

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

BULLETIN 686

DECEMBER 10, 1945

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1. The first part of the report is a general statement of the purpose and scope of the investigation. It is followed by a description of the methods used in the study.

2. The second part of the report is a detailed account of the results of the investigation. It is divided into several sections, each dealing with a different aspect of the study.

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1000 TO 1818

1000 BLOOD SALTS 1000 BLOOD SALT
 DEPARTMENT OF VETERANS' BENEFITS CONTROL
 STATE OF NEW YORK

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

BULLETIN 686

DECEMBER 10, 1945.

1. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND MOTOR VEHICLE ORDERED FORFEITED - APPLICANT FOR RETURN OF MOTOR VEHICLE FAILED TO PROVE "GOOD FAITH" AND THAT THE LAW WAS "UNKNOWINGLY" VIOLATED.

PADLOCK PROCEEDINGS - BUILDING HOUSING ILLICIT STILL ORDERED PADLOCKED FOR SIX MONTHS.

In the Matter of the seizure on)
May 14, 1945, of a still on a)
farm occupied by William Marshall,)
located in the vicinity of Flocks)
School - Budd Lake Road, in the)
Township of Washington, County of)
Morris and State of New Jersey.)

Case No. 6836

ON HEARING
CONCLUSIONS AND ORDER

Charles W. Darmstatter, Esq., Attorney for Hendriena and
Oker DeVries.
Ralph Porzio, Esq., Attorney for William Marshall.
Harry Castelbaum, Esq., appearing for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a still, a Ford Truck, and other personal property itemized in a schedule hereinafter referred to, seized on May 14, 1945, on a farm located in the Township of Washington, New Jersey, constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

In the early morning of May 14, 1945 ABC agents seized a large still in a three-story barn on a farm occupied by William Marshall in Washington Township. Mash, alcohol, sugar and empty five gallon cans were among the articles seized. A Ford truck, parked on a lane between the farmhouse and the barn, was also seized. William Marshall was arrested on charge of unlawfully possessing an unregistered still and illicit alcoholic beverages.

During their investigation, the ABC agents discovered electrical equipment which supplied electric current to the still in a small, recently constructed shed attached to the side of the farmhouse. The electric wiring which supplied the current was visible on the ground between the shed and the barn. An iron water pipe line about 400 feet in length, newly embedded in the ground, supplied water to the still from a brook.

Two large excavations (pits) for the spent mash were in the immediate vicinity of the barn. Marshall told the agents that he had made one excavation, using a horse-drawn scoop, and that he was paid for this work by a person to whom he claimed he had rented the barn. These pits were covered with tree branches and brush over which had been spread sugar bags, and earth placed on top of the bags. Exposed pipe lines led from the barn to these pits.

ABC agents inspected the farmhouse and found four cots in one of the rooms. Marshall told the agents that these cots had been used

by men who were employed at the barn. There were two kitchens in the farmhouse, in one of which there was foodstuffs belonging to these men.

The still was not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1. The Ford truck was on the farm when seized and was available for and could have been used in the illicit still activities. Indeed, Marshall admitted that on one occasion he had used the truck to transport and deliver lumber to the operators of the still. Hence such still, appurtenant articles, alcoholic beverages, all other personal property seized therewith in the barn, and the Ford truck, constitute unlawful property subject to forfeiture and the premises are subject to padlocking. R. S. 33:2-5. Patrick v. Driscoll (New Jersey Supreme Court), 132 N. J. L. 478.

When the matter came on for hearing pursuant to R.S. 33:2-4, Hendriena and Oker DeVries, owners of the farm, and William Marshall appeared and sought to avoid padlocking of the premises. Marshall also sought return of the Ford truck. They did not oppose forfeiture of any of the other seized articles.

I am authorized to return seized or forfeited property if the owner of such property establishes to my satisfaction that he acted in good faith and unwittingly violated the law. I likewise have the discretionary authority to forego padlocking. R.S. 33:2-5, R.S. 33:2-7.

I am convinced from the evidence, which went into the question in considerable detail, that Marshall knowingly consented to act as the ostensible lessee of the farm, as a "front" for the illicit still operators. After Marshall took possession of the farm, he spent a great deal of his time there. His chores, among which was the excavation of a mass pit, required him to pass and repass the open door of the barn where the illicit still had been set up. It is obvious that the operation of a large still for the manufacture of alcohol and the disposal of spent mash is accompanied by a distinctive odor. According to Marshall, the still operators slept and ate in the farmhouse up to the time he and his wife actually moved into the farm. It is probable that the men continued to use the farmhouse after Marshall came there. All of these circumstances indicate that Marshall knew or should have known that an illicit still was being operated in the barn. I must, therefore, find that Marshall is not an innocent person who unwittingly violated the law and, hence, his request for return of the Ford truck is denied.

Marshall occupies the farm under a one-year lease made by Mr. and Mrs. DeVries. This lease expires on April 1, 1946 and provides that, until March 31, 1946, Marshall is to have the option of purchasing the premises. There is considerable evidence that the circumstances under which the owners of the farm executed this lease were so unusual that they must have known or should have suspected that the farm was being leased for an illegitimate purpose. However, this is not a controlling factor, because Mr. and Mrs. DeVries maintain that they must recognize Marshall as their tenant and permit him to remain on the farm until his legal rights are terminated. Hence, Marshall is the only person who will be presently affected by padlocking.

Since Marshall was an active participant in the plan to obtain the farm for the purpose of placing a still there, padlocking should not be waived, but the extent to which this penalty should be imposed is to be determined.

Various aspects of the case may be taken into consideration. Marshall probably was a minor figure in the illicit still activities. He is a farmer and has resided in North Jersey for about forty-five years. He has no previous record of criminal activities aside from a conviction and fine of \$10.00 for reckless driving. He resides at the farm; has a few cows, horses and chickens; cultivates the farm for foodstuffs for his personal needs; and, in the main, derives his income from small, odd, building and contracting jobs for other persons. He has no resources other than what he possesses on the farm. Because the illicit still was on his farm, he now has a criminal record and is awaiting whatever may be the consequences of the criminal proceedings against him.

The difficulties so far encountered by Marshall because he dabbled in illicit still activities, including the loss of his truck and the confiscation of the other personal property seized, seemingly should teach him that in the future he should not collaborate with bootleggers in their nefarious schemes. To compel Marshall to seek a home, and a place for his livestock elsewhere, would be unduly harsh. Under these circumstances, padlocking of the structure where the still was found will be a sufficient additional penalty.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property and that the same be and hereby is forfeited, in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, county and municipal institutions or destroyed in whole or in part at the direction of the Commissioner, and it is further

ORDERED, that the barn located on the farm occupied by William Marshall in the vicinity of Flocks School - Budd Lake Road, in the Township of Washington, County of Morris and State of New Jersey, being the building in which the illicit still was seized, shall not be used or occupied for any purpose whatsoever for a period of six months commencing the 27th day of December, 1945.

ALFRED E. DRISCOLL

Commissioner.

Dated: November 27, 1945.

SCHEDULE "A"

- 1 - high pressure steam boiler
- 1 - Super Electric Cord Corp. oil burner
- 1 - 250 gallon fuel oil storage tank
- 2 - dismantled oil burners
- 2 - electric Rotary converters
- 1 - St. Louis type copper column
- 1 - dephlegmator
- 1 - pre-heater
- 1 - galvanized condenser
- 3 - galvanized coolers
- 3 - 1/4 H.P. General Electric motors
- 1 - 6 cylinder Flint gasoline motor
- 1 - direct current generator
- 3 - Webb cell batteries
- 1 - 50 gallon gasoline tank partly full
- 4 - wooden vats with mash
- 42 - 5 gallon cans of alcohol
- 1 - receiving tank with alcohol
- 1 - empty wooden vat
- 1 - Worthington steam pump
- 12 - 100 pound bags of sugar

SCHEDULE "A" (CONT'D)

20 - bags of Hunt's Hypo
 462 - empty 5 gallon cans
 6 - 50 pound cartons of yeast
 5 - empty 50 gallon steel drums
 1 - Centrifugal hand pump
 1 - copper tri-box
 1 - excavating scoop
 miscellaneous pipes, fittings, rubber hose
 and copper tubing
 1 - Ford truck, engine #4503113,
 1945 N. J. registration XS-7146

2. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS ORDERED
 FORFEITED - MOTOR VEHICLES ORDERED RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on) Case No. 6862
 July 16, 1945 of a number of)
 still parts, an International)
 Truck and a Packard Sedan, at)
 premises located at the corner of) ON HEARING
 Egg Harbor Road and Cattell Avenue,) CONCLUSIONS AND ORDER
 in the Township of Deptford, County)
 of Gloucester and State of New)
 Jersey.)
 - - - - -)

Edward A. Dunbar, Esq., Attorney for Personal Finance Company.
 Aaron Curry, Pro Se.
 Sydney Jefferson, Pro Se.
 Harry Castelbaum, Esq., appearing for the Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a number of still parts, an International Truck and a Packard Sedan seized on July 16, 1945, at premises located in the Township of Deptford, New Jersey, constitute unlawful property and should be forfeited, and, further, to determine whether the premises should be padlocked.

At about 10:00 p.m. on the day in question, ABC agents found the Packard Sedan and the International Truck parked on a small farm owned and occupied by Edward Divers, located at the intersection of Egg Harbor Road and Cattell Avenue in Deptford Township. In the truck there was a copper cooker, pre-heater, copper coils, gooseneck and other unregistered still parts; and four empty fifty-gallon barrels. Aaron Curry, the owner of the truck, Sydney Jefferson, the driver of the Packard car, and his two companions, Leon Jefferson and Theodore Paige, all of whom were near the motor vehicles, told the agents that the still parts had been dug up from their place of concealment in the ground and loaded on the truck.

The ABC agents seized the two cars and the still parts and arrested the four men on charge of possessing unregistered still parts. These men have since pleaded guilty in the criminal case and have paid a very nominal fine of \$100.00 each.

The still parts were not registered with the State Commissioner of Alcoholic Beverage Control as required by R.S. 33:2-1. Hence, such still parts and the two motor vehicles seized therewith

on the farm constitute unlawful property, subject to forfeiture. In addition, the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing, pursuant to R.S. 33:2-4, Aaron Curry appeared and requested the return of his truck; counsel for Personal Finance Company appeared and requested recognition of an alleged lien on such truck; and Sydney Jefferson, father of the Sydney Jefferson who was arrested at the farm, appeared and requested the return of the Packard Sedan.

Under the provisions of R. S. 33:2-7, I have discretionary authority to return seized or forfeited property to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the provisions of the law.

Curry says that he is innocent of intentional wrongdoing and is, in effect, a victim of circumstances, or, at most, failed to use good judgment. It appears from his testimony that he resides in Philadelphia, Pennsylvania, and has a small trucking business, hauling wood and doing odd jobs.

His story of the particular transaction is that, about 6:00 p.m. on the day in question, a strange man came to his home and asked him to haul a sixty-gallon water tank to Philadelphia from a place in New Jersey about thirteen miles from the city. Curry agreed to do the job for ten dollars. The stranger told him that he would return later that night, as it was the only time he had available to do the job.

At about 8:00 p.m. this man returned in his car, accompanied by Sydney Jefferson, who was driving his father's Packard Sedan. Curry was told that Jefferson would show him the way to his destination in New Jersey. Arrangements were then made for Curry to check his battery, obtain gas and oil and meet Jefferson at Front and Market Streets in Philadelphia. Curry met Jefferson at the appointed time and place and followed him to the farm in question. When he arrived at the farm, Jefferson and his companions dug up the still parts and he helped them load these articles on his truck. He states he did not realize that they were still parts. His suspicions as to the illegal nature of the enterprise were first aroused when he noticed four empty barrels on the truck, placed there while he was pouring water in the radiator of his truck. His intention was to insist that the barrels be removed from the truck, but before he could do anything about it the agents appeared on the scene.

It is probably common knowledge that persons who engage in small odd-job trucking accept such jobs casually and with little or no inquiry except as to where the load is to be picked up and delivered and what they are to be paid for the job. Curry apparently has no criminal record and it may well be that he agreed to do this particular job under circumstances described by him.

Hence, assuming that Curry did not know at the outset that he had been hired to transport illicit still parts, the test as to whether he acted in good faith throughout is whether he had sufficient time to recognize and withdraw from the unlawful enterprise before he was caught.

It is difficult to fix the exact moment when Curry should have recognized that the articles were still parts. He says that he did not become suspicious until he saw the four barrels on the back of the truck. It is even more difficult to determine how any person,

with a background and intelligence comparable with Curry's, would have acted upon such discovery. Curry had already expended gas and time and undoubtedly was torn between a desire to complete the job and receive his pay and a desire to write off the trip and keep out of trouble. Curry says that he chose the latter course and intended to refuse to transport whatever property he suspected was unlawful. There is no evidence to the contrary since the men were caught before they could start back to Philadelphia.

I am satisfied that the reasonable conclusion from the facts above outlined is that Curry did not knowingly intend to participate in a violation of the Alcoholic Beverage Law and that he acted in good faith. Hence, his truck will be returned to him upon the payment of the costs of its seizure and storage.

This conclusion renders it unnecessary to consider the alleged lien claim of Personal Finance Company on the motor vehicle as it may now proceed to enforce whatever claim it has by direct action against Curry when the motor vehicle is returned to him.

Sydney Jefferson, the owner of the Packard Sedan, testified that he is in the second-hand furniture business in Philadelphia; that he has five sons, two of whom, Sydney and Leon, help him out occasionally by making deliveries and have the use of the Packard for that purpose only; that the car is generally parked in front of his place of business when not in use. He says that he has been a resident of Philadelphia since 1917 and that the only time he has been accused, arrested or convicted of a crime is either in 1938 or 1939, when the Federal authorities found a small still in his store, then at a different location, and he was placed on parole for a year.

He accounts for his son's (Sydney's) possession of the Packard Sedan on the day in question as follows: After his son had delivered some furniture for him that afternoon, he asked his father whether he could take the car to his home, some distance from the store, and come back in the morning, when he was to make some additional deliveries of furniture for his father. He states he had permitted his son to do this on one other occasion.

The father further claims that he had no reason to suspect that the son intended to use the car for any unlawful purpose and did not know that the car was taken to New Jersey on the night in question until after it had been seized. According to his father, Sydney is about twenty-four years of age, married, and is employed as a stevedore. So far as it appears, the son has not previously been convicted of any crime.

Nineteen-year old Leon Jefferson testified that he, his brother Sydney, Theodore Page and a girl friend were in his father's Packard Sedan on the night in question; that his father had never permitted him to use the car for his own use and so far as he knew, had not permitted his brother to use the car. That when his brother picked him up about 8:00 p.m. on the night in question, he invited him to go for a ride and he (Leon) accepted although he was fearful that his brother was using the car without his father's permission; that when he asked his brother to explain, Sydney told him that "Dad let me have it to go home." Leon further claims, in effect, that he was "an innocent bystander" in the whole affair and that his brother was the moving spirit who drove to the farm in question and directed the entire enterprise.

On the basis of the testimony of Sydney Jefferson, the father, and his son Leon, I have concluded that the father did not have any knowledge of or any reason to suspect that his son Sydney intended to use the car for any unlawful purpose on the evening in question. I have reached this conclusion despite the fact that a small illicit still was found in the father's store some six or seven years ago. This fact was disclosed by the father voluntarily. The Packard Sedan will be returned to its owner, Sydney Jefferson, upon payment of costs of its seizure and storage.

It should be noted that the four men at the farm each paid a fine in the criminal case. It is to be hoped that they have now learnt that it does not pay to become involved in any way with the possession or transportation of an illicit still.

Although the owner of the premises did not appear at the hearing, possibly because he did not realize its significance, nevertheless the reports of the ABC agents disclose that he called the matter to the attention of the police and was largely instrumental in the seizure that followed. Consequently, the premises will not be padlocked.

Accordingly, it is DETERMINED and ORDERED that if, on or before December 7, 1945, Aaron Curry pays the costs of seizure and storage of the International truck, such truck will be returned to him;

And it is further DETERMINED and ORDERED that if, on or before December 7, 1945, Sydney Jefferson pays the costs of seizure and storage of the Packard sedan, such sedan will be returned to him;

And it is further DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5 and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

Dated: November 27, 1945.

SCHEDULE "A"

- 1 - copper cooker
- 1 - pre-heater
- 1 - set copper coils and copper gooseneck
- 1 - galvanized tank
- 4 - empty 50-gallon wooden barrels
- miscellaneous articles of personal property

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary)
Proceedings against)

JACK HEISTEIN)

T/a JACK'S TAVERN)

Brookside Road)

Randolph Township)

P.O. Mt. Freedom, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-3, issued by the)
Township Committee of the Township)
of Randolph, and transferred during)
the pendency of these proceedings)
to)

CONCLUSIONS
AND
ORDER

JOSEPH HEISTEIN)

T/a JACK'S TAVERN)

for the same premises.)

Frank C. Scerbo, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges: (1) that in answer to Question 30 of the application for a license he falsely stated "No" as to whether any individual other than the applicant had any interest, directly or indirectly, in the licensed business; and (2) from July 1, 1944 until the present time he knowingly aided and abetted Joseph Heistein to exercise, contrary to R.S. 33:1-26, the rights and privileges of his successive retail consumption licenses, in violation of R. S. 33:1-52.

The facts show that, on May 6, 1939, Joseph Heistein, the father of the defendant Jack Heistein, obtained a license for the premises in question and renewed the same each year thereafter until June 30, 1942. In that year objections were filed to the renewal of the license for the license year 1942-43. Thereafter the application for renewal was denied and the denial was affirmed on appeal. Heistein v. Randolph, Bulletin 531, Item 7. No license was issued for the premises for the year 1942-43. Charles Bernstein, a brother-in-law of the defendant, filed an application and obtained a license for the premises for the fiscal year 1943-44 and Jack Heistein, the defendant, applied for and received a license for the premises for the years 1944-45 and 1945-46.

The defendant-licensee, twenty-three years of age, is a contractor. It is apparent that after the application of Joseph Heistein had been denied in 1942, the family decided to find some way to keep him in business and adopted the now familiar method of having someone else "front" for Joseph. The record further shows that practically all the profits in the business went to the father. However, the unlawful situation has been corrected and a transfer of the license has now been granted to Joseph Heistein by the local issuing authority.

Licensee has no previous record. In view of all the circumstances, I shall suspend the license for sixty days.

Accordingly, it is, on this 29th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Randolph to Jack Heistein, t/a Jack's Tavern, for premises on Brookside Road, Randolph Township, and transferred during the pendency of these proceedings to Joseph Heistein for the same premises, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 a.m. December 6, 1945, and terminating at 2:00 a.m. February 4, 1946.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

PHILIP MCGEE
T/a MCGEE'S TAVERN
368 Summit Avenue
Jersey City 6, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-311, issued by the
Board of Commissioners of the
City of Jersey City.

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

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on August 4, 1945, he possessed a 4/5 quart bottle of "Gallagher & Burton's Black Label Whiskey 86.8 Proof" and a 4/5 quart bottle of "Carstairs White Seal Blended Whiskey 86.8 Proof", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The license will be suspended for a period of fifteen days.
Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 30th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-311, issued by the Board of Commissioners of the City of Jersey City to Philip McGee, t/a McGee's Tavern, for premises 368 Summit Avenue, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. December 5, 1945, and terminating at 2:00 a.m. December 20, 1945.

ALFRED E. DRISCOLL
Commissioner.

5. MORAL TURPITUDE - CRIME OF PUBLIC LEWDNESS FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST INCLUDING MILITARY SERVICE AND HONORABLE DISCHARGE - 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. 484.
- - - - -)

BY THE COMMISSIONER:

Petitioner, in this proceeding, prays that his disqualification, which precludes him from being associated with the alcoholic beverage industry, resulting from a conviction of a crime involving moral turpitude, be lifted pursuant to R. S. 33:1-31.2.

Petitioner testified that, on January 31, 1939, he pleaded non vult to the crime of public lewdness, as a result of which he was sentenced by a Judge of a Court of Quarter Sessions to an indeterminate term in a state reformatory. The execution of the sentence was suspended, however, and in its stead petitioner was placed on probation for three years and given medical treatment.

The crime of public lewdness is one that involves moral turpitude.

Petitioner testified that he has been in the United States Army for five years, enlisting as a private and being honorably discharged in August, 1945 with the rank of Captain. He served with the armed forces in the European Theatre of Operations for several years.

Three witnesses, among whom was a warrant officer in the United States Army, an employee of a utility company and an employee of a clothing company, testified that they have known petitioner for eight or more years. All were in agreement that he bears a good reputation for being a law-abiding citizen in the community in which he resides. The employee of the clothing company testified that he served in the same regiment in the Army with petitioner and that the petitioner was highly respected.

In view of petitioner's good record in the military service, I am satisfied that he has made a successful effort to rehabilitate himself and that he has become a law-abiding citizen, especially during the five years last past. Consequently, I shall lift the disqualification which resulted by reason of his conviction of public lewdness.

Accordingly, it is, on this 3rd day of December, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

6. ACTIVITY REPORT FOR NOVEMBER, 1945.

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - - 5 Bootleggers - - - - - 16
 Personating an ABC officer - - - - - 1
 Total number of persons arrested - - - - - 22

SEIZURES: Total number of stills seized - - - - - 2
 Mash - gallons - - - - - 10,125
 Alcohol - gallons - - - - - 1
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - - 1,847
 Wine - gallons - - - - - 2,196
 Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - - 2
 Total number of motor vehicles seized - - - - - 1

RETAIL LICENSEES:
 Total number of premises inspected - - - - - 1,095
 Total number of premises where alcoholic beverages were gauged - - - - - 743
 Total number of bottles gauged - - - - - 10,555
 Total number of premises where violations were found - - - - - 56
 Total number of violations found - - - - - 74
 Type of violations found:
 Illicit liquor - - - - - 20 Prohibited signs - - - - - 1
 Unqualified employees - - - - - 15 No sign denoting legal sale
 "Fronts" (concealed ownership) - - - - - 6 hours - off-premises consumption - - - - - 6
 Gambling devices - - - - - 7 Stock disposal permits necessary - - - - - 9
 Other types of violations - - - - - 10

STATE LICENSEES:
 Premises inspected - - - - - 19
 License applications investigated - - - - - 22

COMPLAINTS:
 Investigated, reviewed and closed - - - - - 255
 Investigation assigned, not yet completed - - - - - 222

LABORATORY:
 Analyses made - - - - - 160
 "Shake-up" cases (alcohol, water and artificial coloring) - - - - - 10
 Liquor found to be not genuine as labeled - - - - - 17

IDENTIFICATION BUREAU:
 Criminal fingerprint identifications made - - - - - 18
 Persons fingerprinted for non-criminal purposes - - - - - 218
 Identification contacts with other enforcement agencies - - - - - 308
 Motor vehicle identifications via N. J. State Police Teletype - - - - - 2

DISCIPLINARY PROCEEDINGS INSTITUTED:
 Cases transmitted to municipalities - - - - - 17
 Violations involved:
 Sale outside scope of license - - - - - 4 Gambling (cards) - - - - - 1
 Sale during prohibited hours - - - - - 3 Mislabeled beer taps - - - - - 1
 Fraud in application - - - - - 2 Licensee working while drunk - - - - - 1
 Sale to minors - - - - - 2 Slot machines - - - - - 1
 Bookmaking - - - - - 1 Unqualified employee - - - - - 1
 Brawls - - - - - 1
 Cases instituted by Department - - - - - 22
 Violations involved:
 Illicit liquor - - - - - 9 Hindering investigation - - - - - 1
 Sale during prohibited hours - - - - - 4 Numbers writing - - - - - 1
 Sale to minors - - - - - 4 Lewdness - - - - - 1
 Bookmaking - - - - - 2 Prostitutes - - - - - 1
 Fraud and front - - - - - 2 Sale outside scope of license - - - - - 1
 Business conducted as nuisance - - - - - 1 Unqualified employee - - - - - 1
 Contraceptives - - - - - 1
 Cases brought by municipalities on own initiative and reported to Department - - - - - 6
 Violations involved:
 Brawls - - - - - 3 Sale during prohibited hours - - - - - 1
 Sale to minors - - - - - 2 Sale to intoxicated persons - - - - - 1

HEARINGS HELD AT DEPARTMENT:
 Appeals - - - - - 10 Seizures - - - - - 1
 Disciplinary proceedings - - - - - 16 Applications for license - - - - - 6
 Eligibility - - - - - 14 Tax revocation - - - - - 1
 Total number of hearings held - - - - - 48

PERMITS ISSUED:
 Unqualified employees - - - - - 121
 Solicitors - - - - - 153
 Social affairs - - - - - 255
 Home manufacture of wine - - - - - 634
 Disposal of alcoholic beverages - - - - - 117
 Miscellaneous permits - - - - - 95
 Total number of permits issued - - - - - 1,375

Respectfully submitted,
 ERWIN B. HOCK
 Deputy Commissioner

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

HEREIN OF FUTURE POLICY WITH RESPECT TO SUSPENSIONS IN "FRONT" CASES.

In the Matter of Disciplinary Proceedings against)

STEPHEN NICOMINI)
T/a MATTEO'S FARM)
Mt. Benevolence Road)
Stillwater Township)
P.O. Newton R.D. 2, N. J.,)

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Stillwater, and transferred during the pendency of these proceedings to)

MATTEO NICOMINI)
T/a MATTEO'S FARM,)

of the same premises.)

CONCLUSIONS
AND
ORDER

Vito A. Concilio, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he (1) falsified his license application by concealing the interest of his father in the license and business conducted thereunder, and (2) permitted his father to exercise the rights and privileges of his license.

In January 1943, when the license for these premises was originally issued, Matteo Nicomini, father of the defendant, lacked the requisite qualification of being a five-year resident of this State. For that reason, the license was held on his behalf by his son.

After the institution of these proceedings, the license was transferred to Matteo Nicomini, who had theretofore become a resident of New Jersey. Since the law (R. S. 33:1-25) now requires only a bona fide residence in this state of no specified duration, the transfer was properly made and the prior unlawful situation has been thereby corrected.

The usual ten-day penalty, which has heretofore been the standard for violations of this kind, will be imposed herein. Cf. Re Karbowski, Bulletin 676, Item 3.

I am becoming increasingly concerned about the substantial number of "front" cases being uncovered by ABC agents. Despite my previous warning that penalties for undisclosed interests would be revised upwards if these violations were not curtailed (see Bulletin 512, Item 9), numerous cases involving merely nominal license holders have come to my attention. More drastic penalties are indicated to serve as an effective deterrent against the continuation of this type of offense.

It is my considered opinion that a suspension of at least thirty days should be imposed in any case where the license application fails

to disclose all of the real parties in interest. This minimum penalty is warranted because of the nature of the violation. The deliberate concealment of the true owners of the license and business represents a fraud upon the issuing authority and the public. The greater the fraud, the greater will be the penalty. In particularly aggravated cases I shall have no hesitation in revoking the license outright.

The stated policy will become effective with disciplinary proceedings hereafter instituted which involve "front" situations continued or created after January 1, 1946.

Accordingly, it is, on this 30th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Stillwater to Stephen Nicomini, t/a Matteo's Farm, for premises on Mt. Benevolence Road, Stillwater Township, and transferred during the pendency of these proceedings to Matteo Nicomini, t/a Matteo's Farm, for the same premises, and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. December 5, 1945, and terminating at 12:01 a.m. December 15, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. SEIZURE - FORFEITURE PROCEEDINGS - 600 POUNDS OF SUGAR, ILLICIT STILL PARTS AND PROPERTY SEIZED THEREWITH ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure)	Case No. 6896
on September 29, 1945 of)	
various still parts and other)	ON HEARING
personal property at 136 Eighth)	CONCLUSIONS AND ORDER
Street, in the City of Passaic,)	
County of Passaic and State of)	
New Jersey.)	

Nicholas Martini, Esq., Attorney for Frank DePalma.
Harry Castelbaum, Esq., appearing for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether various still parts and other personal property, itemized in an inventory hereinafter referred to, seized at 136 Eighth Street, Passaic, New Jersey, constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

On September 29, 1945, ABC agents and Passaic police officers found various still parts at the above mentioned premises, then owned by Frank DePalma. There are two buildings there, in one of which is a restaurant and living quarters, and the other, in the rear of this building, is a one-story frame residence.

A copper cooker was found in the frame building. A fifty-five gallon drum of mash was in the kitchen and another drum of mash was in another room, both in the rear of the restaurant. In a room in DePalma's apartment, on the second floor, there were 600 lbs. of sugar. Other still parts were found in the basement. DePalma claimed that the still parts did not belong to him but that he had merely stored them at the request of a casual acquaintance as an accommodation.

The ABC agents seized all the above mentioned articles and DePalma was arrested on charge of possessing unregistered still parts and possessing illicit alcoholic beverages. (mash).

The still parts were not registered with the State Commissioner of Alcoholic Beverage Control, as required by R. S. 33:2-1. Hence, such still parts and other personal property seized therewith constitute unlawful property subject to forfeiture, and the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing pursuant to R. S. 33:2-4, Frank DePalma appeared and sought to avoid padlocking of the premises but did not oppose forfeiture of any of the seized articles.

At the hearing, DePalma reiterated his claim that he stored the still parts for a casual acquaintance. I am not impressed with his story and am quite certain that he personally was engaged in unlawful alcoholic beverage activities at the premises.

However, it appears that the still parts were seized after DePalma had agreed to sell the premises and the new owner has since taken title thereto.

It may well be, since padlocking is a discretionary matter, that, from a strict viewpoint, padlocking may be imposed even as against an innocent prospective purchaser. Cf. Seizure Case 6784. Padlocking of premises where a still or still parts are found, as provided for by law, is in the public interest and is paramount to private rights, where they conflict. It may be compared to a case where liens for taxes and public improvements are a liability against the property no matter in whose hands.

However, the purpose of padlocking is to punish a wrongdoer. DePalma, the wrongdoer, has since moved from the premises. This appears to be the first time he has violated any liquor laws. The still was of the type used for the home and not commercial manufacture of illicit alcohol. DePalma now has a criminal record. In addition, the seized property, including 600 lbs. of sugar taken from DePalma, will be forfeited.

In view of all of the aforementioned circumstances, the premises will not be padlocked.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property and that the same be and hereby is forfeited, in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

Dated: December 7, 1945.

SCHEDULE "A"

- 1 - copper cooker
- 1 - copper tri-box
- 1 - copper dephlegmator
- 600 - pounds of Domino granulated sugar
- miscellaneous lot of pipe and copper fittings
- 4 - 5-gallon empty cans
- 100 - gallons of mash
- 1 - 25-pound bag of malt
- 2 - 55-gallon steel drums

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR THE BALANCE OF
ITS TERM.

In the Matter of Disciplinary
Proceedings against

SIDWELL, INC.

T/a TUMBLE INN

801 Baltic Avenue

Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-124, issued by the
Board of Commissioners of the
City of Atlantic City.

Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

After the charge herein was duly served, a telegram was received from defendant-licensee wherein it pleaded non vult to the charge which alleged that:

"On October 8, 1945, you possessed illicit alcoholic beverages at your licensed premises viz., one 4/5 quart bottle labeled 'Golden Wedding Blended Whiskey', one 4/5 quart bottle labeled 'Wilson That's All Blended Whiskey', one 4/5 quart bottle labeled 'Kessler's Private Blend Blended Whiskey', one 4/5 quart bottle labeled 'Seagram's 7 Crown Blended Whiskey', one 4/5 quart bottle labeled 'Carstairs White Seal Blended Whiskey' and one 4/5 quart bottle labeled 'Calvert Special Blended Whiskey', all of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

The file herein discloses that, on October 8, 1945, a Junior Inspector employed by the Alcohol Tax Unit of the Internal Revenue Service seized upon defendant's licensed premises eight bottles of distilled spirits which appeared, from preliminary tests, to be not genuine as labeled. Subsequent analysis by a Federal chemist disclosed that the evidence was not sufficient to warrant the institution of disciplinary proceedings as to two of the seized bottles. However, as to the six bottles mentioned in the above charge, the chemist's analysis disclosed such variations in proof, acids, solids and percentage of coloring from that found in genuine samples as to lead to the conclusion that the six bottles contained alcoholic beverages not genuine as labeled.

As to penalty: On November 5, 1945 I suspended defendant's license for a period of thirty days, commencing at 7:00 a.m. November 6, 1945, and terminating at 7:00 a.m. December 6, 1945, after defendant had pleaded non vult to a charge alleging that it possessed one bottle of whiskey, the contents of which were not genuine as labeled. Re Sidwell, Inc., Bulletin 684, Item 10. In the cited case the seizure was made on August 20, 1945, and the charge was mailed to defendant on September 21, 1945. It thus appears that the seizure in the present case was made approximately sixteen days after defendant received notice of the charge filed in the previous case. It further appears that the violation committed in 1936 by J. J. Nathanson, President of defendant corporation, which was referred to in the previous Conclusions and Order, concerned the refilling of liquor bottles with other liquor. It is apparent that the President of the defendant corporation, who is also the majority stockholder thereof,

has permitted the premises to be conducted in a very careless manner, or has failed to learn a lesson from the previous penalties imposed. Under the circumstances, I shall suspend defendant's license for the balance of its term.

Accordingly, it is, on this 6th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-124, issued by the Board of Commissioners of the City of Atlantic City to Sidwell, Inc., t/a Tumble Inn, for premises on 801 Baltic Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, commencing at 7:00 a.m. December 11, 1945, and terminating at midnight, June 30, 1946.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - KRAUS v. SOMERDALE - DISMISSED.

MARIE KRAUS,
T/a COLONIAL INN,

Appellant,

-vs-

MAYOR AND BOROUGH COUNCIL
OF THE BOROUGH OF SOMERDALE,

Respondent

ON APPEAL
ORDER OF DISMISSAL

Bernhard G. Luethy, Esq. and Edward H. Flemming, Esq.,
Attorneys for Appellant.
Edward I. Berry, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for renewal of her plenary retail consumption license for premises at the northeast corner of Lafayette Avenue and White Horse Pike, Borough of Somerdale, N. J.

At the time scheduled for hearing of this appeal, of which adequate notice was given to all interested parties, the appellant failed to appear. In accordance with the provisions of Rule 10 of State Regulations No. 15, the respondent has moved for a dismissal of the appeal.

Since good cause appears for granting respondent's motion,

It is, on this 10th day of December, 1945,

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

Alfred E. Driscoll
Commissioner.