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

BULLETIN 411 JUNE 24, 1940.

1. APPELLATE DECISIONS - RICHMOND REALTY CORPORATION v. PLAINFIELD ET AL.

RICHMOND REALTY CORPORATION,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
COMMON COUNCIL OF THE CITY OF PLAINFIELD, MAURICE DAVID SLANSKY and FRANK VASAPOLI,)
Respondents)

Edward Sachar, Esq., Attorney for Appellant.
William Newcorn, Esq., by Jerome D. Newcorn, Esq., Attorney for Respondent, Common Council of the City of Plainfield.
Maurice David Slansky, Pro Se.
Frank Vasapoli, Pro Se.

Maurice David Slansky and Frank Vasapoli obtained a plenary retail consumption license for the current (1939-40) licensing year for their tavern at 501 Richmond Street, Plainfield.

Thereafter, Vasapoli withdrew from the business and properly notified the Common Council of such fact, thus leaving Slansky as the sole holder of the license. Re Baumgartner, Bulletin 165, Item 10. Contemporaneously, Slansky, as such sole licensee, applied for, and in March 1940 obtained, a place-to-place transfer of the license to 120-122 Depot Park, some half mile away, in the City.

The Richmond Realty Corporation, owner of the old premises (501 Richmond Street) appeals from such transfer and, in substance, contends (1) that the transfer prejudices appellant's investment in its premises at 501 Richmond Street and also prejudices various general creditors (apparently of Vasapoli) upon whom Slansky is allegedly perpetrating a fraud; (2) that establishment of an additional tavern at the new vicinity is unreasonable; (3) that the new location is undesirable for a tavern; and (4) that the new premises do not conform with a Plainfield regulation requiring, in general, that the interior of plenary retail consumption establishments be viewable from the street.

As to (1): Protest, as here, of a landlord against transfer of his tenant's liquor license to other premises because such will cause loss to the landlord's investment, or because the tenant is indebted to the landlord for past rentals, is not adequate cause to set aside the transfer. Re Zabriskie, Bulletin 355, Item 3. Although it may be true that the landlord has fixed the premises especially for a tavern, or altered it to suit the taste of the new outgoing tenant, such is a speculative commercial risk which the landlord must bear. Cf. Rainbow Grill v.

Bordentown, Bulletin 245, Item 4; Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Brost v. East Amwell, Bulletin 304, Item 1; Smith v. Winslow, Bulletin 334, Item 1.

Similarly, protest by general creditors on the ground that the licensee owes them unpaid debts is not adequate cause for reversing a place-to-place transfer of the license. Re Rhodes, Bulletin 176, Item 5; Re Mayer, Bulletin 258, Item 9. Appellant's claim that Slansky, in obtaining such transfer, is executing a fraud upon the creditors (apparently of Vasapoli, his erstwhile partner) is not well founded since their standing or position is in nowise altered by such place-to-place transfer.

Although it may perhaps seem harsh thus to preclude a landlord and creditors, it must be significantly remembered that the question whether a local issuing authority shall grant or transfer a retail liquor license in the municipality is not to be determined in light of private controversies between the applicant and his landlord or creditors. Such controversies, if not adjustable between the parties themselves, must be settled in the courts. For a local issuing authority to seek to unravel them would merely result in bogging down the whole machinery of issuing or transferring liquor licenses, convert the forum into an arena for personal fights between debtor and creditor, and lose sight of the fact that the true test as to whether a license should be denied or a transfer refused is, after all, the public interest.

As to (2): Slansky's new premises are located in a business section near the Plainfield station of the New Jersey Central Railroad. Slansky's advent into this section brings the number of taverns in that general area to four, one tavern being located several hundred feet to the northeast of Slansky's new site, another several hundred feet to the south, and a third a similar distance to the northwest across the railroad tracks. The vicinity from which Slansky has transferred is described as a factory section which, since Slansky's transfer, contains only two taverns.

Determination of the number of liquor places to be permitted in any area is a question which is confided to the sound discretion of the issuing authority. In view that the vicinity at the railroad station is apparently a regular business section and that the vicinity from which Slansky has transferred is a factory site, there is nothing to show that the Plainfield Common Council abused its discretion in permitting the transfer, even though such transfer resulted in augmenting the number of taverns in the new vicinity to four and reducing the number at the old to two. Cf. New Jersey Licensed Beverage Association v. Paterson et als., Bulletin 408, Item 1, and cases therein cited.

As to (3): The only evidence in support of appellant's contention that Slansky's new site is undesirable for a tavern is the fact that it is located on an incline near the railroad station. However, there is nothing to show such location is to be deemed peculiarly dangerous or harmful. There is no road crossing here, but instead, a nearby underpass beneath the tracks. Proximity of a tavern to a railroad station does not of itself constitute such location unreasonable. Cf. Metzgar v. Raritan et al., Bulletin 403, Item 13.

As to (4): Plainfield ordinance of June 7, 1937 requires, in general, that the interior of plenary retail consumption places

in the City be viewable from the street. Slansky's new site is on Depot Park, which is not officially a public street, but instead, apparently a thoroughfare over private property. However, it leads from Park Avenue to the railroad station, is to all appearances like the ordinary city street, and is actually open to and habitually used by the public.

The City regulation does not purport to require that a tavern must be located on an officially dedicated and accepted public way. In requiring a view from the "Street", its use of such word is to be taken in its general sense as meaning any thoroughfare which is habitually and permissibly used by the public as a public way. Depot Park fits such a description.

Appellant's contentions thus being without merit, and no reason appearing why the transfer in question was erroneous, the action of respondent is, therefore, affirmed.

E. W. GARRETT,
Dated: June 17, 1940. Acting Commissioner.

2. DISQUALIFICATION - 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 (as amended by Chapter 350, P.L.1938)	ON HEARING CONCLUSIONS AND ORDER
Case No. 94	

Samuel M. Weissman, Esq., Attorney for Petitioner.

In 1926 petitioner was adjudged a disorderly person and fined $100.00; in 1927 he pleaded non vult to a charge of grand larceny and receiving and was placed on probation; between 1930 and 1935 he was convicted on several occasions on charges of non-support and desertion, the last time being in the Bergen County Court of Quarter Sessions on October 9, 1935, on a charge of non-support, at which time he was placed on probation and ordered to pay $5.00 per week for support of his child.

The crime of desertion and non-support may or may not involve moral turpitude, depending upon the circumstances surrounding the commission of the offense. Re Case No. 286, Bulletin 346, Item 15. At the Hearing petitioner testified that his marital difficulties were caused by incompatibility and because "he was not making enough money for her." There is nothing in the record which discloses the presence of any such aggravating circumstances as would warrant a finding that moral turpitude was involved in any of the domestic convictions which occurred between 1930 and 1935.

Disqualification resulting from conviction of a crime involving moral turpitude will be removed only where it appears that the petitioner has, for five years last past, been leading a law-abiding life. Re Case No. 62, Bulletin 334, Item 6. The continuity of the five-year period of good behavior is broken if the petitioner is convicted of any crime within that time, even if the crime does not involve moral turpitude. Re Case No. 72, Bulletin 375, Item 6; cf. Re Case No. 78, Bulletin 407, Item 3; Re Case No. 58, Bulletin 362, Item 8; Re Case No. 32, Bulletin 269, Item 7.

Therefore, since petitioner's last conviction, on October 9, 1935, occurred within the past five years, I cannot find that he has conducted himself in a law-abiding manner during that period.

The petition is, therefore, dismissed, with leave to renew on or after October 9, 1940.

E. W. GARRETT,
Acting Commissioner.

Dated: June 17, 1940.

3. DISCIPLINARY PROCEEDINGS - WEST NEW YORK LICENSEE - DOING BUSINESS ON SUNDAY - IGNORANCE OF LOCAL REGULATION PROHIBITING SUCH CONDUCT NO DEFENSE DESPITE ALLEGED LOCAL DISREGARD OF THE REGULATION - LICENSE SUSPENDED 3 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

THOMAS J. MARTIN,
T/a Park Avenue Liquor Store,
762 Park Avenue,
West New York, N. J.,

Holder of Plenary Retail Distribution License No. D-5 issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq., Attorney for Defendant-Licensee.
Richard M. Stites, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant, holder of a plenary retail distribution license in the Town of West New York, pleads guilty to the charge that he "conducted business in and upon" his licensed liquor premises on Sunday, February 25, 1940, contrary to Section 5 of resolution of December 15, 1933 of the West New York Board of Commissioners which prohibited plenary retail distribution licensees in the Town from conducting business at their licensed premises during Sundays.

The violation occurred in the morning of the said Sunday.

The defendant, seeking to explain such violation, claims that the West New York resolution had not been enforced by the local authorities for several years prior to the violation; that, in fact, plenary retail distribution licensees in West New York during such time were always open and selling on Sundays; that, because of such conduct by the other licensees, he, the defendant, when first working for the previous holder of license for the premises in 1937 and when later buying out the business and taking the license out in his own name, actually never knew that there was such a regulation and, to the contrary, assumed that there was no Sunday restriction.

It appears that, after the instant violation in February 1940, the Town on April 23 introduced and on May 14 adopted an ordinance permitting plenary retail distribution licensees to open at 12:00 Noon on Sundays.

It is a cardinal and necessary principle that liquor licensees are strictly accountable to obey all liquor regulations which are actually on the books. It is incumbent upon them, especially as regards such a matter of daily concern as permissible hours of their business, to definitely check with the local authorities or this Department and to assume nothing. As was pointedly stated in Braunstein v. Bridgeton, Bulletin 63, Item 9:

> "Licensees are not to make any assumptions. They have no right to assume that they may do everything they please unless they actually know that it is expressly forbidden. On the contrary, they are bound to make sure that whatever they do is permissible."

Moreover, it is dubious whether, at time of violation in question, there was actually any general acceptance among plenary retail distribution licensees in West New York that there was then no restriction against their doing business on Sunday. The investigators of this Department who discovered the defendant's violation also discovered, during that same Sunday morning, a similar violation at a liquor store across the street. The licensee in that case has already pleaded guilty to such violation and been given a three-day suspension. See Re Deischer, Bulletin 396, Item 6. The employee present at such store at time of the violation stated that he believed 1:00 P.M. to be the then permissible opening hour on Sundays and that he, despite such belief, was nevertheless open and selling on Sunday morning because the defendant was engaging in the same practice.

I see no reason for treating the instant case on any different footing from the Deischer case.

Hence, although the defendant's claim that he was unaware of the regulation and that there was uniform practice in West New York to sell all day Sunday does not exculpate him, nevertheless, in view that his guilty plea obviated the necessity of producing the Department's investigators and proving its case against him and in view that his claim, which caused hearing to be held thereon in the case, is not without some merit, his license will, as in the Deischer case, be suspended for three instead of the usual five days.

Accordingly, it is, on this 17th day of June, 1940,

ORDERED, that Plenary Retail Distribution License No.D-3, heretofore issued to Thomas J. Martin, T/a Park Avenue Liquor Store, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of three (3) days, commencing June 24, 1940, at 2:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - DISQUALIFIED INDIVIDUAL THE REAL THOUGH UNDISCLOSED OWNER OF THE LICENSE, THIS BEING HIS SECOND SUCH OFFENSE - CONCEALMENT OF PRIOR SUSPENSION - PRESENT LICENSE REVOKED - FACTS CERTIFIED TO COUNTY PROSECUTOR.

In the Matter of Disciplinary Proceedings against

MARY CALLARI,
302-304 West Main Street,
Chester Township,
P.O. Maple Shade,
Burlington County, N. J.,

Holder of Plenary Retail Consumption License C-18 issued by the Township Committee of the Township of Chester, County of Burlington.

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Frank M. Lario, Esq., Attorney for the Licensee.

The licensee was charged with (1) misstatement in her application for license in that she denied that any person other than herself was interested in the license applied for or the business to be conducted thereunder; (2) aiding and abetting one Pasquale Bisanti to exercise the rights and privileges of her license; and (3) concealment of a sixty-day suspension of license previously held in another municipality.

The licensee pleaded not guilty to all charges, but subsequently retracted the plea as to the third charge and instead pleaded non vult with an explanation that the concealment was the result of error of the stenographer who typed the answers in the application for license.

As to the first two charges, which, in effect, alleged that the licensee is a front for Pasquale Bisanti, it appears that Bisanti is disqualified from holding a liquor license by reason of conviction of a crime involving moral turpitude, the subject of Re Case No. 67, Bulletin 345, Item 7. In that case, the late Commissioner Burnett refused to remove the disqualification pursuant to R. S. 33:1-31.2, for the reason that Bisanti had been a silent partner of one William A. Laleker in the liquor business conducted under license in the name of Laleker only, at the same licensed premises for which Mary Callari now holds the license. Because he was a front for Bisanti, the license of Laleker was suspended for the balance of its term by the Chester Township Committee, following conduct of disciplinary proceedings in June 1939.

Thereafter, investigators of this Department, on routine inspection, questioned the licensee with respect to the ownership of the licensed business, and in response to their inquiries the licensee admitted, and gave a voluntary signed statement, that she and Bisanti, her "common law husband", (cf. conclusions in Re Case No. 67, supra, from which it appears that Bisanti, although separated from his wife since 1928, has never been divorced and has been living meretriciously with Mary Callari) were operating the

licensed business under a license issued in Mary Callari's name alone because of Bisanti's disqualification, and that Bisanti "owns everything here and handles the money". In addition, the investigators discovered an account book disclosing disbursements of the licensed business, from which it appears that on twenty-three different occasions from September 8, 1939 until February 19, 1940, Bisanti received various sums of money totaling $564.95.

At the hearing, the licensee's defense was that she had purchased the licensed business from Laleker and Bisanti, paying each the sum of $200.00, the purchase price of $400.00 being her own money which she had "kept in her pocketbook" for three years, it representing the proceeds of the sale of a licensed business previously conducted by her in another municipality; that the items in the account book indicating payment of money to Bisanti represented reimbursement of him for bills that he had paid because she was short of money; that although she signed the statement above mentioned, she had not read it and signed it merely to get rid of the investigators. In substantiation of her claim that she purchased the business from Laleker and Bisanti, she produced a written agreement between Bisanti and Laleker wherein they terminated their partnership and agreed to sell the business to her; one between Laleker, Bisanti and herself, wherein the business was sold by them to her; and a chattel mortgage executed by her to secure the repayment of $300.00 borrowed by her in order to commence business.

The circumstances and facts considered, I do not believe Mary Callari's testimony that she had no knowledge of what she was signing when she gave the statement admitting the ownership of the licensed business by Bisanti. I find as a fact that Bisanti is the real owner of the licensed business, and that Mary Callari is a mere front for him. The agreements in evidence, I believe, are part and parcel of the scheme to conceal actual ownership of the business, entered into and executed by the parties to lend an air of plausibility to the unlawful scheme of operation.

I find the licensee guilty as charged and have no alternative but to revoke the license outright.

Accordingly, it is, on this 17th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-18, heretofore issued to Mary Callari for premises 302-304 West Main Street by the Township Committee of Chester Township, Burlington County, be and the same is hereby revoked, effective immediately.

In view of Bisanti's deliberate and repeated engagement in the licensed business through the medium of two successive fronts, the second of which he employed with full knowledge of his disqualification and the illegality of any arrangement whereby a qualified individual held the license as a front for him, the fact will be certified to the Prosecutor of the Pleas of Burlington County for appropriate criminal prosecution of Bisanti and his aiders and abettors for violation of R. S. 33:1-26, which provides that any person who shall exercise the rights and privileges of a license except the licensee shall be guilty of a misdemeanor.

The practice of setting up fronts for disqualified individuals is a vicious one that strikes at the very root of control. It must and shall be broken up.

E. W. GARRETT,
Acting Commissioner.

5. CANCELLATION PROCEEDINGS - LICENSE ERRONEOUSLY ISSUED TO PERSON NOT A FIVE YEARS' RESIDENT OF NEW JERSEY - LICENSE SUSPENDED FOR BALANCE OF TERM BUT WITH LEAVE TO SEEK BONA FIDE TRANSFER TO QUALIFIED PERSON SINCE LICENSEE PLAINLY STATED IN APPLICATION THAT HE WAS A NON-RESIDENT AND WAS APPARENTLY IN GOOD FAITH THROUGHOUT.

In the Matter of Proceedings to Revoke or Cancel Plenary Retail Consumption License No. C-120 issued to

HARRY DISSYK,
131 Passaic Street,
Passaic, N. J.,

By the Board of Commissioners of the City of Passaic.

CONCLUSIONS AND ORDER

Turetsky & Turetsky, Esqs., by Joseph Turetsky, Esq., Attorney for Defendant-Licensee.
Emerson A. Tschupp, Esq., Attorney for Department of Alcoholic Beverage Control.

Notice was served on the defendant-licensee to show cause why his license should not be revoked or cancelled for the reason that it had been issued to him in violation of R. S. 33:1-25, in that he had not been a resident of the State of New Jersey for five years immediately preceding his application for said license.

In a voluntary statement given to investigators of this Department and again at the hearing, the defendant openly and frankly admitted that he had been a resident of New Jersey for only one year when he made application for and was granted Plenary Retail Consumption License No. C-120 for premises at 131 Passaic Street, Passaic, by the Board of Commissioners of the City of Passaic.

It is apparent, therefore, that the defendant's license was issued in violation of R. S. 33:1-25. Under ordinary circumstances the license would be cancelled outright. The defendant, however, pleads for clemency on the ground that he acted in good faith in applying for and procuring his license and that he was unaware of the statutory five year residence requirement. At the hearing he testified that, at the time he first opened his tavern, a City of Passaic detective had questioned him regarding the length of time that he had been in the State and that the detective, upon being told that the defendant had been a New Jersey resident for one year, had informed him that that was sufficient. In the statement which he gave to Department investigators, the defendant declared that his attorney, who filled out his application for him, had told him nothing of any residence requirement. Question No. 26 of the defendant's application for license, inquiring if applicant had resided in New Jersey for five years immediately preceding his application, was answered "No". The second part of the same question, calling for statement of the name and address for the last five years of any such non-resident person mentioned in the application, was answered "Harry Dissyk, 68 Jackson Avenue, Yonkers, New York".

Notwithstanding defendant's frank and open statement of his non-residence, his application was acted upon by the issuing authority and the license was granted.

The defendant testified that he invested large sums of money in the tavern enterprise and hehas continued to invest money from time to time.

I find that the defendant acted in good faith and in honest ignorance of the statutory requirement. Ignorance of the law, however, can afford no excuse for continued toleration of the unlawful situation. All operation under the license must cease at once. In view of the fact, however, that defendant was induced and encouraged by the issuing authority's erroneous acceptance of his application, to go ahead and expend money for his license, to invest heavily in the licensed business, and to otherwise change his position, outright cancellation would be unduly harsh.

It is, therefore, on this 17th day of June, 1940,

ORDERED, that Plenary Retail Consumption License No.C-120, heretofore issued to Harry Dissyk by the Board of Commissioners of the City of Passaic, be and the same is hereby suspended for the balance of its term, effective immediately, with leave reserved for the licensee to file application with the Board of Commissioners of the City of Passaic to transfer said license to an eligible person in the City of Passaic and if the application be granted, to apply to me to lift the suspension herein imposed so that the license may be effectively transferred.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT - UNQUALIFIED INDIVIDUAL TRUE OWNER OF BUSINESS OPERATED BY CORPORATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

SPARKY'S CAFE, INC.,
366 So. Broad St.,
Trenton, N. J.,

Holder of Plenary Retail Consumption License C-269, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

The licensee was charged with falsifying its license application by concealing the interest of Peter Accardi in the license applied for and the business to be conducted thereunder, and aiding and abetting Accardi to exercise the rights and privileges of its license.

At the hearing, no one appeared on behalf of the licensee to contest the proceedings.

Testimony establishes that Accardi, disqualified from holding a license by reason of lack of the required five years' residence in New Jersey, procured the formation of Sparky's Cafe, Inc., a corporation, and caused all except one share of the stock to be issued to dummy stockholders - none of whom had any interest in the licensed business.

I find as a fact that the licensee was a mere front for Accardi, who exercised the privileges of its license. The penalty is outright revocation.

Accordingly, it is, on this 19th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-269, heretofore issued to Sparky's Cafe, Inc. for premises 366 So. Broad St., Trenton, by the Board of Commissioners of the City of Trenton, be and it is hereby revoked, effective immediately.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - TIED HOUSE - CHARGES DISMISSED FOR INSUFFICIENT EVIDENCE - MAINTAINING UNAUTHORIZED SALESROOM - LICENSE SUSPENDED 2 DAYS.

In the Matter of Disciplinary Proceedings against NATHAN ABOFF, trading as RADIO BEVERAGE CO., 319 Jelliff Avenue, Newark, New Jersey, Holder of State Beverage Distributor's License No. SBD-11, issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

Jacob S. Glickenhaus, Esq., Attorney for Defendant-Licensee.
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant, holder of a State Beverage Distributor's license since Repeal, is charged with the following violations of the Alcoholic Beverage Law:

(1) Holding a mortgage in 1935 on chattels at the licensed premises of a liquor retailer.

(2) Granting to another liquor retailer in 1938 a loan which was accompanied by an agreement that such retailer buy the defendant's beer.

(3) Maintaining in 1938 a salesroom at 21 White Terrace, Newark, beyond the terms of his license.

As to (1) and (2): The Alcoholic Beverage Law prohibits a liquor manufacturer or wholesaler, including a State Beverage Distributor (who has, inter alia, the privilege of wholesaling beer) from being interested in any way, including the holding of a chattel mortgage, in any retail liquor establishment, and also further prohibits such manufacturer or wholesaler from lending money to a liquor retailer accompanied by that retailer's agreement to use the lender's products. See R. S. 33:1-43; Re Carabelli, Bulletin 174, Item 15; Re Rosenberg, Bulletin 217, Item 8; Re Milask, Bulletin 392, Item 14.

The salutary purpose of this broad prohibition is to prevent liquor manufacturers or wholesalers from controlling and dominating the retailers and thus producing the so-called "tied house", source of so many of the evils which led to Prohibition. See Re Princeton Municipal Improvement, Inc., Bulletin 255, Item 1.

In the present case the evidence, in summary, reveals that the defendant, Aboff, has, during past years, been approached for loans by various Newark tavern keepers (or their employees) on his beer route; that he referred such persons to his step-nephew, Sam J. Abraham, an attorney in this State, who thereupon lent them money; that one of such loans in 1935, either to a tavern keeper or his manager, was secured by a mortgage on chattels at the tavern, the mortgage being made out to the attorney's cousin; that, as regards another tavern manager who obtained a loan in 1938 from the attorney, the defendant, after such loan, told the manager, "I appreciate very much if you continue to use my beer" and the manager answered, "I will do my best"; that such tavern manager apparently continued to order beer from the defendant and also several other distributors, as theretofore; that all the various loans were paid off, with Aboff helping to collect them and depositing such monies in the attorney's "trustee" account at a Newark bank.

The defendant testified that none of the loans, nor the above mentioned chattel mortgage, were his, and, in addition, presented evidence that he has for years been in such poor financial condition as to be unable to finance any such loans. He further testified that he helped out the liquor retailers by referring them to Abraham, and helped out Abraham by making some of the collections etc. merely as an accommodation; further, that he never made any agreement with any of the retailers that they use his beer.

Abraham, a member of the New Jersey Bar since 1930, testified that the loans were actually his; that, in connection with his law practice, he lends out money not only to liquor licensees but to others; that his "trustee" bank account, in which the defendant made deposits of the sums which he collected, was an account where he, Abraham, kept the money which he used in giving out loans; that the aforementioned chattel mortgage was his, Abraham's, and was in his cousin's name for the purpose of convenience.

In view of the defendant's activity on these loans, there is strong warrant for the suspicion that the defendant may have been the real party in interest on such loans and also actual holder of the chattel mortgage in question, and that he may perhaps have had an agreement with the indebted retailers (or their employees) that they order beer from him.

However, the proof as to Aboff's poor financial condition, the fact that the only evidence as regards an agreement to order beer from the defendant (viz., the statement of a tavern manager that he would try his best to continue to keep the defendant as one of the distributors from whom he would order the tavern's beer) falls short of proving any such actual agreement, and the sworn word of an attorney that the various loans and the chattel mortgage were his and not the defendant's, throw the case into substantial doubt. Since the Department has the burden of proof, common fairness dictates that the defendant be given the benefit of such doubt.

Hence charges (1) and (2) are dismissed.

However, the defendant, to avoid future suspicion, will do well to discontinue his unsalutary practice of acting as intermediary for loans to liquor dealers.

As to (3): The defendant, when applying for his State Beverage Distributor's license for 1936-7, sought to have his warehouse located at 319 Jelliff Avenue, Newark, and his salesroom at his home at 21 White Terrace in the same city. However, after hearing held at this Department on protests by residents against use of the defendant's home in his business, the defendant was denied the privilege of conducting any salesroom there and his premises at 319 Jelliff Avenue were thereupon designated as both his warehouse and salesroom.

In June 1938 investigators of this Department visited the defendant's said premises at 319 Jelliff Avenue on three occasions and found such premises closed on each. They further discovered that the defendant's telephone listing at the Jelliff Avenue premises and at his home on White Terrace were exactly the same, the 'phone at one place being merely an extension of the 'phone at the other and both ringing simultaneously, and that the defendant took beer orders over the home telephone.

Now, although receiving an occasional order over an independent home telephone may perhaps not be construed as usage of the home as an office or salesroom, nevertheless there is such usage where, as here, a licensee arranges for his home telephone and the telephone at his warehouse and supposed salesroom to have the same listing, and to ring together, for the purpose of receiving orders.

Hence I find the defendant guilty on charge (3).

As to penalty: In view that the defendant did not maintain any beer or trucks at his home but merely arranged to take orders over the telephone there, and in view that such situation has now been corrected in that the defendant has since December 1938 removed his home to 24 Schley Street, Newark, where, under his license, he may maintain a salesroom, his license will, instead of an otherwise more stringent penalty, be suspended for two days.

It is, therefore, on this 19th day of June, 1940,

ORDERED, that State Beverage Distributor's license No. SBD-11, heretofore issued to Nathan Aboff, trading as Radio Beverage Co., by the State Commissioner of Alcoholic Beverage Control, be and the same hereby is suspended for a period of two (2) days, commencing June 26, 1940, at 6:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - CLUB MANAGER CONDUCTING BUSINESS UNDER LICENSE ISSUED TO CORPORATION - ALL PARTIES FULLY QUALIFIED - LICENSE SINCE TRANSFERRED TO CLUB MANAGER - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

CLUB PARSIPPANY, INC.,
Halsey Road and Centerdon Drive,
Lake Parsippany,
Parsippany-Troy Hills, N. J.,

Holder of Plenary Retail Consumption License C-23 issued by the Township Committee of the Township of Parsippany-Troy Hills, and transferred during the pendency of the proceedings to

GEORGE ZIMMERMAN

for the same premises.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
William C. Egan, Esq., Attorney for the Licensee.

The licensee has pleaded guilty to charges of falsifying its license application by denying that any person other than itself was interested in the license applied for and the business to be conducted thereunder, and aiding and abetting a non-licensee to exercise the rights and privileges of its license.

At the hearing it appeared that the Lake Parsippany Property Owners Association, Inc., desirous of obtaining a liquor license for the community clubhouse at the lake, formed a corporation known as Club Parsippany, Inc. to hold the license and operate the licensed business. Within a week after obtaining the first license in July 1937, the corporation employed George Zimmerman to manage the licensed business and in 1938 entered into a contract with him which, in effect, made Zimmerman the licensee in everything but name, the licensee receiving 10% of the gross receipts, the balance being retained by Zimmerman.

Following investigation and the institution of these proceedings, Zimmerman applied for transfer of the license from Club Parsippany, Inc. to himself, which transfer was granted on May 14, 1940 subject to special condition that the license should continue to be subject to any penalty imposed in these proceedings. Prior to the hearing a contract was executed between Lake Parsippany Property Owners Association, Inc. and Zimmerman, leasing the first floor of the clubhouse to Zimmerman for use as a tavern and restaurant.

It therefore appears that the unlawful arrangement heretofore existing has been corrected. The license will, therefore, be suspended for ten days, in accordance with ruling in Re King, Bulletin 404, Item 5.

Accordingly, it is, on this 20th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-23, heretofore issued to Club Parsippany, Inc. for premises Halsey Road and Centerdon Drive, Lake Parsippany, by the Township Committee of Parsippany-Troy Hills, and transferred during the pendency of these proceedings to George Zimmerman, be and the same is hereby suspended for ten days, effective 3:00 A.M. (D.S.T.) June 21, 1940.

One further point deserves mention. The leasing agreement provides that Zimmerman shall pay as rent 10% of the annual gross receipts up to $15,000.00, and 15% of all gross receipts in excess of that sum, but in no event less than $1200.00 per year. Gross receipts are so defined by the parties that they are, in effect, the receipts of the sale of alcoholic beverages.

Since Lake Parsippany Property Owners Association, Inc. is to receive as and for the rent of the licensed premises a percentage of the gross receipts of the licensed business, it is so interested in the license applied for and the business to be conducted thereunder that its interest must be disclosed by Zimmerman in his current and subsequent applications for license in answer to Question 28, which asks:

> "Has any individual, partnership, corporation or association, other than the applicant, any interest directly or indirectly in the license applied for or in the business to be conducted under said license? If so, state names, addresses and interest of such individuals, partnerships, corporations or associations."

In answering the question, brief reference to the agreement should be made and copy of the agreement should be attached for the completeness of the record.

Normally, rental agreements provide for the payment of a fixed sum by the tenant to the landlord. Such agreements give the landlord no interest (within the contemplation of Question 28) in the licensed business since the rent is due and payable without reference to the receipts of the business. Hence applicants who lease premises, paying a fixed rent, need not disclose in answer to Question 28 the rental agreement as an interest of the landlord.

On the other hand, where the rent is computed with reference to the receipts of the licensed business, disclosure of the arrangement must be made so that the issuing authority may determine whether the leasing agreement is <u>bona fide,</u> or a mere subterfuge to conceal either an actual partnership of the landlord and tenant in the licensed business or a situation where the tenant is a mere front for the landlord.

E. W. GARRETT,
Acting Commissioner.

9. APPELLATE DECISIONS - ROSE v. BELLMAWR.

DALE ROSE,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS

BOROUGH COUNCIL OF THE BOROUGH OF BELLMAWR,)

Respondent)

Frank M. Lario, Esq., Attorney for Appellant.
Thomas M. Madden, Esq., Attorney for Respondent.

Respondent revoked appellant's plenary retail consumption license after finding him guilty of charges that, on two occasions, November 4, 1939 and December 24, 1939, he sold alcoholic beverages after 3:00 A.M. and remained open after 3:30 A.M., both contrary to local ordinance, and also that, on the latter date, he permitted known criminals to frequent his licensed premises, contrary to State regulation.

By consent, a transcript of the testimony taken below was offered in evidence at the appeal hearing. From that transcript it appears that there was substantial testimony that on November 4, 1939 his licensed premises was open and doing business as late as 5:00 A.M. and on December 24, 1939 as late as 4:30 A.M. Although appellant denied that he had sold alcoholic beverages or remained open after permissible hours on either occasion, I am satisfied from the evidence that respondent was fully justified in finding him guilty of these charges.

As to the charge of permitting known criminals on his licensed premises, the testimony showed that one of the criminals had been in his employ for a period of three or four weeks prior to December 24, 1939 as a watchman and general handy man and that the other had visited his premises as a patron about once a month. While there was no direct proof that the licensee knew of their criminal records, he admitted that he had known them about fifteen years and at one time had resided at the same hotel with one of them. This evidence was sufficient to warrant an inference that the appellant knew of their difficulties with the law, and placed the burden of going forward with contrary proof on the appellant, who simply denied any knowledge that they were criminals.

Founded upon the dictates of common experience, respondent could fairly resolve this issue against the appellant. In the very nature of things, there can be no general solvent for all cases where the proof is of the character here presented. No one rule, or set of rules, can be devised to provide a sure and universal test for the solution of this type of case. All that can be done is to apply natural reason to the proven facts, based upon broad and well-defined principles of experience and fairness. With this in mind, the inference here drawn could logically be made on the affirmative evidence before respondent and ultimately found by it as a proven fact. Appellant, whose burden it is to show that respondent was wrong in its determination, has not sustained such burden by his mere denial of any knowledge of the criminal records of the two persons involved.

Appellant contends, however, that the revocation of his license was, under the circumstances, too severe and disproportionate to the charges lodged against him. The record reveals the

testimony, admitted over objection, of a minor who testified that "once or twice" she was served liquor at appellant's premises at a time utterly unrelated to any of the charges; that a patron, after emerging from the premises, was beaten and robbed; that a brawl took place at the premises as a result of which a person was fatally shot. None of this testimony was directly within the issues raised by the charges, and may well have led the respondent to a belief that the premises was being operated generally as a nuisance and that it should therefore be permanently closed. Respondent's decision to revoke the license was very likely largely influenced by such belief. If so, its determination cannot be said to have resulted solely from the pertinent evidence produced before it in support of the charges served upon the appellant. Cf. Beam v. Caldwell, Bulletin 327, Item 1.

The licensee has a previous record. He had once before been found guilty of serving alcoholic beverages after the permissible hours provided for by local ordinance and his license suspended for five days. For such violation, this Department has consistently recommended a five-day penalty for the first offense, ten days for the second and outright revocation for the third. Re Schalick, Bulletin 302, Item 12. The charges involved in this case, although comprising two different occasions, nevertheless amount only to a single, and therefore a second, violation within the meaning of that recommendation. In order to constitute separate violations there must be an adjudication of guilt followed by punishment, and then, still unregenerate, a subsequent violation and adjudication. Cf. Re Blanker, Bulletin 254, Item 6.

While municipal issuing authorities are not bound to limit penalties imposed by them to those suggested by this Department, it appears that, taking all of the facts into consideration, and giving reasonable latitude to honest differences of opinion, the penalty of revocation is unnecessarily severe and should be reduced to a suspension for ninety days.

Since the present licensing period will expire prior to the expiration of ninety days, the present license will be suspended for the balance of its term, and respondent directed not to issue any renewal of said license prior to the expiration of ninety days from the effective date of the suspension ordered herein.

Accordingly, it is, on this 20th day of June, 1940,

ORDERED, that the order heretofore entered staying respondent's order of revocation be and the same is hereby vacated; and it is further

ORDERED, that the penalty of revocation of Plenary Retail Consumption License C-4, heretofore issued to Dale Rose by the Borough Council of the Borough of Bellmawr, be and the same is hereby modified to a suspension of said license for the period of ninety (90) days; and it is further

ORDERED, that said license be and the same is hereby suspended for the balance of its term, effective June 24, 1940 at 3:00 A.M. (D.S.T.); and it is further

ORDERED, that no further license be issued to said licensee or for the same premises prior to September 22, 1940.

E. W. Garrett

Acting Commissioner.