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

BULLETIN 410 JUNE 17, 1940.

1. DISCIPLINARY PROCEEDINGS - FRONT - UNDISCLOSED PARTNERSHIP WITH PERSON INELIGIBLE BECAUSE OF NON-RESIDENCE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against LESTER BOYES, T/a IDLE HOUR TAVERN, 986 South Orange Avenue, Newark, New Jersey, Holder of Plenary Retail Consumption License No. C-1001, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Arthur Warner, Esq., Attorney for Defendant-Licensee.
Stanton J. MacIntosh, Esq., Attorney for State Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to the charges (1) that he violated the Alcoholic Beverage Law (R. S. 33:1-25) by falsely stating in his application for his plenary retail consumption license that no one other than himself was in any way interested in his tavern when in fact Walter H. Dearing had such an interest, and (2) that he further violated the Alcoholic Beverage Law (R.S.33:1-26, 52) by permitting Dearing to exercise the rights and privileges of the license.

The defendant obtained his license (by way of transfer from a previous holder) in November 1939. However, since February 1940 the tavern has ceased active operation.

Walter H. Dearing, a non-resident of the State and hence disqualified (under R. S. 33:1-25) from holding any liquor license in New Jersey, testified that the defendant's license was obtained, and the tavern conducted thereunder, with himself, Dearing, as an undisclosed partner in the business. Statements which the defendant made to investigators of this Department likewise plainly admit such partnership. The defendant neither refutes nor seeks to explain these statements.

Hence, despite the defendant's plea of innocence, I find him guilty as charged.

As to penalty: If the defendant had frankly admitted the charges against him and, while not seeking to dodge penalty therefor, had manfully and sincerely requested opportunity to seek to buy out his disqualified partner, I might perhaps, instead of revoking this license, suspend it for a suitable period and until the disqualified partner was definitely out of the business. However, he is entitled to no such equitable consideration where, as here, despite unassailed evidence that admits of no doubt whatsoever as to the truth of the charges against him, he brazenly denies such charges. In such instance revocation is the only proper penalty.

Accordingly, it is, on this 12th day of June, 1940,

ORDERED, that Plenary Retail Consumption License No.C-1001, heretofore issued to Lester Boyes, T/a Idle Hour Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective immediately.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - BARTENDER AS FRONT FOR ITALIAN NATIONAL NOW A CITIZEN - LICENSE SUSPENDED BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against EDWARD A. McCLEARY, 170 Union Avenue, East Rutherford, N. J., Holder of Plenary Retail Consumption License C-12, issued by the Borough Council of the Borough of East Rutherford.	CONCLUSIONS AND ORDER

Dominick Marconi, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded non vult, with an explanation, to charges alleging that (1) he falsely stated in his application that no other person was interested in the license or business, whereas Frank Ocello was so interested; (2) he knowingly aided and abetted a non-licensee to exercise the rights and privileges of a license; (3) he employed Mrs. Frank Ocello, who is ineligible because of non-citizenship.

Prior to July 1, 1939 the license for these premises had been in the name of Frank Ocello. McCleary, his bartender, agreed to take out this license as "an accommodation" for Ocello, who could not obtain a license because he was then an Italian national. Ocello became a citizen of the United States on May 17, 1940. McCleary is apparently fully qualified and the bills for the licensed premises are in his name. It is not disputed, however, that Ocello has an interest in the license and the business conducted thereunder and that he was disqualified from holding a license from July 1, 1939 to May 17, 1940, at which time his disqualification was removed.

The license will be suspended for the balance of its term, effective June 17, 1940, at 2:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

Dated: June 11, 1940.

3. APPELLATE DECISIONS - BRADFORD v. PAULSBORO.

RICHARD H. BRADFORD, trading as ELMIRA CLUB,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF PAULSBORO,
Respondent

ON APPEAL
CONCLUSIONS

William A. Gravino, Esq., Attorney for Appellant.
Charles Camp Cotton, Esq., Attorney for Respondent.

Appellant appeals from denial of his application for a plenary retail consumption license for premises 12 Mantua Avenue in Paulsboro.

In Bradford v. Paulsboro, Bulletin 392, Item 11, the Commissioner affirmed the action of respondent in denying a previous application for a renewal of said license for the present fiscal year. Affirmance in said case was based solely upon a finding that appellant had filed a false application. In accordance with Conclusions therein, appellant ceased doing business on March 15, 1940. On April 2, 1940, he filed the application which is being considered herein and respondent denied said application for the stated reason that "the ordinance governing such licenses limits the number". Hence this appeal.

Richard H. Bradford obtained his first plenary retail consumption license in the Borough for the fiscal year beginning July 1, 1936. That license appears to have been issued in violation of the terms of an ordinance adopted December 17, 1935, which limited the number of licenses in the Borough. Nevertheless, the Bradford license was renewed for the fiscal year beginning July 1, 1937. On June 21, 1938, respondent amended its ordinance of December 17, 1935. The pertinent parts of the amended ordinance read as follows:

> "SECTION 1. That the number of Plenary Retail Consumption Licenses for the sale of Alcoholic Beverages in the Borough of Paulsboro be hereafter limited to thirteen in number, in accordance with the following arrangement or schedule, to wit:
>
> "(a) That Plenary Retail Consumption Licenses now issued and in effect may be renewed from time to time in the discretion of the Governing Body, but that no new licenses shall hereafter be granted whereby the total would be increased to a number of said licenses greater than thirteen in all.
>
> "(b) In any case wherein Plenary Retail Consumption Licenses now in effect shall be annulled, forfeited, made void, or shall expire and for any reason be not renewed, then, and in either case, a license shall not be granted to the party formerly holding said license if by granting same the number of licenses in effect would be increased to a number greater than thirteen in all."

Appellant held a plenary retail consumption license when the ordinance was amended on June 21, 1938 and his license was thereafter renewed for the fiscal year beginning July 1, 1938. He attempted, in June 1939, to renew for the fiscal year beginning July 1, 1939.

The important question to be decided is whether the present application is an application for renewal of an old license or an application for a new license. If the latter, it is barred by the amended ordinance because there are eighteen other consumption licensees in the Borough.

It seems clear that the application filed by Bradford in June 1939, which was the subject of the previous appeal, was an application for a renewal of his license. Respondent contends, however, that since it denied said application and its action was affirmed on appeal, the present application cannot be considered as an application for renewal. The fact is that during the pendency of the prior appeal Bradford operated his place of business under an order extending his old license. Under said order he continued to operate until March 15, 1940. He filed his present application eighteen days thereafter. At no time did he, in any way, indicate that he intended to abandon the business. Appellant's conduct herein was, at all times, consistent with his intent to renew. In Re Deighan, Bulletin 141, Item 2, it was held that the mere fact that there was a gap between the expiration of the old license and the issuance of a new license would not necessarily preclude consideration of the latter license as a renewal. In general, the intent to continue the establishment to which the old license was referable would be the governing factor. I find that the present application is an application for renewal of appellant's license. Cf. Conway v. Haddon, Bulletin 251, Item 3. P.L.1939, Chapter 281, does not apply for the reasons set forth in Re Backer, Bulletin 356, Item 1.

The amended ordinance does not, by its terms, bar renewals of licenses which were in existence on June 21, 1938. Hence it did not necessarily bar the granting of a license on appellant's application filed in June 1939 and, for the reasons stated above, it did not necessarily bar granting of a license on the application which is being considered herein.

Respondent also contends that because of the previous decision, the matter is now "res adjudicata". That, however, is not so since each application must be considered on its own merits.

In order to determine the general fitness of appellant to hold a license, I have reviewed all the evidence given in the prior appeal between these parties. The crime of maintaining a disorderly house, to which Bradford pleaded guilty in 1933, involved gambling in a place where he was an employee. For the reasons stated in Case No. 315, Bulletin 396, Item 4, the crime did not involve moral turpitude, and hence appellant is not mandatorily disqualified from holding a license. He has been punished for the false affidavit in his previous application by being deprived of a license for a period of about three months. In his present application he admitted his conviction. There is scarcely any other evidence in the previous appeal from which it might be concluded that appellant is personally unfit. True, there was some evidence that in 1935 when he conducted a package goods store he permitted an employee to sell some alcoholic beverages on Sunday in violation of a local regulation, but this evidence is considerably weakened by the fact that since that time the Borough has issued numerous licenses to him. The only other evidence of wrongdoing is the testimony of two witnesses that in May 1938 appellant permitted a crap game in the

kitchen of his premises and served drinks to the players at 3:30 A.M. during prohibited hours. Appellant denies this testimony and produced evidence that his premises were always closed during the hours when sales were prohibited. In any event, it appears that no charges of any kind were ever preferred against appellant. Even if the evidence as to the alleged occurrence in May 1938 be accepted as true, it would scarcely be a sufficient reason in and of itself to support respondent's action.

Respondent finally contends that the present application also contained a false statement in setting forth that applicant had never had any interest in an application which was denied. Appellant testified that he had discussed the problem as to how this question should be answered with both his own attorney and the Borough Attorney, and that at the hearing below he had also requested the Borough Council to grant him the privilege of changing the answer if the Borough Council decided that the answer was incorrect, but that such privilege had been refused. Everybody concerned knew that appellant's application which he made in June 1939 had been denied; nobody was deceived; appellant had no reason or intent to deceive.

While respondent unquestionably had discretionary power to deny renewal, such discretion must be exercised in a reasonable manner and, under the circumstances of this case, the denial appears to have been unreasonable.

The action of respondent is, therefore, reversed. Respondent is directed to issue a license to appellant as applied for.

E. W. GARRETT,
Acting Commissioner.

Dated: June 12, 1940.

4. DISCIPLINARY PROCEEDINGS - FRONT - REAL PARTY IN INTEREST QUALIFIED EXCEPT FOR LOCAL REGULATION - LICENSE TRANSFERRED TO QUALIFIED CORPORATION - 10 DAYS' SUSPENSION ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
)
IDA WHITMAN,)
108 N. King St.,)
Gloucester City, N. J.,) CONCLUSIONS
) AND ORDER
Holder of Plenary Retail Distribution License D-1 issued by the Common Council of the City of Gloucester City, and transferred during the pendency of these proceedings to)
)
MORRIS WINE & LIQUOR STORE, INC.,)
108 N. King St.,)
Gloucester City, N. J.,)

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Herman C. Silverstein, Esq., Attorney for Defendant-Licensee.

The defendant-licensee has pleaded guilty to charges of making a false statement in her license application in that she

denied that any individual other than herself had any interest in the business; aiding and abetting a non-licensee to exercise the rights and privileges of the license; and failing to notify the issuing authority of the change in facts set forth in the license application.

It is admitted that the license was taken in Ida Whitman's name because the undisclosed person, who is fully qualified in all other respects, is ineligible as a licensee in Gloucester City by reason of lack of the two years' residence required by local regulation. However, the Common Council of Gloucester City has notified this Department in writing that this local regulation is to be abrogated.

It further appears that this license was transferred during the pendency of these proceedings by the Common Council of Gloucester City to Morris Wine & Liquor Store, Inc. upon the special condition that the license continue to be subject to any penalty herein imposed.

In view of this transfer and in accordance with Re King, Bulletin 404, Item 5, the license will be suspended for ten days.

Accordingly, it is, on this 11th day of June, 1940,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Ida Whitman by the Common Council of the City of Gloucester City and transferred to Morris Wine & Liquor Store, Inc., be and the same is hereby suspended for ten (10) days, effective June 17, 1940, at 2:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - JACEK v. NEWARK.

FRANK JACEK,

Appellant,

-vs-

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

Respondent

ON APPEAL
CONCLUSIONS

Ernest P. Biro, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.

This is an appeal from denial of transfer of a plenary retail consumption license from Mary Qualey to appellant for premises at 180 Plane Street, Newark.

Respondent alleges that it denied the transfer because it found that"Frank Jacek did make a practice of buying and selling liquor licenses and did find that the said Frank Jacek was not a bona fide applicant."

The evidence shows that appellant first obtained a consumption license in the City of Elizabeth and that, after he had operated the place for about eighteen months, he transferred the license to another person. Appellant testified that he had disposed of this license at a loss because of the poor physical condition of the premises.

In March 1938 (five or six months after he had sold his business in Elizabeth), appellant obtained a consumption license, by transfer, for premises at 66 Devine Street, Newark. In July 1938 he took in a partner and they operated the business at that address until November 1939, at which time they transferred their license to another individual. Appellant says that the business was sold at a loss in November 1939 because of a disagreement between himself and his partner.

It appears that, at about the same time, appellant purchased stock in 366 Walnut Tavern Inc., which operated a tavern at 366 Walnut Street, Newark; that he disposed of his interest therein in April 1940 because, he alleges, the neighborhood was "too tough."

Thereafter he agreed to purchase Mary Qualey's license and applied to transfer from person to person and place to place to Washington Street, Newark. Respondent denied said application. Thereupon appellant made the present application to transfer from person to person for the same premises, namely, 180 Plane Street, Newark. He testified that he intends to conduct the business at the latter address.

A license is a privilege. Fitness of an applicant is one of the matters to be considered in determining whether a license should be granted or transferred. It would seem that, in a proper case, an issuing authority would be justified in denying a license to one who merely made a business of buying and selling licenses without bona fide intention of conducting business as a licensee. In the present case, however, appellant held his first two licenses for a substantial period of time and says that he lost money in each case. His explanation as to the reason for disposing of his interest in the third license seems reasonable. While the evidence shows that appellant has held a number of licenses, it is scarcely sufficient to show that he can yet be classified as a person who makes a practice of buying and selling liquor licenses. It may be well to advise him, however, that he is fast approaching the point where he may be so classified. There is nothing in the case to show that his present application is not bona fide.

On the evidence I conclude that the action of respondent was unreasonable.

The action of respondent is, therefore, reversed, and respondent is directed to issue the transfer as applied for.

E. W. GARRETT,
Acting Commissioner.

Dated: June 13, 1940.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - MODIFICATION OF PENALTY.

In the Matter of Disciplinary Proceedings against	
CHARLES I. TARLOW 1 Springfield Rd. (Rte 29), Mountainside, P.O. Westfield, N.J.	S-396 O R D E R
Holder of Plenary Retail Distribution License D-1 issued by the Borough Council of the Borough of Mountainside	

In addition to the above license, Charles I. Tarlow is the holder of a Plenary Retail Distribution License at premises 23 So. Union Avenue, in the Township of Cranford. His license in Cranford was twice suspended for sales below the Fair Trade minimum. For his first offense his license was suspended for ten days, Bulletin 308, Item 12; for his second, thirty days, Bulletin 326, Item 15. For the instant Fair Trade violation at his Mountainside premises that license was revoked outright on January 8, 1940. Bulletin 375, Item 1.

In view of the provisions of R. S. 33:1-31, revocation rendered Tarlow ineligible to secure any liquor license whatsoever for a period of two years. He lost, therefore, not only his Mountainside license but the right to renew his Cranford license. In order to avoid this double punishment the Conclusions and Order heretofore entered on January 8, 1940 provided, in part:

> "Consequently, notwithstanding the revocation hereby effected, I shall entertain an application by Tarlow on and after June first next to reduce this revocation to a suspension for the balance of the term of the Mountainside license so that he will not be ineligible to receive a renewal of his Cranford license. Whether such application will be granted or denied will depend upon what the licensee does at Cranford in the meantime....."

Pursuant to this provision, Tarlow has now applied for a reduction in penalty from revocation to suspension for the balance of the term of the Mountainside license so that he will not be ineligible for renewal. Since the date of the revocation of his Mountainside license, Tarlow's record at Cranford has been clear. His application will, therefore, be granted. This does not mean, however, that Tarlow will be entitled as a matter of right to a renewal of his licenses. The determination of the personal fitness of an applicant rests in the sound discretion of the issuing authority subject to review on appeal to this Department. R. S. 33:1-22. Tarlow as a renewal applicant must, as every applicant, publish a notice of intention to make such application (R.S. 33:1-25), and all objectors, if any, are entitled, upon filing notice of their objections, to be heard. Rule 6, State Regulations 2.

Accordingly, it is, on this 13th day of June, 1940,

ORDERED, that the order heretofore entered on January 8, 1940 revoking Plenary Retail Distribution License D-1 issued to Charles I. Tarlow, be and the same is hereby rescinded; and

IT IS FURTHER ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Charles I. Tarlow by the Borough Council of the Borough of Mountainside for premises 1 Springfield Rd. (Rte 29), Mountainside, P.O. Westfield, N. J., be and the same is hereby suspended for the balance of its term, effective immediately.

E. W. GARRETT,
Acting Commissioner.

7. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

Case No. 93

ON HEARING
CONCLUSIONS AND ORDER

In 1921 petitioner, who was then only sixteen years old, pleaded non vult to a charge of atrocious assault and battery with intent to kill and was sentenced to six months in the penitentiary; in 1927 he was convicted of possessing dangerous weapons and burglars' tools and was sentenced to three years in State Prison; in 1930, upon his release from prison, petitioner pleaded to a charge of breaking, entering, larceny and receiving (the offense had occurred prior to the 1927 conviction), and was given a suspended sentence of eighteen months; in 1934 he was convicted in recorder's court on charges of disorderly conduct and assault and battery and was placed on probation for one year.

Since his release from prison in 1930, petitioner has lived with his wife and three children in the same municipality wherein he now resides. During the last ten years he has, in turn, been employed as a factory worker, a mason, and as a W.P.A. laborer. Except for the last few months, during which time he has worked only intermittently, it appears that petitioner has been steadily employed since his release.

As evidence of his reputation and character during the last past five years, petitioner produced four witnesses who have known him for fifteen, ten, eight, and seven years, respectively. All four testified that his reputation is good, that he has rehabilitated himself since 1934, and that, in their opinion, it would not be harmful to the public interest to permit him to become engaged in the alcoholic beverage industry.

Petitioner's fingerprint record shows that he has not been arrested on any occasion or convicted of any crime since 1934. The Chief of Police of the municipality wherein petitioner resides writes that, since 1934, petitioner has conducted himself as a law-abiding citizen and that the police department knows "of no reason why his association with the alcoholic industry would

be contrary to public interest". The Hearer reports that petitioner's demeanor and attitude while testifying under oath created a favorable impression.

On all the evidence it is concluded that despite his past record petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 13th day of June, 1940,

ORDERED, that his statutory disqualification because of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

8. APPELLATE DECISIONS - MIELE v. FRANKLIN TOWNSHIP.

AGOSTINO MIELE, trading as FRANKLIN TAVERN,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN (SOMERSET COUNTY),
Respondent
ON APPEAL
CONCLUSIONS

Frederick J. Pelovitz, Esq., Attorney for Appellant.
Clarkson A. Cranmer, Esq., Attorney for Respondent.

On February 21, 1940 the Franklin Township Committee suspended Agostino Miele's plenary retail consumption license for his tavern on Elizabeth Avenue in the Township for the month of March 1940, when Miele pleaded guilty, in a disciplinary proceeding before the Committee, to the charges of selling liquor on Sunday before the permissible hour in the Township and of employing a minor at the tavern.

Thereafter, the Township Committee, in a subsequent disciplinary proceeding, found Miele guilty of possessing with intent to sell, and actually selling, liquor on March 11, 1940 (i.e., during the aforesaid period of suspension) at his home across the street from his tavern in violation of the Alcoholic Beverage Law, and thereupon revoked Miele's license.

Miele now appeals from such revocation, claiming that the evidence does not warrant the Township Committee's finding.

As to such evidence: On the said March 11, agents of this Department were assigned to investigate a complaint that appellant was surreptitiously selling liquor at his home during the period of suspension of his license. Investigator Wagi gained entry into the kitchen on three occasions that day - first in the

late morning or early afternoon, next in the middle of the afternoon, and again toward evening.

Wagi testified that on his first visit he knocked at the rear kitchen door and, when Miele answered, introduced himself as a friend of "Steve" on the "W.P.A.", who had told him that he could get a drink there; that Miele invited him into the kitchen and, heeding Wagi's request for a drink, fetched a bottle of whiskey from an adjoining room and sold Wagi two drinks for thirty cents; that, when Wagi asked to buy a pint or half-pint of whiskey, Miele, being unable to find an empty liquor bottle, refused the sale.

Wagi further testified that, when he returned to the kitchen in the middle of the afternoon, he found Miele's wife there; that she sold him two drinks of whiskey for thirty cents but refused to sell him any liquor to take out.

As to his third visit to the kitchen on that day, Wagi testified that he then purchased two more drinks of whiskey from Miele for thirty cents, but again could make no purchase of liquor to take out.

Wagi further testified that he returned to the premises on the next day (March 12) and purchased four drinks and also a half-pint of whiskey to take away with him from Mrs. Miele for $1.00. While he was thus at the premises, other agents of the Department, by prearrangement and pursuant to a search warrant, raided the house and discovered in Miele's bedroom a large number of bottles of liquor, including the bottle from which Wagi had been served all his drinks the day before.

Miele claims that when he served liquor to Wagi (viz., on Wagi's first and third visits on March 11), such drinks were given gratuitously and after Wagi pleaded for them; that, as regards any sale by his wife, he had expressly instructed her against doing such a thing, and that, as to the stock of liquor found in the bedroom on March 12, he had brought such over from the tavern for safe keeping because he intended to make a visit to St. Louis.

Mrs. Miele, who was apparently present on all the occasions when Wagi visited the premises, testified in corroboration of her husband as to his giving drinks gratuitously to Wagi on March 11, and further testified that the only actual sale which she made to Wagi was on March 12.

The tenant who lives on the floor above the Mieles testified that he was in their kitchen when Wagi came on his late afternoon (i.e., the third) visit on March 11 and claims that, although Wagi put money down on the table for his drinks, appellant refused to accept any such money. Wagi claims that the only person in the kitchen on such occasion, other than himself, Mrs. Miele and her husband, was a youth identified by Mrs. Miele as her seventeen year old son.

Thus Miele in effect contends that, in view of the testimony by himself, his wife and the tenant upstairs, nothing untoward was done, especially by him, on March 11, the date when he is alleged, in the Township Committee's charges against him in this case, to have illegally possessed and sold liquor.

However, I am satisfied, from the evidence, that Wagi's story as regards both March 11 and 12 is the correct one. The claim on appellant's behalf that Wagi, although a stranger, was, on his three visits on March 11, made welcome and given two free drinks on each occasion, is too much for me to swallow. Moreover, Mrs.Miele's admission that she sold whiskey to Wagi on March 12 and the fact that on such day (on which the raid occurred) a large stock of liquor was found on the premises, including the bottle from which Wagi had been served on March 11, corroborates Wagi's story.

Hence, even assuming, as argued by Miele, that, because of respondent's charges, he is here accountable only for what he himself did on March 11, nevertheless, I find, in view of his sales to

Wagi on that date and his then possession of the bottle of liquor from which he poured such drinks, that, as charged by the Township Committee, he illegally possessed with intent to sell, and actually sold, liquor at his home on March 11.

Where, as here, a licensee, when the license for his tavern is suspended, thus seeks to "chisel" on the suspension by surreptitiously selling drinks at his home, revocation of the license is the only fit penalty.

The action of respondent is, therefore, affirmed.

E. W. GARRETT,
Dated: June 13, 1940. Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT - BUSINESS SINCE SOLD BY ITALIAN NATIONAL TO LICENSEE - GUILTY PLEA - LICENSE SUSPENDED BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)
FREDA M. BOYSEN,)
49-51 Philadelphia Ave.,) CONCLUSIONS AND ORDER
Egg Harbor City, N. J.,)
Holder of Plenary Retail Consumption License C-17, issued by the Common Council of the City of Egg Harbor.)

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Edward I. Feinberg, Esq., Attorney for the Defendant-Licensee.

Licensee pleaded guilty to (1) making a false statement in her application for license for 1939-40 in that she denied that any individual other than herself had an interest in her license, whereas in truth and fact Millie Tiberio had such an interest, and (2) aiding and abetting Millie Tiberio to exercise the rights and privileges of her license.

Millie Tiberio, a citizen of Italy, held a plenary retail consumption license for the year 1938-39. By force of the decision in Re Woertendyke, Bulletin 304, Item 8, Italian nationals became disqualified from holding any liquor licenses in this State after June 30, 1939. Accordingly, she procured Freda Boysen to obtain a license for the present fiscal year and hold it for her.

These facts were admitted by the licensee, who explained that she permitted the use of her name because the licensed premises were owned by her mother who was in dire need of the rent paid for the premises by Millie Tiberio.

Freda Boysen further produced a bill of sale dated May 29, 1940, by which Millie Tiberio has sold the tavern to her for the sum of $250.00, and also her cancelled check for that amount made payable to Millie Tiberio. So far as appears from the documentary evidence, and the oral testimony given at the hearing, it would seem that the sale of the licensed business is bona fide and that Freda Boysen is now the rightful owner of the business and license. Hence, on the record presented, the situation appears to have been corrected. In view thereof, and in view of the licensee's forthright admissions of all the pertinent facts, the license will, instead of a more drastic penalty that otherwise would be indicated, be suspended for the balance of its term. Cf. Re McCleary, Bulletin 410, Item 2.

However, it will be incumbent upon the local issuing authority, in the event Freda Boysen applies for a renewal, to determine in its own discretion whether any person other than the applicant is interested in the license, and whether, in view of her past conduct, she is a fit person to hold a license.

Accordingly, it is, on this 13th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-17, heretofore issued to Freda M. Boysen by the Common Council of the City of Egg Harbor, be and the same is hereby suspended for the balance of its term, effective June 17, 1940, at 6:00 A.M.(Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

10. APPELLATE DECISIONS - CAPOBIANCO v. MANASQUAN.

PAUL J. CAPOBIANCO,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF MANASQUAN,
Respondent

ON APPEAL
CONCLUSIONS

J. Stanley Herbert, Esq., Attorney for Appellant.
Durand, Ivins & Carton, Esqs., by James D. Carton, Jr., Esq. and Forman T. Bailey, Esq., Attorneys for Respondent.

This is an appeal from denial of a plenary retail consumption license for premises which are planned to be erected at the northeast corner of Riverside Drive and Third Avenue, Manasquan.

Respondent alleges that the application was denied because the granting thereof is unnecessary, socially undesirable and opposed to its policy to grant no further consumption licenses at Manasquan Beach in order that said beach front may be maintained as a safe and desirable playground and place of resort for women and children.

The plot of ground upon which the premises are to be erected is located in a section of Manasquan Beach not yet fully developed and is located about six hundred feet west of the boardwalk, which runs along the ocean front. The plot of ground faces Manasquan Inlet and an esplanade, which runs westerly from the boardwalk and along the inlet in front of this property, has recently been completed. There are no houses of any kind in the immediate vicinity.

The evidence shows that the number of licenses which have been issued and the population of the Borough are the same as they were at the time Conclusions were entered in the appeal case of Minnie Kuller, Inc. v. Manasquan, Bulletin 319, Item 3. In the Manasquan Beach section of the Borough, a consumption license has been issued to Liggett's, located on First Avenue, approximately one-half mile from the property in question, and another consumption license has been issued for premises on Brielle Road near Watson Creek, which is also approximately one-half mile from the property in question, the other three consumption licenses having been issued for premises in the westerly section of the Borough.

The permanent population is about twenty-three hundred and the summer population has been estimated at seven thousand.

The license was denied by a vote of three against, and two in favor, one Councilman being absent. Each of the three Councilmen who voted against the granting of the license appeared at the hearing and testified that, in their opinion, there was no need for any further licenses in the beach section of the Borough. Councilman Morton testified that at the hearing below three residents of the Borough had spoken against the issuance of the license and that a number of other citizens had told him that they were opposed because they thought there were enough licenses in the Borough. It appears also that a petition containing forty-four names had been presented to the Mayor and Council protesting against the issuance of the license on the ground, among other reasons, that this section is already adequately served by two taverns. There was also evidence that the Borough Council has consistently refused to issue licenses along the boardwalk and apparently the esplanade is considered as a continuation of the boardwalk.

The only evidence of necessity was that given by officers of American Timber Co., which is the owner of a large tract of land in this section of Manasquan Beach. Their evidence is that an additional place is needed because the present licensed places are at least one-half mile away and that appellant's premises would serve the needs of fishermen and those persons who walk or drive along the esplanade.

The burden of proof is upon the appellant. The most that has been shown is a mere difference of opinion as to the need for another licensed place in this section of the Borough. Thus, aside from the question of respondent's policy not to issue licenses on the boardwalk, which policy seems to be reasonable and to have been applied uniformly, appellant herein has not sustained the burden of proof in showing that respondent's determination as to the need of an additional license was unreasonable under the circumstances of the case. Agnellino v. Union Beach, Bulletin 88, Item 7; Henry v. Way, Bulletin 90, Item 9; Kuller, Inc. v. Manasquan, supra; Pergola v. Jamesburg, Bulletin 398, Item 6.

Under the circumstances, it is unnecessary to consider the proximity of the bathing beach, which is not maintained by the Borough but where bathing is permitted by the owners of the land in this section of the Borough.

For the reasons aforesaid, the action of respondent is affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: June 14, 1940.

11. ELIGIBILITY - RESIDENCE - FACTS EXAMINED - CONCLUSIONS.

June 14, 1940

Lobw 8/23/40

Re: Case No. 328

Application seeks determination of his eligibility to hold a liquor license in New Jersey, more particularly with reference to whether or not he possesses the five years' residence in New Jersey required by R. S. 33:1-25.

It appears that applicant, a citizen of the United States, married a United States citizen in Toronto, Canada, in 1922, from whence he moved to West Palm Beach, Florida, in 1925. In 1927, because his wife disliked Florida and applicant had friends in New Jersey and was interested in real estate in the seashore area, applicant decided to make his home in New Jersey, and thereafter lived at Manasquan and Long Branch until 1933. In 1932 he had obtained employment with a wholesale grocery company in Perth Amboy, as an assistant salesman in Monmouth County. In 1933 he was transferred by his employer to Phillipsburg as salesman in charge of the Phillipsburg-Easton-Bethlehem territory, then being opened experimentally by his employer. Applicant lived in Phillipsburg until 1935 at which time he moved to Easton, Pennsylvania, where he lived until March 1939, at which time he returned to Manasquan where he still lives.

Thus, applicant has lived in New Jersey continuously since 1927 with the exception of the period from January 1935 to March 1939. The inquiry is whether applicant retained his New Jersey residence notwithstanding his living in Pennsylvania.

Applicant testified that he always regarded the New Jersey shore as his home; that he had always wanted to go into business in the shore territory; that he considered his assignment to the Phillipsburg area merely temporary; that he went to Phillipsburg because he was sent by his employer; that he moved to Easton merely because of better housing facilities and more advantageous rent; that from time to time he attempted to acquire a business of his own in the shore territory so that he could return. In this he is corroborated by the supervisor and director of the wholesale grocery company, who testified that it was always his understanding that applicant wanted to return to the New Jersey shore and that applicant made periodic requests of the supervisor to find him an independent business in New Jersey.

From the foregoing, I conclude that applicant has been a resident of New Jersey since 1927 and that he has not lost his New Jersey residence merely because of his sojourn in Easton, Pennsylvania. It was held in Lilly v. Way, Bulletin 220, Item 1:

> "The word 'residence' as used in the Control Act, means 'domicile' or the place where a person maintains his permanent home to which, when he is absent, he has the intention of returning. See Re Conover, Bulletin 16, Item 4; Re Orland, Bulletin 143, Item 6. Temporary and even protracted absence from the State will not effect loss of domicile if it be accompanied by the intention presently to return, i.e. the so-called animus revertendi. See Re Osborn, Bulletin 174, Item 16; Re Case 53, Bulletin 175, Item 3; Re Potter, Bulletin 186, Item 3. Notwithstanding such absence, the original domicile, once established, is presumed to continue until a new domicile is acquired."

It is recommended that applicant be advised that he is eligible to hold a New Jersey liquor license insofar as the requirement of five years' residence in New Jersey is concerned.

Emerson A. Tschupp,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

12. BULLETIN ITEM CORRECTED.

Bulletin 409, Item 12, though it did not so state, was intended to report the restoration to Ocean Township, Monmouth County, of the power to conduct disciplinary proceedings which had been taken away from that municipality on August 4, 1935 (Bulletin 85, Item 10).

E.W. Garrett

Acting Commissioner.