

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

BULLETIN 746

JANUARY 23, 1947

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

January 23, 1947

BULLETIN 746

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR
A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

EMIL BEFORT & RICHARD A. BEFORT)
T/a ARION HALL)
81-83 Hutton Street)
Jersey City 7, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-521 issued by the)
Board of Commissioners of the)
City of Jersey City.)

Emil Befort and Richard A. Befort, corporate partnership, by
Richard A. Befort.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendants have pleaded non vult to a charge that they possessed
illicit alcoholic beverages at their licensed premises, in violation
of R. S. 33:1-50.

On December 2, 1946, an investigator of the State Department of
Alcoholic Beverage Control seized one 4/5 quart bottle of "Black &
White Blended Scotch Whisky" when his field tests disclosed that the
contents of said bottle were not genuine as labeled. Subsequent
analysis by the Department chemist disclosed that the contents of
said bottle did not contain genuine "Black & White" whiskey as
labeled and warrants the conclusion that said bottle had been almost,
if not entirely, refilled with a "Scotch liqueur". Retailers are not
permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1;
Re Mazza, Bulletin 680, Item 11.

Each of the defendants denies that he personally tampered with
the contents of said bottle. This does not affect the result herein
in view of the fact that the unlawful bottle was admittedly found in
their possession on their licensed premises. Re Barrale, Bulletin
705, Item 5.

Defendants have no prior adjudicated record, and no aggravating
circumstances appear herein. I shall, therefore, suspend the license
for the minimum period of fifteen days (Re Rudolph, Bulletin 680,
Item 1) and remit five days for the plea (Re Gelb, Bulletin 741,
Item 8), leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-521, issued by
the Board of Commissioners of the City of Jersey City to Emil Befort
and Richard A. Befort, t/a Arion Hall, for premises 81-83 Hutton
Street, Jersey City, be and the same is hereby suspended for a period
of ten (10) days. Pursuant to Notice of August 23, 1946, Bulletin
727, Item 12, the effective date of such suspension is reserved for
future determination.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - O'NEAL v. NEWARK.

TURNER O'NEAL and ARRE O'NEAL,)
t/a GOLDEN INN BAR,)

Appellants,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

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

Respondent)

Oliver Randolph, Esq., Attorney for Appellant.
George B. Astley, Esq., Attorney for Respondent.
Alexander Avidan, Esq., Attorney for Alexander and Samuel Avidan,
Owners of Property 191-195 Spruce Street, Objectors.
Rubin Protos, Pro Se, Owner of Property 189 Spruce St., an Objector.

This is an appeal from the respondent's denial of an application for a transfer of the appellant's plenary retail consumption license from 150 Charlton Street to 192½ Spruce Street, Newark.

The testimony herein indicates that the basic factors are substantially the same as those in a prior appeal wherein a corporation, owned by the present appellants, sought a transfer of a plenary retail consumption license from 150 Charlton Street to 194 Spruce Street. In that case, the respondent's action denying the transfer was affirmed. Re Golden Inn Bar, Inc. v. Newark, Bulletin 481, Item 2. The principal factual difference appears to be that the now-sought "new" premises are some twenty feet removed from the "new" premises sought in the former case; and one plenary retail consumption license (located at 181 Spruce Street) has, since the time of the earlier appeal, been voluntarily reduced in its operation to a package goods business only. Of course, that licensee may resume the exercise of the license's full statutory privileges at any time.

The appellant raises the question of "racial discrimination". It appears that the district here involved is now inhabited largely by negroes; and that none of the licenses on Spruce Street is held by a member of that race. While the population of the neighborhood has changed considerably since Repeal, the early alcoholic beverage licensees have continued to hold their licenses. From the record before me, however, and in view of the large concentration of licenses in the neighborhood, particularly on Spruce Street in the vicinity of the "new" premises sought, I am unable to conclude that the respondent's action denying the appellant's transfer application was based upon racial discrimination.

The appellant raises another issue in contending that the use of the word "shall" in Section 4 of a Newark City ordinance, adopted May 4, 1938, effects a mandatory direction to the Municipal Board of Alcoholic Beverage Control. The section provides, in pertinent part:

"No Plenary Retail Consumption License, excepting renewals for the same premises as have heretofore been licensed, and transfers from person to person, shall be granted or transferred to another premises within a distance of seven hundred and fifty (750) feet from an existing licensed premises covered by a Plenary Retail Consumption License. In the event a licensee desires to transfer to another premises he shall be permitted to do so within seven hundred and fifty (750) feet of the premises wherein he is located, at the time of such transfer....." (underscoring added).

It would seem clear that the underscored language merely sets forth an exception from the section's primary minimum distance requirement -- that the exception merely provides, in effect, that the primary distance requirement does not operate to prevent the granting of a place-to-place transfer within the prescribed distance from an applicant's present location.

In statutes and ordinances, the words "shall" and "may" are often interchangeable. The applicable general rule is that both "may" and "shall" are to be construed as only permissive unless a contrary intent clearly appears. (See Seiple v. Elizabeth, 27 N. J. L. 407; McDonald v. Freeholders of Hudson, 99 N. J. L. 170; Winne v. Cassale, 99 N. J. L. 345, affirmed in Winne v. Cassale, 100 N. J. L. 291.) The Legislature has provided that a municipal issuing authority "may" transfer a license from place to place. (R. S. 33:1-26.) Clearly the intendment, and meaning, is that a transfer of a license is a matter of discretion and not a matter of right. As stated in Golden Inn Bar, Inc. v. Newark, *supra*:

"Like other general questions involving the issuance or transfer of licenses, determination of how many retail liquor places will be permitted in any given area is confided, in the first instance, to the sound and bona fide discretion of the issuing authority. See Baselici v. Asbury Park, Bulletin 382, Item 4 (and cases there cited); and also Siebel v. Randolph, Bulletin 477, Item 1 (and cases there cited)."

I find no evidence sufficient to change the findings in the prior case, and I must conclude that the respondent did not abuse its discretionary power in denying the appellant's application for transfer.

The respondent's action will therefore be affirmed.

Accordingly, it is, on this 10th day of January, 1947,

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

ERWIN B. HOCK
Deputy Commissioner.

3. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST NOT SHOWN - PETITION TO LIFT DISMISSED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 567.
-----)

Petitioner, who heretofore has been ruled disqualified to be employed by the holder of a liquor license in this State by reason of the fact that he has been convicted of a crime involving moral turpitude, Re Eligibility Case No. 565, now applies for removal of said

disqualification. Petitioner was released from prison on parole in December, 1930. His maximum sentence expired in 1937, at which time he appears to have been released from the parole.

However, it is to be noted that R. S. 33:1-31.2 gives me the discretionary power to remove the disqualification caused by the conviction of crime involving moral turpitude only when it appears to my satisfaction that "....at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest...."

In February, 1945, petitioner was employed by his wife and her partner and by virtue of said employment was in charge of a licensed tavern operated by them. During his employment, he actively engaged in the commission of a violation of a local ordinance of the City of Paterson where the licensed premises of his wife and her sister are located, in that he permitted the premises to be open and sold alcoholic beverages after the closing hour as provided by the aforesaid ordinance. It further appears that he not only failed to facilitate the investigation made by agents of the Department of Alcoholic Beverage Control, but actually interfered with said investigation of the violation aforesaid by attempting to destroy certain evidence then in the possession of the said agents. See Re Volino and Maheltz Bulletin 666, Item 11.

It has long been the practice of the Commissioner of Alcoholic Beverage Control to hold that a person actively involved in a violation of the Alcoholic Beverage Law, or the Rules and Regulations of this Department, or of local ordinances relating to the regulation of the sale of alcoholic beverages has not been conducting himself in a law-abiding manner. Cf. Re Case No. 78, Bulletin 407, Item 3. It would also appear that I cannot properly conclude, in view of this evidence of a disregard of the Alcoholic Beverage Law, that petitioner's connection with the alcoholic beverage industry would not be contrary to the public interest.

Under all the circumstances herein, it is obvious that petitioner is not at this time entitled to the relief sought. The petition is, therefore, dismissed.

ERWIN B. HOCK
Deputy Commissioner.

Dated: January 10, 1947.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

SAMUEL BRAUER)
T/a 1056 INN & PANTRY)
1238-42 Springfield Avenue)
Irvington, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-10, issued by the)
Board of Commissioners of the)
Town of Irvington.)
- - - - -)

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

Defendant pleads non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On November 21, 1946, an ABC inspector seized five 4/5 quart bottles labeled "Imported Auld Malcolm Brand Special Reserve Highland Liqueur", one 4/5 quart bottle labeled "Black & White Blended Scotch Whisky", and one 4/5 quart bottle labeled "Peter Dawson Special Blended Scotch Whisky", when preliminary tests of the contents thereof indicated that the liquor was not genuine as labeled. Subsequent analyses of the contents of the bottles in question by the Department chemist disclosed several differences in characteristics between the whiskey described on the labels and that in the bottles.

Defendant denies that he tampered with any of the bottles that were found to contain illicit alcoholic beverages. Nevertheless, a licensee is strictly responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall therefore suspend his license for a period of thirty days, less five days' remission for the plea entered herein, or a net suspension of twenty-five days. Re Lydon, Bulletin 731, Item 4.

Accordingly, it is, on this 13th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Town of Irvington to Samuel Brauer, t/a 1056 Inn & Pantry, 1238-42 Springfield Avenue, Irvington, be and the same is hereby suspended for a period of twenty-five (25) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - DROZDOWSKI v. SAYREVILLE (CASE NO. 2).

Case No. 2.

FRANK DROZDOWSKI,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH
OF SAYREVILLE,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Paul C. Kemeny, Esq., Attorney for Appellant.

George L. Burton, Esq. and Joseph T. Karcher, Esq., Attorneys for
Respondent.Francis N. Reps, Esq., Attorney for Rev. Alexander Maciejewski,
an Objector.

This is an appeal from the action of the respondent in refusing to issue a plenary retail consumption license to the appellant for premises at 238 MacArthur Avenue, Sayreville, N. J.

A review of the history of the litigation between the parties hereto, while not directly involved herein, is probably essential to a complete understanding of the matter.

On September 6, 1945, the respondent issued to the appellant a plenary retail consumption license for premises described as a frame building on the rear of 238 MacArthur Avenue for the licensing period expiring June 30, 1946. On September 28, 1945, the respondent, after charges served, revoked said license, which action was thereafter set aside by the New Jersey Supreme Court. See Drozowski v. Mayor etc., 133 N. J. L. 536. On March 13, 1946, on similar charges, the respondent again revoked appellant's license and in November 1946 the said revocation was set aside by the Supreme Court. See Drozowski v. Mayor etc., 135 N. J. L. ---.

On May 29, 1946, the appellant filed an application for a renewal of said license for the period July 1, 1946 through June 30, 1947. This application was made for a new building, 40 x 40 feet, erected on the front of the same lot on which the frame building, originally licensed, is erected. This application was denied on June 19, 1946, for reasons that may be summarized as follows:

- 1, 2, 3. This application is not technically a renewal application - the original license never having been transferred to the "new" building.
4. The increased size makes the new building undesirable.
- 5, 6, 7, 8, 9. The general location is too near a church, a school, a playground, and a proposed church (but not within the 200 feet provided by statute).
10. Appellant's attitude in resisting the efforts of respondent to revoke his license makes him undesirable as a licensee.
11. The license would not serve the best interests of the community.
- 12, 13. There are sufficient licenses in the community and in the neighborhood.

In view of the action of the Supreme Court in the second reversal of the respondent's attempted revocation, the appellant is not disqualified under the statute, which provides:

"A revocation shall render the licensee ineligible to hold or receive any other license, of any kind or class under this chapter, for a period of two years from the effective date thereof." R. S. 33:1-31.

And, while the quoted Section of R. S. 33:1-31 possibly did prohibit the issuance of the license on June 19, 1946, the disability was subsequently removed by the decision of the Supreme Court. This I believe is the matter the Supreme Court referred to in its opinion when Bodine, J., said:

"It is argued that the question of the revocation of the liquor license in question is moot since if it had not been revoked it would have expired by limitation on June 30, 1946; but since the question posed on this writ is whether the license was properly revoked we think the question is not moot since the revocation may affect the prosecutor's standing when making future applications for a license and, therefore the question must be decided." (Emphasis supplied.) Drozowski v. Mayor etc., 135 N. J. L. ---.

Since the application herein covers a new building and not the premises previously licensed, the application must be considered as an application for a new license and not as an application for a renewal of the license previously issued. R. S. 33:1-96. However no limitation of licenses was effective at this time in the Borough of Sayreville by municipal ordinance, and P.L. 1946, c. 147, which would have prevented the issuance of a new license in Sayreville, has been declared null and void by the New Jersey Supreme Court. Hence there is nothing in the State law or the municipal ordinance to prevent the issuance of a new license in Sayreville. This disposes of Reasons 1, 2 and 3 set forth above.

It would seem that the principal, if not the only possible, objection to the new building is that it is larger than the building originally licensed. This, in itself, is not a valid objection. The evidence would indicate that the old building may have been unsuitable but that the new building is suitable. This disposes of Reason 4.

The objections concerning the alleged proximity of the premises to a church, a school, a public park and recreational field certainly are not consistent with the apparent policy of the local issuing authority. The church and the school are about 400 feet away and on the other side of the street. It appears also that other licensees are at least as close to churches and, in fact, that one other licensee is located within 500 or 600 feet of the church mentioned in this appeal. The fact that proposed licensed premises are further than the statutory minimum distance of 200 feet from a church or school (R. S. 33:1-76) does not mean that an application for such premises must be granted. But where denial of an application is based upon the proximity of premises to a church or school, though farther than 200 feet therefrom, such denial to have merit should be pursuant to a reasonable and bona fide municipal policy to that effect. See Iacovone v. Gloucester Township, Bulletin 644, Item .

The church hereinabove referred to owns land on MacArthur Avenue directly opposite the appellant's premises, but at the present time this land is vacant. Other licensed premises are as near to public parks as appellant's premises. Under the circumstances, Reasons 5 to 9 inclusive appear to be without weight.

The appellant's personal qualifications were apparently considered and found sufficient when the original license was issued. I find no merit in Reason 10.

As to Reasons 11, 12 and 13: That the license would serve a public need or convenience was apparently decided by the respondent in the appellant's favor when it granted the original license. There is no change in the "location" and the change from the old building to the new building would seem to be a change for the better. Moreover, between the first and second "revocations" of the appellant's license, the respondent granted applications for four new plenary retail consumption licenses. On the date of the denial of the appellant's application for a 1946-47 license, the respondent granted six additional applications for new plenary retail consumption licenses. And from that date to the present the respondent has granted two further new plenary retail consumption licenses. Considering this "issuance" record, it seems apparent that the respondent has had no general policy of license limitation. In this connection, see Kirchies v. Clifton, Bulletin 66, Item 1; Skwara and Proneska v. Trenton, Bulletin 57, Item 7; Zebrowski v. Trenton, Bulletin 56, Item 9.

Under all the circumstances of this case, I conclude that the appellant has sustained the burden of proof in showing that the action of the respondent in denying his application was unreasonable and, hence, I must reverse the action of the local issuing authority. Cf. Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5.

Accordingly, it is, on this 14th day of January, 1947,

ORDERED that the action of the respondent be and the same is hereby reversed, and the respondent is directed and ordered to issue to the appellant a license for the current fiscal year, pursuant to the Conclusions herein.

ERWIN B. HOCK
Deputy Commissioner.

6. SCHEME DESIGNED UNILY TO INCREASE CONSUMPTION OF ALCOHOLIC BEVERAGES - LICENSEES MAY NOT SELL "TICKETS, CHECKS OR TOKENS" REDEEMABLE IN DRINKS - CONTRARY TO SOUND PUBLIC POLICY.

Mr. Leo Hurley,
Newark, N. J.

January 17, 1947

Dear Mr. Hurley:

You state that a group of young veterans in your neighborhood informally get together at a local tavern. You also relate that the members in your group are employed in various jobs, some being paid monthly, others semi-monthly and the rest weekly. You ask whether the tavern keeper may sell tickets or checks to your group at the beginning of each month so that, by the use thereof, they may spread out their drinks evenly throughout the month.

The Department wholly disapproves of any such scheme in which tavern keeper issues any tickets, checks or tokens redeemable in alcoholic drinks. If allowed, it would enable a tavern keeper to induce patrons to tie up their money in advance in contemplated drinking for the future, especially so since inevitably the tavern keeper would

cater to such business by granting "discounts" to anyone purchasing a book of tickets. Cf. Re Ciancio, Bulletin 510, Item 9, copy enclosed. It takes no great stretch of imagination to realize that such a practice, in time, can only do harm to the liquor business and the public at large. It is more important that veterans or any of their patrons have cash available for all purposes rather than tie up their money in tickets, checks or tokens in anticipation of future drinking.

Hence, I cordially suggest that you continue the informality of your get-togethers at the tavern in good fellowship but without expecting the licensee to engage in the above-mentioned practice. If a man has not got money in his pocket at the time to pay for a drink, then he should not buy drinks at all.

If you are aware of any liquor establishments in which the tavern keeper is engaging in the above practice, we shall appreciate your letting us know where such establishments are so that we may, in fairness to all concerned, advise the licensee to discontinue the practice.

Very truly yours,

ERWIN B. HOCK,
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - CHARGE OF
SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS NOLLE PROSSED.

In the Matter of Disciplinary)
Proceedings against)

AMERICAN LEGION,)
CAPTAIN JAMES MAC FARLAND POST #79,)
S.W. cor. Jones St. & Bordentown Rd.,)
Burlington, N. J.)

CONCLUSIONS
AND
ORDER

Holder of Club License CB-147 issued)
by the State Commissioner of Alcoholic)
Beverage Control)

-----)
William F. Wood, Esq., Appearing for Department of Alcoholic Beverage Control.

A charge was served upon defendant alleging that on November 16, 1946, it sold alcoholic beverages to persons not members or bona fide guests, in violation of Rule 8 of State Regulations No. 7 and R. S. 33:1-2.

On November 16, 1946, alcoholic beverages were sold in defendant's premises to two ABC agents. The attorney who was assigned to prosecute the charge on behalf of the Department has made a motion to nolle pros the charge because subsequent to the institution of these proceedings it was learned that one of the two agents who simultaneously entered the licensed premises was in fact a member of another Post of the American Legion.

In Bulletin 109, Item 10, it was ruled that:

"*** the conclusion has been reached that a Post of the Veterans of Foreign Wars may properly serve alcoholic beverages for immediate consumption on the licensed premises to

visiting members of the same national organization, provided such members carry proper credentials of their membership. They may be considered bona fide guests within the meaning of the Act and the Commissioner's rulings pursuant thereto, despite the fact that they are not actually accompanied at the time of their visit to the Post quarters by any individual holding membership in such Post, and pay for the alcoholic beverages served to them."

The same ruling would, of course, apply to an American Legion Post. Under the circumstances, the motion will be granted.

Accordingly, it is, on this 15th day of January, 1947,

ORDERED that the charge herein be and the same is hereby nolle prossed.

ERWIN B. HOCK,
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - CHARGES OF SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE; PERMITTING FEMALE EMPLOYEES TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF PATRONS; EMPLOYING DISQUALIFIED PERSON ON LICENSED PREMISES, AND PERMITTING KNOWN CRIMINAL ON LICENSED PREMISES, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF. SALE OF ALCOHOLIC BEVERAGES TO MINORS - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against

EDWARD MARKOWITZ, t/a 340 Club,
340 Federal Street, Camden, N.J.

Holder of Plenary Retail Consumption License C-10 for the fiscal year 1942-43, and now holder of Plenary Retail Consumption License C-10, issued to Edward Markowitz, t/a Wall St. Cafe, for the same premises by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

In the Matter of Disciplinary Proceedings against

EDWARD MARKOWITZ, t/a 340 Club,
340 Federal Street, Camden, N.J.

Holder of Plenary Retail Consumption License C-10 for the fiscal year 1944-45, and now holder of Plenary Retail Consumption License C-10, as set forth above.

In the Matter of Disciplinary Proceedings against

EDWARD MARKOWITZ, t/a 340 Club,
340 Federal Street, Camden, N.J.

Holder of Plenary Retail Consumption License C-10 for the fiscal year 1945-46, and now holder of Plenary Retail Consumption License C-10, as set forth above.

CONCLUSIONS
AND
ORDER

Carroll & Taylor, Esqs., by A. Millard Taylor, Esq., Attorneys for Defendant-licensee.
Abraham Merin, Esq., Harry Castelbaum, Esq., and Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

In the first case cited above, defendant pleaded not guilty to charges (1) and (2) which alleged, in substance, that he had sold alcoholic beverages on Sunday, in violation of a local ordinance, and that he had permitted females employed on his licensed premises to accept alcoholic beverages at the expense of or as a gift from a customer or patron, in violation of Rule 22 of State Regulations No. 20.

As to the first charge, investigators of the Department of Alcoholic Beverage Control testified that on the Sunday morning in question they observed Joseph Kember, brother-in-law of the licensee, enter the licensed premises with what appeared to be a Sunday newspaper under his arm. They further testified that a short time thereafter Kember emerged from the licensed premises, walked to the corner and handed a package to one Frank O'Brien. The package contained two bottles of beer which were wrapped in a newspaper. Kember testified that he had brought the beer from his home, stopped at the licensed premises where he was then operating a sandwich concession, took the beer with him when he left the licensed premises and gave it to O'Brien, who was an old friend. Considering all the evidence, I conclude that the Department has failed to sustain the burden of proof and, hence, I shall dismiss the charge.

As to the second charge, the investigators testified that they saw sailors buying drinks for three women in defendant's premises. However, the evidence discloses that one of the women was merely a patron in defendant's premises at that time although she had been employed at other times as an entertainer. The second woman admitted that a sailor had purchased drinks for her, but testified that the sailor was her husband. It is apparent that the "hostess" regulation was not intended to prevent a husband from buying a drink for his wife. The third woman testified that she had paid for the drinks. Upon consideration of all the testimony, I conclude that the Department has failed to sustain the burden of proof and, hence, shall also dismiss this charge.

In the second case recited above, defendant also pleaded not guilty to charges (1) and (2) which alleged in substance that, in violation of R.S. 33:1-26, he knowingly employed a person who was disqualified from said employment by reason of the fact that said person had been convicted of a crime involving moral turpitude and that he allowed upon his licensed premises a known criminal, in violation of Rule 4 of State Regulations No. 20.

The undisputed fact is that on August 11, 1944, one Frank _____, who had been convicted in another State of operating a disorderly house and sentenced to serve a prison term in that State, was observed tending bar on defendant's licensed premises. However, at the hearing held upon said charges, defendant denied that he had any knowledge of Frank's criminal record. There is no testimony that the criminal record of Frank, who apparently was a temporary employee helping out during the rush period, was ever called to the attention of the defendant and, hence, I must also dismiss the charges in the second case.

In the last-mentioned case, defendant pleaded non vult to charges alleging that on March 6, 1946, he sold alcoholic beverages to three minor sailors in violation of R.S. 33:1-77, and that on said

date he permitted the minors to consume alcoholic beverages on his licensed premises in violation of Rule 1 of State Regulations No. 16.

The sailors were, respectively, eighteen, nineteen and twenty years of age, and each consumed one glass of beer purchased from a waitress and a second glass of beer purchased from the licensee.

Defendant has a very unsatisfactory record. In April 1937, his license was suspended by the local issuing authority for ten days after he had been found guilty of charges which included a charge of selling alcoholic beverages to a woman directly over the bar. In July 1942, his license was suspended for a period of sixteen days after he had been found guilty of selling alcoholic beverages to a minor and selling alcoholic beverages to a woman directly over the bar. This, therefore, is his second offense for selling alcoholic beverages to minors. Although there are no aggravating circumstances in the present case, I shall, because of his prior record, suspend defendant's license for a period of thirty days.

Although these proceedings were instituted during the prior licensing periods, they do not abate but remain fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 14th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Edward Markowitz, t/a Wall St. Cafe, for premises 340 Federal Street, Camden, be and the same is hereby suspended for a period of thirty (30) days, commencing at 7:00 a.m., January 20, 1947, and terminating at 7:00 a.m., February 19, 1947.

ERWIN B. HOCK,
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

FRANK MANZIANO,
t/a Munzy's Bar & Grill,
597 West Side Avenue,
Jersey City 4, N. J.)

CONCLUSIONS
AND
ORDER)

Holder of Plenary Retail Consumption)
License C-66, issued by the Board of)
Commissioners of the City of Jersey City)

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Frank Manzano, Defendant-licensee, Pro Se.

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

Defendant pleads non vult to a charge alleging that he possessed a 4/5 quart bottle of "Black & White Blended Scotch Whisky", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R.S. 33:1-50.

On November 7, 1946, an ABC agent tested the contents of open liquor bottles at the defendant's premises and seized the bottle in

question. Upon chemical analysis, it was found that the contents of this bottle varied substantially in solid content and acids when compared with analysis of a genuine sample of the same product. The licensee denied any knowledge of the violation. Nonetheless, the licensee is strictly responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Since no aggravating circumstances appear to have attended the violation and the defendant has no prior record, the usual 15-day penalty will be imposed. Re Rudolph, Bulletin 680, Item 1. Five days will be remitted for the plea, leaving a net suspension of ten days. Cf. Re Gelb, Bulletin 741, Item 8.

Accordingly, it is on this 17th day of January, 1947,

ORDERED, that Plenary Retail Consumption License C-66, issued by the Board of Commissioners of the City of Jersey City to Frank Manzano, t/a Munzy's Bar & Grill, 597 West Side Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK,
Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

AARON LOSS,
64 Ocean Avenue,
Jersey City 5, N.J.

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption
License C- 339, issued by the Board
of Commissioners of the City of Jersey
City.

Aaron Loss, Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic
Beverage Control.

The defendant pleaded non vult to a charge alleging that he possessed a 4/5 quart bottle labeled "Ballantine's Liqueur Blended Scotch Whisky", and a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", both of which contained alcoholic beverages not genuine as labeled, in violation of R.S. 33:1-50.

On November 25, 1946, an ABC agent seized the two bottles in question. Preliminary tests of the contents thereof indicated that they varied substantially from genuine samples of the same products. Chemical analyses by the Department chemist confirmed the agent's preliminary tests.

Defendant has a previous adjudicated record. Effective July 17, 1939, defendant's license was suspended for three days by the local municipal authority on a charge of violation of an ordinance, in that he sold liquor during prohibited hours. In view of the fact, however, that over seven years have elapsed since the imposition of

the aforesaid suspension, I shall not take it into consideration in fixing the penalty for the violation herein. Under all the circumstances, I shall suspend defendant's license for a period of fifteen days, less five days' remission for the plea of non vult, or a net suspension of ten days. Re Sogaro, Bulletin 720, Item 5.

Accordingly, it is, on this 17th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-339, issued by the Board of Commissioners of the City of Jersey City to Aaron Loss, for premises 64 Ocean Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK,
Deputy Commissioner

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - WHISKEY REBOTTLED CONTRARY TO TERMS OF LICENSE - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

HYMAN POLONSKY,
301 Mulberry Street,
Newark 5, N. J.

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption
License C-424, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Newark.

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Hyman Polonsky, Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic
Beverage Control.

Defendant pleads non vult to the following charges:

"1. On Tuesday, December 3, 1946, between the hours of 12:30 a.m. and 1:00 a.m., and again on Tuesday, December 10, 1946, between the hours of 12:30 a.m. and 1:00 a.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38, which prohibits any such type of sale or delivery before 9:00 a.m. or after 10:00 p.m. on any weekday.

"2. On said Tuesday, December 3, 1946, between the hours of 12:30 a.m. and 1:00 a.m., you sold an alcoholic beverage not pursuant to and within the terms of your license as defined by R.S. 33:1-12(1) in that you made a sale of whiskey for consumption off the licensed premises in other than the original container, thereby violating R.S. 33:1-2.

"3. On said Tuesday, December 3, 1946, between the hours of 12:30 a.m. and 1:00 a.m., you, not being the holder of any license so to do, bottled an alcoholic beverage in that you refilled a bottle with whiskey for the purpose of sale, such bottling being in violation of R.S. 33:1-78."

The departmental file discloses that on the early morning of Tuesday, December 3, 1946, an ABC investigator visited defendant's licensed premises. At 12:35 a.m., the investigator observed a woman purchase a 4/5 quart bottle of wine from defendant, and at 12:38 a.m., he observed a man purchase a 4/5 quart bottle of whiskey from defendant. After these patrons had left the premises the investigator ordered a half-pint of whiskey which defendant poured from an original bottle into a twelve-ounce beer bottle for him. Defendant suggested to the investigator that, if questioned concerning the bottle of liquor which he had in his possession, he should state that he purchased the whiskey at 7:00 p.m. Again, on December 10, 1946, about 12:35 a.m., the same investigator in the presence of another ABC investigator purchased a pint of Three Feathers Blended Whiskey from defendant.

Defendant's license was suspended by the State Commissioner for twenty days, effective September 1, 1943, as a result of his plea of guilty to having six bottles of illicit liquor in his possession. Re Polonsky, Bulletin 582, Item 2. Under the circumstances, I shall suspend defendant's license for a period of forty-five days, less five days' remission for the plea entered herein, or a net suspension of forty days.

Accordingly, it is, on this 17th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-424, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Hyman Polonsky, for premises 701 Mulberry Street, Newark, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 a.m., January 27, 1947, and terminating at 2:00 a.m., March 8, 1947.

ERWIN B. HOCK,
Deputy Commissioner

12. STATE LICENSES - NEW APPLICATIONS FILED.

Ben Lomond Corporation
26 Journal Square, Suite 1511
Jersey City, N. J.

Application for Plenary Wholesale License filed January 14, 1947.

Anthony Sacca,
t/a Anthony Bottling Co.
South Side of West Broad St.
Palmyra, N. J.

Application for State Leverage Distributor's License filed
January 16, 1947.

Sidney Frankel,
t/a Standard Distributing Company,
1311-1313 Baltic Avenue
Atlantic City, N.J.

Application for Plenary Wholesale License filed January 17,
1947.

Carl Nami,
Rear 40 College St.
Trenton, N.J.

Application filed January 20, 1947 for transfer of State
Beverage Distributor's License SBD-4 from Leo A. Moore, t/a
L. A. Moore Distributing Co., Rear 725 East State St.,
Trenton, N. J.

Savage Truck Line, Inc.
4201 Dell Ave.
North Bergen, N.J.

Application for Transportation License filed January 22, 1947.

Ernest B. Hook

Deputy Commissioner.