Commissioner Hock
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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 754 MARCH 20, 1947.

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ITEM

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 754 MARCH 20, 1947.

1. APPELLATE DECISIONS - PLIKAYTIS v. HARRISON.

WALTER W. PLIKAYTIS, t/a PETE'S TAVERN, Appellant, -vs- TOWN COUNCIL OF THE TOWN OF HARRISON, Respondent	ON APPEAL CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.

Appellant appeals from respondent's disciplinary action in suspending his plenary retail consumption license for 120 days following adjudication of appellant's guilt of (1) permitting consumption of alcoholic beverages by intoxicated persons (Regulations No. 20, Rule 1) and (2) permitting a disturbance and brawl on the licensed premises (Regulations No. 20, Rule 5). Upon filing the appeal, an order was entered staying the suspension, in accordance with R. S. 33:1-31.

By agreement of the parties, the case was submitted on the stenographic transcript of the hearing below, which was supplemented by testimony taken herein, pursuant to Regulations No. 15, Rule 8.

The testimony before me establishes that on July 13, 1945, between 5:30 and 6:30 p.m., six patrons named Breznitsky, Cifello, Clinton, Delaney, Jacques and Reddington, visited the licensed premises where they drank beer and played shuffleboard until approximately 11:00 p.m. During that time, various members of this group consumed as many as 15 glasses of beer, some being twelve-ounce glasses and some eight-ounce glasses. The group organized three two-man teams, two teams playing and the idle team waiting to play the winning team.

At approximately 11:00 p.m., a dispute arose among the players concerning which team was supposed to be then playing. Apparently the Breznitsky-Jacques team sought to displace one of the playing teams. Argument being unavailing, Breznitsky and Jacques tried to enlist the support of the bartender and, upon failing to obtain satisfaction, Breznitsky blocked play on the board by placing his arm across its center. The argument continued and finally Jacques and Clinton, who had intervened in the dispute, exchanged blows. During the confusion, it appears that Jacques was struck by Breznitsky. At this point the bartender came from behind the bar and, summoning the licensee (who had been dozing beside the radio tuned to a fight broadcast), both bodily ejected Jacques and Breznitsky through the front door.

From the sidewalk, the two evictees, in obscene language, reviled Clinton and Cifello, who stood behind the licensee and the bartender at the front door, bent on preventing the return of Breznitsky and Jacques. Clinton thereupon pushed past the licensee and bartender and, on the sidewalk, engaged Breznitsky and Jacques. Cifello also emerged to join battle. Clinton obtained temporary respite and Cifello retreated to the tavern, but once more went out when

Breznitsky and Jacques resumed their attentions to Clinton. The bartender then succeeded in separating the combatants, and brought Clinton back to the tavern. Cifello, when last seen in action, was holding Breznitsky by the collar and punching him in the face. Shortly thereafter, Breznitsky was found lying in the street, and was removed to a hospital in an ambulance when the police arrived in response to a call from an unidentified person.

In so far as the charge of serving alcoholic beverages to intoxicated persons is concerned, the record is ample for a finding of guilt. Cifello testified he was "not sober". Jacques admitted he was "drunk" and testified that Delaney was "drunk" and Breznitsky "pretty loud". Furthermore, the licensee, in a voluntary signed statement, which is a part of the evidence, admitted that all six of the patrons in question were intoxicated, notwithstanding which he or his bartender continued to serve drinks to them, knowing full well such conduct was in violation of State Regulations.

With respect to the charge of permitting a disturbance or brawl the licensed premises, certain matters of testimony, previously summarized, will bear particularization:

(1) The loudness of the argument: According to Delaney, "Jacques was doing all the hollering" and there was "loud talking about the challenge". According to Jacques, "I guess I hollered pretty loud", "me and George (Breznitsky) started hollering", George "was getting pretty loud" and he "heard George hollering 'The board is challenged'". According to Delaney, he heard "loud language" from Jacques and Breznitsky and the argument was "louder than ordinary conversation". The licensee admits that Clinton engaged in a "loud argument" with Jacques and Breznitsky.

(2) The length of the argument: According to Cifello, fifteen to twenty minutes; according to Delaney, three to five minutes; and according to defense witnesses Baker and Wax, three to four minutes, during which a "scuffle" occurred.

Was there a "brawl" and "disturbance"? A brawl is "a clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace" (Black's Law Dictionary; 11 C.J.S. 767); "a noisy quarrel; loud angry contention; wrangle; tumult" (Webster's New International Dictionary). Brawling is "the use of loud and violent language and opprobrious epithets" (Com. v. Foley, 99 Mass. 497, 499). A disturbance is "an interruption of a state of peace and quiet..... public commotion; synonyms: brawl, turmoil, uproar, hubbub....." (Webster's New International Dictionary); "acts or conduct inciting to violence or tending to provoke or excite others to break the peace" (11 C.J.S. 817). It will be observed that physical violence is not a necessary ingredient of a brawl or disturbance. (See Woodland Rod & Gun Club v. Belleville, Bulletin 569, Item 3.) It may, however, as in this case, reasonably be expected to result therefrom, since words borrow one another and oft beget blows. The evidence indicates that a disturbance or brawl occurred on the licensed premises.

Appellant takes the position that, under the circumstances, he did not "allow, permit or suffer" the disturbance or brawl since he and his bartender did all that was reasonably required to cope with the brawl and disturbance when it occurred, by taking prompt action to eject the aggressors from the premises. However, the licensee's argument implicitly contends that the brawl consisted of the exchange of blows. This is not so, as indicated by the definitions above. In fact, the "brawl" had been going on for at least three minutes, and perhaps as long as twenty, before any action was taken. Furthermore, licensee's argument overlooks his own contribution to the situation,

viz., the continuing service of drinks to intoxicated persons whereby the fuel for the flames was provided. In such a situation, promptness in quelling the brawl is no defense to a charge that it was allowed, permitted and suffered.

Surely, where intoxicated persons are allowed to continue their drinking, or even remain on the licensed premises, the licensee can reasonably foresee that such persons may cause a brawl or disturbance. Since a person is held to intend the reasonably foreseeable consequences of his acts, licensees cannot disclaim responsibility for brawls and disturbances created by intoxicated patrons when their intoxication results from or is enhanced by their consumption of alcoholic beverages on the licensed premises where the disturbance occurs. This principle of responsibility has often been enunciated by this Department in brawl cases, starting in 1935. See Caso v. Belleville, Bulletin 101, Item 8 ("It is a salutary exercise of the disciplinary power to impress licensees that they are responsible for keeping the peace in their taverns at all times"); Klucke v. Orange, Bulletin 256, Item 3 (licensee knew of "bad blood" between two patrons who engaged in fracas, together with three others); Davalos v. Camden, Bulletin 257, Item 8 (licensee had previous trouble with two patrons involved in brawl but permitted them to frequent premises); Re Yamos, Inc., Bulletin 453, Item 8 (intoxicated patron involved in three minor scuffles permitted to remain on premises until serious injury occurred); Re Dziedzic, Bulletin 579, Item 2 (intoxicated patron involved in argument and subsequent assault on another patron -- "A licensee must assume full responsibility where his employees fail to take appropriate action to prevent the occurrence of a brawl or disturbance upon the licensed premises") (italics added); Re Johnson, Bulletin 603, Item 9 (two drunken patrons in argument and fight, no attempt by bartender to avoid the altercation even though preceded by argument). Cf. Woodland Rod & Gun Club v. Belleville, supra (finding of guilt on brawl charge reversed -- sudden assault by one patron on another -- "nothing in the record indicating that anyone on the licensed premises on this occasion was drunk or had been drinking to excess"); Zicherman v. Newark, Bulletin 613, Item 5 (finding of guilt on brawl charge reversed -- sudden assault by one patron upon another. "There is nothing in the record....to show that.....the licensee had any knowledge of bad blood existing between the two girls.....Nor does the evidence in the case indicate that the licensee or her agents participated in any of the events leading up to the fatal blow"); Re Lojko, Bulletin 655, Item 6 (charge of permitting brawl dismissed— no disturbance prior to fight between two patrons -- the evidence "fails to involve the licensee or her employees with the disturbance, brawl or resulting fatality"); Re Club Washington, Inc., Bulletin 683, Item 9 (charge of permitting brawl dismissed -- "I fail to find in the record any circumstances which would attribute any responsibility for the incident to the defendant or any of its employees") (italics added); Engel v. Belleville, Bulletin 694, Item 5 (finding of guilt on brawl charge reversed -- "The record fails to demonstrate any responsibility for the fracas by the licensee.....Although a fight did occur.....there is nothing in the testimony to show that the licensee had any reason to anticipate the trouble which occurred...") (italics added).

It is contended, on behalf of appellant, that testimony with reference to the fracas outside the licensed premises should not have been received. This contention is without merit since such testimony, on the part of the various witnesses, was merely a recital of events which were part of one continuous incident commencing inside the tavern and ending outdoors. As such, it is admissible as part of the res gestae. In any event, the evidence of the occurrences inside

the tavern is more than sufficient to support the finding of guilt on the second charge.

In view of the foregoing, appellant is guilty of service of alcoholic beverages to intoxicated persons and allowing, permitting and suffering a disturbance or brawl to occur on the licensed premises, as charged.

As to penalty: The licensee's record is clear heretofore, and the suspension of 120 days is admittedly substantial. However, it is much less severe than revocation, a penalty which might well have been deemed warranted under the circumstances. In cases involving similar violations, singles or in combination, penalties of 60 days (Re Johnson, supra), 90 days (E & W Corporation v. Long Branch, Bulletin 495, Item 7), 110 days (Re Monesson, Bulletin 657, Item 8), and 146 days (Re Degailler, Bulletin 604, Item 6) were imposed or approved. That revocation may be indicated where the licensee contributed to the disturbance, see Re Johnson, supra. Consequently, while the suspension imposed is severe, it is not so excessive as to require its mitigation because it is unreasonable.

Since there are not a sufficient number of days left in the current licensing year ending June 30, 1947 for the 120 days' suspension to be served, appellant's present license will be suspended for the balance of its term and an order will be made to assure that any 1947-48 license granted to appellant or anyone else for the premises in question will stand suspended until the full 120 days have elapsed.

Accordingly, it is, on this 10th day of March, 1947,

ORDERED that the appeal herein be dismissed and the action of the respondent be and the same is hereby affirmed; and it is further

ORDERED that the 120-day suspension by respondent of appellant's plenary retail consumption license C-70, for premises 751 Harrison Avenue, Harrison, issued by the Town Council of the Town of Harrison, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored and the license now held by appellant be suspended for the balance of its term, to commence at 2:00 a.m. March 19, 1947; and it is further

ORDERED that if any license be issued to appellant or to any other person for the premises in question for the 1947-48 fiscal year, such license shall be under suspension until 2:00 a.m. July 17, 1947.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - SCHUSTER v. UNION AND MATT ANGELE'S GROVE, INC.

WILLIAM SCHUSTER,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UNION, and MATT ANGELE'S GROVE, INC., t/a ANGELE'S GROVE,

Respondents

CONCLUSIONS AND ORDER

Harrison B. Johnson, Esq., Attorney for Appellant.
Gustave G. Kein, Jr., Esq., Attorney for Respondent, Township Committee.
Arthur W. Herrigel, Esq., Attorney for Respondent, Matt Angele's Grove, Inc., t/a Angele's Grove.

This is an appeal from the granting by respondent, Union Township, a plenary retail consumption license to respondent, Matt Angele's Grove, Inc., t/a Angele's Grove.

The reasons advanced for the reversal of the action of respondent Township Committee are:

1. There is no need for additional places for the consumption of alcoholic beverages in Union Township.

2. There is no need for any additional such places in the section of the Township where this license is applied for.

3. Additional places for the consumption of alcoholic beverages are not in accordance with public policy as indicated by the State Legislature.

4. Drinking places in large numbers tend toward unsound economical situations among those in the business, which in turn promotes violations of law.

The licensed premises consist of a "picnic grove" of approximately six acres, containing one or more buildings. Apparently the building housing the bar is at least 300 feet from any public highway and its entrance would appear to be away from either of the two highways from which the "grove" may be entered. From 1935 to June 30, 1942, respondent, Matt Angele's Grove, Inc. (sometimes hereafter called "Angele's"), purely a family business corporation, and its predecessor, Matthew Angele, operated a "picnic grove" at the same premises and held a plenary retail consumption license in connection therewith. Some time in 1941 Matthew died and his two sons entered the armed forces of the United States, leaving only his widow and daughter to operate the business. Being unable to continue the operation without the help of the male members of the family, and on the advice of one of the members of the respondent Township Committee, the local issuing authority, they did not seek renewal of the corporation's license for the 1942-43 licensing period. In 1946 the two sons came home to find that the "numerical limitation law" had apparently been passed by the State Legislature and possibly prevented the resumption of the family business. Before the corporation actually filed its application, however, the law had been declared null and void. Re petition of Kornbluh and Temel, 134 N.J.L. 529. Thereafter, respondent Matt Angele's Grove, Inc., t/a Angele's Grove, filed its application for the plenary retail consumption license, the granting of which is the subject matter of this appeal.

In the year 1941 or 1942, and prior to the expiration of Angele's then existing license, appellant Schuster had received his plenary retail consumption license and started business. At that time appellant no doubt was of the opinion that his license would fill a public need and serve a public convenience. Since the surrender of Angele's former license, no new plenary retail consumption licenses have been granted for premises in the section of the Township here involved. The instant grant restores the situation as it was when appellant Schuster first secured his license.

Appellant, who apparently is the only objector, was the only witness to testify in support of his contention. The local issuing authority voted unanimously to issue the license after a full hearing. Appellant's testimony, while disclosing many taverns in the vicinity, also disclosed that most of the other businesses are located on main traveled thoroughfares and that none of the other licensed premises offer the "picnic ground" facilities offered by respondent "Angele". Even disregarding testimony adduced by respondent "Angele", the evidence offered by appellant is far from sufficient to show that respondent abused its discretion in granting the license in question.

The so-called state numerical limitation law having been declared null and void by the Supreme Court, I cannot say that there now exists any bind expression of state policy by the Legislature as to the number of licenses to be issued. The mere fact that appellant may suffer the loss of some of his business is not a sufficient reason for reversing the action of respondent Township Committee. The Great Atlantic and Pacific Tea Company v. Conover, Bulletin 153, Item 12, affirmed Conover v. Burnett et al., 118 N. J. L. 483, Bulletin 201, Item 4.

I shall affirm the action of respondent Township Committee of the Township of Union.

Accordingly, it is, on this 12th day of March, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against)

ARTHUR THERRIEN)
S/S So. Pemberton Rd.) CONCLUSIONS
Pemberton, N. J.,) AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Pemberton.)

Arthur Therrien, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded not guilty to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

The evidence discloses that on December 31, 1946, an investigator of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Carstairs 1788 Blended Whiskey" when his field test indicated that the contents therein were not genuine as labeled. Subsequent analysis of the contents of said bottle by the Department chemist substantiated the findings of the field test.

The defendant admits that the bottle was on his premises and does not dispute the result of the chemical analysis, simply stating that neither he nor his only employee added anything to the bottle and that he had no knowledge that the contents of said bottle was illicit. The lack of personal participation in the illegal act, or knowledge thereof, is no defense. Cedar Restaurant & Cafe Co. v. Hock (N. J. Sup. Ct.), Bulletin 748, Item 9. I must find defendant guilty as charged.

The usual minimum penalty for cases involving one bottle of illicit alcoholic beverages is fifteen days. Re Rudolph, Bulletin 680, Item 1. However, in the instant case, defendant has a prior record. In 1937, his license was suspended by the local issuing authority for five days upon a finding of guilt to a charge of "selling after hours" as fixed by local ordinance. Again, in 1944, defendant's license was suspended for three days by the local issuing authority on charges that his beer taps were incorrectly marked. In 1946, defendant's license was suspended by the State Commissioner for forty days after charges alleging "sale to minors" and false statement in application. There is a serious question as to whether or not, in view of the repeated violations of the law and regulations, defendant is a proper party to enjoy the license privileges. However, I am constrained to give the defendant one further opportunity to demonstrate his fitness to operate a licensed business. Considering all the attendant circumstances, I shall suspend his license for forty-five days. The defendant would do well to mend his ways. Another violation might well result in revocation.

Accordingly, it is, on this 7th day of March, 1947,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Pemberton to Arthur Therrien, for premises s/s So. Pemberton Road, Pemberton, N. J., be and the same is hereby suspended for a period of forty-five (45) days, commencing at 2:00 a.m. March 17, 1947, and terminating at 2:00 a.m. May 1, 1947.

ERWIN B. HOCK
Deputy Commissioner.

4. APPELLATE DECISIONS - LETTIERE v. BERLIN.

Cases Nos. 1 and 2.
FRANK LETTIERE,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF BERLIN,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

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Frank M. Lario, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

Appellant has appealed in Case No. 1 from the action of respondent whereby it adopted an ordinance which limits the number of plenary retail consumption licenses, and in Case No. 2 from the subsequent action of respondent whereby it denied his application for a plenary retail consumption license. Both cases were consolidated at the hearing and will be decided at the same time.

The premises in question are located at 69 White Horse Pike, Borough of Berlin. Appellant, owner of the premises, operated therein as a plenary retail consumption licensee for two and one-half years prior to 1939. In the latter year, the license for said premises was transferred to one Chew, and subsequently to Earl E. Rosenberger, who operated therein as a plenary retail consumption licensee until June 30, 1946. Respondent refused to renew Rosenberger's license for the present fiscal year and, on October 14, 1946, the denial was affirmed upon appeal. See Rosenberger v. Berlin, Bulletin 734, Item 7.

On November 14, 1946, appellant filed the application considered herein. At that time the ordinance then in effect in the Borough permitted the issuance of six plenary retail consumption licenses and the existing number had been reduced to five by the refusal to renew the license formerly held by Rosenberger. On November 18, 1946, an ordinance reducing the number of plenary retail consumption licenses to three, but permitting renewal of licenses then outstanding, was passed at first reading. Said ordinance was finally adopted at a meeting held on December 3, 1946. Appellant's application was unanimously denied at a meeting held by respondent on December 16, 1946, although no reason for the denial was stated. It has been repeatedly said that it is better practice to state the reasons for denial, but it seems quite apparent that the application for the license was denied in the light of the then existing ordinance.

In Socony-Vacuum Oil Co. v. Mt. Holly, 135 N.J.L. 112 (Sup. Ct. 1947), Justice Perskie, speaking for the Court, in discussing the right to a writ of mandamus, said:

> "***Moreover, in my opinion, there can no longer be any question as of the time when the status of the applicable law controls. It is neither the status of the law prevailing at the time of the application for the permit nor the status of the law prevailing at the time of the application or allowance of the rule to show cause. It is the status of the law prevailing at the time of the decision by the court that is controlling.*** Otherwise the administrative body, here the building inspector whose acts are subject to appeal to or review by this court, would issue a permit contrary to the existing legislation.***"

The same rule applies as to the issuance of a liquor license. Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1; Kitchman v. Mount Laurel, Bulletin 752, Item 10.

The ordinance in effect on December 16, 1946 effectively prevented the issuance of a new license to appellant herein.

I conclude that the limiting ordinance was adopted in good faith. It appears from the testimony of Mayor Jaggard that, prior to July 1, 1946, the members of the Borough Council had discussed a possible reduction of plenary retail consumption licenses but had taken no action at that time because of the existence of the State Limitation Act. The ordinance to limit the number of licenses to three was introduced at the first meeting held after the members of the Borough Council learned that the State Limitation Act (P. L. 1946, c. 147) had been voided by the Supreme Court. This evidence is sufficient to lead to the conclusion that the policy to limit the number of licenses had been adopted prior to the filing of appellant's application, and that the ordinance was introduced in pursuance of the previously adopted policy.

The ordinance also appears to be reasonable. The population of the Borough, according to the 1940 Federal Census, was 1,753. On the basis of population there would appear to be no necessity for six plenary retail consumption licenses. The mere fact that, prior to 1944, four consumption premises existed on the White Horse Pike, whereas there are only two at the present time, does not establish that public necessity and convenience require the issuance of an additional license.

Under the circumstances, the action of respondent is affirmed.

Accordingly, it is, on this 13th day of March, 1947,

ORDERED that the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

5. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST - APPLICATION TO LIFT GRANTED ON REHEARING.

In the Matter of an Application)
to Remove Disqualification
because of a Conviction, Pursuant)
to R. S. 33:1-31.2. CONCLUSIONS
) AND ORDER
Case No. 560.
- - - - - - - - - - - - - - - - - - - -)

In a prior proceeding decided on November 1, 1946, I ruled that the petitioner had been convicted of a crime involving moral turpitude but, because such conviction did not occur until February 6, 1942, the petitioner was advised to reapply after February 6, 1947. See Bulletin 736, Item 10.

The petitioner pleaded guilty to the crime of possessing unregistered distilling equipment. This resulted from his employment, as a subordinate laborer, at an unlawful still. The technical requirements of the statute involved herein have been met by the petitioner and, ordinarily, I would have no hesitancy in granting the requested relief.

I am disturbed, however, by the nature of the crime of which petitioner has been convicted. Apart from the disqualification attached to the crime, it is one which is directly connected with the very industry in which the petitioner now desires permission to engage. As far as this Department is concerned, a conviction resulting from the engaging in bootlegging activities presents as serious a barrier against the relief desired by the petitioner as does a conviction of the most reprehensible felony. In such cases, it is usually required that an applicant wait a longer period than the bare five-year minimum provided in the law before becoming entitled to relief.

The underlying reason for this principle is that a person so convicted is presumed to possess proclivities peculiarly inimical to the public interest in the sound enforcement of the liquor traffic. The statute provides that, before I may lift a disqualification, it must appear that the applicant's "association with the alcoholic beverage industry will not be contrary to the public interest." See R. S. 33:1-31.2.

In the instant matter, however, I am convinced that the petitioner's connection with the illicit still was in the very minor capacity of a manual laborer and that he had no proprietary interest therein. It further appears that such connection was short-lived and resulted from the petitioner's dire financial straits at the time. I feel that the circumstances surrounding the petitioner's unlawful activity do not warrant the presumption aforesaid which generally follows from the type of conviction here concerned.

Accordingly, it is, on this 12th day of March, 1947,

ORDERED that petitioner's 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.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
HAZEL CABLE T/a EVERGREEN BAR & GRILL 250 Main Avenue Wallington, N. J.,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-37, issued by the Mayor and Council of the Borough of Wallington.	)	

Leo J. Berg, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on December 31, 1946, she possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle of "Three Feathers Reserve Blended Whiskey", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

This defendant has no prior record. The usual penalty of fifteen days, with five days remitted for the plea, leaving a net penalty of ten days, will be imposed. Re Galaskas, Bulletin 750, Item 4.

Accordingly, it is, on this 12th day of March, 1947,

ORDERED that Plenary Retail Consumption License C-37, issued by the Mayor and Council of the Borough of Wallington to Hazel Cable, t/a Evergreen Bar & Grill, 250 Main Avenue, Wallington, N. J., be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. March 17, 1947, and terminating at 3:00 a.m. March 27, 1947.

ERWIN B. HOCK
Deputy Commissioner.

7. GAMBLING DEVICES - "MAGIC PHOTO-FINISH" CARD PROHIBITED ON LICENSED PREMISES.

March 13, 1947

Mr. James Dolan
Orange, N. J.

Dear Mr. Dolan:

Receipt is acknowledged of "Magic Photo-Finish" card submitted by you for determination whether you may possess and distribute such cards on your licensed premises.

The card, 2 x 3½ inches in size, lists on its face the names and numbers of six horses and directs, "For the winner develop it yourself. Wet the enclosed magic paper with water. Rub it over the plain surface of the card until the photo-finish is fully developed." The reverse of the card is blank until rubbed with the "magic paper", whereupon a photograph becomes visible depicting in the background a tote board and in the foreground three horses each carrying a numbered saddle cloth. Apparently, the number on the leading horse indicates the winner among the six horses listed on the face of the card.

The card, with its horse racing connotations and especially its feature of a winner concealed until selections are made, lends itself admirably to gambling by inducing betting on the winner by groups of patrons to whom the cards may be furnished. Although the face of the card is careful to state, "For Amusement Only", it taxes belief that adults would find amusement merely in causing the photograph to appear by applying the "magic paper", especially since the photograph is always the same except for the numbers on the three horses.

State Regulations No. 20, Rule 7, provides:

> "No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose....."

Obviously, the "Magic Photo-Finish" card is a device designed for the purpose of gambling. It is therefore prohibited on licensed premises in New Jersey.

Your timely inquiry was well advised since possession of these cards on your licensed premises would constitute cause for suspension or revocation of your license.

Very truly yours,
ERWIN B. HOCK
Deputy Commissioner.

8. APPELLATE DECISIONS - PRICE v. EAST RUTHERFORD.

PHILIP PRICE,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF EAST RUTHERFORD,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Joseph J. Weinberger, Esq., Attorney for Appellant.
Albert V. D'Amato, Esq., Attorney for Respondent.

Appellant appeals from denial of his application for a plenary retail distribution license for premises at 208 Paterson Avenue, East Rutherford.

Appellant filed his application on October 7, 1946. No action on the application having been taken prior to December 28, 1946, appellant at that time delivered a letter to respondent, the pertinent part of which is as follows:

"Unless you decide this matter at your next meeting on the 1st day of January 1947, I shall take it that you have denied the application for the issuance of a license and shall protect my interests in accordance with law."

On January 13, 1947, appellant filed his appeal herein. On January 17, 1947, the Borough Clerk returned to appellant the check which he had deposited with the application. Although it does not appear that any formal action was taken to deny the application, the case will be determined on its merits as if an adverse formal decision had been rendered against the applicant. Re Salsburg, Bulletin 118, Item 11.

For a period of seven years prior to March 18, 1946, respondent municipality had an ordinance limiting the number of distribution licenses to three. On the latter date the ordinance was repealed and on April 14, 1946, two additional plenary retail distribution licenses were granted. On appeal, the action of respondent in granting the two distribution licenses was affirmed. Huetteman v. East Rutherford and Lipton, Huetteman v. East Rutherford and Czech, Bulletin 724, Item 7.

On October 7, 1946, when the application which is the subject of this appeal was filed, there was no ordinance in effect in the Borough of East Rutherford limiting the number of plenary retail distribution licenses.

On December 16, 1946, there was introduced in the Borough Council of the Borough of East Rutherford an ordinance whereby the number of plenary retail distribution licenses in the Borough would be limited to five, which was the number then outstanding. At that time, applications for licenses of this type had been filed by appellant and also by Alfred Gross. Said ordinance was passed on first reading at the meeting held on December 16, 1946. At some subsequent meeting of the Borough Council, appellant, or his brother, appeared and presented a petition containing the names of 300 persons who objected to the adoption of the ordinance because "we feel that the discharged veterans are entitled to much more consideration than they are

getting. They should have an opportunity of engaging in this business without having restrictions imposed upon them at this time." Nevertheless, respondent adopted the ordinance on final reading at a meeting held on January 20, 1947.

The fact that the reduced quota was officially fixed subsequent to the denial of the application cannot avail the appellant since the question here at issue is whether the license should now be granted. Cf. Socony-Vacuum Oil Co. v. Mt. Holly, 135 N. J. L. 112; Franklin Stores v. Elizabeth, Bulletin 61, Item 1; Kitchman v. Mt. Laurel, Bulletin 752, Item 10; Lettieri v. Berlin, Bulletin 754, Item 4.

Moreover, the fixing of the quota at five appears to be reasonable under the circumstances of this case. The Czech license which was granted in April 1946 was for premises in the Carlton Hill section where no other distribution licenses had been issued. The Lipton license which was also granted in April 1946 was for premises 267-269 Paterson Avenue, 600 feet from appellant's premises. John Huetteman now holds a plenary retail distribution license for premises at 226-226½ Paterson Avenue, 845 feet from appellant's premises, and D. Blickstein now holds a plenary retail distribution license for premises at 115-117 Park Avenue, only 195 feet from appellant's premises. Even if the large number of industrial corporations located in the Borough be taken into consideration in addition to the 8,000 permanent population, it would appear that five plenary retail distribution licenses are sufficient. In any event, there would appear to be no need for an additional plenary retail distribution license in this particular section of the Borough where three similar licenses exist in close proximity to appellant's premises. It may well be that respondent should not have issued any additional licenses in April 1946, but there must be a stopping-point and the members of the Borough Council apparently have concluded that that point has been reached. I conclude that this is true from the testimony given herein by Councilmen McKeown, Flannagan and Clarkson. Appellant has failed to sustain the burden of proof in showing that respondent acted in an arbitrary or unreasonable manner in denying his application, and the action of respondent will, therefore, be affirmed.

Accordingly, it is, on this 14th day of March, 1947,

ORDERED that the action of the respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - PREVIOUS RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

SAMUEL GILSON
28 New Street
Newark 2, N. J.,

Holder of Plenary Retail Consumption License C-349, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to charges alleging that he sold alcoholic beverages to minors, allowed, permitted and suffered the service and delivery of alcoholic beverages to minors, and allowed, permitted and suffered them to consume alcoholic beverages on his licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Two ABC agents visited the licensed premises during the early morning hours of November 2, 1946, arriving there at approximately 1:00 a.m. The premises were crowded and the agents were required to stand at the bar. A bartender was serving drinks from behind the bar and a man later identified as Jesse _____, attired in a white apron, was serving alcoholic beverages to patrons seated at booths. At about 1:25 a.m., three soldiers, two of whom were eighteen and the other nineteen years of age, entered and occupied a booth. Jesse took their order for three glasses of beer and, after obtaining them from the bartender at the bar, served the beer to the minors. One of the minors handed Jesse a 50-cent piece. Jesse then gave the coin to the bartender who, after ringing up the sale in the cash register, handed five cents change to Jesse, who placed it upon the table of the booth where the minors were seated.

After at least two of the minors had consumed a portion of the beer, the agents identified themselves to the bartender and Jesse and also to the defendant, who had been standing outside the licensed premises during all of this time.

The defendant does not dispute the service of the beer to the minors. He contends, however, that Jesse was not in his employ and had no authority to serve alcoholic beverages to any of his patrons. Without detailing all of the evidence submitted on behalf of the defendant, it is clear that Jesse did, during the interval of at least twenty-five minutes between the time of the agents' arrival and the service to the minors, serve other patrons with alcoholic beverages and, attired in a white apron, gave every outward appearance of acting as an employee, in the capacity of a waiter, on behalf of the defendant. Whether or not Jesse received any compensation for his services is immaterial on the issue of the defendant's liability for his acts at the licensed premises. Under the circumstances exhibited in this case, the defendant must assume complete responsibility for the service of the beer to the minors by Jesse and for the consumption of the beer by the minors on his licensed premises.

I find the defendant guilty as charged.

The defendant's license was heretofore suspended in August 1942 for a period of ten days on a similar charge. In view thereof, the penalty herein will be fixed at a period of twenty days.

Accordingly, it is, on this 14th day of March, 1947,

ORDERED that Plenary Retail Consumption License C-349, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Samuel Gilson, 28 New Street, Newark, N. J., be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. March 19, 1947, and terminating at 2:00 a.m. April 8, 1947.

ERWIN B. HOCK
Deputy Commissioner.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Edelbrew Brewery, Inc.
1 Bushwick Place, also known as 250 Messerole St.
Brooklyn, N. Y.
Application for Limited Wholesale License filed March 12, 1947.

Brady Transfer & Storage Co.
1535 Paterson Plank Road
Secaucus, N. J.
Application for Transportation License filed March 20, 1947.

Erwin B Hock
Deputy Commissioner.