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

BULLETIN 434 DECEMBER 12, 1940.

1. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION - SALES CONTRARY TO REFERENDUM - 10 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against NICHOLAS CARRAS & ANTHONY KYPRIOS, T/a Chatham Delicatessen, 119 Main Street, Chatham, New Jersey, Holders of Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Chatham.	CONCLUSIONS AND ORDER

Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Nicholas Carras & Anthony Kyprios, by Anthony Kyprios.

The licensees have pleaded guilty to charges of selling alcoholic beverages on Sunday, October 20, 1940 (1) at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30, and (2) contrary to referendum held in the Borough of Chatham on November 8, 1938 at which time a majority of the voters voting upon the question "Shall the sale of alcoholic beverages be permitted on Sundays in the Borough of Chatham?", voted "No", in violation of R. S. 33:1-47.

The usual penalty for violation of Rule 6 of State Regulations No. 30 is ten days. Re Gardella, Bulletin 431, Item 12; Re Malmendier, Bulletin 428, Item 14. The minimum penalty for sale on Sunday contrary to referendum is ten days. See Re Magee, Bulletin 318, Item 11; Re Nash, Bulletin 351, Item 9.

By entering the plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. Five days of the total penalty will, therefore, be remitted.

Accordingly, it is, on this 29th day of November, 1940,

ORDERED, that Plenary Retail Distribution License D-2, heretofore issued to Nicholas Carras and Anthony Kyprios by the Borough Council of the Borough of Chatham, be and the same is hereby suspended for a period of fifteen (15) days, effective December 2, 1940, at 6:00 A. M.

E. W. GARRETT,
Acting Commissioner.

2. ENFORCEMENT DIVISION ACTIVITY REPORT FOR NOVEMBER, 1940.

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - - - - - - - - - - - 16
Licensees - 0 Non-licensees - 16

SEIZURES: Stills - total number seized- - - - - - - - - - - - 7
Capacity 1 to 50 Gallons- - - - - - 2
Capacity 50 Gallons and over- - - - 5

Motor Vehicles - total number seized- - - - - - - - 3
Trucks - 2 Passenger cars - 1

Alcohol
Beverage Alcohol - - - - - - - - - - - - - - - 13 Gallons

Mash - total number of gallons - - - - - - - - 19,394

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - - - - - - - - - 18 Gallons
Wine -133 "
Whiskies and other hard liquor- - - - - - 54 "

RETAIL INSPECTIONS:

Licensed premises inspected- - - - - - - - -	1625
Illicit (bootleg) liquor- - - - - - - -	7
Gambling violations - - - - - - - - - -	9
Sign violations - - - - - - - - - - - -	20
Unqualified employees - - - - - - - - -	207
Other mercantile business - - - - - - -	7
Disposal permits necessary- - - - - - -	14
"Front" violations- - - - - - - - - - -	3
Improper beer markers - - - - - - - - -	3
Other violations found- - - - - - - - -	11
Total violations found- - - - - - - - -	281
Total number of bottles gauged - - - - - - - - -	13980

STATE LICENSEES:

Plant Control inspections completed- - - -	54
License applications investigated- - - - -	13

COMPLAINTS:

Investigated and closed- - - - - - - - - -	172
Investigated, pending completion - - - - -	373

LABORATORY:

Analyses made- - - - - - - - - - - - - - - -	101
Alcohol and water and artificial coloring cases- - - -	17
Poison and denaturant cases- - - - - - - -	1

Respectfully submitted,

S. B. White,
Chief Inspector.

3. APPELLATE DECISIONS - LIDO, INC. v. RARITAN.

A MUNICIPAL RESIDENCE REQUIREMENT WHICH APPLIES, BY ITS TERMS, ONLY TO NATURAL PERSONS, DOES NOT GOVERN APPLICATIONS BY CORPORATIONS - CHARGE OF SUBTERFUGE IN PROCURING PRIOR LICENSE FOUND UNJUSTIFIED FOR LACK OF PROOF - DENIAL REVERSED.

LIDO, INC.,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE TOWNSHIP OF RARITAN, MIDDLESEX COUNTY,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

H. E. Romond, Esq., Attorney for Appellant.
Thomas L. Hanson, Esq., Attorney for Respondent.

This is an appeal from the refusal of respondent to issue to appellant a plenary retail consumption license for this fiscal year.

So far as appears from the record, all stockholders have all the statutory requirements of individual licensees. Respondent refused such license because the application filed by appellant therefor discloses that two of its stockholders, each holding one of the thirty-five shares of stock issued and outstanding, are non-residents of the municipality. It contends that Section 23 of its resolution adopted June 22, 1934 bars the issuance of a license to a corporation unless all of the stockholders are residents of the Township. That section provides:

> "No license shall be granted to any applicant who has not been a resident of the Township of Raritan for a period of at least two (2) years prior to the granting of such license or who has not maintained an established place of business in the Township of Raritan for a period of at least one (1) year prior to the granting of the said license."

It is clear that respondent has misconstrued the residence requirement in the resolution. A mere reading of the section suffices to indicate that it has reference only to individual applicants and not to corporations or their stockholders. None of the language of the residence requirement discloses any intention to apply to anyone other than natural persons. Cf. New Jersey Licensed Beverage Ass'n v. Woodbridge et al., Bulletin 406, Item 3.

Moreover, even if the residence provision were applicable to corporate applicants, it nevertheless appears that appellant has held a license in respondent municipality ever since April 25, 1939 and has conducted its business there ever since that date. It has, therefore, "maintained an established place of business in the Township of Raritan for a period of at least one (1) year ***." Since the requirements of the cited section are in the alternative, it follows that appellant would be entitled to a license upon satisfying either of those requirements.

Respondent also argues that, when the corporation was formed, there was a secret understanding that the original stockholders who were residents of the municipality would, at some later date, dispose of their shares to others, including the stockholders who were not residents of the municipality and who are mentioned in the application for this fiscal period and that, therefore, the original license was obtained by subterfuge. The only proof of such secret understanding was in the form of an affidavit made by one of the original stockholders. The affiant did not appear at the hearing and no reason was given for the failure to produce her as a witness. It also appears that this affidavit formed the basis of disciplinary proceedings brought against appellant by respondent in which it was charged with having obtained its original license by subterfuge (the same contention here made) and which proceedings were dismissed by respondent under date of May 14, 1940. In its dismissal order respondent found that the matters set forth in the affidavit were not sufficient "to justify the finding that the application was obtained by fraud and will, therefore, dismiss the charges as filed against the applicant."

In this posture of the case, and with only the affidavit before me containing the same facts already found lacking by the issuing authority, I cannot say that respondent was justified in refusing to grant appellant's application for such reason.

The action of respondent is, therefore, reversed.

Accordingly, it is, on this 2nd day of December, 1940,

ORDERED, that respondent issue to appellant forthwith the license as applied for.

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against HARRY SCHIFFMAN, 605 Central Avenue, East Orange, N. J., Holder of Plenary Retail Distribution License D-11, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange.	CONCLUSIONS AND ORDER

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.
Harry Schiffman, 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 November 14, 1940, in violation of Rule 6 of State Regulations No. 30.

The minimum penalty for this violation is ten days.

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

Accordingly, it is, on this 30th day of November, 1940,

ORDERED, that Plenary Retail Distribution License D-11, heretofore issued to Harry Schiffman by the Municipal Board of Alcoholic Beverage Control of the City of East Orange, be and the same is hereby suspended for a period of five (5) days, effective December 2, 1940, at 6:00 A. M.

E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - CAPITOL LIQUOR STORES CO. v. BELLEVILLE.

SUFFICIENT LICENSES IN MUNICIPALITY - PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN - DENIAL AFFIRMED.

CAPITOL LIQUOR STORES CO., a corporation of New Jersey, Appellant, -vs- BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Bernard E. McBride, Esq., Attorney for the Appellant.
Lawrence E. Keenan, Esq., Attorney for the Respondent.

Appellant appeals from the denial of its application for a plenary retail distribution license for premises 358-360 Washington Avenue, Belleville.

The petition of appeal sets forth that the reason given by respondent for such denial was: "There were too many package liquor stores in Belleville at the time."

There is presently no ordinance in respondent municipality limiting the number of such licenses. The theory of appellant's appeal is apparently that, in the absence of any such quota, the respondent must of necessity grant an application therefor.

Such, however, is not the law. It has heretofore been held repeatedly that a local issuing authority may validly refuse to issue a liquor license if, at the time, sufficient liquor places are already outstanding in the municipality, even though there is no formal regulation limiting the number of such licenses. Haycock v. Roxbury, Bulletin 101, Item 3; Dunster v. Bernards, Bulletin 121, Item 11; Widlansky v. Highland Park, Bulletin 209, Item 7; Goff v. Piscataway, Bulletin 234, Item 5; Watts v. Princeton, Bulletin 301, Item 2; Albert v. Asbury Park, Bulletin 380, Item 2; Stewart v. Chatham, Bulletin 433, Item 9.

Appellant, upon whom rests the burden of proof, offered no evidence that the seven distribution licenses now outstanding in the municipality were not sufficient to satisfy public convenience and necessity. On the other hand, a map of the municipality produced by appellant indicates that four of the seven distribution licenses, and nine consumption licenses, are located in the same section, comprising approximately ten blocks along Washington Avenue, in which appellant seeks to locate.

As to the suggestion that respondent's denial of the application has deprived appellant of the equal benefit of the laws, the answer is given in Stewart v. Chatham, supra, where it was said:

> "A liquor license is a privilege. No one has a right to a license. The same argument was considered in Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935), wherein Justice Parker, speaking for the court, said:
>
> "'Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee: but that is not the case. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. "No one has a right to demand a license: License is a special privilege granted to the few, denied to the many." Ibid. 596. "There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the State of the United States." Meehan v. Board, 29 N.J.L.J. 370; 64 Atl. Rep. 689. See, also, Hagan v. Boonton, 62 N.J.L. 150.'"

I am satisfied that respondent did not abuse its discretion in refusing to grant appellant's application for a plenary retail distribution license at the premises in question. Its action is, therefore, affirmed.

Accordingly, it is, on this 2nd day of December, 1940,

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

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT FOR DISQUALIFIED PERSON - SITUATION CORRECTED AND MINIMUM 10 DAYS' SUSPENSION SERVED - PETITION TO LIFT SUSPENSION GRANTED.

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.	ON PETITION CONCLUSIONS AND ORDER

John J. Meehan, Esq., Attorney for Defendant-Licensee.

Heretofore in this case I suspended the defendant's license from October 28, 1940 through the balance of its term after the defendant pleaded "nolo contendere" to charges showing that he was holding such license merely as a "front" for Anna Stankewich (a person disqualified in point of citizenship from herself holding a retail liquor license in this State). However, in view of the defendant's frank disclosure, leave was granted at time of such suspension for the defendant, if actually correcting such "front" situation, to present a verified petition for an order lifting the suspension after ten days of such suspension had been served. Re Lindeman, Bulletin 428, Item 10.

On December 4, 1940 the defendant filed such a petition, establishing that he has bought out Anna Stankewich entirely and is now the sole and exclusive owner of the tavern and that there are no agreements, secret or otherwise, giving Anna Stankewich or anyone else any interest therein.

In view of such fact, and since more than ten days have elapsed since the suspension became effective (actually more than five weeks having thus elapsed), the defendant's petition for immediate lifting of such suspension is granted.

Accordingly, it is, on this 4th day of December, 1940,

ORDERED, that the suspension heretofore imposed on the defendant's license, from October 28, 1940 through the balance of its term, be and hereby is lifted and the license restored to operation, effective immediately.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

DUNELLEN LODGE 1488, B.P.O. ELKS, 121 No. Washington Ave., Dunellen, N. J.,

Holder of Club License CB-22, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Henry Handelman, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded non vult to a charge that on August 16, 1940 it possessed, allowed, permitted and suffered slot machines on and about the licensed premises in violation of Rule 8 of State Regulations 20.

The Department file discloses that three jack-pot pull-handle slot machines were found on the licensed premises. The method of operation of these machines is substantially identical with that of the Mills Jackpot machines described in Re Ukrainian National Home, Bulletin 433, Item 10, and the Keystone Jackpot machines described in Re Atlantic City Tuna Club, Bulletin 433, Item 11. They are, therefore, slot machines.

The minimum penalty for possessing slot machines is ten days. Re Morrisey & Walker, Inc., Bulletin 423, Item 8.

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 five days instead of the usual ten days.

Accordingly, it is, on this 4th day of December, 1940,

ORDERED, that Club License CB-22, heretofore issued to Dunellen Lodge 1488, B.P.O. Elks by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, effective December 8, 1940, at 1:00 A.M.

E. W. GARRETT,
Acting Commissioner.

8. APPELLATE DECISIONS - FELZOT v. PALMYRA.

APPLICATION PROPERLY FILED PURSUANT TO PRIOR APPEAL - CITIZENSHIP DETERMINED - APPLICANT QUALIFIED, PREMISES SUITABLE, NO OBJECTIONS FILED - DENIAL REVERSED.

RUBEN FELZOT,)

Appellant,) ON APPEAL
CONCLUSIONS AND ORDER

-vs-)

MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF PALMYRA,)

Respondent)

Worth & Worth, Esqs., by Herbert L. Worth, Esq., Attorneys for Appellant.
No appearance on behalf of Respondent.

On August 27, 1940, upon appeal filed by this appellant from the refusal of respondent to issue to him a plenary retail distribution license for premises 107 West Broad Street, Palmyra, for the fiscal year 1939-40, respondent was directed "to issue a license for the year 1940-41, provided appellant makes proper application therefor and fully complies with all statutory requirements, unless valid objections different in kind from those heretofore raised shall be presented." See Bulletin 421, Item 9.

Thereafter, appellant filed his application for the present fiscal period, and this application was also denied by respondent. Hence this appeal.

Respondent did not appear at the hearing. The appellant testified that no reason was given by respondent for the denial other than that if this Department desired to issue the license it could do so, but that it (respondent) did not intend to issue the license.

Appellant has complied with all statutory requirements. No question was raised on the first appeal, or on the present application, concerning appellant's fitness to hold a license or the suitability of his premises. Indeed, no objections of any kind were lodged with respondent to appellant's present application, and no "objections different in kind from those heretofore raised" were presented, with the possible exception of appellant's citizenship.

It appears that appellant was born in Russia in 1904 and came to this country in 1923, when he was nineteen years of age, and has resided here ever since. His father became a United States citizen in 1920. Under such circumstances, appellant derived his citizenship through the naturalization of his father. See United States v. Tod (C.C.A. 1924), 297 F. 385, which holds that, according to the law then in effect, a foreign-born child, not in the United States when the parent is naturalized, becomes a citizen from the time that, while still a minor, it begins to reside permanently in the United States. These facts and the law applicable thereto were reported to respondent by its counsel, whose recommendation that the application be granted was ignored by respondent.

The action of respondent is reversed. In view of its apparent unwillingness to issue a license to appellant, despite the absence of any valid reason therefor, attention is called to the last paragraph of R. S. 33:1-38, which reads:

> "Where any order entered by the commissioner pursuant to any appeal taken under this chapter, except from the denial of a refund, is not honored and executed within ten days after the date thereof, it shall be deemed self-executed and shall have the same force and effect as though actually complied with by the other issuing authority."

Accordingly, it is, on this 5th day of December, 1940,

ORDERED, that respondent issue to appellant forthwith the license as applied for.

E. W. GARRETT,
Acting Commissioner.

9. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION 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).	CONCLUSIONS AND ORDER
Case No. 120.	

In Re Case No. 27, Bulletin 268, Item 5, petitioner's application for removal of disqualification was denied, for the reasons stated therein, but with leave to renew application on or after December 24, 1938. Pursuant to the leave therein granted, petitioner, on October 22, 1940, again made application for removal of disqualification.

At the hearing, a business man and the clerk of the county wherein petitioner resides, who have known petitioner for thirty years, and a priest who has known petitioner for the last five years, testified that his reputation in the community is good and that he has been leading an honest and law-abiding life during the last past five years.

Petitioner's fingerprint record shows that he has not been convicted of any crime since 1927. Report from the Chief of Police of the municipality wherein petitioner resides discloses that there are no complaints or pending investigations against him.

It is, therefore, concluded that petitioner has been law-abiding for the last past five years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 5th day of December, 1940,

8. APPELLATE DECISIONS - FELZOT v. PALMYRA.

APPLICATION PROPERLY FILED PURSUANT TO PRIOR APPEAL - CITIZENSHIP DETERMINED - APPLICANT QUALIFIED, PREMISES SUITABLE, NO OBJECTIONS FILED - DENIAL REVERSED.

RUBEN FELZOT,)
Appellant,) ON APPEAL
-vs-) CONCLUSIONS AND ORDER
MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF PALMYRA,)
Respondent)

Worth & Worth, Esqs., by Herbert L. Worth, Esq., Attorneys for Appellant.
No appearance on behalf of Respondent.

On August 27, 1940, upon appeal filed by this appellant from the refusal of respondent to issue to him a plenary retail distribution license for premises 107 West Broad Street, Palmyra, for the fiscal year 1939-40, respondent was directed "to issue a license for the year 1940-41, provided appellant makes proper application therefor and fully complies with all statutory requirements, unless valid objections different in kind from those heretofore raised shall be presented." See Bulletin 421, Item 9.

Thereafter, appellant filed his application for the present fiscal period, and this application was also denied by respondent. Hence this appeal.

Respondent did not appear at the hearing. The appellant testified that no reason was given by respondent for the denial other than that if this Department desired to issue the license it could do so, but that it (respondent) did not intend to issue the license.

Appellant has complied with all statutory requirements. No question was raised on the first appeal, or on the present application, concerning appellant's fitness to hold a license or the suitability of his premises. Indeed, no objections of any kind were lodged with respondent to appellant's present application, and no "objections different in kind from those heretofore raised" were presented, with the possible exception of appellant's citizenship.

It appears that appellant was born in Russia in 1904 and came to this country in 1923, when he was nineteen years of age, and has resided here ever since. His father became a United States citizen in 1920. Under such circumstances, appellant derived his citizenship through the naturalization of his father. See United States v. Tod (C.C.A. 1924), 297 F. 385, which holds that, according to the law then in effect, a foreign-born child, not in the United States when the parent is naturalized, becomes a citizen from the time that, while still a minor, it begins to reside permanently in the United States. These facts and the law applicable thereto were reported to respondent by its counsel, whose recommendation that the application be granted was ignored by respondent.

The action of respondent is reversed. In view of its apparent unwillingness to issue a license to appellant, despite the absence of any valid reason therefor, attention is called to the last paragraph of R. S. 33:1-38, which reads:

> "Where any order entered by the commissioner pursuant to any appeal taken under this chapter, except from the denial of a refund, is not honored and executed within ten days after the date thereof, it shall be deemed self-executed and shall have the same force and effect as though actually complied with by the other issuing authority."

Accordingly, it is, on this 5th day of December, 1940,

ORDERED, that respondent issue to appellant forthwith the license as applied for.

E. W. GARRETT,
Acting Commissioner.

9. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION 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).	CONCLUSIONS AND ORDER
Case No. 120.	

In Re Case No. 27, Bulletin 268, Item 5, petitioner's application for removal of disqualification was denied, for the reasons stated therein, but with leave to renew application on or after December 24, 1938. Pursuant to the leave therein granted, petitioner, on October 22, 1940, again made application for removal of disqualification.

At the hearing, a business man and the clerk of the county wherein petitioner resides, who have known petitioner for thirty years, and a priest who has known petitioner for the last five years, testified that his reputation in the community is good and that he has been leading an honest and law-abiding life during the last past five years.

Petitioner's fingerprint record shows that he has not been convicted of any crime since 1927. Report from the Chief of Police of the municipality wherein petitioner resides discloses that there are no complaints or pending investigations against him.

It is, therefore, concluded that petitioner has been law-abiding for the last past five years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 5th day of December, 1940,

ORDERED, that his statutory disqualification because of the convictions described in Re Case No. 27, supra, 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.

10. DISCIPLINARY PROCEEDINGS - DEVICE IN THE NATURE OF A SLOT MACHINE - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

CORNELIUS BRESLIN,
209 Preakness Ave.,
Paterson, N. J.,

Holder of Plenary Retail Consumption License C-252, issued by the Board of Aldermen of the City of Paterson.

CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - -

Cornelius Breslin, Defendant-Licensee, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that on August 27, 1940 he possessed a "Hawthorne" one-ball machine, a device in the nature of a slot machine which was used for the purpose of playing for money on his licensed premises, in violation of Rule 8 of State Regulations 20.

The Department file discloses that this machine is operated in the following manner: When a nickel is inserted into the receiving slot, a small number lights up on the backboard, indicating the odds to be paid. At the same time another, larger number lights up on the backboard. Available for play is one ball, which the player propels by means of a plunger. If the ball goes into a receptacle on the playing surface of the machine bearing a number corresponding to that lighted on the backboard, the machine automatically ejects a number of tickets equal to the posted odds. In the instant case the investigators succeeded in winning some tickets which were redeemed for cash by the bartender. From its method of operation the machine is clearly a device in the nature of a slot machine.

The minimum penalty for possessing a slot machine is ten days. Re Morrisey & Walker, Inc., Bulletin 423, Item 8. Possession of a device in the nature of a slot machine warrants the same penalty.

By entering a guilty plea in ample time before 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 five days instead of the usual ten days.

Accordingly, it is, on this 6th day of December, 1940,

ORDERED, that Plenary Retail Consumption License C-252, heretofore issued to Cornelius Breslin by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of five (5) days, effective December 9, 1940, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - DEVICE IN THE NATURE OF A SLOT MACHINE - SECOND DISSIMILAR OFFENSE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against GIUSEPPE AQUARO, 288-290 Grand St., Paterson, N. J., Holder of Plenary Retail Consumption License C-171, issued by the Board of Aldermen of the City of Paterson.	CONCLUSIONS AND ORDER

Philip Rubin, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that on October 16, 1940 he possessed a Bally "Stables" one-ball machine, a device in the nature of a slot machine which was used for the purpose of playing for money on his licensed premises, in violation of Rule 8 of State Regulations 20.

The Department file discloses that the method of operation of this machine is substantially identical with the method of operation of the "Hawthorne" one-ball machine described in Re Breslin, Bulletin 434, Item 10. However, the Bally "Stables" is equipped with a cash pay-off drawer in addition to a ticket ejector. In the instant case the ticket ejector was disconnected, but the investigators succeeded in receiving an automatic cash pay-off through the machine itself. From its method of operation the machine is clearly a device in the nature of a slot machine.

By entering a guilty plea in ample time before the date set for hearing, the licensee has saved the Department the time and expense of proving its case.

The minimum penalty for this violation is ten days. Re Breslin, supra. However, the Department files disclose that the subject's license was suspended by the Board of Aldermen of the City of Paterson for two days, effective February 8, 1939, for mislabeling of beer taps in violation of Rule 1 of State Regulations 22. In view of the previous record of this licensee, the penalty will be fifteen days. The license will, therefore, be suspended for fifteen days, less five days for the guilty plea, or a total of ten days.

Accordingly, it is, on this 6th day of December, 1940,

ORDERED, that Plenary Retail Consumption License C-171, heretofore issued to Giuseppe Aquaro by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of ten (10) days, effective December 10, 1940, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

12. DISCIPLINARY PROCEEDINGS - CONDUCT OF LICENSED BUSINESS DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - PERSONS OTHER THAN EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - FAILURE TO REMOVE SCREENS DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

ANTONIO TEDESCO,
T/a Bergenline Tavern,
6705-07 Bergenline Avenue,
West New York, N. J.,

Holder of Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Antonio Tedesco, Pro Se.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges that during prohibited hours on Sunday, October 27, 1940, he (1) conducted his licensed business, (2) suffered and permitted persons other than himself, and his actual employees and agents, in and upon his licensed premises, and (3) failed to remove all shades, screens and other obstructions so as to permit a clear view of the bar in his licensed premises, in violation of Section 6 of Rules and Regulations governing the sale of alcoholic beverages in the Town of West New York, adopted by resolution of the Board of Commissioners on December 15, 1933, as amended July 11, 1939.

The minimum penalty for each violation is five days (Re Reddan, Bulletin 428, Item 2), thus making a total of fifteen days.

Entry of the plea has saved the Department the time and expense of proving its case. Five days of the total penalty will therefore, be remitted.

Accordingly, it is, on this 6th day of December, 1940,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued to Antonio Tedesco by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of ten (10) days, effective December 9, 1940, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION - SALE DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - OPEN DURING PROHIBETED HOURS - 5 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against STEPHEN PAPP, 299 Smith Street, Perth Amboy, N. J., Holder of Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Perth Amboy.	CONCLUSIONS AND ORDER

Stephen Papp, Pro Se.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of (1) selling liquor at less than the Fair Trade price at the licensed premises on October 20, 1940, in violation of Rule 6 of State Regulations No. 30; (2) permitting the sale of alcoholic beverages on the licensed premises on Sunday, October 20, 1940, in violation of local ordinance; and (3) permitting his place of business to be open on Sunday, October 20, 1940, in violation of local ordinance.

The minimum penalty for the first charge is ten days, and five days each on the second and third charges, making a total of twenty (20) 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 fifteen (15) days instead of twenty (20) days.

Accordingly, it is, on this 9th day of December, 1940,

ORDERED, that Plenary Retail Consumption License C-33, heretofore issued to Stephen Papp by the Board of Commissioners of the City of Perth Amboy, be and the same is hereby suspended for a period of fifteen (15) days, effective December 10, 1940, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

14. APPELLATE DECISIONS - MUTUAL BEEF CO., INC. v. ROXBURY.

SUFFICIENT LICENSES IN MUNICIPALITY - PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN - DENIAL AFFIRMED.

MUTUAL BEEF CO., INC.,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ROXBURY,
Respondent

ON APPEAL
CONCLUSIONS

George M. Passmonick, Esq., Attorney for Appellant.
William C. Egan, Esq., Attorney for Roxbury Township Hotel and Tavern Owners Ass'n.

This is an appeal from denial of a plenary retail distribution license for premises located at State Highway, Route 6, and Dell Avenue, Kenvil, Roxbury Township.

Respondent filed no answer herein. It appears, however, from respondent's minutes, that Committeemen Fancher, Roberts and Beasley were present at the meeting at which appellant's application was considered. Said minutes further show that:

> "After considerable discussion, Mr. Beasley said he didn't think any valid reason had been presented by the objectors that the license should not be granted and moved that the application be granted. After some discussion, Mr. Roberts seconded the motion. The motion was then put by the Chairman; Mr. Beasley voting 'Yes' and Mr. Roberts declining to vote; Mr. Fancher stating there were three licensed premises on Route#6, which he considered plenty, voted 'no' and declared the motion lost."

There is no ordinance or resolution restricting the number of plenary retail distribution licenses in the township. One such license has been issued and is now in effect for premises on Route 10, approximately a mile and one-half from appellant's premises. Eleven plenary retail consumption licenses have been issued; three of which are for various premises on Route 6, the nearest being about one-quarter of a mile from appellant's premises. The population of the township is approximately 4,000.

Even where there is no limiting ordinance or resolution, as in the present case, the question of the number of licenses which should be outstanding in the community, and particularly in any section of the community, is a matter to be decided primarily by the local issuing authority. The burden of proof is upon appellant to show that the action of respondent was unreasonable.

As was said in Sussex County Drug Co. v. Newton, Bulletin 47, Item 3:

> "The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently serviced by another liquor store is difficult to sustain,

> especially in the case of a distribution license for off-premises consumption. For, with telephone and transportation facilities, such a store can properly service an area of much greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality. Its decision may be reversed if it fails in the ultimate test of public necessity and convenience."

In the present case, the existing distribution licensee has a telephone and makes deliveries throughout the township. A written petition signed by nineteen business men (including a number of liquor licensees) was presented to respondent objecting to the issuance of the license.

The evidence produced by appellant shows that it opened a market, wherein groceries and meat are sold, at the premises in question on September 1, 1940 and that this section of the township "is pretty well populated". Committeeman Fancher, however, testified at the hearing that the population is scattered throughout the township; that "possibly 300 people" reside within a quarter mile of appellant's premises; and that, in his opinion, there is no community need for another license, particularly in this section of the township. The only other evidence given by appellant as to necessity consisted of the testimony of two individuals, one of whom resides nearby, and the other of whom is a tenant in the floor above appellant's premises. The evidence as to the need for an additional distribution license is not substantial or convincing as in the cases of Budd Lake Market, Inc. v. Mt. Olive, Bulletin 160, Item 6, and Hubert v. Linden, Bulletin 251, Item 6. Appellant has not sustained the burden of proof in showing that the interests of the community require that a distribution license be issued for its premises, and hence the action of respondent in denying its application is affirmed. Sussex County Drug Co. v. Newton, supra; Sanford Drug Co. v. Maplewood, Bulletin 71, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Ander v. Woodbridge, Bulletin 409, Item 11; Stewart v. Chatham, Bulletin 433, Item 9.

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

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

E. W. Garrett

Acting Commissioner.