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

BULLETIN 626 JULY 3, 1944

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ITEM

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

BULLETIN 626 JULY 3, 1944.

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DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION TO LIFT DENIED.

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

Case No. 323.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

A hearing was conducted, pursuant to the Alcoholic Beverage Law (R. S. 33:1-31.2), to determine whether an order should be entered removing petitioner's disqualification from obtaining or holding a license because of the convictions hereinafter set forth.

Petitioner became the holder of a plenary retail consumption license in July 1943. In his application for that license he answered, in the negative, Question #33 therein, which asks: "Have you.....ever been convicted of any crime?" In truth, however, petitioner had been convicted, in December 1925, of the crime of keeping a disorderly house (prostitution) and again, in January 1931, for possession of a slot machine. For the first conviction, petitioner was confined to jail at hard labor for six months. On the second conviction, he was sentenced to pay a fine of $250.00. Disciplinary proceedings instituted against petitioner's license for his failure to reveal the aforesaid convictions are being decided simultaneously herewith. See Bulletin 626, Item 2.

The crime of maintaining a house of prostitution, per se, involves the element of moral turpitude. Re Kielb, Bulletin 570, Item 4, and cases therein cited.

The fact that petitioner had a criminal record came to light only when, pursuant to a specific complaint, an ABC investigator interviewed the petitioner in September 1943. At that time petitioner, although admitting his 1925 conviction, failed to apprise the investigator of his 1931 conviction.

At the hearing, petitioner explained his failure to disclose his disqualifying conviction by stating that because he was only nineteen years old when convicted and that the conviction had occurred some eighteen years before filing his application for license, he understood that it was not necessary to reveal that conviction. This understanding, strange to say, was based on "discussions that come up when a bunch of fellows get together." He admitted that he had never sought professional advice nor made any inquiry of the local issuing officials.

In the verified petition filed herein, petitioner revealed only the 1925 conviction and swore that he had "never been convicted of any other crime." At his hearing, petitioner first denied that he had ever been arrested after 1925 but finally admitted, after being pressed, that he had also been convicted for possession of a slot machine in 1931.

It is apparent from the foregoing that petitioner has failed to establish one of the necessary statutory requisites, to wit, that he has been law-abiding for five years last past. See R.S. 33:1-31.2. Under the circumstances, I must deny the relief sought and refuse to lift the disqualification resulting from petitioner's conviction for maintaining a house of prostitution.

Accordingly, it is, on this 21st day of June, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT (CRIMINAL RECORD) - LICENSE SUSPENDED FOR BALANCE OF TERM - NO NEW LICENSE TO BE ISSUED FOR PREMISES FOR A PERIOD OF 90 DAYS.

In the Matter of Disciplinary Proceedings against PETER A. MUCCIO T/a FREDDIE'S LAST ROUND-UP 47 Newby Avenue West Paterson, N. J., Holder of Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of West Paterson.	CONCLUSIONS AND ORDERS

Edward A. Haffer, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, in his application for license, he falsely denied that he had ever been convicted of any crime, whereas, in truth and fact, he had been convicted, in December 1925, of the crime of keeping a disorderly house.

In proceedings founded upon petitioner's application to lift the statutory disqualification resulting from such conviction, which are being decided simultaneously herewith (Bulletin 626, Item 1), it was disclosed, for the first time, that the defendant had also been convicted of the crime of possessing a slot machine, in January 1931. To a supplemental charge alleging the failure to reveal this conviction in his license application, the defendant pleaded nolle contendere.

Because I was unable to find, as I am required to do by statute (R. S. 33:1-31.2), that the defendant had been law-abiding for five years last past, I had no alternative other than to refuse to lift the defendant's disqualification resulting from his conviction in December 1925. See Bulletin 626, Item 1. The defendant is thus ineligible, under the Alcoholic Beverage Law, to hold a liquor license or to be employed by a liquor licensee in this State. R.S. 33:1-25, 26.

Although a revocation of the license for the concealment of defendant's convictions would not be unnecessarily severe, I shall consider, as mitigating factors, the defendant's clear record as a licensee and that the disqualifying conviction occurred some nineteen years ago while he was but nineteen years of age.

The license will be suspended for the balance of its term, effective June 26, 1944, and I shall further direct that, if any license is issued to another person for the premises in question, such license shall remain under suspension until September 24, 1944. Cf. Re Botta, Bulletin 566, Item 10.

In view of the foregoing disposition, the cancellation charge brought against this defendant on the theory that the license was improvidently issued because of the defendant's disqualifying conviction is dismissed.

Accordingly, it is, on this 21st day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-15, heretofore issued by the Borough Council of the Borough of West Paterson to Peter A. Muccio, t/a Freddie's Last Round-Up, for premises 47 Newby Avenue, West Paterson, be and the same is hereby suspended for the balance of its term, effective June 26, 1944, at 3:00 A.M.; and it is further

ORDERED, that no new license (as distinguished from a renewal) be issued to any person for the premises in question prior to September 24, 1944; and it is further

ORDERED, that if a bona fide transfer of the license is effected to a duly qualified purchaser prior to June 30, 1944, such transferee may apply for a renewal, which, however, shall not become effective until September 24, 1944.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - JAMISON v. LIBERTY TOWNSHIP.

WILLIE JAMISON,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LIBERTY,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Saul N. Schecter, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

Appellant appeals herein from the denial of his application for a plenary retail consumption license for premises on Route 6, Township of Liberty, N. J.

Respondent filed no answer. Neither respondent nor any objectors appeared at the time the instant appeal was heard. It is unfortunate that the respondent failed to enter an appearance and offer for my guidance its reasons for the action taken by it.

A copy of the motion approved by respondent after denial of appellant's application was read into the record. This provided as follows: "Motion by George A. Tichenor and seconded by Parkes J. Cummins -- the application of Mr. Willie Jamison for a Plenary Retail Consumption license on Route #6 is hereby denied -- for the reason that other applicants had heretofore been rejected. By order of the Township Committee of the Township of Liberty -- Warren County -- Lizzie V. Sharp, Township Clerk."

The reason assigned, as outlined above, for the denial of the license is valueless in so far as the present appeal is concerned. These other applicants referred to may have been disqualified for various reasons or the premises sought to be licensed may not have been suitable for this type of business, or located in close proximity to other licensed premises.

The building for which appellant seeks a license is situated on a main highway near a bend on the Pequest River. According to the testimony of divers witnesses, the river near the premises of appellant is very popular with the sporting fraternity. Hundreds of fishermen who visit the river near the premises of appellant patronize his present establishment and there is a substantial demand, according to his testimony, for alcoholic "refreshments." Because of the heavy traffic on the highway in front of the premises, facilities have been arranged for parking so that there is no likelihood of a traffic hazard resulting from vehicular congestion. The nearest tavern is a half mile from appellant's premises.

Four witnesses who reside in Liberty Township, not too distant from appellant's place of business, are in agreement that if permission to sell alcoholic beverages were granted to appellant it would

serve a public convenience and need. Their testimony also corroborated that of the appellant regarding the great number of transients, especially fishermen, who are seen in and around the appellant's property on many occasions. Two other witnesses who reside in another municipality but fish near the site owned by appellant substantiated the testimony of the other witnesses relative to the need and convenience to be served if a license were issued to appellant.

No objections, either written or verbal, as to the personal qualifications of appellant or as to the premises for which a license is sought, according to the testimony of appellant, had been made before the issuing authority at the time the original hearing was held. The building appears, from the testimony, to be suitable for the purpose desired, the place being characterized by one witness as "one of the most beautiful places along the line; it has everything."

The Township of Liberty adopted an ordinance, on July 1, 1935, wherein it is provided, under Section 8, that "no more than six (6) plenary retail consumption and seasonal retail consumption licenses shall be in effect in the municipality at any time." There are at the present time five liquor licenses issued and outstanding in the municipality. No amendment to the ordinance has been adopted to reduce the limitation of the number of licenses from that fixed nearly nine years ago.

In Eisen v. Plainfield, Bulletin 68, Item 12, it was stated, with reference to an ordinance limiting the number of plenary retail distribution licenses to be issued to twenty, of which seventeen thereof had been issued, that:

> "Under this ordinance an applicant who is personally fit and whose premises are suitable and properly located should receive a license so long as the maximum number fixed by the ordinance has not been issued. To deny it without cause against person or place of applicant, would be arbitrary and unreasonable."

In Levitt v. Liberty, Bulletin 169, Item 4, it was stated by the late Commissioner Burnett:

> "***the fact that the full number of licenses authorized by respondent's ordinance has not been issued and that a vacancy now exists, does not thereby entitle appellant to a license. I have already determined that a limitation in mere numbers must give way to a municipality's determination to restrict the number of licenses in a particular area."

In the Levitt case, the need for an additional license at the location where appellant's premises were located was not established.

I am satisfied, after full consideration of the evidence based upon the facts presented in the instant case, that the appellant is entitled to the privilege of a license.

Accordingly, it is, on this 19th day of June, 1944,

ORDERED, that the action of respondent be and it hereby is reversed, and respondent is directed to issue to appellant a license for the present fiscal year, in accordance with the application filed heretofore.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 30 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against WAYSIDE ENTERPRISES, INC. T/a WAYSIDE INN Main St. and Bloomfield Ave. Denville Center Denville, N. J., Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Denville.	CONCLUSIONS AND ORDER

Frederick C. Henn, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to charges alleging that it sold and served alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20 and R. S. 33:1-77.

On Saturday night, May 13, 1944, several ABC agents observed a group of youngsters enter the defendant's dining room and there seat themselves at tables. In due course, their orders were taken by a waitress and served to them. At one table, an eighteen year old minor was served with a bottle of beer and, at another table, three nineteen year old minors were served with whiskey. Two other minors, one of whom is seventeen years old and the other, a soldier, who is nineteen years old, were each consuming a rum drink.

The fact that the premises were very crowded on this Saturday night, particularly by minors who were attracted to the defendant's premises because of the dancing, accentuates, rather than mitigates, the seriousness of the offense. The manager of the premises, who was present while these episodes were taking place, represents that safeguards had been taken to prevent the sale of alcoholic beverages to minors but that the "service to the minors in question was purely a mistake of judgment made in a period of haste." It is evident, however, that the precautions, if any, that were adopted were woefully inadequate to cope with the situation that existed on the occasion in question. This is patent from the mere fact that the ABC agents experienced no difficulty in immediately detecting the youthful appearance of all the six minors.

The type of establishment conducted by this defendant calls for a most rigorous policing system to insure that intoxicants are not served to persons under twenty-one years of age. The indiscriminate service to six minors, as here, creates a fair inference that the defendant fell far short of meeting its responsibility for strict observance of the law prohibiting the sale of alcoholic beverages to minors.

In a somewhat similar case, involving eight minors, two of whom were seventeen years old and four eighteen years old, I imposed a penalty of forty days. See Re Monmouth Old Mill, Inc., Bulletin 548, Item 8. Under all the circumstances of this case, I shall suspend the license for thirty days, with remission of five days for the plea, leaving a net suspension of twenty-five days.

Since the defendant's present license will expire on June 30, 1944, I shall direct that such license be suspended for the balance of its term and that any further license issued to the defendant or any other person for the premises in question shall remain under suspension until July 21, 1944.

Accordingly, it is, on this 21st day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-3, heretofore issued by the Township Committee of the Township of Denville to Wayside Enterprises, Inc., t/a Wayside Inn, for premises Main Street and Bloomfield Avenue, Denville Center, Denville, be and the same is hereby suspended for the balance of its term, effective June 26, 1944, at 3:00 A.M.; and it is further

ORDERED, that if any license be issued to the defendant herein or to any other person for the premises in question for the fiscal year 1944-45, such license shall remain under suspension until July 21, 1944, at 3:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - D'ALLESSIO v. CARTERET.

ANGELO D'ALLESSIO,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH OF CARTERET,)
Respondent)

Benedict W. Harrington, Esq., Attorney for Appellant.
Michael Resko, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the alleged denial by respondent of a transfer to appellant of a plenary retail consumption license from one Elizabeth Maurer for premises located at 535 Roosevelt Avenue, Borough of Carteret.

The pertinent facts in the case reveal that appellant made application, on January 19, 1944, for the transfer of the license. However, on the above date, the transferee was not qualified to hold a license or in any way to be associated with the alcoholic beverage industry because appellant had been convicted of a crime involving moral turpitude. A duly verified petition filed by appellant herein with the State Commissioner of Alcoholic Beverage Control resulted in the entry of an order, dated April 14, 1944, whereby said disqualification, because of the conviction of said crime, was removed, pursuant to R. S. 33:1-31.2. Re Case No. 325, Bulletin 615, Item 4.

At a meeting of the Borough Council, on April 19, 1944, appellant again made application for transfer mentioned herein, at which time the matter was referred to the Police Committee for investigation. At the meeting of the Council, on May 3, 1944, according to the minutes taken by the Borough Clerk and read into the record, the attorney for the appellant appeared requesting some definite action on the application. At this meeting the Chairman of the Police Committee stated that he, or his committee, did not have sufficient time to make an investigation and therefore could not make any definite recommendation. At a subsequent meeting of the Council, on May 17, 1944, the matter was not discussed.

It was stated by the late Commissioner Burnett, in Re Salsburg, Bulletin 118, Item 11:

> "After the filing of an application for the issuance or transfer of a license, the municipal issuing authority must be afforded reasonable opportunity to act thereon.*** When the municipal issuing authority has had reasonable opportunity to reach a determination the applicant may address to it a written communication requesting that the application be granted or denied within a designated period therein set forth in order that an appeal may be taken in the event decision is adverse. However, if no determination is reached and no exceptional circumstances warranting further delay appear, the applicant may treat the situation as though an adverse determination had been made and file an appeal with the Commissioner."

In the instant case, no demand in the form of a written communication was addressed to the respondent. Under the circumstances, the proper procedure, as outlined above, was not adopted and therefore the instant appeal is premature.

Accordingly, it is, on this 21st day of June, 1944,

ORDERED, that the appeal herein be and the same is hereby remanded to respondent for the purpose of taking formal action upon the application filed for transfer of the license to appellant. Despite the entry of the order lifting appellant's statutory disqualification, respondent may consider appellant's entire record in determining whether or not he is a fit person to hold a license. Re Chiaravalli, Bulletin 300, Item 15. A decision should be rendered by respondent before the present license expires, at midnight, June 30, 1944.

ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - BENAK v. EGG HARBOR TOWNSHIP.

JOHN BENAK,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Emerson Richards, Esq., Attorney for Appellant.
Enoch A. Higbee, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

John Benak appeals (1) from the action of the municipal governing body revoking his 1942-43 plenary retail consumption license, and (2) from the action of the governing body refusing to renew his license for the current license year. The two appeals will be decided together.

Appellant, a citizen of the United States, whose birth place was Hungary (subsequently a part of Czechoslovakia), held a liquor license in Egg Harbor Township from the repeal of the National Prohibition Act until June 30, 1943.

Respondent contends that its action revoking the license, and its subsequent refusal to renew, was proper because the appellant had been found guilty (as charged) of (1) maintaining a "disorderly house at said premises"; (2) permitting female employees to purchase intoxicating beverages which were charged to customers; (3) permitting immoral acts on the premises; (4) permitting customers to buy the licensee alcoholic beverages; (5) permitting persons in the military service to tend bar and serve "drinks"; (6) allowing fights and brawls to take place on the premises; (7) employing a person convicted of being a disorderly person; and finally (8) permitting an employee, while engaged in or attempting to commit an immoral act, to steal money belonging to a patron.

Numerous cases have been decided by the Commissioner where renewals have been denied and upheld on appeal because of the misconduct of the licensee during the license year immediately preceding that for which a renewal is sought. Kaplan v. Newark, Bulletin 269, Item 6; Holzberg v. Orange, Bulletin 385, Item 4.

Respondent, in its refusal to renew, relies upon its decision that the licensee was guilty of the charges preferred against him in the disciplinary proceedings. It is, therefore, necessary to carefully review these proceedings.

While the charges summarized above in general allege a serious breach of good conduct by the licensee, it is apparent that Charges 4, 5 and 7 fail to allege with sufficient clarity and definiteness a violation of the Alcoholic Beverage Law, the State Regulations or any applicable municipal regulation.

The form of Charge 1 is likewise subject to serious question. Rule 5 of Regulations No. 20 states, inter alia:

> "No licensee shall *** allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

Any place of public resort in which illegal practices are habitually carried on is a public nuisance, and the keeper thereof who permits the same is guilty of keeping a disorderly house.

In State v. Hall, 32 N. J. L. 158, Chief Justice Beasley, delivering the opinion of the Court of Errors and Appeals, says:

> "In a legal point of view, a house may be disorderly in two ways, viz., first, from the end or purpose to which it is appropriated, and second, from the mode in which it is kept."

In the case of McClean v. State, 49 N. J. L. 471 (Errors and Appeals), the Court adopted the definition of a disorderly house given in State v. Williams, 30 N. J. L. 102, 104, and declared that "any place of public resort in which illegal practices are habitually carried on" is a disorderly house.

The headnote in State v. Elliott, 129 N. J. L. 169, recites:

> "***a 'disorderly house', in the legal sense, exists where an establishment for the sale of intoxicating liquor is knowingly conducted in violation of the regulations promulgated in that regard by the Commissioner of Alcoholic Beverage Control under the authority of the statutes."

The expressions "public nuisance" and "disorderly house" have been used very loosely. It is apparent that the words "disorderly house" cover a multitude of sins. Accordingly, a charge of keeping a disorderly house, or more properly of allowing, permitting or suffering the licensed place of business to be conducted in such manner as to become a public nuisance, should be framed with sufficient certainty to apprise the licensee of the particular wrongdoings he is alleged to have habitually committed. Cf. Linden Park Horse Ass'n v. State, 55 N. J. L. 557 (Errors and Appeals).

The right to meet the charge of the issuing authority is a right to have the issues and contentions of the municipality clearly defined so as to permit the licensee to meet them by the introduction of evidence and argument. Without this right all others become of little value. The failure to adequately state the charges is not merely an irregularity in practice; it is a vital defect. Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 83 L. Ed. 126.

The licensee does not appear to have objected to the form of the charge, or to have asked for any clarification of the same. Under the circumstances, a study of the evidence presented is in order.

Suffice it to say that the testimony does not support the finding that immoral acts were permitted on the licensed premises (Charge 3). Nor does the testimony support a finding that the licensee allowed fights and brawls to take place on the premises, as charged (Charge 6). There does appear to have been one very brief flare-up, which apparently occurred without the licensee's knowledge. Licensee's wife further appears to have taken immediate steps to terminate the altercation. Likewise, there is some evidence in the record that on one occasion a theft occurred on the licensed premises and that this theft accompanied or was a part of a solicitation for an immoral act. The testimony offered by the licensee in opposition

to this charge is corroborated by the stories of several disinterested witnesses. Without deciding whether or not the incident took place, it is pertinent to the charge of maintaining a disorderly house to note that there is no evidence in the record charging the licensee with knowledge of the event nor in any way indicating that he acquiesced in the activity or permitted the same.

The evidence does support the finding that, over a period of time, the licensee permitted two female employees, namely, Hattie Millard and Almeda Phipps, to accept alcoholic beverages at the expense of patrons, in violation of Rule 22 of State Regulations No. 20 (Charge 2). While these girls do not appear to have been professional hostesses, I am satisfied that both girls were employed by the licensee in various capacities, including that of barmaid, waitress and handymaid to appellant's four-legged pigs. The young women were of questionable reputation. Their presence on the premises, as well as their activities, emphasizes the careless manner in which appellant conducted his licensed business. The young women were not residents of this State. Accordingly, the licensee might well have been charged with employing disqualified persons on the licensed premises in violation of the Alcoholic Beverage Law. Likewise the two soldiers who, unfortunately, were permitted to tend bar, were non-residents. This reprehensible conduct on the part of the licensee in the employment of disqualified persons, and permitting men in uniform to tend bar, is not to be condoned.

The proof submitted disclosing the repeated violations of Rule 22 of State Regulations No. 20 leads me to the conclusion that the licensee was guilty of permitting his premises to be conducted as a disorderly house or nuisance, in violation of Rule 5 of State Regulations No. 20. The decision of the respondent is, accordingly, affirmed as to Charges 1 and 2. As to the remaining charges, it will be reversed.

The suspension to be imposed in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Commissioner to reduce a suspension on appeal is confined to those cases where the suspension or revocation is manifestly unreasonable. In the present case the revocation of the appellant's license, in view of his previous clear record and the conclusions set forth above, is undoubtedly severe, although perhaps not undeserved. After having carefully considered the whole matter and making due allowance for the form of the charges, reasonable differences of opinion, and the character of the disorderly house or nuisance as disclosed by the testimony, I have decided that the decision of respondent revoking appellant's license should be modified to one of suspension. In view of the conclusion I have reached with respect to the appeal from the action of respondent denying renewal, it is unnecessary for me to fix the term of the suspension. Appellant's premises have been closed for approximately one year.

The testimony fully justifies respondent's refusal to renew the appellant's license. The misconduct of the licensee during the previous license year was sufficient to support the refusal. The careless manner in which the licensee conducted his premises and his reprehensible conduct in permitting men in the uniform of the United States to occasionally tend bar, constitute supporting reasons for respondent's action.

Accordingly, it is, on this 21st day of June, 1944,

ORDERED, that the action of the respondent, to the extent that it revoked appellant's license, be and the same is hereby reversed; and it is further

ORDERED, that the petition of appeal from the action of respondent in denying appellant's renewal license for the current license year be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

LOUIS R. MANCINE
T/a OWL GRILL
609 North Third Street
Camden, N. J.,

Holder of Plenary Retail Consumption License C-166 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Harry M. Mendell, Esq., Attorney for Defendant-Licensee.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to charges alleging that, on May 27, 1944, he sold and delivered alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

On the evening in question, at about 10:15 P. M., investigators of the Alcoholic Beverage Control Department visited the licensed premises. They observed the bartender sell two bottles of beer to a customer. The bartender thereafter sold one of the ABC agents two bottles of beer for eighty cents. The licensee appeared after the agents identified themselves, and offered no explanation except that the bartender, his father, should not have made the sale.

The minimum penalty for a violation of Rule 1 of State Regulations No. 38 is a fifteen-day suspension. Re Starn, Bulletin 593, Item 9. Licensee has no prior record and, as there are no aggravating circumstances, the minimum penalty will be imposed. I will suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 22nd day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-166, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Louis R. Mancino, t/a Owl Grill, for premises 609 North Third Street, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 A. M. June 27, 1944; and it is further

ORDERED, that if any license be issued to this licensee or any other person for the premises in question for the 1944-45 fiscal year, such license shall be under suspension until 2:00 A. M. July 7, 1944.

ALFRED E. DRISCOLL
Commissioner.

8. APPELLATE DECISIONS - SAVOY DELICATESSEN AND RESTAURANT, INC. v. ASBURY PARK.

SAVOY DELICATESSEN AND RESTAURANT, INC.,
Appellant,
-vs-
CITY COUNCIL OF THE CITY OF ASBURY PARK,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Anschelewitz & Barr, Esqs., by Leon Anschelewitz, Esq., Attorneys for Appellant.
Charles Frankel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at 727 Mattison Avenue, City of Asbury Park.

The reason, expressed in a formal resolution dated April 26, 1944 and adopted by the respondent, for its action in unanimously denying the application for the license was, "There are licenses very near to that location and would not serve public good to increase number."

At the request of appellant's attorney, the same application was "re-submitted" to respondent at its meeting held on May 8, 1944. The Mayor stated that it was his understanding that the applicant would accept a license with conditions contained therein prohibiting a bar and prohibiting sales for off-premises consumption. Appellant's attorney stated that his client would not accept a license with such conditions. The minutes recite that "the matter was closed." This resubmission of the application to respondent was irregular, because the Commissioner has ruled that no re-hearing may be granted by a municipal issuing authority after it has denied an application for a license. The sole method of review provided for by the Control Act from the denial of an application for a municipal license is by appeal to the Commissioner. See Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City, Bulletin 80, Item 11.

Aside from the question of quota, which may or may not be pertinent in the present appeal, a consideration of the merits in the instant case warrants the affirmance of the action of respondent in denying the application for the license. The testimony of the Acting City Clerk and the City Manager of the City of Asbury Park discloses that there are eleven liquor licensees operating establishments in close proximity to the appellant's business. There is no evidence in the instant case that establishes the need for or the public convenience to be served by the issuance of an additional license, with or

without condition, at the place where the appellant's premises are located. The determination of the number of liquor licenses to be issued in any area is a consideration which, in the first instance, rests within the sound discretion of the municipal issuing authority. Appellant has not sustained the burden of proof in showing that respondent abused its discretion.

Accordingly, it is, on this 23rd day of June, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

9. SPECIAL PERMIT - LICENSED PREMISES UNTENANTABLE AS A RESULT OF FIRE - APPLICATION FOR TEMPORARY SPECIAL PERMIT FOR OTHER PREMISES GRANTED.

In the Matter of an Application for Special Permit by

FRED OLIVER, INC.
1523 Pacific Avenue
Atlantic City, N. J.,

Holder of Plenary Retail Distribution License D-19 issued by the Board of Commissioners of the City of Atlantic City.

ON PETITION
CONCLUSIONS

Bertram M. Saxe, Esq., Attorney for Petitioner.
Charles M. Deull, Esq., Attorney for Leo Burg, an Objector.

BY THE COMMISSIONER:

This is an application for a second temporary special permit to permit operation by petitioner under License D-19 (as renewed) at premises known as 1530 Pacific Avenue, Atlantic City. The application was filed pursuant to permission given in Re Fred Oliver, Inc., Bulletin 611, Item 8.

A written objection to the issuance of the permit having been received from Leo Burg, hearing upon said objection was held, at which all parties were given an opportunity to be heard.

It appears that the repairs to the store at 1523 Pacific Avenue have not been completed -- or in fact begun -- to date. The evidence given by Fred Oliver, President of petitioner, indicates that the repairs may be begun within a short time and that it will require about three months to complete the actual repairs. The Board of Commissioners of the City of Atlantic City have renewed for the fiscal year 1944-45 the plenary retail distribution license of Fred Oliver, Inc. for premises at 1523 Pacific Avenue. Under the circumstances, I shall issue a special permit to permit temporary operation under the renewed license at premises 1530 Pacific Avenue, Atlantic City, until October 1, 1944.

ALFRED E. DRISCOLL
Commissioner.

Dated: June 27, 1944.

10. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT LIQUOR, IN VIOLATION OF R. S. 33:1-50(e) - BOTTLING ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-78 - UNLAWFUL STORAGE OF ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-2 - PURCHASING ALCOHOLIC BEVERAGES FROM UNLICENSED PERSON, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - MITIGATING CIRCUMSTANCES - 120 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against ALEXANDER HOPKINS T/a HOPKIN'S TAVERN 22 Washington Place East Orange, N. J., Holder of Plenary Retail Consumption License C-2, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange.	CONCLUSIONS AND ORDER

Forman & Forman, Esqs., by David Forman, Esq., Attorneys for Defendant-Licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charges alleging (1) possession of three unlabeled jugs containing illicit alcoholic beverages and twenty-one bottles labeled as standard brand products, whereas the contents thereof were not genuine as labeled, in violation of R. S. 33:1-50(e); (2) bottling of alcoholic beverages without being the holder of proper license, in violation of R. S. 33:1-78; (3) off-premises storing of alcoholic beverages intended for sale at the licensed premises, in violation of R. S. 33:1-2; and (4) purchasing alcoholic beverages from an unlicensed person for use in the licensed premises, in violation of Rule 15 of State Regulations No. 20.

The file discloses that, on March 22, 1944, investigators of the Department of Alcoholic Beverage Control, after making tests of divers bottles of liquor in the licensed premises, discovered that eighteen bottles of supposedly standard brand liquors were not genuine as labeled. Interrogation of the defendant regarding result of the tests revealed, by his own admission, that he had purchased from a non-licensee liquor in unlabeled jugs for a period of approximately three months. Defendant further admitted that he had liquor stored in his living quarters, which are situated on the second floor of the licensed premises. In his home three unlabeled jugs of liquor were found, as also were several bottles containing alcoholic beverages not genuine when compared with the labels attached thereto.

Defendant testified in attempted mitigation of punishment commensurate with the violations committed herein that he conducted a saloon for many years prior to Prohibition; that he has held a license since Repeal of the National Prohibition Act and during that time, with the exception of the instant trouble, has maintained an unblemished record. Several witnesses, including a captain and a detective of the local police department and two members of the Municipal Alcoholic Beverage Control Board testified that they have known the defendant for many years and that he bears a good reputation in the community, both as a resident and as a business man.

Upon being confronted with the fact that illicit liquor was discovered on the licensed premises, defendant immediately confessed his guilt to the ABC investigators and thereafter cooperated in all respects with them. He revealed the names of two men who were alleged by him to be involved in the transactions and subsequently identified them at the hearing of the instant case. Previous to the commission of the within offenses, the defendant's record is clear.

Although revocation of the defendant's license would appear to be in order in this case, I am disposed to consider the past good conduct and the cooperation offered by defendant as mitigating factors. Under all the circumstances, I shall suspend the license of defendant for a period of 120 days.

The present license will expire by its terms before the expiration of the suspension herein imposed.

Accordingly, it is, on this 27th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to Alexander Hopkins, t/a Hopkin's Tavern, for premises 22 Washington Place, East Orange, be and the same is hereby suspended for the balance of its term, effective at 2:00 A. M. June 30, 1944; and it is further

ORDERED, that if any license be issued to this licensee or to any other person for the premises in question for the fiscal year 1944-45, such license shall remain under suspension until 2:00 A. M. October 28, 1944.

Alfred E. Driscoll
Commissioner.