

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 588

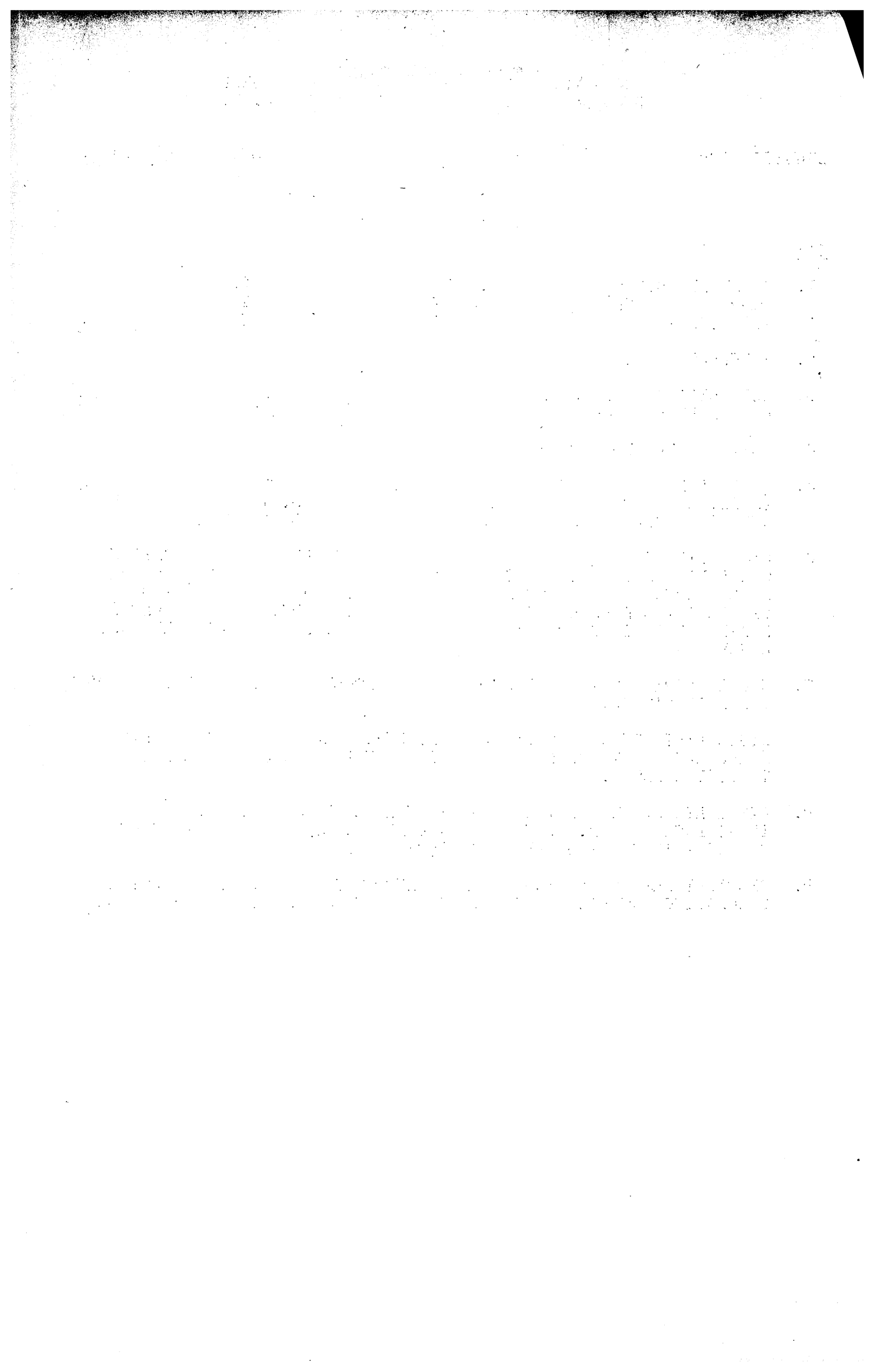
OCTOBER 13, 1943.

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OCTOBER 13, 1943.

1. COURT DECISIONS - NEW JERSEY SUPREME COURT - THE CASABLANCA COMPANY v. ALFRED E. DRISCOLL, COMMISSIONER, AND THE CITY OF WILDWOOD - WRIT OF CERTIORARI DISMISSED - COMMISSIONER SUSTAINED.

NEW JERSEY SUPREME COURT

THE CASABLANCA COMPANY,)	
a corporation of New Jersey,)	
)	
Prosecutor,)	
)	
-vs-)	
)	
ALFRED E. DRISCOLL, Commissioner)	
of the Department of Alcoholic)	
Beverage Control of the State of)	
New Jersey, and BOARD OF COMMIS-)	
SIONERS OF THE CITY OF WILDWOOD,)	
)	
Respondents.)	
-----)	

CONCLUSIONS

COLIE, J.

This matter came before the court on an application for a writ of certiorari to review an order of the Honorable Alfred E. Driscoll, Commissioner of Alcoholic Beverage Control of the State of New Jersey, dismissing the appeal of Casablanca Company from the refusal of the Board of Commissioners of the City of Wildwood to grant its application for a transfer of a plenary retail consumption license from premises at 4100 Atlantic Avenue in the City of Wildwood to premises at 224 East Oak Avenue in said city. By stipulation of counsel for the prosecutor and the respondents, the Commissioner of Alcoholic Beverage Control and the City of Wildwood, it was stipulated that the matter be submitted in a summary manner and that the application for said writ heard as though the said writ had been allowed.

Argument was had by counsel for all parties in interest and after an examination of the papers submitted and the application for the writ of certiorari and the return submitted pursuant to stipulation and the affidavits, the court is of the opinion that the action of the Commissioner in dismissing the petition of appeal should be sustained.

The action of the Commissioner as shown by his conclusions was based upon the fact that the matter of whether or not a given license shall be transferred from one location within a city to another is primarily one that rests in the discretion of the local issuing authority. His study of the matter led him to the belief that there was no abuse of that discretion by the Commissioners of the City of Wildwood.

This court is of the same opinion and accordingly the writ of certiorari will be dismissed.

In order that the record may be clear, counsel should prepare and submit a writ of certiorari which writ will be allowed and may also submit an order dismissing the writ.

2. APPELLATE DECISIONS - BABBITT v. SCOTCH PLAINS.

BERNYCE BABBITT,)
t/a BABBITT'S GROCERY,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF SCOTCH PLAINS,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Julius P. Litwack, Esq., Attorney for Appellant.
Harry E. Bernstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals herein from the alleged denial of her application to renew her plenary retail distribution license for premises at 310 Plainfield Avenue, Scotch Plains, N. J.

The petition of appeal alleges that, on June 29, 1943, respondent denied the application for the following stated reasons:

"None given."

The petition further alleges that the action of respondent was arbitrary, capricious, without warrant of law, and an abuse of the respondent's discretion.

Notice of appeal and petition of appeal were filed on June 30, 1943. On the same day, because of the facts set forth in the petition, I entered an order extending the license which appellant then held pending the return of an order to show cause and until further order of the Commissioner. R. S. 33:1-22. The order to show cause was returnable on July 29, 1943, and notice was served on both parties that final hearing would be held at the same time. On the return day some testimony was taken, and both matters were continued to September 16, 1943, at which time the taking of testimony was completed. No further order has been entered herein to date, and appellant continues to operate under the extension order dated June 30, 1943.

At both hearings held herein appellant contended that no formal action had been taken by respondent to deny the application to renew. An examination of the minutes of the meeting held on June 29, 1943 does not show that respondent took any formal action to either grant or deny the license. Respondent admits that this is true. However, after this situation fully appeared in the record, the attorney for appellant consented to the taking of testimony as if the application had been formally denied.

The difficulty with which I am faced is that it appears that there has been no action of respondent from which an appeal may be taken. R. S. 33:1-22 provides for an appeal to me from the action of the issuing authority. I deem it necessary, therefore, to remand the case to respondent with instructions to adopt a resolution either granting or denying a renewal of the license.

As to the order to show cause: It is admitted that on November 19, 1942, respondent suspended appellant's license for a period of thirty days after she had pleaded guilty to a charge of selling alcoholic beverages during prohibited hours.

At the hearings herein, Chief of Police Harry Erholm testified that on numerous occasions he broke up fights and arrested intoxicated people in front of appellant's store, and that approximately 75% of the people who congregate in front of the store had criminal records of some kind. It appears from his testimony that the Township has a small police force, which makes it difficult to answer the numerous complaints which have been received by the Police Department from this section of the Township during the past three years. The Chief further testified that he had spoken to the licensee's husband in her presence about the conditions in front of the store, and that these conditions had become worse during the past year.

Harold Croft, a special officer of the Township, testifies that a large crowd hangs around in front of the store cursing, swearing and using vile language. He says that, on one occasion, "everybody wanted to drink out of one bottle."

Principal Ralph Kehs, of Public School #3, which is located only a short distance from appellant's premises, testified that he has seen people in this crowd disturbing the school teachers; that men come on the school playground and drink and carry on, and that he has seen these men make repeated trips to Babbitt's to get liquor.

Robert Jones, a policeman in the Township of Scotch Plains, testified on May 15, 1943 he broke up a gang of at least 100 in front of Babbitt's store, and that most of the members of the gang were drunk.

In addition to these witnesses, the respondent called nine persons who live nearby. All of these witnesses testified that the people who congregate in front of the store use loud and indecent language and that frequently many of them are intoxicated. All of the witnesses produced by respondent testified that they have seen large quantities of empty liquor bottles on the street in the vicinity of the appellant's premises.

George W. Jackson, one of the three members of the Township Committee, testified that, in May 1943, he and the other members of the Township Committee made an inspection of conditions in and around the licensed premises. He further testified that, in November 1942, at the conclusion of the disciplinary proceedings, he warned Mrs. Babbitt as to the conditions around her premises and that she had promised to make every effort to see that the condition was cleaned up. He stated that, despite the warning, the condition was progressively getting worse.

On behalf of appellant, Mrs. Blanche Andrews, owner of the building at 310 Plainfield Avenue, testified that for many years there have been large crowds in front of the store. She testified that the crowd there is noisy but "don't really do anything bad." She admits that she telephoned to the police on at least four occasions requesting them to stop noises and disturbances in the street, but she alleges that this condition was not due to the sale of liquor at the licensed premises. Her testimony is corroborated by her husband. Appellant denied that there is any unsatisfactory condition either inside or outside of her store. Three other witnesses, who testified to the same effect, reside respectively $1\frac{1}{2}$ miles, $1/4$ mile and $1\frac{1}{2}$ miles from the premises in question.

The testimony shows that a plenary retail consumption license has been issued for a clubhouse on a golf links directly across Plainfield Avenue from appellant's premises. Apparently appellant argues that the unsatisfactory condition in front of her premises may be due to the fact that liquor is also sold at the club, and hence, that she is not responsible within the rule laid down in Freeland v. Roselle, Bulletin 352, Item 5, wherein it is said:

"The condition on the outside has been extremely unsatisfactory. However, it appears that these conditions were due, in part at least, to the existence of the nearby lunch room and the licensed premises located in Linden on the opposite side of St. George Avenue. The licensee apparently has made efforts to correct this condition and the police department seems to have that situation under its control. A licensee is responsible for conditions outside of his licensed premises which are caused by his patrons. Conte v. Princeton, Bulletin 139, Item 8; Repici v. Hamilton, Bulletin 201, Item 8. However, where it appears that the conditions on the outside result from other factors which are not within the control of the licensee, such evidence would not be sufficient to warrant denial of the renewal. Cf. Hand v. Woodstown, Bulletin 219, Item 4."

However, the evidence herein shows that the clubhouse is located some distance away and that the people who congregate in front of Babbitt's store do not patronize the clubhouse because of the higher prices which are charged at the club. All the evidence satisfies me that there is a very unsatisfactory condition on the outside of appellant's premises, and that this condition is due, in great part, to the fact that people purchase liquor in appellant's premises and consume the liquor at the side of and in front of her premises. Although warned, she apparently has not been able to remedy this unsatisfactory condition. This condition is entitled to serious consideration when the continuance of the license is in issue. Cf. Peditto v. Palmyra, Bulletin 389, Item 13. Under the circumstances, and in view of her prior record, it does not appear that appellant should be permitted to continue operation of her licensed business pending action by respondent on her application to renew. Hence I shall vacate immediately the order entered herein on June 30, 1943.

After the notice of application to renew this license has been duly published, written objections were filed with the Township Clerk. No hearing was held upon said objections. Appellant contends that the respondent was required to hold such a hearing in accordance with the provisions of Rules 6 and 7 of State Regulations No. 2. However, it should be pointed out that Rule 8 of State Regulations No. 2 provides:

"No hearing need be held *** if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant."

Applicant would have had no cause to complain that no hearing was held if it appeared that respondent, on its own motion, after the requisite statutory investigation, had determined not to renew the license. The difficulty in this case is that, upon the record presented, it does not appear that respondent took any formal action to grant or deny the pending application.

Accordingly, it is, on this 5th day of October, 1943,

ORDERED, that the appeal herein be and the same is hereby remanded to respondent for the purpose of taking formal action upon the application for renewal of appellant's license; and it is

FURTHER ORDERED that, if the application for renewal shall be denied and an appeal shall be taken from said action of respondent, the testimony heretofore taken herein shall be considered upon said appeal, with leave reserved to both parties to offer additional testimony; and it is

FURTHER ORDERED, that the order heretofore entered herein on June 30, 1943, extending appellant's 1942-43 license pending the return of the order to show cause and until further order of the Commissioner, be and the same is hereby vacated, and that the appellant cease any alcoholic beverage activity thereunder forthwith.

ALFRED E. DRISCOLL
Commissioner.

3. ELIGIBILITY - FACTS EXAMINED - APPLICANT FOUND ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

October 5, 1943

Re: Case No. 517

Applicant seeks to have determined his eligibility to hold a liquor license or to be employed by a liquor licensee.

The record discloses that he was twice convicted of simple assault and battery, once in 1935 and once in 1937.

On the first occasion the assault seems to have been the result of a fight between him and another man. No one seems to have been hurt seriously, nor were any weapons used. The sentence of the court was a small fine.

On the second occasion, which resulted in a jail sentence of forty days, the matter arose out of his attempt to recover some money which he claimed was secured from him by fraud. There seems to have been no injury and no weapons were used.

Under the circumstances, I do not believe that either of these crimes involved moral turpitude. Re Case No. 375, Bulletin 465, Item 8. It is recommended, therefore, that the applicant be advised that he is not disqualified by statute from holding a liquor license or from being employed by a liquor licensee.

Edward F. Hodges
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

4. ACTIVITY REPORT FOR SEPTEMBER, 1943

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	9	Bootleggers - - - - -	14
	Total number of persons arrested - - - - -			23
<u>SEIZURES:</u>	Still - 1 to 50 gallons daily capacity - - - - -			0
	50 gallons and more daily capacity - - - - -			3
	Total number of stills seized - - - - -			3
	Mash - gallons - - - - -			1,850
	Motor vehicles - Trucks - - - - -			1
	Passenger cars - - - - -			5
	Total number of motor vehicles seized - - - - -			6
	Beverage alcohol - gallons - - - - -			75.63
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -			92
	Wine - gallons - - - - -			16.46
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -			26.80
<u>RETAIL LICENSEES:</u>				
	Total number of premises inspected - - - - -			1,402
	Total number of bottles gauged - - - - -			9,753
	Total number of premises where violations were found - - - - -			122
	Total number of violations found - - - - -			162
	Type of violations found:			
	Illicit (bootleg) liquor - - - - -	12	Improper beer tap markers - - - - -	8
	Gambling devices - - - - -	4	Stock disposal permits necessary - - - - -	14
	Prohibited signs - - - - -	12	No sign denoting legal sale	
	Unqualified employees - - - - -	45	hours-off-premises consumption - - - - -	52
	"Fronts" (concealed ownership) - - - - -	6	Other types of violations - - - - -	9
<u>MILITARY AREA PATROL INSPECTIONS:</u> - - - - - 360				
<u>STATE LICENSEES:</u>				
	Premises inspected - - - - -			83
	License applications investigated - - - - -			12
<u>COMPLAINTS:</u>				
	Investigated, reviewed and closed - - - - -			326
	Investigation assigned, not yet completed - - - - -			320
<u>LABORATORY:</u>				
	Analyses made - - - - -			141
	"Shake-up" cases (alcohol, water and artificial coloring) - - - - -			10
	Liquor found to be not genuine as labeled - - - - -			19
<u>IDENTIFICATION BUREAU:</u>				
	Criminal fingerprint identifications made - - - - -			29
	Persons fingerprinted for non-criminal purposes - - - - -			234
	Identification contacts with other enforcement agencies - - - - -			239
	Motor vehicle identifications via N. J. State Police Teletype - - - - -			3
<u>DISCIPLINARY PROCEEDINGS:</u>				
	Cases transmitted to municipalities - - - - -			14
	Cases instituted at Department - - - - -			32
	Cancellation proceedings at Department - - - - -			2
<u>HEARINGS HELD AT DEPARTMENT:</u>				
	Total number of hearings held - - - - -			50
	Appeals - - - - -	5	Eligibility - - - - -	15
	Disciplinary proceedings - - - - -	29	Seizures - - - - -	1
<u>PERMITS ISSUED:</u>				
	Total number of permits issued - - - - -			780
	Unqualified employees - - - - -			235
	Solicitors - - - - -			47
	Social affairs - - - - -			154
	Home manufacture of wine - - - - -			132
	Disposal of alcoholic beverages - - - - -			108
	Miscellaneous permits - - - - -			104

Respectfully submitted,
 SYDNEY B. WHITE
 Chief Inspector.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS (SOLDIERS) ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against LINWOOD GROVE, INC. Route 27, Raritan Township P. O. R.D. 5, Box 348 New Brunswick, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the Township of Raritan. -----

CONCLUSIONS AND ORDER

Alex Eber, Esq., Attorney for Defendant-Licensee. Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to a charge alleging that, on August 29, 1943, it sold alcoholic beverages to three soldiers who were actually and apparently intoxicated, in violation of Rule 1 of State Regulations No. 20.

Two ABC agents testified that, upon entering the premises on the occasion in question, their attention was directed to two soldiers seated at the bar. The general demeanor of these soldiers indicated that they were under the influence of liquor. In addition, they were unsteady on their feet and were boisterous and incoherent in their speech. During the course of the investigation, the agents also observed a third soldier, seated at a table, who gave all the outward manifestations of a drunken person. Following their observations of the intoxicated condition of the soldiers, the agents noted that all three were again served with alcoholic beverages.

Two members of the Provost Marshal's office, who were assigned to escort the soldiers from the licensed premises, also testified that the soldiers were in an intoxicated condition. Further corroboration was given by the Provost Marshal, and also the medical officer under whose supervision tests of the blood of the three soldiers were made.

The sole defense to the charge is a categorical denial made by the president of the corporate licensee and two bartenders employed by it that these soldiers, or any others, had ever received alcoholic beverages at its licensed premises while actually or apparently intoxicated. In the light of the overwhelming testimony supporting the charge which was produced by the prosecution, this defense is entitled to

little, if any, weight. Under the circumstances, I find the defendant guilty as charged.

No emphasis need be placed at this late date upon the seriousness of the violation herein. To permit members of our armed forces to drink to excess is a particularly heedless and unpatriotic act, meriting severe punishment. The defendant's otherwise clear record is all that saves its license from outright revocation.

I shall suspend the license for a period of sixty days. Cf. Re Constantino, Bulletin 547, Item 7; Re Reit, Bulletin 548, Item 10; Re Seaker, Bulletin 551, Item 6.

Accordingly, it is, on this 5th day of October, 1943,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued by the Board of Commissioners of the Township of Raritan to Linwood Grove, Inc. for premises Route 27, Raritan Township, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 A.M. October 11, 1943 and terminating at 2:00 A.M. December 10, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 6. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - FAILURE TO FILE NOTICE OF CHANGE IN STOCK OWNERSHIP AS REQUIRED BY R. S. 33:1-34 - EMPLOYMENT OF DISQUALIFIED PERSONS, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - VIOLATION OF R. S. 33:1-35 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

STAR CAFE, INC.)
266-8 Madison Avenue)
Perth Amboy, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-78 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-78 for the current (1943-44) year, both issued by the Board of Commissioners of the City of Perth Amboy.)

Frederic M. P. Pearse, Esq., by George S. Pearse, Esq., Attorney for Defendant-Licensee and Philip Pollen.
Samuel S. Cohen, Esq. and David H. Wiener, Esq., Attorneys for Defendant-Licensee and Joseph and Amelia Cuccinello.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, a corporate licensee, pleaded nolo contendere to charges alleging, in substance:

- (1) Violation of R. S. 33:1-25. Defendant falsely concealed in its 1942-43 license application that Philip Pollen, its Treasurer, director and holder of 80% of its corporate stock, was not a citizen of the United States.
- (2) Violation of R. S. 33:1-25. Defendant falsely concealed in such application that said Philip Pollen had been convicted for violation of the National Prohibition Act.
- (3) Violation of R. S. 33:1-34. Defendant failed to file with the issuing authority the requisite notice that on or about September 14, 1942 its stockholders and officers of record became Joseph Tagliaboschi, President, Treasurer, director and holder of 80 shares, Benjamin Cross, Vice-President, director and holder of 10 shares, and Philip Breslow, Secretary, director and holder of 10 shares, with Philip Pollen having the beneficial interest in all of the said shares of stock.
- (4) Violation of R. S. 33:1-34. Defendant failed to file with the issuing authority the requisite notice that on or about November 9, 1942, Joseph Tagliaboschi ceased to be the record holder of the aforesaid 80 shares of stock, or President, or Treasurer, or director in the corporation.
- (5) Violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11. Defendant employed Philip Pollen, a person disqualified by lack of American citizenship.
- (6) Violation of R. S. 33:1-35. Defendant hindered and delayed and failed to facilitate an investigator of the Department of Alcoholic Beverage Control who was investigating its corporate set-up.
- (7) Violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11. Defendant knowingly employed a minor.

It was stipulated by all counsel that the Department's file was to be marked in evidence and considered as part of the record in the case.

The evidence, the major portion of which was offered by defendant in an effort to mitigate the penalty, chiefly concerns the activities of Philip Pollen (hereinafter referred to as Pollen). Since 1929 he and his father have owned the United Fixture Company of Perth Amboy (hereinafter referred to as the Fixture Company), a corporation engaged in the sale of bar fixtures. In 1933 Pollen was convicted for a violation of the National Prohibition Act.

In June 1942, defendant, which then owned other real estate assessed at \$11,000.00, arranged to acquire a lease for the premises in question. On June 22, 1942 Pollen filed a petition for naturalization in New York City which was still pending at all times herein. On June 29, 1942 an application for a transfer of the license in question to the defendant was executed by Benjamin Cross, President of the corporation, and sworn to before Pollen as a Notary Public. This application listed Cross as the holder of ten of the corporation's 100 shares of capital stock; Pollen as the holder of 80 shares and its Treasurer; and Robert Rossi as the holder of ten shares and Secretary. The defendant's application also stated that Pollen was a naturalized citizen "by virtue of his father's citizenship obtained

in New York City in 1923" and denied that any person mentioned therein had ever been convicted of a crime. Pollen was in fact the beneficial owner of all of defendant's shares of stock and Benjamin Cross, who is his uncle, never at any time invested any money in the business. The application should have disclosed this fact. On July 15, 1942 the local issuing authority granted a transfer of the license to the defendant. Pollen paid \$1500.00 to the former owner of the license for the business and good will of the tavern and \$500.00 to the City for the license fee. The defendant bought \$12,000.00 worth of equipment from the Fixture Company, agreeing to pay for the same at the rate of \$50.00 a month. The sale was unconditional and the defendant was not required to execute a chattel mortgage. Pollen closed the tavern during the installation of the new fixtures.

In August 1942 the Department of Alcoholic Beverage Control made an investigation which disclosed that Pollen was born in Russia in 1902, immigrated to this country with his parents in 1913, and did not become a citizen through the naturalization of his father in 1923. As a result of this investigation, Pollen was advised by his lawyer that the Department considered him disqualified to hold a license in this State. Hence, any corporation in which Pollen held, directly or indirectly, more than 10% of its capital stock was likewise disqualified to hold a license.

Pollen notified the Department that he would sell his interest in the defendant corporation. Thereafter he employed Joseph Tagliaboschi, a bartender who was qualified as to citizenship, to manage the tavern at a salary of \$45.00 a week. Shortly thereafter Pollen gave Tagliaboschi \$800.00, with which he obtained a Cashier's check in like amount from a Metuchen bank. Tagliaboschi gave the check to Pollen. On the following day, September 14, 1942, Pollen took Tagliaboschi to the office of Pollen's lawyer and a certificate for the 80 shares of defendant's stock held by Pollen was issued to Tagliaboschi. This certificate was endorsed in blank by Tagliaboschi and placed with the lawyer, in escrow, to secure the payment of \$800.00 which Tagliaboschi was alleged to owe Pollen. The tavern opened September 15, 1942, and Tagliaboschi acted as manager until November 9, 1942, when he found other employment. He never invested any money in the business and at no time officiated as President of the defendant corporation.

After Tagliaboschi left, Pollen assigned the 80 shares nominally held by Tagliaboschi to Benjamin Cross, who was qualified as to citizenship. He told his uncle that he had put the stock in his name because of his (Pollen's) lack of citizenship. He assigned the remaining ten shares to his brother, Ben Pollen, who assisted him in operating the business. The requisite notice of such change in stockholding was not filed with the local issuing authority.

During the last week in November 1942, Pollen, for the defendant, employed as a waitress an eighteen year old girl without having first obtained an employment permit. This girl was permitted to serve alcoholic beverages to patrons, in violation of R. S. 33:1-26. The minor apparently worked on the licensed premises for about three months.

On November 30, 1942, an A.B.C. agent who did not know Pollen visited the tavern to investigate the defendant's corporate set-up. He observed a man in front of the bar who was apparently in charge of the licensed premises. The investigator revealed his identity to the man who represented himself to be Joseph Tagliaboschi, manager

of the tavern. In response to questioning by the investigator, the man signed the name of Joseph Tagliaboschi to a written statement in which he said he was President and Treasurer of the defendant corporation and owned 80 shares of its stock which he had bought from Pollen with an \$800.00 Cashier's check on a Metuchen bank. The man also signed Joseph Tagliaboschi's name to a Retail Inspection Report which the investigator made for the Department. The man in question was later identified as Pollen.

Upon being informed that the Department did not approve of his purported assignment to Cross, Pollen made an arrangement with Michael Kuligowski, a real estate broker, to take over the shares of stock standing in the name of Cross. On January 8, 1943 the defendant executed a conditional bill of sale covering the fixtures sold to the corporation by the Fixture Company. On the same day Cross endorsed a stock certificate for his 90 shares to Kuligowski. The certificate was placed with a lawyer, in escrow, until February 2, 1943, when Kuligowski gave the lawyer an \$800.00 check payable to Pollen and received the certificate. Kuligowski visited the tavern on six occasions and at no time exercised any right of ownership. The business continued under the management of Pollen without any accounting to Kuligowski.

Joseph Cuccinello, in the latter part of January 1943, was operating a tavern in Red Bank under a tentative purchase agreement. Two weeks of investigation disclosed that the business was not as represented and he decided not to buy the establishment. During this time Pollen had offered to sell him the defendant's tavern. On February 15, 1943 Cuccinello, after three brief visits to the tavern, asked the price and Pollen arranged with Michael Kuligowski for the three of them to meet at the office of Cuccinello's lawyer. As a result of this meeting, which lasted about two hours, Cuccinello arranged to buy the stock of the corporation for a purchase price of \$16,608.99. He thereby obtained control of all of the assets of the corporation exclusive of its real estate, which was to be deeded Pollen.

Cuccinello paid \$5,373.40 in cash, of which \$2,000.00 was paid to the Fixture Company; \$2,717.35 to Kuligowski; \$301.92 to Ben Pollen; and \$354.13 for outstanding bills. He assumed the \$10,000.00 balance due the Fixture Company and the payment of bills amounting to \$1,235.59. Kuligowski assigned the 90 shares of stock standing in his name to Joseph Cuccinello and Ben Pollen assigned the remaining ten shares to Amelia Cuccinello, wife of Joseph Cuccinello. Defendant's real property was subsequently deeded to Pollen. During these negotiations, the pendency of the Department's investigation was apparently not disclosed to Cuccinello and he made no investigation of the status of the license.

About three weeks after the sale Cuccinello learned there was a possibility of charges being preferred against the defendant. On March 30, 1943 he secured from Pollen a written agreement which provides that in the event of suspension or revocation of the defendant's license, Pollen is to pay Mr. and Mrs. Cuccinello \$75.00 per week during the time of the suspension or revocation and reimburse them for their rental expenses and liability resulting from employment contracts. He also guarantees that any payment due the Fixture Company shall be suspended during such time.

Pollen's testimony was evasive, contradictory and, to say the least, lacking in frankness. He attempted to explain the false statement as to citizenship by stating that it was made because he

believed he had become a citizen through the naturalization of his father. In view of his petition for naturalization, which was filed prior to the date when the statement was made, this testimony is unimpressive. Only on cross-examination did Pollen finally admit that he should have disclosed his criminal record in the license application. He claimed the stock transfer to Tagliaboschi was a bona fide sale and that Cross and Kuligowski also were legitimate purchasers who had successively assumed Tagliaboschi's original debt for the stock. This claim is sheer fiction. It strains credulity to believe that Pollen sold them for \$800.00 the controlling interest in the real estate assessed at \$11,000.00 and allowed Tagliaboschi and Cross to control the fixtures without giving security to the Fixture Company. The failure of Kuligowski to exercise any right of ownership confirms my belief that the ostensible sale to him was as fraudulent as that to Tagliaboschi. The evidence convinces me that Pollen used Tagliaboschi, Cross and Kuligowski as "fronts" to cover his disqualifying interest in the defendant's corporate stock.

No explanation was given for the admitted failure of the defendant corporation to file with the local issuing authority the requisite notice of the change in stockholding. Pollen denied that he ever managed the tavern and said his only connection with the business was in protecting the interest of the Fixture Company. I am unable to believe this statement. The corporation not only had a disqualifying stockholder but employed disqualified persons in violation of the Control Law and the regulations. The excuse for his reprehensible impersonation of Tagliaboschi was that he became "panicky" when he realized the possibility of loss to the Fixture Company. He tried to justify the defendant's employment of the minor girl by saying she produced a birth certificate which showed that she was twenty-one years old. However, an authentic certificate in the Departmental file discloses the girl was eighteen years of age.

In a brief filed on behalf of Pollen it is argued that, from September 1942 to February 15, 1943, he was at all times endeavoring to find a responsible purchaser for his interest and that leniency should be shown because the violations were motivated not by an attempt to operate the tavern unlawfully, but rather in order to save the Fixture Company from a substantial loss of its investment. The evidence is to the contrary. At all times Pollen knew there was a serious question as to his eligibility. Nevertheless, he persisted, by devious devices, in having the corporation defendant defy the law and the rules and regulations of this Department. The impersonation of Tagliaboschi and the forgery of his name is without precedent in A.B.C. cases. Licensees must learn that they cannot with impunity brazenly disregard our laws and defeat the statutory requirements by deliberate deceit and misrepresentation under oath. I find defendant guilty as charged.

I have recited the record of the manipulation of the defendant's corporate stock at some length because, in common parlance, Pollen, the beneficial though disqualifying owner of all of its corporate stock, at least until the sale to the Cuccinellos, was in fact the corporation. In view of the admitted violations by the defendant and the continued character of Pollen's attempts to "beat" the law, it is clear that the proper penalty in this proceeding is revocation. Re Almac Tavern, Bulletin 587, Item 5.

In a brief filed on behalf of Joseph Cuccinello and his wife Amelia, it is argued that they bought the "tavern" in good faith without knowledge of the investigation and therefore should not be penalized for the offenses of Pollen and suffer a loss in their

investment. Assuming the lack of knowledge to be the case, it is apparent that Joseph Cuccinello, despite his statement, did not purchase the "tavern." He purchased the stock of a corporation with a very bad record. The defendant corporation had, under oath, falsely answered questions in its application for license. It had concealed material facts in its application and thereby fraudulently obtained its license in the first instance. On one or more occasions it had failed, as required by law, to notify the issuing authority of the change in stock ownership. It had employed disqualified persons without obtaining the required permits. It had permitted a minor, in violation of law, to serve alcoholic beverages. Under the circumstances, it is apparent that, despite the fact that the Cuccinellos had had full opportunity to investigate the corporate record, they failed to do so and, having bought the corporate stock without any questions on their part, they cannot now expect to escape the consequences of the corporation's previous illegal acts. Those who choose to deal in the stock of a corporate licensee do so at their peril. Re Twelve East Park Street Tavern, Inc., Bulletin 490, Item 5; Re Breit, Bulletin 493, Item 3.

While the result herein may be unfortunate for Mr. and Mrs. Cuccinello as stockholders, the test to be applied concerns not the private interest of the individual but the public interest in effective control. Their redress is the indemnifying agreement executed by Pollen. A license to sell alcoholic beverages is a special privilege, not a right. Paul v. Gloucester, 50 N.J.L. 585, 596. The defendant corporation has forfeited any claim it may heretofore have had to this privilege.

In view of the penalty to be imposed, it is unnecessary to consider the rule to show cause why the license in question should not be canceled because improvidently issued and such proceedings are dismissed.

Accordingly, it is, on this 7th day of October, 1943,

ORDERED, that Plenary Retail Consumption License C-78, issued by the Board of Commissioners of the City of Perth Amboy to Star Cafe, Inc. for premises 266-8 Madison Avenue, Perth Amboy, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

7. MORAL TURPITUDE - CRIME OF RECEIVING STOLEN GOODS FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - 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.)

CONCLUSIONS
AND ORDER

Case No. 296.)
-----)

BY THE COMMISSIONER:

In 1935 petitioner was convicted on a charge of receiving stolen goods and sentenced to serve fifteen months in a county penitentiary. He had been accused of receiving some \$409.00 worth of gold-filled braid which had been stolen from a jewelry concern. The crime in question involves moral turpitude. Re Case No. 488, Bulletin 561, Item 3, and cases cited therein.

Petitioner represents that he has been law-abiding for at least five years last past, and hence, pursuant to R. S. 33:1-31.2, seeks removal of his disqualification from working for a liquor license or holding a liquor license in this State by reason of his conviction of a crime involving moral turpitude.

Since his release from the penitentiary in 1935, petitioner has worked as a painter. He is married and lives with his wife and their three children. His fingerprint returns disclose no other conviction.

A wholesale fruit dealer who has had a business and social acquaintance with petitioner for seven years testified that during such time petitioner has conducted himself in a law-abiding manner and has had a good reputation in the community. Similar testimony was given by a manufacturer who has known petitioner socially for five years and a coal dealer who has known him for eight years.

I find that petitioner has conducted himself in a law-abiding manner during the five years immediately past. I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 7th day of October, 1943,

ORDERED, that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION
CONCEALING MATERIAL FACT - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

WILLIAM TANSKY, JR.
T/a TANSKY'S CAFE
1903 South 6th Street
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-35, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Edward A. Tanski, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he failed to reveal in his license application that he had been convicted on April 7, 1932 of a violation of the National Prohibition Act.

The conviction in question arose out of the operation by the defendant of a "speakeasy" during Prohibition. He was fined \$100.00 and sent to jail for ten days. Since this offense does not appear to have been attended by any aggravating circumstances, it does not involve the element of moral turpitude. Re Case No. 478, Bulletin 554, Item 4.

However, the fact that defendant is not mandatorily disqualified because of such conviction from holding a liquor license (see R. S. 33:1-25) does not excuse the concealment of the conviction in the license application. An applicant is required to disclose any and all convictions of crime so that the issuing authority may determine whether, in its sound discretion, the applicant should be viewed as personally fit for a license.

Departmental records disclose that this is the defendant's first conviction in disciplinary proceedings. Under all the circumstances, I shall suspend the license for ten days, with remission of five days because of the plea, leaving a net penalty of five days. Re Tumulty, Bulletin 558, Item 2; Re Stasny, Bulletin 566, Item 6.

Accordingly, it is, on this 8th day of October, 1943,

ORDERED, that Plenary Retail Consumption License C-35, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, to William Tansky, Jr., for premises 1903 South 6th Street, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. October 11, 1943, and terminating at 2:00 A.M. October 16, 1943.

Alfred E. Dunsell
Commissioner.