

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

BULLETIN 362

NOVEMBER 17, 1939

1. SUSPENSIONS IN FAIR TRADE CASES

On December 17, 1938, John Gainé obtained a writ of certiorari in the New Jersey Supreme Court to review an order of the State Commissioner entered December 14, 1938 suspending his license for twenty (20) days for violation of the Fair Trade Regulations.

Accordingly, I lifted temporarily that suspension to abide the decision of the Supreme Court.

In order to treat all licensees on a parity, I also lifted temporarily, on my own motion, the suspensions then being served by four other licensees.

The policy was thereupon announced, in respect to all disciplinary proceedings then pending or thereafter instituted for alleged violation of the Fair Trade Regulations, that if guilt should be adjudicated, the effective date of any suspension would not be fixed unless and until the authority of the State Commissioner to impose the regulation under review and to suspend the license of a violating licensee was sustained by the courts.

Express warning, however, was given that licensees were not to get the erroneous impression that they were at liberty to sell alcoholic beverages in disregard of the Fair Trade Regulations; that if they did so it was at their own peril for, if the Commissioner was sustained by the courts, appropriate penalties for interim violations would be strictly administered the same as theretofore. Bulletin 289, Item 1.

Thereafter, the New Jersey Supreme Court, after hearing the proceedings on the aforesaid writ of certiorari, dismissed the writ with costs. Bulletin 299, Item 2.

Thereafter John Gainé appealed the matter to the Court of Errors & Appeals, which, after hearing, affirmed the decision of the Supreme Court. Bulletin 354, Item 3.

Remittitur has since been entered.

This matter having been finally determined by our court of last resort, no reason remains why suspensions heretofore adjudicated should not be served forthwith.

Accordingly, orders of suspension have today been entered, effective November 20, 1939, at 12:01 A.M., as follows:

AS TO THE FOUR LICENSEES WHOSE SUSPENSIONS WERE
TEMPORARILY INTERRUPTED AS AFORESAID:

Paul David Rappaport, 205 Madison St., Passaic	-	1 day
William S. Guskind, 500 Jersey Ave., Jersey City	-	4 days
Joseph Levine, 591 Orange St., Newark	-	5 days

The fourth licensee, Isadore C. Horn, 379 Centre St., Nutley, had already served six days of his ten-day suspension. Upon subsequent adoption of a policy to reduce penalties for violations of the Fair Trade Regulations from ten to five days in cases where the licensee pleaded guilty well in advance of trial and thus saved the Department the time and expense of proving its case, the entire balance of his suspension was lifted on the Commissioner's own motion. Bulletin 311, Item 3.

AS TO LICENSEES AGAINST WHOM DISCIPLINARY PROCEEDINGS
WERE PENDING ON OR INSTITUTED AFTER DECEMBER 17, 1938:

I

FIVE DAYS (UPON CONFESSION OF GUILT IN
ADVANCE OF HEARING OR BECAUSE OF MITIGATING
CIRCUMSTANCES)

Ace Beverage Co., Inc.	560-4 Perry St.	Trenton
Ades, Herman	73 Waverly Ave.	Newark
*Alexander, Felix, T/a Dragon Inn	7829 River Road	Pennsauken
Bell, Saul	1561 Irving St.	Rahway
Berger, Ralph, T/a Berger's Delicatessen	5206 Ventnor Ave.	Ventnor City
Berkelhammer, Isidor	223 N. Clinton Ave.	Trenton
Broadway Liquor Store, Inc.	2½ E. State St.	Trenton
Broadway Woodcliff Delica- tessen, Inc. (subsequently transferred to Carl True)	943-a Broadway	North Bergen
Campbell, Raymond F.	9 So. Third St.	Camden
Canzanese, Vasco, T/a Seven Bros. Cafe	713 So. 3rd St.	Camden
Conte, Nicola	884 and Rear of 886 S. Broad St.	Trenton
Elias, Angelo, T/a Blue Bird Restaurant	140 S. So. Carolina Ave.	Atlantic City
Friedenrich, Selig and Jackson, Annie, T/a Market Liquor Store	233 Market St.	Paterson
Gakos, John	5 Park Place	Morristown
Geisler, Frances	Crown Point Road and Delaware St., P. O. Thorofare	West Deptford Township
Giordano, Anthony	34 Montgomery St.	Jersey City
Guglielmi, Dominick	2222 Federal St.	Camden
**Health Shop, Inc.	142 Washington St.	Paterson
Held, Adolph	Woodbury-Blackwood Road and High St.	Deptford
	Blackwood Ter.	Township
Horowitz, Max, T/a Max's Delicatessen	6223 Monmouth Ave.	Ventnor City
Jacob, Louis	87½ French St.	New Brunswick
Jacobs Drug Company	197 Broadway	Paterson

Janulis, Theodore K.	486 Orange St.	Newark
Jaskulski, Philip	1400 Rose St.	Camden
Jingoli, Joseph	416 Princeton Ave.	Trenton
Kelly, William, T/a Kelly's Bar & Grill	2205 Atlantic Ave.	Atlantic City
La Greca, Patrick, T/a La Gray's Town Hall	759 Main Ave.	Passaic
Maire, Charles	428 E. First Ave.	Roselle
Megronigle, Harold V.	908 Shore Road	Somers Point
Patrons, Inc.	201 Main St.	Paterson
Polonsky, Frieda and Kiewe, Lipman	809 Pacific Ave.	Atlantic City
Russ, Joe	305 Washington St.	Orange
Scher, Sidney M.	102 Walnut Ave.	Cranford
Schwarz Drug Co.	565 Bloomfield Ave.	Bloomfield
Schweinler, Rudolph J.	414-a Bergenline Ave.	Union City
Sepple, John G.	3rd and Broad Sts.	Phillipsburg
Silver, Louis, T/a Silver's Delicatessen	6430 Ventnor Ave.	Ventnor City
Sivo, Mary A.	54-56 Butler St.	Trenton
Tsibikas, Astor J., T/a Royal Delicatessen	732 Bergen Ave.	Jersey City
Tublitz, Herman and Tublitz, Nathan, T/a Tublitz Brothers	75 South Orange Ave.	South Orange
West End Wine & Liquor Stores, Inc.	150 Elmora Ave.	Elizabeth

*This license is now held by Dragon Inn, Inc., of which Felix Alexander, the former licensee, is now Vice-President and a stockholder. No order of suspension will be presently entered in this case against the new licensee but proceedings will be instituted forthwith calling upon it to show cause why the suspension inflicted against the license of Alexander should not be imposed upon it.

**This license is now held by Julius E. Weiner, who was President of the former licensee, Health Shop, Inc. No order of suspension will be presently entered in this case against the new licensee but proceedings will be instituted forthwith calling upon him to show cause why the suspension inflicted against the license of Health Shop, Inc. should not be imposed upon him.

II

TEN DAYS

Balas, Irving	312 No. Day St.	Orange
Basher, Morris	1534 Main St.	Rahway
Campana, Caesar	600 Point St.	Camden
Colonial Wine & Liquor Stores, Inc.	547 Hamilton Ave.	Trenton
Glassman, Louis H.	893 Main St.	Paterson
Goncharoff, Solomon	1705 Broadway	Camden
Lou & Ed Tavern, Inc.	266 Park Ave.	Newark
Heffner, Martin	48 Smith St.	Perth Amboy
Jordan, Frank	Atco Ave. East of Rail- road Station, P.O. Atco	Waterford Township
Malyska, Frank	15 Florence St.	New Brunswick
Marcincin, Steve	732 River Drive	Garfield
*Michael, Anastas	943 Broadway	Camden
Minkoff, Joseph	189 Spruce St.	Newark
New Yorker Liquor Stores, Inc.	1236 Atlantic Ave.	Atlantic City

Napp, Ralph J.	381 Jackson Ave.	Jersey City
Revallo, John	1186 Mechanic St.	Camden
Ryan, Hubert and Nunnink, Arnold A.	991 Madison Ave.	Paterson
Sawczuk, Emil and Szarko, Mike	158 Ferry St.,	Newark
Simon's Delicatessen, Inc.	149 Main St.	Hackensack
Speivy, Catherine	Lake and Hessian Ave.	National Park
Taraskiewicz, Antonina	1199 Thurman St.	Camden
Wardach, Joseph	1448 Rose St.	Camden

*This licensee, against whom suspension was ordered during the last fiscal year, did not renew this year nor is there any license outstanding for that address at this time. Special order will, therefore, be entered imposing a ten-day suspension against any future license which Anastas Michael may subsequently acquire.

III

OTHER SUSPENSIONS

The license of John Gainé at 104 Hillside Avenue, Neptune City, was suspended for twenty days because he sold alcoholic beverages below the minimum consumer price on three different occasions.

The license of Charles I. Tarlow, 23 So. Union Avenue, Cranford, was suspended for ten days and because of a subsequent violation for thirty days, making forty days in all.

The license of John Gainé at 441 Mt. Prospect Avenue, Newark, was suspended for forty days because of his previous record.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 15, 1939.

2. APPELLATE DECISIONS - FRANKLIN STORES CO. v. NEWARK

FRANKLIN STORES CO., a corporation, and EDWARD SOBOCIENSKI,)	
)	
Appellants,)	ON APPEAL
-vs-)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK and MICHAEL SHAPIRO and SIDNEY M. FAUER,)	
)	
Respondents)	
-----)	

Louis B. Englander, Esq., Attorney for Appellants.
Joseph B. Sugrue, Esq., Attorney for Respondent Board.
Klein & Klein, Esqs., by Nathaniel J. Klein, Esq., Attorney
for Respondent Licensees.

BY THE COMMISSIONER:

This appeal is from the person to person and place to place transfer of Boris Litowski's 1938-39 plenary retail consumption license for 43 Prince Street to Michael Shapiro and Sidney M.

Fauer for 185 Springfield Avenue, Newark, and from the renewal of that license, as thus transferred, for the present fiscal year.

Shapiro, after the renewal, withdrew from his partnership with Fauer and the Newark Board was notified accordingly. Hence, Fauer is now the sole licensee. See Re Baumgartner, Bulletin 165, Item 10; Re Nordheim, Bulletin 310, Item 7.

Appellants first contend that the transfer (and the subsequent renewal) was erroneous because of the number of retail liquor places in the general vicinity of the new premises.

The change in premises was merely from a site near the northwest corner to a place at the southeast corner of Prince Street and Springfield Avenue, the entire area being a well-known business section. This is a matter confided to the discretion of the local issuing authority. Sobocienski et al. v. Newark et al., Bulletin 239, Item 8; Fanel Realty Co. et al. v. Newark et al., Bulletin 284, Item 10; Sachs v. Trenton et al., Bulletin 321, Item 12. It cannot be said that the Newark Board abused such discretion by merely granting, within that section, a transfer (and renewal) of an already existing license there.

Appellants next contend that the premises are not fit for a plenary retail consumption license apparently because they are fitted up and conducted as a straight "package" store.

A plenary retail consumption license entitles the holder to the permissive privileges of (1) selling liquor in original containers for off-premises consumption, and (2) selling liquor in open receptacles for on-premises consumption. See R. S. 33:1-12(1). The holder may, fancy-free, choose to exercise both, neither or either of these privileges. Re Koehler, Bulletin 59, Item 13; Re Salomon, Bulletin 159, Item 6; Re Boyce, Bulletin 183, Item 5; Re Hershenstein, Bulletin 330, Item 7. To be sure there are some limitations, for instance, that a consumption licensee may not maintain under a single license both a tavern and a package goods store which are conducted distinctly and are separated by a room and hallway, Re Schlenger, Bulletin 165, Item 11, but that is not applicable here. Hence, the fact that this licensee chooses to operate only a "package" store, does not signify that his premises thereby become unsuited for license.

Appellants further contend that the premises fail to comply with Section 2 of resolution of May 23, 1934 of the Newark Board, which provides:

"No plenary retail consumption license shall be issued for the operation of any place of business with a floor space of less than four hundred square feet."

Fauer's establishment contains two rooms - one on the street floor, about 350 square feet in size, and the other, about 378 square feet, directly overhead and connected by an inside stairway open to the public. Both rooms are used as regular public salesrooms, the upper room, however, being also used to store Fauer's reserve liquor, of which, he testified, he does not keep a large amount.

Although neither room alone contains 400 square feet of floor space, the regulation requires, not that each room, but that the "place of business" contain at least 400 square feet. Since

both rooms are used as public salesrooms and are integral parts of the one business establishment, being directly and openly connected with each other, they may be totaled together. Cf. Re Neiden Bar & Grill, Bulletin 329, Item 6. Since the premises thus total 728 square feet, they comply with the requirement.

Appellants lastly contend that Fauer is holding the license as a "front" for an undisclosed principal.

The only evidence upon this issue is Fauer's testimony that he and Shapiro each originally put between two and three thousand dollars into their partnership; that one Meyerson, Fauer's prospective father-in-law, lent Fauer the money to enter this partnership and also recently lent him the money to buy out Shapiro; that, although Meyerson occasionally helps at the store and gives advice, he derives no income whatsoever from the business by reason of such services; that his sole purpose is to set Fauer up in a business.

To establish a "front", clear evidence is necessary. Sobocienski et al. v. Newark et al., Bulletin 309, Item 2. The testimony presented falls far short of the evidence required.

The action of respondent in transferring the 1938-39 license and renewing it, as transferred, for the current fiscal year, is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 14, 1939.

3. DISCIPLINARY PROCEEDINGS - GAMBLING - BAGATELLE PAY-OFF - 3 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary Proceedings against

WOLFE'S TAVERN INC.,
814 Bergen Street,
Newark, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-268, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Sidney Simandl, Esq., Attorney for the Defendant-Licensee.
Charles Basile, Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charge of allowing and permitting gambling on the licensed premises in that pay-offs in drinks were made for winning scores obtained on a bagatelle machine.

The usual penalty for this violation is five days.

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

Accordingly, it is, on this 15th day of November, 1939, ORDERED, that plenary retail consumption license C-268, heretofore issued to Wolfe's Tavern Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, commencing November 20, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - BILAZZO VS. HAMMONTON.

FRANK A. BILAZZO, TRADING AS)	
BILAZZO BROTHERS,)	
)	ON APPEAL
APPELLANT,)	CONCLUSIONS
-vs-)	
MAYOR AND TOWN COUNCIL OF THE)	
TOWN OF HAMMONTON,)	
)	
RESPONDENT.)	

James A. Ruberton, Esq., Attorney for Appellant.
 Peter H. Lucas, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of a limited retail distribution license for premises known as 100 Bellevue Avenue, Hammonton.

The license applied for permits only the sale for off-premises consumption of unchilled beer.

There is no question of the personal qualifications of the appellant or the suitability of his place.

One of the councilmen testified:

"The reason we didn't issue a license was on account of the relief rolls. The gentleman was in the meat and grocery business and we were afraid the way this relief is going on, instead of people getting food, people would get beer instead of food. That is why we turned the license down."

The noble reason assigned does not stand up. Not counting club licenses, there are twenty-one taverns in Hammonton where one can drink foaming, ice-cold beer to his heart's content and view with alarm the temptations that beset the poor, balance the diet of those on relief, and chant the blues of the W.P.A. Such solicitude is well enough in its place but we must keep our sense of proportion and not strain at gnats while swallowing camels - or something more palatable than warm beer, to sell which is the only privilege sought by appellant. The population of Hammonton is approximately eight thousand. There is no place in that town where a woman can purchase bottled or canned beer for home consumption except in a saloon.

The action of respondent is reversed. It is directed to issue the license as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 15, 1939.

5. LICENSES - RENEWAL - BY AGENT WHEN LICENSEE IS IN FOREIGN LANDS -
HEREIN OF THE HARSH SITUATION WHERE A LICENSEE LEFT FOR POLAND
BEFORE THE OUTBREAK OF THE WAR AND HER WHEREABOUTS ARE NOW UNKNOWN.

Dear Comm. Burnett:

I am writing in reference to a liquor license issued to my mother, Mary Murawska of 383 Chestnut Street, Newark.

She left for Poland before the outbreak of the European war and has not returned since. We do not know of her whereabouts and cannot communicate with her.

Before leaving, my mother signed a form designating me as her agent and granting me the power to make and sign Beverage Tax Returns. This form is on file at the Beverage Tax Division, State Tax Department, Trenton.

Please let me know if I can renew this license in the event that my mother does not return by July. I wish to renew it in her name.

I sincerely hope that she will be here by that time and that it will not be necessary for me to do this for her.

Very truly yours,

STANLEY TABOR.

November 16th, 1939.

Mr. Stanley Tabor,
Newark, New Jersey.

Dear Mr. Tabor:

I hope that your Mother is safe and soon will be on her way home. It must be a terrible worry!

Normally, every applicant for license must personally sign the affidavit. However, if she does not return by renewal time, but writes authorizing you to apply on her behalf, I shall honor the situation as if she were ill and allow you to sign in her behalf.

But, assuming she shall not return in time, you cannot lawfully renew the license for her unless she expressly authorizes you to do so. Otherwise, you would not only lack authority, but, moreover, there would be no way of telling whether your Mother was still living.

It is highly essential, therefore, that you establish communication with her.

There is still plenty of time and I hope with you for the best.

As for you presently managing your mother's business, I take it that she has authorized you to do so until her return.

In the event of her death, her license would automatically lapse until revived in the name of her executor or administrator.

With best wishes, I am

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - NON-BEVERAGE ALCOHOL - VIOLATION OF SPECIAL RULING - CANCELLATION OF PERMIT AND ORDER THAT NO OTHER PERMIT BE ISSUED FOR TWO YEARS.

In the Matter of Disciplinary and Cancellation Proceedings against

JULIUS LEWIT & SON, INC.,
728 Springfield Avenue,
Irvington, N. J.,

ORDER-

holder of Plenary Retail Distribution License D-16 and Special Permit AL-33

Henry F. Schenk, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

It appearing that charges were heretofore served upon the licensee alleging that it displayed alcohol in the show window of its licensed premises in violation of special ruling; and

It further appearing that, prior to the date fixed for hearing, the licensee has tendered for cancellation Special Permit AL-33 heretofore issued to it to permit the possession and sale of alcohol;

It is, therefore, on this 16th day of November, 1939, ORDERED, that Special Permit AL-33 be cancelled and proceedings herein be and they hereby are discontinued.

It is further ORDERED that no special permit authorizing the possession and sale of alcohol be issued to the licensee for the term of two years next ensuing.

D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - EMMONS, ET AL. v. EATONTOWN
DANGERIO ET AL. v. EATONTOWN.

WILLIAM EMMONS, CHARLES M. :
HILTON, PAUL P. LEE, RAY H. :
STILLMAN, DOMENICO MAIDA, :
THOMAS F. JOYCE, EDWARD P. :
GASTON, LIDA M. COLMORGAN, :
JOHN SCORGIE and DOLLY :
BEAUMONT, :

Appellants, :

vs. :

BOROUGH COUNCIL of the BOROUGH :
OF EATONTOWN, GRACE DANGERIO :
and MILLICENT BENNETT, :

Respondents. :

ON APPEAL

GRACE DANGERIO and MILLICENT :
BENNETT, :

Appellants, :

CONCLUSIONS

vs. :

BOROUGH COUNCIL of the BOROUGH :
OF EATONTOWN, :

Respondent. :

Parsons, Labrecque & Borden, Esqs., by Theodore D. Parsons, Esq.,
Attorneys for William Emmons, et als.
Quinn & Doremus, Esqs., by Vincent McCue, Esq. and Howard M. Lawn,
Esq., Attorneys for Grace Dangerio and Millicent Bennett.
Snyder, Roberts and Pillsbury, Esqs., by John M. Pillsbury, Esq.,
Attorneys for Eatontown Borough Council.

BY THE COMMISSIONER:

These two appeals, since related, will be decided together.

Last fiscal year, Grace Dangerio and Millicent Bennett applied to the Eatontown Borough Council for a plenary retail consumption license for premises now known as "The Haunted Inn." In advertising their notice of intention they described the proposed premises, apparently having no street number, as being located at "Main Street and Highway 4N, Eatontown."

This description, which might otherwise have been sufficient, is nevertheless ambiguous and misleading since there are

actually two intersections in Eatontown which answer to the name of "Main Street and Highway 4N."

The intersection intended is at the eastern line of the Borough in a residential area of substantial homes. The other, a "T" or "dead-end" intersection, is at the Eatontown business center about a mile away, with the Borough Hall standing on one corner and a garage on the other where formerly a diner was operated.

The testimony establishes that, in the popular mind, the designation "Main Street and Highway 4N" means the business intersection. This is understandable from the fact that Main Street there runs for more than half a mile in the Borough and traverses the heart of the business section, whereas the Main Street in the residential section comes in from Oceanport and merely touches Eatontown at its eastern border for some 200 yards, with one side of the road being in Eatontown and the other in Oceanport.

However, it does not appear that the applicants, who are but recent residents in the Borough, actually intended to deceive anybody by the ambiguous description in their notice, although apparently one of the applicants knew that there were the two "Main Street and Highway 4N" intersections in the Borough.

Their application came up before the Eatontown Borough Council on May 10, 1939. When introduced, one of the Councilmen inquired as to the applicants' site, whereupon the Clerk, being familiar with the intended location, identified it as being at the residential intersection. The Council, since no one appeared in or had lodged protest, granted the application.

Various residents in the vicinity learned of the application only after it had thus been granted. They appeared at the Council's next meeting (May 24) and protested vigorously against the grant of the license. However, the Council, although apparently it would have denied the application had it known of such objection, refused to rescind its action, stating correctly that it had lost jurisdiction in the matter. The objectors thereupon appealed to the State Commissioner.

Pending that appeal, the licensees applied for renewal of their license for the current fiscal year and again, in their notice, described their premises as "Main Street and Highway 4N." I deem that they employed this same description (instead of using the simple expedient of stating that the intersection was the one at the Oceanport line) to show that they were not conceding it to be defective. In any event, the Council, in view of the now known protests of the residents, refused to renew, whereupon the licensees took appeal.

So much for the facts. Now for the law.

A notice of intention, to be valid, must clearly set forth the location of the proposed premises, else the notice is fatally defective and voids the application.

As I said in Trotto vs. Trenton, Bulletin #46, Item 11:

"Section 22 of the Control Act (now R. S. 33:1-25) provides that every applicant for a license shall cause a notice of intention to make such application to be published in a form prescribed by rules and regulations. The Commissioner's rules and regulations require that the notice of intention include the address of the premises sought to be licensed. The purpose of requiring the advertising of notice of intention is to make the advertisement a medium through which all bona fide objectors might be accorded a fair hearing. The disclosure of the location of the premises sought to be licensed is of the utmost importance in enabling persons residing in the vicinity to make known their objections to the issuance of a license for such premises. Failure to make such disclosure renders the advertisement fatally defective even though there was no intention to deceive ..."

See Methodist Episcopal Church vs. Verona, et als., Bulletin #101, Item 5; cf. Re McEwen, Bulletin #230, Item 11.

Since the description in both notices was ambiguous and in fact misleading, both the original and the renewal applications were fatally defective. Hence, the original should not have been granted and the renewal was correctly denied. The fact that the Council actually did grant the original neither cured such defect nor lent authority for its repeated use on the application for renewal. A notice of intention, proper in all respects, is a jurisdictional requisite which the issuing authority may not waive or overlook. Trotto vs. Trenton, supra; Methodist Episcopal Church vs. Verona, et als., supra.

Although it may seem that the licensees, who have invested money and incurred expenses in their establishment, are being harshly penalized by reason of their defective notices, it must also be remembered that this is a residential neighborhood; that such neighborhood, whose inhabitants, as here, are opposed to a liquor place, is not a proper locale for such an establishment; and that the Borough Council, had it originally known of the objection of residents there, would not have granted the 1938-9 license.

The action of the Eatontown Borough Council in granting the 1938-9 license is hereby reversed, and its action in refusing to renew for the current fiscal year is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 16, 1939.

8. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application)
 to Remove Disqualification be-)
 cause of a Conviction, Pursuant)
 to R. S. 33:1-31.2 (as amended)
 by Chapter 350, P. L. 1938))
 Case No. 58)
 -----)

CONCLUSIONS
AND ORDER

Abe Wasserman, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In June 1927 petitioner, then 17, was convicted of petit larceny and fined \$15.00.

Investigation indicates that, during the same year, he was also convicted of assault and battery and fined \$10.00.

In July 1928 he was arrested for "entering and larceny", but no bill was returned by the grand jury.

In April 1930 he was convicted of various robberies and attendant crimes, sentenced to five years' imprisonment and released (with time off for "good behavior") in January 1934.

In April 1937 he was arrested on a charge of atrocious assault and battery, but the complaint was dismissed.

In November 1937 he was convicted of disorderly conduct because he and two others, while riding in an automobile in Jersey City during the early hours of the morning, were unable, when stopped by a police car, to give a good account of themselves. See R. S. 2:202-16. He was sentenced to six months' imprisonment and released (being allowed thirty days' "good time") in April 1938.

Petitioner testified that (with the exception of the time spent in jail for his last conviction) he has been living in Newark, doing odd jobs "like washing cars.....at garages", since 1934 and has been on relief since 1938.

Three character witnesses (a tavern keeper, a bartender and the assistant pastor of the Mount Zion Baptist Church of Newark, all of whom have known petitioner for many years) testified that, in their opinion, petitioner has, since 1934, been leading an honest and law-abiding life.

However, as pointed out in Re Rehabilitation Case No. 51, Bulletin 308, Item 4, and Re Rehabilitation Case No. 49, Bulletin 308, Item 8, where, as here, a petitioner seeking removal of his disqualification has a long criminal record, his claim of good conduct for the necessary period of five years last past must be scrutinized with exceeding care to make sure that he has really turned over a new leaf - that his "repentance" is affirmatively genuine and not a mere lucky streak of freedom from being caught.

In this light, I cannot, in view of petitioner's conviction in 1937, conclude that he has been leading an honest and law-abiding life for the last five years warranting removal of his disqualification. The period of five years' good behavior will have to run from his release in April 1938.

Accordingly, the petition is denied, with leave to re-apply in April 1943.

Dated: November 16, 1939.

D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - ITALIAN WORLD WAR VETERANS v. NEWARK

ITALIAN WORLD WAR VETERANS)	
IN U. S. AMERICA,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS
-vs-)	
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
)	
Respondent)	
-----)	

F. D. Masucci, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.
Bernard Shanley, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Respondent refused to renew the club license held by appellant for premises at 211 Littleton Avenue, Newark, because, so it states, "the premises were conducted in a noisy and improper manner". Hence, this appeal.

Outside of the noise issue, the only testimony of "improper" conduct was the inconvenience caused to people in the vicinity by the number of automobiles that were parked there. The testimony on this point was meagre. There was no proof that the congestion caused by the parked cars was attributable solely, or even in large degree, to the club members. Nor was there any substantial evidence of real inconvenience. The most insistent objector, a next door resident, stated that the crowded condition of the street had annoyed him but "three or four times". The proof falls far short of that necessary to sustain the contention. In any event, it was admitted by respondent's witnesses that the parking situation had improved for some time prior to the hearing.

The sole substantial issue is a narrow one, and purely factual. Has the licensed premises been conducted in such a noisy manner as to warrant a refusal to renew the license?

The testimony is in conflict. On behalf of respondent, a physician, with offices located next door to the club premises, testified that during the afternoons men congregated in the basement of the club and engaged in "shouting conversation"; that the playing of bocci on two outdoor courts at night was "all right other than the banging of balls"; that the game is never played after 11:00 P.M.; that members play cards in the arbor alongside the premises, sometimes until 2:00 A.M. or 3:00 A.M. with attendant noise; that a brass band used to play there but that it "is in the prehistoric past, as far as the noise is concerned"; that the club had installed a loud speaker to magnify the reception of regular broadcasts, which was audible for "several house areas".

Another witness, also a physician, who resides directly across the street, testified substantially to the same effect, except that he added he was disturbed by the rolling of beer kegs which were delivered to the club.

A woman, residing two doors away, complained of the rolling beer kegs and the noise made by the bocci players, but admitted that during the winter the only noise which came from inside the premises was the playing of the band. Another, who lives across the street about 100 feet away from the club, testified that she was annoyed by the band and loud talking, but not by the beer kegs or loud speaker. A resident of a house across the street, also about 100 feet away, said he had been kept awake by the loud talking.

On the other hand, three others, living in the immediate vicinity, testified that they were not at all disturbed by the noises emanating from the club; that the conversation of the members while playing bocci was not loud; that the bocci games were not played after 11:00 P.M., and that their sleep was not interfered with because of their proximity to the club.

The assembling of persons at any social organization, whether licensed for the sale of liquor or not, is of necessity attendant with some noise. Especially is this true of a club, such as here, where a large number of people congregate to spend a convivial evening. There are, of course, reasonable bounds within which such noise must be confined. Where the issue is whether those bounds have been overstepped, as in the case at bar, it is a difficult task to draw the line between those cases in which the evidence is so clear as to warrant a denial to renew and those in which the evidence is not sufficient. The difficulty lies in the nature of the proof. Noise is purely subjective. It is not the type of evidence that can be brought physically into court and marked as an exhibit. It is intangible, even while audible. The oral testimony, therefore, must carry cogent conviction of unreasonableness.

In this case, I do not believe the testimony is so clear and convincing as to justify a refusal to renew. Many of the objectionable noises have been eliminated. Two of respondent's witnesses testified that for a period of three or four weeks prior to the hearing they had not been disturbed by any noises coming from the club. The playing of the brass band is, admittedly, no longer a disturbing influence. It is apparent that appellant has made a sincere effort to avoid a recurrence of the past disturbances.

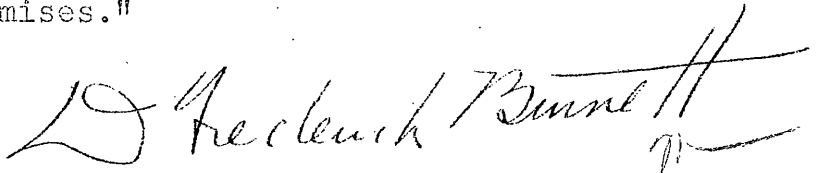
Boiled down, there would seem to be three major objections, viz., the noise incident to the playing of cards, the use of the loud speaker, and the bocci games. As to these, the objectors are entitled to relief. Card playing on the outside of licensed premises should not be tolerated, nor is there any reason why a loud speaker need be used to amplify the reception of regular radio broadcasts.

As to the bocci games, it appears that they have been played despite a contrary condition imposed against the use of the premises by the Newark Board of Adjustment. The club president explained that the club had obtained the signatures of 93% of the neighbors in the vicinity to a petition praying that the games be allowed, but admitted that no action had been taken on the petition by the local authorities. These games, therefore, are also out.

Under all the circumstances, I shall give appellant, which does not operate a public tavern but a social club whose liquor sales are confined to its members and bona fide guests, another opportunity to demonstrate its ability to conduct its licensed premises without creating any objectionable disturbances. If this opportunity is abused and further experience demonstrates otherwise, the objectors may request that disciplinary proceedings be instituted against it, or they may object to a renewal of its license for the next fiscal year.

The action of respondent is reversed and it is directed to issue the renewal of license as applied for, subject, however, to the following conditions to be inserted in the license:

- "(1) No bocci games shall be permitted anywhere on the premises occupied by the licensee;
- (2) No card games shall be permitted on the exterior of the licensed premises;
- (3) No loud speaker amplifier shall be used anywhere on the licensed premises."



Commissioner.

Dated: November 16, 1939.