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

BULLETIN 435 DECEMBER 23, 1940.

1. DISCIPLINARY PROCEEDINGS - NOISE AND DISTURBANCE ON LICENSED PREMISES - LICENSEE VOLUNTARILY TO STOP MUSIC AT MIDNIGHT FRIDAY AND SATURDAY, AT 10:00 P.M. ON OTHER NIGHTS, AND TO DISCONNECT ELECTRIC VICTROLA - PROCEEDINGS DISMISSED.

In the Matter of Disciplinary Proceedings against

JOHN LISECKI,
463 Avenue C,
Bayonne, N. J.,

Holder of Plenary Retail Consumption License No. C-32, issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - - -

John Lisecki, Pro Se.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant is charged with violating Rule 5 of State Regulations No. 20 by permitting unnecessary noise and disturbance at his tavern in Bayonne.

The tavern is on an apparently heavily used thoroughfare (Avenue C) in a neighborhood where, in general, stores occupy the first floor of the various buildings and persons live above.

In February 1940 Dr. Joseph Goldstein, part owner and manager of such a building alongside the tavern, wrote to this Department complaining that various tenants living in the building were being disturbed by noise at the tavern. This Department, pursuant to its theretofore established policy in such cases, suggested that, before it take any action, Dr. Goldstein try to work out a friendly arrangement with the defendant with respect to such alleged noise. Re Noise, Bulletin 342, Item 10; Re Ruisi, Bulletin 431, Item 6. After several such arrangements apparently proved to be short-lived, the present proceedings were instituted.

The tenants who dwell at the building alongside the tavern are an elderly man living at the rear of a "cake and bread shop" on the first floor; two single men who live on the second floor at the rear of Dr. Goldstein's dentistry office there; and two families living on the third (and top) floor.

Although there is some mention by one of these tenants about tavern patrons occasionally being noisy after leaving the tavern at closing hour, and although it further appears that at one time the defendant had a watch-dog at the tavern that barked during the early morning hours (such dog having been removed last February), the real complaint of these tenants is against music allegedly played "loud and....late" at the tavern. The defendant, who formerly had only a piano at the tavern, now has an electric victrola and also a week-end orchestra.

The defendant (who, as admitted by Dr. Goldstein, has been cooperative throughout) testified that his arrangements heretofore with Dr. Goldstein were not very successful because he (the defendant) has, since last September, been an instructor in the federal air corps at Newark airport with duties which require him to report at the airport at 5:00 A.M.; that hence he has not been in the tavern late at night, and, since he lives eight blocks away, has had to depend on his help to see that the arrangements with Dr. Goldstein were carried out; that he will now have music cease at the tavern at midnight on Friday and Saturday and at 10:00 P.M. on the other days in the week; that he will have the electric victrola actually disconnected and give instructions to the week-end orchestra to cease play at those hours; further, that he will have his uncle personally check at the tavern to see that the music ceases at such hours.

Dr. Goldstein and the various tenants who appeared at the hearing agreed to this solution, with the exception of one tenant who wanted the music to cease every night throughout the week at 10:00 P.M.

I presume that music at the tavern has, from date of the hearing in this case (October 31 last), actually been ceasing at the hours which the defendant has stated, since no complaint has been received from Dr. Goldstein or any of the tenants since that time.

In view of all the facts - viz., that the tavern, in the first instance, is located in an apparent business neighborhood (where, naturally, such an establishment must be expected to operate with a certain unavoidable amount of noise); that apparently no one other than the tenants living next door register complaint; that the defendant has appeared cooperative throughout in trying to appease the complaint of these tenants; and that he has here agreed upon reasonable hours as a deadline for music in the tavern and is apparently living up to such agreement, - I do not believe that the evidence is sufficient to show that defendant permitted unnecessary noise and disturbance at his licensed premises and hence I find him not guilty.

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

ORDERED, that the present proceedings be and hereby are dismissed.

E. W. GARRETT,
Acting Commissioner.

2. ELIGIBILITY - POSSESSION OF LOTTERY SLIPS - CONSPIRACY TO CONDUCT A LOTTERY - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

December 12, 1940

Re: Case No. 354

Applicant was arrested on August 10, 1932 on a charge of possessing lottery slips, and on April 10, 1934 on a charge of conspiracy to conduct a lottery. On both occasions he pleaded guilty and was fined $50.00 and $100.00 respectively.

From the evidence it appears that both convictions resulted from his possession of lottery slips. He testified that he was not one of the principals involved in the actual conduct and operation of the unlawful enterprise, but rather a minor employee engaged at a small weekly salary to write "numbers". This would appear to be corroborated by the comparative lightness of the sentences imposed. Under such circumstances, neither crime involves moral turpitude. Re Case No. 295, Bulletin 351, Item 10; Re Case No. 296, Bulletin 353, Item 12; Re Case No. 315, Bulletin 396, Item 4. Nor does the fact that applicant has been twice convicted of similar offenses change this result. There is nothing to indicate that he has a reckless disregard for law and order. Cf. Re Case No. 315, supra.

It is recommended that applicant be declared eligible, despite the aforesaid convictions, to be employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

DAVID BLICKSTEIN,
115-117 Park Avenue,
East Rutherford, N. J.,

Holder of Plenary Retail Distribution License D-1, issued by the Mayor and Council of the Borough of East Rutherford.

CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - -

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.
Lloyd L. Schroeder, Esq., by Herman Korn, Esq., Attorney for the Defendant-Licensee.

The defendant-licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on November 19, 1940, in violation of Rule 6 of State Regulations No. 30.

The minimum penalty for this violation is ten days.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of the usual ten days.

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

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to David Blickstein by the Mayor and Council of the Borough of East Rutherford, be and the same is hereby suspended for a period of five (5) days, effective December 16, 1940, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

BRUNSWICK LIQUOR DISTRIBUTORS INC.,
102 French St.,
New Brunswick, N. J.,

Holder of Plenary Retail Distribution License D-6, issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS AND ORDER

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.
Brunswick Liquor Distributors Inc., by Beatrice Bass, Secretary.

The defendant-licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on November 8 and 16, 1940, in violation of Rule 6 of State Regulations No. 30.

The minimum penalty for this violation is ten days.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of ten days.

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

ORDERED, that Plenary Retail Distribution License D-6, heretofore issued to Brunswick Liquor Distributors Inc. by the Board of Commissioners of the City of New Brunswick, be and the same is hereby suspended for a period of five (5) days, effective December 16, 1940, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. ELIGIBILITY - POSSESSION OF LOTTERY SLIPS - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

December 13, 1940

Re: Case No. 355

On November 20, 1940 applicant was found guilty of possessing lottery slips, placed on probation for one year, and sentenced to pay a $50.00 fine.

At the hearing herein he testified that, at the time of his arrest in September 1940, the police found a number of lottery slips in his possession after they had stopped an automobile in which he and two other individuals were riding. Independent investigation corroborates this testimony. Applicant further testified that he has never sold any lottery slips, either at the licensed premises where he is employed as a bartender or at any other place. Fingerprint returns disclose that he has never been convicted of any other crime.

Under the circumstances, I believe that the crime does not involve moral turpitude. Case No. 296, Bulletin 355, Item 12; Case No. 344, Bulletin 425, Item 8.

It is recommended that applicant be advised that he is not disqualified, despite the aforesaid conviction, from holding a liquor license or being employed by a liquor licensee in this State.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

6. ELIGIBILITY - LEWDNESS - EXCULPATING CIRCUMSTANCES - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

December 16, 1940

Re: Case No. 353

On December 7, 1938 applicant pleaded non vult to a charge of open lewdness; was placed on probation for three years and fined $78.00, payable fifty cents per week.

At the hearing, applicant testified that the police arrested him at his home on the morning of August 5, 1938, and alleged that he had, sometime prior to their arrival, stood at the window of his home in the nude and thus exposed himself to passersby. Independent investigation substantially corroborates his statement. Applicant testified that he had been out all night; that he had been drinking; that he has no recollection as to his actions on the morning in question; that he pleaded non vult to the charge on the advice of his bondsman.

Lewdness may or may not involve moral turpitude, depending upon the circumstances of the case. Applicant, a World War veteran, has an otherwise clean record. Considering all the circumstances, I do not believe that the crime of which he was convicted involved moral turpitude. Cf. Re Case No. 7, Bulletin 92, Item 18.

It is recommended that applicant be advised that he is eligible to be employed on licensed premises despite the conviction set forth herein.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

7. APPELLATE DECISIONS - GALLNER v. BRIDGETON.

ALLEGATION OF SALES TO INTOXICATED PERSONS DURING PRIOR LICENSE PERIOD NOT SUSTAINED - APPELLANT VOLUNTARILY TO COMPLY WITH MUNICIPAL REGULATION REQUIRING PUBLIC VIEW - DENIAL REVERSED UPON CONDITION THAT BACK OF SHOW WINDOW BE LOWERED.

MAX GALLNER,)
Appellant,) ON APPEAL
-vs-) CONCLUSIONS AND ORDER
CITY COUNCIL OF THE CITY OF BRIDGETON,)
Respondent)

William Gallner, Esq., Attorney for Appellant.
Samuel Iredell, Esq., Attorney for Respondent.

This appeal is from respondent's refusal to renew appellant's plenary retail consumption license for premises 11 East Commerce Street, Bridgeton.

Respondent's answer sets forth that the renewal was denied, among other reasons:

(1) Because alcoholic beverages were sold to intoxicated persons during the fiscal year 1939-1940;

(2) Because of the harboring of intoxicated persons during the fiscal year 1939-1940;

(3) Because of the failure to arrange a premises in which alcoholic beverages are sold or dispensed so that a full view of the interior may be had from the public thoroughfare or from adjacent rooms to which the public is freely admitted, during the fiscal year 1939-1940;

(4) Because the booths therein are so arranged that the tables and patrons cannot be seen, during the fiscal year 1939-1940.

As to (1) and (2): On behalf of respondent, a woman testified that, on a number of occasions between December 1939 and March 1940, her brother became intoxicated upon the licensed premises and

also that during that period she had seen other intoxicated persons leave the premises. It appears that this witness had requested appellant's wife not to permit the witness' brother to visit the premises, but there is a conflict in testimony as to whether this request was made because of his excessive drinking or because of his alleged friendship with a waitress who was then employed by appellant. Her testimony, which is uncorroborated and denied by appellant and a number of his witnesses, must be considered in the light of the animosity that existed between her and appellant, which culminated in a threat she made to appellant that "I will get you yet". In addition to her testimony, three police officers stated that on May 18, 1940, from a position across the street, they saw a man, apparently intoxicated, enter the premises, pick up a glass from the bar and drink the contents; that they then saw another man being assisted from the premises to an automobile, and saw a third person leave the premises whom they described as"feeling good" and "two-thirds drunk". The police officers did not enter the premises.

There is also the testimony of a member of the City Council that, although he never went inside appellant's premises, he happened along there at 12 o'clock or near 12 o'clock on Saturday nights and he saw drunks but he couldn't give you their names or dates.

On the other hand, appellant, his employees and several resident, of the neighborhood, who are frequent visitors, testified that the business is conducted in an orderly and proper fashion; they stated that intoxicated persons were not served liquor and were not permitted to remain on the premises. One of appellant's witnesses testified that on May 18, 1940 he had escorted a man to an automobile, not because the man was drunk but because he was lame and required assistance. Councilman Dailey, the only Councilman who voted to renew, testified that Gallner's was "one of the quietest places".

There is no doubt that an issuing authority may refuse to renew a license because of either of the reasons being considered herein. Cf. Repici v. Hamilton, Bulletin 201, Item 8, and cases therein cited. The difficulty herein is that the weight of the evidence does not sustain the finding that appellant sold alcoholic beverages to intoxicated persons or otherwise improperly conducted his licensed premises. No charges have ever been preferred against appellant. The Police Department apparently received no complaints but were twice called to the place to evict an unruly patron. On both occasions this was at the request of appellant. The conduct of a licensee in reporting potential disturbances to the police is commendable rather than reprehensible. McGuire v. Paulsboro, Bulletin 392, Item 10.

The evidence in support of respondent's action in denying a renewal should be clear and substantial. Vuono v. Belleville, Bulletin 163, Item 12; Jones v. Absecon, Bulletin 218, Item 1; Zicherman v. Newark, Bulletin 227, Item 7. The evidence in this case does not meet that test.

As to (3) and (4): The Police Commissioner testified at the appeal hearing that all of the conditions which had previously violated the local regulation concerning a view of the interior of the licensed premises had been remedied, except that the backboard of the front show window was about six inches too high. He stated that if this backboard was cut down to five feet above the street level it would then be satisfactory. Appellant testified that several years ago this backboard had been raised to its present height at the insistence of one of the prior councilmen of the municipality. He agreed, however, to lower the backboard to

the height suggested by the Police Commissioner.

The foregoing necessitates a reversal of respondent's action. It will be directed to renew appellant's license provided that the backboard of the front show window is lowered to five feet above the street level.

Accordingly, it is, on this 18th day of December, 1940,

ORDERED, that respondent issue to appellant forthwith the license as applied for, upon condition that the backboard of the front show window of appellant's premises is lowered to a height of five feet above the street level.

E. W. GARRETT,
Acting Commissioner.

8. APPELLATE DECISIONS - TREMAINE v. BRIDGETON.

ALLEGATION OF IMMORAL ACTIVITIES ON LICENSED PREMISES DURING PRIOR LICENSE PERIOD NOT SUSTAINED - APPELLANT VOLUNTARILY TO ADJUST BLINDS TO PERMIT PUBLIC VIEW AS REQUIRED BY MUNICIPAL REGULATION - DENIAL REVERSED.

IDA DAVIS TREMAINE,
T/a LAFAYETTE HOTEL,

Appellant,

-vs-

CITY COUNCIL OF THE CITY OF BRIDGETON,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

David L. Horuvitz, Esq., Attorney for the Appellant.
Samuel Iredell, Esq., Attorney for the Respondent.

Respondent refused appellant's application for renewal of her plenary retail consumption license for premises on the corner of Broad and Franklin Streets, Bridgeton. Hence this appeal.

In its answer to the petition of appeal, respondent set forth five grounds in support of its action. At the hearing, however, it abandoned all except the following two grounds:

(1) Because the rooms upon the said licensed premises were permitted to be used for unlawful and immoral purposes during the fiscal year 1939-1940;

(2) Because of the failure to arrange a premises in which alcoholic beverages are sold or dispensed so that a full view of the interior may be had from the public thoroughfare or from adjacent rooms to which the public is freely admitted, during the fiscal year 1939-1940.

As to (1): Appellant has conducted her premises, a three-story frame building, as a hotel for the past twenty-six years. She

caters in the main to permanent residents. On February 24, 1940, at about 1:40 A.M., several police officers answered a call from the premises that one Betty _____ had committed suicide there. When they arrived at the premises they found her dead. During the course of their investigation they apprehended a man who told them that he had been living with Betty _____ at a room in appellant's hotel for three or four days prior to February 24, 1940.

The police officers also testified that they found an unmarried couple, Florence _____ and Oscar _____, in the corridor on the second floor of the premises upon arriving there on February 24, 1940. The man was fully clothed and the girl "had on some kind of a bathrobe". Upon being questioned, the man told the police that "they were staying there together". The statements made by both men are hearsay; neither was produced at the hearing.

Appellant testified that in January 1940 she had rented a room to Betty _____, who checked out after a few weeks. Appellant's daughter testified that she rented the same room to the same person on February 19, 1940. Both denied that there was any evidence that any other person occupied the room. Appellant's bartender testified that about the middle of February he rented a room to Oscar _____. These witnesses denied that Florence _____ had ever rented a room but said that she occasionally stayed at the hotel with her cousin.

On behalf of appellant, several of the permanent residents of her hotel testified that the premises were run in an orderly and proper fashion and that appellant's reputation and character were good. All of these witnesses had lived there at least six months with their families, some of which included minor children. They further stated that Betty _____ had occupied her room alone. As to Florence _____, one of the witnesses stated that she was her cousin and that, on the occasion in question, Florence _____ had slept in her apartment all that night.

Proof of misconduct upon licensed premises sufficient to warrant a refusal to renew must be clear and substantial. Cf. Gallner v. Bridgeton, Bulletin 455, Item 7, and cases therein cited. Were there any competent evidence of improper conduct at appellant's premises, and, equally important, any evidence that appellant knew or should have known of any such misconduct, I would unhesitatingly affirm respondent's action. Where, however, as here, the evidence of misconduct is not convincing, and where there is no evidence that appellant had any knowledge of the alleged immoral activities at her premises, I have no alternative other than to find that the charge against appellant lacks proper substantiation. The unholy union of vice and liquor is not to be tolerated on licensed premises but, on the other hand, ordinary principles of fairness require that charges should be supported by some competent testimony.

As to (2): Section 8 of an ordinance adopted by respondent on December 27, 1938 provides that all premises in which alcoholic beverages are sold or dispensed shall be so arranged that a full view of the interior may be had. Appellant's ground floor windows are covered with Venetian blinds. The Police Commissioner testified that on two occasions, May 9, 1940 and May 18, 1940, he was unable to see into the interior of the premises because the blinds were drawn. It is not clear, however, whether the slats of the blinds were fully or partially drawn. The Police Commissioner suggested that the blinds should be so arranged that a full view

of the interior could be had from any angle at a height of five feet above the street level. Appellant has agreed to comply with this suggestion.

The action of respondent is reversed.

Accordingly, it is, on this 18th day of December, 1940,

ORDERED, that respondent issue to appellant forthwith the license as applied for.

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SUSPENSION FOR BALANCE OF LICENSE TERM UPON THIRD VIOLATION - PETITION FOR RECONSIDERATION AND MODIFICATION OF PENALTY DENIED.

In the Matter of Disciplinary Proceedings against CHARLES MAIRE, 428-430 East First Avenue, Roselle, N. J., Holder of Plenary Retail Distribution License No. D-3, issued by the Mayor and Council of the Borough of Roselle.	ON PETITION CONCLUSIONS

Kasen, Schnitzer & Kasen, Esqs., Attorneys for Petitioner.

On August 16, 1940 License No. D-3, issued to the above named licensee, was suspended for the balance of the term, effective August 19, 1940, after licensee had pleaded guilty to a third violation of the Fair Trade regulations. Bulletin 420, Item 8.

Petitioner prays herein that a hearing be granted to him in order to present evidence in support of the facts contained in the petition, and that the penalty heretofore imposed be reconsidered and modified.

An examination of the petition discloses that the only ground upon which relief is sought is that, since the date of suspension, petitioner's grocery and delicatessen business, which he operated in conjunction with his liquor business, has declined about sixty per cent, so that, unless relief is afforded, petitioner will have lost not only the liquor business but the grocery and delicatessen business as well. However, even if these facts could be fully established at a hearing, they would not be sufficient to constitute any valid reason for lifting the suspension heretofore imposed. A liquor license is a privilege. The Fair Trade regulations, as well as all other regulations of this Department, must be enforced. Petitioner has admittedly violated the Fair Trade regulations on three separate occasions. After the first violation a five-day suspension was imposed. After the second violation a fifteen-day suspension was imposed. Neither of these penalties appears to have taught the licensee a lesson and, after the third violation, I suspended the license for the balance of the term

after hesitating as to whether I should impose that penalty or the extreme penalty of revocation.

I sympathize with the licensee, but I conclude that proper enforcement requires that there be no modification of the penalty. The petition for a hearing, and for reconsideration and modification of the penalty heretofore imposed, is, therefore, denied.

E. W. GARRETT,
Acting Commissioner.

Dated: December 18, 1940.

10. EMPLOYMENT PERMITS - ISSUING WORTHLESS CHECKS - APPARENT INNOCENT PARTICIPATION AS THE DUPE OF ANOTHER - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

December 18, 1940.

Re: Case No. 356

Hearing was held to determine whether applicant, a minor of 19, has been convicted of a crime involving moral turpitude and is hence disqualified from obtaining an "A.R.C." permit. See R. S. 33:1-25, 26.

In August 1939 applicant was, pursuant to his plea of guilty, convicted in Pennsylvania for issuing (or aiding in the issuance of) false checks. He was, after being fined $1.00 and costs and given a suspended jail sentence of one year, released on probation. After five days he was discharged from such probation.

Applicant, explaining this conviction, testified that, during the summer of 1939, when he was 17 years of age, he was familiar with a young man, one Weissman, who informed applicant that he (Weissman) was a reporter for a New York newspaper and that applicant was to be his assistant; that Weissman, representing that they had an assignment for the newspaper, brought applicant to Scranton, where they stayed for some two weeks; that, while thus in Scranton, Weissman made up several false checks, each about $30.00, purporting to be pay checks to himself from the newspaper; that he (applicant), unaware of the falsity of these checks, helped Weissman cash one of them; that he first learned that Weissman was actually not a reporter on the New York newspaper and that Weissman had been "faking" the checks when they were both arrested; that he (applicant) made restitution on the one check which he had helped to cash, Weissman making restitution on the others.

Whether the crime of issuing, or aiding in the issuance of, worthless checks involves moral turpitude depends upon the particular facts of each case. Re Case No. 250, Bulletin 303, Item 9, Re Case No. 272, Bulletin 318, Item 8. In the present case, since applicant was under 18 years of age at the time of his offense, his youth is a pertinent circumstance to be considered. Re Case No. 36, Bulletin 149, Item 1; Re Case No. 261, Bulletin 305, Item 15; Re Case No. 321, Bulletin 396, Item 12. In view of his immaturity, his apparently being duped by Weissman and the comparatively lenient sentence imposed upon him, I do not believe that this case involves moral turpitude.

Applicant has not been arrested or convicted on any other occasion.

It is, therefore, recommended that applicant be declared qualified, despite his aforesaid conviction, to obtain an "A.R.C." permit.

Nathan Davis,
Attorney-in-Chief.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

11. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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).	CONCLUSIONS AND ORDER
Case No. 121	

Petitioner was arrested on September 6, 1935 on a charge of stealing from the United States mails. He pleaded guilty and was sentenced to sixty days in jail, to be followed by probation for two years. He was released from jail on November 23, 1935. He testified that, at the time of his arrest, he was an United States Post Office employee and was apprehended as a result of extracting money from letters.

After his release from prison, petitioner operated a coal truck for a year and a half and thereafter worked as a packer in the shipping department of a cosmetics concern. He has been married for fourteen years, and with his wife and child has resided at his present residence for twelve years.

At the hearing, he produced four witnesses, a musician, a tavern owner, a tractor driver and an electric welder, who have known him for four, ten, five and four years, respectively. They all testified that his reputation in the community as an honest and law-abiding citizen is good. Petitioner's fingerprint record is otherwise clear, and the Chief of Police of the municipality in which he resides certified that he "has no police record in the files of this department". His former Probation Officer reported that "His conduct record was very satisfactory and he was never involved in any offense while under the supervision of this office. He reported as required, was cooperative and apparently made a sincere effort to adjust".

I am satisfied that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be detrimental to the public interest.

It is, therefore, on this 16th day of December, 1940,

ORDERED, that petitioner's statutory disqualification resulting from the aforesaid conviction be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

12. APPELLATE DECISIONS - BETSY ROSS, INC. v. UNION TOWNSHIP. OBJECTIONS BY NEIGHBORING RESIDENTS - DENIAL REVERSED AND LICENSE ORDERED ISSUED SUBJECT TO MUTUALLY ACCEPTABLE CONDITIONS.

BETSY ROSS, INC., a corporation of New Jersey,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UNION,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Elvin H. Ullrich, Esq., Attorney for the Appellant.
Charles Wagner, Esq., Attorney for the Respondent.
Larchmont Civic Association, by Vincent R. Springer, President.

This appeal is from the denial of appellant's application for a plenary retail consumption license for premises 2801 Morris Avenue, Union Township.

The license was refused because of the objections of the residents in the neighborhood.

Appellant operates a restaurant at the premises in question, which is located at the entrance to an exclusive residential development known as Larchmont Estates. This development comprises, in effect, a small community in itself. There are now living there about 130 families composed of approximately 300 persons. They are all members of an association known as the Larchmont Civic Association.

At the appeal hearing, it became apparent that the basis of the objection of the residents of the development was that they did not want a saloon or tavern located in their midst. They were, however, sympathetic with appellant's plea that it was essential for its continued existence that it be permitted to sell alcoholic beverages as an incident to its restaurant business, and offered withdraw their objections if certain restrictions were embodied i the issuance of the license so as to insure that the license be used only for restaurant purposes.

Respondent signified its willingness that the license be granted subject to such restrictions as would effectuate that purpose.

The hearing was then adjourned in order to afford the Larchmont Civic Association an opportunity to sound out the sentiment of the members as to the nature of the restrictions desired. On the adjourned date, respondent's attorney reported that a meeting had been held at which, in addition to the members of the association, representatives of respondent and appellant were also

present. He reported that it was agreeable to all that the license be issued provided it be subject to substantially the following restrictions:

(1) That there be no bar located on the premises and that alcoholic beverages be served only at tables;

(2) That there shall be no orchestra, singing, dancing or other entertainment on the licensed premises;

(3) That the premises shall close at 11:00 P.M., except that on New Year's day it shall close at 3:00 A.M.

The president of the Larchmont Civic Association testified that the foregoing represented the wishes of the members of the association. Appellant's manager testified that the imposition of such conditions in its license would be most agreeable to it.

As to restrictions (1) and (2), there is no doubt that they may be reasonably imposed upon appellant's license.

The third restriction, however, poses a serious problem. The local ordinance provides that licensed premises shall be closed and no sales of alcoholic beverages may be made except between 6:00 A.M. and 3:00 A.M. of the next day, on weekdays and on Sundays except between 12 o'clock noon and 3:00 A.M. of the next day.

It has been consistently held that local hours of sale and closing must apply uniformly to all licensees of the same class. To allow some members of a class to sell when others are prohibited from doing so is discriminatory. The reason for the rule, of course, is to prevent the granting of special privileges to a favored individual or individuals which is denied to others similarly situated. If, in this case, an advantage was attempted to be given the applicant so as to permit his remaining open and selling alcoholic beverages at a later hour than 3:00 A.M., it would be clearly invalid, and, therefore, disapproved.

Only where it is evident that a justifiable public purpose is to be served is any exception to the foregoing rule allowed. Thus, for example, municipal regulations permitting sales on Sundays only in bona fide hotels and restaurants with meals have been approved. See Re Hauck & Felter, Bulletin 130, Item 3; Re Bowers, Bulletin 170, Item 11; Re Warren, Bulletin 207, Item 10.

In this case, however, appellant's premises is so situated as to practically place it in a class by itself. The suggested closing hour is a diminution of the privilege granted by the local regulation, and not an extension for commercial advantage. The condition is not one that is imposed against the will of the applicant, but rather one to which the applicant has freely and openly expressed its wholehearted consent. The matter has been fully aired and thrashed out at the appeal hearing at which every interested person was either present or represented. The sentiment of all interested persons has been definitely and accurately ascertained. In view of these circumstances, I conclude that the suggested condition violates neither the spirit nor intent of the rule against discrimination between licensees.

It should be pointed out that the imposition of this type of condition in a license is, however, to be sparingly and most cautiously exercised. Otherwise, the resultant confusion of diversified conditions will render nugatory practical enforcement of local regulations.

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

ORDERED, that the action of respondent be reversed, and it is directed to issue to appellant forthwith the license as applied for, subject, however, to the following conditions to be inserted in the license:

"(1) The licensed premises shall be operated and conducted as a bona fide restaurant without a bar and the license shall be effective in such premises only so long as the licensed premises is operated and conducted as a bona fide restaurant without a bar;

"(2) No alcoholic beverages shall be sold or served except to patrons seated at tables upon the licensed premises;

"(3) There shall be no orchestra, singing, dancing or other form of entertainment whatsoever, except the playing of a radio and phonograph, upon the licensed premises.

"(4) The licensee shall not sell, serve, deliver, or allow, permit, or suffer the sale, service or delivery of any alcoholic beverages, or allow the consumption of any alcoholic beverages on the licensed premises on weekdays, except between the hours of 6:00 A.M. and 11:00 P.M. and, on Sundays, except between the hours of 12 o'clock noon and 11:00 P.M.; provided that the foregoing shall not apply to the hours between 11:00 P.M. on December 31, 1940 and 3:00 A.M. on the following day. During the hours sales are prohibited, the entire licensed premises shall be closed. Whenever Daylight Saving Time shall be adopted by the Township of Union in the County of Union, then during such period as Daylight Saving Time is effective there, the aforesaid hours shall be deemed to refer to Daylight Saving Time."

E. W. GARRETT,
Acting Commissioner.

13. SOLICITORS' PERMITS - EMBEZZLEMENT - MORAL TURPITUDE - APPLICANT DISQUALIFIED - SOLICITOR'S PERMIT DENIED.

December 19, 1940

Re: Case No. 357

Applicant disclosed in his application for solicitor's permit his conviction in May 1939 of the crime of embezzlement.

At the customary hearing to determine whether such conviction involved moral turpitude, it appeared that applicant's conviction followed a non vult plea to an indictment found in 1935; that the amount embezzled was four hundred and eighty dollars, which applicant, then employed by a wholesale liquor licensee as solicitor-collector, had collected from various retailers and retained for his own use. Following his plea he was placed on probation for three years.

Applicant admits the embezzlement of the four hundred and eighty dollars but claims that it was money to which he was entitled by reason of having "kicked back" small amounts of money to retailers from time to time out of his own pocket at the direction of his employer. Applicant testified that he had been promised repayment of these amounts but that upon receiving no satisfaction he finally quit his job. However, applicant's then sales manager denied that applicant had been instructed to make any "kick-backs" or that applicant had been promised repayment of monies he had paid to retailers.

Embezzlement ordinarily involves moral turpitude. Re Case 285, Bulletin 345, Item 8; Re Case 316, Bulletin 397, Item 6, which also involved embezzling solicitor-collectors. Nothing in the testimony appears to free applicant's crime of that element. On the contrary, it seems quite clear that applicant simply appropriated to his own use his most recent collections before quitting his employment. His self-justifying story of the "kick-back" that backfired does not square with the sworn testimony of the disinterested sales manager.

It is, therefore, recommended that applicant be declared ineligible to hold a liquor license or be employed by a liquor licensee in this State and that his application for solicitor's permit be denied.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

Emerson A. Tschupp,
Attorney.

E. W. Garrett
Acting Commissioner.