

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

BULLETIN 550

FEBRUARY 1, 1943.

1. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - 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. )

CONCLUSIONS  
AND ORDER

Case No. 252  
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that her disqualification resulting from the conviction of a crime be lifted pursuant to R. S. 33:1-31.2.

On July 7, 1934 petitioner pleaded non vult to a very serious charge and was placed on probation for a period of one year. At the hearing petitioner produced three character witnesses who were all public officials in the city wherein the petitioner resides. Two of these men have known petitioner for at least twenty years, while the third has known her for a period of fifteen years. All three live in the immediate vicinity of where petitioner resides. The three witnesses testified that petitioner lives with her daughter, is a hard worker, and is regarded in her community as law-abiding, well-behaved and of excellent character.

Petitioner's probation officer is high in his praise as to petitioner's conduct while she was in his charge. After serving six months of the year's probation, she was released and the case was closed with a satisfactory recommendation from the Chief Probation Officer. Aside from the conviction in 1934, petitioner's fingerprint return shows a clean record and indicates that there are no pending complaints or investigations against her.

From all of the foregoing I am satisfied that petitioner has led an honest and law-abiding life for at least five years last past, and that her association with the alcoholic beverage industry will not be contrary to the public interest. Hence, petitioner's disqualification will be removed.

Accordingly, it is, on this 21st day of January, 1943,

ORDERED, that petitioner's statutory disqualification because of the conviction of crime be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL  
Commissioner.

New Jersey State Library

2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE - SUPPRESSION OF MATERIAL FACTS - DISQUALIFIED PERSONS INTERESTED IN CORPORATION CONTRARY TO R. S. 33:1-12.1 - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 30 DAYS AND BONA FIDE CORRECTION.

DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR PERMIT CONCEALING MATERIAL FACTS - PERMIT PRIVILEGE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against WEISS & RUBIN, INC., 236 Broad Ave. Palisades Park, N. J., Holder of plenary Retail Distribution License D-10 issued by the Mayor and Council of the Borough of Palisades Park.

In the Matter of Disciplinary Proceedings against JACK RUBIN 236 Broad Avenue Palisades Park, N. J., Holder of Employment Permit No. 1037, issued by the State Commissioner of Alcoholic Beverage Control.

In the Matter of Disciplinary Proceedings against SADIE RUBIN 236 Broad Avenue Palisades Park, N. J., Holder of Employment Permit No. 1038, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDERS

Joseph M. Rotolo, Esq., Attorney for Defendant-Licensee and Defendant-Permittees. Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to the following charge:

"In your license application dated June 2, 1942, filed with the Mayor and Council of the Borough of Palisades Park, upon which you obtained Plenary Retail Distribution License D-10 for the year 1942-43, you, after listing the following as the stockholders in your corporation -- Sophia Weiss 90 shares, Jack Rubin 5 shares, and Sadie Rubin 5 shares --, falsely stated 'No' in answer to Question 24 in said application, which question asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and in fact Jack Rubin and Sadie Rubin

were the real and beneficial owners of all of the stock listed in Sophia Weiss' name; such false statement being in violation of R. S. 33:1-25."

The defendant-permittees pleaded guilty to a charge that they falsified their permit applications by stating therein that each owned 5% of the stock of the corporate licensee, whereas in truth and fact they were each the real and beneficial owners of 50% of such corporate stock.

It is frankly admitted that Jack Rubin and Sadie Rubin, his wife, are equal one-half partners in the business conducted under the corporate license. Since they have resided in this state only since June 1940, they are disqualified under the Alcoholic Beverage Law from holding a liquor license in their own names (see R. S. 33:1-25) or owning more than 10% of the stock of a licensed corporation (see R. S. 33:1-12.1). They therefore formed the present corporation and caused 90% of the stock to be held on their behalf by another person.

Since this unlawful arrangement still exists, I must suspend the license for the balance of its term. If, however, a correction is effected by a bona fide sale and transfer, application may be made to me for a lifting of such suspension. In no event, however, will the suspension be lifted until at least thirty days have elapsed from the effective date of the suspension herein imposed. Cf. Crown Liquor Store, Inc., Bulletin 549, Item 1.

The employment permits of Jack Rubin and Sadie Rubin will each be suspended for the balance of the fiscal year. Cf. Re Solodar and Pell, Bulletin 549, Item 1.

Accordingly, it is, on this 22nd day of January, 1943,

ORDERED, that Plenary Retail Distribution License D-10, heretofore issued by the Mayor and Council of the Borough of Palisades Park to Weiss & Rubin, Inc. for premises 236 Broad Ave., Palisades Park, be and the same is hereby suspended for the balance of its term, effective at 3:00 A.M. on January 26, 1943; and it is

FURTHER ORDERED that, upon a correction of the existing unlawful situation by a bona fide sale and transfer, application may be made to me to lift the suspension, provided, however, that such suspension shall not be lifted prior to the expiration of thirty (30) days from the effective date of such suspension; and it is

FURTHER ORDERED, that Employment Permit No. 1037, heretofore issued to Jack Rubin by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective immediately; and it is

FURTHER ORDERED, that Employment Permit No. 1038, heretofore issued to Sadie Rubin by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

3. APPELLATE DECISIONS - MCGUIRE v. HOBOKEN.

RICHARD MCGUIRE, )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF HOBOKEN, )

Respondent. )

NON APPEAL  
CONCLUSIONS AND ORDER

Joseph B. McFeely, Esq., by James D. Connell, Esq., Attorney for Appellant.

John J. Fallon, Esq., by James A. Coolahan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the revocation of his plenary retail consumption license C-102 issued for premises located at 301 Clinton Street, Hoboken. His application for a stay pending determination of the appeal was denied.

On October 20, 1942 respondent conducted a hearing upon charges previously served upon appellant herein, and revoked his license after it found him guilty on all of the following charges:

"1. That you did on the 11th day of October, 1942, in the licensed premises conducted by you at 301 Clinton Street, Hoboken, N. J. permit the sale and delivery of alcoholic beverages to persons actually or apparently intoxicated; to wit, Pauline G--- and Mary V--- (deceased), and that you did permit and suffer the consumption of alcoholic beverages by the said Pauline G--- and Mary V--- (deceased) upon the licensed premises conducted by you, all of which was contrary to and in violation Section 1 of Regulation 20 of the Department of Alcoholic Beverage Control;

"2. That you did on or about the 11th day of October, 1942 and on divers other dates, allow, permit and suffer upon the licensed premises prostitutes and persons of ill repute, contrary to and in violation of Section 4, Regulation No. 20 of the Department of Alcoholic Beverage Control;

"3. That you did on or about the 11th day of October, 1942 and divers other dates, violate the resolution and regulation of the Board of Commissioners of the City of Hoboken passed December 17, 1935, in that you did allow, permit and suffer in and upon the licensed premises, women conversationalists and other persons of ill repute, and that you did permit the assembling of females in the licensed premises for the enticing of customers."

The evidence herein shows that, during the early evening of October 11, 1942, Pauline G---, her husband and Mary V---, an elderly widow, entered the licensed premises. The husband went to the bar-room and later left the premises alone. The two women went to a rear sitting room where they were served with drinks by the bartender.

Later in the evening two bargemen entered the licensed premises, went to the rear sitting room and sat at the same table with the women. In a statement given by the bartender to the police, he admitted that, before he went off duty at 9:00 P.M., he served about four rounds of drinks to these men and women and stated that the women were drinking highballs and the men were drinking beer. The licensee relieved the bartender at about 9:00 P.M. At the hearing herein, the licensee admitted that, between 9:00 P.M. and 11:30 P.M., he served three additional rounds of the same kind of drinks to these four persons.

It appears from statements taken from the bargemen, and admitted in evidence herein, that, during the course of the evening, Pauline suggested to the men that she and Mary would be willing to accompany the men to their barge for immoral purposes. She summoned a taxi and the party of four left the premises at about 11:30 P. M. Shortly thereafter Mary was accidentally killed while attempting to board the barge. The case was investigated by the Hoboken Police, who took statements from Pauline, the bargemen and the bartender, with the result that these charges were preferred against appellant.

Appellant objected to the introduction into evidence in this case of the statements obtained from the bargemen. It appears that both bargemen were present at the hearing below and swore that the contents of the statements were true. Appellant was present at said hearing and was given an opportunity to cross-examine both of these witnesses at that time. Since the hearing below, both bargemen have left the State and cannot be found. I conclude that the ruling of the Hearer in admitting these statements into evidence was correct.

In their statements the bargemen say that they were "half drunk" and that both women were drunk while they were on the licensed premises. One of the bargemen said that about three months previously he had met Mary in the appellant's premises and had taken her to his boat, where they had sexual intercourse. In the bartender's statement he says that he had been employed there as bartender for about six months and that, during that period, Pauline G--- came into the tavern on an average of three or four times a week. He further says:

"On many occasions while I was acting as bar-tender, Mrs. G--- was invited to have a drink by male customers who were in the tavern. Mrs. G--- accepted the invitation and the male customer would pay for her drink. Mrs. G--- would always sit in the back-room known as the sitting-room. The men who purchased the drinks, as a general rule, would be standing at the bar, while Mrs. G--- would be in the back-room. Sometimes, after the male customers would purchase the drink for Mrs. G--- he would then go into the back-room and sit with her. This same procedure followed with another woman customer, one Mary V---, who was a friend of Mrs. Pauline G---. On many occasions male customers purchased drinks for Mary V--- and would then go into the back-room and converse with her."

Appellant denies that he knew, or had any reason to believe, that either of these women was a prostitute or person of ill repute. There is no evidence that he had any knowledge of the arrangements made between the women and the men on the evening in question, or

that he had any knowledge of the arrangement made some three months previously between one of the women and one of the men. On the record presented, I find that there is not sufficient evidence to sustain a finding of guilt as to the second charge. However, the evidence is sufficient to sustain the finding of guilt as to the first and third charges. Cf. O'Hanlon v. Newark, Bulletin 519, Item 5; Miche v. Hoboken, Bulletin 509, Item 10.

Appellant argues also that the penalty is excessive. He produced four witnesses who testified that the premises were always conducted in a respectable manner to the best of their knowledge and belief. Appellant has no previous record. However, the penalty to be imposed after a finding of guilt is within the sound discretion of the issuing authority and will not be disturbed unless clearly unreasonable. Considering all the evidence herein, I cannot say that respondent abused its discretion in revoking the license. The action of respondent is affirmed.

Accordingly, it is, on this 21st day of January, 1943,

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

ALFRED E. DRISCOLL  
Commissioner.

4. SALES TO MINORS - R. S. 33:1-77 SETS FORTH THREE FACTS, ALL OF WHICH MUST BE ESTABLISHED TO CONSTITUTE A DEFENSE TO PROSECUTION - MINOR'S SIGNED STATEMENT MISREPRESENTING HIS AGE TO BE TWENTY-ONE YEARS OR OVER IS NOT ALONE A SUFFICIENT DEFENSE.

January 25, 1943

Mr. Albert J. Hoffacker  
Elizabeth, N. J.

Dear Mr. Hoffacker:

I have yours of January 20th, reading in part:

"A minor, going into a Tavern is refused an alcoholic beverage, however when he signs a paper stating that he is over 21 years of age, he is then served an alcoholic beverage. Now, does the signed paper fully clear the man who served the beverage, or is he still subjected to a fine."

Section 33:1-77 of the Revised Statutes provides that:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over."

You will observe that the minor's mere signing of the paper is not sufficient. For an adequate defense under the statute, the person who sells to a minor must establish not only the facts stated in "(a)" of the quoted section, but those stated in "(b)" and "(c)" as well. If this were not so there would be such ease of evasion that the section would have little or no effect.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED AND PERMITTING THE CONSUMPTION OF SAME ON LICENSED PREMISES, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION - PERMITTING FEMALE EMPLOYEE TO ACCEPT BEVERAGES AT THE EXPENSE OF CUSTOMERS AND PATRONS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION - TOTAL: 60 DAYS.

In the Matter of Disciplinary Proceedings against )

MARIE McDONALD )  
T/a KENTUCKY INN )  
114 South Kentucky Avenue )  
Atlantic City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-221 issued by the Board of Commissioners of the City of Atlantic City. )  
- - - - - )

Leon Leonard, Esq., Attorney for Defendant-Licensee.  
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty as to charges alleging that:

"1. On or about October 3, 1942, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Sergeant Benjamin --- and Private Raymond ---, persons actually and apparently intoxicated, 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.

"2. On or about the date aforesaid, and on divers days prior thereto, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of and as gifts from customers and patrons, in violation of Rule 22 of State Regulations No. 20."

As to charge (1): Investigators Ilaria and Metzler of the Department of Alcoholic Beverage Control entered defendant's premises on the evening of October 3, 1942. Their testimony discloses that, between the time of their entrance and midnight, they observed the defendant's bartender serve seven glasses of beer to Sergeant Benjamin --- and five glasses of beer to Private Raymond ---. The two soldiers in question had been standing at the bar when the agents entered the premises. Messrs. Ilaria and Metzler expressed the

opinion that, at 11:40 P.M., the two soldiers were actually or apparently intoxicated. Between 11:40 P.M. and midnight the bartender served, and the licensee (who was on the premises at the time) permitted the consumption of, two glasses of beer by each of the soldiers. At about midnight the investigators summoned members of the Atlantic City Police, who took both soldiers to Police Headquarters, where they remained until shortly after 1:00 A.M., when Sergeant Gillian of the Military Police arrived.

The defendant does not deny that between 11:40 P.M. and midnight drinks were served to both soldiers mentioned in the charges. However, the licensee, the bartender who was on duty, a waitress and a taxicab driver, who saw the soldiers leave with the police, all deny that the soldiers at any time were actually or apparently intoxicated. Sergeant Gillian, of the Military Police, who saw both soldiers at Police Headquarters, testified that, at that time, Sergeant Benjamin --- was sober, but that Private Raymond --- was under the influence of liquor. The testimony of the disinterested representative of the Military Police merits thoughtful consideration. It is to be noted, however, that the observation of Sergeant Gillian occurred over an hour after the service of the last beer, and after Sergeant Benjamin --- had had an opportunity to clear his head as well as his stomach. The testimony of the investigators as to the physical condition of patrons is entitled to great weight. Re Roselle, Bulletin 279, Item 8. The two investigators stated that both soldiers were "wobbly" on their feet and that their speech was "very incoherent." Neither soldier was disorderly.

In view of the substantial doubt existing as to the condition of Sergeant Benjamin ---, and in view of the testimony of the Military Police with respect thereto, I shall dismiss the charge as to Sergeant Benjamin ---. All the evidence, however, leads me to conclude that Private Raymond --- was intoxicated when served. Hence I find defendant guilty as to charge (1) so far as it concerns sale of alcoholic beverages to him.

As to charge (2): Investigator Ilaria testified that, on the evening of October 2, 1942, he saw a male patron purchase two drinks of alcoholic beverages for Frances Green, a waitress employed on the licensed premises, and that on the following evening he saw Sergeant Benjamin --- purchase alcoholic beverages for Miss Green. The waitress testified that she drinks only with friends, and that she did not know that this constituted a violation of State Regulations. This is no excuse. Rule 22 of State Regulations No. 20 provides:

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

I find defendant guilty as to charge (2).

As to penalty: A sale of alcoholic beverages to any member of our armed forces while intoxicated is not only a serious violation but an unpatriotic act demanding severe punishment. I shall suspend defendant's license for forty days because of the finding of guilt as to charge (1), and for an additional twenty days because of the finding of guilt as to charge (2).

Accordingly, it is, on this 26th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-221, issued by the Board of Commissioners of the City of Atlantic City to Marie McDonald, t/a Kentucky Inn, for premises 114 South Kentucky Avenue, Atlantic City, be and the same is hereby suspended for sixty (60) days, commencing at 12:01 A.M. February 1, 1943, and terminating at 12:01 A.M. April 2, 1943.

ALFRED E. DRISCOLL  
Commissioner.

6. LICENSEES - INDUCTION INTO ARMED FORCES - LICENSES MAY NOT BE CONTINUED BEYOND EXPIRATION OF LICENSE TERM WITHOUT PAYMENT OF FEE AND EXISTENCE OF LICENSED PREMISES.

MUNICIPAL REGULATIONS - LIMITATION OF LICENSES - EXCEPTION TO PERMIT NEW LICENSES TO EX-LICENSEES UPON THEIR DISCHARGE FROM ARMED FORCES.

January 25, 1943

I. William Aronsohn, Esq.  
Hackensack, N. J.

Dear Mr. Aronsohn:

I have your letter of January 14th stating that:

Your client, Leonard Castrianni, who operated a tavern at 121 Main Street, Fort Lee, was inducted into the Army, and the renewal of his license on July 1, 1942 was obtained by his mother Anna Castrianni as attorney-in-fact. The mother, who has operated the tavern since July 1st, now feels unequal to the task of continuing the business and wishes, therefore, to vacate the licensed premises. She wishes, however, to retain the license for the use of her son when he returns from service.

You ask whether the law in this State allows a person to hold a plenary retail consumption license under these circumstances and when there is no actual place of business in operation.

Merely going out of business does not invalidate the license. A license, unless sooner surrendered, suspended or revoked, remains in existence until it expires at the end of the license term.

A license may not, however, be "saved", or "carried over", or "held in abeyance" pending its future use beyond the period of the term for which it was issued. R. S. 33:1-12 establishes the minimum fees to be fixed by the municipal authority and each license is issued subject to the fixed fee. R. S. 33:1-25 requires that a deposit of the full amount of the fee must accompany the license application. (I gather from your letter that you understand this fee requirement - that there is no desire or intention to hold the license beyond the present term without payment of the regular fee.)

More significant, in your client's situation, is the fact that license applications are granted and the licenses issued to particular persons for particular premises. The law clearly contemplates the necessity of premises in connection with a license issuance. R. S. 33:1-24 makes it the duty of the issuing authority to inspect premises sought to be licensed; and R. S. 33:1-26 requires a separate

license for each specific place of business. Furthermore, if the applicant does not have possession or right to possession of, or interest in, the premises, the license may not be granted. The principle was first enunciated by this Department in 1934 in Procoli v. Trenton, Bulletin 28, Item 6, and has been followed to this date. Alberts v. Roselle, Bulletin 444, Item 1; Berry v. Newark, Bulletin 433, Item 8; Bodrato v. Northvale, Bulletin 433, Item 1; Gimber v. Galloway, Bulletin 427, Item 9; Hindin v. Egg Harbor, Bulletin 399, Item 1; Licata v. Camden, Bulletin 342, Item 1.

It follows that the Castrianni license could not be renewed for the license year 1943-44 in the absence of approved premises for carrying on the business.

Section 1 of the Borough's alcoholic beverage ordinance adopted December 27, 1939 reads:

"The number of plenary retail consumption licenses issued and outstanding in the Borough of Fort Lee at the same time shall not exceed Twenty-five, provided, however, that this limitation shall not prevent the issuance of renewals of plenary retail consumption licenses to persons holding such licenses at the time this regulation was adopted, and further provided that this limitation shall not prevent the transfer of licenses, or the renewal thereof, according to law. No new plenary retail consumption licenses shall be issued to anyone not holding such license at the time this regulation was adopted until the number outstanding shall be reduced by surrender, revocation, or non-renewal, to less than Twenty-five."

Pursuant to the quoted ordinance provision, if Castrianni's license is surrendered or expires, a new plenary retail consumption license cannot later be issued to him unless and until the number then outstanding is fewer than twenty-five. This would be true even had Castrianni held a plenary retail consumption license in the Borough when the ordinance was adopted (which he had not). If the second sentence of the ordinance ~~section~~ should be construed as permitting a new license to be issued over and above the quota, at any future date, to any person who happened to have held a license when the quota was adopted, such a provision would be arbitrary and necessarily invalid. Virgilio v. Orange, Bulletin 437, Item 1.

According to our records, there are thirty-seven plenary retail consumption licenses now outstanding in Fort Lee.

Considering all the circumstances and in view of the State law and the Borough's limitation ordinance, I offer the following suggestion. You might request the Mayor and Council to consider amending the ordinance by adding a provision along the following lines:

"The provisions of Sections 1, 2 and 3 shall not prevent the issuance of a new license within \_\_\_\_\_ days from his completion of service in the armed forces of the United States, to a person who, having held a license of the same class in the Borough, surrendered the license, or permitted it to expire, because of his induction into or service in said armed forces."

The refinements and exact wording of this provision will require care but should not be too difficult.

The amendment would give no promise or assurance that the local issuing authority will grant a particular new license at some future date. It would, however, permit the issuance of a new license to an ex-licensee upon his return from service regardless of the number of licenses then outstanding. For your information, the Municipal Council of the City of Clifton adopted a similar amendment to its limitation ordinance on May 20, 1941.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - HINDERING AND OBSTRUCTING INVESTIGATION OF LICENSED PREMISES - PREVIOUS RECORD - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

J. BARNES OPERATING CORP. )  
223 1/2 Halsey Street )  
Newark, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-856, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
- - - - - )

Saul C. Schutzman, Esq., Attorney for Defendant-Licensee.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to a charge alleging that it hindered, delayed and failed to facilitate an investigation of its licensed premises, in violation of R. S. 33:1-35.

On September 10, 1942 two ABC agents observed the bartender at defendant's tavern serve beer to five young men, all ostensibly minors. Three of these minors were seated at the bar and two in a booth. Making their identity known to the latter two minors, the agents learned that they were each seventeen years of age. One of the agents then approached the three minors at the bar and identified himself to them and also to the bartender. When the bartender heard the minors admit their ages to the agent, he hastily reached for their glasses and dumped the unconsumed contents into a sink beneath the bar.

The three minors, the bartender and the agent then proceeded to the booth, where, in the meantime, the other agent was conversing with the other two minors. Their drinks had been placed on a table in an adjoining booth for safekeeping. The bartender, a huge hulk of an individual, of great weight but little judgment, immediately became unruly and abusive. He shouted that the agents were "framing" him, and throughout used the vilest of language in which he impugned their legitimacy and animadverted to the abnormality of their sex life. As one of the agents described it, he "roared like a mad lion."

Apprehending that additional aid might be required, one of the agents attempted to call the police from a public phone on the premises. The bartender grabbed him by the arm and, when the other agent attempted to interfere, he caught the latter by the collar and sought to pin them both against the bar. Although the bartender, by this time, had worked himself into a fiery rage, he nevertheless had the presence of mind to destroy the remaining evidence of the sales to the two minors by sweeping their glasses off the table. In the meantime, the minors, acting on the command of the bartender, fled from the premises. The police arrived shortly thereafter and escorted the bartender to police headquarters, where he was held in bail upon assault and battery complaints made by the ABC agents.

The bartender was not produced as a witness since he has apparently left this jurisdiction and was not available to testify. The only witness for the licensee was its president and majority stockholder, who was not present on the occasion in question. In fact, no one associated with the corporate licensee, with the exception of the bartender, was at the premises at the time. If it appeared that any of the persons directly connected with the corporation, either as stockholder or manager, had been at the tavern and actively participated in the melee or refrained from taking any steps to prevent it, the violation, as serious as it developed to be, would assume more aggravated proportions.

In any event, however, a substantial penalty is indicated because of the flagrant defiance of the authority of the ABC agents, the destruction of the evidence and the disappearance of the witnesses because of the fracas, resulting in the Department's inability to institute proceedings against the licensee for sales to minors, and last but not least, the manhandling of the agents. In two recent cases involving a similar charge, where neither of the latter two elements were present, I imposed suspensions of fifteen days in each. See Re Moose, Bulletin 520, Item 3; Re Niewinski, Bulletin 549, Item 9. In this case, because of the gravity of the violation and the fact that the licensee has on one prior occasion received a suspension of its license (see Bulletin 500, Item 7), I shall impose a penalty of forty days.

Accordingly, it is, on this 26th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-856, heretofore issued to J. Barnes Operating Corp. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, for premises 223½ Halsey Street, Newark, be and the same is hereby suspended for a period of forty (40) days, commencing at 3:00 A.M. February 1, 1943, and terminating at 3:00 A.M. March 13, 1943.

ALFRED E. DRISCOLL  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION SUPPRESSING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BY CRIMINAL RECORD) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

JOSEPH DE DOMENICO )  
T/a BLACK & WHITE INN )  
W/S Harding Highway )  
Buena Vista Township )  
P.O. Landisville, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 issued by the Township Committee of the Township of Buena Vista. )  
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No appearance for Defendant-Licensee.  
Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On December 21, 1942 there was mailed to defendant-licensee, by registered mail addressed to him at the licensed premises, a copy of the following charges:

"1. In your application filed with the Township Committee of the Township of Buena Vista, and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual...other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Edward DelDuca was the real and beneficial owner of said license and the business conducted thereunder; such false statement being in violation of R. S. 33:1-25.

"2. From July 1, 1942 and until the present time, you knowingly aided and abetted Edward DelDuca to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license in the Township of Buena Vista, thereby yourself violating R. S. 33:1-25."

At the hearing duly scheduled to be held upon said charges, defendant-licensee did not appear.

Our records disclose that Joseph De Domenico obtained his license effective July 1, 1942, and that in his application for said license he answered "No" in answer to Question 30 therein.

Our records further disclose that, in a statement given to investigators of the Department of Alcoholic Beverage Control dated December 8, 1942, the licensee admitted that in fact the business belongs to Edward DelDuca, who, between the date upon which the license became effective and the date of charges preferred herein, was acting as ostensible manager of the licensed premises. Because of his criminal record, Edward DelDuca is ineligible to hold a license in the State of New Jersey. See Re Case No. 477, Bulletin 550, Item 9, decided herewith.

I find defendant guilty as charged.

On December 22, 1942 the licensee notified me in writing that he intended to go out of business on January 1, 1943. So far as appears, he has not surrendered the license. In any event, I shall revoke the license and thus disqualify the licensee from holding or receiving any liquor license in this State for a period of two years from the date hereof. Re Roninger, Bulletin 421, Item 10.

Accordingly, it is, on this 27th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Buena Vista to Joseph De Domenico, t/a Black & White Inn, for premises on W/S Harding Highway, Buena Vista Township, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

9. ELIGIBILITY - FACTS EXAMINED - CRIME OF MAINTAINING A DISORDERLY HOUSE FOR THE PURPOSE OF PROSTITUTION INVOLVES MORAL TURPITUDE - APPLICANT HELD INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

January 27, 1943

Re: Case No. 477

This proceeding concerns the eligibility of one Edward Del Duca to hold a license or to be employed in a business capacity by a licensee. Although duly notified, he failed to appear at a hearing scheduled to be held as to his eligibility. He is the same individual referred to in Re De Domenico, Bulletin 550, Item 8, decided herewith.

Our investigation discloses that, on December 3, 1930, Edward Del Duca pleaded guilty in the Court of Special Sessions, Atlantic County, to a charge of keeping slot machines and was fined \$50.00. Investigation further discloses that, on July 2, 1931, he pleaded non vult to an indictment which charged that he kept, maintained and operated a building for the purpose of prostitution, lewdness and assignation. The second crime of which he was convicted clearly involved moral turpitude.

It is recommended, therefore, that Edward Del Duca be advised that he is not eligible to hold a liquor license or to be employed in any business capacity by a liquor licensee in the State of New Jersey.

Edward J. Dorton  
Deputy Commissioner  
and Counsel.

APPROVED:

ALFRED E. DRISCOLL  
Commissioner.

10. SALES TO MINORS - "LEGGINGS" - U. S. COAST GUARDSMEN IN ATLANTIC AND CAPE MAY COUNTIES WEARING "LEGGINGS" ON LIBERTY AND HAVING LIBERTY CARDS STAMPED "LEGGINGS" IDENTIFIED AS MINORS.

January 28, 1943.

TO ALL RETAIL LICENSEES IN ATLANTIC AND CAPE MAY COUNTIES:

The sale of alcoholic beverages to a person under twenty-one (21) years of age is a violation of the Alcoholic Beverage Law, the Rules and Regulations of this Department, and a misdemeanor. To constitute a defense to any prosecution therefor, the licensee must establish:

- (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and
- (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and
- (c) that the sale was made in good faith, relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over.

In order to help licensees identify members of the U. S. Coast Guard, who may be minors, the District Coast Guard Officer of the Fourth Naval District, on December 23, 1942, issued to the Commanding Officers of the Coast Guard Stations from, and including Atlantic City, south along the eastern shore line of New Jersey, to and including Cape May, an order to the following effect:

"Hereafter \* \* \* and so that there will be no question when a service man walks into a saloon or taproom that the man is of age, it has been agreed that all Coast Guardsmen under the age of 21 when going on liberty will wear leggings and will also have marked on their liberty card the word 'leggings.' Using this means of identification will immediately put the liquor dispenser on notice that the man is under 21."

While this arrangement is intended to be helpful to the licensees in the affected area, the following must be clearly and explicitly noted:

1. The ONLY personnel included in this order are those Coast Guardsmen located in the territory South of Absecon Inlet, including all stations in Atlantic City, and extending south from Absecon Inlet along the Atlantic shore line of New Jersey through and including Cape May.
2. The order applies only to Coast Guardsmen and not to any other branch of the armed forces of the United States.
3. The only Coast Guardsmen, other than those under twenty-one, who wear leggings, are the members of the Shore Police, and they are easily identified by arm bands bearing the initials "S.P.", to whom liquor must not be sold.

