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

BULLETIN 326 JUNE 27, 1939

1. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - 30 DAYS.

In the Matter of Disciplinary Proceedings against

PETER ORSI,
112 Bank Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License #C-548, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Joseph J. Breitner, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with permitting female impersonators at his tavern, contrary to Rule 4 of State Regulations No. 20.

On Saturday night, March 4, 1939, at about 11:20 o'clock, Investigator Robbins of this Department entered the defendant's tavern followed, some fifteen minutes later, by Investigator Clinch (who, in the interim, observed the tavern from across the street).

Robbins testified that thirty-five or forty persons were in the bar room when he entered; that, after he was at the bar for a few minutes, a man "made up with rouge, lipstick, mascara, and fingernail polish" approached him and, in a very effeminate voice, asked Robbins to buy him a drink and fondled the investigator's legs and chest with his hands; that he (the investigator) pushed the man away and walked toward the back room, where he saw two pairs of men dancing together, one man in each pair being made up in the same way as the man who had approached him at the bar; that another man, similarly made up, was playing the piano; that Investigator Clinch entered about ten minutes thereafter; that, about three or four minutes after Clinch entered, the investigators identified themselves to the defendant and asked why he was allowing "these 'fags'" in the place; that the defendant replied that he "had been trying to get rid of them, but they keep coming back every week"; that the defendant then asked the investigators to put the "fags" out; that, in order to see whether the defendant knew of the presence of all the "fags" upon the premises, he (Robbins) allowed the defendant to point them out to him; that the defendant pointed out five such men, all of whom were so obviously made up with cosmetics that "they stood out from the crowd very much"; that, on the investigators' request, these men left the tavern, without comment; that he (Robbins) recognized one of them as a female impersonator whom he had seen in another tavern; that the investigators left the tavern shortly before midnight, and returned at 2:20 a.m. and were then informed by the defendant that, since they had left the tavern, "a great number" of "fags" had entered his place but all, except two, left on his demand; that he (the defendant) asked the investigators to eject these remaining two.

Investigator Clinch testified in corroboration of Robbins with reference to what occurred in the tavern while he (Clinch) was there. He further testified that, while he was observing the tavern from the outside, a group of four boys congregated in front of it and poked jibes at the men who entered it.

There was also submitted in evidence a signed statement taken by the investigators from the defendant when they returned to his tavern at 2:30 a.m. This statement (which, the investigators testified, was read to and by the defendant before signed) admits the presence of "fags" at his tavern.

The defendant, his night bartender, his day bartender (who testified that he was in the tavern at the time) and the defendant's waiter all took the stand and categorically denied that there were any men on the premises who were made up with cosmetics or impersonated women. The licensee declared emphatically that he did not know that the men who were ousted were perverts or "fairies" - or, more politely, female impersonators.

However, the defendant's signed statement (which he seeks to discredit by stating that he signed it without knowing what it contained) and the testimony of the investigators convince me that female impersonators were knowingly permitted in the defendant's tavern and that, in fact, the tavern was a rendezvous for such persons.

His counsel argues that it is unfair to class the persons ousted as female impersonators because they had greasepaint, rouge or powder on their faces - that they might have been men engaged in theatrical work and have visited the tavern after leaving the theatre - or they might have been men who had gone to a barber shop and left with powder on their faces. Possible - yes! But not at all probable!! Real men don't act that way, whether they are in the theatrical line or have just left a barber shop. I am not at all squeamish in imputing knowledge to a licensee of the character of these persons when anyone can tell objectively and most of us know what they are. The licensee had no trouble in picking them out.

I find the defendant guilty as charged.

There is no excuse for this sort of thing. If a licensee disapproves of the presence of "fags" at his tavern and they refuse to leave on his demand, he may always resort to the simple expedient of calling the police.

The defendant's license will be suspended for thirty days.

Accordingly, it is, on this 22nd day of June, 1939, ORDERED that Plenary Retail Consumption License #C-548, heretofore issued to Peter Orsi, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended until the end of its term, effective June 25, 1939, at midnight (Daylight Saving Time); and it is

FURTHER ORDERED that no further license be issued to this licensee or for said premises prior to July 26, 1939.

D. FREDERICK BURNETT,
COMMISSIONER.

2. GAMES - BINGO - NOT PLAYABLE IN ROOM IN WHICH THERE IS A BAR EVEN IF BAR IS TEMPORARILY SCREENED.

GAMBLING - LOTTERY - PRIZE WINNING COUPONS A LA BALLOON - DISAPPROVED.

Lake Hopatcong Vacation and
Outing Co., Inc.,
Lake Hopatcong, N. J.

Gentlemen:

It appears from the photographs which you enclose that, to all practical intents and purposes, the bar is located in the ballroom where you plan to conduct the bingo games. The lattice work which appears in the photographs is in nowise sufficient to separate the portion of the room in which the bar is located so as to constitute it a separate and distinct room from the ballroom.

You suggest enclosing the bar with a solid board partition approximately eight feet high, to remain in place on the evenings when the bingo games are played and to be removed on the following morning. This arrangement will not in any way suffice. Bingo may not be played in the ballroom unless the bar is removed therefrom, or a solid permanent partition erected of such a character as to make the ballroom and the barroom two separate and distinct rooms. You are prohibited from permitting bingo games to be conducted in the ballroom unless and until such conditions are complied with.

As to the balloons: The plan to release two hundred balloons, twenty-five of which will contain prize-winning coupons, is clearly a lottery. There is no question of skill of the players involved. The winners are determined solely by chance. Since you may not conduct a lottery on your premises, the plan is disapproved.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. CITIZENSHIP - WHAT CONSTITUTES - CHILDREN OF NATURALIZED PARENTS WHO WERE UNDER THE AGE OF TWENTY-ONE AT THE TIME OF SUCH NATURALIZATION ARE CITIZENS IF THEY DWELL IN THE UNITED STATES.

Dear Sir:

I have a person residing in Buena Vista Township for the past forty years but he was born in Italy and he always voted through his father's citizenship papers, and he has intention of applying for a beer license in aforesaid Township. Kindly advise me if under the statute he has a legal right to same.

Yours very truly,
James W. Rovegno,
Township Clerk.

James Rovegno, Clerk,
Buena Vista Township,
Vineland, N. J.

Dear Sir:

The United States Code Annotated (8 U.S.C.A. Sec. 7) provides:

> "The children of persons who have been duly naturalized under any law of the United States, *** being under the age of twenty-one at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof ***."

Assuming that the individual to whom you refer is otherwise qualified, the Township Committee should determine from the facts whether he is a citizen within the provisions set forth above.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - SLOT MACHINES.

In the Matter of Disciplinary Proceedings against

FRATERNAL ORDER OF EAGLES #2137, 24 South Bridge Street, Somerville, N. J.,

Holder of Club License CB-41, issued by the State Commissioner of Alcoholic Beverage Control

CONCLUSIONS AND ORDER

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

Bowers & Rinehart, Esqs., by James I. Bowers, Esq., Attorneys for the Licensee.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of possession of slot machines, contrary to Rule 8 of State Regulations No. 20.

The usual penalty for this violation is five days.

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

Accordingly, it is, on this 21st day of June, 1939, ORDERED, that Club License CB-41, heretofore issued to Fraternal Order of Eagles #2137, by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of three (3) days, commencing June 26, 1939, at 1:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

5. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

June 23, 1939

Re: Case No. 281

On July 20, 1938 applicant was convicted in a Criminal Judicial District Court of embezzlement and fined $25.00, payable One Dollar per week.

The complaint in the case was made by a New Jersey liquor licensee and alleged that applicant, while in its employ, had collected $206.50 which he converted to his own use.

At the hearing herein, applicant testified that, during the ten months he had been employed by the licensee, he had been permitted to withhold his weekly salary from his collections; that $132.00 of the money he was alleged to have embezzled represented salary due to him and that the balance represented expenses which he was permitted to deduct from his collections; that a representative of the licensee had offered to settle the matter for $75.00, which offer applicant refused because he "never took a nickel"; that the criminal charge was brought after applicant obtained a position (which he still holds) as solicitor with a competitor of complainant.

The Judge who conducted the criminal trial advises:

> "It was with great hesitation that I convicted him because his story was a very plausible one; that the shortage from his collections was a mistake and that it was entirely a matter of bookkeeping. However, it was difficult to prove this through lack of corroboration and the books of the company showed a difference in accounts."

Complainant in the criminal case has never started a civil action to recover the amount alleged to be due, and applicant testified that he has recently refused another offer to settle the claim for $75.00. Despite the conviction, it appears that there is a debatable question as to whether or not applicant had a legal right to withhold the money he is alleged to have embezzled.

Under all the circumstances, I believe that the crime herein considered did not involve moral turpitude.

In his present application, however, applicant denies that he had ever been convicted of a crime. He says he thought there was no conviction against him. The answer is false.

It is recommended that the permit for the next fiscal year be issued, but that issuance thereof be withheld until July 10, 1939 because of the false affidavit.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

6. LICENSES - RENEWALS - PARTNERSHIP - A LICENSE TAKEN OUT BY TWO PARTNERS IS NOT THE RENEWAL OF A LICENSE PREVIOUSLY HELD BY ONE OF THE PARTNERS.

June 22, 1939

George J. Bache, Clerk,
Dunellen, N. J.

Dear Mr. Bache:

I have before me your letter of May 10th in which you inquire whether, if a plenary retail consumption licensee takes out a license for the coming term in the name of himself and a partner instead of his own as at present, such license will constitute a renewal and not a new license. I take it that what you have in mind is Section 1 of Dunellen Ordinance finally adopted on May 3, 1937, which, according to the records of this Department, is still in effect and provides:

> "The number of plenary retail consumption licenses issued and outstanding in the Borough of Dunellen at the same time shall not exceed twelve (12), 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....."

To constitute a renewal for the purpose of this limitation, there must be (among other things) identity of person between the holder of the original and of the succeeding licenses. There is no such identity when an individual holding a license seeks to obtain the successive one in the name of himself and another as partners. The addition of the partner brings a new personality to the business and the license. By way of illustration, were the licensee to bring the partner in during the term of the license, a formal transfer of that license to the partnership would be necessary. Re Chiavaralli, Bulletin 300, Item 15; Re Nordheim, Bulletin 310, Item 7.

Hence, I rule that a license taken out by two partners may not be considered a renewal of a license theretofore held by only one of them. While your municipal quota remains filled, the only way in which a Dunellen licensee may take in a partner is through transfer of an existing license held by him to the partnership. See Re Heuring, Bulletin 322, Item 8.

This ruling does not conflict with Re Nordheim, supra. I there ruled that, where a partnership held a license but dissolved at the end of the term, one of the partners could obtain a renewal in his own name. This was because no new personality is added to the business or the license but, instead, one is taken away. Both partners were passed upon and both were acceptable or else no license would have been issued in the first place. Hence, if one drops out at the expiration of the license and the other continues, there is sufficient identity of person between the old partnership and the remaining or surviving partner who takes over the business. Such a case is similar to a partner of a licensee-partnership withdrawing during the term, in which event no formal transfer of the license to the remaining partners is necessary but only a notation on the license certificate and the municipal records. Re Baumgartner, Bulletin 165, Item 10; Re Ostrander, Bulletin 236, Item 9.

I must now point out one respect in which your letter very seriously disturbs me. You state therein that the licensee in question (whom you do not name) actually has an active partner in the business at the present time. In other words, it appears, from your letter, that the two partners are conducting the liquor business although only one of them holds the license. This is absolutely illegal. Only the person holding the license may exercise its privileges. R. S. 33:1-26. Where a partnership conducts the liquor business, the license must be in the name of all partners. Were it otherwise, the issuing authority would have no opportunity to pass upon the personal qualification of those partners not on the license.

Please report to me forthwith the name of the licensee so that I may cause immediate investigation to be made and, if the facts warrant, disciplinary action to be instituted against him.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. LICENSES - HOTEL - CONCESSIONS - LICENSED PRIVILEGE SHOULD BE CONFINED TO THAT PART OF THE HOTEL PREMISES WITHIN THE EXCLUSIVE POSSESSION AND CONTROL OF THE CONCESSIONAIRE.

June 23, 1939

Philip Sebold,
Deputy Chief of Police,
Newark, N. J.

My dear Chief:

I have considered your question as to the propriety of licensing the St. Francis Hotel, 22 East Park Street, Newark, in view of the liquor concession which your investigation brings to the surface.

Mr. Norman Kruvant, the Manager, says that the hotel is operated by the St. Francis Hotel Co.; that the restaurant and bar are operated, and all food and beverages are sold, by the Bayou Holding Co., Inc.; that the liquor license is in the name of the Bayou Holding Co., Inc.; that the bar, restaurant and kitchen are on the first floor on the Mulberry Street side, run from front to back in the order named, and are leased by the Bayou Holding Co., Inc. from the hotel; that the lessee enjoys the privilege by oral agreement of selling and serving alcoholic beverages throughout the rest of the hotel premises.

The applicant has described the entire hotel as constituting the licensed premises. This, I take it, is why you raised the question.

As regards the bar and the restaurant: There is no objection to regarding those rooms as part of the licensed premises for they are in the possession and subject to the control of the lessee.

As to the rest of the hotel: The licensee has a mere oral permission to sell or serve. To be sure, it would not be a trespasser, but that is about the most that can be said for such an arrangement. Even if the invitation or the privilege were in writing, the concessionaire would only have a mere right of temporary

access. It would not have any possession or control. Control over licensed premises, however, is essential for the licensee is bound to see to it that the law and the rules are obeyed. What about drinks served to minors behind closed doors? Again, licensees may not allow lewdness, immoral activities, brawls, or unnecessary noises, or lotteries, slot machines or gambling, or gangsters, prostitutes, female impersonators or other persons of ill repute, upon the licensed premises. Lacking the power to control the other parts of the hotel, the licensee could not be held accountable for what goes on in those other places. Although seeking the privilege of selling throughout the whole hotel, the licensee would be responsible only for what occurred on that part of the premises within its exclusive possession. Hence, the licensed privilege should be confined to just that part.

Consequently, I suggest that you recommend to the local Excise Board that, if the license is granted, the licensed premises should include only the bar and the restaurant.

If a hotel desires the privilege of selling and serving liquor in private rooms, the hotel itself must procure the license and accept full responsibility.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. AGE, RESIDENCE OR CITIZENSHIP PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

June 22, 1939

Re: Case No. 280

Applicant admits that on April 26, 1935, he pleaded non vult in a Court of Quarter Sessions to an indictment for violating the Alcoholic Beverage Control Act, and that on October 23, 1935, he pleaded guilty in the United States District Court to an indictment for violating the Internal Revenue Law, in that he possessed an unregistered still. Applicant testified that as a result of his conviction in the Court of Quarter Sessions he was fined $750.00 and that as a result of his conviction in the United States District Court he was fined $800.00 and sentenced to one year and one day, which entire sentence was suspended and defendant placed on probation for two years.

At the hearing applicant testified that he knew nothing of the still which was found upon a farm and that he was arrested as he was leaving the farm after he had driven two men there at their request. In view of the pleas entered in the criminal proceedings in the State and Federal Courts, both of which arose out of the one transaction, the question of his guilt or innocence cannot be redetermined in this proceeding. Re Case No. 267, Bulletin 313, Item 1.

Whether activity in illicit liquor since repeal constitutes moral turpitude is admittedly debatable. It is clear, however, that anyone who has committed such an offense is unfit to hold a liquor license or be employed by a liquor licensee. Re Siess, Bulletin 252, Item 7; Case No. 251, Bulletin 303, Item 10.

It is recommended that the application for age, residence or citizenship permit be denied.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

9. ADVERTISING - MONEY BACK GUARANTEE - DISAPPROVED.

June 24, 1939

Brewing Corporation of America,
Cleveland, Ohio.

Gentlemen:

I have before me proposed advertisement reading:

"Buy a case of Carling's. You be the judge. If you do not agree that Carling's is outstanding, fine beer (or ale) your store or dealer is authorized to return your money."

It is common knowledge that a money back guarantee is "sure fire" advertising. Few people would bother to return the goods, but everybody is impressed with the assuredness of the advertiser. Sales stimulation is the natural result.

There is no reason why liquor should be offered for free sampling to induce the spread of its sales. Whatever sweeps away consumer resistance is not good policy so far as liquor is concerned.

Such advertising is designed unduly to increase the consumption of alcoholic beverages, and, therefore, is not permissible in New Jersey.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ADVERTISING - REDUCTION IN PRICE FOR TWO OF A KIND - MISLEADING STATEMENTS DEPRECATED.

ADVERTISING - MONEY BACK GUARANTEE - DISAPPROVED.

June 24, 1939

Austin & Spector Company, Inc.,
New York, N. Y.

Gentlemen:

I have before me proposed advertisement for the Eastern Wine Corporation, of a quart of Chateau Martin Port at 59¢, in combination with a half-pint of the same wine at only 5¢, both for only 64¢, with the offer to the purchaser to try the half-pint and if not pleased, to return the quart and get his money back.

I note that the fair trade price for quarts of Chateau Martin Wines, sweet types, is but 49¢. It, therefore, does not seem to be a wholly faithful representation that the half-pint is being sold for only 5¢.

Moreover, advertising with a money back if not satisfied guarantee is designed unduly to increase the consumption of alcoholic beverages and is, therefore, not permissible in New Jersey. Re Brewing Corp. of America, Bulletin 326, Item 9.

The proposed advertisement is disapproved.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. ADVERTISING - WINDOW DISPLAYS - PRICE SIGNS.

June 24, 1939

Lee's Wine & Liquor Co., Inc.,
Elizabeth, N. J.

Gentlemen:

I have yours submitting sketch of proposed window display consisting of a sign reading:

"LOOK! What you get for $1.00."

with ribbon streamers running from the sign to bottles in the window.

You are permitted by Rule 3 of Regulations No. 21 (Pamphlet Rules, page 64) to advertise the price of alcoholic beverages on the exterior of the premises, or in the show window or door, or interior when visible from the street, only by the use of 1½" x 1½" cards stating prices of merchandise being sold in original containers for off-premises consumption.

The proposed display creates an advertisement of price in excess of the allowable size and is, therefore, disapproved. Its use will be cause for the suspension of your license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - PROSECUTION BY LOCAL AUTHORITIES - HEREIN OF FURNISHING ADVICE TO ISSUING AUTHORITIES SITTING AS JUDGES IN DISCIPLINARY MATTERS.

June 24, 1939

Thomas F. Salter, Esq.,
Pennsauken Township Solicitor,
Camden, N. J.

Dear Sir:

I have before me your letter of June 15th re disciplinary proceedings against Tekla Dromsky, charged with refilling liquor bottles.

I note that hearing is to be held at 8:30 P.M., Daylight Saving Time, on June 27, 1939, at the Municipal Building, Cove Road and Grant Avenue. Investigators Adams and Glenn have been instructed to attend at that time and place, prepared to testify.

I received in the same mail with your letter a request from the Township Clerk that I arrange for counsel to prosecute the case. I understand from your letter that the Committee feels that it is embarrassing to have the Township Solicitor act both as prosecutor and adviser to the Committee.

If the five members of my Legal Division were not already swamped with work, I should be glad to grant the request of the Township Committee. I cannot furnish prosecutors for each of the municipalities in the State to discharge their duty in

conducting some 400 disciplinary proceedings each year. Yet, if I granted the Pennsauken Township Committee's request, I should have to do the same for any other municipal body. I think you will grant that this Department does much when it investigates complaints against municipal licensees and, in cases where violations are found, furnishes the case ready made to the municipality for prosecution.

I see no reason why the Township Committee needs special advice in the ordinary case. Their job is to sit as judges and determine the facts. If the licensee is found guilty, they are then to admeasure a proper penalty. Most of it is the exercise of just plain common sense like jurymen day in and day out exercise in our courts in cases involving much more complicated situations. If, however, any advice should be needed, I am at their service and will endeavor to answer fully any question submitted to me by the Township Committee.

If the Committee for any special reason does not desire to hear this particular case, I will, upon their request, take it over and exercise original jurisdiction although on general principles the governing bodies which issue licenses should administer discipline direct.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS - LUSK v. WAY.

MARY C. LUSK,
Appellant,
-vs-
HON. PALMER M. WAY, JUDGE OF THE COURT OF COMMON PLEAS IN AND FOR CAPE MAY COUNTY, and ISSUING AUTHORITY,
Respondent

ON APPEAL
CONCLUSIONS

Harry Tenenbaum, Esq., Attorney for Appellant.
T. Millett Hand, Esq., Attorney for Respondent Issuing Authority.
Irving Shenberg, Esq., Attorney for Cape May County Beverage Association.

BY THE COMMISSIONER:

Appellant appeals from denial of a plenary retail consumption license for premises located at 748 West Glenwood Avenue, West Wildwood, Cape May County.

The license was denied, among other reasons, because:

"There is no necessity for the license in this residential area, especially since just across 'The Bridge' the City of Wildwood is possessed of ample accommodations for the thirsty. The City of Wildwood has 55 licensed places."

West Wildwood is almost entirely residential. It is known as a "bungalow colony", has a summer population of about 1500, with very few permanent residents. West Glenwood Avenue is residential in character, although there is a store to one side and a print shop to the other side of the premises in question and another store on the same street about a block away. No liquor licenses have ever been granted in West Wildwood.

The sentiment of those residing in the community appears to be rather evenly divided. Petitions considered below contained the names of seventy-two residents in favor and sixty-four residents against the granting of the license. At the hearing on appeal seventeen residents testified in favor, and seven against.

Those favoring the application contend that the license is necessary because the nearest existing licensed place is located in Wildwood about a mile away and the fare charged on the bus running to Wildwood is nine cents in each direction. They contend also that the license fee is needed by the municipality because the tax rate is high.

Nearly all of the witnesses have owned their bungalows for many years. Those favoring the license have managed to get along without a licensed place in the community. The type of the community has not changed recently. It is still a summer bungalow community. I conclude that the evidence produced as to necessity is not sufficient to justify the granting of a consumption license in this residential section, where so many residents object. The license fee is too small to make any appreciable difference in the tax rate.

The action of respondent is affirmed.

Dated: June 25, 1939.

D. FREDERICK BURNETT,
Commissioner.

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

April 26, 1939

Re: Case No. 269

During the course of an investigation of licensed premises it developed that the manager thereof had been convicted, in December 1936, of the crime of embezzlement. Accordingly, the manager (hereinafter referred to as the employee) was notified to appear at a hearing to explain the circumstances surrounding the conviction of the crime so that determination might be made as to whether he was eligible to be employed on licensed premises.

At the hearing employee admitted that, in December 1936, in a Court of Special Sessions, he had been found guilty of embezzlement, sentenced to pay a fine of Fifty Dollars and make restitution of the sum of Two Hundred Thirty-five Dollars. He testified that the fine was paid, and restitution made. He further

testified that the complaint against him was made by a veteran who accused him of embezzling the sum of Two Hundred Thirty-Five Dollars out of the proceeds of an adjusted compensation check drawn to the order of the veteran in the sum of Two Hundred Fifty Dollars, which the employee had arranged to cash for the benefit of the veteran. Employee insists that in fact he made payment of the full sum of Two Hundred Fifty Dollars to the veteran by turning over to him in cash the sums of Fifty Dollars, Forty Dollars and One Hundred Sixty Dollars on three different days. It appears from the report received from the Prosecutor of said county that the veteran contended that he had received from the employee out of the proceeds of said check only the sums of Ten Dollars and Five Dollars and was then informed by the employee that that was all he had coming.

According to the testimony given at the hearing herein, the case was fully tried before a Judge sitting in a Court of Special Sessions, who heard the testimony of four witnesses on behalf of the State and five or more witnesses on behalf of defendant and, further, that the employee was represented by counsel at his trial. In view of these facts, the question of the guilt or innocence of the employee cannot be redetermined herein. The conviction for embezzlement remains open of record, and the sole question is whether the crime was of such a nature as to involve moral turpitude.

At the hearing herein the employee produced two of the witnesses who had testified against him in the criminal proceeding. Both of them testified that, at some time subsequent to the criminal proceeding, they had heard the veteran make certain statements from which it might be inferred that the veteran had committed perjury at the trial of the criminal case when he testified that he had received only a small portion of the proceeds of his check from the employee. Testimony was also introduced to show that the present address of the veteran cannot be ascertained and that he has been accused, although never convicted, of perpetrating a fraud upon the Government in connection with some other matter.

The apparent purpose of the testimony set forth in the preceding paragraph is to show that employee was not guilty of the crime for which he stands convicted. It would be establishing a dangerous precedent to accept evidence of this character and thus permit a collateral attack upon a conviction of record. This is especially true under the present circumstances, where the complainant in the criminal proceeding has had no opportunity to be heard herein. The employee has had his day in court, and stands convicted of embezzling the sum of Two Hundred Thirty-Five Dollars from a person who turned over to him a check for Two Hundred Fifty Dollars for the purpose of cashing the same. Under these circumstances I believe that the crime involved moral turpitude.

It is recommended, therefore, that employee be advised that he is not eligible to be employed on licensed premises.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

15. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SECOND OFFENSE 30 DAYS - HEREIN OF GENTLEMEN'S AGREEMENTS AND OF CHRISTMAS SHOPPING DONE BY LABOR DAY.

In the Matter of Disciplinary Proceedings against	:	
CHARLES I. TARLOW, 23 S. Union Ave., Cranford, N. J.,	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License #D-1, issued by the Township Committee of the Township of Cranford.	:	
. . . . .	:	

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Henry T. Waldman, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with selling liquor below Fair Trade prices in violation of Rule 6 of State Regulations No. 30.

On December 14, 1938, or thereabouts, the defendant (who conducts a combination grocery and liquor store) delivered twelve cases of liquor to the Anglo-American Varnish Company (hereinafter called Company), viz., seven cases, pints, of Seagram's "V.O." (Canadian Whiskey) (6 years old); one case, fifths, of E. Remy Martin Cognac (Three Star) (12 years old); one case, fifths, of E. Remy Martin Cognac (V.S.O.P.) (20 years old); and three cases, fifths, of Johnnie Walker "Black Label" (Blended Scotch Whiskies).

Under the Fair Trade prices then prevailing for those items, the total bill should not have been less than $529.09. However, the defendant, on December 13, billed the Company $448.25 for the liquor, charging less per item than the then existing Fair Trade prices. On December 14, the Company remitted its check in that amount in payment of the bill.

The defense is that, although the liquor was delivered and paid for in December, the sale was actually consummated prior to September 15, 1938, the date when State Regulations No. 30 first took effect; that, hence, there was no violation of those Regulations.

In support of this defense, the treasurer of the Company and the defendant testified that the Company, during the Christmas season of 1937, had purchased from the defendant (for distribution as Christmas gifts to the Company's customers) eleven cases of liquor (apparently comprising five cases of Seagram's "V.O."; two cases of Seagram's "5 Crown"; one case of E. Remy Martin Cognac "40 years old"; one case of E. Remy Martin Cognac "12 years old"; and two cases of Johnnie Walker "Black Label"); that the treasurer visited the defendant's store on the evening after Labor Day 1938 and told him that the Company was anticipating its Christmas needs

for that year and wanted to arrange for a way to "order now" yet not have to pay the increased prices which might result from the then coming Fair Trade Regulations; that the treasurer, therefore, gave the defendant an oral order for the liquor, patterned after the sale in 1937 except that the Seagram's "5 Crown" be replaced by Seagram's "V.O.", with delivery to be made "some time in December".

However, as to the quantity of liquor to be thus delivered in December, both the treasurer and the defendant admit that no definite amount was determined (either in bulk for the entire sale or with respect to the individual kinds of liquor) at their September talk. The treasurer testified, in fact, that "final arrangements" as to precise amounts were to be made by telephone call "about the end of the second week in December". The defendant testified that he received a call from the Company a few days before Thanksgiving specifying three cases as regards Johnnie Walker "Black Label", and another such call a few days before delivery specifying seven cases as regards Seagram's "V.O.".

As for the precise kinds of liquor, while this was perhaps settled in most respects at the September talk, the defendant admits that he later substituted, for E. Remy Martin "40 years old" (which was originally arranged for), a case of the 20-year old item. While it is not clear when this substitution occurred, it appears to have been at or shortly before the delivery in December.

As for price, the treasurer and the defendant admit that none was actually fixed at their talk, other than the defendant's representation that he would charge "the same as last year". Despite such alleged representation, the defendant's bill of December 13 shows an entirely different set of prices from the year before. When the prices on this bill were actually determined upon, is not clear. However, the treasurer testified that the first time he knew the cost of the liquor was when the Company's check of December 14 (in payment of the defendant's bill) was presented to him for his signature.

As for the precise time of delivery, the treasurer testified that this was to be later settled over the telephone. It does not appear when such telephone call was made.

The defendant attempted to prove that an immediate segregation was made of some of the items after his talk with the treasurer. But a bill from a wholesale liquor dealer to the defendant, dated December 14, 1938, and containing the very items (and in the same amounts) which the defendant delivered at about that time to the Company clearly indicates no such segregation.

An investigator of this Department testified that the defendant had admitted to him that he first received the Company's 1938 order "just prior to Thanksgiving" but without any specification of price.

There is no need to inquire into legal niceties as to whether a technical contract arose, or any title passed, as a result of the alleged conversation between the treasurer and the defendant in early September 1938. It is plain at the most that all that occurred at that time was an understanding that, when the Company needed liquor for the Christmas season, it would place its order with the defendant and he would "take care" of such order, when it came in, for less than the Fair Trade prices. Essentials as to kinds of liquor, quantity, and price were left undetermined,

apparently because the Company could not ascertain its actual liquor needs until the gift season arrived notwithstanding its claim that it had completed its Christmas shopping before the ides of September.

The admission that increased prices under Fair Trade Regulations were in active contemplation supplies the keynote to the option or call under which no quantities were fixed, no time of delivery stated, and no prices mentioned except that they were to be below those feared under Fair Trade. If such flexibility is quiescently passed then the ease by which retailers can ride roughshod over the rules and regulations is demonstrated. If the oral understanding is to be held good for last Christmas why couldn't it avail for all time hereafter whatever the rules might be! All that would be necessary would be an "understanding" dated back to September, thirty eight!!

The fallacy looms clear, however, when one realizes that there was really no commitment whatsoever by either side; that neither could hold the other legally responsible; that all that occurred was a gentleman's agreement whereby Tarlow eventually made a big sale and the Company got the goods for less than lawfully listed prices.

I find as fact that no sale of the liquor occurred until the parties had effected delivery and payment in December; that their talk in September merely evidenced an intention later to "get together" for the Company's Christmas liquor purchase at less than the Fair Trade prices.

I therefore find the defendant guilty as charged.

This is his second conviction for violating the Fair Trade regulations. He was heretofore (Re Tarlow, Bulletin 308, item 12) found guilty of selling liquor on November 23, 1938 below Fair Trade prices, whereupon his license was suspended for ten days, which penalty apparently did not impress him that the rules were made to be obeyed.

In view of his record, and the wholesale proportions of the sale in the present violation, the defendant's license will be suspended for thirty days over and above the ten-day suspension already imposed.

Accordingly, it is, on this 26th day of June, 1939, ORDERED that Plenary Retail Distribution License #D-1, heretofore issued to Charles I. Tarlow, by the Township Committee of the Township of Cranford, and any renewal thereof, shall be suspended for a period of thirty (30) days additional to the ten-day suspension heretofore imposed in Re Tarlow, Bulletin 308, item 12, these suspensions to run consecutively. Pursuant to notice of December 17, 1938, Bulletin 289, item 1, the effective date of such suspensions is reserved for future determination.

Frederick Burnett

COMMISSIONER.

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