

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

BULLETIN 412

JUNE 27, 1940

1. DISCIPLINARY PROCEEDINGS - FRONT FOR PERSON APPARENTLY
QUALIFIED - SALES TO MINORS - LICENSE SUSPENDED BALANCE OF TERM.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH SCARSELLA,)
N/S Newton-Swartswood Road,)
Fredon Township,)
P.O. Newton, N.J., R.D. 3,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-4 issued by the)
Township Committee of the)
Township of Fredon.)
-----)

Richard E. Silberman, Esq., Attorney for the Department
of Alcoholic Beverage Control.
Dolan and Dolan, Esqs., Attorneys for Licensee.

The licensee has pleaded non vult to charges of selling alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations 20; of making false statement in his application for license, and having knowingly aided and abetted a non-licensee to exercise the rights and privileges of his license.

Together with his plea the licensee has tendered his license certificate for surrender and has voluntarily ceased all operation thereunder as of June 18, 1940.

It appears from the Department file that the undisclosed principal was John Scarsella, cousin of the licensee, who, because of judgments obtained against him by creditors, did not apply for the license in his own name. He appears fully qualified to hold a license. Cf. Re King, Bulletin 404, Item 5.

If it were not for the sales to minors the tender of the license for surrender would be accepted and the charges dismissed. Re Huttich, Bulletin 406, Item 2. However, the surrender of a license does not bar proceedings to revoke or suspend such license. R. S. 33:1-31.

In view of the licensee's frank and forthright admission of guilt and in view of the voluntary suspension of business, the license will be suspended for the balance of its term.

Accordingly, it is, on this 20th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued to Joseph Scarsella by the Township Committee of the Township of Fredon, be and the same is hereby suspended for the balance of its term, effective immediately.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - APPLICANT FALSELY DENIED IN APPLICATION THAT HE HAD EVER BEEN CONVICTED OF CRIME - UNFIT ASIDE FROM QUESTION OF MORAL TURPITUDE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

EMMETT A. STURTS, Clayton-Williamstown Road, Franklin Township (Gloucester Co.), P.O. Franklinville, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-5, issued by the Township Committee of the Township of Franklin (Gloucester County))

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William C. Egan, Esq. and Vernon H. Fisler, Esq., Attorneys for Defendant-Licensee.

Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant is charged with violating the Alcoholic Beverage Law (R. S. 33:1-25) by falsely denying in his application for his plenary retail consumption license that he had ever been convicted of a crime.

The defendant has been convicted of crime on at least four occasions, viz., in 1929 for maintaining a slot machine at premises which he was then apparently operating as a "speakeasy" in Prohibition days; in 1932 for possessing and selling liquor at those premises; in 1934 for maintaining a slot machine at the same or nearby premises; and in 1935 for book-making at such premises. From the defendant's testimony it further appears that he was convicted on an added occasion for a liquor violation during the Prohibition days.

The defendant obtained his first plenary retail consumption license in 1936-7 by way of transfer from his wife, and has successively renewed such license for 1937-8, 1938-9 and 1939-40. In his first and second applications (viz., for his 1936-7 and 1937-8 licenses respectively) the question asking whether the defendant had ever been convicted of a crime was left blank. In his next two applications (viz., for his 1938-9 and his current 1939-40 licenses respectively) the question is answered "No." However, in all four applications there is, in answer to another question, the information that the defendant was convicted for selling liquor in 1929 (a mistake, so defendant claims, for his 1932 liquor conviction).

The defendant claims that he is innocent of any intent to hide his full record. He testified that his original application was filled out by the then Township Clerk; that the Clerk, in filling out such application, did not ask the defendant for what crimes he had been convicted, but merely inquired whether the defendant had been convicted of any liquor violation; that each application thereafter was filled out by the Township Clerk by merely copying the answers from the preceding application; that he (the defendant) merely signed but never read the applications, and never knew there was any question which required him to reveal all his convictions.

I am not convinced of the defendant's avowal of innocence. His story breaks down in two respects: It fails to explain why, if the Clerk actually asked him on the original application only for the liquor violations of which he had been convicted, the defendant revealed only one such conviction and not the two of which he believes he had been convicted; likewise, his claim that each application was merely a copy of the previous one fails to explain why the question as to his convictions was left blank in his first two applications and yet specifically answered "No" in his next two.

Hence I find the defendant guilty as charged.

As to penalty: On two separate occasions in the past, viz., in June 1938 and February 1940, the defendant has been found guilty in a disciplinary proceeding before the Township Committee of selling liquor during the locally prohibited hours on Sunday, his then license being suspended for three days in the first case and ten days in the second. In view of such record, and his guilt in the present case of having deliberately failed in his applications for license to reveal the four and perhaps five criminal convictions against him, he stamps himself as personally unfit to hold a license. Outright revocation is indicated.

In view of the foregoing, it is unnecessary here to determine whether any of the crimes of which the defendant was convicted involves moral turpitude and hence disqualified him from obtaining any liquor license in New Jersey. See R.S. 33:1-25.

Accordingly, it is, on this 21st day of June, 1940,

ORDERED, that Plenary Retail Consumption License No. C-5, heretofore issued to Emmett A. Sturts by the Township of Franklin (Gloucester County), be and the same hereby is revoked, effective immediately.

E.W.GARRETT,
Acting Commissioner.

3. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2 (as amended)
by Chapter 350, P.L. 1938).)

CONCLUSIONS
AND ORDER

Case No. 98)
-----)

In a petition filed with this Department, petitioner asked removal of his disqualification resulting from his conviction in 1928 of maintaining a house of prostitution.

Petitioner's criminal record disclosed three other convictions: Larceny in 1918; inmate of disorderly house in 1926; and violation of the National Prohibition Enforcement Act in 1931.

At the hearing petitioner disclaimed any knowledge or recollection of having been convicted of any crime on any occasion other than in 1928. He readily admitted having been arrested in a speakeasy raid in 1931, but insisted that he had been released.

Subsequent investigation by this Department bears out petitioner's story in so far as the convictions in 1926 and 1931 are concerned. Another person of similar name had been convicted of being an inmate of a disorderly house in 1926 and charges arising out of the speakeasy arrest in 1931 had been dismissed as against petitioner. As regards the larceny conviction in 1918, however, investigation discloses that petitioner, together with another young man, had taken an automobile for a "joy-ride", had pleaded guilty and had been given a suspended sentence. Petitioner was then only seventeen years old. Such a conviction does not involve moral turpitude. Cf. Case No. 261, Bulletin 305, Item 13, and cases cited therein. The Hearer reports that petitioner appeared to be most earnest and sincere in his inability to recall this conviction of twenty-two years back. It may well be, considering the length of time which has since intervened, the youthfulness of petitioner at the time of the offense and the fact that he did not stand trial or serve a jail sentence, that he was honestly unable to remember the conviction at the time of the hearing. Under the circumstances I shall give him the benefit of the doubt.

Petitioner produced two character witnesses at the hearing — a Police Court Clerk and a businessman who have known him for thirty and eight years, respectively. Both testified that petitioner's reputation is good. His attorney, a member of the bar of this State for twenty-two years, testified that he has known petitioner since childhood and that his reputation in the community is excellent.

Petitioner's fingerprint record shows that he has not been arrested on any occasion since 1931 nor convicted of any crime since 1928. Report from the Chief of Police of the municipality wherein he resides discloses that there are no present complaints or investigations pending against him.

On all the evidence it is concluded 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.

Accordingly, it is, on this 25th day of June, 1940,

ORDERED, that his statutory disqualification because of the conviction described 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. APPELLATE DECISIONS - BARKAN v. RUMSON.

HARRY BARKAN,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
BOROUGH COUNCIL OF THE)	
BOROUGH OF RUMSON,)	
)	
Respondent)	
-----)	

Carton & Abramoff, Esqs., by Lawrence A. Carton, Esq.,
Attorneys for Appellant.
William A. Stevens, Esq., by Bliss Price, Esq., Attorney for
Respondent.

Appellant appeals from the revocation of his plenary retail distribution license issued for premises at 8 West River Road, Rumson. Respondent revoked the license after it had found appellant guilty of permitting the consumption of alcoholic beverages on the licensed premises and permitting containers to be opened on the licensed premises, in violation of Rule 14 of State Regulations No. 20, which provides:

"No retail distribution licensee shall permit any alcoholic beverages sold by him to be consumed on the licensed premises, nor shall he permit their containers to be opened on the licensed premises."

Appellant alleges various reasons for reversal, which may be summarized as follows:

- (1) There was no trustworthy testimony which warranted a finding of guilt;
- (2) There was no proof that alcoholic beverages were sold or consumed on the licensed premises or a container opened on the licensed premises;
- (3) The penalty is excessive.

On February 10, 1940, Investigators Wagi and Finzel visited the licensed premises. Wagi entered first and after purchasing some groceries, asked the man in charge of the premises if he would sell him a drink of whiskey. Wagi was instructed to go into a back room on the same floor, which room has been identified as a kitchen. Shortly thereafter the man in charge of the premises brought from the front to the rear room an open bottle of Wilson whiskey from which he served Wagi three drinks at twenty-five cents a glass. Later, the same man brought two bottles of beer, which he permitted Wagi to open and for which he charged ten cents a bottle. Investigator Finzel then entered the rear room and saw the glass of whiskey and the opened beer bottle in Wagi's possession.

The investigators testified that the man in charge of the licensed premises identified himself as Louis Barkan, admitted making the sales, and told them that he was the manager of the premises in the absence of his brother, the licensee.

As to the first point: Appellant argues that the testimony of "paid detectives" should not be accepted unless strongly corroborated. Without passing on the question as to whether investigators of this Department should be classified as "paid detectives", it is enough to say that their testimony was sufficiently corroborated by the other testimony in the case. It should be noted that appellant failed to call upon his brother, Louis Barkan, to testify at the hearing below or at the hearing on the appeal, despite the testimony as to alleged admissions made by Louis Barkan.

As to the second point: The analysis made by the chemist regularly employed by this Department, as set forth in his findings duly certified by the Commissioner of Alcoholic Beverage Control, discloses that the bottle of Wilson whiskey seized by the investigators contained a blended whiskey fit for beverage purposes and that the bottle of beer seized by the investigators contained a malt alcoholic beverage fit for beverage purposes. A duly certified copy of the chemist's analysis was offered at the hearing below but excluded because of appellant's objection. However, the evidence should have been admitted under the provisions of R. S. 33:1-37 and it was admitted at the hearing on the appeal, which is a trial de novo. Light v. Ridgefield, Bulletin 116, Item 8. The application for the license which was admitted in evidence at the hearing on the appeal shows that the licensed premises consisted of the "ground floor", which clearly includes the kitchen in which the sales were made and consumption permitted.

As to the third point: The question as to penalty which should be imposed in a case of this kind is largely within the discretion of the local issuing authority. The records of this Department show that in April 1936 appellant's license was suspended for three days for possession of lottery tickets, and that in January 1938 his license was suspended for two weeks on a charge similar to that being considered herein. This is his third violation of the State rules and regulations. I cannot say that respondent's decision to revoke the license was unreasonable under the circumstances of this case.

Appellant contends also that no penalty should be imposed or that the penalty should be mitigated because he himself did not participate in any way in the violation. I find that the violation was committed by licensee's brother, who was managing the licensed premises. However, licensee is responsible for his brother's acts. As the Commissioner said in Re Kneller, Bulletin 49, Item 4:

"A licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. The license is his. So is the business. It is his duty to see to it that the business is conducted in accordance with the law. If unable to do so because of other interests, that is his personal lookout. It does not exonerate him from full responsibility for what goes on upon the licensed premises."

For the reasons aforesaid, the action of respondent is affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: June 25, 1940.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - SECOND VIOLATION - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary)
 Proceedings against)
)
 LOUIS SEIDMAN,)
 1129½ Broadway,)
 Camden, New Jersey,)
)
 Holder of Plenary Retail Distri-)
 bution License No. D-17, issued by)
 the Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Camden.)
 -----)

CONCLUSIONS
AND ORDER

Philip Blank, Esq., Attorney for Defendant-Licensee.
 Charles Basile, Esq., Attorney for Department of Alcoholic
 Beverage Control.

The defendant is charged with selling liquor below Fair Trade price contrary to Rule 6 of State Regulations No. 30.

On March 26, 1940, Investigators Brooks and Roberts of this Department noted that a fifth bottle of Wilen's blackberry wine, then on the Fair Trade price list at 55¢, was nevertheless advertised in the defendant's store window at 49¢. They thereupon instructed one Kirk (a young colored man whom they knew and who washed Investigator Roberts' car every week and took care of it when he parked the car in the Camden City Hall parking lot) to purchase a fifth bottle of such wine at the defendant's store and gave him 49¢ for the purchase. When Kirk emerged with the wine the investigators, on his declaration that he had bought it for the 49¢, entered the store with Kirk. Inside, they found that, in addition to the "49¢" tag in the window, there was also a "49¢" tag on the shelf where the Wilen blackberry wine was located.

Kirk testified that he actually purchased the fifth bottle of wine from the defendant for 49¢ and that the defendant, in making the sale, told him, "I sell it for 55¢ but I will let you have it for 49¢."

However, the defendant, while admitting the sale, denies it was for 49¢. He asserts that, when Kirk offered him that sum, he informed Kirk that the price was 55¢; that Kirk thereupon took six additional pennies from his pocket and thus gave the defendant 55¢ in total. This testimony was corroborated by his delivery and handy man, who claims that, when the sale was made, he was in the "back room" fixing stock, and saw and heard what happened through a window-like opening in the wall.

In seeking to explain the "49¢" tag on the shelf and also on the bottle in the window, the defendant claims that the shelf's price tag, though placed in the middle of the shelf, did not refer to the Wilen blackberry wine but to other Wilen wines on that shelf, and that the tag in the window was erroneously put on the bottle by his clerk when dressing the window the day previously.

This testimony as to the price tags is corroborated by the defendant's clerk. Such clerk claims that, when dressing the window, he checked the list of liquors on Fair Trade and, since other of the

Wilens wines sold for 49¢, made the mistake of believing that Wilens blackberry wine sold for the same price.

In addition to the foregoing testimony on his behalf, the defendant sought, in various ways, to impeach Kirk's credibility as to his story of buying the wine for 49¢.

Such attempt might perhaps be well taken were it not for the unassailable fact of the price tags of 49¢ on the shelf and in the window. For, frankly, I do not believe the defendant's story that the shelf's price tag was intended to refer only to some of the wines on the shelf and not to all. Nor do I believe the clerk's protestation that the price tag in the window was merely the result of mistake on his check of the Fair Trade prices. On a previous occasion (viz., in 1939) when the defendant was found guilty by this Department of selling liquor below Fair Trade price, this same clerk then similarly claimed that he had made a mistake as to the Fair Trade listings. See Re Seidman, Bulletin 372, Item 11. His present story has the same familiar hollow ring as did his old.

Hence, in view of the mentioned price tags of 49¢, I believe Kirk's story that he made his purchase for that sum.

Consequently, I find the defendant guilty as charged.

As to penalty: In view that this is the defendant's second offense for selling below Fair Trade price, his license, as is usual with such second offenders, would normally be suspended for twenty days. However, since his present license will expire in a few days, such license will be suspended for the balance of its term and no license issued to him or for the premises in question until a period of twenty days shall have elapsed from the date of suspension of the present license.

Accordingly, it is, on this 25th day of June, 1940,

ORDERED, that Plenary Retail Distribution License No. D-17, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Louis Seidman, for premises at 1129½ Broadway, Camden, be and the same is hereby suspended for the balance of its term, effective June 28, 1940, at 2:00 A.M. (Daylight Saving Time); and it is further

ORDERED, that no further license be issued to said licensee or for the same premises prior to July 18, 1940.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - BRAWL CHARGE DISMISSED - LICENSE SUSPENDED 10 DAYS FOR PERMITTING KNOWN CRIMINALS AND PERSONS OF ILL REPUTE ON PREMISES.

In the Matter of Disciplinary)
Proceedings against)

PATRICK J. GERRITY, JR.,)
49 Avenue L,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-30, issued)
by the Municipal Board of)
Alcoholic Beverage Control of)
the City of Newark.)
- - - - -)

Samuel B. Helfand, Esq., Attorney for the State Department of
Alcoholic Beverage Control.
Carl J. Yagoda, Esq., Attorney for the Licensee.

The licensee pleaded not guilty to charges that (1) he permitted known criminals and persons of ill repute in and upon his licensed premises, in violation of Rule 4 of State Regulations 20, and (2) he suffered a brawl and disturbance in and upon his licensed premises, in violation of Rule 5 of State Regulations 20.

These proceedings emanated from the shooting affray which occurred in the licensed premises on December 18, 1939, at which time one Theodore, alias "Teddy", Nalikowski fatally shot one John Sasso. It appears that on the day in question there were in the licensed premises: Theodore Nalikowski, Eugene McMenamain and Anthony Cusano, among others. In addition to these individuals the licensee has admitted the presence of Joseph Cusano in the licensed premises on several occasions. It appears that Nalikowski, McMenamain and the Cusanos were well known by the licensee. He has admitted that for the past ten or twelve years he knew intimately Eugene McMenamain. McMenamain has a police record which dates back to 1923. In addition to difficulties with the law, which include bastardy proceedings, disorderly conduct on several occasions and loitering, McMenamain's record shows a sentence of 18 months in 1930 for robbery; a sentence of 2 years in 1932 for larceny, receiving and driving an automobile without the owner's consent; a sentence of 3 months in 1934 for disorderly conduct; a sentence of 18 months in 1938 for atrocious assault and battery. The 1930 and 1938 sentences were to the Essex County Penitentiary. The 1932 sentence resulted in McMenamain's commitment to the New Jersey State Prison from which he was paroled the following year. Each of these jail sentences occurred during the past ten years - during which time the licensee has admitted that he knew Eugene McMenamain intimately. In the light of his record McMenamain may be considered a known criminal. In the light of the licensee's admission, McMenamain may be considered a criminal known certainly to the licensee, who, when questioned by field investigators of this Department, even admitted that he had visited McMenamain in the Essex County Penitentiary.

The licensee denies knowledge of any criminal record as far as Nalikowski and the Cusanos are concerned. He has admitted that he has known Anthony, alias "Nigger", Cusano for the past 15 years.

During that time Anthony Cusano received a jail sentence, fine or suspended sentence on three occasions for loitering and on one occasion for disorderly conduct - an unenviable record.

The licensee denies knowing Joseph Cusano for more than the past year and well he might. Joseph Cusano, alias Albert Martino, alias Joe Nelson, in 1929 was placed on probation for 2 years for breaking, entering, larceny and receiving; in 1930 for grand larceny he was committed for an indeterminate term to the Annandale Reformatory, transferred to the Rahway Reformatory - from which he was paroled the following year; in 1935 interference with a police officer resulted in a fine of \$10.00 or 20 day jail sentence. Further difficulties the same year caused a sentence of three months in the Essex County Penitentiary. Disorderly conduct in 1936 resulted in a \$50.00 fine and as a disorderly person in 1937 he was sentenced to the Hudson County Penitentiary for nine months.

The licensee admits that he has known "Teddy" Nalikowski for about five to seven years. In 1930 Nalikowski received a maximum sentence of fifteen years for robbery and was committed to the Rahway State Reformatory. He was recalled the following year and was sentenced for five years to the New Jersey State Prison for robbery.

In the light of these records and the licensee's admission that at least three of these men were his frequent and regular customers, two of whom were known to him for ten and fifteen years respectively, I find the licensee guilty of permitting known criminals in the licensed premises.

I do not expect that present-day taverns will be conducted in an atmosphere resembling an eighteenth century drawing room. However, I will not tolerate for a moment any practice which permits known criminals to congregate in and frequent licensed premises in the State of New Jersey.

On the first charge the license will be suspended ten (10) days.

The second charge concerns the licensee's culpability in permitting the brawl or disturbance which resulted in the death of John Sasso. As to this the record is not clear. The licensee was a member of Local #478 Teamsters' and Chauffeurs' Union. He has admitted being friendly "with all the boys." Sasso and Nalikowski, the principals in the affray, were candidates for an elective office in the Union. Nalikowski was the victor - Sasso the loser - both in the election and the affray. The licensee has admitted that his tavern was regularly the gathering place for a large number of union members. The licensee further admitted that, upon occasion, he has had to "quiet down" members of the union in his premises.

On the evening of December 18, 1939 Nalikowski was celebrating, in the premises, his successful election. It appears to have been a wholehearted celebration. One of the licensee's witnesses admitted that he had had about "40 or 50 drinks" before Sasso entered. The licensee admitted knowing of bad feeling between Sasso and Nalikowski. The licensee further admitted that, when he saw Sasso in his tavern "I knew he was in there for trouble." Exactly what happened after Sasso's entrance has been the subject of exhaustive investigation by the Newark police, the

Essex County Prosecutor's Office and this Department. One thing is clear, events moved rapidly. I am satisfied that the licensee did nothing to prevent the brawl. On the other hand, the words and actions which preceded the fatal climax moved in such rapid sequence that it is doubtful whether the licensee could have done much even if he were so inclined. Unquestionably, the licensee would have been far wiser to have exercised more restraint upon his patrons and to have taken precautions against such eventualities. His failure to do so cannot be construed as neglect, contributing to Sasso's misfortune. The record, as developed, shows that the Department failed to carry the burden of proof in establishing that the licensee permitted a brawl and disturbance in the licensed premises. In fairness to the licensee the second charge is dismissed.

Accordingly, it is, on this 25th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-30, heretofore issued to Patrick J. Gerrity, Jr. for premises 49 Avenue L, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for ten (10) days effective June 28, 1940, at 3:00 A.M. (Daylight Saving Time); and it is

FURTHER ORDERED, that no further license be issued to this licensee or for said premises prior to July 8, 1940.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - BRAWL CHARGE DISMISSED - FALSELY REPRESENTING PREMISES AS HOTEL AND RESTAURANT TO CIRCUMVENT LOCAL LIMITATION OF LICENSES - LICENSE CANCELLED.

In the Matter of Disciplinary)
and Cancellation Proceedings)
against)

ESTHER MAY BURD,)
Route 6 & Dell Avenue,)
Kenvil, Roxbury Township,)
New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-7 issued by the)
Township Committee of the Township)
of Roxbury.)

J. Garry Keely, Esq., Attorney for the State Department of)
Alcoholic Beverage Control.)
William C. Egan, Esq., Attorney for the Licensee.)

The licensee was charged with permitting a brawl and disturbance on the licensed premises, in violation of State Regulations 20, Rule 5, and falsifying her applications for license for the years 1937-38, 1938-39 and 1939-40, by describing the licensed building as a hotel and restaurant, in violation of R. S. 33:1-25. In addition, the licensee was required to show cause why the license should not be cancelled because it was issued

in violation of resolution of the Roxbury Township Committee adopted December 11, 1935 limiting the number of plenary retail consumption licenses to be issued with an exception in favor of bona fide hotels, there being no vacancy in the quota and the licensee's premises not being a bona fide hotel at the time of the issuance of the license.

With respect to the charge of permitting a brawl, testimony establishes that on the evening of January 28, 1940 John Vilage visited the barroom of the licensed premises, and after a brief verbal exchange with another patron was attacked by the other with a knife, as a result of which Vilage's finger was cut. The licensee's husband intervened before any more blows were struck and the licensee requested Vilage to go into the dining room which adjoins the barroom. Thereafter Vilage's assailant attempted to enter the dining room but was prevented from doing so by the licensee's husband who blocked the doorway. Nevertheless, the assailant reached over the shoulder of the licensee's husband and inflicted a cut on the forehead of Vilage. Vilage, the State's only witness, testified that the licensee and her husband attempted to stop the disturbance as soon as it started.

I find the licensee not guilty of permitting a brawl and disturbance as charged, and the charge is therefore dismissed.

With respect to the charge of falsifying the license application, and whether the license was lawfully issued: The resolution of December 11, 1935 limiting the number of plenary retail consumption licenses to be issued in Roxbury Township provides, so far as applicable:

"BE IT FURTHER RESOLVED that from and after July 1, 1936, there shall not be issued and outstanding in the Township of Roxbury at the same time more than eight (8) plenary retail consumption licenses, provided, however, this limitation shall not apply to licenses issued or applications made for premises operating or to be operated as a bona fide hotel, or to renewals of other plenary retail consumption licenses now issued and outstanding except as renewals of such licenses are now applied for or are refused because of bad conduct on the part of such licensees, or otherwise; it being the desire and intention of the Committee that the total number of outstanding plenary retail consumption licenses be reduced to eight (8) as soon as practicable;....."

The records of this Department indicate that the licensee first obtained a license on August 24, 1937, at which time there were issued and outstanding 13 plenary retail consumption licenses of which 10 have been renewed each year since. Hence, unless the licensee's premises constitute a bona fide hotel, no license could lawfully be issued for those premises.

It appeared that the license was issued for premises at Dell Avenue and Route 6 in Kenvil, known as The Blue Bulb Inn. The licensed building comprises 2½ stories, the first floor and cellar constituting the licensed premises. On the first floor there is a large dining room at the front of the building and in the rear there is a barroom. Behind the bar is a hallway and stairway leading to the second floor. On the second floor there are three bedrooms, a dining room, a kitchen and pantry and a

bathroom. The third floor is an unfinished garret partitioned into three rooms by the use of differently colored second hand lumber. The third floor "rooms" had neither ceilings nor windows but each contained an iron cot and no other furniture. All except two of the rooms on the second floor were rented to a tenant who had occupied the rooms for some five months prior to the date of inspection by investigators of this Department. At the request of the investigators, the licensee produced a register which contained three names, one being that of the tenant of the second floor rooms, the second being the name of the previous tenant of the same rooms, and the third being the name of the previous tenant's daughter-in-law who visited the previous tenant and occupied one of the rooms, for which she was charged by the licensee one dollar for the week that she stayed.

The licensee admitted that she never served regular meals; that when she commenced business she did buy a roast sufficient for twenty people, and potatoes, onions, canned vegetables and cold cuts, but that since there were no calls for any meals she used in her own home what did not spoil; that she never replenished her initial supply of food; that she does have on hand cold cuts and bread and butter for the preparation of sandwiches which are called for about once a week; that she served hot food on only one occasion, viz.: New Year's Eve last past, at which time she advertised that turkey sandwiches would be available, of which she sold six or eight at fifty cents each.

A restaurant is defined by R. S. 33:1-1(t) as:

"An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted." (Italics mine)

Clearly the licensee has not been operating a restaurant.

The Alcoholic Beverage Law contains no definition of a hotel. What constitutes a hotel is largely a question of fact to be determined by a consideration of all the circumstances in any given case. Re Corona, Bulletin 29, Item 5. It was held in Anthony v. Branchville, Bulletin 80, Item 9, that:

".....what constitutes a hotel is mainly a question of fact. I know of no air-tight, universal definition. What might fairly be considered a hotel in Branchville with a population of 665 would naturally be something entirely different from the concept of a hotel in Newark with a population of 450,000, or in a resort such as Atlantic City, which, irrespective of population, has natural advantages which attract several thousands to every one who seeks accommodations over night in Branchville."

Premises were determined to be not hotels in Geiger v. Readington, Bulletin 79, Item 11 (premises known as "Geiger's Beer Garden", transients and weekend guests accommodated, situated on a dirt road off principal highway); Hutchinson v. Wyckoff, Bulletin 84, Item 3 (eight rooms, no guests in occupancy on hearing date, one guest a week previous and before that

guests in occupancy three months before); Steup v. Wyckoff, Bulletin 155, Item 12 (nine bedrooms, no guests, no register, no restaurant, no sign, no help); Braunstein v. Bridgeton, Bulletin 216, Item 10 (three stories, sixteen rooms, few completely furnished, one bath, no room clerk, front door customarily locked, four roomers in occupancy); Mainiero v. Roxbury, Bulletin 246, Item 2 (four bedrooms, two available to transients, front door locked from 11:00 P.M. to 8:00 A.M.); Bialoglow v. Independence, Bulletin 254, Item 7 (eight bedrooms, sign "Tourists Accommodated", meals obtainable, no help employed, few guests except during the summer season).

From the foregoing, it clearly appears that the licensed premises here involved are neither hotel nor restaurant - they are naught but a tavern. Notwithstanding the obvious character of the business conducted, the licensee continued for three years to falsify her license application by stating under oath that she conducted a hotel and restaurant.

I find the licensee guilty as charged.

Since the licensed premises do not constitute a bona fide hotel, they may not be licensed within the exception of the limiting resolution above mentioned. The license, having been issued in violation of the resolution, must be set aside because improvidently granted. Re Loeb, Bulletin 206, Item 14.

Accordingly, it is, on this 25th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-7, issued to Esther May Burd for premises Route 6 and Dell Avenue, Kenvil, Roxbury Township, be and the same is hereby cancelled and declared null and void, effective immediately. All operations thereunder shall terminate and cease forthwith.

E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - PARTNERS PLEAD NON VULT TO CHARGES THEY HOLD LICENSE FOR OTHER INDIVIDUALS, ONE OF WHOM IS PERSONALLY UNFIT - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

NATHAN ALTER and JOSEPH WEISSMAN,)
219 Miller Street,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

-----)
Holders of Plenary Retail Consumption License No. C-479, issued by)
the Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)
-----)

William N. Becker, Esq., Attorney for Defendant-Licensees.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendants, joint holders of a plenary retail consumption license since February 1940, plead non vult to charges that, in effect, they are holding such license as "fronts" for

Harry Alter (son of the defendant Nathan Alter) and Elias Weissman (father of the defendant Joseph Weissman) in violation of the Alcoholic Beverage Law (see R. S. 33:1-25, 26, 52). In addition, they plead non vult to charges of keeping the tavern open and there selling liquor during prohibited hours on May 11, 1940 in violation of Newark Ordinance 3930. It further appears that they are likewise guilty of keeping the tavern open during such hours on February 22, 1940 in violation of the same ordinance.

As to the said "front", the statements of the defendants show that, at least with respect to Harry Alter, the purpose for putting the license in his father's name in lieu of himself was because they believed that Harry, in view of his arrests on various occasions, would not be granted any license by the Newark Board of Alcoholic Beverage Control.

As to penalty: Where, as here, licensees are guilty of violating a municipal regulation on two separate occasions by being open or selling liquor during the locally prohibited hours, and are further guilty of fraudulently obtaining their license as a "front" for others, at least one of whom they considered would be deemed personally unfit by the local issuing authority to hold a liquor license, outright revocation of their license is indicated. Cf. Re Sturts, Bulletin 412, Item 2.

In view of the foregoing, it is unnecessary here to determine whether the defendants are also guilty of permitting a brawl at the tavern on February 22, 1940 in violation of Rule 5 of State Regulations No. 20.

Accordingly, it is, on this 25th day of June, 1940,

ORDERED, that Plenary Retail Consumption License No. C-479, heretofore issued to Nathan Alter and Joseph Weissman by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same hereby is revoked, effective immediately.

E. W. GARRETT,
Acting Commissioner.

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

June 25, 1940

Re: Case No. 329

In 1920, applicant was convicted of being a disorderly person and sentenced to ninety days in the county penitentiary. In 1935 he pleaded guilty to charges of defrauding the United States of taxes, working in a distillery and failing to give notice of a still in violation of United States Internal Revenue Law, and on October 8, 1936 he was fined \$700.00, penalized \$1,000.00, and sentenced to imprisonment in the United States penitentiary for a year and a day.

The conviction in 1920, on a charge of being a disorderly person, is not a conviction of a "crime" within the meaning of R. S. 33:1-25, 26. Re Case No. 318, Bulletin 394, Item 17. Hence it need not be further considered.

As regards the conviction in 1935 for complicity in the operation of an illicit still, applicant testified that he was employed on a salary basis by the operator of a large still and that his activities included building a dam for the still's water supply, filling cans with alcohol and unloading molasses. Reports from the Department of Justice and the United States Penitentiary at Lewisburg disclose that applicant, when apprehended, was actively engaged in the operation of a huge "bootleg" distillery in this State.

Activity in illicit liquor since Repeal involves moral turpitude within the meaning of the Alcoholic Beverage Law. Re Case No. 267, Bulletin 313, Item 1; Re Case No. 326, Bulletin 409, Item 3.

It is recommended that applicant be advised that he is ineligible to hold a liquor license or to be employed by a liquor licensee in this State.

Robert R. Hendricks,
Attorney.

APPROVED:

E. W. Garrett

Acting Commissioner.