

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

BULLETIN 764

MAY 28, 1947.

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

BULLETIN 764

MAY 28, 1947.

1. APPELLATE DECISIONS - NARDONE v. NEWARK.

BENEDETTO NARDONE, t/a BEN'S)
MELROSE COCKTAIL BAR,)

Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Edward F. Beers, Esq., Attorney for Appellant.
George B. Astley, Esq., Attorney for Respondent.
Samuel Poleshuck, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant, holder of a plenary retail consumption license for premises 901-903 - 18th Avenue, Newark, appeals from an order of respondent dated December 27, 1946, ordering that he cease sale of alcoholic beverages in the portion of his licensed premises known as 903 - 18th Avenue until such time as that portion of the premises was rearranged to comprise a restaurant as it had theretofore existed.

The order was entered in what purported to be disciplinary proceedings instituted by the service of "charges" directing the appellant to show cause why his license should not be suspended or revoked. The "charges" alleged in effect that the appellant had converted the restaurant portion of the licensed premises into a store for the sale of package goods, thereby creating a "new and additional outlet" for the sale of alcoholic beverages without prior approval first obtained from respondent, in consequence of which appellant "violated certain representations" to respondent, all in violation of R. S. 33:1-34.

The "charges" seem to have been preferred under the erroneous impression that a plenary retail consumption licensee may not engage in the sale of alcoholic beverages in original containers for off-premises consumption except to the extent expressly permitted by the municipal license issuing authority, since the gravamen of the "charges" is that appellant discontinued his restaurant operation and sought to expand his package goods business. Since the sale of alcoholic beverages in original containers for off-premises consumption is one of the privileges inherent in the plenary retail consumption license by virtue of the Alcoholic Beverage Law (R. S. 33:1-12(1)), such a licensee may sell for on-premises consumption or off-premises consumption or both to a relative degree as deemed best by himself. Since the privilege is conferred by the statute without restriction, it may not be diminished by municipal action. Re Lee, Bulletin 232, Item 8; Re Altman, Bulletin 248, Item 8; Re Berla, Bulletin 304, Item 10; Re Whitman, Bulletin 512, Item 6; Re Hershenstein, Bulletin 330, Item 7; Zager and Scheraga v. Passaic, Bulletin 385, Item 9; South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105, wherein it was held:

"The holder of a plenary retail consumption license may sell liquor in its original package, and he may also sell for consumption on the premises. He may choose to do one, or the other, or both. The municipal board was not justified in refusing the transfer merely because respondent admitted he did not intend to avail himself of all the privileges conferred by the license he held."

In so far as the "disciplinary proceedings" sought to impose punishment upon appellant for the lawful exercise of his licensed privilege, they were ill-founded and improper and any penalty imposed must be reversed and set aside.

Nor are the "disciplinary proceedings" saved by the allegation that appellant's action in expanding or creating a package department without approval of respondent constituted a violation of R.S.33:1-34. That section of the statute requires that written notice must be given to a license issuing authority of any change of the facts set forth in the application for license. While it was set forth in appellant's application for license that he intended to conduct a restaurant business in the licensed premises, the question which elicited that information asks, "Will the applicant conduct any business other than the sale of alcoholic beverages on the premises sought to be licensed?" (Italics added.) Since appellant, by expanding or creating his package goods department, was not thereby engaging in any business other than the sale of alcoholic beverages, no notice of such expansion or creation need have been given to respondent and hence no violation of R. S. 33:1-34 occurred. Obviously, since the application was filed for a plenary retail consumption license, respondent must have known that, if and when the application was granted, appellant might choose to exercise the full privileges of that license which, as heretofore indicated, included the privilege of selling alcoholic beverages in original containers for off-premises consumption.

Nor are the "disciplinary proceedings" saved by the allegation that appellant's action was contrary to Municipal Ordinance No. 2419. That ordinance merely imposes a numerical limit on the number of plenary retail consumption and plenary retail distribution licenses to be issued and, further, fixes a minimum distance between premises. Clearly, the conversion of the restaurant into a package goods department neither increased the number of plenary retail consumption licenses outstanding nor did it conflict with that portion of the ordinance fixing a minimum distance between the instant licensed premises and others. The internal rearrangement of the premises did not in any way extend the exterior limits thereof. Since the premises were deemed suitable for license at the time of the original transfer of license to appellant in May 1945 and upon renewal for the fiscal years 1945-46 and 1946-47, respondent cannot now invoke the indicated ordinance as a justification for restricting the operation of the licensed business to the conduct of a bar and restaurant but precluding the conduct of that business as a bar and package department.

Finally, the "disciplinary proceedings" are not saved by the contention that appellant procured the original licensing of that portion of the premises known as 903 - 18th Avenue by fraudulent representation that he proposed to conduct thereon a restaurant business. The only proof of the claimed fraud is that some eighteen months later he abandoned the restaurant business in favor of expanding his package goods business. Since during the interim appellant had been conducting a restaurant, it cannot be concluded that because he followed a changed course of action in December 1946, he was motivated by fraud in May 1945. Mere change of mind, motivated as it may be by many circumstances, is not indicative of fraudulent misrepresentation in the inception.

In view of the foregoing, I have no alternative but to reverse the action of respondent. Cf. Drozdowski v. Sayreville (N.J. Sup. Ct.), 134 N. J. L. 566.

Accordingly, it is, on this 15th day of May, 1947,

ORDERED that the order of respondent dated December 27, 1946, heretofore entered in "disciplinary proceedings" against Benedetto Nardone based on "charges" dated December 19, 1946, be and the same is hereby vacated, set aside and for nothing holden.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against LITHUANIAN-AMERICAN CITIZEN'S CLUB, INC. 6 Davis Avenue Kearny, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-28 issued by the Town Council of the Town of Kearny.

Charles F. Paulis, Jr., Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to the following charge:

"On December 7, 1946, you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5 quart bottles labeled 'Golden Wedding Blended Whiskey', both of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On December 7, 1946, an ABC agent tested twenty-five opened bottles of alcoholic beverages on defendant's premises and seized the two bottles mentioned in the charge when his preliminary test indicated that the contents of the bottles were too light in color. The agent also obtained from the licensee an unopened bottle of the same product for comparative purposes.

Analyses made by the chemist employed by the Department of Alcoholic Beverage Control disclosed that the whiskey in each of the seized bottles had an acid content of 9.6 grams per hundred liters whereas the whiskey contained in the unopened bottle had an acid content of 20.64 grams per hundred liters. The analyses also disclosed that the whiskey contained in one of the seized bottles had a solid content of 83 grams per hundred liters and the whiskey contained in the other seized bottle had a solid content of 125.4 grams per hundred liters, whereas the whiskey contained in the unopened bottle had a solid content of 120 grams per hundred liters. The chemist testified that, as to both of the seized bottles, "the acid was way off and the color was too light, much too light." He concluded that the seized

bottles did not contain genuine "Golden Wedding Blended Whiskey" as labeled. The chemist stated that the low acid content in the seized bottles indicated that a "cheap" whiskey had been added to the original contents.

A chemist employed by defendant gave lengthy testimony, during which he stated that one genuine sample of the product in question which he had analyzed had an acid content of 17 grams per hundred liters. However, it appears that defendant's chemist also analyzed the same three bottles tested by the Department's chemist and that he reached "practically the same results". The defendant's chemist indicated that the variation in solids might have been due to the fact that the seized bottles had been open for some time, but his testimony is weakened by his statement that, under such circumstances, the acid content would normally increase. Defendant also offered testimony to show that one of the seized bottles had been opened by the bartender in the presence of the ABC agent, but I am satisfied that the agent told the truth when he stated that both of the seized bottles were open when he entered the premises.

The manager, former manager and bartender employed by defendant, testified that they did not tamper with the contents of the seized bottle. Nevertheless, the licensee is strictly responsible for any "refills" found in its stock of liquor. Re Kurian, Bulletin 517, Item 2.

In this case the Department presented prima facie evidence that the seized bottles contained illicit beverages. The evidence presented by defendant does not overcome this presumption. Hence I find defendant guilty as charged. The Panda v. Driscoll (Ct. E. & A. 1947), 135 N.J.L. 164.

Defendant has no prior adjudicated record. I shall suspend its license for a period of fifteen days. Re Nurse, Bulletin 680, Item 7.

Accordingly, it is, on this 14th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-28, issued by the Town Council of the Town of Kearny to Lithuanian-American Club, Inc., for premises 6 Davis Avenue, Kearny, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. May 26, 1947, and terminating at 2:00 a.m. June 10, 1947.

ERWIN B. HOCK
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - EFFECTIVE DATE FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against
 THOMAS MILONAKIS
 T/a ACTAION GRILL
 1001-1009 Ocean Avenue
 Asbury Park, N. J.,
 Holder of Plenary Retail Consumption License C-12 issued by the City Council of the City of Asbury Park.

O R D E R

BY THE COMMISSIONER:

It appearing that by order dated September 13, 1946, the license held by the above defendant was suspended for a period of thirty days, and that the effective date of said suspension was reserved for future determination (Re Milonakis, Bulletin 730, Item 6), and

It appearing that defendant is entitled to the benefit of a subsequently adopted policy whereby five days were remitted for a guilty plea (Re Gelb, Bulletin 741, Item 8), and

It further appearing that defendant's premises have now been reopened for business;

It is, on this 16th day of May, 1947,

ORDERED that the suspension heretofore imposed be reduced from thirty to twenty-five days, and that Plenary Retail Consumption License C-12, issued by the City Council of the City of Asbury Park to Thomas Milonakis, t/a Actaion Grill, for premises 1001-1009 Ocean Avenue, Asbury Park, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. June 2, 1947, and terminating at 2:00 a.m. June 27, 1947.

ERWIN B. HOCK
 Commissioner.

4. APPELLATE DECISIONS - DAVIS v. SOUTH RIVER, MARONSKI AND ZOCHOWSKI.

ARTHUR DAVIS,)

Appellant,)

-vs-

BOROUGH COUNCIL OF THE)
BOROUGH OF SOUTH RIVER, and)
WALTER MARONSKI and THEODORE)
ZOCHOWSKI, t/a FERRY STREET)
LIQUOR STORE,)

Respondents)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Heston N. Potts, Esq., Attorney for Appellant.
Herman D. Ringle, Esq., Attorney for Respondents Maronski and
Zochowski.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Borough Council in issuing a plenary retail distribution license to respondents Maronski and Zochowski for premises at 25 Ferry Street, South River.

Appellant, a resident and taxpayer of the Borough of South River, alleges in effect that the issuance of the license in question was an abuse of the discretionary power which has been conferred upon respondent Borough Council by the provisions of R. S. 33:1-19. Upon an appeal filed pursuant to R. S. 33:1-22, the Commissioner has power to set aside a license if it appears that the local issuing authority abused its discretionary power in issuing the license. Hudson Bergen County Retail Liquor Stores v. Hoboken and Novak (decided by New Jersey Court of Errors and Appeals on April 24, 1947).

Appellant testified that the population of the Borough is approximately 12,000 and that, prior to November 12, 1946, when the license in question was issued, thirty-nine plenary retail consumption licenses and two plenary retail distribution licenses had been issued. Appellant contends, therefore, that there was no need for the issuance of any additional licenses of either type in the Borough.

At a meeting of the Borough Council held on November 12, 1946, Councilmen Allgair, Dominiecki and White voted to deny the application filed by respondents Maronski and Zochowski. Councilmen Brilla, Palowski and Solenski voted to grant said application. Mayor Maliszewski, who is authorized to vote in case of a tie, then voted in favor of the application and the license was subsequently issued.

At the hearing held herein, Mayor Maliszewski testified that it had been the established policy of the Borough Council not to issue any additional plenary retail consumption licenses. The Mayor stated that one of his reasons for voting in favor of the application in question was because the Legislature, in April 1946, had provided that plenary retail distribution licenses should be limited to one for every 3,000 inhabitants of the municipality. That reason alone would be insufficient because that legislation fixed a limit but did not require any local authority to issue additional licenses up to the number fixed therein. However, the Mayor further testified that in his opinion there was a definite need for an additional plenary retail distribution license at 25 Ferry Street. He based this opinion upon the fact that the two existing licenses of this type had been issued for premises on Main Street a few blocks distant from 25 Ferry Street.

Charles J. Brilla testified that in his opinion there was need for an additional plenary retail distribution license in the Borough. Mr. Brilla had been defeated for reelection prior to the consideration of the application in question, but he testified that that fact did not influence his vote. He admitted that he had previously expressed the opinion that no additional plenary retail consumption licenses should be issued, but denied that he had previously expressed any opinion as to additional plenary retail distribution licenses.

Theodore Zochowski, one of the respondents herein, testified that he formerly conducted business as a florist at 25 Ferry Street, and that numerous persons had expressed to him their belief that there was need for a package goods store on Ferry Street. Photographs introduced into evidence establish that the section is devoted to business purposes. The evidence also shows that in the immediate vicinity of 25 Ferry Street there are numerous premises for which plenary retail consumption licenses have been issued.

It has been held that a package goods license fills a need quite distinct from that supplied by the tavern, and it may well be an important matter of social convenience and necessity that such a license be granted. Sanford Drug Co. v. Maplewood, Bulletin 71, Item 6; Budd Lake Market v. Mount Olive, Bulletin 160, Item 6. The testimony of Councilman Brilla and Mayor Maliszewski indicates that in their opinion there was need for the additional plenary retail distribution license despite the existence of the large number of plenary retail consumption licenses and, in view of all the surrounding circumstances, I cannot say that this conclusion was unreasonable.

The evidence shows that Councilmen Brilla and Solenski, who voted in favor of the application, had previously been defeated for reelection and that their term expired on December 31, 1946. The evidence also shows that Councilman White, who had voted to deny the application, had previously been defeated for reelection and that his term expired on December 31, 1946. It is indicated that the present members of the Borough Council may not favor renewal of this license on July 1, 1947, but that is not material to the present proceeding. In this case I am called upon to pass upon the action of the Borough Council as it was constituted at the time the license was granted.

I find that appellant has failed to sustain the burden of proving that the action of the issuing authority was either arbitrary or unreasonable, and that there is some evidence of public need or convenience to be served by the license. Hence, the decision of respondent Borough Council to grant a plenary retail distribution license to respondents Maronski and Zochowski will be affirmed.

Accordingly, it is, on this 16th day of May, 1947,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - DAVIS v. SOUTH RIVER AND COST.

ARTHUR DAVIS,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH)
OF SOUTH RIVER, and RALPH COST,)
t/a COST'S LIQUOR STORE,)
Respondents)

Heston N. Potts, Esq., Attorney for Appellant.
George S. Applegate, Jr., Esq., Attorney for Respondent Ralph Cost.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Borough Council in issuing a plenary retail distribution license to respondent Ralph Cost for premises at Washington and Obert Streets, South River.

At the hearing herein it was stipulated that the evidence given by the appellant in Davis v. South River and Maronski and Zochowski (decided herewith) should be considered as if the same had been given in the present case.

At a meeting of the Borough Council held on November 25, 1946, Councilman Allgair voted to deny the application filed by respondent Ralph Cost. Councilmen White, Brilla, Palowski and Solenski voted to grant said application.

At the hearing held herein Ralph S. White testified that, after he had voted to deny the Maronski and Zochowski application, he "felt that perhaps a review of the situation was in order". He further testified:

"I found this, that while there are a considerable number of plenary retail consumption licenses in South River *** a great many of them were confined to a very small area and, as a matter of actual fact, in the matter of service and convenience to the public it was my opinion that there were opportunities for other licensed places."

He further testified that the premises mentioned in the Cost application were located in a densely populated area directly across the street from the Post Office and expressed the opinion that the Cost package goods store was needed in its present location. Although Mr. White had previously been defeated for reelection and his term expired on December 31, 1946, there is no evidence that he was improperly motivated in voting to grant the application.

At the hearing held herein Ralph Cost testified that his licensed premises are located in a one-story hollow tile building which he owns; that he opened his licensed business on December 10, 1946, and that he did a substantial business between that date and the date of hearing. He admitted that there are a number of taverns in the same section of the municipality in which his premises are located.

Appellant contends that, after written objections had been filed, no hearing had been scheduled to be held in accordance with Rules 6 and 7 of State Regulations No. 2. That fact was admitted. However, the Borough Clerk testified that numerous objectors were present at the meeting held on November 25, 1946, and that they were given an opportunity to be heard. Moreover, the objectors were given an

At the hearing held herein, Ralph S. White testified that he voted in favor of the application because "it is approximately a mile to the nearest package store" and "to the nearest tavern it is about a half-mile." Charles Brilla testified that one of his reasons for voting in favor of the present application was because the premises are located "in a place that I feel definitely needed a package store." Edward William Winkler testified that he began to operate under his license on December 20, 1946, and that he was doing a satisfactory business between that time and the date of hearing. He further testified that the nearest package goods store is exactly eight-tenths of a mile from his premises.

There is nothing in the case to indicate that any of the Councilmen was improperly motivated in voting for or against the issuance of this license.

It is indicated that the present members of the Borough Council may not favor renewal of this license on July 1, 1947, but that is not material to the present proceeding.

I find that appellant has failed to sustain the burden of proving herein that the action of the Borough Council was either arbitrary or unreasonable, and that there is some evidence of public need or convenience to be served by the license. Hence, the decision of respondent Borough Council to grant a plenary retail distribution license to respondent Edward William Winkler is affirmed.

Accordingly, it is, on this 16th day of May, 1947,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

7. APPELLATE DECISIONS - DAVIS v. SOUTH RIVER AND TRZASKA.

ARTHUR DAVIS,)
Appellant,)
-vs-)
BOROUGH COUNCIL OF THE BOROUGH)
OF SOUTH RIVER, and BERNARD)
TRZASKA, t/a JEFFRIE INN,)
Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

Heston N. Potts, Esq., Attorney for Appellant.
Thaddeus B. Leszczynski, Esq., Attorney for Respondent Bernard Trzaska.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Borough Council in issuing a plenary retail consumption license to respondent Bernard Trzaska for premises at 12 Northside Avenue, South River.

Appellant, a resident and taxpayer of the Borough of South River, alleges in effect that the issuance of the license in question was an abuse of the discretionary power which has been conferred upon respondent Borough Council by the provisions of R. S. 33:1-19. Upon an appeal filed pursuant to R. S. 33:1-22, the Commissioner has power to set aside a license where it appears that the local issuing authority abused its discretion in issuing the license. Hudson Bergen County Retail Liquor Stores v. Hoboken and Novak (decided by N. J. Court of Errors and Appeals on April 24, 1947).

At the hearing herein it was stipulated that the direct evidence given by the appellant in Davis v. South River and Maronski and Zochowski (decided herewith) should be considered as if the same had been given in the present case. In the cited case appellant testified that the population of the Borough is approximately 12,000 and that, prior to the issuance of the license in question, thirty-nine plenary retail consumption licenses had been issued. Appellant contends, therefore, that there was no need for the issuance of any additional plenary retail consumption licenses.

At a meeting of the Borough Council held on November 25, 1946, Councilman Allgair voted to deny the application filed by respondent Bernard Trzaska. Councilmen White, Brilla, Palowski and Solenski voted to grant said application.

At the hearing held herein the Borough Clerk testified that four persons, including the appellant, had filed written objections against the issuance of the license and that at the meeting held on November 25, 1946, "there were people who got up and verbally said they favored it for the ex-service men, of which Mr. Trzaska is one." Mayor Maliszewski testified that there was no need for any more plenary retail consumption licenses in the Borough. Ralph White; Charles Brilla and Alex Palowski testified as to their respective reasons for voting for the license. Mr. White and Mr. Brilla, who had previously been defeated for reelection, had expressed themselves on numerous occasions as being opposed to the issuance of any further plenary retail consumption licenses. Their testimony indicates that they had given little, if any, attention to the need for an additional license but had voted in favor of the application principally because respondent Trzaska was a veteran. Councilman Palowski testified as follows:

"I thought, when I voted, that just one more wouldn't be too much for the Borough of South River and that section where the people mostly appreciate it, which is closer to home where the working people could go home and go out with a pitcher of beer, instead of going on Main Street with a pitcher of beer. They would prefer to go on a side street."

The reasons given by the three witnesses last named are not at all convincing in view of the large number of plenary retail consumption licenses in the Borough and particularly in that section of the Borough in which the Trzaska premises are located. The evidence shows that a plenary retail consumption license has been issued for premises at 16 Northside Avenue, which is located three doors from the Trzaska premises; and that there are nine premises licensed for consumption along Whitehead Avenue and a contiguous street within five or six blocks of the Trzaska premises.

Under all these circumstances it appears that respondent Borough Council abused its discretionary power in issuing an additional plenary retail consumption license to respondent Bernard Trzaska and, hence, I shall reverse the action of the Borough Council.

Accordingly, it is, on this 16th day of May, 1947,

ORDERED that the action of respondent Borough Council in issuing a plenary retail consumption license to Bernard Trzaska, for premises at 12 Northside Avenue, South River, be and the same is hereby reversed, effective May 22, 1947, at 2:00 a.m., that all operations under said license shall cease at that time, and that the license certificate shall be surrendered thereafter to respondent Borough Council.

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS - DAVIS v. SOUTH RIVER AND RECKAGE.

ARTHUR DAVIS,
)
 Appellant,
)
 -vs-
)
 BOROUGH COUNCIL OF THE BOROUGH
 OF SOUTH RIVER, and JOHN F.
 RECKAGE, t/a RUSSIAN TURKISH
 BATHS,
)
 Respondents
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Heston N. Potts, Esq., Attorney for Appellant.
 George S. Applegate, Jr., Esq., Attorney for Respondent John F.
 Reckage.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Borough Council in issuing a plenary retail consumption license to respondent John F. Reckage for premises at 6 Serviss Street, South River.

Appellant's reasons for opposing the issuance of the license are set forth in Davis v. South River and Maronski and Zochowski (decided herewith).

At a meeting of the Borough Council held on November 25, 1946, Councilman Allgair voted to deny the application filed by respondent John F. Reckage. Councilmen White, Brilla, Palowski and Solenski voted to grant said application.

At the appeal hearing, Councilmen White and Brilla testified that they voted in favor of this application because the respondent Reckage did not intend to operate an ordinary type of tavern, but sought the license merely for the accommodation of his prospective patrons at a Russian Turkish Bath which he intended to operate. Both of these witnesses had previously expressed themselves as being opposed to the issuance of any further plenary retail consumption licenses.

Respondent Reckage testified that he desired the license for the convenience of his prospective patrons "to satisfy the people *** going to come there and take the Russian Turkish Baths." To the question "Would it be a good business policy to open a tavern at that location?", respondent Reckage replied "No."

Four witnesses appeared at the appeal hearing to testify as to a need for the license. In addition, there was testimony that two petitions in behalf of Mr. Reckage were presented to the respondent Council. But it seems abundantly clear from the record before me that the license application was not granted because of the need for an additional plenary retail consumption license in the Borough (in fact, the Councilmen testified to the opposite effect). The only reasons which appear for granting the license are that it would be an added convenience for applicant's business, and because applicant is a veteran.

I am convinced, from the record, that public convenience and necessity did not warrant the granting of the license here in question. In view of the large number of plenary retail consumption licenses in the Borough and of the conclusion, freely concurred in by the respondent Council, that at least an adequate number of plenary retail consumption licenses existed in the Borough, I must find that the Council abused its discretionary power in issuing a

plenary retail consumption license to respondent, Reckage. Hence I shall reverse the Council's action. See Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken and Novak (decided by N. J. Court of Errors and Appeals on April 24, 1947).

Accordingly, it is, on this 16th day of May, 1947,

ORDERED that the action of respondent Borough Council in issuing a plenary retail consumption license to John F. Reckage for premises at 6 Serviss Street, South River, be and the same is hereby reversed, effective May 22, 1947, at 2:00 a.m.; that all operations under said license shall cease at that time, and that the license certificate shall be surrendered thereafter to respondent Borough Council.

ERWIN B. HOCK
Commissioner.

9. APPELLATE DECISIONS - HUTCHINS v. PATERSON.

AUGUSTUS HUTCHINS,)
Appellant,)

-vs-

BOARD OF ALCOHOLIC BEVERAGE)
CONTROL OF THE CITY OF)
PATERSON,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Grabow & Phelan, Esqs., by George Grabow, Esq., Attorneys for)
Appellant.)
George Surosky, Esq., Attorney for Respondent.)
Reuben H. Reiffin, Esq., Attorney for Objectors.)

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application to transfer his plenary retail consumption license from 166 - 16th Avenue to 39 Carroll Street, Paterson.

The application was denied on the stated bases of "the increased problem of juvenile delinquency in the area of the proposed tavern; the opposition of the religious and educational groups in the area, as well as the Board's consideration of the general welfare of the community."

In his petition of appeal appellant urges that respondent's action was erroneous in

- "(a) That said refusal to transfer was arbitrary and capricious.
- "(b) That the said reasons set forth do not constitute a valid reason for the refusal of the transfer of said license.
- "(c) That the reasons advanced do not constitute a valid exercise of discretion and were not based upon the facts as presented at said hearing.
- "(d) That no motion, formal or otherwise was offered or submitted by any member of the issuing authority for respondents to deny the application at the regular public meeting on January 22, 1947.
- "(e) That no roll call or polling of the votes of the members of the respondent Board was taken to ascertain their respective votes, at the regular public meeting of January 22, 1947.

- "(f) That the proceedings in effectuating the judgment which denied the application was illegal, invalid and without any force and effect.
- "(g) That the respondent board failed to conform to the required rules of law in pronouncing judgment in the matter herein.
- "(h) That the denial of the application herein imposes a hardship upon the applicant.
- "(i) That there is a public necessity for a license in the neighborhood, since there is no other tavern in the immediate vicinity."

As to reasons (d), (e), (f) and (g): These reasons relate merely to matters of procedure rather than the merits. Even assuming their truth, they are technical rather than substantial. As the Court of Errors and Appeals said in Hudson Bergen County Retail Liquor Stores Assn. and Driscoll v. Hoboken et al. (Ct. E. & A., April 24, 1947):

"Meticulous technicalities ought not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil."

There is, therefore, no merit in these stated reasons requiring reversal of respondent's action.

As to reasons (a), (b), (c) and (i): At the hearing on appeal it was established that the premises sought to be licensed are situated in a mixed residential and business neighborhood. The determination of the question as to the number of licensed premises which should be permitted in any such neighborhood is a matter confided to the sound discretion of the issuing authority. Moran v. West Orange, Bulletin 143, Item 8. In the instant case there appear to be seven licensed premises within the immediate neighborhood, with many residents in protest voicing their objections at the hearing before respondent and again on appeal. In addition, written objection to the transfer was filed by the Principal and Parent Teachers Association of nearby School No. 6, and a petition bearing the names of 408 residents of the neighborhood objecting to the transfer was also filed with respondent. The reasons advanced by respondent are certainly valid, were based on facts existing, and indicate that the vicinity is already adequately supplied with licensed premises. By the same token, there is an absence of any compelling evidence of public necessity for an additional licensed premises in the neighborhood and, consequently, the action of respondent cannot be deemed arbitrary and capricious.

As to reason (h): The mere fact that denial of application will result in personal hardship to applicant is a matter not of sufficient weight to overcome the primary consideration of public convenience and necessity that is dispositive of these liquor licensing matters. The claim of personal hardship is based on the inarticulate major premise that any individual is entitled to a license at any location desired by him. This, of course, is not so since no one is entitled to a license to sell liquor (Bumball v. Burnett, 115 N. J. L. 254), or even a renewal of a former license (Zicherman v. Driscoll, 133 N. J. L. 586). The public interest is paramount; the individual interest is incidental. Cf. Samalonis v. Pennsauken, Bulletin 622, Item 1.

The burden of establishing that the action of a respondent issuing authority is erroneous and should be reversed rests with the appellant. State Regulations No. 15, Rule 6. For the reasons above stated, appellant has failed to sustain that burden and, consequently, the action of respondent will be affirmed.

Accordingly, it is, on this 16th day of May, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FRANCES METZ & ISIDOR MININSOHN T/a BOND WINE & LIQUOR STORE 11 Washington Street Dover Township, Toms River, N.J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Dover.)

Harold Feinberg, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead non vult to charges alleging that (1) they sold a 4/5 quart bottle of Don C Rum, Gold Label, and (2) a one-gallon jug of Marca Petri, Vino Rosso Pastoso wine, respectively, below the minimum consumer prices, in violation of Rule 6 of State Regulations No. 30.

On March 11, 1947, an investigator of this Department purchased a 4/5 quart bottle of Don C Rum, Gold Label, from an employee of defendants for \$3.50. The established minimum resale price of this product is \$3.72. Bulletin 751. The investigator was not accompanied by any other member of this Department nor did he make known his identity to the salesman.

On March 12, 1947, the ABC agent purchased a one-gallon jug of Marca Petri, Vino Rosso Pastoso wine from the same salesman at nineteen cents below the established minimum resale price. Bulletin 751. On this occasion the ABC agent who purchased the wine, as well as another investigator of the Department of Alcoholic Beverage Control who had accompanied him, made known their identities to the person who made the sale.

Defendants have no prior record.

Since the investigator did not reveal his identity after the first violation was discovered, I shall suspend the license for the minimum period of ten days. Cf. Re Weiss and Hochberg, Bulletin 514, Item 10. Five days will be remitted for the plea, making a net suspension of five days.

Accordingly, it is, on this 16th day of May, 1947,

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Dover to Frances Metz & Isidor Mininsohn, t/a Bond Wine & Liquor Store, for premises 11 Washington Street, Dover Township, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. June 2, 1947, and terminating at 9:00 a.m. June 7, 1947.

ERWIN B. HOCK Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

SS Sandy Hook Inc.

SS Sandy Hook

Atlantic Highlands, N. J.

Application for Plenary Retail Transit License filed May 22, 1947.

Martin S. Marks

131 - 10th Ave.

New York, N. Y.

Application for Transportation License filed May 23, 1947.

Walt Stewart, Inc.

60 Park Pl.

Newark, N. J.

Application for Plenary Wholesale License (1947-48 fiscal year)
filed May 26, 1947.

Erwin B. Hook

Commissioner.