

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

BULLETIN NUMBER 88

September 21, 1935.

1. APPELLATE DECISIONS - HERRMAN v. LANDIS

IRA C. HERRMAN,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF LANDIS	)	
(CUMBERLAND COUNTY),	)	
Respondent	)	
-----)		

New Jersey State Library

Moe A. Joseph, Esq., Attorney for Appellant.

M. J. Greenblatt, Esq., Attorney for Respondent.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at the intersection of Wheat Road and East Avenue, Landis Township.

Respondent contends that the application was properly denied because the neighborhood is residential, the residents object to the issuance of the license, and the existing places adequately service the demands of the vicinity.

Respondent Township is essentially an extensive rural community with a population of approximately 17,000. The vicinity in which appellant's premises are located is entirely residential. Indeed appellant's premises themselves consist of a private residence which will require extensive alterations before being suitable for the sale of alcoholic beverages or the conduct of any other mercantile business. To the north and west of these premises are large uninhabited swamplands. Twenty-five consumption licenses have been issued in the Township, three being approximately one mile from appellant's premises. Appellant, when asked on direct examination whether in his opinion the section in the immediate locality of his premises was adequately serviced by these existing licensees, replied he did not know. Although one person, a resident in the vicinity, testified in favor of issuing a license to appellant, the record establishes that the general sentiment of the surrounding residents was to the contrary.

In view of the character of the neighborhood, the objections of the residents therein and the existence of a sufficient number of licensed places adequately supplying the demands of the community, it cannot be said that the denial of appellant's application was unreasonable. See Vannozzi v. Trenton, Bulletin #35, Item #7, where the Commissioner sustained the action of the local issuing authority in denying an application for premises located in a residential neighborhood, and Haenelt v. Haworth, Bulletin #57, Item #11, where the Commissioner sustained the action of the local issuing authority in denying an application where the existing licensed places were adequate to service all reasonable demands. See also Apgar v. Tewksbury, Bulletin #66, Item #2; Hickey v. Lopatcong

Bulletin #68, Item #1; Hackman v. Greenwich, Bulletin #71, Item #13; Hutchinson v. Wyckoff, Bulletin #84, Item #3.

The action of respondent is affirmed.

D. FREDERICK BURNETT  
Commissioner

By: Nathan L. Jacobs  
Chief Deputy Commissioner

Dated: August 29, 1935.

2. APPELLATE DECISIONS - LOCKETT v. WAY

GRACE T. LOCKETT,	)	
Appellant,	)	
-vs-	)	
HONORABLE PALMER M. WAY, JUDGE	)	ON APPEAL
OF THE COURT OF COMMON PLEAS OF	)	CONCLUSIONS
CAPE MAY COUNTY, AND ISSUING	)	
AUTHORITY,	)	
Respondent	)	
-----	)	

Robert Bright, Esq., Attorney for Appellant.

Samuel F. Eldredge, Esq., Attorney for Respondent.

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at Pennsylvania Avenue and the Beach, in Lower Township.

Respondent contends that the application was properly denied for the reason, among others, that there is a sufficient number of licensed places in the vicinity of the premises sought to be licensed, and an additional license in said vicinity would be socially undesirable.

The right of an issuing authority, even in the absence of a formal limitation of the number of licenses to be issued, to deny an application where the granting thereof would result in the existence of too many licensed places in any particular vicinity is well settled. Bumball v. Burnett, 115 N. J. L. 254 (Sup. Ct. 1935) Bader v. Camden, Bulletin #44, Item #8; Furman v. Springfield, Bulletin #49, Item #6; Clement v. Loder, Bulletin #52, Item #5; Faccidomo v. Union Beach, Bulletin #55, Item #8.

Appellant's premises are located in a residential section of Lower Township known as Wildwood Villas, approximately one mile square, with an all-year population of 100 and a summer population of 2500. Five plenary retail consumption licenses have been issued therein, three within a block and a half in each direction from appellant's premises. There is no evidence that public necessity

and convenience dictate the issuance of an additional license for premises located in said vicinity or that the determination of respondent is unreasonable.

The action of respondent is affirmed.

D. FREDERICK BURNETT  
Commissioner.

By: Nathan L. Jacobs,  
Chief Deputy Commissioner

Dated: August 29, 1935.

3. APPELLATE DECISIONS - GEIGER v. READINGTON

Frank W. Geiger, trading as	)	
"Idle Rest Hotel"	)	
	)	
Appellant,	)	On Appeal
	)	CONCLUSIONS
--vs--	)	
	)	
Township Committee of the	)	
Township of Readington,	)	
	)	
Respondent.)	)	
- - - - -)		

Braelow & Tepper, Esqs., by Herman W. Brans, Esq., Attorneys  
for appellant.

Philip R. Gebhardt, Esq., Attorney for respondent.

This is the third appeal from the denial of appellant's applications for a plenary retail consumption license for premises located on Readington Road, Readington. See Bulletin #37, Item #4, and Bulletin #79, Item #11.

At the last appeal respondent contended that appellant's application was properly denied because of its limitation of the number of licenses to be issued and its issuance of the allotted number. Appellant contended that the application of the limitation to him was improper because (1) the three licensees were improperly preferred over him, and (2) his premises constituted a hotel. These contentions were overruled for the reasons fully set forth in Bulletin #79, Item #11.

In the present appeal appellant again advances the contention that the premises sought to be licensed consist of a hotel to which the limitation of three cannot be made applicable. This issue was fully presented at the hearing on the last appeal. Proper administration requires that aside from exceptional cases where the clear interests of justice compel a contrary conclusion, determinations shall be final and not subject to redeterminations. Cf. Bulletin #79, Item #4. No such exceptional situation is here presented. Indeed, the only additional evidence introduced on the controverted issue was to prove that the road on which the premises are located is covered with crushed stone and is not dangerous on a rainy day. These facts are clearly insufficient to alter the

conclusion that the appellant's premises do not constitute a hotel within the controlling principles announced by the Commissioner. See Bulletin #84, Item #3.

The action of respondent is affirmed.

D. FREDERICK BURNETT  
Commissioner.

By: Nathan L. Jacobs  
Chief Deputy Commissioner

Dated: September 9, 1935.

4. APPELLATE DECISIONS - RADICH v. WOODBRIDGE

Mary Radich,	)	
	)	
Appellant,	)	
	)	
-vs-	)	
	)	On Appeal
Township Committee of the	)	CONCLUSIONS
Township of Woodbridge,	)	
	)	
Respondent.	)	

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Mary Radich, Pro Se.  
Leon E. McElroy, Esq., Attorney for Respondent.

This is an appeal from denial of a plenary retail consumption license for premises known as 19 Oakland Avenue, Seward.

Appellant admitted that she had not obtained, or paid the fee for, a Federal tax stamp, prior to the filing of the application or the disposition thereof by respondent. She also admitted that the license fee did not accompany her application and that the original application filed by her has been returned. These facts are fatal to the maintenance of this appeal. See Snock vs. Harding, Bulletin #83, Item #4; Andreach vs. Keansburg, Bulletin #73, Item #14; Quinlan vs. Allenhurst, Bulletin #81, Item #17.

The appeal is, therefore, dismissed without prejudice however to appellant's right to file a new application in accordance with the Act.

D. FREDERICK BURNETT,  
Commissioner

By: Nathan L. Jacobs  
Chief Deputy Commissioner

Dated: September 12, 1935.

5. APPELLATE DECISIONS - RETAIL LIQUOR DISTRIBUTORS  
ASSOCIATION OF ATLANTIC CITY vs. ATLANTIC CITY  
AND AGOSTINI

Retail Liquor Distributors )  
Association of Atlantic City, )  
a corporation of the State of )  
New Jersey, )  
Appellant, )  
-vs- )  
Board of Commissioners of the )  
City of Atlantic City and )  
Joseph Agostini, )  
Respondents )  
----- )

On Appeal  
CONCLUSIONS

Paul M. Salburg, Esq., Attorney for Appellant  
Wheeler Grey, Esq., Attorney for Respondent, Joseph Agostini,  
Anthony J. Siracusa, Esq., by Samuel Backer, Esq., Attorney  
for Respondent, Board of Commissioners of the City of  
Atlantic City

This is an appeal from the issuance by the respondent, Board of Commissioners of the City of Atlantic City, of a plenary retail consumption license to respondent, Joseph Agostini, for premises located at #626 Pacific Avenue, Atlantic City.

At the hearing, counsel for the appellant consented to abandon the appeal provided a view of the licensed premises disclosed no violation of section 13(1) of the Control Act. From a view of the premises, taken on August 24, 1935, it appears that the licensee operates a delicatessen store adjacent to this tavern at #626 Pacific Avenue. The respective premises are substantially separate and distinct. The fact that there is a door in the rear of the tavern leading into a hallway from which the delicatessen store may, in turn, be entered through another door, does not alter this conclusion. See Bulletin #35, Item #15.

The appeal herein is dismissed.

D. FREDERICK BURNETT  
Commissioner

By: Nathan L. Jacobs  
Chief Deputy Commissioner

Dated: September 12, 1935

6. APPELLATE DECISIONS - CONOVER v. ATLANTIC CITY

Harry Conover, )  
Appellant, )  
-vs- )  
Board of Commissioners of the )  
City of Atlantic City, )  
Respondent )  
----- )

On Appeal  
CONCLUSIONS

Thomas G. Siddall, Esq., Attorney for Appellant,  
Anthony J. Siracusa, Esq., by Samuel Backer, Esq., Attorney for Respondent

This is an appeal from the denial of appellant's application for the renewal of his plenary retail consumption license for premises located at #203 Melrose Avenue, Atlantic City.

At the hearing on appeal, respondent withdrew its answer and recommended that a license be issued to appellant. In addition, evidence was introduced to support the propriety of the issuance of the license sought.

The action of respondent is reversed.

D. FREDERICK BURNETT,  
Commissioner

By: Nathan L. Jacobs  
Chief Deputy Commissioner

Dated: September 12, 1935

7. APPELLATE DECISIONS - AGNELLINO v. UNION BEACH

Vincenza Agnellino, )  
Appellant, )  
-vs- )  
Borough Council of the )  
Borough of Union Beach, )  
Respondent )  
----- )

On Appeal  
CONCLUSIONS

Maurice Warner, Esq., Attorney for Appellant  
Ezra Karkus, Esq., Attorney for Respondent

This is an appeal from the denial of an application for a plenary retail consumption license for premises located on Front Street opposite Pine Street, Union Beach.

Respondent contends inter alia that the application was properly denied for the reason that there are a sufficient number of licensed places in the vicinity of the premises sought to be licensed by appellant and that an additional license in said vicinity would be socially undesirable. Union Beach is essentially a summer resort with a permanent population of about 2000, which increases to about 4500 during the summer. This increase includes a large percentage of women and children. There is testimony that on Sundays during the summer season the number may be increased to 7500 persons.

Twelve plenary retail consumption licenses have been issued in Union Beach, one within 100 feet of appellant's premises, a second within 200 feet and a third within 300 feet. All these places, as well as appellant's, are located on the beach front and there is testimony that an additional license for premises along the beach front would be socially undesirable.

Faccidomo vs. Union Beach, Bulletin #55, Item #8, was an appeal from the denial of an application for the same premises now sought to be licensed by appellant. The Commissioner there sustained the respondent's denial based on the adequacy of the number of existing licensed places in the vicinity on the ground that it did not appear that public necessity or convenience dictated the issuance of the additional license sought. The facts presented on the controverted issue in the instant case are substantially the same as those presented in the Faccidomo case and no cause appears for a modification of the conclusion therein reached.

Appellant advances the further contention that respondent unjustly discriminated against her in that it issued a license to another person whose application was filed after appellant's application was filed. This is of no present significance since the license was not issued for premises in the vicinity of those sought to be licensed by appellant and there is nothing to show that it was issued for premises in a vicinity adequately provided for. Battaglia vs. Glassboro, Bulletin #66, Item #4.

The action of respondent is affirmed.

D. FREDERICK BURNETT  
Commissioner

By: Nathan L. Jacobs  
Chief Deputy Commissioner

Dated: September 14, 1935

## 8. APPELLATE DECISIONS - FUCCELLO v. TRENTON

DANIEL FUCCELLO,	)	
Appellant,	)	
-vs-	)	On Appeal
	)	CONCLUSIONS
CITY COUNCIL OF THE CITY	)	
OF TRENTON,	)	
Respondent.	)	
-----	)	

Crawford Jamieson, Esq., Attorney for Appellant.

Adolph F. Kunca, Esq., Attorney for Respondent.

This is an appeal from the denial of appellant's application for the renewal of his plenary retail consumption license for premises located at #219 Ferry Street, Trenton.

After denying the application, respondent conducted an informal hearing, as a result of which it withdrew its answer and recommended that a license be issued to appellant. In addition, at the hearing of the appeal evidence was introduced to support the propriety of the issuance of the license sought.

The action of respondent is reversed.

D. FREDERICK BURNETT,  
Commissioner

By: Nathan L. Jacobs  
Chief Deputy Commissioner

Dated: August 28, 1935.

## 9. REVOCATION PROCEEDINGS - LOUIS COHEN, trading as STATES FAST FREIGHT CO.

In the Matter of Proceedings to	:	
Revoke Transportation License No.	:	
T-42, issued to Louis Cohen, trad-	:	On Revocation
ing as States Fast Freight Co.,	:	
216 South Victoria Avenue, Atlantic:	:	CONCLUSIONS AND ORDER
City, N. J.	:	

Jerome B. McKenna, Esq., Attorney for Department,  
Frederick M. P. Pearse, Esq., by Max Mehler, Esq.,  
Attorney for the Licensee.

Charges and Notice to Show Cause why Transportation License No. T-42 issued to Louis Cohen, trading as States Fast Freight Co. should not be suspended or revoked, were duly served upon the licensee. Upon the return date of the notice a hearing was held and the licensee appeared by counsel and was afforded full opportunity to be heard.



Charge #1 alleges that the Licensee committed acts of violence upon Morris Geller and Charles Levy, employees of Weisbrod and Hess Corporation, holder of New Jersey Limited Wholesale License No. WL-63, and acts of sabotage to its property, with intent to interfere and actually interfering with the conduct of its business. Although the evidence establishes the commission of acts of violence and sabotage, it does not clearly connect the licensee therewith. The licensee testified that the acts were committed without his knowledge or consent, and there is some intimation that they may have been connected with labor difficulties. However, in view of the findings hereinafter set forth, no finding need be made on this charge. Charge #2, which related to the first charge, was withdrawn because of the absence of an essential witness due to illness.

Charges #3-6 inclusive allege that the Licensee solicited orders for and sold beer to various licensees in New Jersey and in connection therewith unlawfully warehoused alcoholic beverages in a truck owned by him and located in a lot at 1021 Everett Street, Camden. The evidence supporting these charges was uncontroverted. A Transportation License authorizes its holder to transport alcoholic beverages; it does not authorize him to sell or solicit the sale of alcoholic beverages. There must be a finding of guilty on each of charges #3 - 6.

Charge #7 alleges that the licensee falsely swore in his application that he had never been convicted of a crime and Charge #8 alleges that he was convicted of a crime involving moral turpitude, thereby disqualifying him from holding a license under the provisions of Section 22. The evidence establishes that in November, 1928 the Grand Jury of Allegheny County, Pennsylvania did present that the licensee and others

"with force and arms unlawfully did then and there falsely and maliciously conspire and agree together and with another person and other persons whose name and names are to said Inquest unknown, to cheat and defraud William Fox, doing business under the name, title and style of William Fox and Company, of his goods, moneys, chattels and other property and other dishonest, malicious and unlawful acts then and there to do to the prejudice of the said William Fox, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania."

The licensee was tried before and found guilty by a jury, but a new trial was allowed by the Court. Thereafter the licensee pleaded nolo contendere and the consequent conviction was duly recorded. It may hardly be doubted that this conviction for conspiracy to cheat and defraud constitutes conviction of a crime involving moral turpitude within the meaning of Section 22 of the Control Act. See Bulletin #70, item #2.

The licensee's testimony with respect to his false application and the circumstances surrounding the conviction was entirely unsatisfactory. He stated that he did not know that a conviction had been recorded against him until shortly before the hearing in these proceedings, and that the plea of nolo contendere must have been entered without his consent. I am satisfied that the licensee is guilty as alleged in charges #7 and #8.

Charge #9 alleges that the licensee in connection with the transportation of beer from Pennsylvania into New Jersey, collected the purchase price, or part thereof, from the consignee

buyer, in violation of Section 239 of the United States Criminal Code (18 U.S.C.A., Section 389). The testimony in support of this charge was uncontroverted.

In view of the aforesaid findings, particularly the findings on charges #7 and #8, there must be a revocation of the license. Accordingly, it is on this 12th day of September, 1935,

ORDERED that Transportation License No. T-42 issued to Louis Cohen, trading as States Fast Freight Co., of 216 South Victoria Avenue, Atlantic City, New Jersey be, and the same hereby is, revoked effective immediately.

D. FREDERICK BURNETT,  
Commissioner.

By: Nathan L. Jacobs  
Chief Deputy Commissioner  
and Counsel.

10. APPELLATE DECISIONS - RETAIL LIQUOR DISTRIBUTORS v. POLONSKY

Retail Liquor Distributors	)	
Association of Atlantic City,	)	
a corporation of the State of	)	
New Jersey,	)	
	)	
Appellant,	)	On Appeal
-vs-	)	CONCLUSIONS
	)	
Board of Commissioners of the	)	
City of Atlantic City and Boris	)	
Polonsky,	)	
Respondents.	)	
- - - - -	)	

Paul M. Salsburg, Esq., Attorney for Appellant

Isaac C. Ginsburg, Esq., Attorney for Respondent, Boris Polonsky

Anthony J. Siracusa, Esq., by Samuel Backer, Esq., Attorney for  
Respondent, Board of Commissioners of the City of Atlantic  
City

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license by the Board of Commissioners of Atlantic City to Boris Polonsky, for premises located at #31 South States Avenue, Atlantic City.

Appellant contends that the license was issued (1) in violation of section 13(1) of the Control Act, and (2) without hearing after objection filed, in violation of the rules and regulations of the Commissioner. See Bulletin #72, Item #2. The respondent-licensee contends (1) that section 13(1) was not violated in that he conducts a restaurant within the statutory exception, and (2) that hearing was not necessary because the appellant was not a bona fide objector.

At the commencement of the hearing on appeal, motion was made to dismiss the appeal on the ground that the appellant was not an aggrieved person opposing the issuance of the license and was, therefore, not entitled to maintain this appeal. The appellant is an incorporated association not for pecuniary profit and its membership consists of licensed retail liquor distributors doing business in Atlantic City. It may not be dis-

puted that the individual members of the association would have a standing to maintain an appeal from the issuance of licenses in violation of section 13(1) by the Board of Commissioners of Atlantic City. The licensing of competitors in violation of law would clearly render them "aggrieved persons" within the meaning of Section 19. This being so, no substantial objection may be urged to the maintenance of the action in the name of the association, particularly since the violation alleged is statutory and one which the Commissioner would cognize, independent of any appeal. Furthermore, the association has an independent standing to maintain this appeal. Section 19 provides that any "aggrieved person" may appeal the issuance of a license and section 1 defines "person" to include "association of natural persons, association, corporation, organization, etc.". Appellant is a "person" within the foregoing definition and in view of its corporate objects and membership would be aggrieved by outstanding licenses unlawfully issued and authorizing competitive business.

At the hearing testimony was taken and counsel stipulated that the Hearer could embody his view in the record. A view was duly taken. The license premises have three window displays, one of liquor, a second of groceries and a third of fruit. In the interior there is a large delicatessen counter, in addition to groceries, fruits and vegetables. Several small tables for the incidental service of sandwiches are located on the premises. A very small room in which are contained a gas range and a few utensils serves as a kitchen. A sign painted on the side of the premises reads as follows: "fruits, vegetables, groceries and delicatessen", and other advertisements by the licensee are to the same effect.

Section 13(1) provides that a plenary retail consumption license may not be issued to permit the sale of alcoholic beverages in or upon "any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, etc.) is carried on". Section 1(ss) defines "restaurant" as "an establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment is conducted." From the uncontroverted facts in the instant case it must be concluded that the licensee does not conduct a restaurant as defined by the Control Act. On the contrary, he operates a delicatessen and grocery store, with incidental tables at which food may be consumed on the premises. The issuance of the license was, therefore, in direct violation of section 13(1). In view of this finding, no determination need be made on the second contention advanced by the appellant.

The action of the Board of Commissioners in issuing the license is reversed. The license is hereby declared void and all activities thereunder must cease forthwith.

D. FREDERICK BURNETT  
Commissioner

Dated: September 20th, 1935

Retail Liquor Distributors  
Association of Atlantic City,  
a corporation of the State of  
New Jersey,

Appellant,

-vs-

Board of Commissioners of the City  
of Atlantic City and Morris A.  
Kornblau,

Respondents.

On Appeal  
Conclusions

Paul M. Salsburg, Esq., Attorney for Appellant

Samuel Freedman, Esq., Attorney for Respondent, Morris A. Kornblau

Anthony J. Siracusa, Esq., by Samuel Backer, Esq., Attorney for Respondent, Board of Commissioners of the City of Atlantic City

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license by the Board of Commissioners of Atlantic City to Morris A. Kornblau, for premises located at #925-927 Pacific Avenue, Atlantic City.

Appellant contends that the license was issued (1) in violation of section 13(1) of the Control Act, and (2) without hearing after objection filed, in violation of the rules and regulations of the Commissioner. See Bulletin #72, Item #2. The respondent-licensee contends (1) that Section 13(1) was not violated in that he conducts a restaurant within the statutory exception, and (2) that hearing was not necessary because the appellant was not a bona fide objector.

At the commencement of the hearing on appeal, motion was made to dismiss the appeal on the ground that the appellant was not an aggrieved person opposing the issuance of the license and was, therefore, not entitled to maintain this appeal. For the reasons set forth in Retail Liquor Distributors Association vs. Atlantic City and Polonsky, Bulletin #88, Item #10, this motion must be overruled.

At the hearing testimony was taken and counsel stipulated that the Hearer could embody his view in the record. A view was duly taken. The licensed premises have four (4) show windows, which display liquor and groceries. An electric sign on the exterior of the licensed premises reads: "Delicatessen-Kornblau - Sandwiches". In the interior, several feet from the entrance, there is a cashier's desk. The portion of the premises to the left thereof may readily be called a restaurant. It contains a substantial number of tables at which full course meals may be obtained although a large portion of the food there served consists of sandwiches and special platters. To the right of the cashier's desk there is a large delicatessen counter and displays of bread, eggs, butter, canned goods and other groceries.

The testimony, confirmed by the Hearer's view, renders unalterable the conclusion that although the licensee conducts a restaurant at the licensed premises, he also conducts an established delicatessen and grocery business therein.

Section 13(1) provides that a plenary retail consumption license may not be issued to permit the sale of alcoholic beverages in or upon "any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, etc.) is carried on". Section 1(ss) defines "restaurant" as "an establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment is conducted."

In Bulletin #38, Item #6, the Commissioner ruled that a plenary retail consumption license may not be issued for premises where a business, part restaurant and part delicatessen, is conducted, stating that: "The delicatessen part of the business must not only be a minor part, but also must be merely incidental to the conduct and operation of the restaurant". The casual sale of delicatessen articles by a restaurant to persons patronizing the establishment as such, may well be considered to be incidental to its business. A contrary conclusion must be reached, however, where a complete delicatessen and grocery department is being operated, the customers of which consist mainly of persons who have not been served in the restaurant. The establishment conducted by the licensee is a restaurant and delicatessen and grocery store. The issuance of the plenary retail consumption license was, therefore, in violation of section 13(1) of the Act.

At the conclusion of the hearing on appeal, counsel for the licensee requested that, in the event the Commissioner determined that the license was issued in violation of Section 13(1), an opportunity be afforded the licensee to separate physically the premises where the restaurant business is conducted from the premises where the delicatessen and grocery business is conducted. A solid partition placed between the premises where the restaurant business is conducted and the premises where the delicatessen and grocery business is conducted might well render them substantially separate and distinct within the Commissioner's ruling in Bulletin #35, Item #15. The licensee will be afforded a period of twenty days within which to make alterations and furnish proof, satisfactory to the Commissioner, that the premises have been separated in accordance with the Commissioner's requirements and that alcoholic beverages will be sold only within the portion conducted as a restaurant. Cf. Bulletin #41, Item #4.

In support of its second contention, appellant introduced evidence that a written objection to the issuance of the license was duly filed and that no hearing was held by the Board of Commissioners of Atlantic City as required by the Commissioner's rules and regulations. The wisdom of this requirement is self evident. Issuing authorities must exercise a careful and considered judgment in determining whether a license should be issued. Where an objection is filed it is difficult to see how such judgment can be rendered without hearing the objector.

Ordinarily, therefore, the failure to hold a hearing after the due filing of written objection would require that the entire matter be remitted to the issuing authority for further proceedings in accordance with the Commissioner's rules and regulations. In the instant case, however, no useful purpose could be served by such action. The appellant's objection was not directed to any exercise of discretion, but was rested solely upon a statutory violation. This objection has been fully considered herein and the determination thereon could not be affected by a hearing before the Board of Commissioners.

The action of the respondent, Board of Commissioners of the City of Atlantic City, is reversed, effective on October 10, 1935, provided, that such reversal will be vacated and the appeal herein dismissed upon proof satisfactory to the Commissioner being furnished prior to said effective date, that the premises where the restaurant business is conducted have been rendered substantially separate and distinct from the premises where the grocery and delicatessen business is conducted and that sales of alcoholic beverages will be made only within the premises conducted as a restaurant.

D. FREDERICK BURNETT  
Commissioner

Dated: September 20, 1935.

12. APPELLATE DECISIONS - RETAIL LIQUOR DISTRIBUTORS v. REPETTI

Retail Liquor Distributors	)	
Association of Atlantic City,	)	
a corporation of New Jersey,	)	
Appellant,	)	
-vs-	)	On Appeal
		CONCLUSIONS
Board of Commissioners of the	)	
City of Atlantic City and Peter	)	
Repetti,	)	
Respondents.	)	
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Paul M. Salsburg, Esq., Attorney for Appellant

Isaac C. Ginsburg, Esq., Attorney for Respondent, Peter Repetti

Anthony J. Siracusa, Esq., by Samuel Backer, Esq., Attorney for Respondent, Board of Commissioners of the City of Atlantic City

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license by the Board of Commissioners of Atlantic City to Peter Repetti, for premises located at #1015 Atlantic Avenue, Atlantic City.

The facts and issues here presented are similar to those presented in Retail Liquor Distributors Association of Atlantic City vs. Atlantic City and Polonsky, Bulletin #88, Item #10. The licensee operates a delicatessen and grocery store with incidental tables at which food may be consumed on the premises. The issuance of the license was, therefore, in direct violation of

section 13(1),

The action of the Board of Commissioners in issuing the license is reversed. The license is hereby declared void and all activities thereunder must cease forthwith.

D. FREDERICK BURNETT  
Commissioner

Dated: September 20, 1935.

13 APPELLATE DECISIONS - RETAIL LIQUOR DISTRIBUTORS v. SOLOFF

Retail Liquor Distributors )  
Association of Atlantic City, )  
a corporation of New Jersey, )  
Appellant, )

-vs-

Board of Commissioners of the )  
City of Atlantic City and Edward )  
L. Soloff, )  
Respondents. )

On Appeal  
CONCLUSIONS

Paul M. Salsburg, Esq., Attorney for Appellant

Morris Bloom, Esq., Attorney for Respondent, Edward L. Soloff

Anthony J. Siracusa, Esq., by Samuel Backer, Esq., Attorney  
for Respondent, Board of Commissioners of the City of  
Atlantic City

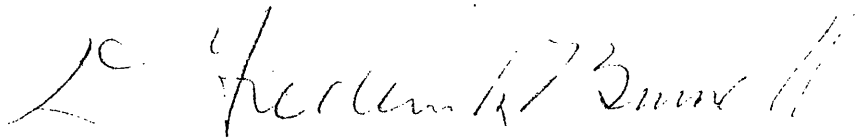
BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license by the Board of Commissioners of Atlantic City to Edward L. Soloff, for premises located at #3803 Ventnor Avenue, Atlantic City.

The facts and issues here presented are similar to those presented in Retail Liquor Distributors Association of Atlantic City vs. Atlantic City and Kornblau, Bulletin #88, Item #11. The establishment conducted by the licensee is a restaurant and delicatessen store. The issuance of the plenary retail consumption license was, therefore, in violation of Section 13(1) of the Act.

The action of the respondent, Board of Commissioners of the City of Atlantic City, is reversed, effective on October 10, 1935, provided, that such reversal will be vacated and the appeal herein dismissed upon proof satisfactory to the Commissioner being furnished prior to said effective date, that the premises where the restaurant business is conducted have been rendered substantially separate and distinct from the premises where the grocery and delicatessen business is conducted and that sales of alcoholic beverages will be made only within the premises conducted as a restaurant.

Dated: September 20, 1935.

A handwritten signature in cursive script, appearing to read "L. Herman H. Bunn".

Commissioner