

Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 127

June 30, 1936.

1. APPELLATE DECISIONS - HUDSON COUNTY RETAIL LIQUOR STORES vs.
TERMINAL WINE AND LIQUORS INC.

HUDSON COUNTY RETAIL LIQUOR)
STORES ASSOCIATION,)
)
Appellant)
) ON APPEAL
-vs-)
) CONCLUSIONS
)
TERMINAL WINE AND LIQUORS, INC.,)
and BOARD OF COMMISSIONERS OF THE)
CITY OF JERSEY CITY,)
)
Respondents.)

Samuel Moskowitz, Esq., and Herman C. Silverstein, Esq.,
Attorneys for Appellant.
Charles Hershenstein, Esq., Attorney for Respondent, Terminal
Wine and Liquors, Inc.
N. Louis Paladeau, Esq., Attorney for Respondent Board of
Commissioners of Jersey City.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail
distribution license for premises situated at 322 Central Avenue,
Jersey City to the respondent Terminal Wine and Liquors, Inc.
(hereafter called Terminal).

Terminal was incorporated in New Jersey on March 7, 1935,
and for some time past has conducted a store at Journal Square,
Jersey City. On January 10, 1936, it applied for an additional
distribution license for the Central Avenue store now in question.

The first notice of intention of Terminal was published
on January 11, 1936. Objections were filed and the matter set
down for a local hearing on January 20. These objections set forth
many grounds upon which it was contended that the license should
be denied. Included, among others, was the objection that
Terminal was not qualified to receive a license because of the
provisions of P.L. 1935, Chapter 254, commonly referred to as
Section *22A of the Control Act, which forbids issuance of retail
licenses to any corporation unless each owner, directly or in-
directly, of more than ten per centum of its stock qualifies in all
respects as an individual applicant.

It is clear that at the time this application was filed,
Terminal was not so qualified because Samuel Bettinger, Yetta
Keller and Irving Seiger, its then stockholders, each owned more
than 10% of its issued stock and they had not been residents of New
Jersey for at least five years continuously immediately prior to
the submission of its application. Of the 30 shares issued

Bettinger held 50%; Keller 25% and Seiger 25%. The application describes Keller and Seiger as being residents of Brooklyn, New York. Those figures and facts which appeared on the face of the original application sufficed to disqualify the corporate applicant.

After the application had been filed but before the hearing took place, Terminal rearranged its internal affairs. Its minute book shows that a special meeting of its board of directors was held on January 16, 1936 at which the following resolution was adopted:

"WHEREAS, a communication was received signed by the present owners of the 30 shares of stock which is the total outstanding stock of this corporation, advising that there has been a change in the corporate structure and that the capital stock of the company is owned by the following persons in the following amounts, to wit:-

Leon Schechter	-	22 1/2 shares
Samuel Bettinger	-	2.7 shares
Yetta Keller	-	2.4 shares
Irving Seiger	-	2.4 shares

"NOW, THEREFORE, be it RESOLVED that the proper officers of said corporation are hereby authorized and directed to issue the stock to the foregoing persons in the manner indicated upon the surrender of the certificates by the former stockholders."

The certificate book shows that on the same day new certificates were issued to and receipted for by the four persons named above so that each thereafter owned the number of shares following his or her name in the resolution. The stock and transfer ledger shows that these transfers were duly entered therein.

Respondent Board of Commissioners was notified of this change in the corporate structure and the application was amended on January 18 by a notice dated that day and declaring:-

"The following are the stockholders, their addresses and their percentage of stock:-

Leon Schechter, 10 Humphrey St. Englewood,
N.J. 75%

Samuel Bettinger, 78 Stevens Ave. Jersey City, N.J. 9%

Yetta Keller, 1801 Park Place, Brooklyn, N.Y. 8%

Irving Sieger, 974 - 46 St. Brooklyn, N.Y. 8%

"The directors of the Company are:-

Samuel Bettinger
Yetta Keller
Irving Sieger

"The present officers are the following:-

Samuel Bettinger - President & Treasurer
Irving Sieger - Secretary."

Thus, at the hearing held on January 20 the evidence before the Board of Commissioners disclosed that each of the three former stockholders held less than ten per cent. (10%) of its stock and that Leon Schechter, the fourth and majority stockholder, had been a resident of New Jersey for the requisite period and was otherwise fully qualified to receive a license. It follows, therefore, that at the time the license was granted, Terminal was prima facie qualified so far as Section *22A is concerned.

The license was therefore granted by a resolution of the Board of Commissioners passed on January 21. This resolution was conditioned upon republication of the notice of intention in accordance with the change in capital structure. This condition was performed and, upon the filing of proof of publication of the second notice, the license was issued on February 1. This procedure was in accord with re Garfield, Bulletin 92, item 3.

The gist of appellant's contention on this appeal is that the transfer of stock above set forth was a fraud and a subterfuge.

Leon Schechter appeared upon the appeal and was examined as to the circumstances surrounding the transfer of the majority stock to him. He testified that he resides in Englewood and is engaged in the printing business. He is related to Bettinger and Keller. In the early part of January he was asked by Bettinger if he would purchase seventy-five per cent (75%) of the stock of Terminal. He replied that he knew nothing about the liquor business and had no money. Bettinger suggested that he give a note for the stock. It was finally agreed that Schechter would give his note to the other three stockholders for \$2,250. in payment for twenty-two and one-half (22½) shares of said stock. On January 16, at the time the stock was transferred to him, Schechter executed and delivered his promissory note for that amount, payable to the three former stockholders, and which note is due on July 1, 1936. Let Schechter speak for himself:-

"Q From whom did you get your interest in the corporation?

A From the Terminal Wine & Liquors - Samuel Bettinger.

Q What did you give him for the interest?

A \$2250.00 in a note,

Q Did he tell you why he wanted you to buy?

A He came to me in the print shop and explained to me, 'I am in the liquor business', and I say, 'I know it'; and he explained the law has been changed in Jersey, that a man has to be a resident for five years, and to do that he must get a man to sell his stock to to get a license, and he wanted to sell me 75% of the stock. I told him I didn't know anything about the business, I am in the printing business, and I have no money, and he said 'Give me your note'; and how to repay it, I am an Ex-Service man and getting a bonus, so I thought I will give him part of it.

Q Have you received any income from it?

A Not yet.

Q Who attends to the financial matters?

A I don't know a thing about it.

Q Are you an officer of the corporation?

A No, sir.

Q Are you a director in it?

A No, sir."

I believe Leon Schechter told the simple, unvarnished truth. I place no credence, however, in the good faith of Bettinger, Keller and Seiger in lugging in Schechter at the eleventh hour to save their application. The motivation is obvious; the execution, atrocious. Faced with disqualification, they scurry to buttonhole a resident relative of unblemished reputation, without any interest in liquor and without any money; dump into his lap the undreamed prize of majority control of a successful business on the eve of expansion; silence the qualms of an unwilling purchaser by volunteering to take his note - anything to go through the form of selling the stock, anything to place it in safe hands, anything "to get a man to sell his stock to to get a license". These badges of fraud and their timing, coupled with the fact that the alleged holder of 75% of the stock is neither officer nor director and does not "know a thing about it" convince me that Schechter was used as a mere blind, the transaction a sham and the internal rearrangement conceived and executed as a fraud upon the Board of Commissioners of Jersey City. I find as fact that Bettinger, Keller and Seiger were each indirectly the owners of more than ten per centum of the stock of Terminal at the time this license was issued and still are. Hence, since none of them could qualify in all respects as an individual applicant - Keller and Seiger because they were non-residents, and Bettinger because not a resident of New Jersey for five years last past, it follows that the license should not have been issued.

The action of respondent Board of Commissioners in issuing the license is reversed. The license is hereby declared void. All activity thereunder must cease forthwith.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 26, 1936.

2. APPELLATE DECISIONS - PRICE vs. WEST WINDSOR.

ADELAIDE PRICE,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF WEST WINDSOR,)	
Respondent.)	
.....)	

Irving H. Lewis, Esq., Attorney for Appellant.
Louis Gerber, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from an order entered by respondent on June 9, 1936, revoking appellant's license #C-4 for premises located at Washington Avenue, Princeton Junction, West Windsor Township, New Jersey, and rendering the premises ineligible to become the subject of any further license of any kind or class under the Control Act for a period of two (2) years.

The revocation was based upon respondent's findings, pursuant to hearing duly held, that the appellant had sold alcoholic beverages to Thomas F. Leary, a person under the age of 21 years, and had also sold alcoholic beverages after closing hour in violation of a municipal regulation. By stipulation of counsel, a transcript of the testimony introduced before the respondent Township Committee was made part of the record on appeal and has been considered, together with the testimony introduced at the hearing on appeal.

Certain facts are substantially undisputed. On November 2d and December 13th, 1935, and on several intervening dates, alcoholic beverages were sold at appellant's licensed premises to Thomas F. Leary, a Princeton sophomore, 19 years of age. These sales were in clear violation of section 77 of the Control Act. On April 18, 1936, investigators of the Department purchased alcoholic beverages at appellant's licensed premises after the hour of 12 midnight. These sales were in violation of respondent's regulation.

The findings of guilt were, therefore, obviously proper. Appellant contends, nevertheless, that the punishment inflicted was excessive and requests mitigation thereof. Whether the Commissioner has authority to mitigate punishment imposed by a municipal issuing authority after a proper finding of guilt need not be considered since the evidence hereinafter set forth amply displays the appropriateness of the penalty of revocation and accompanying disqualification of the premises.

From November 2d to December 2d, 1935, Leary incurred a bill in the sum of \$176.95 for alcoholic beverages purchased at appellant's licensed premises. Appellant states that Leary was in the habit of coming in alone and purchasing champagne and other beverages for everyone present. Leary testified that he was "tight" when he did that. This was denied by appellant, but considering Leary's testimony that his allowance was \$25.00 per month, exclusive of necessary expenses, the probabilities strongly favor his story.

Appellant contends she did not know that Leary was under age and produced a card signed by him and stating that he was of legal age. But that card has a history! On November 30, 1935, Leary wrote a letter to Robert Price, appellant's husband, and apparently in charge of the licensed premises, stating among other things that he would not be 21 years of age until three (3) years thereafter and indicating that he would be unable to pay his bill except over a period of time. Mr. Price's reply dated December 2d, 1935 stated that Leary's letter came as a surprise and contained the following enlightening remark: "do your best and when you come out, if I am not here, ask John for a card that I want you to sign for our protection". Mr. Price testified that the card referred to was the card ultimately signed by Leary and attesting to the fact that he was over age. Apparently, the signing of the card was mistakenly calculated to furnish the appellant with "protection" -- to use Mr. Price's own language. These flimsy pasteboards are vain things for safety.

To cap the climax of sinning against the light, later, on December 13, 1935, after the foregoing correspondence, appellant permitted Leary to incur a further bill for alcoholic beverages

in the sum of \$18.30, making the grand total of sales to this sophomore for six (6) weeks --\$195.25. The incontrovertible evidence, mainly documentary, bespeaks eloquently appellant's conscious disregard of the law.

Sales of hard liquor to minors constitute grave danger to continuance of Repeal. The municipal issuing authority would have been derelict in its duty if it had imposed any punishment less than revocation for the deplorable conduct disclosed by the evidence.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated June 26, 1936.

3. RETAIL SALES - EXTENSION OF CREDIT - SOME OF THE CONSIDERATIONS INVOLVED - REACTIONS INVITED.

June 29, 1936.

New Jersey Licensed Beverage Association,
R.F.D. Palmyra, New Jersey.
Attention: Neil F. Deighan, President.

New Jersey Retail Liquor Package Stores Ass'n.,
Trenton, N.J.
Attention: A. L. Waldron, President.

Gentlemen:

I have frequent letters from wives and children complaining of the practice of retailers selling liquor on credit.

The following, just received, is typical:

"Can't something be done in regards to the saloon owners who give credit for whiskey to our husbands? Myself and two other wives, are having that trouble.

"Our husbands salaries are paying off 'honest debts' as they call them; and we wives and the children are suffering for it!

"We've tried to stop the practice, but our husbands go to other saloons that we know nothing about finding their places.

"Our bills are unpaid, we have just about enough to eat at times, yet the men get their bottle of whiskey without money any time they want it and on pay day, we get the few dollars that's left to try and keep things going. Now sir, we know that our husbands wouldn't drink so much if they had to pay cash for their whiskey; but this credit business is terrible. Can't you do something to help wives like ourselves? And there must be lots others who will appreciate any law you can enforce.

"Trusting these few words will reach down into your heart and that you will be able to render us a service for which I'm sure, all wives will be forever grateful."

I desire to know your attitude and that of all other trade organizations as to the public policy, necessity and convenience of making a rule forbidding retailers to make sales of liquor on credit excepting only hotels and bona fide clubs.

I will be glad to learn the reaction of the public as well - both sides.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. TWO HUNDRED FEET RULE - CHURCH ENTRANCE - WHAT CONSTITUTES - WHEN THE ENTRANCE TO A CHURCH IS A GATE, THE TWO HUNDRED FEET WILL BE MEASURED FROM THE GATE EVEN THOUGH PERSONS MAY GO THROUGH THE GATE ELSEWHERE THAN THE CHURCH.

TO: Erwin B. Hock, Deputy Commissioner

FROM: Mortimer J. Shapiro, Senior Inspector.

Re: The application of F. & A. Distributing Co. for
Renewal of Plenary Wholesale License for Premises
Located at 270-278 Avenue E, Bayonne.

Objection was filed to the application for renewal in the above matter by the Heart of Jesus Polish National Catholic Church, 285 Avenue E, Bayonne, on the ground that the nearest entrance of the licensed premises is within two hundred feet of the entrance of the church. Accordingly, the matter was set down for hearing on June 25th and testimony taken.

The facts are: The church is set back some eighteen feet from the sidewalk. In front of the church are three steps, and surrounding it is a fence with a hinged gate adjoining the sidewalk. The distance from the bottom step leading to the entrance door of the church to the licensed premises is more than two hundred feet, but the distance between the licensed premises and the gateway is one hundred ninety-seven feet and seven inches. The only question is whether the measurement should properly start at the gate or at the bottom step.

In Re: Ackerman, Bulletin 48, item 11, under a very similar set of facts, it was said:

"Furthermore, the Second Reformed Church is surrounded by a fence, and the gate leading to the entrance is 13' 5" distant therefrom. Between the gate and the entrance door are steps elevated from the level of the sidewalk. Under these facts the entrance to the church, within the meaning of Section 76, must be considered as the point at which the gate is located, rather than the entrance door. It is significant that Section 76 contains no mention of the phrase 'entrance door' and refers solely to 'entrance'. The gate clearly separates the church from the walk used by the general public, and persons passing through the gate

would be considered as entering the church."

Counsel for the applicant recognizes the force of this ruling but argues (1) that the ruling is erroneous and should be reversed; and (2) that the cases are distinguishable.

(1) The argument that the earlier ruling of the Commissioner was erroneous has been carefully considered. It is based upon the suggestion that earlier statutes prior to Prohibition did not use the unmodified word "entrance" but said "entrance to the curtilage" or "nearest point of the church edifice." Counsel therefore argues that inasmuch as the present statute simply uses the word "entrance" it must mean something different from the entrance to the curtilage.

This ingenious argument overlooks the fact that the ruling in Re: Ackerman, supra, does not construe the word "entrance" as used in the Control Act to mean entrance to the curtilage. If there were no fence setting off the church from the general walk used by the public, that ruling would be inapplicable notwithstanding that the curtilage might extend within two hundred feet of the premises sought to be licensed. It therefore appears that this ruling is not inconsistent with the strict legal rule of statutory interpretation invoked by the applicant.

(2) The suggestion that the instant case can be distinguished from and is not governed by Re: Ackerman, supra, is based upon the fact that alongside of the church in the instant case is a parish house; behind the church is a storage building used in connection with the parish house as well as the Church; persons desiring to go either to the parish house or storage house must pass through the gate.

But the Commissioner will look at the substance and will not yield to acute legal arguments based upon thin factual distinctions designed to whittle away the statutory protection afforded to churches by Section 76 of the Control Act. The physical facts as demonstrated by the photographs introduced in evidence clearly compels the conclusion that the entrance to the church is the gate.

Accordingly, it is concluded that the licensed premises as now situated are within two hundred feet of the objecting church. However, it is recommended that the application be granted on condition that the licensee move the nearest entrance to the licensed premises a sufficient distance so as to render the same more than two hundred feet from the entrance to the church.

APPROVED
ERWIN B. HOCK

MORTIMER J. SHAPIRO

The fact that persons may go through the gate elsewhere than the church, is of no moment for the gate is still the nearest entrance to the church. The two hundred feet will therefore be measured from the gate. Churches and schools will be protected to the full limit of the law. Recommendation approved.

D. FREDERICK BURNETT
Commissioner.

June 26, 1936.

5. RULES GOVERNING SIGNS - REFUSAL TO SELL ADVERTISED LOSS LEADERS
WARRANTS SUSPENSION - THE PUBLIC IS NOT TO BE FOOLED

In the Matter of the Revocation)	
Proceedings against		
Joseph Tabatchnick & Co., Inc.,)	
468 - 18th Avenue, Newark, N.J.,		
holder of Plenary Retail Distribution)	CONCLUSIONS AND ORDER
License D-75 issued by the Municipal		
Board of Alcoholic Beverage Control)	
of Newark.		
.)	

Louis Weiss, Esq., Attorney for Licensee.
Jerome B. McKenna, Esq., Attorney for Department.

BY THE COMMISSIONER:

Charges and notice to show cause why Plenary Retail Distribution License D-75 issued to Joseph Tabatchnick & Co., Inc. for premises 468 - 18th Avenue, Newark, N.J., should not be suspended or revoked were duly served upon the licensee.

Upon the return date, June 11, 1936, the hearing was held.

The licensee was charged with having violated Rule #4 of "Rules Governing Signs and Other Advertising Matter", promulgated April 9, 1935, reading as follows:

"No retail licensee shall permit or suffer in or on the licensed premises any sign or other matter advertising the sale of any particular brand or type of alcoholic beverage unless such brand or type of alcoholic beverage is actually available for sale at such premises."

On Friday, May 29, 1936, the licensee advertised by circular and window display the sale of alcoholic beverages. Included in the sale were pint bottles of "Calvert Special Whiskey" at 79¢ a pint. Prominently displayed in the window of the licensed premises was a box or carton containing about 15 or 18 pint bottles of "Calvert Special Whiskey". Attached to the top of one of the bottles was a price tag marked 79¢. Three witnesses testified that notwithstanding this display they were refused when they attempted to make a purchase of the advertised Calvert. One was Frank Mayer - the New Jersey State Supervisor of the Calvert Maryland Distilling Co., Inc.; another, his brother-in-law; the third, an Investigator from this Department who had been assigned to investigate a reported violation of the above rule.

The licensee admitted that from about 8 to 10:30 P.M. no sales of pint bottles of Calvert were made. The reason advanced for the refusal to sell same was that they were of the opinion representatives of the Calvert Company were attempting to buy out all their product by sending in customers with money furnished by

Mayer; that when they found this out, sales of pint bottles of Calvert Special were discontinued. The licensee contended sales on that brand of liquor were resumed at 10:30 P.M. but that assertion was denied by M. J. Kobrin, the New York and New Jersey Division Manager of the Calvert-Maryland Distilling Co., Inc., who stated he was in the licensed premises from 10:00 P.M. to 12:00 midnight; that all during that time no sales were made; on the contrary, he stated, customers, applying for pint bottles of Calvert Special, were refused.

The licensee admitted that at no time during the period when the "Calvert Special" was withdrawn from sale, did he or any of his employees remove the bottles from the window or the price tag above them and that is where I am interested. The only excuse offered by the licensee for this disregard of the Rule was that they were "too busy".

This licensee further admitted his familiarity with the Rule above stated.

Licenses must realize the Control Act is to be obeyed. Further, "Rules and Regulations" promulgated under the express provisions of said Act are not to be disregarded. The public is not to be fooled and lured by advertised loss leaders that licensees refuse to sell or, when sought, seek to palm off "something just as good". The day of Barnum is past.

On May 22, 1936, in Bulletin #120, Item #1, I said:

"Licensees should not be stampeded, whatever the price panic, into violations of rules which stand good at all times. Price fixing is none of my business, but the Control Act is and these rules will be strictly enforced all the time."

I meant what I said.

The licensee is adjudged guilty of having violated Rule #4.

It is therefore ORDERED, that Plenary Retail Distribution License D-75 heretofore issued by the Municipal Board of Alcoholic Beverage Control of Newark, be suspended until the end of its term, effective forthwith; further, that any renewal license heretofore or hereafter issued to this licensee for the fiscal year beginning July 1, 1936 be, and hereby is suspended until and through July 1, 1936.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 27, 1936.

6. TIED HOUSES - REVOCATION PROCEEDINGS - ILLEGAL FOR STATE BEVERAGE DISTRIBUTOR TO HOLD CHATTEL MORTGAGES ON LICENSED RETAIL LIQUOR ESTABLISHMENTS - LICENSE SUSPENDED AND OTHER PENALTIES INFLICTED

In the Matter of the Revocation)
Proceedings against)

Ernest Bade, t/a Keansburg)
& Union Beach Beverage Co.,)

CONCLUSIONS

Holder of State Beverage Distributor's)
License #SBD-89, issued for premises)
N/S Stone Road, Union Beach, N.J. and)
370 Broad Street, Keyport, N.J.)
.)

AND ORDER

John J. Meehan, Esq., Attorney for Ernest Bade
Jerome B. McKenna, Esq., for the Department

BY THE COMMISSIONER:

Charges and notices to show cause why State Beverage Distributor's License #SBD-89, issued to Ernest Bade, trading as Keansburg & Union Beach Beverage Co., for premises N/S Stone Road, Union Beach, N.J. and 370 Broad Street, Keyport, N.J., should not be revoked were duly served upon the licensee and the owners and mortgagees of the premises. A hearing was held at which the licensee appeared by counsel and was afforded full opportunity to be heard.

Charges 1 to 4 inclusive, allege the acceptance by the licensee of chattel mortgages from each of four plenary retail consumption licensees, as security for payment of open accounts due him. Charge #5 alleges the acceptance of a similar chattel mortgage by the licensee in the name of his nominee, the Bay Shore Finance Co. Inc. Each of the 5 chattel mortgages in question covered furnishings and fixtures in the several retail premises.

A chattel mortgage upon the goods and fixtures of a retail licensee constitutes a prohibited interest and may not be held by a State Beverage Distributor. See In re: G. Krueger Brewing Co. Bulletin 55, Item 12. The holding of such a prohibited interest by a State Beverage Distributor is a violation of Section 40 of the Control Act which provides in part as follows:

"It shall be unlawful for any ***** wholesaler of alcoholic beverages, to ***** be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this act, *****."

The licensee pleaded guilty to the first four charges. In mitigation, he testified that he was acting under the advice of counsel, and in this he was corroborated by his attorney Ezra Karkus. He denied, however, that the Bay Shore Finance Co. Inc., the mortgagee named in the fifth charge, was a mere nominee.

The Bay Shore Finance Co. Inc., was organized in 1928 for the purpose of making small loans. According to the testimony of the secretary-treasurer, it has done no business since 1931. Mr. Karkus, attorney for the licensee, is also president of the company. At Bade's suggestion Edward F. Shepherd, a retail consumption licensee, called at Karkus' office for the purpose of obtaining a loan from the finance company in order to pay Bade a balance due on an open account. He executed a note and a chattel mortgage, but before the loan was consummated, the existence of a conditional sales agreement covering the same property was disclosed. The loan to Shepherd was thereupon refused, but, according to the attorney's testimony, the account was purchased from Bade and Bade endorsed Shepherd's note. There is no documentary evidence to prove this latter transaction. On the contrary, the chattel mortgage is still open of record and Shepherd is being sued on the note. Bade is not a party to that suit despite his endorsement. Bay Shore Finance Co., by its president, now offers to cancel the chattel mortgage. This offer comes too late. It is apparent that the real party in interest throughout this transaction is the licensee, Ernest Bade, and I find him guilty of charge #5.

The licensee testified that in March, 1935, he discontinued with the Bay Shore Finance Co. the accounts on which he held the chattel mortgages referred to in the first four charges. Again there is a complete lack of documentary evidence that such a transaction ever took place. It appears that the virtually defunct corporation was revived only on occasions when it could be of service to Ernest Bade. I find that Ernest Bade is the owner of the four chattel mortgages in question.

Charges #6 and #7 are directed to the licensee's failure to disclose in his applications to this Department, his prohibited interests in retail consumption premises, in violation of Section 22 of the Control Act.

The licensee testified that the answers were given after consultation with his attorney. While this is a circumstance to be considered in mitigation, it is, of course, no defense. I find him guilty of charges #6 and #7.

The importance of vigorously prohibiting any interest by the wholesaler in retail licensed premises, is immediately apparent. No subterfuge which results in a "tied house" can be tolerated. In Reichelderfer vs. Johnson, 72 F. (2d) 552, 554 (Dist. of Columbia 1934), the court said:

"One of the well-recognized objections to the methods of sale and distribution of liquors prior to the era of prohibition was the fact that brewers and wholesalers frequently monopolized and controlled the retail trade."

See also In re: State Liquor Control Board, Bulletin 104, Item 1.

Counsel for the licensee has offered to cancel all the chattel mortgages in question. In view of this offer, and in consideration of the fact that the licensee acted throughout with the advice of his attorney and as this is a case of first impression,

It is, on this 26th day of June, 1936,

ORDERED that the State Beverage Distributor's License #SBD-89 heretofore issued to Ernest Bade, trading as Keansburg & Union Beach Beverage Co., be and the same is hereby suspended for the balance of the present licensed period effective immediately, and it is further

ORDERED that no renewal application be considered unless and until the five chattel mortgages hereinabove referred to, together with any other chattel mortgages held by the said licensee on retail licensed premises, shall be cancelled of record.

D. FREDERICK BURNETT
Commissioner.

7. APPELLATE DECISIONS - CASCIO vs. ROSELLE PARK.

NICHOLAS CASCIO,)	
Appellant)	
-vs-)	ON APPEAL
)	CONCLUSIONS.
BOROUGH COUNCIL OF THE BOROUGH OF ROSELLE PARK,)	
Respondent.)	

Eugene A. Liotta, Esq., Attorney for Appellant.
Charles E. Renton, Borough Clerk, for the Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at 37 W. Westfield Avenue, Roselle Park, N.J.

Respondent contends that the application was properly denied because there are already too many licensed places in the municipality.

The right of a municipality to deny an application where the issuance thereof would result in the existence of too many licensed premises is well settled. Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935). Lackowitz v. Waterford, Bulletin #125, item 12; Palmer v. Englishtown, Bulletin #116, item 4; In re: Roselle Park, Bulletin #115, item 8.

The population of the Borough is approximately 9,000. There are now issued and outstanding 13 plenary retail consumption licenses, 1 club license, 3 plenary retail distribution licenses, and 2 limited retail distribution licenses. That is plenty. Moreover, there is one tavern in the same block with the premises in question and a package store directly across the street. The testimony of the chairman of the license committee and the minutes of the council meeting at which the license application was denied, show an honest determination on the part of the municipality to prevent any overcrowding of retail licensees. This action is

backed by the strongly expressed sentiment of the community.

I find there is no real need for an additional licensed place. The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated June 29, 1936.

8. APPELLATE DECISIONS - VIRGILIO vs. ORANGE.

ANTONIO VIRGILIO,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS.
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY OF)	
ORANGE,)	
Respondent.)	
.....)	

Frank A. Palmieri, Esq., Attorney for Appellant
Louis J. Goldberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's order which suspended appellant's license from June 17, 1936 until the end of its term and directed that no further license be issued for the same premises prior to July 17, 1936.

On March 26, 1936, investigators of the Department seized three partly filled bottles of whiskey, labeled respectively as follows: "Schenley's Bar Blended Whiskey, 90 Proof", "Three Feathers Blended Whiskey, 90 Proof", and "Seagrams Bar Special, 90 Proof". Analyses by the Department's chemist disclosed that the contents were not "blended" as stated on the labels, but were straight whiskies. Three sealed bottles, similar in appearance to the other bottles and admittedly genuine, were also taken by the investigators and analyses thereof disclosed that the labels thereon were accurate.

Revocation proceedings were thereafter instituted by the respondent and after hearing duly held, the licensee was found guilty of having possessed illicit beverages in violation of law and the order of suspension was entered. Criminal proceedings instituted against the licensee resulted in his conviction on June 18, 1936 before the Essex County Court of Special Sessions for having possessed illicit beverages.

The fact that the contents of the three partly filled bottles seized by the investigators did not meet the descriptions on the labels and differed materially from the contents of similar sealed bottles, admittedly genuine and taken from the licensed premises, warranted respondent's determination that the beverages were illicit. Cf. Yates vs. Mulrooney, 281 N.Y.S. 216 (1935). The

licensee's protestation of innocence and his suggestion that others might have tampered with the bottles in question are of no avail. He must be held accountable for the presence of illicit beverages on licensed premises in any event. See Bulletin #49, item 4.

The action of respondent is affirmed.

D. FREDERICK BURNETT.
Commissioner.

Dated: June 27, 1936.

9. APPELLATE DECISIONS - VAN SCHOICK vs. HOWELL TOWNSHIP.

CHARLES W. VAN SCHOICK,)	
Appellant)	
-vs-)	On Appeal
)	CONCLUSIONS.
TOWNSHIP COMMITTEE OF HOWELL TOWNSHIP,)	
Respondent.)	
.		

Harry Sagotsky, Esq., Attorney for Appellant.
McDermott & Finegold, Esqs., by Max Finegold, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

In a previous case between the same parties, Van Schoick v. Howell Township, Bulletin #120, item 6, the decision was in favor of appellant for the reasons therein set forth, which are unnecessary here to repeat because not involved herein, and the respondent Township Committee directed to transfer appellant's retail consumption license from "Quaker Rest" to "Wayside Inn". Thereafter, appellant notified the Township Committee that he had lost his interest in "Wayside Inn" and hence, despite the decision in his favor, he did not desire to take advantage of the ordered transfer. At the same time, he applied for a transfer of his license from "Quaker Rest" to "Village Inn". He has duly complied with all the statutory requirements. His application has been denied. Hence this appeal.

The personal qualification of appellant was settled in the previous appeal. The sole question now to be determined is the suitability of the premises to which the present transfer is sought.

The "Village Inn" is located on Highway #33, Howell Township, a distance of about one mile west of "Wayside Inn" and a mile and a half west of "Quaker Rest". "Village Inn" is the same place considered in Botfan v. Howell Township, Bulletin #64, item 9. In that case the present respondent was sustained in its refusal to transfer Botfan's consumption license to that place because the neighborhood was rural, very sparsely settled, less than 100 people residing therein for a distance of one half mile, and because a retail consumption licensee was operating diagonally across the road about one hundred (100) feet away, and a second similar place about five hundred (500) feet away. Since the Botfan case was

decided (March 4, 1935), both of these other places have discontinued business, so that now the nearest licensed place is "Jim's White Pole", also located on Highway #33, about midway between "Village Inn" and "Wayside Inn" and approximately one-half mile from each. This case, therefore, is not controlled by the conclusions reached in the Botfan case, supra.

In the previous appeal of Van Schoick, no one appeared to testify on behalf of respondent, although a brief was submitted on the questions of law on which that case was thought to depend. In the present appeal, however, the three members of the Township Committee appeared. They testified that the Township Committee originally issued nineteen (19) consumption licenses in a Township having a population of approximately three thousand (3,000); that subsequent experience showed that this number was too large, and, in the course of time, the number was reduced to fifteen (15) including Van Schoick's license; that, in their opinion, there are at the present time too many licensed places on Highway #33; that the length of the Highway through the Township is approximately six (6) miles; that exclusive of the Van Schoick license, there are now outstanding three other licenses on the Highway, and a fourth on another road within one hundred (100) feet of the Highway.

It is true that if a license is granted to the "Village Inn", the nearest licensed place will be "Jim's White Pole", half a mile away but, unlike the situation in the previous appeal where no evidence was introduced as to sufficiency of places along the Highway, it now affirmatively appears that the Township Committee has determined that, exclusive of Van Schoick's license, the other places on the Highway, and immediately adjacent thereto, can take care of the local and transient trade. In this rural sparsely settled section, it cannot be successfully contended that a license at "Village Inn" is a matter of public necessity and convenience. See Connolly v. Middletown, Bulletin #81, item 11, and cases cited.

While appellant has introduced some testimony that a number of persons living in the vicinity of "Village Inn" do not object to a license for those premises, there is testimony that a large number of people appeared at the hearing held before the local authorities, including representatives of the Taxpayers Association of Howell Township, and objected to the issuance of this license upon the ground that it was not necessary, and upon the further ground that it was within four hundred seventy-five (475) feet of a school. Aside from the question of the proximity to the school, it suffices to say that local sentiment is generally in support of the unanimous decision of the Township Committee that another licensed place was not needed or wanted at "Village Inn".

Transfer of a license to other premises is a privilege and not inherent in appellant's license. The issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. Van Schoick v. Howell, Bulletin #120, item 6, and cases cited. There is sufficient evidence in the case to support the finding of the local issuing authorities that an additional license is not needed at "Village Inn". The action of respondent in denying the transfer was reasonable.

The action of respondent is, therefore, affirmed.

New Jersey State Library

L. H. Clark
Commissioner.

Dated June 27, 1936.