

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

BULLETIN 428

OCTOBER 25, 1940.

1. DISCIPLINARY PROCEEDINGS - FRONT - REAL OWNER DISQUALIFIED FOR LACK OF FIVE YEARS' RESIDENCE - LICENSE SINCE TRANSFERRED TO QUALIFIED CORPORATION SUBJECT TO THESE PROCEEDINGS - LICENSE SUSPENDED 10 DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against)

JOSEPH PAGLIUGHI,)
 T/a Hotel Savoy,)
 N/S Landis Avenue and)
 Union Road,)
 Buena Vista Township,)
 P.O. Vineland 2, N. J.,)

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

HOTEL SAVOY, INC.,)
 N/S Landis Avenue and)
 Union Road,)
 Buena Vista Township,)
 P.O. Vineland R.F.D., N.J.)

CONCLUSIONS
AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
 Solve Tusso, Esq., Attorney for the Licensee.

Licensee pleaded guilty to (1) making a false statement in his application for license in that he denied that any individual other than himself had any interest in his license, whereas in truth and fact Bartolomeo Poggioli had such an interest; and (2) aiding and abetting Bartolomeo Poggioli to exercise the rights and privileges of his license.

It was admitted at the hearing that Poggioli lacked the requisite five years' residence in this State and for that reason he procured Pagliughi to obtain a license and hold it for him.

It further appears from the evidence that since the institution of these proceedings the license has been transferred to Hotel Savoy, Inc. upon the express condition that it be subject to any penalty herein imposed.

Under the circumstances of this case, the license will be suspended for ten days. Cf. Re Silver Palm Corporation, Bulletin 422, Item 8.

Accordingly, it is, on this 17th day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-8, heretofore issued to Joseph Pagliughi by the Township Committee of

the Township of Buena Vista, and transferred to Hotel Savoy, Inc., be and the same is hereby suspended for a period of ten (10) days, effective October 21, 1940, at 4:00 A.M.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - SECOND VIOLATION AS TO SALES OUT OF HOURS AND PERMITTING PERSONS ON PREMISES AFTER HOURS - FIRST VIOLATION AS TO PROHIBITED SCREENS - 20 DAYS' SUSPENSION ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN J. REDDAN,
T/a Old Homestead Tavern,
5610 Park Ave.,
West New York, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-79, issued by the Board of Commissioners of the Town of West New York.)
- - - - -)

John J. Reddan, Pro Se.
Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of (1) conducting his licensed business on September 5, 1940 after 4:00 A.M.; (2) suffering and permitting persons other than the licensee, his actual employees and agents, in or upon his licensed premises on said date after 4:00 A.M.; and (3) failing to remove all shades, screens and other obstructions so as to permit a clear view of the bar in the licensed premises on the date and during the hours aforesaid, in violation of a resolution adopted by the Board of Commissioners of the Town of West New York on December 15, 1933, as amended July 11, 1939.

The usual penalty for each violation is five days.

It appears, however, that this is not the licensee's first offense. On September 17, 1938 he was found guilty of conducting the licensed business after 3:00 A.M. and suffering and permitting persons other than himself, his actual employees and agents, in and upon the licensed premises after 3:00 A.M. on August 5, 1938, in violation of the same resolution, as amended December 22, 1936. The license then held by him was suspended for five days on each charge, making a total of ten days. Re Reddan, Bulletin 269, Item 2.

The penalty on the first two charges will, therefore, be doubled, plus a penalty of five days on the third charge.

By entering this plea in ample time in advance of the date set for hearing, the licensee has saved the Department the time and expense of proving its case. The license will, therefore, be suspended for a period of twenty-five days, less five days for the guilty plea, making a total of twenty days in all.

Accordingly, it is, on this 17th day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-79, heretofore issued to John J. Reddan, T/a Old Homestead Tavern, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of twenty (20) days, effective October 21, 1940, at 4:00 A. M.

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEE - SALES MADE AND PREMISES OPEN DURING PROHIBITED HOURS - 5 DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against
VINCENZA ALBERTI,
762½ Broadway,
Newark, New Jersey,
Holder of Plenary Retail Consumption License C-211, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
-----)

CONCLUSIONS
AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.
Vincenza Alberti, Pro Se.

The licensee has pleaded guilty to charges that on Sunday, September 8, 1940, during prohibited hours, she (1) sold alcoholic beverages on her licensed premises, and (2) her licensed premises were open, both in violation of Section 1 of Newark Ordinance No. 3930.

The usual penalty for each violation is five days, or a total of ten days.

By entering the plea of guilty the licensee has saved the Department the time and expense incident to proving the Department's case. The license will, therefore, be suspended for five (5) days instead of the usual ten.

Accordingly, it is, on this 18th day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-211, heretofore issued to Vincenza Alberti by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective October 20, 1940, at 3:00 A. M.

E. W. GARRETT,
Acting Commissioner.

4. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

October 19, 1940

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will be made on or about Friday, November 8, 1940. New items and changes in old items must be filed at the offices of this Department not later than Saturday, October 26, 1940.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to retail licensees.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - DAME v. FORT LEE.

WALTER DAME,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE)	
BOROUGH OF FORT LEE,)	
)	
Respondent)	
-----)	

Joseph H. Gaudielle, Esq., by Marconi V. A. Caporale, Esq.,
Attorney for Appellant.
Lawrence A. Cavinato, Esq., Attorney for Respondent.
Leroy B. Huckin, Esq., Attorney for Objectors.

During the last (1939-40) licensing year, Walter Dame held a plenary retail consumption license for his roadstand at 1365 Palisade Avenue, Borough of Fort Lee. Some 200 feet to the south, Paul Woerz conducted a similarly licensed roadstand at 1345 Palisade Avenue in the Borough.

In May 1940 Dame, having acquired Woerz's nearby stand, applied to the Fort Lee Borough Council for a transfer of his (Dame's) then existing license from 1365 Palisade Avenue to his thus newly acquired stand at 1345 Palisade Avenue. In June 1940 the Borough Council, after several hearings, denied the application, whereupon Dame took the present appeal.

So far as appears from the evidence, the reasons for such denial were: (1) that the total number of liquor licensed roadstands in this vicinity is socially undesirable and depreciates general property values there, and that hence all effort should be made to alleviate rather than aggravate such a condition; (2) fear of increase in traffic hazard from the proposed transfer; and (3) objections from members of the public against the transfer.

As to (1): When the transfer in question was sought, there were, in total, eight liquor licensed roadstands within a

stretch of some 1800 feet on Palisade Avenue in the Borough, there being, in addition to Dame's and Woerz's aforementioned stands, two other such stands to the north and four others to the south along the highway.

Aside from such stands, this vicinity is largely open, undeveloped country with most of the land belonging to the Borough. Originally zoned for business, it was changed in 1939 to a "multi-family" residential zone, but with all the liquor licensed roadstands being able to continue in existence as valid, non-conforming uses (R. S. 40:55-48). Apparently the only residence as yet in the vicinity is a two-family house alongside the stand at 1345 Palisade Avenue to which appellant sought transfer.

Now, this Department, realizing the general undesirability of granting liquor licenses to roadstands, specifically cautioned local issuing authorities to grant such a license only after careful consideration. Re Leed, Bulletin 178, Item 3; and see Notice to Municipal Issuing Authorities, Bulletin 76, Item 1.

Hence I regard as wholly salutary any present policy by respondent to better rather than aggravate the condition in the vicinity in question as regards the number of liquor licensed roadstands there. However, salutary as any such policy may be, it must necessarily be reasonably and not arbitrarily applied.

Thus, were appellant actually located outside this vicinity of roadstands and seeking to transfer into it or if, being (as he is) within the area, he were seeking to transfer to a site which would further extend the present line of roadstands, respondent would, I believe, be reasonable in denying such a transfer and I would hence sustain such a denial.

However, such is here not the case. To the contrary, appellant, as proprietor of a licensed roadstand within the area, was seeking transfer to a similarly licensed roadstand within the very same area and being but some 200 feet from appellant's place. Moreover, the transfer would in effect have actually cut down the number of licensed roadstands from eight to seven. See Re Clayton Bulletin 250, Item 11.

In view of such facts, it thus appears that the proposed transfer would not in anywise have aggravated the condition as regards the number of liquor licensed roadstands in this vicinity but would, if anything, have alleviated it.

Hence respondent's first ground for the denial of such transfer is here without merit. Cf. Gross v. Landis, Bulletin 386, Item 5.

As to (2): Palisade Avenue is apparently a heavily traveled highway. As such, the various licensed roadstands along the way quite naturally contribute to the traffic problem. However, appellant has a parking lot in the rear of his premises capable of accommodating thirty-five or forty automobiles and enough space between his roadstand and the highway to accommodate an additional nine or ten automobiles if parked straight in. In addition, he states that he has a man to supervise the parking and to direct incoming and outgoing traffic.

Hence I do not see how the proposed transfer will cause any undue increase in traffic hazard, especially since, at appellant's original roadstand at 1365 Palisade Avenue - i.e., at the

intersection of that and Harmon Avenues - patrons apparently parked right out on the road on Harmon Avenue.

Ground (2) is thus without merit.

As to (3): The only person to appear below against the transfer was an objector who owns and also lives at the two-family house alongside the roadstand at 1345 Palisade Avenue. However, at the hearing on appeal not only she but her tenant in the house and also two other persons appeared as objectors.

Since the objections of these last two persons are apparently similar to those in grounds (1) and (2) considered above, their objections are, for the same reasons as there expressed, without merit. Hence only the objections of the owner of the two-family house and her tenant need here be considered.

In reviewing the objections of such owner and tenant, I find that, in essence, they are, as persons whose home is next door to the roadstand, protesting against the things which generally attend operation of any roadstand of this kind - cooking odors, disturbance at night from the noise and light of automobiles being driven into, parked at and driven out of the premises, etc. However, there is no substantial evidence that the roadstand is being operated in any unusual way.

In weighing such objection, it must be noted that the two-family house is the only residence in this vicinity which thus far seems given over mostly to roadstands; that such house was built by its present owner in 1935 when the stand in question was already in existence; that hence such owner voluntarily located herself alongside that stand and, in fact, herself worked there in 1936 for its then proprietor; that the stand has been licensed for sale of liquor since 1937 or 1938; that, as regards the tenant, she actually moved into her present home when the stand was not only in existence but also licensed to sell liquor.

In view of all the facts, I do not believe that the objection of the owner of the two-family house and of her tenant justify outright refusal to transfer appellant's license to the already licensed stand at 1345 Palisade Avenue.

Hence I conclude that such transfer should have been granted.

Although appellant's 1939-40 license, which he sought to transfer to the roadstand in question, has since expired, he has, nevertheless, on file since June or July last, an application for renewal of his license at 1365 Palisade Avenue. Hence the instant decision is not moot but is dispositive of the same issues which may arise should appellant obtain the renewal and thereafter seek to transfer such license to the premises in question. Shelby v. Trenton, Bulletin 129, Item 1; Gross v. Landis, supra; Crest Tavern, Inc. v. Wildwood Crest, Bulletin 415, Item 13; Felzot v. Palmyra, Bulletin 421, Item 9; Purpuro v. Passaic, Bulletin 425, Item 1.

If, on any such application for transfer, respondent is troubled by the aforesaid objection of the occupants of the two-family house, it may well, to ensure those occupants against undue disturbance by the operation of the roadstand, impose reasonable conditions upon the transfer to achieve that end.

Accordingly, it is, on this 19th day of October, 1940,

ORDERED, that the action of respondent in refusing transfer of appellant's plenary retail consumption license for 1939-40 from 1365 Palisade Avenue to 1345 Palisade Avenue, Borough of Fort Lee, be and the same is hereby reversed, but since the license in question has already expired, no order will be entered herein requiring the respondent to transfer such license. Shelby v. Trenton, supra.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
JOSEPH AGOSTINI,
T/a Agostini Hotel,
624-626 Pacific Avenue,
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the City of Atlantic City.

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.
Joseph Agostini, Pro Se.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on September 20, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

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

Accordingly, it is, on this 19th day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-42, heretofore issued to Joseph Agostini, trading as Agostini Hotel, by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for a period of five (5) days, effective October 24, 1940, at 6:00 A.M.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - SLOT MACHINE ON LICENSED PREMISES - 5 DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against)

PHILIP S. CULBERT, T/a Phil's Place, 174 Main Street, Matawan, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Matawan.)

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Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

Philip S. Culbert, Pro Se.

The licensee has pleaded guilty to a charge that on September 18, 1940 he possessed, allowed, permitted and suffered, on his licensed premises, a slot machine, in violation of Rule 8 of State Regulations No. 20.

The penalty for this violation is ten days. Re Morrissey & Walker, Inc., Bulletin 423, Item 8.

By entering the plea the licensee has saved the Department the time and expense of proving its case. The license will, therefore, be suspended for five days instead of ten days.

Accordingly, it is, on this 19th day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued to Philip S. Culbert, trading as Phil's place, by the Mayor and Council of the Borough of Matawan, be and the same is hereby suspended for five (5) days, effective October 25, 1940, at 1:00 A.M.

E. W. GARRETT, Acting Commissioner.

8. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS.Re: Case No. 346

October 21, 1940

Applicant seeks a determination of whether he is eligible to receive a solicitor's permit from this Department.

His criminal record is as follows:

<u>Date Arrested</u>	<u>Offense</u>	<u>Disposition</u>
1. 1911	Vagrancy	10 days
2. 1912	Carrying concealed weapons	6 months
3. 1912	Burglary and grand larceny	1 year and 9 months
4. 1917	Burglary and grand larceny	10 years and 6 months
5. 1933	Passing forged U. S. Government checks	1 year and 1 day
6. 1935	Assault and battery	3 months
7. 1936	Breaking, entering and larceny	6 months
8. 1939	Assault and battery	1 year to 15 months

It is necessary to examine only into the facts of the crimes committed in 1936. Breaking, entering and larceny ordinarily involve moral turpitude. Re Case No. 304, Bulletin 363, Item 7. Applicant's explanation that he deliberately broke into a tavern in the early morning hours and stole several hundred dollars worth of liquor because the tavern-keeper owed him some money, presents no facts which relieve the offense of the element of moral turpitude.

It is recommended that applicant be advised that he is ineligible to hold a solicitor's permit in this State.

Samuel B. Helfand,
Attorney.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

9. CANCELLATION PROCEEDINGS - RETAIL LICENSE HELD BY CORPORATION IN WHICH A STOCKHOLDER, FORMERLY HOLDING MORE THAN 10% OF STOCK, LACKED RESIDENTIAL QUALIFICATION - FACTS FULLY DISCLOSED IN APPLICATION FOR LICENSE - SITUATION CORRECTED - PROCEEDINGS DISMISSED.

In the Matter of Proceedings)	
to Revoke or Cancel Plenary)	
Retail Consumption License)	
No. C-54, issued to)	CONCLUSIONS
)	AND ORDER
THE BERGEN-COURT TAVERN, INC.,)	
37-39 Hudson Street,)	
Hackensack, N. J.,)	
)	
By the City Council of the City)	
of Hackensack.)	
-----)	

Martin Klughaupt, Esq., Attorney for Defendant-Licensee.
Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Notice was served on the defendant, a corporation, to show cause why its plenary retail consumption license for its tavern in Hackensack should not be revoked or cancelled on the charge that Hans Grether, then holder of more than 10% of its stock (being in fact a 33-1/3% holder) was not a five years' resident of New Jersey and that hence the corporation was not qualified under the Alcoholic Beverage Law (R. S. 33:1-12.1, 25) to obtain any retail liquor license in this State.

The defendant admits the truth of the said charge.

However, it appears that the defendant was seemingly unaware that, to obtain its license, all holders of more than 10% of its stock were required to have five years' residence in New Jersey; that in its application for license it frankly revealed that Hans Grether was not such a five years' resident; that, since learning of the said requirement, Grether has actually conveyed to another (and apparently qualified) stockholder in the corporation all but 10% of his stock, thus qualifying the defendant to hold a retail liquor license at the present time.

In view of the defendant's ready admission of the facts, its apparent lack of any fraudulent intent, and the bona fide correction, the instant case calls for neither cancellation nor penalty. For similar ruling see Re Dissyk, Bulletin 411, Item 5.

Accordingly, it is, on this 22nd day of October, 1940,

ORDERED, that the present proceeding be and is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - BUSINESS SOLD TO ALIEN WHO THEREAFTER OPERATED UNDER LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM - LEAVE TO APPLY, AFTER 10 DAYS, FOR LIFTING SUSPENSION IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against CHARLES LINDEMAN, 733 Sixth Street, Union City, N. J., Holder of Plenary Retail Consumption License No. C-165, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

John J. Meehan, Esq., Attorney for Defendant-Licensee. Benjamin M. Horwech, Esq., Attorney for Anna Stankewich. Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant is charged in substance with:

- (1) Permitting Anna Stankewich to operate under his plenary retail consumption license since August 13, 1940, in violation of the Alcoholic Beverage Law (R. S. 33:1-26, 52). (2) Having failed, after conveying his liquor business to Anna Stankewich on that date, to notify the Union City Board of Commissioners in writing of such change within ten days after its occurrence, as required by the Alcoholic Beverage Law (R. S. 33:1-34).

The defendant pleads "nolo contendere" to these charges. He admits that he actually sold his liquor business to Anna Stankewich on the named date and thereafter permitted her to operate it and merely retained the license in his own name as a "front" for her. It is further admitted that he gave no notice of such sale to the Union City Board of Commissioners.

The defendant thus retained the license as a "front" for Anna Stankewich after the sale of the business to her (and failed to notify the Board of Commissioners of such sale) because Anna Stankewich, born in a place which was then part of Russia, is apparently a Russian citizen and hence not qualified to hold any retail liquor license in New Jersey. See R. S. 33:1-25 and Re Aliens, Bulletin 94, Item 15 (requiring, in sum, that a retail liquor licensee be either an American citizen or else an alien from certain foreign countries - of which Russia is not one - which have a reciprocal trade treaty with the United States).

Since there is no adequate proof that this "front" situation has been corrected, the license must, to prevent continued operation of the business in this unlawful manner, be suspended for the balance of its term. However, in view of the defendant's plea and his admission of the pertinent facts, such suspension may, on proper showing of a bona fide correction, be lifted but, in penalty for the said violations, not before at least ten days of such suspension shall have been served. See Re King, Bulletin 404, Item 5, and Re Margrie, Bulletin 423, Item 10, similarly dealing with the

analogous case of a person holding a license as a "front" for someone disqualified because of lack of the required five years' residence in this State. Cf. Re Silver Palm Corp., Bulletin 422, Item 8.

Accordingly, it is, on this 23rd day of October, 1940,

ORDERED, that Plenary Retail Consumption License No. C-165, heretofore issued by the Board of Commissioners of the City of Union City to Charles Lindeman for 733 Sixth Street, Union City, be and the same is hereby suspended for the balance of its term, effective October 28, 1940, at 3:00 A.M.; and it is further

ORDERED that, if it satisfactorily appears, on verified petition and proper proof, that the "front" situation herein has been fully corrected, the said suspension will be lifted, provided, however, that in no event shall such suspension be lifted prior to the expiration of ten days from the effective date of the suspension.

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - SALES MADE AND CUSTOMERS PERMITTED ON PREMISES DURING PROHIBITED HOURS - TOTAL SUSPENSION OF 10 DAYS ON PLEA OF GUILTY.

In the Matter of Disciplinary Proceedings against)

JOHN ZUCHNOWSKI and HENRY CHRZANOWSKI,)
249 Avenue E,)
Bayonne, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-106 issued by the Board of Commissioners of the City of Bayonne.)
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John Zuchnowski and Henry Chrzanowski, Defendant-Licensees, by John Zuchnowski, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensees have pleaded guilty to charges of (1) selling a bottle of Duff Gordon "Nina" Sherry below Fair Trade; (2) selling alcoholic beverages before 12:00 o'clock noon on Sunday, September 8, 1940; and (3) failing to close, lock and make the licensed premises inaccessible to persons other than themselves and their employees during prohibited hours on said date, in violation of an ordinance adopted by the Board of Commissioners of the City of Bayonne on June 2, 1936, as amended January 2, 1940.

The usual penalty for the first charge is ten days. The usual penalty for each of the other charges is five days, or a total of twenty days.

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

Accordingly, it is, on this 23rd day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-106, heretofore issued to John Zuchnowski and Henry Chrzanowski by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for a period of ten (10) days, effective October 28, 1940, at 3:00 A. M.

E. W. GARRETT,
Acting Commissioner.

12. SEIZURES - CONFISCATION PROCEEDINGS - ALCOHOLIC BEVERAGES SEIZED ON PREMISES WHERE UNLAWFUL SALE OF LIQUOR OCCURS ARE UNLAWFUL PROPERTY - SEIZED PROPERTY FORFEITED.

In the Matter of the Seizure)	
on March 12, 1940 of approxi-)	Case No. 5713
mately 70 bottles of assorted)	
alcoholic beverages from)	
Agostino Miele, at premises)	ON HEARING
located on Elizabeth Avenue,)	CONCLUSIONS AND ORDER
in the Borough of South Bound)	
Brook, County of Somerset and)	
State of New Jersey.)	

Frederick I. Pelovitz, Esq., Attorney for Agostino Miele.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On March 12, 1940 investigators of this Department seized, as the result of a "buy", a quantity of alcoholic beverages from Agostino Miele's home on Elizabeth Avenue, South Bound Brook. Agostino Miele at the time was the holder of a liquor license for premises across the street from his home, which license was then under suspension. He was arrested, charged with possession and unlicensed sale of alcoholic beverages. As the result of the seizure, disciplinary proceedings were instituted against Miele by the Township Committee of the Township of Franklin and his license was revoked. On appeal, I sustained the action of the Township Committee. Miele v. Franklin, Bulletin 410, Item 8.

At the present hearing, Agostino Miele requested that the alcoholic beverages be returned to him so that he, in turn, could return them to the wholesalers and receive credit therefor. He does not dispute the facts pertaining to the seizure. He stated that, as a result of the revocation of his license, he is now without employment; that he is in poor financial circumstances; and that the return of the whiskey by him to the wholesalers would ease his debt burden.

Any alcoholic beverages sold or possessed with intention to sell without a license is illicit, and hence unlawful property. R. S. 33:1-1(i and y). All liquor found on the premises was unlawful property and subject to forfeiture. R. S. 33:1-66.

Licensees must learn to obey the Alcoholic Beverage Law. In the present case, Miele, while under a thirty-day suspension for a previous violation, attempted to "chisel" on that suspension by doing business, not from the licensed premises, but from his home. While so doing, he was apprehended. A sale of alcoholic beverages made while a license is under suspension strikes at the very heart of enforcement. Miele gambled and was caught. The seized liquor will be forfeited.

Accordingly, it is ORDERED that the seized property set forth in Schedule "A", annexed hereto, be and the same is hereby forfeited in accordance with the provisions of R. S. 33:1-66, 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.

E. W. GARRETT,
Acting Commissioner.

Dated: October 23, 1940.

SCHEDULE "A"

Approximately 70 bottles of assorted
alcoholic beverages

13. MUNICIPAL REGULATIONS - JAG LISTS - THE ESSENTIAL ELEMENTS.

October 24, 1940

Mr. C. A. Bond, Jr.,
Borough Clerk,
Sea Girt, N. J.

My dear Mr. Bond:

There is nothing in the State Alcoholic Beverage Law or Regulations which prohibits licensees from selling alcoholic beverages to an incurable alcoholic, so long as he is sober at the time of the sale. Rule 1 of Regulations No. 20, as you have advised the Council, merely prohibits sales to persons actually or apparently intoxicated, which means that unless the customer is intoxicated at the time the alcoholic beverages are sold or delivered to him, there is no violation.

The only statutory method I find for an adjudication that a person is an habitual drunkard is that in R. S. 3:7-35 et seq., providing for a determination of mental incompetency because of habitual drunkenness, but concerned primarily with the administration of the incompetent's estate as distinguished from his regeneration or social readjustment.

Your Council, however, as the municipal governing body, may make appropriate regulations. It has the power (under R. S. 33:1-40) to regulate the conduct of businesses licensed to sell alcoholic beverages at retail. Pursuant to this power, it may designate persons to whom sales are prohibited, and provide the necessary administrative procedure for enforcement, subject, of course, as with all other regulations of the conduct of licensed businesses, to the approval of the State Commissioner first obtained.

Proposed solutions have come before the Department from two municipalities. See Re Matawan, Bulletin 67, Item 3; Re Netcong, Bulletin 115, Item 12. In both cases, it was sought to accomplish essentially the result you have in mind. The local authorities had before them the problem of controlling sales of alcoholic beverages to those whose mental or moral or physical condition made the consumption of alcoholic beverages on their part socially undesirable. A grave and serious problem, to be sure. The regulations they

enacted were, however, inadequate. The procedure was arbitrary. Means were provided for adding persons to the list of those to whom no sales were to be made, but not for taking them off. There was nothing in the Netcong case indicating the conduct for which persons were to be included. In Matawan, there was no provision for notifying the licensees.

There occur to me a number of essential elements and I put them down as they come to mind. They are only the high spots, and are not concerned with administrative detail. That must be handled by each municipality in the manner it sees fit and as its local facilities allow.

First of all, there must be a complaint in writing by a person or persons in interest and made to some specifically designated municipal officer or body. The matter must be set down for hearing. The person complained against must be given written notification of the subject matter of the hearing. All other persons interested also must be notified to appear. At the hearing, each must be given full and equal opportunity to present his side of the case. The body hearing the complaint must then determine, in the light of the facts adduced and the testimony taken, whether or not the complaint is well-founded.

Moreover, some municipal official must be charged with the performance of the necessary ministerial duties. The complainant and the person complained against must be notified. Lists must be kept as a matter of public record and published. Licensees must be served and the service acknowledged.

Furthermore, there must be provision for taking names off the list. My suggestion is that this be commenced by petition on the part of some person in interest for rehearing. Notice of hearing and of the result must here also be given to all parties concerned as well as to the original complainant. I do suggest, however, that petition for rehearing be not entertained until a specified time has elapsed since the name was added to the list in order that the municipal body charged with holding the hearings be saved from constant appeals.

In conjunction with all this, the Council must, of course, also set out the purpose sought to be accomplished, thus to illustrate the grounds for complaint the Council deems adequate and the conduct for which names may be included. Lastly, as a matter of practical enforcement and in order to put teeth in the regulation, there must be provision for punishment for violation.

I shall be glad to go over any regulation that you may prepare, before its introduction, to offer such comments or suggestions as appear necessary. If all these matters of common fairness to both licensees and those who are afflicted, are carefully thought out and an equitable solution is provided, it seems to me that some benefit may be accomplished. I shall watch the experiment with great interest.

Very truly yours,

E. W. GARRETT,
Acting Commissioner.

14. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - SALES MADE AND PREMISES OPEN DURING PROHIBITED HOURS - TOTAL SUSPENSION OF 10 DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against
 ODILE HUBERTINE MALMENDIER,
 Executrix of the Estate of
 John Malmendier, Sr.,
 42 Plauderville Ave.,
 Garfield, N. J.,
 Holder of Plenary Retail Consumption License C-20, issued by the
 City Council of the City of
 Garfield,

CONCLUSIONS AND ORDER

Odile Hubertine Malmendier, Executrix of the Estate of
 John Malmendier, Sr., Defendant-Licensee; Pro Se.
 Richard E. Silberman, Esq., Attorney for the Department of
 Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of (1) selling a one pint bottle of Three Feathers Blended Whiskey below Fair Trade; (2) selling alcoholic beverages before noon on Sunday, September 15, 1940, in violation of the local ordinance; and (3) failing to close the entire licensed premises, in violation of said ordinance.

The usual penalty for the first charge is ten days. The usual penalty for each of the other charges is five days, or a total of twenty days.

By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for ten days instead of the usual twenty days. Re Zuchnowski and Chrzanowski, Bulletin 428, Item 11.

Accordingly, it is, on this 25th day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-20, heretofore issued to Odile Hubertine Malmendier, Executrix of the Estate of John Malmendier, Sr., by the City Council of the City of Garfield, be and the same is hereby suspended for a period of ten (10) days, effective October 28, 1940, at 4:00 A. M.

E. W. Garrett
 Acting Commissioner.