

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

BULLETIN 413

JULY 5, 1940.

1. DISCIPLINARY PROCEEDINGS - PETITION TO REOPEN CASE DENIED.

In the Matter of Disciplinary)
Proceedings against)
SPARKY'S CAFE, INC.,) ON PETITION
366 So. Broad St.,) CONCLUSIONS
Trenton, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-269, issued by)
the Board of Commissioners of the)
City of Trenton.)
- - - - -)

Conclusions and Order were heretofore entered on June 19, 1940 revoking the license of Sparky's Cafe, Inc. for the reason that it was a front for Peter Accardi, disqualified from holding a license by reason of lack of the requisite five years' residence in New Jersey. Re Sparky's Cafe, Inc., Bulletin 411, Item 6.

On June 25th a petition to "reopen the case so that he may present his defense" was filed by Peter Accardi. The petition sets forth only that Accardi failed to appear on the date fixed for hearing for the reason that he consulted an attorney in Atlantic City who advised him that it would be unnecessary for Accardi to appear. The petition does not purport to be filed by the licensee nor does it allege that the licensee has any meritorious defense to the charges. No facts alleged in the supporting affidavits indicate that such meritorious defense existed.

In view of the absence of such allegations in the petition, Peter Accardi (who appeared at this Department for the purpose of filing the petition) was sworn and examined by the Hearer with a view to ascertaining whether or not, in fact, the licensee had a prima facie meritorious defense. In the course of that examination Accardi at first claimed that he was interested in the licensed business only to the extent of holding one share of stock, and that Frances Trombino, his sister, the holder of twenty-eight shares of stock, owned the business. Although denying that it was his business, he admitted that it was his money that purchased it. He claimed that he was trying to help his sister who was on relief, but admitted that in the fifteen months that the business had been in operation he "never gave her a penny". Contrasted with this testimony is his statement obtained by investigators of this Department, in which he admits that he had the corporate stock put in the name of his sister because he knew that he was disqualified from holding a license because of his lack of New Jersey residence, and the statement of his sister that she has no financial interest in the corporation or the licensed business.

In the course of the examination Accardi was asked by the Hearer whether he discussed the case in disciplinary proceedings with any lawyer prior to June 17th. This he denied. He was then asked by the Hearer whether he had discussed the case with a certain lawyer in Trenton (naming him) and this he also denied. It

being within the Hearer's knowledge that the named lawyer in Trenton had discussed the case with another attorney of this Department on two occasions, the Hearer interrupted the taking of Accardi's testimony to telephone to the lawyer in Trenton and verify his understanding. Realizing that he had been trapped, Accardi then admitted that he had discussed the case with the Trenton lawyer and that his previous testimony was false.

Again, he was asked whether he knew that he could not hold a New Jersey liquor license because of his lack of five years' New Jersey residence, to which he replied that he never knew that. Confronted with his statement which contradicted his testimony, he then admitted that he knew that he was disqualified.

It therefore appears not only that the licensee has no meritorious defense to the charges but also that the petitioner who requests the reopening of the case is wholly unworthy of belief. Petitioners who request equitable relief by reopening of disciplinary proceedings must make full and frank disclosure of the truth. Petitioners who have no regard for the truth and testify falsely are entirely unworthy of any relief. In effect, they come in with unclean hands.

The petition is therefore denied.

E. W. GARRETT,
Acting Commissioner.

Dated: June 26, 1940.

2. DISCIPLINARY PROCEEDINGS - FRONT - UNDISCLOSED INTEREST OF OTHERS IN LICENSE - DISMISSED ON SURRENDER OF LICENSE.

In the Matter of Disciplinary Proceedings against
PAUL AMATUZIO,
T/a Silver Fox Tavern,
White Horse Pike,
Winslow Township,
P.O. Elm, N. J.,
Holder of Plenary Retail Consumption License C-21, issued by the Township Committee of Winslow Township.

CONCLUSIONS
AND ORDER

Jacob S. Glickenhous, Esq., Attorney for Defendant-Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee was charged with misrepresenting material facts in his application for license in that he concealed the interest of Harry Silverstein and Pedigreed Fox Farm, Inc. in said license and the business to be conducted thereunder.

It appears that licensee has frankly conceded the impropriety in the issuance of the license to himself and the conduct of the business under such license. Licensee has made a clean breast of the affair and evinced a desire to cooperate with the Department. To that end the license has been surrendered to the issuing authority. The Township Clerk has certified to the fact of surrender and the further fact that the premises has been closed since the date of

surrender. Concealed and improper interests in the retail liquor business must be eliminated. Surrender of the license and closing of the premises have eliminated such interests in the instant case. No aggravated circumstances appear here to warrant additional punishment against either the person of the licensee or the premises.

The surrender of the license may be accepted and the case closed. Re Huttich, Bulletin 406, Item 2. Re Marchisio, Bulletin 403, Item 5.

Accordingly, it is, on this 27th day of June, 1940,

ORDERED, that these proceedings be and the same are hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE CRIME NOT INVOLVING MORAL TURPITUDE - LICENSE SINCE TRANSFERRED SUBJECT TO THESE PROCEEDINGS - LICENSE SUSPENDED 2 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH STUIISO,
T/a Club Royale,
1 Mt. Pleasant Avenue,
Wallington, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-28, issued by the Borough Council of the Borough of Wallington.)
-----)

Joseph Stuiso, Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that Alexander Mihalchyk, his predecessor in interest, made a false statement in his application for license dated June 15, 1939, filed with the Borough Council of the Borough of Wallington, in that he stated that he had never been convicted of any crime, whereas in truth and fact said Alexander Mihalchyk had been convicted of third degree assault in the Westchester, New York, County Court; said false statement being in violation of R. S. 33:1-25.

It appears from the Department investigation that the said crime for which Mihalchyk had been convicted arose out of domestic difficulties and that the said conviction was not of a crime involving moral turpitude. Mihalchyk's eligibility for license would not be affected thereby.

It appears further that Mihalchyk transferred his license to Stuiso on June 4, 1940, subject to determination in the present proceedings which were at that time contemplated.

The transfer appears to have been bona fide and devoid of any collusion between the parties. However, the transfer of the license having been made subject to these proceedings, a penalty will be inflicted against Stuiso for the violation of his predecessor but, of course, to a lesser extent than would have been imposed if Mihalchyk were still the licensee.

Under all the facts and circumstances as appear, the li-
cense will be suspended for two (2) days.

Accordingly, it is, on this 26th day of June, 1940,

ORDERED, that Plenary Retail Consumption License C-28,
heretofore issued to Joseph Stuiso, T/a Club Royale, by the
Borough Council of the Borough of Wallington, be and the same is
hereby suspended for a period of two (2) days, effective June 27,
1940, at 3:00 A.M., Daylight Saving Time.

E. W. GARRETT,
Acting Commissioner.

4. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2 (as amended)
by Chapter 350, P.L. 1938))
Case No. 103.)
-----)

CONCLUSIONS
AND ORDER

Petitioner's previous application for removal of his
statutory disqualification because of convictions of crimes in-
volving moral turpitude was dismissed because, at that time, five
years had not elapsed from June 13, 1935, the date of his last
conviction, and he was given leave to re-apply after June 13, 1940.
See Re Case No. 49, Bulletin 303, Item 8, where petitioner's con-
victions are set forth.

Four character witnesses were produced by the petitioner.
One is a dentist, another a manufacture of hatters' fur, and the
other two are lawyers. All have known him for at least eight years,
and all testified that his reputation for being honest and law-
abiding is good.

Since his release from prison petitioner has been in the
employ of a building contractor during the construction seasons.
For economic reasons he now desires to work at the tavern owned
by his wife.

Petitioner's fingerprint returns disclose no arrests or
convictions since June 13, 1935. The Chief of Police of the mu-
nicipality where he resides advises that "there are no arrests,
complaints or pending investigations or reports involving the sub-
ject in this Department."

I am satisfied from the evidence that petitioner is en-
titled to a lifting of his statutory disqualification. However,
because of his employment at his wife's saloon after having
promised the police that he would not do so (see Re Case No. 49,
supra), his disqualification will not be removed for another ten
days.

Accordingly, it is, on this 28th day of June, 1940,

ORDERED, that petitioner's statutory disqualification be
and the same is hereby removed, effective July 8, 1940, in accord-
ance with the provisions of R. S. 33:1-31.2 (as amended by Chapter
350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

5. ENFORCEMENT DIVISION ACTIVITY REPORT FOR JUNE, 1940.

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - 18
 Licensees - 0 Non-licensees - 18

SEIZURES: Stills - total number seized- - - - - 8
 Capacity 1 to 50 Gallons- - - - - 7
 Capacity 50 Gallons and over- - - - - 1

Motor Vehicles - total number seized- - - - - 2
 Trucks - 0 Passenger cars - - - - 2

Alcohol
 Beverage Alcohol- - - - - 0

Mash - total number of gallons- - - - - 12,580

Alcoholic Beverages
 Beer, Ale, etc. - - - - - 4 Gallons
 Wine- - - - - 1217 "
 Whiskies and other hard liquor- - - - 12 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1634
 Illicit (bootleg) liquor- - - - - 9
 Gambling violations - - - - - 2
 Sign violations - - - - - 18
 Unqualified employees - - - - - 181
 Other mercantile business - - - - - 7
 Disposal permits necessary- - - - - 3
 "Front" violations- - - - - 7
 Improper beer markers - - - - - 2
 Other violations found- - - - - 9

 Total violations found- - - - - 238
 Total number of bottles gauged- - - - - 15587

STATE LICENSEES:

Plant Control Inspections completed - - - - - 49
 License applications investigated - - - - - 667

COMPLAINTS:

Investigated and closed - - - - - 271
 Investigated, pending completion- - - - - 160

LABORATORY:

Analyses made - - - - - 157
 Alcohol and water and artificial coloring
 cases- - - - - 12
 Poison and denaturant cases - - - - - 0

Respectfully submitted,

S. B. White,
 Chief Inspector.

to do so, or that the licensee did not have knowledge, especially as to the second occasion when the immoral act was committed four times, as to what was taking place on his premises.

I have carefully scrutinized the testimony given by "Doc" in view that he had previously been convicted of perjury. However, despite that conviction, it appears that his evidence is worthy of credence since it was substantially corroborated by the girl, and since there was not even a suggestion that he was in any wise motivated against the appellant.

I find that the evidence sufficiently discloses that the licensee is guilty as charged.

The penalty of outright revocation fits the offense. Respondent has clearly indicated that it does not intend to tolerate the unholy union of vice and liquor on licensed premises in its municipality.

The action of respondent is affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: June 28, 1940.

ALBERT PROCOLI,)
Appellant,)

-vs-

ON APPEAL
ORDER

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF HAMILTON (MERCER)
COUNTY),)
Respondent)

It appearing that an order was heretofore entered in this matter on May 2, 1940, staying the order entered by respondent revoking appellant's plenary retail consumption license No. C-13 for premises located at Princeton and Dickinson Streets, Township of Hamilton, pending final hearing on the appeal and until further order of the Acting Commissioner; and

It further appearing that Conclusions have this day been filed affirming the action of respondent herein;

It is, on this 28th day of June, 1940,

ORDERED, that said order dated May 2, 1940 be and the same is hereby vacated and set aside; and it is further

ORDERED, that the aforesaid revocation of appellant's plenary retail consumption license No. C-13 for premises located at Princeton and Dickinson Streets, Township of Hamilton, be and the same is hereby restored to full force, effective immediately.

E. W. GARRETT,
Acting Commissioner.

in the store to make a purchase there when Geltzeiler came in, and an employee who states that he also was in the store at such time. Both witnesses corroborate Sawczuk's version of the sale to Geltzeiler.

Thus there is presented a square conflict in the evidence. In weighing the testimony, sight cannot be lost of the fact that Geltzeiler is a competitive licensee and, on the other hand, that the dentist and the salesman, who testified for the defendants, appeared to have no interest in the outcome of these proceedings. Guilt of a licensee must be shown by a preponderance of the evidence and, under the circumstances of this case, the Department has not sustained the required burden of proof.

Accordingly, these proceedings are dismissed.

E. W. GARRETT,
Acting Commissioner.

Dated: June 28, 1940.

8. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)
MRS. DESPINA VAFIADIS,)
403 Myrtle Ave.,)
Irvington, N. J.,)
Holder of Plenary Retail Distri-)
bution License D-21 issued and)
transferred by the Board of Com-)
missioners of the Town of)
Irvington.)
-----)

CONCLUSIONS
AND ORDER

Richard M. Stites, Esq., Attorney for the State Department
of Alcoholic Beverage Control.
Jacques H. Hecht, Esq., Attorney for the Defendant-Licensee.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on June 11, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The suspension will, therefore, be for five (5) days instead of ten (10) days.

The license against which these proceedings were instituted expires June 30. Fairness to the licensee demands that she receive adequate notice of the punishment to be imposed. The present license may, therefore, run its course. The punishment will be imposed against the renewal license.

Accordingly, it is, on this 28th day of June, 1940,

ORDERED, that no renewal of Plenary Retail Distribution License D-21, heretofore transferred to Mrs. Despina Vafiadis by the Board of Commissioners of the Town of Irvington, become effective until July 6, 1940.

E. W. GARRETT,
Acting Commissioner.

9. APPELLATE DECISIONS - ZUCKERMAN v. CAMDEN.

JACOB ZUCKERMAN,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF CAMDEN,)	
)	
Respondent)	
-----)	

Carl Kisselman, Esq., Attorney for Appellant.
Edward V. Martino, Esq., Attorney for Respondent.
Herman C. Silverstein, Esq., Attorney for various Objectors.
A. M. McNutt, Esq., Attorney for other Objectors.

This appeal is from the denial of a plenary retail distribution license for store premises at Yorkship Square, Camden.

This square is in the center of an individual (although unofficial) community in Camden known as Fairview or Yorkship Village. The square - a large grass tract - is like the "common" in English and New England communities (after which it seems to have been patterned) and is the scene of the "village's" communal activities. On the streets which bound it there are various "homey" stores of the "go-to-the-local-market" type. The surrounding blocks contain residences, churches and the community school and public library. Though several liquor places are located at or beyond the outskirts of the "village" (including a "package" store), no liquor place of any kind has ever been permitted at the square and local civic sentiment appears to be strongly opposed to the location of any such place there.

Several years ago, viz., in 1936, when the denial of a plenary retail consumption license was appealed to this Department, such denial was, in view of the character of the "village", the communal activities at the square and the strong local sentiment against liquor places there, sustained in Norton v. Camden, Bulletin 97, Item 9 (where a short history and detailed description of the "village" is given).

These self-same considerations likewise here lead to affirmation of respondent's denial of a distribution license for premises at the square. The community's strong civic sentiment against having any liquor place, whether tavern or "package" store, at its communal center is not unreasonable and hence should be respected.

The action of respondent is, therefore, affirmed.

Dated: July 1, 1940. E. W. GARRETT,
Acting Commissioner.

10. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

July 1, 1940

Re: Case No. 330

On March 1, 1930 applicant was arrested and charged with assault and battery, as a result of which he was fined \$25.00.

On December 22, 1930 he was found guilty of petty larceny and fined \$5.00.

On August 2, 1934 he was charged with being a disorderly person and received a suspended sentence and placed on probation for two years.

On May 31, 1935 he received a suspended sentence after being found guilty of assault and battery.

On May 17, 1936 he was found guilty of assault and battery and given a suspended sentence.

On September 12, 1939 he was arrested and charged with the crime of atrocious assault and battery, as a result of which he was found guilty and sentenced to an eighteen-month jail term on February 8, 1940 by the Hudson County Court of Quarter Sessions. This conviction arose out of a quarrel that applicant had with his fiancée. Upon his promise to marry her, the Court suspended the sentence and placed him on probation for three years. As he stated, "With my previous record, it was either marry her or go to jail."

In addition to the foregoing, applicant's criminal record discloses:

Arrested 10-1-28 - disorderly person and assault and battery - non-appearance of complainant.

Arrested 9-8-35 - assault and battery - complaint withdrawn.

Arrested 5-26-36 - assault and battery - non-appearance of complainant.

Arrested 2-13-37 - assault and battery - complaint withdrawn.

Thus, applicant has to his discredit four separate convictions of assault and battery, one as a disorderly person and another of petty larceny. In view of these repeated arrests and convictions, his apparent propensity for getting into trouble and his utter disregard for law and order, I believe that applicant's conviction of the crime of atrocious assault and battery on February 8, 1940 involves the element of moral turpitude. Cf. Re Case No. 324, Bulletin 407, Item 4; Re Case No. 314, Bulletin 393, Item 9; Re Case No. 246, Bulletin 293, Item 10.

It is recommended that applicant be advised that he is ineligible to hold a liquor license or be employed by a liquor licensee in this State.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

Samuel B. Helfand,
Attorney.

11. RECAPITULATION OF ENFORCEMENT DIVISION ACTIVITY FOR PERIOD FROM JANUARY 1ST TO JUNE 30TH, 1940, INCLUSIVE.

To: E. W. Garrett, Acting Commissioner.

<u>ARRESTS</u>	<u>JAN.</u>	<u>FEB.</u>	<u>MARCH</u>	<u>APRIL</u>	<u>MAY</u>	<u>JUNE</u>	<u>TOTALS</u>
Licensees	0	0	1	2	0	0	3
Non-Licensees	13	33	40	17	32	18	153
Total Number	13	33	41	19	32	18	156
<u>SEIZURES</u>							
<u>STILLS</u>							
1 to 50 Gal. capacity	1	5	4	4	9	7	30
Over 50 Gal. capacity	0	6	2	3	5	1	17
Total number	1	11	6	7	14	8	47
<u>Motor Vehicles</u>							
Trucks	0	0	0	0	1	0	1
Passenger Cars	2	3	4	1	4	2	16
Total number	2	3	4	1	5	2	17
<u>Alcohol</u>							
Beverage Alcohol (Gallons)	3	53	138	14	212	0	420
<u>Mash</u>							
Total number gallons	425	73598	1220	3400	4745	12580	95968
<u>Alcoholic Beverages</u>							
Beer, Ale, etc. (Gallons)	52	8	5	6	33	4	108
Wine (Gallons)	477	9	439	142	166	1217	2450
Whiskies and hard liquor (Gallons)	26	60	247	53	103	12	501
<u>RETAIL INSPECTIONS</u>							
Licensed premises inspected	1281	1530	1749	1452	1571	1634	9217
Illicit (bootleg) liquor	6	18	19	15	20	9	87
Gambling violations	4	17	9	12	3	2	47
Sign violations	27	34	30	32	21	18	162
Unqualified employees	75	65	102	83	101	181	607
Other mercantile business	16	15	17	14	17	7	86
Disposal permits necessary	2	3	3	3	2	3	16
"Front" violations	2	3	5	2	3	7	22
Improper beer markers	3	3	5	0	2	2	15
Other violations found	17	28	23	9	9	9	95
Total violations found	152	186	213	170	178	238	1137
Number of bottles gauged	10016	13675	17056	14626	15467	15587	86427
<u>STATE LICENSEES</u>							
Plant Control inspections completed	85	75	86	114	79	49	488
License applications investigated	8	14	18	11	18	667	736
<u>COMPLAINTS</u>							
Investigated and closed	342	416	400	377	309	271	2115
Investigated, pending	376	368	452	452	456	160	
<u>LABORATORY</u>							
Analyses made	100	114	130	156	124	157	781
Alcohol, water and artificial coloring cases	5	11	14	20	14	12	76
Poison and denaturant cases	0	0	0	1	1	0	2

Respectfully submitted,

S. B. White,
Chief Inspector.

12. RECAPITULATION OF ENFORCEMENT DIVISION ACTIVITIES BY QUARTERLY PERIODS FOR THE FISCAL YEAR 1939-40..

To: E. W. Garrett, Acting Commissioner

	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			TOTALS
	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
<u>ARRESTS</u>													
Licenseses		3			1			1			2		7
Non-Licenseses		116			81			86			67		350
Total Number		119			82			87			69		357
<u>SEIZURES</u>													
<u>Stillis</u>													
1 to 50 gal. capacity		11			14			10			20		55
Over 50 gal. capacity		13			12			8			9		42
Total Number		24			26			18			29		97
<u>Motor Vehicles</u>													
Trucks		2			1			0			1		4
Passenger Cars		8			15			9			7		39
Total Number		10			16			9			8		43
<u>Alcohol</u>													
Beverage Alcohol (Gallons)		575			1188			194			226		2183
<u>Mash</u>													
Total Number Gallons		127,081			35,133			75,243			20,725		258,182
<u>Alcoholic Beverages</u>													
Beer, Ale, etc. (Gals.)		19			62			65			43		189
Wine (Gals.)		851			3832			925			1525		7133
Whiskies and hard liquors (Gals.)		272			261			333			168		1034
<u>RETAIL INSPECTIONS</u>													
Licensed premises inspected		3432			4205			4560			4657		16854
Illicit (bootleg) liquor		16			11			43			44		114
Gambling violations		14			32			30			17		93
Sign violations		57			83			91			71		302
Unqualified employees		527			223			242			365		1357
Other mercantile business		55			25			48			38		166
Disposal permits necessary		24			18			8			8		58
"Front" violations		9			14			10			12		45
Improper beer markers		4			7			11			4		26
Other violations found		57			63			58			27		215
Total violations found		763			476			551			586		2376
Total number of bottles gauged		26,970			32,645			40,747			45,680		146,042
<u>STATE LICENSEES</u>													
Plant Control inspections completed		177			234			246			242		899
License applications investigated		41			45			40			696		822
<u>COMPLAINTS</u>													
Investigated and closed		1032			1219			1158			957		4366*
<u>LABORATORY</u>													
Analyses made		396			323			344			437		1500
Alcohol and water and artificial coloring cases		73			49			30			46		198
Poison and denaturant cases		4			0			0			2		6

Respectfully submitted,

S. B. White,
Chief Inspector.

* 160 complaints pending at end of fiscal year.

13. APPELLATE DECISIONS - COVENTRY v. EATONTOWN.

GEORGE J. COVENTRY and)	
KATHRYN COVENTRY,)	
)	
Appellants,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
)	
MAYOR AND COUNCIL OF THE BOROUGH)	
OF EATONTOWN and VIOLA ROOT)	
CAMERON,)	
)	
Respondents)	
-----)	

Sherman A. Manning, Esq., Attorney for Appellants.
 Snyder, Roberts & Pillsbury, Esqs., by John M. Pillsbury, Esq.,
 Attorneys for Respondent Mayor and Council of Eatontown.
 Patterson & Cooper, Esqs., by Henry H. Patterson, Esq.,
 Attorneys for Respondent Viola Root Cameron.

This appeal is from the issuance of a plenary retail consumption license for 1939-40 by the Mayor and Council of the Borough of Eatontown to Viola Root Cameron for her restaurant known as "Green Acres" on Monmouth Road in the Borough.

The restaurant, apparently of high character, has been in existence since May 1940. Previously, a similar liquor licensed restaurant known as the "Maison Folci" was operated there for several years until July 1938.

Appellants contend that the issuance of license for the present restaurant was erroneous because of (1) the character of the vicinity; (2) the proximity of a Children's Home; and (3) a Chancery injunction which appellants obtained in 1936.

As to (1): The vicinity in question is largely open rural country. On its residential side, there are some ten homes within a radius of a quarter of a mile or more of the restaurant, the nearest being appellants', which is but thirty-seven feet away, and the next nearest being the home of another objector some five hundred feet away. Nearby there is also a Children's Home, maintained by a charitable institution for providing vacations to underprivileged children during July and August.

On the non-residential side: Monmouth Road (on which the restaurant and also the appellants' and other objector's homes are located) is a well-traveled highway. Appellants operate a large chicken farm at their premises. The other objector operates a nursery and a roadside flower stand at his. There are several other nurseries and greenhouses in the vicinity; also a nearby golf club, a public garage and, of course, the restaurant in question. There is also another licensed restaurant some quarter of a mile away.

Whether or not a liquor license shall be granted in any particular vicinity is a question which lies within the sound discretion of the issuing authority. Hence, had the Mayor and Borough Council denied a license for the restaurant in question, I might, in view that the vicinity is of a rural character where homes are located, affirm such denial as a not unreasonable act of discretion by the Mayor and Council.

However, I cannot, on the other hand, say that the vicinity is of such outright residential character that the issuance of a license to this restaurant of apparently high standard, and located on a busy road, must be deemed unreasonable.

Although appellants point out that recently the Mayor and Council denied a license for the "Haunted Inn" in a nearby neighborhood (which denial was affirmed on appeal in Dangerio and Bennett v. Eatontown, Bulletin 362, Item 7), that case is distinguishable in that there the neighborhood was definitely residential in character, with many homes in the vicinity, practically all of which were opposed to the license, and further in that there the establishment sought to be licensed was an ordinary so-called "road-house."

As to (2): The proximity of the Children's Home does not render issuance of the license in question erroneous. The Home, located across from the restaurant and some two hundred feet away, is fenced in and set back from the highway. It contains its own large play-field, and apparently really fronts on the Eatontown-Long Branch Boulevard. There is no indication that the Home was in anywise harmed by the operation of the past licensed restaurant, nor is there evidence that the Home objects to the present license or establishment.

As to (3): On December 3, 1936 appellants obtained a decree in the New Jersey Court of Chancery enjoining the proprietor of the then restaurant (and also the owner of the premises) from causing any undue annoyance to appellants in operation of the restaurant, more particularly from permitting music there after midnight except on Saturdays, Sundays and holidays, on which excepted nights the music was to cease two hours after midnight, and also from permitting lights on the licensed premises to shine directly on appellants' dwelling.

Such decree clearly does not purport in any way to brand a licensed restaurant at the premises in question as constituting a nuisance to the neighborhood or to the appellants. It merely enjoined the existence of certain conditions of music and light at such restaurant when previously operated.

However, appellants should, in fairness, be given continued protection of that decree against even the present licensee. The licensee states that she has, in fact, been complying with the terms of the decree and is willing to continue such compliance.

Accordingly, the action of the Mayor and Borough Council of Eatontown in issuing license for the present restaurant is affirmed but on the following special condition, to be set forth in the now existing Cameron license (a renewal license for the 1940-41 fiscal year):

"This license is subject to the special conditions (1) that the holder shall not permit any music on the licensed premises after midnight except on Saturdays, Sundays and legal holidays, on which excepted nights no music shall be permitted after two hours past midnight, and (2) that the holder shall not permit any lights on the licensed premises which shall shine directly on the dwelling-house now immediately to the north of the licensed premises on Monmouth Road in the Borough of Eatontown."

Should the licensee violate either of these conditions, or for any reason cause undue disturbance (thus violating Rule 5 of State Regulations No. 20 of this Department), disciplinary proceedings may be brought against the licensee for such violation.

Dated: July 2, 1940.

E. W. GARRETT,
Acting Commissioner.

14. REGULATIONS NO. 17 - RULES GOVERNING THE TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO NEW JERSEY - RULE 4 AMENDED.

Rule 4 of Regulations No. 17 is hereby amended, viz.:

"Alcoholic beverages intended for personal consumption and not for sale may be brought into this State by any individuals on their persons or in vehicles under their control, or by any licensed transporter, to the following extent, viz.: Not exceeding 1/4 barrel (or one case containing not in excess of 12 quarts in all) of beer, ale or porter and one gallon of wine, and one gallon of other alcoholic beverages within any consecutive period of 24 hours; provided, however, that no licensed transporter may accept any shipment of alcoholic beverages in any amount, from, or at the licensed premises of any retailer of alcoholic beverages licensed in any other State and thereafter deliver or cause to be delivered such shipment to any consumer within this State."

The foregoing rule is effective immediately.

Dated: July 3, 1940.

E. W. Garrett
Acting Commissioner.