

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street, Newark, N. J.

BULLETIN 431

NOVEMBER 14, 1940.

1. UNDUE STIMULATION - CONSUMPTION LICENSEES WARNED CONCERNING  
OVER-SELLING TO SOLDIERS - THE "HOSTESS RACKET" PROHIBITED.

October 29, 1940.

Hon. Leo Rogers,  
Mayor,  
Trenton, N. J.

Dear Mayor Rogers:

I have yours of the 25th enclosing copy of letter of warning of the 24th which you state was issued to all alcoholic beverage licensees of your city.

You and the Director of Public Safety, who signed the warning jointly with you, have stepped out into the front ranks of alert public conscience with this suggestion to licensees to exercise discretion in selling members of the United States Army. I have in mind that Trenton is not many miles from Fort Dix, where thousands of our young men are now undergoing training. They are now out of reach of the normal parental influences and family responsibilities. The pleasures of their leave of absence from arduous duty should not be marred by over-indulgence. Licensees and the public in general owe a debt of gratitude to these men for the sacrifices they are making to bolster the safety of our country. The least that we can do for them is to extend a helping hand to preserve their self-respect.

Disregard of this suggestion may necessitate state-wide restrictive rules affecting licensees, or lead to regulations even more far-reaching concerning the use of licensed premises. Licensees everywhere will do well to take this hint to heart and help the young men of the armed forces to give a wide berth to excessive drinking.

Preparations for national defense in New Jersey have, in certain areas, lent stimulus to the hostess racket on licensed premises. This problem, you will observe, is not unconnected with that which was the subject of your warning letter. As far as it involves immorality and constitutes practices designed to increase unduly the consumption of alcoholic beverages, it is reprehensible. Its proportions now call for state-wide regulation. Accordingly, I have promulgated the enclosed rule.

Sincerely yours,  
E. W. GARRETT,  
Acting Commissioner.

2. REGULATIONS NO. 20, RULE 22 - EMPLOYMENT OF "HOSTESSES" ON PREMISES OF PLENARY OR SEASONAL RETAIL CONSUMPTION LICENSEES PROHIBITED.

"No plenary or seasonal retail consumption licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron."

The above rule is hereby promulgated effective November 1, 1940. Violation will be cause for suspension or revocation of the license.

E. W. GARRETT,  
Acting Commissioner.

Dated: October 29, 1940.

3. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application	)	
to Remove Disqualification be-	)	
cause of a Conviction, Pursuant	)	CONCLUSIONS
to R. S. 33:1-31.2 (as amended by	)	AND ORDER
Chapter 350, P.L. 1938).	)	
Case No. 119.	)	
-----	)	

In 1919 petitioner was convicted of maintaining a disorderly house and fined \$100.00. At the hearing he testified that at the time of the offense which led to his conviction, he was in active service in the United States Army and had no personal knowledge as to the manner in which the place was conducted but pleaded guilty to the charge because the premises were in his name. It is unnecessary to determine herein whether the crime involved moral turpitude.

In April 1935 petitioner pleaded guilty to the crime of forgery and was placed on probation for two years. Petitioner admits that he signed a false name to two small checks but says that this was done without any intention of defrauding anyone. However, the question of his guilt or innocence cannot be redetermined in this proceeding. This crime involved moral turpitude.

At the hearing herein petitioner testified that he has never been arrested or convicted at any other time; that he has lived in the municipality where he now resides for more than twenty years; that since his discharge from the Army in 1919 he has earned his living as a musician; that he seeks to have his disqualification lifted so that he may be employed as a musician on licensed premises.

A service station proprietor, a salesman, and an auto repair man, who have known him respectively for twenty-two years, thirty years, and five years, testified that his reputation in the community is very good and that he has been law-abiding for the past five years. The Chief of Police of the municipality has certified that there are no charges or investigations pending concerning the petitioner.

I am satisfied from the evidence that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

It is, therefore, on this 30th day of October, 1940,

ORDERED, that petitioner's statutory disqualification because of the convictions disclosed herein, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,  
Acting Commissioner.

4. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 30, 1940

Re: Case No. 348

In July 1935 applicant pleaded non vult to an indictment charging him with (1) assault with pistol, and (2) carrying concealed weapons. He was sentenced to one year in the county workhouse on the first charge, and six months in the county workhouse on the second charge, the sentences to run concurrently.

Applicant does not deny the offense but testified that he was so intoxicated at the time of his arrest that he did not know what he was doing. In view of his plea in the criminal proceedings, the question of his guilt or innocence cannot be determined herein. In my opinion, the crime of assault with a pistol involves moral turpitude.

It is recommended, therefore, that applicant be advised that he is not eligible to hold a license or to be employed by or connected in any business capacity with a liquor licensee.

Edward J. Dorton,  
Deputy Commissioner  
and Counsel.

APPROVED:

E. W. GARRETT,  
Acting Commissioner.

5. ENFORCEMENT DIVISION ACTIVITY REPORT FOR OCTOBER, 1940.

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - 25  
Licensees - 3 Non-licensees - - - - - 22

SEIZURES: Stills - total number seized- - - - - 9  
Capacity 1 to 50 Gallons- - - - - 4  
Capacity 50 Gallons and over- - - - - 5

Motor Vehicles - Total number seized- - - - - 4  
Trucks - 0 Passenger cars - 4

Alcohol  
Beverage Alcohol - - - - - 43 Gallons

Mash - total number of gallons - - - - - 8704

Alcoholic Beverages  
Beer, Ale, etc.- - - - - 10 Gallons  
Wine - - - - - 10 "  
Whiskies and other hard liquor - - - - - 89 "

RETAIL INSPECTIONS:

Licensed premises inspected- - - - - 2123  
Illicit (bootleg) liquor - - - - - 12  
Gambling violations- - - - - 5  
Sign violations- - - - - 26  
Unqualified employees- - - - - 150  
Other mercantile business- - - - - 5  
Disposal permits necessary - - - - - 10  
"Front" violations - - - - - 6  
Improper beer markers- - - - - 6  
Other violations found - - - - - 13

Total violations found - - - - - 233  
Total number of bottles gauged - - - - - 18289

STATE LICENSEES:

Plant Control inspections completed - - - - - 90  
License applications investigated - - - - - 10

COMPLAINTS:

Investigated and closed - - - - - 230  
Investigated, pending completion- - - - - 319

LABORATORY:

Analyses made - - - - - 101  
Alcohol and water and artificial coloring  
cases- - - - - 22  
Poison and denaturant cases - - - - - 1

Respectfully submitted,

S. B. White,  
Chief Inspector.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEE - UNNECESSARY NOISES - LICENSE SUSPENDED FOR 3 DAYS.

In the Matter of Disciplinary Proceedings against )

JOSEPH RUISI, )  
297 South Orange Avenue, )  
Newark, N. J., )

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Consumption License No. C-629, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
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Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

Joseph Ruisi, Pro Se.

The licensee is charged with allowing and permitting, on August 22, 1940 and on divers days prior thereto, unnecessary noises at his tavern in violation of Rule 5 of State Regulations No. 20.

During July 1940, Giosue Costanzo, whose apartment at 234 South Sixth Street, Newark, is located just around the corner from the defendant's tavern, complained to this Department about the noisy conduct of the tavern during the late evening and early morning. The rear of the licensed premises, containing two windows and a door, is but thirty-one feet removed from the right rear side of the complainant's apartment. While that section of South Orange Avenue, wherein the licensed premises is located, is devoted to business, South Sixth Street, where Costanzo resides, is essentially residential in character. Following Costanzo's complaint and in accordance with procedure set forth in Bulletin 342, Item 10, a letter was sent by this Department to the defendant advising him of such complaint and suggesting that he attempt to reach a mutually satisfactory arrangement with Costanzo concerning the allegedly noisy conduct of the tavern.

Shortly thereafter, Costanzo renewed his complaint, stating that there had been no abatement of the noise. Thereupon, independent investigation was made by this Department and, as a result thereof, the instant proceedings were instituted.

The investigators of this Department testified that they visited the Costanzo apartment on Thursday night, August 22, 1940; that while in the living room of the apartment they heard the sound of music "very plain and very loud"; that even with the windows closed they "very distinctly" heard the same music while in the side and rear bedrooms of the apartment; that they next went to the defendant's tavern where, in the rear room, they saw a coin-operated electric phonograph equipped with two amplifiers, one in the same room, the other in the barroom. One investigator testified that he played the machine and that it was "very loud, exceedingly loud, much louder than I have ever heard in any tavern"; that on leaving the tavern and going to the front of Costanzo's home, the music was "very loud there"; and that even at a distance of 250 feet from the tavern the music could be heard very plainly.

Costanzo testified that the loud music of the electric phonograph had disturbed him and his family from sleep throughout the summer on an average of three or four nights a week; that the music was often played continuously from midnight or earlier until closing time, and so loudly that it made sleep in his bedroom impossible, even with all windows closed and a closet and clothes rack placed against them. Herman Tortoriello, who is Costanzo's son-in-law, and who also resides in the same apartment, testified to like effect.

The defendant testified that the volume of the music machine can be adjusted by turning a knob located on the back of the machine; that he kept the volume control turned to a low position but that customers sometimes turned it up.

I am convinced by the testimony that the electric phonograph was played in such manner and under such circumstances as to create unnecessary noise. That customers may have been responsible for turning up the volume of the machine affords no defense in light of the fact that the defendant had been placed on notice that the phonograph was being operated in a manner which constituted a nuisance. After such notice it was the defendant's duty to take steps to prevent tampering with the volume control or to take such other measures as were necessary to prevent this machine, equipped, as it is, with two amplifiers, from blaring forth at top volume through open windows at all hours of the night, to the annoyance and discomfort of neighbors who are trying to sleep.

I find the defendant-licensee guilty as charged.

The usual penalty for a violation of this kind is five days. Re Beyer, Bulletin 268, Item 4. In view of the fact, however, that this is the defendant-licensee's first offense, and that the only evidence of undue noise is the loud playing of the electric phonograph, the license will be suspended for three days instead of five days.

Accordingly, it is, on this 31st day of October, 1940,

ORDERED, that plenary retail consumption license C-629, heretofore issued to Joseph Ruisi by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective November 6, 1940, at 3:00 A. M.

E. W. GARRETT,  
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - LICENSEE DISQUALIFIED BECAUSE NOT RESIDENT OF STATE FOR 5 YEARS - LICENSE SUSPENDED BALANCE OF TERM - LEAVE TO APPLY, AFTER 10 DAYS, FOR LIFTING SUSPENSION IF LICENSE TRANSFERRED.

In the Matter of Disciplinary Proceedings against )

KATHRYN E. McGRATH, )  
15th Street and Boulevard, )  
Surf City, Ocean County, N.J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Borough Council of the Borough of Surf City. )  
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Joseph A. Citta, Esq., Attorney for Defendant-Licensee.  
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges substantially alleging that she (1) falsely stated that she had resided in New Jersey continuously for five years immediately preceding the license application, in violation of R. S. 33:1-25; (2) suppressed the fact that Patrick McGrath had an interest in the license applied for and the business to be conducted thereunder, in violation of R. S. 33:1-25; (3) aided and abetted Patrick McGrath, a non-licensee, to exercise the rights and privileges of the license, in violation of R. S. 33:1-52; and (4) that the license was issued in violation of R. S. 33:1-25 in that she had not been a resident of the State of New Jersey for the requisite five years.

In connection with her guilty plea, received in advance of trial, the licensee represents:

"That Kathryn E. McGrath has sold her license to Worden Taylor, of Collingswood, N. J., who is fully qualified in all respects as a licensee; that application for transfer of this license from Kathryn E. McGrath to Worden Taylor has already been made to the Borough Council of the Borough of Surf City; that if and when the transfer is granted, no one other than Worden Taylor will have any interest whatsoever in the license or the business conducted thereunder; and that upon the granting of the transfer, the licensee will file a verified petition, accompanied by documentary proof and affidavits that the 'front' situation herein has been fully corrected so that whatever suspension to be imposed against this licensee may be lifted\*\*\*\*".

In accordance with Re King, Bulletin 404, Item 5, and Re Margrie, Bulletin 423, Item 10, the license will be suspended for the balance of its term. However, on proper showing that a bona fide correction has actually been made, the suspension may be lifted, but not before at least ten days of such suspension shall have been served.

Accordingly, it is, on this 1st day of November, 1940,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Mayor and Borough Council of the Borough of

Surf City to Kathryn E. McGrath for 15th Street and Boulevard, Surf City, Ocean County, N. J., be and the same is hereby suspended for the balance of its term, effective November 6, 1940, at 2:00 A.M.; and it is further

ORDERED, that if it satisfactorily appears, on verified petition and proper proof, that the "front" situation herein has been fully corrected, the said suspension will be lifted, provided, however, that in no event shall such suspension be lifted prior to the expiration of ten days from the effective date of the suspension.

E. W. GARRETT,  
Acting Commissioner.

8. APPELLATE DECISIONS - HAMBURG DEPARTMENT STORE, INC. v. HAMBURG.

HAMBURG DEPARTMENT STORE, INC., )	
Appellant, )	
-vs- )	ON APPEAL
	CONCLUSIONS AND ORDER
MAYOR AND BOROUGH COUNCIL OF )	
THE BOROUGH OF HAMBURG, )	
Respondent )	
----- )	

Seymour J. Solomon, Esq., Attorney for Appellant.

This is an appeal from the denial of a plenary retail distribution license for premises at the intersection of Routes 31 and 23 in the Borough of Hamburg.

No reason was given when the application was denied, nor did respondent file any answer to the petition of appeal, setting forth its reasons for denial. Nor did anyone appear on behalf of the respondent at the hearing herein.

The appellant appears personally qualified and there seems to be no objection to the suitability of the premises. Although respondent has fixed a fee for plenary retail distribution licenses, none are presently issued and outstanding. Testimony on behalf of appellant establishes that the nearest package stores are in Franklin, Sussex and Newton, distant 2½, 5 and 15 miles from Hamburg in different directions. According to the 1930 Federal census, the population of the Borough of Hamburg is 1,160.

Under the circumstances, especially in view of the complete silence of the respondent municipality as to its reasons for the denial, I must conclude that the denial was unreasonable and arbitrary. Respondent's action is therefore reversed.

Accordingly, it is, on this 2nd day of November, 1940,

ORDERED, that respondent grant the license for which application was made.

One further point deserves mention. Following denial of the application, the municipal clerk returned to the applicant the application for license, proof of publication and applicant's check

for the license fee. This was improper. Even were the denial affirmed, the application and proof of publication must be kept on file as part of the official municipal records. Furthermore, in the event of denial, municipalities are obliged to retain ten per cent of the required license fee as and for an investigation fee. R. S. 33:1-25. The application, proof of publication and check were marked as exhibits in the cause. All three will be transmitted to the municipal clerk, the first two to be filed in the municipal records and the last to be applied to payment of the license fee, which is to be prorated from the effective date of the license, the balance to be refunded to appellant.

E. W. GARRETT,  
Acting Commissioner.

9. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

November 6, 1940.

Re: Case No. 347

In 1931 applicant was twice convicted of disorderly conduct, receiving a suspended sentence on both occasions; in 1936, and again in 1937, he was convicted of the same offense and fined \$10.00 and \$5.00, respectively. His fingerprint record further discloses that between April 1926 and November 1939 he was arrested on eleven other occasions on various charges ranging from disorderly conduct and assault and battery to grand larceny, although it does not appear that he was convicted on any of these occasions.

Convictions arising out of charges of disorderly conduct are not convictions of crimes. Re Case No. 342, Bulletin 423, Item 11; Re Case No. 329, Bulletin 412, Item 9; Re Case No. 278, Bulletin 397, Item 5; Re Case No. 318, Bulletin 394, Item 17. Arrests which result in dismissals are not convictions. Re Case No. 68, Bulletin 364, Item 3.

While examination into the circumstances surrounding each arrest and conviction discloses nothing serious or morally reprehensible in connection with any one of said arrests or convictions, the very length of applicant's criminal record would seem to indicate an apparent proclivity for running afoul of the law.

Applicant, however, has never been convicted of a crime, let alone a crime involving moral turpitude. He is not, therefore, disqualified by statute.

It is recommended, albeit reluctantly, that applicant be advised that by reason of the aforesaid convictions he is not mandatorily disqualified by statute from being employed on licensed premises.

Robert R. Hendricks,  
Attorney.

APPROVED:

E. W. GARRETT,  
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - DISQUALIFIED INDIVIDUAL TRUE OWNER OF BUSINESS OPERATED BY CORPORATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against  
 EAGLE CAFE, INC.,  
 16 Bank Street,  
 Paterson, N. J.,  
 Holder of Plenary Retail Consumption License No. C-342, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Henry Marelli, Esq., Attorney for Defendant-Licensee.  
 Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant, holder of a plenary retail consumption license for a tavern in Paterson, pleads guilty to the charges (1) that it falsely denied, in its application for license, that anyone other than itself had interest in the tavern when in fact Anna Caillie had such an interest, contrary to R. S. 33:1-25; and (2) that it permitted the said Anna Caillie to exercise the rights and privileges of its license, contrary to R. S. 33:1-26, 52.

In effect, the defendant thus admits that it holds its license merely as a "front" for Anna Caillie and that she actually owns and operates the tavern.

The pertinent facts, showing the full extent of the illegality here involved, are as follows:

In June 1937, Anna Caillie, apparently desirous of running a tavern at the premises in question but being disqualified by her criminal record from holding any liquor license or even working for or being connected with a liquor licensee in this State, engineered the fraudulent scheme of obtaining from the Paterson Board of Aldermen a plenary retail consumption license for such premises in the name of Lena Caillie (her sister). She then, under guise of this license and successive renewals for 1937-8, 1938-9 and 1939-40, opened up and operated a tavern there. On one occasion, when questioned by investigators of this Department, she represented that she was actually Lena.

Not content with thus fraudulently operating the tavern, she also permitted lewdness and other misconduct there. Hence, in June 1940 the Paterson Board, in a disciplinary proceeding before it, revoked the tavern's then existing license for such misconduct.

To "beat" this revocation, Anna Caillie at once formed the defendant, the Eagle Cafe, Inc., as a puppet for her, with all its stockholders and directors being merely "dummies". On June 17, barely a week after closing of the tavern, this corporation obtained a plenary retail consumption license for the same premises from the Paterson Board of Alcoholic Beverage Control (the new local issuing authority in the City), and later renewed such license for the current (1940-1) fiscal year.

Under guise of this corporation and its license, Anna re-opened and continued the tavern. She then applied to this Department for a removal of her disqualification resulting from her criminal record (apparently hoping thereby to be able to come out from under cover). In that proceeding she falsely testified that she had never been connected with any liquor business in this State. When independent investigation by this Department in such proceeding uncovered the fact that she had really been operating the Lena Caillie licenses, her application was denied outright. Re Case No. 109, Bulletin 423, Item 13.

However, it was not then known that Anna Caillie was also actually operating the Eagle Cafe, Inc., present holder of the license. When further investigation by this Department brought such fact to light, the instant proceedings were brought against the Eagle Cafe, Inc.

In view of the foregoing facts, showing Anna Caillie's flagrant and persistent disregard of law, the only proper penalty against the license now being held by the defendant as a "front" for her is outright revocation.

No credit will be given for the guilty plea. For, in cases of this kind, the Department is not interested in the saving of time and expense of conducting a hearing and proving its case, but rather in rigorously weeding from the liquor industry such undesirables and the "dummies" through which they operate. See Re Lou's, Inc., Bulletin 377, Item 1.

Nor is any leniency to be shown because of the defendant's claim that, if the license be not revoked, the business is to be sold and application made for transfer of such license to another.

I find that such purported sale is merely a loose verbal agreement with Anna Caillie's brother-in-law, who has been actually working at the tavern and whose wife is one of the "dummy" stockholders and officers in the Eagle Cafe, Inc. Wholly passing over the question whether such transaction is bona fide, it would indeed be ludicrous, after Anna Caillie has so grossly violated the law, now to allow her, when caught, simply to sell the business and have the license transferred to another.

Accordingly, it is, on this 6th day of November, 1940,

ORDERED, that Plenary Retail Consumption License No. C-342, heretofore issued by the Board of Alcoholic Beverage Control of the City of Paterson to Eagle Cafe, Inc. for premises at 16 Bank Street, Paterson, be and the same is hereby revoked, effective immediately.

E. W. GARRETT,  
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - SECOND VIOLATION AS TO SALES DURING PROHIBITED HOURS - FIRST VIOLATION AS TO PERMITTING PERSONS ON PREMISES DURING PROHIBITED HOURS - 15 DAYS' SUSPENSION - HEREIN OF EMPLOYEE ALLEGEDLY MENTALLY INCOMPETENT.

In the Matter of Disciplinary Proceedings against JOSEPH KOBYLARZ, 46 Wood Street, Garfield, N. J., Holder of Plenary Retail Consumption License C-102, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Henry L. Janowski, Esq., Attorney for Licensee. Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Charges were served on licensee alleging that (1) he sold and allowed, permitted and suffered the sale of alcoholic beverages at 11:15 A.M. (D.S.T.) on Sunday, September 15, 1940; and (2) his premises were open and he permitted persons other than himself and bona fide employees to remain therein at 11:15 A.M. (D.S.T.) on Sunday, September 15, 1940, both in violation of Section 14 of an ordinance adopted by the City Council of the City of Garfield on February 27, 1935, as amended August 14, 1940.

On Sunday, September 15, 1940, Investigators Wagi and Webster of this Department arrived at the licensed premises at about 11:00 A.M.

The evidence shows that Webster first knocked on a side door and was told by a man who opened the door that he could not obtain any drinks until 12 o'clock; that shortly thereafter Wagi knocked on the side door and was admitted by the bartender, from whom he purchased a glass of whiskey and a bottle of beer; that while Wagi was in the premises he saw two men drinking at the end of the bar; that while Wagi was in the barroom, Webster again tried to gain admission through the side door and was denied admission by the bartender; that subsequently Wagi opened the front door, which had been locked, and admitted Webster through the front door. That Wagi was served with drinks and that two other persons were then on the premises is corroborated by Webster, who testified that when he finally entered the premises Wagi had a bottle of beer in his hand, and that two other men were then in the barroom.

The licensee introduced no evidence to contradict the investigator's testimony. His sole defense is that the bartender was mentally incompetent at the time of the violation and he contends that because of this fact he should not be held responsible for the acts of his agent.

Licensee testified that Anthony Warchol, who was tending bar on September 15, 1940, was taken sick on September 29, 1940, removed to Bergen Pines Psychopathic Ward and thereafter transferred to Hackensack Hospital, where he died on October 3, 1940. He further testified that for a long period prior to the violation, he

noticed that his bartender had been drinking heavily and had been cashing checks for strangers; that his bartender appeared to be in a daze for two or three months prior to September 15th; that he did not discharge the bartender because he felt that the condition was merely temporary and because of sympathy for the bartender's family. He also produced the widow of the bartender, who testified that her husband had been acting irrationally for a long period of time; and that after the alleged violation he had told her that he thought the day on which the violation occurred was a Monday.

Ordinarily, a licensee is responsible for the acts of his agent performed within the apparent scope of his duty. Re Jacobs, Bulletin 315, Item 8. It may be that a licensee could not be held responsible for the acts of an agent who had no knowledge of what he was doing at the time when the alleged violation occurred. The proof in this case, however, does not satisfy me that the bartender was so mentally incompetent that he did not know what he was doing. He had twice told Webster that he could not sell him any drinks prior to 12 o'clock noon; he admitted to the investigators that he had made the sale; and his conduct appeared to them to be normal.

I therefore find the licensee guilty on both counts.

This is the licensee's second violation for selling on Sunday in violation of City Ordinance. I shall, therefore, double the usual five day penalty and impose a suspension of ten days on the first charge. The license will also be suspended for five additional days on the second charge, making a total suspension of fifteen days.

Accordingly, it is, on this 6th day of November, 1940,

ORDERED, that Plenary Retail Consumption License C-102, issued to Joseph Kobylarz by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for fifteen (15) days, effective November 12, 1940, at 3:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

12. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
 ERNEST A., JOHN and EUGENE GARDELLA,  
 T/a Gardella's Market,  
 Ocean Avenue and New St.,  
 Sea Bright, N. J.,  
 Holders of Plenary Retail Distribution License D-1, heretofore issued by the Borough Council of the Borough of Sea Bright.

CONCLUSIONS AND ORDER

Ernest A., John and Eugene Gardella, Pro Se.  
 Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensees have pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on October 26, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of the usual ten days.

Accordingly, it is, on this 9th day of November, 1940,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Ernest A., John and Eugene Gardella, T/a Gardella's Market, by the Borough Council of the Borough of Sea Bright, be and the same is hereby suspended for a period of five (5) days, effective November 12, 1940, at 1:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

13. DISCIPLINARY PROCEEDINGS - FRONT - PETITION TO LIFT SUSPENSION GRANTED AFTER MORE THAN TEN DAYS ELAPSED ON PRODUCTION OF PROOF THAT SITUATION NOW CORRECTED.

In the Matter of Disciplinary Proceedings against )

THOMAS BOWE, )  
T/a TOWN TAVERN, )  
State Highway 34, 1/2 mile )  
north of Collingswood Circle, )  
Howell Township, Monmouth County, )  
P.O. R. D. Farmingdale, N. J., )

ON PETITION  
CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption )  
License No. C-18, issued by the )  
Township Committee of the Township )  
of Howell. )  
- - - - - )

Harry Sagotsky, Esq., Attorney for Defendant-Licensee.

On September 11, 1940 I suspended the defendant's license for the balance of the term after the defendant pleaded guilty to charges showing that he was holding such license merely as a "front" for Michael Bus (a person disqualified from himself holding a retail liquor license in this State by reason of not having been a five years' resident here). However, in view of the defendant's frank disclosure, leave was granted, at time of such suspension, for the defendant to present a verified petition accompanied by proper proof that he acquired all Michael Bus' interest, for an order lifting the suspension after ten days of such suspension had been served. Re Bowe, Bulletin 423, Item 2.

On November 8 the defendant filed such petition, accompanied by proof that he has bought out Michael Bus entirely and that he (the defendant) has obtained a lease from the landlord of the premises. The petition further alleges that the defendant is now the sole and exclusive owner of the tavern; that there are no agreements, secret or otherwise, giving Michael Bus or anyone else any interest therein, and that, in fact, the defendant "will not engage, hire, employ or use Michael Bus at the said licensed premises in any capacity whatsoever."

In view of such petition and proofs, I am satisfied that the "front" situation has been fully corrected. Hence, since more than ten days have elapsed since the suspension became effective, the defendant's petition for immediate lifting of such suspension is granted.

Accordingly, it is, on this 9th day of November, 1940,

ORDERED, that the suspension heretofore imposed on the defendant's license on September 11, 1940, for the balance of its term, be and hereby is lifted and the license restored to operation effective immediately.

E. W. GARRETT,  
Acting Commissioner.

14. DISCIPLINARY PROCEEDINGS - SLOT MACHINE ON LICENSED PREMISES - SALES DURING PROHIBITED HOURS - 8 DAYS ON PLEA OF GUILTY TO BOTH CHARGES.

In the Matter of Disciplinary Proceedings against  
 WILLIAM J. HENDERSON,  
 97 Prospect St.,  
 Paterson, N. J.,  
 Holder of Plenary Retail Consumption License C-185 issued by the Board of Aldermen of the City of Paterson.

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CONCLUSIONS AND ORDER

William J. Henderson, Defendant-Licensee, Pro Se.  
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that (1) on August 12, 1940 he possessed a Bally "Thistle Downs" one-ball machine, a device in the nature of a slot machine, on his licensed premises, in violation of Rule 8 of State Regulations 20; and (2) on September 28, 1940 he sold alcoholic beverages after 3:00 A.M. in violation of Rule 2 of Rules and Regulations of the Board of Aldermen of the City of Paterson governing Plenary Retail Consumption and Distribution Licenses, passed June 28, 1935, as amended June 30, 1939.

The usual penalty for the first charge is ten days; that for the second charge, five days; making a total of fifteen days.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for eight days instead of the usual fifteen days.

Accordingly, it is, on this 9th day of November, 1940,

ORDERED, that plenary Retail Consumption License C-185, heretofore issued to William J. Henderson by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of eight (8) days, effective November 12, 1940, at 3:00 A.M.

E. W. Garnett  
Acting Commissioner.