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

BULLETIN 538 NOVEMBER 20, 1942.

1. APPELLATE DECISIONS - HARVEY v. PEMBERTON BOROUGH.

JAMES B. HARVEY,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF PEMBERTON,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

James Mercer Davis, Jr., Esq., Attorney for Appellant.
Powell & Parker, Esqs., by Robert W. Criscuolo, Esq.,
Attorneys for Respondent.

BY THE COMMISSIONER (Orally):

This is an appeal from the denial of a plenary retail consumption license for premises owned by James B. Harvey, situate at the intersection of Elizabeth Street and Hanover Street, in the Borough of Pemberton, in the County of Burlington.

It appears from the testimony that the Borough of Pemberton has a population of slightly less than one thousand and is entirely surrounded by the Township of Pemberton. The township, the testimony disclosed, had a population, as of the last census, of approximately 2,500. At the time of Mr. Harvey's application for a license it appears that there was, and has been since 1939, one license outstanding in the borough. There are presently outstanding in the Township of Pemberton eighteen licenses, of which three are located just beyond the borough lines, one on Hanover Street, known as Sweet's Bar, and the other two on Pemberton Road, one known as the "Country House" and the other as "Crescent Lunch."

The law in this State imposes upon local issuing authorities the responsibility for passing upon applications for licenses. The action by the local issuing authority, under the New Jersey law, is subject to review by appeal to the Commissioner. The responsibility which the statute imposes on the local issuing authority is a very serious one. The local issuing authority, in the performance of its duty, is required to consider the public welfare rather than the private interests of any individual. It should take into consideration the type and character of the community; whether the public convenience will be served by the issuance of the license applied for; also the character of the applicant, as well as the character of the premises which are sought to be licensed.

In the present appeal no question seems to be raised with respect to the character or reputation of the applicant. The Commissioner assumes that it is of the best. Likewise no question appears to have been raised with respect to the character of the premises other than the reason assigned by the respondent that the issuance of a license for this particular locality might result in increased traffic hazards because of the fact that the premises are located at the intersection of Elizabeth Street and Hanover Street,

two thoroughfares that are, upon occasions, heavily traveled. On this point, suffice it to say that the evidence before me, standing alone, would not warrant the denial of the license.

The main reason that has been assigned for the denial of the application is that there are already a sufficient number of licensed premises within the respondent borough and the adjacent township.

It must be remembered that licenses are a privilege and not a right. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N. J. L. 585, 595. "No one has a right to demand a license; license is a special privilege granted to the few, denied to the many." Ibid. 596. Under the circumstances and in view of the testimony, the question to be determined is whether or not the issuing authority has abused the power conferred upon it by the statute and acted contrary to the law, public interest and convenience in refusing to grant a license to appellant. In view of the number of licenses outstanding in the township and the one presently outstanding in the borough, and in view of the population within this area as shown by the last census, and even assuming that there has been a substantial increase in the same within recent months as a result of activities at Fort Dix, I am, nonetheless, not prepared to say that the borough has acted contrary to the law or abused the power conferred upon it by the Control Law. On the contrary, there would appear to be presently outstanding an overabundance of licenses within the area covered by the borough and township. It was entirely proper for the respondent, in considering the application of the appellant, to take into consideration the number of licenses outstanding within its own confines as well as those outstanding in the territory immediately adjacent thereto.

Appellant has stressed the fact that the application is by a person who has purchased a property formerly occupied and used as a hotel, and that if the application is granted the premises will be renovated and once again used as a hotel. While it is true that licenses are frequently regarded as necessary adjuncts to hotel operations, I am not prepared to say that issuing authorities are compelled to grant a license merely because applicant represents that he will operate the premises as a hotel and that the existence of a license will make his operation thereof more profitable and his hotel more popular with the traveling public. While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses, it does not follow that a hotel is entitled to a license as a matter of right just because it is a hotel. Current v. Fredon, Bulletin 184, Item 1.

The testimony also discloses that in the past there were as many as three licenses outstanding in Pemberton Borough. The mere fact that a municipality has previously issued more licenses than are outstanding at the time a particular application is filed does not in and of itself compel the granting of the application where the local issuing authority, acting within its sound discretion, properly finds that public convenience does not require the issuance of another license. The Alcoholic Beverage Law provides that municipalities may limit the number of licenses by ordinance. R. S. 33:1-40. While this is the procedure that should be followed, local issuing authorities may call a halt to the issuance of licenses even though there be no limiting ordinance. Watts v. Princeton, Bulletin 301, Item 2.

In Bumball v. Burnett, 115 N. J. L. 254, 255, the Supreme Court, in an opinion written by Mr. Justice Parker, stated:

"Apart from this, and assuming the facts claimed, to wit, that the ordinance itself placed no limit on the number of licenses to be issued, and the resolution of council to grant no more, was adopted after prosecutor's application and one other were already filed, we see no illegality whatever in the refusal of a particular license, at least so long as the refusal is not shown to be fraudulent, corrupt, or inspired by improper motives."

I conclude that the appellant has not sustained the burden of proof or shown that the respondent acted unreasonably, contrary to the public interest, or in any manner abused the authority conferred upon it by the Control Law. Hence, I affirm the action of respondent denying the license.

Accordingly, it is, on this 4th day of November, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - MICHE v. HOBOKEN.

VICTOR LEON MICHE,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Bernard S. Glick, Esq., Attorney for Appellant.
James A. Coolahan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for a plenary retail consumption license for premises 321 Washington Street, Hoboken.

Appellant's wife, Maria Miche, previously held a consumption license for premises 93 Washington Street, Hoboken. On April 21, 1942 her license was revoked by respondent when she was found guilty of (1) permitting persons of ill repute on her licensed premises, in violation of Rule 4 of State Regulations No. 20, and (2) permitting women conversationalists and the assembling of females in the licensed premises for the enticing of customers, in violation of local regulation. Upon appeal to this Department, the first charge was dismissed, the second charge was sustained, and the revocation affirmed. Maria Miche v. Hoboken, Bulletin 509, Item 10.

The only ground for denial assigned by respondent in its answer to the instant appeal is that it "has reason to believe that said appellant is merely acting as a front or subterfuge for his wife, the said Maria Miche." While the circumstances may be said to lend themselves to such an inference, there is nothing to indicate

that such inference has any factual basis. No probative evidence was produced by respondent to support its belief that a "front" exists. On the other hand, appellant explained that when his wife applied for her license, he anticipated that he would shortly thereafter be inducted into military service. He had no interest whatsoever in her license, which was purchased with her own funds, and was merely employed at his wife's tavern as a bartender on a weekly salary. He has recently learned that he has been deferred from military duty and, therefore, when he became unemployed as a result of the revocation of his wife's license, he applied for a license in his own name. He testified that he will be the sole owner of that license and that his wife will have no interest whatsoever in it. Some degree of plausibility is added to appellant's story by the fact that Maria Miche is not only ineligible to receive a liquor license for two years from the date of the revocation of her license (see R. S. 33:1-31), but she is also barred from employment by a licensee in this state for a like period. R. S. 33:1-26. She may not, therefore, work at her husband's tavern in any capacity while so ineligible.

At the hearing on this appeal, respondent amended its answer, with appellant's consent, to include, as an additional reason for its refusal to issue the license, that appellant "is not a fit person to hold a license....by reason of the fact he acted as bartender for his wife, Maria Miche, whose license was revoked...." In view of this amendment, I have carefully re-examined the entire record in the Maria Miche appeal case. There is nothing in that record to implicate the present appellant with any of the charges brought against his wife. While it is true that he was a bartender at her premises, none of the evidence produced at the prior appeal hearing connects him with any of the violations charged against his wife; nor does it appear that he knew that any "women conversationalists" frequented her premises or that "any females assembled in the licensed premises for the enticing of customers." The testimony in the instant case is also barren of any proof to support respondent's contention of appellant's unfitness.

Proper liquor control dictates that an issuing authority be free, within the confines of its sound discretion, to determine that an applicant for a license is unworthy of the privileges of a liquor license. The exercise of such discretion, however, must be founded upon valid and substantial grounds. As was said in Fisch v. Hillsborough, Bulletin 467, Item 8:

> "Now, this Department has consistently and properly ruled that the question whether an applicant should be deemed generally worthy of a retail liquor license lies within the sound judgment of the issuing authority; and that its determination of unfitness is accordingly entitled to great weight. See, for example, Sylvester v. South Belmar, Bulletin 38, Item 15; Re Reservation of Discretion, Bulletin 43, Item 9; Tuccillo v. Princeton, Bulletin 97, Item 11; Zupkus v. Linden, Bulletin 172, Item 6; Chmielinski v. Clifton, Bulletin 240, Item 5; Alper v. Paterson et al., Bulletin 312, Item 11; Spitz v. Pemberton, Bulletin 379, Item 8. However, it is equally clear that, in full fairness, any such determination of unfitness must be based upon sound and adequate ground. See Skwara and Proneska v. Trenton, Bulletin 57, Item 7. Cf. Colacuori v. Orange, Bulletin 87, Item 8; Sudol v. Wallington, Bulletin 276, Item 7. In the present case, I do not find such sufficient ground in the record. Cf. Auletto v. Camden, Bulletin 137, Item 3.

"Hence, I shall reverse respondent's action and shall give appellant his chance at the license. Should he in any way misconduct the tavern, respondent has it wholly within its power to take swift and effective disciplinary measures for suspension or revocation of the license."

Accordingly, it is, on this 9th day of November, 1942,

ORDERED, that the action of respondent be and the same is hereby reversed, and it is directed to issue to appellant forthwith the license for which he has applied.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION - SUPPRESSION OF MATERIAL FACTS - CONCEALING THE INTEREST OF PERSON DISQUALIFIED BY REASON OF CRIMINAL RECORD - EMPLOYMENT OF PERSON DISQUALIFIED BY REASON OF CRIMINAL RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 90 DAYS AND CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against

CLINTON CUT RATE DRUGS, INC., 1031 Springfield Ave., Irvington, N. J.,

Holder of Plenary Retail Distribution License D-3 issued by the Board of Commissioners of the Town of Irvington.

CONCLUSIONS AND ORDER

Jacob S. Glickenhaus, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that:

"1. In your license application dated June 9, 1942, filed with the Board of Commissioners of the Town of Irvington, upon which Plenary Retail Distribution License D-3 for the year 1942-43 was granted to you, you, after listing the following as the stockholders in your corporation -- Philip Edell 15 shares, Frances Edell 4 shares, and Harry Dovgin 1 share, falsely stated 'No' in answer to Question 23 in said application, which question asks: 'Has any....individual other than the stock holders hereinbefore set forth any beneficial interest, directly or indirectly in the stock held by said stock holders?', whereas in truth and fact Louis Edelstein (also known as Louis Edell) was the real and beneficial owner of at least five of the shares of stock listed in Philip Edell's name and all of the stock listed in Frances Edell's name and in Harry Dovgin's name; such false statement being in violation of R. S. 33:1-25.

"2. Since August or September 1941, and until the present time, you knowingly employed in your licensed business the aforesaid Louis Edelstein, a person who would fail

to qualify as a licensee by reason of his conviction on or about February 17, 1941 of a crime involving moral turpitude; such employment being in violation of R. S. 33:1-26 and also Rule 1 of State Regulations No. 11."

Defendant corporation was organized on April 5, 1937. Prior thereto the business had been operated by two brothers, Philip Edel and Louis Edell, as partners. When the corporation was organized, the business was taken over by the corporation and the shares of the corporation were issued as set forth in charge (1). There has been no change of stockholders since that time. Statements taken from the parties interested support the conclusion that, despite the corporate set-up, Louis Edell was and is the beneficial owner of one-half of the corporate stock. As was admitted by the plea herein, his beneficial interest in said stock was not disclosed in the application dated June 9, 1942.

On February 17, 1941 Louis Edell was convicted, in a Federal court, of crimes involving moral turpitude, namely, conspiracy and using the mails to defraud. As a result, he served a sentence of six months in a Federal Penitentiary. It appears that, since his release from said institution, he has been employed by another corporation and has taken no active interest in the conduct of defendant's business except to the extent of advising his brother and occasionally fixing window displays in the licensed premises.

As to penalty: This violation concerns an application for the present fiscal year. In accordance with the policy announced in Bulletin 512, Item 9, I would ordinarily impose a penalty of suspension for ninety days on the facts set forth herein. However, since the licensed business cannot be permitted to operate with Louis Edell as the indirect owner of fifty per cent of defendant's stock, I shall suspend the license for the balance of its term, with leave granted to a qualified transferee of the license to apply to me to lift the suspension. In no event will the suspension be lifted until at least ninety days have elapsed from the effective date of the suspension. It appears from evidence given at the hearing that defendant has entered into an agreement with one George Goodman to sell the business to him, provided that the proposed purchaser can obtain a license from the State Board of Pharmacy and also a liquor license for the premises.

Accordingly, it is, on this 9th day of November, 1942,

ORDERED, that Plenary Retail Distribution License D-3, heretofore issued by the Board of Commissioners of the Town of Irvington to Clinton Cut Rate Drugs, Inc. for premises 1031 Springfield Avenue, Irvington, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED, that if and when the license is transferred, subject to this suspension, by the local issuing authority, application may be made to me by the transferee to vacate the suspension herein imposed; provided, however, that in no event will the suspension be lifted until at least ninety (90) days have elapsed from the effective date of the suspension herein imposed.

ALFRED E. DRISCOLL,
Commissioner.

4. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID $100.00 FINE - LICENSE SUSPENDED FOR 10 DAYS BY LOCAL BOARD - FACTS EXAMINED - APPLICATION TO LIFT GRANTED UPON TERMINATION OF ADDITIONAL 10 DAYS' SUSPENSION.

In the Matter of Petition by)

CHARLES SOLITARE,)
T/a ORIENTAL LIQUOR STORE,) ON PETITION
514 Oriental Avenue,) CONCLUSIONS AND ORDER
Atlantic City, N. J.,)

to lift the automatic suspension of Plenary Retail Consumption License C-206, issued by the Board of Commissioners of the City of Atlantic City.)

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Julius Waldman, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from petition filed herein that the licensee pleaded guilty, in the Court of Special Sessions, Atlantic County, to an indictment alleging that he had sold alcoholic beverages to minors and that he has paid the fine of One Hundred Dollars ($100.00) imposed as a result of said conviction. It further appears from the petition that the Board of Commissioners of Atlantic City suspended his license for ten days, effective from October 29, 1942, at 2:00 P.M., to November 8, 1942, at 2:00 P.M., after licensee, in disciplinary proceedings instituted by said Board, pleaded guilty to charges of selling alcoholic beverages to minors.

The records of the Department of Alcoholic Beverage Control show that the indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts and that, because of the criminal conviction, petitioner's license has been automatically suspended since October 29, 1942. R.S. 33:1-31.1. The petition filed herein prays that the automatic suspension may be lifted.

This case concerns the sale of alcoholic beverages for off-premises consumption to four boys, one of whom was eighteen years of age, another seventeen years of age, and the other two sixteen years of age. All became intoxicated outside of the licensed premises. At the time the first purchase was made, the oldest boy showed a draft registration card and stated that he was twenty-one years of age. Thereafter, one of the sixteen year old boys entered the licensed premises on two occasions and each time purchased alcoholic beverages without being questioned as to his age.

Despite the ten-day penalty imposed by the local Board of Commissioners, I shall not lift the automatic suspension at this time. The purpose of the automatic suspension is to insure that, when a licensee is convicted in a criminal court, there is swift and sure penalty against his license. In view of such purpose, it has been the policy of this Department to lift such suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Panasevitz, Bulletin 485, Item 3. Petitioner has no previous record but, even if full weight be given to that fact, the penalty imposed by the local Board appears to be inadequate. I shall not lift the automatic suspension under the facts disclosed herein until twenty days have elapsed from the date upon which it became effective.

Accordingly, it is, on this 10th day of November, 1942,

ORDERED, that the automatic suspension of the license be lifted, effective at 2:00 P.M. on Wednesday, November 18, 1942. The license will be returned to the licensee at that time.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 10 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - 10 DAYS' SUSPENSION - TOTAL: 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
)
JOHN STINE,)
608 Third St.,) CONCLUSIONS
Union City, N. J.,) AND ORDER
)
Holder of Plenary Retail Consumption License C-33 issued by the Board of Commissioners of the City of Union City.)

John Stine, Defendant-Licensee, Pro Se.
Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to charges alleging that (1) he falsely stated in his license applications that no person other than himself was interested in his license or the business conducted thereunder, whereas John Suchodolski did have such interest, in violation of R. S. 33:1-25; (2) since July 1, 1941 he permitted the said John Suchodolski to exercise the rights and privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52; and (3) and (4) on April 1, 1942 he sold alcoholic beverages to Anna Ianuale, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

As to (1) and (2): The testimony discloses that, shortly after obtaining his liquor license in July 1941, the licensee borrowed some money from John Suchodolski and, to secure the loan, made him a partner in the business. So far as appears from the record, John Suchodolski is not disqualified from holding a liquor license in his own name. When investigation uncovered the undisclosed interest, the licensee, in June 1942, repaid the entire amount of the loan to John Suchodolski and terminated the partnership. Since then John Stine has been the only person interested in the license.

Since the unlawful situation was corrected prior to July 1, 1942, the admitted violation does not warrant any increased penalty as in cases where the "front" was created or continued after such date. See Bulletin 512, Item 9. The license will, therefore, be suspended for ten days on the first two charges. Re Kovacs, Bulletin 498, Item 4.

As to (3) and (4): On April 1, 1942 a minor and an adult male escort were each served a glass of beer by the licensee's bartender and also two glasses of beer each by the licensee. One of the investigators who observed the service at the licensed premises testified that, although the minor was not quite eighteen years of age at the time, she gave the appearance of being well over nineteen years old. Since the violation does not seem to be an aggravated one, I shall impose the usual penalty of ten days on charges 3 and 4, with a remission of five days because of the guilty plea.

The defendant's license will, therefore, be suspended for a total of fifteen days.

Accordingly, it is, on this 11th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-33, heretofore issued to John Stine by the Board of Commissioners of the City of Union City for premises at 608 Third Street, Union City, be and the same is hereby suspended for a period of fifteen days, commencing November 16, 1942, at 3:00 A.M., and concluding December 1, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - AGGRAVATING CIRCUMSTANCES - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against JOHN YURICK, SR., T/a JOHNNY'S, N/S State Highway #10, Malapardis, Hanover Township, P.O. R.D. Whippany, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Township Committee Committee of the Township of Hanover.	CONCLUSIONS AND ORDER

Frank C. Scerbo, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that:

"1. On or about February 18 and 20, 1942 and on divers days prior and subsequent thereto you sold alcoholic beverages to Margaret _____, Elizabeth Jane _____ and Mary Virginia _____, minors, in violation of R. S. 33:1-77.

"2. On or about the dates aforesaid you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Margaret _____, Elizabeth Jane _____, and Mary Virginia _____, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The file in this case shows that on February 18 and February 20, 1942, John Yurick, Jr., son of the licensee and manager of the licensed premises, sold beer to the three girls mentioned in the charges. Two of the girls were sixteen years of age and the other girl was eighteen years of age. As a result of subsequent investigation by the criminal authorities of Morris County, John Yurick, Jr. was arrested, indicted for sale of alcoholic beverages to minors, and pleaded guilty, on June 5, 1942, in the Court of Quarter Sessions of Morris County, to said indictment, and was fined $100.00. Defendant's license was not automatically suspended because the conviction of the agent of the licensee did not bring the case within the provisions of R. S. 33:1-31.1.

As to penalty: This is one of a series of cases involving sales of alcoholic beverages to these and other minors on or about the same date. In some of these cases local issuing authorities suspended licenses for periods varying from ten to sixty days, depending upon the facts. The usual penalty for sales to minors is ten days where there are no aggravating circumstances. Here, however, two of the three minors were very young and hence, despite the fact that defendant has no previous record, I shall suspend his license for twenty days, less five for the guilty plea, making a net suspension of fifteen days. Cf. Re Rovere, Bulletin 523, Item 2 (one of this series of cases, wherein the automatic suspension of the license was lifted after it had been in effect for eleven days).

Accordingly, it is, on this 16th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to John Yurick, Sr., t/a Johnny's, by the Township Committee of the Township of Hanover, for premises on N/S State Highway #10, Malapardis, Hanover Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing November 23, 1942, at 2:00 A.M., and terminating December 8, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - AGGRAVATING CIRCUMSTANCES - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA (LESS TIME SERVED UNDER AUTOMATIC SUSPENSION - R.S. 33:1-31.1).

In the Matter of Disciplinary Proceedings against

ROADSIDE GRILLS, INC.,
T/a ROADSIDE GRILLS,
State Highway Route #6,
Rockaway Borough, N. J.,

Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Rockaway

CONCLUSIONS AND ORDER

Frank C. Scerbo, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that:

"1. In or about February 1942, you sold alcoholic beverages to Margaret _____, Gordon _____, Elizabeth Jane _____, Mary Virginia _____, Anthony F. _____ and Andrew T. _____, minors, in violation of R. S. 33:1-77.

"2. On or about the date aforesaid you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Margaret _____, Gordon _____, Elizabeth Jane _____, Mary Virginia _____, Anthony F. _____, and Andrew T. _____, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The file in this case shows that on an unspecified date in February 1942, a waitress in the licensed premises served beer to the six minors mentioned in the charges. Two of the minors were then sixteen years of age; one of them was seventeen years of age, and the other three were eighteen years of age. Defendant corporation was thereafter indicted for sale of alcoholic beverages to minors, pleaded guilty in the Court of Quarter Sessions of Morris County to said indictment and was fined $100.00. Its license was automatically suspended because of said conviction, was picked up on June 19, 1942 and remained suspended until June 30, 1942. R. S. 33:1-31.1. The license was renewed for the present fiscal year beginning July 1, 1942.

As to penalty herein: This is one of a series of cases involving sales of alcoholic beverages to these and other minors. See Re Yurick, Bulletin 538, Item 6, decided herewith. Prior to the date of the violation set forth herein, defendant's license had been suspended by the local issuing authorities for fourteen days, effective July 14, 1941, for permitting dancing on the licensed premises in violation of a municipal regulation. In this case the six minors were young and because of this aggravating circumstance and the prior record of licensee, I shall suspend its license for thirty days, less five days for the guilty plea and less eleven days for the time already served under the automatic suspension, making a net suspension of fourteen days.

It should also be noted that subsequent to the date of the violation herein, defendant's license was suspended by the local issuing authorities for forty-five days, effective July 27, 1942, for selling alcoholic beverages on Sunday, June 7, 1942, in violation of a municipal regulation. It follows that, in view of this record, any subsequent violation will merit severe punishment, if not revocation of the license.

Accordingly, it is, on this 16th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-8, heretofore issued to Roadside Grills, Inc., t/a Roadside Grills, for premises on State Highway Route #6, Rockaway Borough, by Borough Council of the Borough of Rockaway, be and the same is hereby suspended for a period of fourteen (14) days, commencing November 23, 1942, at 2:00 A.M., and terminating December 7, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, COLOR AND SOLID CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

PATSY RITACCO,
T/a Patsy's,
128 Park Avenue,
Nutley, N. J.,

Holder of Plenary Retail Consumption License C-2 issued by the Board of Commissioners of the Town of Nutley.

CONCLUSIONS AND ORDER

A. Theodore DeMuro, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant entered a plea of not guilty to the following charge:

"On or about July 8, 1942, you possessed an illicit alcoholic beverage in that one quart bottle labeled 'Wilson "That's All" Blended Whiskey 86.8 Proof', found in your licensed premises, contained an alcoholic beverage which varied from a genuine sample similarly labeled used for comparative purposes in proof, solids and color, in violation of R. S. 33:1-50."

On July 8, 1942 an investigator of the Department of Alcoholic Beverage Control visited the licensed premises. He tested twelve open bottles of liquor and seized the one mentioned in the charge when he found that its contents varied from a genuine sample similarly labeled. An analysis made by the chemist of the Department of Alcoholic Beverage Control disclosed that the whiskey in the seized bottle was a straight whiskey whereas the label of the bottle indicated the contents to be a blended whiskey.

At the hearing the defendant contended that he had opened the bottle the previous night and that most of the contents of the bottle had been consumed in his presence. He stated that he was unable to account for the presence of a whiskey different from that indicated on the label since he and his son had been the only ones to handle the seized bottle.

The evidence shows that the seized bottle was refilled with liquor other than that indicated on the label. The chemist's analysis proves that this was not a case of mixing one liquor with another since the analysis discloses the absence of any blended whiskey in the seized bottle. In view of the foregoing, I conclude that the defendant is guilty as charged. Re Kurian, Bulletin 517, Item 2.

I note that the defendant has no previous record and will suspend the operation of his license for the minimum penalty of ten days.

Accordingly, it is, on this 17th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued to Patsy Ritacco, trading as Patsy's, for premises 128 Park Avenue, Nutley, New Jersey, by the Board of Commissioners of the Town of Nutley, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:30 A.M. November 23, 1942, and concluding at 2:30 A. M., December 3, 1942.

ALFRED E. DRISCOLL,
Commissioner.

9. APPELLATE DECISIONS - LEHN v. CALDWELL TOWNSHIP.

ELFRIEDE LOUISE LEHN,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF CALDWELL,)
Respondent)
- - - - - - - - - - - - - - - - -)

Harry Kampelman, Esq., Attorney for Appellant.
Robert W. Brady, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant held a plenary retail consumption license for premises on Little Falls Road, Caldwell. These premises were completely demolished by fire on August 8, 1942. Thereafter, appellant applied for a transfer of her license to premises on Passaic Avenue, Caldwell, which was denied. Hence this appeal.

The proposed site is owned by one Anton Krump, whose consumption license for these premises was revoked by respondent on April 9, 1942 after it had found him guilty of permitting acts of open lewdness on his licensed premises. On appeal to this Department, I affirmed the revocation. Re Krump, Bulletin 507, Item 4.

The premises in question have an area of approximately three and one-half acres, and contain three structures: the main building in which the tavern is located, a small cottage and a dance pavilion. The grounds are used for picnics and include a bathing beach, swings, slides, tables, benches and other picnic paraphernalia.

One of the reasons assigned by respondent for denial of appellant's application to transfer her license is:

> "The area of the premises to which the application relates is too large for a licensee to be able effectively to control its patrons and assure the maintenance of peace and good order therein while in operation as a tavern under a plenary retail consumption license."

As indicated above, this is not merely a reasonably apprehended fear but is grounded in actual past experience with these very premises. Not only is it an established fact that the premises had been misconducted, but one of the contentions advanced by Krump in his appeal, supra, was that the immoral acts took place in the dance pavilion, located about 250 feet from the main building, and that he,

therefore, had no knowledge that any indecent conduct was taking place upon his premises. This lends forcible support to respondent's position and demonstrates its reasonableness.

Although not supported by proof, there is a suggestion in the record that there are other places of comparable size having liquor licenses in respondent's municipality. Even if this were true, it does not follow that respondent has been guilty of unlawful discrimination against appellant. It does not appear in the record that any of these other places have ever been misconducted, or that the enforcement authorities have encountered any difficulties in controlling activities thereon. Nor does it appear that the places referred to are comparable in the size of the property or the character of the buildings located upon the same. In the absence of such proof, it cannot be assumed that respondent would not, if a similar situation arises with respect to any of these alleged comparable establishments, take like action.

At the appeal hearing, appellant offered to delimit her licensed premises so as to cover only the main building containing the tavern. Whether this would meet respondent's aforesaid objection cannot at this time be passed upon by me. It should, as are all questions involving the exercise of discretion in the issuance of municipal licenses, be determined in the first instance by the local issuing authority. However, it may well be, as argued by respondent's attorney in his brief, that respondent would not be guilty of an abuse of discretion if it took the position that the same problems relating to the difficulty of supervision and control would be present regardless of whether the entire premises were licensed or only the one building containing the tavern.

Finally, appellant argues that a denial of her application to transfer her license would deprive her of her only means of livelihood. Although I may be personally sympathetic to appellant, nevertheless, the test as to whether a particular premises should be licensed is not the deprivation of an individual but rather the welfare of the community at large. Where private and public interests conflict, the latter must necessarily prevail. De Vivo v. Highlands, Bulletin 427, Item 5; Spezio v. Jamesburg, Bulletin 492, Item 10.

The foregoing renders it unnecessary to consider any of the other reasons assigned by respondent to sustain its refusal to grant appellant's application.

The action of respondent is affirmed.

Accordingly, it is, on this 17th day of November, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - 20 DAYS' SUSPENSION - PERMITTING DISQUALIFIED EMPLOYEE (NON-CITIZEN) TO SELL AND SERVE ALCOHOLIC BEVERAGES - 5 DAYS' SUSPENSION - TOTAL: 25 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against ANTOINETTE CANCRO, 785 Palisade Avenue, Cliffside Park, N. J., Holder of Plenary Retail Consumption License C-19, issued by the Borough Council of the Borough of Cliffside Park.	CONCLUSIONS AND ORDER

Joseph Gaudielle, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads not guilty to the following charges:

"1. At or about midnight, August 7, 1942, and the early morning hours of August 8, 1942, you sold alcoholic beverages to Salvatore Michael Romano, Willard Girard Orth, Frank Michael Podbevsek and Joe Vincent Reboly, minors, in violation of R. S. 33:1-77.

"2. At or about the times aforesaid, you sold, served and delivered and permitted the consumption of alcoholic beverages by Salvatore Michael Romano, Willard Girard Orth, Frank Michael Podbevsek and Joe Vincent Reboly, being persons under the age of twenty-one years, this being in violation of Rule 1 of State Regulations No. 20.

"3. At or about the times aforesaid, and on divers days prior thereto, you permitted a person not qualified because of non-citizenship to tend bar and sell and serve alcoholic beverages in violation of Rule 1 of State Regulations No. 11 and R. S. 33:1-26."

As to Charges (1) and (2): At the hearing, investigators of the Department of Alcoholic Beverage Control testified that, on the evening of August 7, 1942, they saw the bartender sell, at the bar, a glass of beer to Romano and a glass of beer to Orth, both of whom appeared to be minors. They testified also that, in a rear room of the licensed premises, they observed Podbevsek and Reboly, who appeared to be minors. The latter told the investigators that they were minors and that they had been served with glasses of beer. Orth, Podbevsek and Reboly are in the armed forces and could not be produced to testify at the hearing. No competent evidence was introduced as to the age of any of these three young men, and hence, in the absence of proper proof that they were minors, I must dismiss the charges as to sales to these three alleged minors.

At the hearing, Salvatore Romano testified that he was born on September 12, 1925; that, on the evening in question, he was seated at the bar with Orth, who ordered two beers; that the bartender placed before each of them a glass of beer, for which each paid, and that the witness was consuming his beer when it was seized by the investigator. I find defendant guilty, as charged, as to sale and service of alcoholic beverages to Salvatore Romano, a minor, then sixteen years of age.

As to Charge (3): An investigator of the Department of Alcoholic Beverage Control testified that, on the evening in question, he saw Charles Cancro serve a drink of whiskey to a woman. The evidence shows that Charles Cancro, father-in-law of the licensee, is an Italian national. Hence he was not qualified to handle, sell or serve alcoholic beverages. Re Lipman, Bulletin 535, Item 9. In view of the investigator's testimony, I do not believe that Charles Cancro was then behind the bar merely for the purpose of locking the cash register, as defendant contends. It is clear also that Charles Cancro was employed on the licensed premises at the time of the sale. Re DeVlaminck, Bulletin 147, Item 4; Re Haino, Bulletin 295, Item 7. I find defendant guilty as to Charge (3).

While the defendant has no previous record, I cannot overlook the fact that Romano was sixteen years of age at the time he was permitted to buy and consume alcoholic beverages on the licensed premises. Nor can I overlook the fact that despite the presence on the licensed premises of those who appeared to be minors, neither the licensee nor his agents exercised the necessary precautions to prevent a violation of the law. I therefore shall impose a penalty of twenty days' suspension of defendant's license for the sale of alcoholic beverages to a minor, and a five day suspension of her license for permitting a person unqualified because of non-citizenship to serve liquor on her licensed premises, making a total of twenty-five days' suspension.

Accordingly, it is, on this 18th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-19, heretofore issued to Antoinette Cancro for premises 785 Palisade Avenue, Cliffside Park, New Jersey, by the Borough Council of the Borough of Cliffside Park, be and the same is hereby suspended for a period of twenty-five (25) days, commencing November 23, 1942, at 3:00 A.M., and terminating December 18, 1942, at 3:00 A. M.

Alfred E. Driscoll
Commissioner.