

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

BULLETIN 409

JUNE 13, 1940.

1. NEW LEGISLATION - MUNICIPAL EXCISE COMMISSIONS - ESTABLISHMENT AND POWERS.

Assembly Bill No. 217 was approved by Governor Moore on May 6, 1940 and thereupon became Chapter 63, P.L. 1940.

The Act is effective immediately.

It reads:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Each municipality now or hereafter having a population of one hundred thousand or more, according to Federal or State census, and having a board of finance established in and for such municipality, may establish in and for such municipality a municipal excise commission. Such municipal excise commission may be established by resolution of the board of finance of such municipality and shall consist of three persons, no more than two of whom shall be of the same political party, who shall be chosen and appointed by such board of finance of such municipality, for a term of three years; but one of the initial appointments shall be for one year, another for two years, and the third for three years. In the case of any vacancy occurring before the expiration of any term, the appointment to fill such vacancy shall be only for the unexpired term.

"2. The members of such municipal excise commission shall receive no salaries and shall be removable by the appointing authority for cause. Such members shall not be subject to the provisions to Title 11, Civil Service, and may be members of any board or other body of such municipality.

"3. Such municipal excise commission, when established, shall be constituted the Board of Alcoholic Beverage Control for such municipality, and all the powers, duties and rights to administer the provisions of Title 33 of the Revised Statutes in respect of such municipality shall, from and after the date of the establishment of such municipal excise commission, be vested in such municipal excise commission, and the rights theretofore existing to administer Title 33 of the Revised Statutes in respect to such municipality in any other board or body of such municipality, whether the same be the governing body or board of aldermen, shall cease and terminate from the date of the establishment and appointment of such municipal excise commission.

"4. This act shall take effect immediately.

"Approved May 6, 1940."

2. APPELLATE DECISIONS - HARRY A. STOCK AMUSEMENT CO., INC. v. SEASIDE PARK.

HARRY A. STOCK AMUSEMENT CO.,	)	
INC., a corporation of the	)	
State of New Jersey, trading	)	
as RED TOP BAR,	)	
	)	ON APPEAL
Appellant,	)	CONCLUSIONS
	)	
-vs-	)	
	)	
BOROUGH COUNCIL OF THE BOROUGH	)	
OF SEASIDE PARK,	)	
	)	
Respondent	)	
-----		

Albert Kushinsky, Esq., Attorney for Appellant.  
Walter Carson, Esq., Attorney for Respondent.

This appeal is from respondent's refusal to grant a place-to-place transfer of appellant's plenary retail consumption license in the Borough of Seaside Park.

It appears, from the testimony of the Borough Clerk, that appellant actually never presented any application to respondent for the transfer but, at most, merely made a verbal request for such transfer at one of respondent's meetings, which request was denied.

Under the Alcoholic Beverage Law (R. S. 33:1-26), presenting a formal application to the local issuing authority is a statutory requisite for the transfer of a retail liquor license. See Wenger v. Ridgewood, Bulletin 110, Item 3 (ruling a letter to such issuing authority to be insufficient to stand in lieu of a regular application). Even though it may be clear that any application, if made, will be denied, nevertheless it is essential, in order to prosecute an appeal, that such application actually be presented to the local issuing authority and that such authority either deny or unwarrantably delay action on it. Otherwise there is nothing whatsoever from which any appeal may be taken.

In view of the foregoing, this appeal is hereby dismissed.

E. W. GARRETT,  
Acting Commissioner.

Dated: June 8, 1940.

3. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS

June 7, 1940

Re: Case No. 326

Applicant was convicted on February 20, 1940 of defrauding the United States of taxes, possessing an unlawful still, fermenting mash and removing untaxpaid distilled spirits, in violation of the United States Internal Revenue Laws. On the four counts he was fined a total of \$700.00, penalized \$500.00 and sentenced to imprisonment for a year and a day, but the total sentence was suspended and he was placed on probation for three years.

Applicant claims to have been entirely innocent of any complicity in the operation of the illicit still which led to his arrest. He tells a fanciful story of being hired by an unidentified stranger to station himself on the highway and make notation of the license plate numbers of all passing automobiles. According to his story he was merely standing at the side of the road minding his own business when the Federal officers arrested him.

The crimes of which applicant was convicted were committed on June 9, 1939. It was ruled in Re Case No. 267, Bulletin 313, Item 1, that activity in illicit liquor since repeal constitutes moral turpitude within the meaning of the Alcoholic Beverage Law.

It is recommended that applicant be advised that he is ineligible for employment by any New Jersey licensee.

Emerson A. Tschupp,  
Attorney.

APPROVED:

E. W. GARRETT,  
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAILURE OF WHOLESALER TO DISCLOSE  
PHYSICAL INVENTORY IN REPORTS TO STATE TAX COMMISSIONER -  
LICENSE SUSPENDED ONE DAY.

In the Matter of Tax Revocation )  
Proceedings against )

JAMES J. CLARK, INC., )  
733-35 Communipaw Avenue, )  
Jersey City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Wholesale )  
License W-84, issued by the )  
State Commissioner of Alcoholic )  
Beverage Control. )  
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William H. Osborne, Jr., Esq., Attorney for the  
State Tax Department.  
Arthur Knaster, Esq., Attorney for the Licensee.

Charges were preferred against the licensee alleging that it filed tax reports for the months of January, February, March and April 1939, which reports failed to disclose the actual physical inventory of alcoholic beverages on hand on the last days of those months, as required by Sections 703 and 4111 of Rules and Regulations of the Tax Department, in violation of R. S. 54:45-1.

Section 703 of the Tax Department's regulations provides:

"Physical inventories shall be taken on the last day of each month. Such inventory records shall state the day, date and hour when taken, the name of the person or persons who took such inventory, the brand, trade name or other designation identifying each item, the location where stored, size of containers, the number of cases, barrels or other units of each size, and the number of gallons or decimal parts thereof respecting each item."

Section 4111 of the same regulations directs:

"Set forth on the control sheet the quantities of beverages on hand as determined by physical inventories. Include all beverages on the licensed premises in New Jersey and stored in the Federal tax paid sections of New Jersey licensed public warehouses. Do not include beverages held in United States Internal Revenue or United States Customs warehouses under Federal bond."

R. S. 54:45-1 provides that holders of New Jersey licenses shall file with the State Tax Commissioner a report under oath on the form prescribed by the Commissioner, disclosing the amount of alcoholic beverages "manufactured, distributed, transported, stored, warehoused, withdrawn from storage, imported, purchased and sold, and the number and kind of warehouse receipts, receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages purchased, transferred, sold and agreed to be sold by such person during the preceding month, and such other information as the commissioner may require....."

At the hearing, the licensee pleaded guilty and produced testimony from which it appears that for the month of January 1939 no physical inventory at all was taken, and that for the months of February, March and April it reported as and for its physical inventory its book inventory, for the reason that the former was apparently 700 gallons long as compared with the latter, the discrepancy finally being traced to unreported purchases which of necessity failed to appear in the book inventory. Adjustment of the licensee's tax liability was made in May, when the error was discovered. Since that time, the monthly tax reports apparently have been made in compliance with the Rules and Regulations of the Tax Department.

There is no contention that the reports were falsified for the purpose of evading the payment of taxes. It appears that the false reports were filed for the reason that the licensee's accountant, in charge of their preparation, although employed as such since June 1934, had never familiarized himself with the provisions of the Tax Department Rules and Regulations and had never received instructions from his superiors with reference to the taking of physical inventories. However, since 1935 the form of tax report has carried as Item 10 the designation "Actual physical inventory on hand last of month".

Notwithstanding that I am convinced that the error was not corruptly motivated, the fact remains that on four separate occasions the licensee signed and swore to false reports under oath, in violation of the Alcoholic Beverage Tax Law. Although this is a case of first impression, the State Tax Department reports that there are a limited number of similar violations which will also be prosecuted.

The State Tax Department admits the presence of mitigating circumstances and concedes that a one-day suspension would be fair and adequate. The licensee's cooperation and frankness and the circumstances considered, I am inclined to agree.

Accordingly, it is, on this 7th day of June, 1940,

ORDERED, that Plenary Wholesale License W-84, heretofore issued to James J. Clark, Inc. for premises 733-35 Communipaw

Avenue, Jersey City, by the State Commissioner of Alcoholic Beverage Control, be and it hereby is suspended for one day, commencing at 12:01 A.M. (Daylight Saving Time) June 12, 1940.

E. W. GARRETT,  
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEE - OBSCURING VIEW OF INTERIOR AFTER 3:00 A.M. - 3 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary	)	
Proceedings against	)	
	)	
FRIEDA RUBIN,	)	CONCLUSIONS
87 Norfolk Street,	)	AND ORDER
Newark, New Jersey,	)	
	)	
Holder of Plenary Retail Con-	)	
sumption License C-190, issued	)	
by the Municipal Board of Al-	)	
coholic Beverage Control of	)	
the City of Newark.	)	
-----	)	

Budd & Larner, Esqs., by Samuel A. Larner, Esq., Attorneys for Defendant-Licensee.  
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charge of failing to draw aside the curtains and screens obscuring the view from the street to the interior after 3:00 A.M., and failing to afford to the public a free and unobstructed view from the street to the interior in violation of local ordinance.

The usual penalty for this violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three (3) days instead of five (5) days.

Accordingly, it is, on this 7th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-190, heretofore issued to Frieda Rubin by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective June 11, 1940, at 3:00 A.M. Daylight Saving Time.

E. W. GARRETT,  
Acting Commissioner.



store and gas station, he owed Roffman the sum of \$300.00; that, since he knew that he could not hold a liquor license, he induced Roffman to purchase the liquor license and business; that Roffman did so with the \$300.00 given to him by Rappaport in repayment of the loan. Roffman testified in similar vein.

Frankly, I do not believe their story. It is unnecessary to review all of their testimony. Suffice it to say that it is so replete with inconsistencies and contradictions as not to be worthy of any credence. This much appears, however: That Roffman, although claiming to be the real owner of the license, visits the premises only two or three times a year; that he has never taken any money from the liquor business, nor has he ever received an accounting of that business from Rappaport; that Rappaport operates the liquor business himself and co-mingles its funds with those of his grocery business; that he deposits the liquor receipts in his own personal account and pays liquor bills by checks drawn on that account.

Moreover, the corporate books and records are corroborative of the admissions made by Rappaport in his written statement and, to say the least, do not bear out the story told by him and Roffman at the hearing. It is impossible to tell from the corporate stock book the number of shares that are issued and outstanding. Some of the stock certificates are missing, others are issued but marked "cancelled", and none can be found to coincide with the schedule of stock holdings listed in the application. Of great significance, however, is the fact that, on the stub of certificate No. 2 for twenty-three shares, there is a handwritten notation "sold to Charles Rappaport". Further, the minutes of a meeting held on February 21, 1938 state that the stockholders are "Abraham Roffman owning four (4) shares, Anna Roffman owning twenty-three (23) shares, Charles Rappaport owning twenty-three (23) shares." These minutes are signed by "Charles Rappaport Secy."

I find as fact that not only does Charles Rappaport nominally hold forty-six per cent of the stock of the corporate licensee, but that he is the real and sole owner of the license and that the Roffmans are merely acting as "fronts" for him.

After the hearing, the licensee submitted an affidavit signed by the Roffmans and Rappaport. It recites that at a meeting of the corporation held on March 11, 1940, a motion was carried that the corporate minutes be corrected to show the real ownership of the stock of the corporation, as follows:- Charles Rappaport - 1 share, Sidonie Siegel - 1 share, Abraham Roffman - 23 shares, and Anna Roffman - 25 shares \*\*\*".

In view of the aforesaid finding of fact, the purported correction is meaningless and can have no effect on the penalty of outright revocation that is so clearly indicated.

The license will, therefore, be revoked.

Accordingly, it is, on this 10th day of June, 1940,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Budd Lake Store, Inc. by the Township Committee of Mount Olive Township, be and the same is hereby revoked, effective immediately.

E. W. GARRETT,  
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - HUSBAND AND WIFE - DISMISSED FOR LACK OF PROOF THAT WIFE IS FRONT FOR HUSBAND.

In the Matter of Disciplinary	)	
Proceedings against	)	
	)	
THERESA BUDNY,	)	
1920 Brunswick Ave.,	)	CONCLUSIONS
Lawrence Township (Mercer County),	)	AND ORDER
P.O. Trenton, N. J.,	)	
	)	
Holder of Plenary Retail Consumption	)	
License C-1, transferred to her by	)	
the Township Committee of the Town-	)	
ship of Lawrence, County of Mercer.	)	
-----)	)	

Eugene T. Urbaniak, Esq., Attorney for Licensee.  
 Richard E. Silberman, Esq., Attorney for State Department of  
 Alcoholic Beverage Control.

Licensee pleaded not guilty to charges alleging (1) that in her application dated September 20, 1939 for transfer of the license she falsely stated that no individual other than Anthony Pisanko had any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license, whereas in fact Vincent Budny had such an interest; and (2) that since October 4, 1939 she knowingly aided and abetted Vincent Budny, a non-licensee, to exercise the rights and privileges of her license.

Vincent Budny is the husband of Theresa Budny and a nephew of Anthony Pisanko.

The licensed premises, operated as a restaurant and tavern, are owned by Anthony Pisanko, and rented by him to the licensee. In September 1939 one Dwyer, who then held the liquor license for the premises in question, consented to transfer said license to Theresa Budny and said license was transferred to her after she had filed the application dated September 20, 1939, which has been referred to above.

In a statement given to investigators on December 4, 1939, licensee said, in substance, that Anthony Pisanko owns the premises and all the equipment and stock in the place; that he did not want to be in the liquor business and that, at the time of the transfer, he agreed verbally with Theresa Budny and Vincent Budny to "turn it over to us to run"; that Vincent Budny would have taken the license in his name except for the fact that he was a citizen of Poland and was advised by his attorney that he could not qualify as a licensee.

At the hearing herein Theresa Budny testified that all bills for the licensed premises are in her name; that she does all the work and exercises complete control of the licensed business; that her husband conducts a gasoline and oil business next door to the licensed premises; that he receives no profits and exercises no control over the licensed premises.

The question to be decided herein is not what might have happened if licensee's husband had been fully qualified, but what, in fact, did happen. On the evidence produced, the Department has not sustained the burden of proving that defendant was in fact a "front" for her husband.

Since the licensee disclosed in her application that Anthony Pisanko was an interested party, the charges will be dismissed. However, the present arrangement of depositing all proceeds from the restaurant and also the licensed business in one bank account, apparently controlled by Anthony Pisanko, must be terminated immediately. There would seem to be no objection to an arrangement whereby Pisanko conducts the restaurant concession on the licensed premises, but he cannot share in the proceeds of the sale of liquor unless he assumes the liability of a licensee. Defendant, within a week from the date hereof, must certify to this Department that the bank account covering receipts and disbursements for the licensed business has been placed in her name and will remain in her name so long as she is the licensee.

E. W. GARRETT,  
Acting Commissioner.

Dated: June 10, 1940.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - WHISKEY DILUTED WITH WATER - 10 DAYS' SUSPENSION ON GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

WILDWOOD GOLF CLUB, )  
Shore Road, )  
Burleigh, Middle Township, )  
Cape May County, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-5, )  
issued by Hon. Palmer M. Way, )  
Judge of Cape May County Court )  
of Common Pleas )  
- - - - - )

Richard E. Silberman, Esq., Attorney for State Department of  
Alcoholic Beverage Control.  
Harry Tenenbaum, Esq., for Defendant-Licensee.

The licensee has pleaded guilty to possessing illicit liquor contrary to R. S. 33:1-50.

Federal agents took five partly filled bottles of whiskey from the back bar of the licensee club. From his analysis of the contents of those bottles the Federal chemist concluded that the liquor was not genuine as labeled and appeared "to be genuine spirits which have been diluted with water."

The club, in admitting the charge, claims that the dilution was caused by a former employee "who was jack of all trades and performed all of the duties around the club, being locker boy, janitor, bartender and whatnot"; and that this employee was discharged immediately upon the discovery of his wrongdoing.

The diluted liquor constituted an illicit beverage and its mere possession, however innocent, is a violation of R.S. 33:1-50. See Re Jacobs, Bulletin 315, Item 8; Re Tumen, Bulletin 316, Item 8; Re Clover Inn, Bulletin 327, Item 2. The license will, therefore, be suspended for a period of ten days, in accordance with the precedent established in Re Orbach, Bulletin 406, Item 10.

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

ORDERED, that Club License CB-5, heretofore issued to Wildwood Golf Club by Hon. Palmer M. Way, Judge of Cape May County Court of Common Pleas, be and the same is hereby suspended for a period of ten (10) days, commencing June 17, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - POWERS RESTORED TO LOCAL ISSUING AUTHORITY.

August 16, 1939.

Joseph F. Bergmann, President,  
Totowa Council,  
Totowa, N. J.

My dear Mr. Bergmann:

I have yours of the 14th and am glad to honor your request and restore to your Council Board full powers concerning alcoholic beverage control.

It is heartening to the cause of sound law enforcement *enforcement - 6/14* to realize that men of your character and caliber are genuinely interested and pledged to do their full duty.

Sincerely yours,  
D. FREDERICK BURNETT,  
Commissioner.

10. APPELLATE DECISIONS - BENNETT v. EATONTOWN.

HAROLD BENNETT,	)	
	)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
-vs-	)	
	)	
BOROUGH COUNCIL OF THE BOROUGH	)	
OF EATONTOWN,	)	
	)	
Respondent	)	

Kays R. Morgan, Esq., Attorney for Appellant.  
Snyder, Roberts & Pillsbury, Esqs., by John M. Pillsbury, Esq.,  
Attorneys for Respondent.

This appeal is from respondent's refusal to grant a place-to-place transfer of appellant's plenary retail consumption license along Neptune Highway (Route 35), Eatontown.

The Alcoholic Beverage Law (R. S. 33:1-25 and 26) requires an applicant for transfer of a retail liquor license to advertise in a proper newspaper, on two occasions a week apart,

his "notice of intention" to obtain such transfer. Rule 7 of State Regulations No. 3 further requires that the application actually be on file with the local issuing authority at or before the first advertisement of such notice.

Appellant, contrary to the State rule, filed his application for transfer three days after the second advertisement of his notice.

Such late filing of the application is, as heretofore ruled in Brost v. East Amwell, Bulletin 304, Item 1 (where application was filed two days after the second advertisement of notice), a fatal defect. As there explained:

"The purpose of the State Rule requiring such antecedent filing of the application is threefold - (1) to provide persons reading the advertisement of 'notice of intention' with the opportunity of examining the application itself in order better to determine whether or not they should object thereto; (2) to enable the local issuing authority readily to identify objections filed with it as pertaining to specific pending applications, and hence to avoid confusion in the records and failure to notify objectors when an application comes up for decision; and (3) to prevent the practice of applicants sending up 'trial balloons' by first advertising their 'notice of intention' and, if objections are filed, thereupon withholding their applications (together with the attendant license fee) and perhaps readvertising a new set of notices in the hope that the objectors may fail to renew their protests. Cf. Re Evesham Township, Bulletin 184, Item 6."

In view of such threefold purpose of the State rule, it is essential that the time there specified for the filing of application be scrupulously adhered to. Otherwise, applications might be filed not only days but weeks and months late, thus wholly defeating the purpose of advertisement of "notice of intention".

Hence the late filing of appellant's application warrants affirmance of respondent's denial thereof.

Quite apart from such late filing, it would appear that the merits of the case lead to the same result, since no substantial reason appears why, in view of the three taverns already located on Neptune Highway within 1200 feet of appellant's proposed site, one being but some hundred feet away, an additional tavern is needed in the vicinity. Although a tavern was once permitted at the premises in question (from April 30, 1937 until July 1, 1939), nevertheless during such time the now existing tavern some hundred feet away was not then in existence.

Moreover, so far as appears, appellant has no lease from the owner of the premises in question but merely an oral agreement to "take care of the bar" as a concessionaire at such premises which are now or else will be operated as a restaurant by another. An applicant with only such privilege lacks sufficient possession of and control over the premises to warrant obtaining a license therefor. Re Sebold, Bulletin 326, Item 7; Re Fedner and Davis,

Bulletin 329, Item 5; Re Finkel, Bulletin 338, Item 7. See also Re Kashner, Bulletin 199, Item 12; Re DeStefano, Bulletin 227, Item 4; Re Epstein, Bulletin 240, Item 9.

In view of the foregoing, the action of respondent is affirmed.

E. W. GARRETT,  
Acting Commissioner.

Dated: June 11, 1940.

11. APPELLATE DECISIONS -- ANDER v. WOODBRIDGE.

DAVID ANDER,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
	)	
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF WOODBRIDGE,	)	
	)	
Respondent	)	
-----	)	

A. J. and J. S. Wight, Esqs., by Samuel Sladkus, Esq.,  
Attorney for Appellant.  
Leon E. McElroy, Esq., Attorney for Respondent.

Appellant appeals the denial of a plenary retail distribution license for premises on Oak Tree Road in the Iselin section of Woodbridge.

Respondent denied the license on the ground, inter alia, that the number of plenary retail consumption licenses issued and outstanding were sufficient to serve the vicinity.

It appears that Iselin is an unofficial community with a population of between 1500 and 2000; that there are presently issued and outstanding five plenary retail consumption licenses within a radius of approximately 1500 feet of the premises sought to be licensed, of which three are within 600 feet, and one within 50 feet.

It was held in Boody v. Gloucester, Bulletin 300, Item 11:

"Determination of the number of liquor establishments to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Mita v. Orange, Bulletin 266, Item 10; Sudol v. Wallington, Bulletin 267, Item 10. There is no proof that respondent abused that discretion in determining that a third liquor place - even though a 'package' store as distinguished from the existent consumption establishments - should not be permitted in the area in question."

As in the Boody case, supra, there is here no proof that respondent abused its discretion.

Nor is appellant entitled to a license merely because there is presently in effect in Woodbridge Township an ordinance limiting the number of plenary retail distribution licenses to be issued in the Township to six, of which only four are presently issued and outstanding. Irrespective of a vacancy in a formal quota, an issuing authority may deny an application for good independent cause. Re Somerville, Bulletin 110, Item 6; Zakarew v. South Bound Brook, Bulletin 216, Item 4. Even though the quota has not been exhausted, applications may be denied on the ground that the vicinity in which the applicant proposes to operate is already sufficiently supplied with liquor establishments. Young v. Pennsauken, Bulletin 114, Item 2; Berkey v. Pine Hill, Bulletin 262, Item 5; Bernstein v. Hillside, Bulletin 289, Item 7; Wenzel v. Maywood, Bulletin 310, Item 3.

Appellant has not sustained the burden of proof in showing there is need for an additional license in the Iselin section of Woodbridge Township.

The action of respondent is therefore affirmed.

E. W. GARRETT,  
Acting Commissioner.

Dated: June 11, 1940.

12. DISCIPLINARY PROCEEDINGS - POWERS RESTORED TO LOCAL ISSUING AUTHORITY.

June 7, 1940

Henry H. Patterson, Esq.,  
Asbury Park, N. J.

*See also*  
410-12

My dear Mr. Patterson:

I have yours of the 5th in reply to my letter of May 25th and am pleased to honor the request of your Township Committee. Full powers concerning alcoholic beverage control are hereby restored to the Committee.

The cause of sound law enforcement is enhanced when local governing officials accept their responsibilities and pledge themselves to the full, fair, just and reasonable discharge of them. I trust that your resolve will never again falter or fail.

Please convey to the Township Committee my appreciation and best wishes.

Sincerely yours,  
E. W. GARRETT,  
Acting Commissioner.

13. DISCIPLINARY PROCEEDINGS - FRONT - UNDISCLOSED PARTNERSHIP  
WITH PERSON INELIGIBLE FOR LACK OF FIVE YEARS' RESIDENCE -  
LICENSE REVOKED.

In the Matter of Disciplinary )  
Proceedings against )  
MARGARET H. BURKE, )  
4 Heckman Street, )  
Phillipsburg, New Jersey, )  
Holder of Plenary Retail Consump- )  
tion License No. C-43, issued by )  
the Board of Commissioners of )  
the Town of Phillipsburg. )  
----- )

CONCLUSIONS  
AND ORDER

Margaret H. Burke, Pro Se.  
Charles Basile, Esq., Attorney for Department of Alcoholic  
Beverage Control.

The defendant pleaded not guilty to the charge (1) that, in her application for her plenary retail consumption license, she evaded answering the question there asked as to whether someone other than herself had any interest in the tavern and thus suppressed the fact that Frieda Nixon had such an interest, contrary to R. S. 33:1-25, and (2) that she permitted Frieda Nixon to exercise the rights and privileges of the license, contrary to R. S. 33:1-26, 52.

Frieda Nixon, who is thus in effect alleged to have an undisclosed interest in the defendant's tavern, is, since not a five years' resident of New Jersey, disqualified from holding any license in this State.

In signed statements made to investigators of this Department, both the defendant and Frieda Nixon admitted that they are actually partners in the business. They now claim that such admission is untrue and that they did not, when signing the statements, realize what they were signing.

The investigators, in addition to obtaining such statements, found at the tavern a number of bills in Miss Nixon's name, which she admits were contracted and paid out by her in the course of the tavern's business. The defendant claims that she knew nothing about these bills.

It further appears that the telephone, gas and electricity at the tavern are listed in Miss Nixon's name, and that the lease for the premises is signed by both the defendant and Miss Nixon. As regards the telephone, gas and electricity, the defendant claims that these items were, before the defendant's advent into the tavern, originally listed in the name of Miss Nixon, then allegedly an employee of the former licensee, and that she (the defendant), when taking over the tavern, had neglected to change the items into her own name. As regards the lease, the defendant states that she was unaware that Miss Nixon had ever signed it, and Miss Nixon states that, when signing it, she thought she was doing so merely as a witness.

The defendant, as to the fact that in her application she left blank the question there asked as to whether any person other than herself was interested in the tavern, states that such was merely an oversight.

Despite the attempted explanations by the defendant and Miss Nixon, it is clear beyond question that the defendant obtained her license and operated the tavern thereunder with Miss Nixon as an undisclosed and disqualified partner.

Hence I find the defendant guilty as charged.

As to penalty: If the defendant had frankly admitted the charges against her and, while not seeking to avoid penalty therefor, had sincerely requested opportunity to seek to buy out her disqualified partner, I might perhaps, instead of revoking this license, suspend it for a suitable period and until the disqualified partner was definitely out of the business. However, she is here entitled to no such equitable consideration since, in lieu of honestly admitting her violations, of which the evidence is clear and convincing, she apparently preferred to try to brazen them out. Re Boyes, Bulletin 410, Item 1.

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

ORDERED, that Plenary Retail Consumption License No. C-43, heretofore issued to Margaret H. Burke by the Board of Commissioners of the Town of Phillipsburg, be and the same is hereby revoked, effective immediately.

E. W. GARRETT,  
Acting Commissioner.

14. DISCIPLINARY PROCEEDINGS - WHOLESALER - SALE TO CONSUMER -  
SUSPENSION ONE DAY ON GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against: )

ROBERTS & CO. (formerly )  
Harry H. Lippe & Company), )  
971 McCarter Highway, )  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Wholesale Li- )  
cense W-6, issued by the State )  
Commissioner of Alcoholic )  
Beverage Control. )  
- - - - - )

Robert R. Hendricks, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
Roberts & Co., by Harry H. Lippe, President.

The licensee has pleaded guilty to a charge of selling and distributing alcoholic beverages in a manner not pursuant to and within the terms of its plenary wholesale license in that it sold and caused to be delivered alcoholic beverages to a consumer.

The penalty for this violation is three days, less two for the guilty plea. Re Federal Wine & Liquor Company, Bulletin 403, Item 10.

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

ORDERED, that plenary Wholesale License W-6, heretofore issued to Roberts & Co. (formerly Harry H. Lippe & Company), be and the same is hereby suspended for a period of one (1) day, effective June 20, 1940, at 7:00 A.M. (Daylight Saving Time).

*E. W. Garrett*

Acting Commissioner.