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

BULLETIN 268 SEPTEMBER 15, 1938

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - FAILURE TO CLOSE ON TIME AND OBSTRUCTED VIEW.

In the Matter of Disciplinary Proceedings against

MAURICE A. CASARICO,
410-412 Broadway,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-932, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were duly served upon the licensee alleging (1) that on June 26, 1938 he kept his licensed premises open during prohibited hours, namely after 3:00 A.M., and (2) that on the same day, after 3:00 A.M., curtains or screens obstructed the view from the street to the interior of his licensed premises, both of which are alleged to be violations of the provisions of Newark Ordinance No. 6579.

Said ordinance provides, among other things, that no licensed premises, with certain exceptions not material herein, shall be open during prohibited hours, namely, between 3:00 A.M. and 7:00 A.M. on weekdays, and 3:00 A.M. and 12:00 Noon on Sundays, and also "that all establishments selling alcoholic beverages by virtue of plenary retail consumption licenses shall be required to draw aside the curtains or screens obscuring the view from the street to the interior at 3:00 o'clock A.M., the closing hour designated, and keep same open at least until 7:00 o'clock A.M. on weekdays, and 12:00 o'clock Noon on Sundays, so that a free and unobstructed view may be afforded the public from the street to the interior during the above prohibited hours."

On June 26, 1938, at about 3:25 A.M., Officers Leahy, Bontempo and McMahon, of the Newark Police, arrived at the licensed premises. Officer Leahy testified that he stood in front of the show window, looked through a hanging curtain and saw approximately nine people lined up against the bar; that Mrs. Casarico was behind the bar; that he knocked on the door and Mr. Casarico would not admit him, stating that the place was closed; that, after the Officers identified themselves, Casarico opened the front door and admitted them to the licensed premises. The Officer further testified that, when he entered, there were drinks in front of the majority of the customers, and that some of the glasses were filled and some partly filled. As to the curtain, the Officer testified that it runs the full length of the window, and that it was not drawn aside at the time of his visit; that, while it is possible to see through the curtain, it was not possible to obtain a clear view of the interior of the premises.

The evidence introduced on behalf of the licensee corroborated the testimony that eight or nine persons were in the licensed premises at the time the Officers arrived. The licensee stresses the point that there is no proof of the sale of alcoholic beverages after 3:00 A.M. The first charge, however, does not concern the sale or service of alcoholic beverages, but charges the licensee with keeping his premises open during prohibited hours. A licensee may "keep open" his licensed premises despite the fact that he has locked its doors. Richards v. Bayonne, 61 N.J.L. 496 (Sup. Ct.) 1897. The licensee and his witnesses testified that the others in the premises when the Officers arrived were waiting for the licensee to clean up the premises, after which it was planned that all would go to a restaurant to get something to eat. In answer to a question as to whether there were any glasses on the bar containing beer at the time the Officers arrived at 3:25 A.M., the licensee testified:

> "That I couldn't vouch for. There were glasses, but whether they had any substance in them or not, I am not sure."

All of the other witnesses who appeared on behalf of the licensee were equally vague as to whether any drinks were being consumed when the Officers arrived. In view of the positive evidence of Officer Leahy, and the stipulation that Officers Bontempo and McMahon would corroborate his testimony, I am satisfied that the licensee kept open his place of business until 3:25 A.M. on June 26, 1938. As to the curtains, the licensee testified:

> "Q And on this particular night the officers entered, the curtains were not pulled aside when the officers entered at 3:25?
> A I hadn't gone out yet. As we go out we do that."

In view of Officer Leahy's testimony that, while he could see there were persons lined up against the bar, the curtain prevented him from obtaining a clear view of the interior of the premises, and the licensee's admission that the curtain was not drawn at the time the officers arrived, I find the licensee guilty as to the second charge.

This is a first conviction against the licensee. I shall suspend his license for a period of five (5) days for keeping open during prohibited hours, and for a further period of five (5) days for permitting the curtain to obstruct a clear view of the premises during prohibited hours.

Accordingly, it is on this 24th day of August, 1938,

ORDERED that plenary retail consumption license No.C-332, issued to Maurice A. Casarico by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and is hereby suspended for ten (10) days, effective 3:00 A.M. (Daylight Saving Time) on August 27, 1938.

D. FREDERICK BURNETT,
Commissioner.

APPELLATE DECISIONS - MASCOLO v. CAMP.

JAMES MASCOLO,
Appellant,
-vs-
HONORABLE PERCY CAMP, JUDGE OF THE COURT OF COMMON PLEAS IN AND FOR THE COUNTY OF OCEAN AND ISSUING AUTHORITY,
Respondent

ON APPEAL
CONCLUSIONS

Francis Tanner, Esq., Attorney for Appellant.
No Appearance on behalf of Respondent.
Joseph A. Citta, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located on the south side of Bay Avenue, Stafford Township, Ocean County.

Respondent denied the application for the following stated reason:

> "Public necessity does not require the granting of this application and in the exercise of my discretion I will deny the application."

In an answer filed herein, respondent sets forth five grounds for his action, only two of which need to be considered, namely:

> "1. The testimony produced at the Hearing disclosed the fact that the community in which Application for license was made has a meager population, having only eight or ten families living in the immediate vicinity and that there are three taverns already operating in the vicinity.
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> *******
>
> "4. That public necessity does not require the granting of this license."

At the hearing on appeal it appeared that the premises for which appellant seeks the license consist of a one-story building, which has recently been completed, on the south side of Bay Avenue which is a continuation of Route S-40. The building is approximately twenty-four feet in width by forty feet in depth, and no objection has been made to the suitability of the premises for the sale of alcoholic beverages. The denial seems to have been based upon the fact that a consumption license is now outstanding for premises on the opposite side of Bay Avenue about five hundred feet from appellant's premises, and that two other consumption licenses are outstanding for premises on Bay Avenue about a mile away from appellant's premises.

It cannot be seriously contended that another license is needed to take care of the persons who reside in the immediate vicinity. This section of Stafford Township is locally known as Mud City. There are only ten or twelve families who reside in Mud City during the winter time. The summer population of Mud City has been estimated at between two hundred and three hundred. Appellant

admits that he intends to cater to transient tourist trade. Unquestionably during the summer months, especially on Saturday and Sunday, there is a large amount of automobile traffic on Bay Avenue, which leads from Route S-40 to a causeway connecting Long Beach Island with the mainland. All three of the presently existing licenses, however, are located on the mainland and respondent's determination that the existing places are sufficient to supply the needs of this transient business appears to be reasonable under the circumstances of this case.

At the hearing on appeal, appellant produced two of the members of the Township Committee of Stafford Township, who testified that five consumption licenses were outstanding at one time in the Township but that at the present time only four of such licenses are outstanding and that at some unspecified date the Township Committee had adopted a resolution providing for five consumption licenses. In Ocean County, however, respondent herein is the issuing authority and a resolution of the Township Committee of Stafford Township is not binding upon him. Moreover, the mere fact that five licenses existed at one time in the Township does not show the necessity for a license at appellant's place of business.

It appears also that appellant presented at the hearing below a petition containing one hundred eighty names of individuals, requesting that the application be granted. From the evidence heretofore set forth it would appear that very few of these persons resided in the immediate vicinity of appellant's premises, and the weight to be given to the petition is naturally affected thereby. In any event, the weight to be given to any petition is a matter confided to the sound discretion of the issuing authority. Dunster v. Bernards, Bulletin 99, Item 1. The fact that said petition was presented is not in itself sufficient reason for reversing the action of respondent herein.

The burden is upon appellant to show that the action of respondent was unreasonable, and that burden appellant has not sustained.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 24, 1938.

3. APPELLATE DECISIONS - LEWIS v. ORANGE ET AL.

MARPLE M. LEWIS,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE, and FRANK N. TREZZA, FRANK J. DODD, WALTER M. HOLDERNESS, EMIL KLUCKE and FRANK J. WALLACE and HAROLD THOMAS,

Respondents

ON APPEAL
CONCLUSIONS

Joseph C. Paul, Esq., Attorney for Appellant.
Edmond J. Dwyer, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the City of Orange.
Lawrence E. Burns, Esq., Attorney for Respondents Frank N. Trezza, Emil Klucke and Frank J. Wallace and Harold Thomas.
Michael N. Steinberg, Esq., Attorney for Respondent Frank J. Dodd.
Philip Singer, Esq., Attorney for Respondent Walter M. Holderness.

BY THE COMMISSIONER:

These appeals (instituted as separate actions but combined for convenience in entering Conclusions), are taken from the action of respondent Municipal Board in granting renewals for the present fiscal year of plenary retail consumption licenses to each of the other several respondents. These appeals are based (1) upon the terms of an ordinance passed July 7, 1936, as amended January 18, 1938, and (2) upon the convictions of violation of ordinance or State regulation by said several other respondents.

During the past fiscal year, each of respondent licensees was disciplined by respondent Municipal Board for violation of a city ordinance or State regulations, or both. The license held by Trezza was suspended for sixty days for permitting gambling. Trezza v. Orange, Bulletin 229, Item 7. The license held by Dodd was suspended for fifteen days for an indecent performance. The license held by Holderness was suspended for five days on a charge of selling alcoholic beverages to a woman at a public bar. Holderness v. Orange, Bulletin 257, Item 1. The license held by Klucke was suspended for thirty days for permitting a brawl on his licensed premises. Klucke v. Orange, Bulletin 256, Item 3. The license held by Wallace and Thomas was suspended for three days, for violation of a city ordinance pertaining to closing hours. Wallace and Thomas v. Orange, Bulletin 254, Item 2.

Respondent Municipal Board on June 27, 1938 renewed each of said licenses for the coming fiscal year.

There is nothing in the ordinance which would prevent the issuance of the renewals herein.

Appellant cites numerous instances in which I have held that conviction of a violation in disciplinary proceedings would be a sufficient ground for denial of a renewal. Re Juska, Bulletin 116, Item 7; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10; Zicherman v. Newark, Bulletin 227, Item 7; Kirschhoff v. Millville, Bulletin 254, Item 8. It would be. But the Board did not refuse. Instead, it renewed. It does not follow that because it may deny, ergo it must deny. The single violation in each case did not necessarily disqualify the licensee.

The question as to whether these licenses should be renewed was a matter within the sound discretion of the members of the Municipal Board.

The present situation is neatly exemplified by two decisions both involving the same licensee in another municipality. In Bassau v. Oakland, Bulletin 57, Item 14, Bassau's renewal license for the fiscal year 1934-1935 was denied on the ground that he had improperly conducted his place of business under a previous license. The denial was affirmed on appeal. A year later Bassau applied again, and his application was granted. On appeal, it was argued that the issuance of the license was erroneous because of Bassau's improper conduct in the past. The issuance of the license was affirmed. Granger v. Oakland and Bassau, Bulletin 91, Item 1. I there said:

> "The mere fact that a licensee has at one time improperly conducted his business does not necessarily disqualify him forever from receiving a license unless the misconduct was so gross as to involve moral turpitude or demonstrate permanent unworthiness ever to be entrusted with a license. The incidents which caused the original denial aforesaid and upon which appellant's present contention is based fall far short of this. It there appears, Bassau v. Oakland, supra, that Bassau employed his stepdaughter, aged 17, to serve liquor; that complaints had been made of loud noises, singing, yelling and swearing; that sales had been made after closing hours and after his first license had expired. That was sufficient misconduct to justify the Mayor and Council of Oakland in refusing him a renewal license. It is utterly insufficient to brand him for life as an unworthy citizen or to effect a permanent disqualification. While it was wrong, it was not moral turpitude. Whether he should now be entrusted with a license depends largely on his attitude. He is no longer recalcitrant but repentant. If this proves genuine and is backed by good behavior, there is no reason why a license may not be granted. The local issuing authority is primarily charged with passing upon the personal fitness of applicants for retail licenses. Federko v. Piscataway, Bulletin 85, Item 4. Its determination, if reasonable, will be sustained on appeal. Moss and Convery v. Trenton, Bulletin 29, Item 12; Orofino v. Millburn, Bulletin 45, Item 15; Anthony v. Branchville, Bulletin 80, Item 9. The action of the Borough Council in depriving Bassau of a license for over eleven months and now giving him a chance to show whether he has learned anything is reasonable and practical. The licensee misbehaved. He was amply punished. Justice has been done. Mercy is now in order. There is no abuse of discretion in giving him another chance."

See also Leeds and Lippincott Co. v. Atlantic City and Foxwell, Bulletin 196, Item 12, and Marsteller v. Somers Point and Hagenbucher, Bulletin 244, Item 7.

In order to reach a conclusion herein that the action of the Municipal Board should be reversed, I would have to find that said Board had abused its discretion in renewing these licenses for the present fiscal year. The nature of the charges upon which each of said licensees was found guilty was not of such a character as to show that any of them was permanently unfit. They were punished. They ought to have been punished. Apparently the Municipal Board

believed that each of said licensees had been sufficiently punished, and decided to give them another chance. I cannot say that, in so doing, the Municipal Board abused its discretion.

The action of respondent Municipal Board in issuing renewal licenses to each of the other respondents herein is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 24, 1938.

DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - GAMBLING AND EXCESSIVE NOISE.

In the Matter of Disciplinary Proceedings against

Charles J. Beyer,
523 South Orange Avenue,
Newark, New Jersey,

Holder of Plenary Retail Consumption License C-717, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.
Sidney Simandl, Esq., Attorney for Licensee.

BY THE COMMISSIONER:

The licensee was charged with (1) permitting gambling on the licensed premises in violation of Regulations 20, Rule 7, and (2) permitting unnecessary noises on the licensed premises and permitting the licensed place of business to be conducted in such manner as to become a nuisance in violation of Regulations 20, Rule 5.

On the first charge, testimony of investigators of this Department established that they had played a bagatelle machine called "Stoner's Races" which for a nickel permits the player to start five steel balls down an inclined plane simultaneously, the first of which to pass through a numbered stall is the winner of the "race." Odds are posted by the machine. On this machine, each of the two investigators won at odds of two-to-one and received their pay-off in a glass of port wine worth ten cents.

I find the licensee guilty of permitting gambling on the licensed premises.

On the charge of permitting excessive noise, the testimony as might be expected, is in some conflict. Investigators of this Department testified that on one occasion there were twenty people in the barroom who were singing, among others, the old favorite "Sweet Adeline", and that the singing could be heard forty feet from the rear of the licensed premises even though all the windows and doors were closed. On another occasion, orchestra music was heard through the closed doors and windows.

On behalf of the State, the nearest neighbors of the licensee who live in the house forty feet to the rear of the licensed premises testified that the noise of the orchestra until three in the morning when the premises closed, especially on Friday and Saturday nights, prevented their sleeping.

On behalf of the licensee, a parade of regular customers was produced, all of whom testified that they frequent the premises, especially on Saturday nights, and that they have never observed any unreasonable noise. Some of them even testified that they went outside the premises to listen, particularly to see whether they could hear the orchestra, but in their zeal to testify that the sound was not audible, they were unable to state whether or not the orchestra was playing at the time.

To patrons of a tavern who are in the midst of the noise and confusion and perhaps contributing to it, each in his own small way, the noise probably did not seem excessive. I do not doubt them when they say that to them the noise was not loud. On the other hand, to neighbors who are trying to sleep with intermittent blares of the orchestra to bring them back to wakefulness each time they succeed in dozing off, the noise is cause for complaint. There is no real conflict of testimony; the witnesses for the defendant are in no position to testify about the objectionable nature of the music because they did not listen to it under the same conditions as did the neighbors. It is significant that although the licensee requested an adjournment for the purpose of producing other neighbors who would testify that they were not disturbed by the noise, on the adjourned day excuses were plentiful but no neighbors were produced.

On behalf of the licensee it was testified that the orchestra had been dismissed and that the windows and doors at the rear of the premises are kept closed during the entire evening. This attempt to conduct the place of business in a quiet and unobjectionable manner is commendable but belated.

I find the licensee guilty of permitting unreasonable and excessive noise on the licensed premises as charged.

On the charge of permitting gambling on the licensed premises, the license will be suspended for five days; on the charge of permitting excessive noise, there will be an additional five days' suspension, making a total of ten days in all.

Accordingly, it is ORDERED that plenary retail consumption license C-717, issued to Charles J. Beyer for premises 523 South Orange Avenue, Newark, N. J., by the Newark Municipal Board of Alcoholic Beverage Control, be and it hereby is suspended for ten (10) days, commencing 3:00 A. M. August 28, 1938 (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

Dated: August 25, 1938.

DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938)) CONCLUSIONS

Case No. 27)

Benjamin Semer, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In 1925, petitioner was twice convicted of illegal possession of liquor, being fined $250.00 on the first occasion and $550.00 on the second. In 1927, he was convicted of conspiracy in obstruction of justice in a liquor matter, fined $400.00 and given a six months' suspended sentence.

Petitioner admits that, after the above convictions, he continued to operate a "speakeasy" in Phillipsburg until 1933, when Repeal was effected. Thereafter, in December 1933, he applied for a limited wholesaler's license in this State. This license was denied, and petitioner was so notified in May 1934. In the interim, however, he had been conducting business as a limited wholesaler without authority of license.

Petitioner gives two contradictory stories in explanation of his operating during that period. On the one hand, he asserts that he had obtained an actual wholesaler's license. However, the records of this Department reveal no indication of any such license. On the other hand, he also states that he operated as a wholesaler because he believed he was allowed to do so on posting his fee with his application.

At the hearing, petitioner produced four men who have known him for many years as a neighbor in Phillipsburg and who testified as to his good character and reputation. However, one of these witnesses knew nothing of petitioner's convictions or of his "speakeasy"; the second knew only of the "speakeasy"; the third knew nothing of the two convictions in 1925; the fourth knew only that petitioner had been in "some trouble."

Removal of disqualification rests in the sound discretion of the State Commissioner. Petitioner's previous record as to liquor violations, his operation of a "speakeasy" until Repeal in 1933, his illicit conduct of the wholesale business until May, 1934, and the questionable efficacy of his character witnesses put grave doubt upon the advisability of removing his disqualification. This doubt I shall resolve against him at this time because of his apparent falsification at the hearing in attempting to excuse his illicit operation as a wholesaler.

The petition accordingly is denied, but with leave to be renewed at the expiration of four months from the date hereof.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 24, 1938.

REGULATIONS NO. 30 - RULES GOVERNING THE SALE OF ALCOHOLIC BEVERAGES SUBJECT TO FAIR TRADE CONTRACTS.

1. Any manufacturer or wholesaler who has heretofore entered into any Fair Trade contract with any licensed New Jersey retailer, which is now in force and provides that the retailer shall not resell any of the products affected thereby except at stipulated prices, shall file at the offices of the Department of Alcoholic Beverage Control within ten (10) days after the effective date of these rules (a) a copy of the contract as executed; (b) a price list (which may be embodied in the contract itself or in an accompanying document) which shall contain an explicit statement of the prices stipulated and an adequate description of the articles to which they refer; and (c) an affidavit or affidavits establishing that copies of the contract and price list have been mailed to or served personally upon all retail licensees in New Jersey who are engaged in the sale of any of the products affected thereby.

2. Any manufacturer or wholesaler who shall hereafter enter into any such Fair Trade contract shall, within ten (10) days after its execution, file at the offices of the Department of Alcoholic Beverage Control (a) a copy of the contract as executed; (b) a price list in the form specified in Rule 1, and (c) an affidavit or affidavits to the same effect as provided in Rule 1.

3. Whenever any alteration is effected in any such contract or price list, the manufacturer or wholesaler shall, within ten (10) days thereafter, file at the offices of the Department of Alcoholic Beverage Control (a) a copy of the altered contract or price list; and (b) an affidavit or affidavits establishing that copies of the altered contract or price list have been mailed to or served personally upon all retail licensees who are engaged in the sale of any of the products affected thereby.

4. Whenever any such contract and price list or such altered contract or price list is filed at the offices of the Department of Alcoholic Beverage Control, summarized notice thereof shall be published as part of the official bulletins issued by the Department, and all licensees shall be chargeable with notice of the contents of contracts and price lists and alterations thereof so published.

5. Whenever any manufacturer or wholesaler has theretofore filed copies of Fair Trade contract and price list and an affidavit or affidavits of service or mailing pursuant to the preceding rules, and sells products which are subject to the provisions of the contract and price list to new customers holding retail licenses, he shall, within ten (10) days thereafter, file at the offices of the Department of Alcoholic Beverage Control an affidavit or affidavits establishing that copies of the contract and price list have been mailed to or served personally upon such new customers holding retail licenses.

6. Whenever any such contract and price list or altered contract or price list is filed and published as aforesaid, no retail licensee shall sell any product affected thereby except (a) at the price stipulated therein by the manufacturer or wholesaler; or (b) pursuant to and within the terms, conditions and limitations of a special permit first obtained from the Department of Alcoholic Beverage Control.

7. Application by a retail licensee for special permit authorizing the sale of any particular product affected by a Fair Trade contract without regard to the price stipulated therein will be entertained in the following situations: (a) where the product was actually possessed by the retailer prior to the execution of the Fair Trade contract; (b) where the retailer is actually closing out his stock for the purpose of discontinuing delivering such product; (c) where the product is damaged or deteriorated in quality and notice is given to the public thereof; and (d) where the sale of the product is by an officer acting under orders of any Court.

8. Violation of any of the foregoing rules shall constitute ground for revocation or suspension of license.

The foregoing rules are hereby promulgated, effective September 15, 1938.

The official bulletins are obtainable from the Department upon payment of the sum of $3.50 per annum. They contain not only the information set forth in Rule 4, but also all decisions and rulings made in respect to any phase of alcoholic beverage control. They are issued about once a week. The subscription price barely covers the paper and postage.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 25, 1938.

APPELLATE DECISIONS - WILLIAMS v. HILLSBOROUGH TOWNSHIP.

BRUCE WILLIAMS,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HILLSBOROUGH,) CONCLUSIONS
Respondent)

Nelson H. Nichols, Jr., for Appellant.
Henry B. Van Nuys, Chairman of the Township Committee, for Respondent.
T. P. Bardsley, for New Jersey Licensed Beverage Association, an Objector.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for 1937-8 to appellant, a negro, for the Club quarters of the Belle Mead Country Club, a colored organization, at R.F.D. 1, State Highway 31, Belle Mead, Hillsborough Township.

Appellant contends that his license was denied because he and the members of the Belle Mead Country Club are negroes. The Township Committeemen assert that they refused his application because they believe sufficient liquor places exist in the general neighborhood.

It is unnecessary to determine whether appellant's license was really denied because of color because I do not find that respondent was justified in reaching the conclusion that public necessity and convenience precluded the issuance of the license applied for.

Hillsborough is a large-sized, rural township, occupying some fifty square miles. The Club premises are located in a sparsely settled, farming section known as Belle Mead. The Clubhouse is a twenty-room mansion set on grounds that cover some four or five acres. The Club has tennis courts and similar sport facilities for the use of its members (which now total 268), serves meals to these members, and apparently in every way is the usual high class "country club" except that its members are colored instead of white. Appellant, when he secures a plenary retail consumption license, plans to cater to these members. The Club itself originally intended to apply for a club license to serve this purpose, but was advised by respondent that no such licenses are issued in the Township.

The nearest liquor place to the Club is located 1/2 or 3/4 of a mile to the south; the next nearest is 2 or 2½ miles to the north. Neither these nor any of the other liquor places in the Township cater to the colored folks.

It is all very well to talk of the theoretical protection given to negroes under the Civil Rights Act, which provides (R. S. 10:1-2, 3, 5) that no tavern keeper shall refuse to sell drinks to patrons merely because of color. However, it is a commonplace fact that negroes, despite this law, are frequently refused service either outright or by more subtle methods. Members of the Belle Mead Country Club have already experienced difficulty. Two of them were informed at the Belle Mead Inn, the nearest liquor place to the Club, that a glass of beer would cost them 35¢ and a glass of whiskey 50¢.

Practical difficulties like these which confront the colored race, must be fearlessly faced and given practical and fair solutions.

The action of respondent in denying a license to appellant during the last fiscal year is reversed. Since it is stipulated that the determination herein shall apply to any new application filed by appellant for the current term for the same premises, respondent is directed to act upon any such new application in accordance with these conclusions.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 25, 1938.

DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - FAILURE TO AFFORD FREE AND UNOBSTRUCTED VIEW.

In the Matter of Disciplinary Proceedings against

Carroll Co.,
T/a Carroll's Tavern,
140-142 Broadway,
Newark, New Jersey,

Holder of Plenary Retail Consumption License C-889, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

James J. Quinn, Esq., Attorney for licensee.

BY THE COMMISSIONER:

The licensee was charged with failing to provide an unobstructed view of his licensed premises in violation of Newark Ordinance adopted December 23, 1936, which provides:

> "That all establishments selling alcoholic beverages by virtue of a Plenary Retail Consumption License shall be required to draw aside the curtains or screens obscuring the view from the street to the interior at three o'clock A.M., the closing hour designated, and keep same open at least until seven o'clock A.M. on weekdays and twelve o'clock, noon, on Sundays, so that a free and unobstructed view may be afforded the public from the street to the interior during the above prohibited hours."

It appears that on June 26th, three Newark plainclothesmen on patrol visited the licensed premises at 3:45 A.M. They observed no lights in the place but upon entering the doorway and casting the light from a flashlight inside, two men were seen in front of the bar, one of whom was standing upright and the other asleep with his head resting on the bar. The first officer who looked believed that he saw a third man who hid behind the bar although the other two officers saw only the two men, one of whom opened the door and let them in.

The premises are so arranged that there is a door at the left which is raised above the sidewalk level by a step three or four inches high. The single window to the right of the door has in it a wood partition extending to a height of five feet above the floor. At the time the officers arrived, the view through the glass of the door was obstructed by a green shade which extended to within a few inches of the bottom of the glass. A door in the center of the partition was not opened.

The bartender admitted that he had not drawn up the shade nor opened the door in the partition, because, as soon as closing time arrived, he had locked up and rushed downtown to purchase medicine for his sick dog. The two men in the darkened barroom, lighted only by the rays of the street lamp outside, were awaiting his return, presumably to assist in the medication of man's best friend.

It is true that all three policemen testified that they could see into the licensed premises. But to do so all three had to mount the step, stand on tiptoe and crane their necks. This is a far cry from the "free and unobstructed view" that must be "afforded the public from the street." The ordinance is designed to facilitate police as well as public inspection, not to develop gymnasts.

I find the licensee guilty as charged.

Accordingly, it is ORDERED, that plenary retail consumption license C-889, heretofore issued to Carroll Co., T/a Carroll's Tavern, for premises 140-142 Broadway, Newark, N. J., by the Newark Municipal Board of Alcoholic Beverage Control, be and the same hereby is suspended for five days, commencing 3:00 A.M. August 28, 1938 (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

Dated: August 25, 1938.

APPELLATE DECISIONS - PATEREK v. FAIRVIEW.

JOSEPH PATEREK,

Appellant,

-vs-

Borough Council of the Borough of Fairview,

Respondent

ON APPEAL
CONCLUSIONS

Cosmo D. Palmisano, Esq., Attorney for Appellant.
Harry A. Accomando, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for plenary retail consumption license for premises located at 375 Cliff Street, Fairview.

The respondent asserts that the application was properly denied because there are now in existence a sufficient number of licensed establishments in the immediate vicinity of the premises sought to be licensed by the appellant.

The evidence establishes that the immediate neighborhood is, in large part, residential, although zoned for business; that there is a licensed place of business at 379 Cliff Street, which is separated from the appellant's premises only by a 25-foot vacant lot; and that there is another licensed place of business at 358 Cliff Street, which is less than 200 feet from the appellant's premises. From the foregoing, it is evident that the immediate vicinity is adequately provided for by licensed establishments.

The appellant charges discrimination in that licenses have been issued for nearby buildings in other sections of the Borough. In support, evidence was introduced indicating that licenses have been issued for premises which are located between 250 feet and 500 feet from each other on the same side of the street, and for premises 80 feet distant from each other but located on opposite sides of the street. These instances are not comparable to the appellant's application which seeks a license for premises which, aside from a small vacant lot, are immediately adjacent to an established place of business.

Finally, appellant places reliance upon the fact that the respondent has never before denied a license on the ground that there were a sufficient number in the vicinity. This fact is without significance. A bona fide non-discriminatory municipal policy against the issuance of additional licenses for vicinities adequately serviced is directly in the public interest and should be given full encouragement. Such policy is legally effective, notwithstanding extended delay in its adoption. Cf. Temperino v. Vineland, Bulletin 240, Item 8.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 25, 1938.

). ENFORCEMENT DIVISION ACTIVITY REPORT FOR AUGUST 1 to 31, 1938, INCL

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - - - 92
Licensees - - 8 Non-Licensees - - - 84

SEIZURES: Stills - total number seized - - - - 16
Capacity 1 to 50 gallons - 5
Capacity 50 gallons and over - 11

Motor Vehicles - - total number seized 12
Trucks - 2 Passenger Cars - 10

Alcohol
Beverage alcohol - - - - - - 230 Gallons

Mash - Total number of gallons - 37,647

Alcoholic Beverages

Beer, Ale, etc. - - - - - - -	267	gallons
Wine - - - - - - - - - - -	1394	"
Whiskies and other hard liquor -	177	"

RETAIL INSPECTIONS:

Licensed premises inspected - - -	1806	
Illicit (bootleg) liquor - - -	1	
Gambling violations - - - - -	26	
Sign violations - - - - - -	85	
Unqualified employees - - - -	303	
Other mercantile business - - -	99	
Disposal permits necessary- - -	15	
"Front" violations - - - - -	3	
Improper beer markers - - - -	8	
Other violations found - - - -	25	
Total violations found - - - -	563	
Total number of bottles gauged - -		12,225

STATE LICENSEES:

Plant Control Inspections completed	238
License applications investigated -	33

COMPLAINTS:

Investigated and closed - - - -	274
Investigated, pending completion -	209

LABORATORY:

Analyses made- - - - - - - - -	136
Alcohol and water and artificial coloring cases - - - - -	29
Poison and denaturant cases - - -	0

Respectfully submitted,

E. W. Garrett,
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF HOSTESS - PETITION FOR CLEMENCY - CONCLUSIONS.

In the Matter of Disciplinary Proceedings against

ADAM PANASEWITZ (or Panasevitz), 109 West Street, Newark, N. J.

On Petition for Clemency CONCLUSIONS

Mario V. Farco, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

By order of July 21, 1938 (Bulletin 262, Item 10), petitioner's license was suspended for a period of 130 days commencing July 24, 1938. Thirty days was for serving alcoholic beverages to a minor on several occasions; a hundred days was for the employment of that minor as a hostess.

Petitioner makes no issue as to the facts nor upon the decision, but begs mercy, basing his plea on the heavy financial burden which he has undoubtedly suffered during the past 52 days since the suspension became effective and which, he says, has terminated his livelihood, causing serious privation to his family, and especially to his daughter, Eugenia, a student in her senior year in journalism at New York University. To complete her course, the payment of $352.00 tuition is required as well as other fees, besides which there is the cost of books and transportation, all of which petitioner says he will be unable to pay unless his earning capacity is restored.

The penalty inflicted in this case was designedly severe. The minor, to be sure, was twenty years old and married, although separated from her husband. Petitioner knew her age —knew her to be a minor. She lived next door with her mother. There was no deception on her part and no reliance on appearances by him. Not only was he guilty of selling to a minor knowing her to be such, but also he employed the twenty year old girl as a hostess. She testified that, between April 25th and June 5th, she frequented petitioner's tavern practically every day, being continually urged by petitioner to meet and drink with his customers; that sometimes, while ostensibly ordering whiskey, she was actually served tea from a Hennessey bottle; that the defendant introduced her to "people", such being the "method" of getting her to meet the patrons and to encourage them to buy drinks for themselves and for her. This went on for 40 days.

On the other hand, Panasewitz himself has a daughter of tender age, whose chances of completing her college education may well be ruined if she has to drop school in her senior year because of her father's abuse of his licensed privileges!

Without relenting one little bit in determination to drive out this hostess racket, which uses other folks' daughters to prey on males, forlorn when lonely, I shall, under the circumstances of this case, reduce the 100 day penalty to 50, thereby making a total suspension of 80 days instead of 130 days.

Accordingly, it is, on this 14th day of September, 1938, ORDERED that the order heretofore entered on July 21, 1938 be, and

it is hereby, changed to read that Plenary Retail Consumption License C-318, heretofore issued to Adam Panasewitz (or Panasevitz) by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same hereby is suspended for a period of eighty days (80), commencing July 24, 1938, at 3:00 A. M. (Daylight Saving Time).

Frederick P. Burnett

Commissioner.