

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

BULLETIN 513

JUNE 3, 1942.

1. MORAL TURPITUDE - CRIME OF MAINTAINING A HOUSE OF PROSTITUTION
INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - APPLICANT HAD UNDISCLOSED.
INTEREST IN LICENSED BUSINESS DURING THE PAST FIVE YEARS DESPITE
DISQUALIFICATION - APPLICATION DENIED.

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. 153
-----)

Louis Schwartz, Esq., Attorney for Applicant.

BY THE COMMISSIONER:

In 1929 petitioner pleaded non vult to a charge of main-
taining a disorderly (bawdy) house and to two charges of unlawfully
receiving the earnings of a prostitute. On the former charge he was
sentenced to prison for one year. On the latter two charges, sen-
tence was suspended.

The crime of maintaining a house of prostitution, per se,
involves the element of moral turpitude. Re Case No. 148, Bulletin
466, Item 4.

Despite his ineligibility to be employed on licensed prem-
ises or to have any interest therein (see R. S. 33:1-25, 26), it
appears that between November 1939 and July 1941 he was the undis-
closed half-owner of licensed premises, and ever since July 1941 has
been the undisclosed sole owner of licensed premises. See
Re Vilinofsky, Bulletin 513, Item 2; Re Broadway Lites, Inc., Bul-
letin 513, Item 3, both cases being decided simultaneously herewith.

In order to grant petitioner's request for removal of his
disqualification, I must, under the statute, be satisfied that he
has been leading a law-abiding life for five years last past and that
his association with the alcoholic beverage industry will not be
contrary to the public interest. R. S. 33:1-31.2. Where, as here,
a person has deliberately set up two separate "fronts" for the pur-
pose of concealing his unlawful interest in liquor licenses, it is
apparent that no such findings may be made. Cf. Re Case No. 155,
Bulletin 486, Item 6.

The petition is denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: May 27, 1942.

2. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - SUPPRESSION OF MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMITTING FEMALE EMPLOYEES TO ACCEPT DRINKS IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR BALANCE OF TERM - PREMISES DISQUALIFIED FOR FORTY-FIVE DAYS.

In the Matter of Disciplinary
Proceedings against

ETHEL VILINOFSKY,
337 Straight St.,
Paterson, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-150, issued by the
Board of Alcoholic Beverage Control
of the City of Paterson.

Lawrence Diamond, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges alleging that she:

(1) Falsified her license application by denying that anyone other than herself was interested in her license or the business conducted thereunder, whereas Bennie Vilinofsky and Herman Weiner had such interests, in violation of R. S. 33:1-25; (2) and (3) permitted the said Bennie Vilinofsky and Herman Weiner to exercise the privileges of her license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52; and (4) permitted female employees to accept drinks at the expense of patrons, in violation of Rule 22 of State Regulations No. 20.

As to (1), (2) and (3): It appears that Bennie Vilinofsky and Herman Weiner, as equal partners, purchased the business in question in November 1939. Because Bennie Vilinofsky had been convicted of a crime involving moral turpitude (see Re Case No. 153, Bulletin 513, Item 1, just decided), and because Herman Weiner had several unpaid judgments against him, the license was originally issued in the names of Ethel Vilinofsky, sister of Bennie Vilinofsky, and Nathan Weiner, brother of Herman Weiner. This status continued until July 1941, when Bennie Vilinofsky and Herman Weiner dissolved their partnership, the former taking over full ownership of the business. At the same time, Nathan Weiner's name was dropped from the license, and ever since then the license has remained solely in Ethel Vilinofsky's name as a "front" for Bennie Vilinofsky.

As to (4): Between April 25, 1941 and May 15, 1941, agents of this Department, on three separate occasions, were solicited by females employed at the licensed premises to purchase drinks for them. However, those solicitations do not appear to be aggravated by any accompanying immoral activities.

As to penalty: Ordinarily, I would suspend the license for thirty days on the first three charges (cf. Re Luker, Bulletin 423, Item 7; Re Club Murray Corporation, Bulletin 452, Item 3), and for twenty days, less five days for the guilty plea, on the fourth charge (cf. Re Bud Holding Co., Bulletin 469, Item 8; Re Kovacs, Bulletin 498, Item 4), thus making a total suspension of forty-five days. This order of suspension would direct that the license be suspended for

the balance of its term, expiring June 30, 1942, and would further order that no renewal be issued to Ethel Vilinofsky or for the same premises until July 16, 1942.

Since, however, the present method of operation of the business is improper, no renewal may be granted to Ethel Vilinofsky in any event. It will therefore be necessary that a bona fide transfer of the license be effected to a duly qualified purchaser prior to June 30, 1942. If this is done, the transferee may apply for a renewal of the license, which, however, may not become effective until after the period of suspension imposed herein has expired.

I shall, therefore, suspend the license for the balance of its term and direct that, if a bona fide transfer of the license is effected to a duly qualified purchaser prior to June 30, 1942, such transferee may apply for a renewal of the license, which renewal, however, shall not take effect until July 16, 1942.

Accordingly, it is, on this 27th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-150, heretofore issued to Ethel Vilinofsky by the Board of Alcoholic Beverage Control of the City of Paterson for premises 337 Straight Street, Paterson, be and the same is hereby suspended for the balance of its term, effective June 1, 1942, at 3:00 A. M.; and it is further

ORDERED, that no new license (as distinguished from a renewal) be issued to any person for the same premises prior to July 16, 1942; and it is further

ORDERED, that if a bona fide transfer of the license is effected to a duly qualified purchaser prior to June 30, 1942, such transferee may apply for a renewal thereof, which, however, may not become effective until July 16, 1942.

ALFRED E. DRISCOLL,
Commissioner.

3. APPELLATE DECISIONS - BROADWAY LITES, INC. v. PATERSON - 10 DAYS' SUSPENSION AFFIRMED.

DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATIONS - SUPPRESSION OF MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO NOTIFY ISSUING AUTHORITY OF CHANGE IN STOCK OWNERSHIP IN VIOLATION OF R. S. 33:1-34 - EMPLOYMENT OF DISQUALIFIED PERSON IN VIOLATION OF R. S. 33:1-26 - 50 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA - TOTAL: 55 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)	
BROADWAY LITES, INC.,)	
44 Broadway,)	
Paterson, N. J.,)	
Holder of Plenary Retail Consumption License C-379, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)	ON APPEAL AND DISCIPLINARY PROCEEDINGS
-----)	CONCLUSIONS AND ORDER
BROADWAY LITES, INC.,)	
Appellant,)	
-vs-)	
BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF PATERSON and THE CITY OF PATERSON,)	
Respondents)	
-----)	
Isadore Klenert, Esq., Attorney for Defendant-Licensee.		
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.		
J. David Newman, Esq., by Charles Turndorf, Esq., Attorney for Appellant.		
George Suroskey, Esq., Attorney for Respondents.		

BY THE COMMISSIONER:

These two cases, for convenience, are being decided together.

One involves a disciplinary proceeding instituted by this Department and the other an appeal from a suspension of the license imposed by the local authority.

In the disciplinary proceedings, the licensee pleaded guilty to charges that it (1) failed to disclose in its license applications that Bennie Vilinofsky was an officer of the corporation, in violation of R. S. 33:1-25; (2) falsified its license applications by denying that any other individual, except those named therein, had any interest in the license or business conducted thereunder, whereas Bennie Vilinofsky, not named therein, had such interest, in violation of R. S. 33:1-25; (3) falsified its license applications by denying that Herman Weiner, named therein as an officer and stockholder, was interested in any other liquor license in New Jersey whereas he did have such interest, in violation of R. S. 33:1-25; (4) permitted

Bennie Vilinofsky to exercise the rights and privileges of its license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52; (5) failed to notify the local issuing authority of changes in stock ownership within ten days after the occurrence thereof, in violation of R. S. 33:1-34; (6) knowingly employed and had connected with it in a business capacity Bennie Vilinofsky, a person who had been convicted of a crime involving moral turpitude, in violation of R. S. 33:1-26; and (7) allowed Bennie Vilinofsky, a known criminal and person of ill repute, on its licensed premises, in violation of Rule 4 of State Regulations No. 20.

In 1939, Bennie Vilinofsky and Herman Weiner each became the undisclosed half owner of a tavern licensed in the names of Ethel Vilinofsky and Nathan Weiner. See Re Vilinofsky, Bulletin 513, Item 2, decided simultaneously herewith.

Thereafter, in October 1940, they purchased the license in question, and although Bennie Vilinofsky was an equal partner with Herman Weiner therein, no stock was actually issued in the name of Bennie Vilinofsky. His interest in the license was concealed because he had been convicted of a crime involving moral turpitude, which disqualified him from having any interest in a liquor license. See Re Case No. 153, Bulletin 513, Item 1, just decided. Of the ten shares of stock issued by the corporation, five shares were held by Dora Wenger, a cousin of Bennie Vilinofsky, as a "front" for him. Four of the remaining five shares were held by Herman Weiner, and the other by his wife, Gertrude Weiner. Herman Weiner was made President of the corporation and Bennie Vilinofsky, Assistant Secretary. The latter also acted as manager of the corporate business.

In July 1941 Bennie Vilinofsky and Herman Weiner dissolved their partnership, the former assuming full ownership of the license then held in the names of Ethel Vilinofsky and Nathan Weiner (see Re Vilinofsky, supra), and the latter taking over the corporate license. The five shares then nominally held by Dora Wenger were transferred to Gertrude Weiner and the one share formerly held by Gertrude Weiner was transferred to Nathan Weiner, brother of Herman Weiner. No notification of the changes in stock ownership, as required by R. S. 33:1-34, was given to the local issuing authority. It is also admitted that the five shares of stock held by Gertrude Weiner really belonged to Herman Weiner, who caused those shares to be placed in his wife's name because he wanted to conceal his assets from creditors.

After the institution of these proceedings, the unlawful situation existing with respect to the stock holdings was fully corrected so that the corporate records now accurately disclose the true ownership of the shares of stock issued and outstanding.

As to penalty: On charges (2) and (4) I shall impose a penalty of thirty days since Bennie Vilinofsky, one of the undisclosed principals, had a disqualifying criminal record. Cf. Re Vilinofsky, supra, and cases therein cited.

On charges (1), (3) and (5), I shall impose a penalty of five days for each, or fifteen days in all.

On charges (6) and (7) I shall impose a penalty of five days. It should be noted that no testimony was taken on the seventh charge because of the guilty plea thereto. No independent finding, therefore, is being made as to whether Bennie Vilinofsky is a known criminal or a person of ill repute. Furthermore, such determination is unnecessary since, in view of the substantial suspension inflicted on

the remaining charges, the sixth and seventh charges, being an outgrowth of the same occurrence, are being treated as one for the purpose of penalty.

By reason of the guilty plea to charges (1), (3), (5), (6) and (7), five days of the total penalty of fifty days will be remitted, leaving a net penalty of forty-five days for the disciplinary proceedings.

As to the appeal: On April 8, 1942 the Paterson Board of Alcoholic Beverage Control found the licensee guilty of having sold and served alcoholic beverages after 3:00 A. M. on March 21, 1942, contrary to local regulation, and suspended its license for ten days. Upon filing its petition of appeal, which alleged that the evidence adduced below was not sufficient to warrant the guilty finding, appellant obtained an ad interim stay of the suspension pending disposition of the appeal.

There is a substantial conflict in the evidence. On behalf of respondent, the testimony shows that, on the morning in question, Police Officer Curry answered a call that there was a disturbance at the licensed premises, arriving there at about 3:45 A. M. Upon entering the tavern, he observed three male patrons and a woman in the barroom. On the bar were two partially consumed glasses of beer and some coins. The officer arrested the three men, the woman and also Herman Weiner, President of the corporate licensee, who was in charge of the premises at the time. All were found guilty in Police Court of being disorderly persons, and received suspended sentences. At the hearing before the police magistrate, one of the men testified that he had been served beer by Herman Weiner after 3:00 A. M. on March 21, 1942.

Herman Weiner and two of the aforesaid three men (neither of the two being the person who testified in Police Court concerning the after hours sale), testified for appellant. In sum, they stated that there was no sale or service of any alcoholic beverages at the tavern after 3:00 A. M. and that the unconsumed glasses of beer observed by the police officer had been served prior to 3:00 A. M., but because of the excitement resulting from the disturbance, the glasses had not been cleared away prior to the policeman's arrival, which, incidentally, they place at no later than 3:30 A. M.

After a careful consideration of the entire appeal record, I deem that there is sufficient evidence in the case to warrant respondent's finding of guilt against appellant, and, hence, I shall affirm respondent's action and reinstate the ten-day suspension imposed against appellant below. Such suspension, when added to the penalty of forty-five days for the disciplinary proceedings instituted by this Department, makes a total suspension of fifty-five days.

Since its present license will expire on June 30, 1942, I shall direct that the present license be suspended for the balance of its term and that no further license be issued to it or for the premises in question prior to July 26, 1942.

Accordingly, it is, on this 27th day of May, 1942,

ORDERED, that plenary Retail Consumption License C-279, heretofore issued to Broadway Lites, Inc. by the Board of Alcoholic Beverage Control of the City of Paterson for premises 44 Broadway, Paterson, N. J., be and the same is hereby suspended for the balance of its term, effective June 1, 1942, at 3:00 A. M.; and it is further

ORDERED, that no further license be issued to this licensee or for the premises in question prior to July 26, 1942.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATIONS - CONCEALING BENEFICIAL INTEREST - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FRANK DISCLOSURE - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

ITALIAN KITCHENS, INC.,)
191 Market Street,)
Newark, N. J.,)

CONCLUSIONS)
AND ORDER)

Holder of Plenary Retail Consump-)
tion License C-834, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

William L. Greenbaum, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to the following charges:

"1. In your applications for license dated July 20, 1938, June 14, 1939, June 15, 1940 and June 12, 1941, filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which Plenary Retail Consumption License C-1032 for the year 1938-39, C-919 for the year 1939-40, C-920 for the year 1940-41 and C-834 for the year 1941-42 were granted to you, you falsely stated 'No' in answer to Question 28 in said applications for the years 1938-39 and 1939-40, and Question 27 for the years 1940-41 and 1941-42, which question 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 Pauline Fisher, the nominal holder of 10% of your corporate stock, was so interested in that she was the real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application for license for the year 1941-42, you falsely stated 'Yes' in answer to Question 25 therein, which asks: 'Have you and/or all persons mentioned in this application resided in New Jersey continuously during the five (5) years immediately preceding this application?'; whereas Pauline Fisher, mentioned in divers places in said application, was a resident of New York City and had not so resided; said false statement being in violation of R. S. 33:1-25.

"3. In all of your aforesaid applications for license you falsely stated 'No' in answer to Question 24 in the applications for the years 1938-39 and 1939-40, and in answer to Question 23 for the years 1940-41 and 1941-42, which question asks, 'Does the individual signing this application on behalf of said corporation know, or have any reason whatsoever to believe or suspect that any of the

officers or directors of said corporation, or any holder, directly or indirectly, by any device or subterfuge whatsoever, of ten (10) per cent or more in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect?', whereas in truth and fact Sadye Greenbaum, who signed the application, knew and had reason to believe and suspect that Pauline Fisher, who was an officer and director of the corporation, and the holder, directly and indirectly, of more than 10% in beneficial interest of the capital stock of the corporation, failed to qualify as an individual applicant by reason of lack of five years' residence in New Jersey immediately preceding the application for license; said false statements being in violation of R. S. 33:1-25.

"4. In your aforesaid applications for license for the years 1939-40 and 1940-41, you suppressed a material fact by failing to list Pauline Fisher in answer to Question 22 of the application for the year 1939-40 and Question 21 in the application for the year 1940-41, which question requires a listing of the 'per cent of stock issued and outstanding' of '....all stockholders holding one (1) or more per cent of the stock of the applicant corporation....', whereas in truth and fact said Pauline Fisher was the record holder of 10% of your corporate stock; said suppressions of fact being in violation of R. S. 33:1-25.

"5. From on or about July 21, 1938 and until the present time, you knowingly aided and abetted Pauline Fisher, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

Licensee appeared in opposition to a rule to show cause why its license should not be declared null and void because improvidently issued.

Between July 20, 1938 and April 1, 1942, the books of defendant corporation showed that the issued capital stock consisted of ten shares; one of which was issued in the name of Pauline Fisher and the remaining nine shares in the name of Sadye Greenbaum. The applications for licenses which were filed between said dates disclosed the above information. All of said applications, except the application filed for the present fiscal year, also disclosed the fact that Pauline Fisher, the nominal holder of ten per cent of the stock as described above, was a resident of the City of New York. The application for the present fiscal year falsely alleged that Pauline Fisher was a resident of the City of Newark, New Jersey.

In a statement obtained from Pauline Fisher by our investigators on September 11, 1941, she stated that she was the only person who had any interest in defendant corporation but she also stated that Sadye Greenbaum, who is apparently fully qualified to hold a license, had loaned her a little money. At the hearing herein, attorney for defendant stated that Sadye Greenbaum had paid a substantial sum of money for her nine shares of stock and that there had existed a dispute between Pauline Fisher and Sadye Greenbaum as to the exact extent of their respective interests in the corporation. However, it was admitted that, in any event, Pauline Fisher had a direct or indirect interest in substantially more than ten per cent of the corporate stock. Because of the facts hereinafter set forth

and the guilty plea, I deem it unnecessary to determine the exact interest formerly held by each of these individuals.

Samuel Rosenthal and Sophia Rosenthal, his wife, testified at the hearing herein that, on or about April 1, 1942, they paid Pauline Fisher the sum of Twelve Hundred Dollars (\$1200.00) for all her interest in the corporation and also paid Sadye Greenbaum the sum of Seven Hundred Dollars (\$700.00) for all her interest in the corporation, and that, as part of the agreement, they assumed an outstanding chattel mortgage and all unpaid debts. Both of the former stockholders have assigned their shares to the Rosenthals and have resigned as officers and directors of the corporation. Samuel Rosenthal and Sophia Rosenthal testified that neither of the former stockholders mentioned herein has any further interest of any kind in the corporation. On April 9, 1942, notice of the change in stockholders was sent to the local issuing authority in accordance with the provisions of R. S. 33:1-34. So far as appears, both Samuel Rosenthal and Sophia Rosenthal are fully qualified to hold a liquor license.

From the above statement of facts it appears that the former unlawful situation has been corrected. The only apparent reason why Pauline Fisher was disqualified to hold, directly or indirectly, more than ten per cent of the stock in defendant corporation was due to the fact that she was a non-resident.

Since defendant frankly admitted its guilt and has corrected the situation, I shall suspend the license for ten (10) days and dismiss the order to show cause. Re Silver Palm Corporation, Bulletin 422, Item 8; Re Cliffside Park Town Tavern, Inc., Bulletin 492, Item 4.

Accordingly, it is, on this 26th day of May, 1942,

ORDERED, that the order to show cause herein be and the same is hereby dismissed; and it is further

ORDERED, that Plenary Retail Consumption License C-834, heretofore issued to Italian Kitchens, Inc. for premises 191 Market Street, Newark, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing June 1, 1942, at 3:00 A. M. and terminating June 11, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

5. ELIGIBILITY - CRIME OF BREAKING, ENTERING AND LARCENY INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

May 26, 1942

Re: Case No. 432

In July 1938, when slightly over eighteen years of age, applicant and two companions broke into a tavern at night and stole a cash register and \$13.00 in cash. Two weeks later they broke into another tavern and stole \$215.00 in cash. Shortly afterwards they were arrested and charged with breaking, entering and larceny.

While these charges were pending, applicant was again arrested for entering a building and stealing some radiators and sinks.

In each case applicant pleaded guilty to breaking, entering and larceny. He was sentenced to an indefinite term in a reformatory and released on parole in October 1939.

Breaking, entering and larceny is a crime which involves the element of moral turpitude. Re Case No. 179, Bulletin 485, Item 8. To complete the record, it is to be noted that applicant committed a series of five petty thefts between 1934 and 1938; in four of these cases he was sentenced to a parental home and in the fifth case, which occurred in 1937, he was ordered to make restitution and placed on probation.

It is recommended that applicant be advised that he is not eligible to be employed by or connected in any business capacity with a liquor licensee in the State of New Jersey.

Harry Castelbaum,
Attorney.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

6. MORAL TURPITUDE - PARTICIPATION IN EXTENSIVE BOOTLEGGING ACTIVITIES SINCE REPEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION 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. 211.

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BY THE COMMISSIONER:

In 1935 petitioner was convicted, in police court, of possessing and operating an unregistered still, in violation of the Alcoholic Beverage Law. He was sentenced to pay a fine of \$100.00 or serve thirty days in the penitentiary. He seems to have no other criminal record.

Petitioner operated two small stills at different addresses and sold the illicit liquor so manufactured. Such activity since Repeal involves the element of moral turpitude, and hence disqualifies petitioner, under R. S. 33:1-25, 26, from holding a liquor license or working for a liquor licensee in this State. Re Case No. 173, Bulletin 504, Item 7 and cases therein cited; Re Case No. 197, Bulletin 502, Item 10.

More than five years having elapsed since petitioner's conviction, he now requests that such disqualification be lifted. See R. S. 33:1-31.2.

Petitioner came to this State about 1930, but could not find any steady work, so that for some five years he merely helped out in his father's grocery store. He then started to manufacture and sell illicit liquor on a small scale until he was caught. Shortly thereafter, he obtained employment in a brass factory, where he worked

steadily for over five years. In 1941 he left this job because of his ill health and opened up the tailor shop where he is now in business. In addition, he has recently promoted three or four public dances.

Petitioner produced three character witnesses - the editor of a weekly newspaper, an acquaintance who collects rents in the neighborhood, and his pastor. They have known petitioner, respectively, for six, four and twelve years and testified that petitioner bears a good reputation for being honest and law-abiding.

The police records of the municipality where the petitioner resides disclose no complaints or criminal investigations pending against him.

I am favorably impressed by the evidence of petitioner's good conduct for the past seven years, especially since there is only one conviction against his record. However, there is some question concerning the relation that petitioner's application has to his wife's pending appeal to this Department from the denial of transfer of a liquor license to her.

Petitioner says that he seeks to clear his record merely to aid his wife, in that she was denied a license because he had such record. He assumes that if his disqualification is lifted, the basis for such denial will vanish. If petitioner is telling the truth, I cannot find fault with his motive.

On the other hand, if petitioner is the proposed purchaser of the liquor business, but had his wife apply for the license because he knew he was disqualified, it might well indicate that he lacked a proper regard for the observance of the liquor laws and would probably lead to denial of relief. I would not help petitioner if he appealed to me after he had been frustrated in an attempt to obtain a liquor license in his wife's name.

Consequently, I have carefully scrutinized the evidence presented both in this and the appeal case, but I can find no evidence that petitioner is to be the owner, in whole or in part, of the proposed liquor business; on the contrary, there is a great deal of convincing evidence to support the wife's contention that she is to be the sole owner of such business. The most that can be inferred is that petitioner will have a natural interest in his wife's affairs; however, this, of itself, does not make it his business.

I have dealt with this question at greater length in the appeal case decided contemporaneously herewith, in which I sustained the appeal and directed that the license should be transferred to appellant.

In view of the above, I conclude that the petitioner has been law-abiding for at least five years last past and that the public interest would not be harmed by petitioner's association with the liquor industry.

Accordingly, it is, on this 27th day of May, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

7. APPELLATE DECISIONS - GRAHAM v. NEWARK.

WILMA GRAHAM,

)

Appellant,

)

-vs-

)

ON APPEAL

CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent)

Leon J. Lavigne, Esq., Attorney for Appellant.

Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to grant appellant (a married woman) a person to person transfer of Ike Kesselman's plenary retail consumption license at 46 Rutgers Street, Newark.

Respondent's reasons for such denial are threefold:

- (1) that a woman will not be able to properly conduct the particular licensed premises; (2) that it has a general policy of denying a married woman's application for a license in her own name if she is living with her husband; and (3) that appellant is actually a "front" for her husband, who was convicted in 1935 of operating an illicit still.

As to (1): In general, there is nothing in the Alcoholic Beverage Law, or the rules and regulations of this Department which would prohibit a married woman from holding any type of license. Respondent's objection that appellant would not be able to conduct the tavern properly has not been sustained. It appears to be an ordinary tavern, and if it needs a man's strong hand she can readily employ a man for that purpose.

As to (2): The respondent's further claim that it has a general policy of denying a married woman's application for a license in her own name, if she is living with her husband, does not appear to be supported by the evidence. Respondent has recently in some cases refused, and in other cases granted, a license to a married woman living with her husband. I assume that in each case, respondent considered and was guided by the particular facts in the case and undoubtedly had a valid reason for its action. Nevertheless, it is cogent evidence that respondent has not established and does not follow a uniform policy on the subject.

As to (3): The respondent seemingly was influenced by the fact that appellant's husband had a criminal record for bootlegging; that in view of their relationship and the consequent interest he would have in his wife's affairs, it is inimical to the public interest to grant the wife a license. Possibly, if the situation had remained unchanged, the respondent's action may well have been justified. However, I have contemporaneously herewith lifted the husband's disqualification. This, to a certain extent, removes the reflection cast upon his wife's application by his criminal record and consequent statutory disqualification. Nevertheless, if he applies for a license in his own name, respondent may still consider whether he is otherwise personally fit to hold such license.

In this view, decision upon the appeal turns squarely upon the question as to whether appellant is to be the sole owner of the tavern. The evidence establishes that she has been steadily employed in a laundry for the past ten years, earning an average of \$715.00 per year. Her husband was also steadily employed for five years prior to January 1941, earning about \$975.00 per year. At present he conducts a tailor shop and has also promoted four or five public dances. Each had an independent bank account and apparently was able to save from their respective incomes. She says she made a down payment of \$2500.00 of her savings in the purchase of the business. Moreover, she is fully conversant with all the details of the negotiations and final terms of the purchase and had logical reasons for going into business. The present owner of the tavern, and his lawyer, testified that she paid the \$2500.00 in crumpled and disarranged bills which she took from her purse.

There is no direct evidence to the contrary and there is no question as to appellant's personal character or fitness. While there is strong suspicion of at least a joint enterprise where the parties are husband and wife, such suspicion has been dispelled by the facts presented by appellant. Only inferences remain, arising from their close relationship and consequent natural interest in each other's affairs; from her entire lack of business experience and consequent doubt as to whether she would go into business herself; from the fact that some of her savings represent moneys given to her by her husband; and from her story that she concealed over \$2500.00 in her linen closet and only had a few hundred dollars on deposit in her bank. These inferences, doubts and suspicions are hardly sufficient to justify the conclusion that appellant's husband is the actual purchaser of the business or is to have any interest therein. Cf. Re Bambo, Bulletin 353, Item 6.

I therefore conclude that it is to be appellant's business.

Appellant's husband has stated that he does not intend to have any connection whatsoever with the business. I shall hold him to his word, and to avoid even the suspicion that his presence on the licensed premises may arouse, I shall approve of an express condition that he may not even be permitted on the licensed premises. The violation of such condition will be cause for immediate revocation of the license. This, of course, does not bar him from hereafter making application for a license in his name, at which time the respondent will have ample opportunity to pass upon his personal qualifications.

Accordingly, it is, on this 27th day of May, 1942,

ORDERED, that the action of respondent in refusing to transfer to appellant the plenary retail consumption license of Ike Kesselman for 46 Rutgers Street, Newark, be and the same is hereby reversed, and respondent is directed to execute forthwith the transfer applied for subject to the following express condition to be inserted on the license:

"This transfer from Ike Kesselman to Wilma Graham is subject to condition that Henry Clay Graham shall not be permitted on the licensed premises at any time for any reason whatsoever."

ALFRED E. DRISCOLL,
Commissioner.

8. MORAL TURPITUDE - THE CRIMES OF LARCENY AND ASSAULT AND BATTERY MAY INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION 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. 218.
-----)

BY THE COMMISSIONER:

In 1929 petitioner was convicted of assault and battery and received a suspended sentence. In 1930 he was convicted of larceny of an automobile and assault and battery and was placed on probation for three years. In 1933 he was convicted of assault and battery and sentenced to one year in Hudson County Penitentiary. Of the latter term he served six and one-half months. The record does not disclose with any degree of clarity the facts and circumstances surrounding these cases.

Larceny of an automobile and repeated assault and battery charges in their very nature ordinarily involve moral turpitude. No circumstances are shown to rebut the presence of that element in petitioner's convictions for such crimes. Hence he is disqualified under R. S. 33:1-25, 26 from obtaining a liquor license or working for a liquor licensee in this State.

However, his record being clear for more than five years, petitioner applies, under R. S. 33:1-31.2, for removal of the disqualification.

At the hearing petitioner produced four witnesses who have known him for periods ranging from seventeen to three and one-half years. Two of the witnesses who spend most of their time in the company of the petitioner testified that he has not been in trouble since 1933. During this period that elapsed he has worked as a furrier and has been steadily employed. The other two witnesses, although not as intimately acquainted with the applicant, testified that his reputation in the community is good and that to their knowledge he had continuously worked as a furrier.

It is evident from the record that the petitioner had all his trouble with the law when he was a very young man. It is apparent to me that for the past eight or nine years he has changed his ways, worked conscientiously and has followed the life of the usual good citizen in a community. I am satisfied from the record presented to me that the petitioner has not been convicted of any crime within the five years last past nor has he had any trouble of any nature whatsoever (except being held as a material witness following a raid on a suspected gambling house and was immediately discharged), nor has he had any trouble whatsoever accruing from his conduct since October 1933. Petitioner gives every evidence of having most adequately rehabilitated himself and has been living a normal, honest and respectable life and is engaged and has been engaged in the pursuit of a livelihood as a furrier. Hence I conclude that his connection with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 27th day of May, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - CONCEALING CRIMINAL RECORD IN APPLICATION FOR LICENSE IN VIOLATION OF R. S. 33:1-25 - 10 DAYS' SUSPENSION WITH NO REMISSION FOR GUILTY PLEA - CANCELLATION OF PROCEEDINGS DISMISSED.

In the Matter of Disciplinary)	
Proceedings against)	
GEORGE MEHOK,)	CONCLUSIONS
T/a GEORGE'S TAVERN,)	AND ORDER
209 New Brunswick Avenue,)	
Hopelawn, Woodbridge)	
Township, N. J.,)	
Holder of Plenary Retail Consump-)	
tion License C-17, issued by the)	
Township Committee of the Township)	
of Woodbridge, N. J.)	

John C. Stockel, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license for a tavern in Woodbridge Township, pleads guilty to the charge of having concealed his criminal record in his license applications for 1939-40, 1940-41 and 1941-42 in violation of R. S. 33:1-25.

The facts are that the defendant, in those applications, falsely denied that he had ever been convicted of a crime when actually, as he now admits, he had been convicted in November 1924 for assault and (in a joint indictment) for assault and battery. Pursuant to such conviction, he was sentenced to four months in the County Workhouse and served two months of that term.

Since the evidence does not warrant any conclusion that this assault or assault and battery involved the element of moral turpitude, the defendant's conviction does not, so far as appears, peremptorily disqualify him from being a licensee. See R. S. 33:1-25.

However, this fact serves as no excuse for the defendant's failure to have revealed that conviction in his various applications. An applicant must truthfully and completely disclose any and all convictions of crime so that the issuing authority, even if there be no mandatory disqualification, may nevertheless properly determine whether, in its sound discretion, the applicant should be viewed as personally fit for a license. See Re Blanker, Bulletin 254, Item 6; Re DiOrto, Bulletin 509, Item 8; Re Diodati, Bulletin 512, Item 4.

To explain why he had not revealed the conviction, the defendant claims that he actually did not know that his trouble in 1924 constituted a "criminal record."

This claim is sheer fiction. I can scarcely believe that a man who has been indicted for a crime, convicted in Criminal Court, and sentenced to a term of four months in the County Workhouse, of which he actually served two months, did not realize that this was a "criminal record."

As to penalty: I note that the present case is apparently the defendant's first conviction for any violation as a licensee. For his failure to reveal his 1924 criminal conviction, his license, giving due weight to the fact that such conviction did not peremptorily disqualify him, will be suspended for ten days. See Re DiOrio, supra; Re Diodati, supra. Because of his "cock and bull" story as to why he had not revealed such criminal conviction, I shall (as will be the rule in all similar cases hereafter) remit nothing for the guilty plea. Cf. Re DeRusso, Bulletin 510, Item 11.

It is to be noted that affiliate proceedings were brought in this case to cancel the defendant's license in the event his afore-said 1924 criminal conviction was deemed to involve moral turpitude and hence disqualified him from obtaining his license. In view of the above ruling that the conviction apparently does not involve such element, the cancellation proceedings are dismissed.

Accordingly, it is, on this 27th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-17, heretofore issued to George Mehok, t/a George's Tavern, by the Township Committee of the Township of Woodbridge, for 209 New Brunswick Avenue, Hopelawn, Woodbridge Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. June 1, 1942 and concluding at 2:00 A. M. June 11, 1942.

Alfred E. Driscoll
Alfred E. Driscoll
Commissioner

CHECKED BY M. J. J.