

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

BULLETIN 816

SEPTEMBER 14, 1948.

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

BULLETIN 816

SEPTEMBER 14, 1948.

1. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE-  
CONCEALING MATERIAL FACT (NON-RESIDENCE) - ILLEGAL SITUATION  
CORRECTED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary  
Proceedings against

PATRICK KEANE & MICHAEL  
PRENDERGAST  
T/a KEANE'S TAVERN  
304 River Street  
Hoboken, N. J.,

Holders of Plenary Retail Consump-  
tion License C-110 for the 1947-48  
licensing year, and renewed by the  
Board of Commissioners of the City  
of Hoboken as License C-104 for the  
1948-49 licensing year, which license  
is now held by

CONCLUSIONS  
AND ORDER

PATRICK KEANE (individually)  
T/a KEANE'S TAVERN,

for the same premises.

Thomas J. McAleer, Esq., Attorney for Defendant-licensees.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendants plead non vult to the following charge:

"In your application dated June 12, 1947, filed with the Board of Commissioners of the City of Hoboken, upon which you obtained your current plenary retail consumption license, you, in answer to Question 3 in said application, falsely listed the residence of Michael Prendergast as 304 River Street, Hoboken, New Jersey, and you also falsely stated 'Yes' in answer to Question 27(a) which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time', whereas in truth and fact Michael Prendergast resided at such time at 3628 Irwin Avenue, Bronx, New York; said false statement being in violation of R. S. 33:1-25."

The file in this case discloses that Michael Prendergast alleged that he "roomed" at 304 River Street, Hoboken, but he now admits, however, that he and his family are residents of New York City, and that he was such a resident on June 12, 1947, when the application for renewal of the license for the licensing year just passed was filed.

During the pendency of these proceedings proof was submitted that Patrick Keane purchased all the right, title and interest that Michael Prendergast had in the license and the business establishment operated in connection therewith, and is now the sole owner thereof. The prior unlawful situation appears to have been corrected. Nevertheless, the nature of the violation heretofore committed warrants a suspension of the license.

Defendants have no previous adjudicated record. I shall suspend the license for a period of ten days. Cf. Re Heesch, Bulletin 635, Item 9; Re Zuby, Bulletin 790, Item 11.

Although this proceeding was instituted during the 1947-48 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1948-49. State Regulations No. 16.

Accordingly, it is, on this 31st day of August, 1948,

ORDERED that Plenary Retail Consumption License C-104, issued for the 1948-49 licensing year by the Board of Commissioners of the City of Hoboken to Patrick Keane & Michael Prendergast, t/a Keane's Tavern, for premises 304 River Street, Hoboken, which license is now held in the name of Patrick Keane (individually), t/a Keane's Tavern, for the same premises, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 7, 1948, and terminating at 2:00 a.m. September 17, 1948.

ERWIN B. HOCK  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FALSE ANSWER IN APPLICATION - PERMITTING NON-LICENSEE TO RETAIN PROFITS FROM SALE OF ALCOHOLIC BEVERAGES - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary  
Proceedings against

WORKMEN'S CIRCLE EDUCATIONAL  
CENTER OF NEWARK  
179-183 Clinton Avenue  
Newark 2, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Club License CB-19 for  
the licensing years 1947-48 and  
1948-49, issued by the Municipal  
Board of Alcoholic Beverage Control)  
of the City of Newark.

-----  
Biunno & Rothenberg, Esqs., by Nathan Rothenberg, Esq., Attorneys  
for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that (1) it falsely concealed in the application for its club license for the 1947-48 licensing period that David and Rose Silverman are the real and beneficial owners of the license and the business conducted thereunder, such false statement being in violation of R. S. 33:1-25; (2) it falsely denied that it had agreed to permit David and Rose Silverman to retain all the profits derived from the licensed business, such false statement being in violation of R. S. 33:1-25, and (3) it knowingly aided and abetted David and Rose Silverman to exercise, contrary to R. S. 33:1-26, the rights and privileges of its successive club licenses since June 1946, in violation of R. S. 33:1-52.

The file in the instant case discloses that an agreement was made on behalf of defendant club with David and Rose Silverman whereby the latter were privileged to operate the licensed premises. In return for this concession the Silvermans paid the licensee's bills for gas and electric services, reimbursed the licensee for the cost of the alcoholic beverages purchased for sale on the licensed premises and, in addition thereto, paid to the licensee the sum of \$25.00 weekly. All profits derived from the sale of alcoholic beverages sold on the licensed premises were retained by the Silvermans.

It appears from the statement of Isadore Dolins, manager of the House Committee of defendant club, that the club never realized more than \$25.00 profit per week from the sale of alcoholic beverages. In view of this it was decided by the officers of defendant club that the arrangement in question with the Silvermans would mean as much financially to the club and also would preclude the necessity of employing anyone to operate or supervise the operation of the bar. Although the aforementioned arrangement between defendant club and the Silvermans may have been more convenient for the defendant club, it constituted a violation of the Alcoholic Beverage Law.

Defendant club has rescinded its former agreement with the Silvermans. Under a subsequent agreement the Silvermans now pay a stipulated monthly rental for use of the kitchen. In addition, the Silvermans now act as stewards for the club, receiving a salary, and all money taken in from the sale of alcoholic beverages is turned over to the defendant club's House Committee, which in turn deposits same in the defendant's bank account. Assurance has been given by the present officers of the club that, from now on, the operation of the club will be under their strict supervision and in all respects legal and proper.

In the instant case it is clear that the club actually "farmed out" its liquor franchise. Were it not that the defendant, in granting the liquor concession, did so with no deliberate intent to circumvent the Alcoholic Beverage Law and, further, that the club immediately terminated the illegal situation, I might revoke the license.

Defendant has no previous adjudicated record. Under the circumstances I shall suspend its license for a period of ten days.  
Cf. Re Plainfield Gesang & Turn Verein, Inc., Bulletin 663, Item 4.

Although this proceeding was instituted during the licensing year 1947-48, it does not abate but remains fully effective against the renewal license for the 1948-49 licensing year. State Regulations No. 16.

Accordingly, it is, on this 31st day of August, 1948,

ORDERED that Club License CB-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Workmen's Circle Educational Center of Newark, for premises 179-183 Clinton Avenue, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 7, 1948, and terminating at 2:00 a.m. September 17, 1948.

ERWIN B. HOCK  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MISLABELED BEER TAP - FALSE STATEMENT IN APPLICATION RE PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary  
Proceedings against

JAMES V. PENNESSE  
T/a JIM'S CAFE  
Blue Bell & Oak Streets  
Monroe Township  
P.O. Williamstown, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-5 issued by the  
Township Committee of the  
Township of Monroe.

James V. Pennesse, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to Charges 1 and 2, wherein it is alleged that he sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages, directly or indirectly, to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. Defendant has also pleaded non vult to Charge 3, wherein it is alleged that he permitted a mislabeled beer tap on his licensed premises, in violation of Rule 1 of State Regulations No. 22, and non vult as to Charge 4, wherein it is alleged that, in violation of R. S. 33:1-25, he falsely denied in his application for license that his license had previously been suspended.

The file herein discloses that on April 3, 1948, Theodore ---, age 19, entered defendant's premises with an adult. The adult purchased two glasses of beer, one of which was delivered by the bartender to the minor, who consumed the beer. No inquiry was made as to the age of the minor, and no written statement as to his age was obtained from him.

On April 13, 1948, ABC agents, during the course of an investigation, discovered that a barrel of Esslinger beer was being drawn through a tap which indicated that the beer was Holland beer. Investigation further disclosed that, in his application filed for the present fiscal year, defendant denied that his license had ever been previously suspended, whereas his license had been suspended by the local issuing authority for a period of five days, effective October 16, 1944, on a charge of selling alcoholic beverages during prohibited hours.

Under all the circumstances, and considering the prior record and the plea, I shall suspend defendant's license for a total period of twenty days.

Accordingly, it is, on this 17th day of May, 1948,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Monroe to James V. Pennesse, t/a Jim's Cafe, for premises at Blue Bell and Oak Streets, Monroe Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. May 26, 1948, and terminating at 2:00 a.m. June 15, 1948.

ERWIN B. HOCK  
Commissioner.

4. APPELLATE DECISIONS - PALKA v. PASSAIC.  
PALKA v. PASSAIC AND ST. STANISLAV SOCIETY OF  
PASSAIC.

JOHN PALKA, )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF PASSAIC, )

Respondent )

Case #1 )

JOHN PALKA, )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF PASSAIC, and ST. STANISLAV )  
SOCIETY OF PASSAIC, N. J., )

Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

Thomas J. Kennedy, Esq., Attorney for Appellant.  
Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.  
Manfield G. Amlicke, Esq., Attorney for Respondent St. Stanislaw  
Society.

BY THE COMMISSIONER:

These appeals were consolidated at the hearing and will be decided together.

In the first appeal appellant seeks to set aside the action taken by respondent Board on June 14, 1948 whereby it denied appellant's application for a transfer of his plenary retail consumption license from 40 Third Street to 44 Third Street, Passaic. In the second appeal appellant seeks to set aside the action taken by respondent Board, on the same day, whereby it transferred appellant's license from him to respondent St. Stanislaw Society of Passaic, N. J. (hereafter called the Society) for premises 40 Third Street, Passaic.

The building known as 40 Third Street has been owned by respondent Society for many years.

On May 29, 1940, the Society entered into a written lease with appellant John Palka, whereby it leased to him the building known as 40 Third Street, Passaic, for a period of three years. This lease contained the following clause:

"It is further agreed and understood that the landlord shall consent to the transfer of the Plenary Retail Consumption Liquor License, now held by it on said premises to the tenant, provided, however, that the tenant enter into an agreement to re-transfer said license only to the landlord, its nominee or assignee, immediately upon the termination of the within lease, or any renewal thereof, or upon a breach of the within lease by the tenant."

At the same time, the Society and Palka entered into a separate written agreement whereby the Society agreed to consent to the transfer to Palka of its plenary retail consumption license and whereby Palka agreed that

"\*\*\*he shall be entitled to the ownership of the aforesaid Plenary Retail Consumption Liquor License only until such time as he shall remain lessee or owner of the premises \*\*\*."

In said agreement Palka further agreed that, upon expiration of the lease, without renewal, he would release all his right, title and interest to the license and execute whatever papers may be necessary to effect a transfer of the license to the Society.

Shortly after the lease and agreement were executed, the liquor license was duly transferred by respondent Board from the Society to Palka, who obtained renewals of said license for the same premises from year to year to and including the 1947-48 fiscal year.

On February 18, 1948, the Society notified Palka that his lease, which had been extended by a written lease dated June 19, 1943, would terminate on June 30, 1948; that the Society would not renew the lease, and that it "herewith demands re-transfer of the Plenary Retail Consumption License now held by you to it as per your agreement." A copy of this letter, together with a copy of the agreement dated May 29, 1940, were sent to the City Clerk of the City of Passaic.

On May 12, 1948, the attorney for the Society sent the following letter to the City Clerk:

"I would appreciate it very much if you would let me know when John Palka of 40 Third Street, Passaic, New Jersey files his application for renewal of transfer of plenary retail consumption license. This is the matter that I wrote to you about in greater detail some time ago."

On May 17, 1948, Palka filed with respondent Board of Commissioners an application for transfer of his license to 44 Third Street. No notice of a hearing upon this application was sent to the Society or its attorney. On June 1, 1948, when no objectors appeared, respondent Board unanimously voted to transfer appellant's license from premises known as 40 Third Street to premises known as 44 Third Street. On June 8, 1948, respondent Society filed with respondent Board an application for a transfer of the same license from Palka to itself for premises 40 Third Street, and attached thereto the original agreement dated May 29, 1940, the original lease dated May 29, 1940, and the original lease dated June 19, 1943. On the same day the Board of Commissioners rescinded the action it had previously taken on June 1, 1948. Thereafter, on June 14, 1948, the Board of Commissioners denied appellant's application for a place-to-place transfer because of the agreement and leases, and granted the application filed by the Society for a transfer of the license from Palka to the Society.

At the outset it may be pointed out that Rules 8 and 9 of State Regulations No. 6 provide that a hearing shall be held if written objections to the transfer of a license are filed with the municipal clerk. It would appear that the letter dated May 12, 1948, sent to the City Clerk by the attorney for the Society, may be construed as a written objection to the transfer of the license and that a hearing should have been held by the Board. However, since it appears that the objection of the Society is based solely upon the agreement and the two leases heretofore referred to herein, I shall decide the case upon its merits instead of remanding the case to the Board of Commissioners.

The purpose of the Legislature is clear that licensees should hold their licenses free from any device which would subject the licenses to control of other persons. Walsh v. Bradley, 121 N. J. Eq. 359. The attempt made by the Society in the agreement and leases to retain control over the license in question is contrary to public policy. The

specific sections of the agreement and leases referred to herein are void and unenforceable. Rawlins v. Trevethan, 139 N. J. Eq. 226, and cases therein cited.

It is also well settled that, where an issuing authority has formally passed upon an application, it has no power at a subsequent meeting to reconsider its action in the absence of a statute or a fraud having been perpetrated against an issuing authority. Lance v. Hightstown, 46 N.J.L. 102; Decker v. Board of Excise, 57 N.J.L. 603; Vanaman v. Adams, 74 N.J.L. 125; Plager v. Atlantic City, Bulletin 80, Item 11. In the present case it cannot be said that a fraud was perpetrated by appellant upon the issuing authority. The Board apparently reconsidered its action solely because its attention was called to an agreement which was in fact null and void. Delaware Tavern v. Atlantic City, Bulletin 758, Item 1. Under the circumstances, the action of the Board taken on June 8, 1948, whereby it purported to rescind its previous action, and also its action taken on June 14, 1948, whereby it attempted to deny appellant's application for a transfer of his license after it had previously granted said application, must be set aside.

For the aforesaid reasons, and for the additional reason that the application for transfer filed by the Society did not bear the written consent of the licensee, I must also set aside the action of respondent Board taken on June 14, 1948, whereby it purported to transfer the license from Palka to the Society. See R.S. 33:1-26; Grace v. Egg Harbor, Bulletin 403, Item 9; Norton v. Union, Bulletin 709, Item 5.

The net result of the orders entered herein will be that appellant, John Palka, will be considered as the holder of a plenary retail consumption license for premises known as 44 Third Street, Passaic, as of June 30, 1948, in accordance with the action of the Board of Commissioners taken on June 1, 1948, and any application for renewal of the license for the present fiscal year filed by him for said premises must be considered as an application for renewal of the license held by him for the previous fiscal year. Likewise the result will be that respondent Society was not the holder of a license for premises at 40 Third Street as of June 30, 1948, and hence not entitled to obtain a renewal of said license for said premises for the present fiscal year.

Accordingly, it is, on this 1st day of September, 1948,

ORDERED that the action taken by respondent Board of Commissioners on June 8, 1948, and on June 14, 1948, whereby it purported to set aside its previous action and to deny appellant's application for a transfer of his plenary retail consumption license from 40 Third Street to 44 Third Street, Passaic, be and the same is hereby reversed; and it is further

ORDERED that the action of respondent Board of Commissioners taken on June 14, 1948, whereby it purported to transfer the license held by appellant, John Palka, from Palka to respondent St. Stanislaw Society of Passaic, N. J., for premises at 40 Third Street, Passaic, be and the same is hereby reversed.

ERWIN B. HOCK  
Commissioner.



5. APPELLATE DECISIONS - PALKA v. PASSAIC AND ST. STANISLAV SOCIETY OF PASSAIC.

Case #2 )  
JOHN PALKA, )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE )  
CITY OF PASSAIC, and ST. STANISLAV )  
SOCIETY OF PASSAIC, N. J., )

Respondents. )

----- )  
Thomas J. Kennedy, Esq., Attorney for Appellant.  
Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.  
Manfield G. Amlicke, Esq., Attorney for Respondent St. Stanislaw  
Society.

BY THE COMMISSIONER:

This is an appeal to set aside the action taken by respondent Board on June 22, 1948, whereby it granted an application filed by respondent Society for renewal of a plenary retail consumption license for the present fiscal year for premises at 40 Third Street, Passaic.

By stipulation of all parties, this case was submitted upon the testimony taken in the cases decided herewith.

P.L. 1947, ch. 94, prohibits the issuance of a new license to the Society. Since the attempted transfer of the license to the Society on June 14, 1948 has been set aside, the application which is the subject of the present appeal cannot be considered as an application for renewal of a license within the meaning of that term as used in Section 4 of P.L. 1947, ch. 94. Hence the action of respondent Board taken on June 22, 1948 must be reversed.

Accordingly, it is, on this 1st day of September, 1948,

ORDERED that the action of respondent Board of Commissioners, whereby it purported to renew for the present fiscal year a plenary retail consumption license applied for by St. Stanislaw Society of Passaic, N. J., for premises at 40 Third Street, Passaic, be and the same is hereby reversed. All activities under said license shall cease forthwith.

ERWIN B. HOCK  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - REVOCATION OF PERMIT REDUCED TO  
SUSPENSION FOR BALANCE OF TERM.

DISQUALIFICATION - APPLICATION TO REMOVE DISQUALIFICATION GRANTED.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH T. LICHTENSTERN )  
6051 Boulevard East )  
West New York, N. J., )

Holder of Solicitor's Permit )  
No. 2281 (for the 1947-48) fiscal )  
year), issued by the State )  
Commissioner of Aleoholic Beverage )  
Control. )

CONCLUSIONS  
AND  
ORDERS

----- )  
In the Matter of an Application )  
to Remove Disqualification )  
because of a Conviction, pursuant )  
to R. S. 33:1-31.2. )

Case No. 696. )  
----- )

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys  
for Petitioner.

BY THE COMMISSIONER:

On September 3, 1947, Solicitor's Permit No. 2281, then held by  
defendant, was revoked as a result of his plea of guilty to a charge  
that he falsified his application for said permit. See Bulletin 776,  
Item 5.

At the request of defendant, who alleges that his family has suf-  
fered hardships because of said ruling, I have agreed to reconsider  
the penalty heretofore imposed in the disciplinary proceedings and  
have permitted defendant to file an application for relief pursuant to  
R. S. 33:1-31.2.

It appears that prior to September 3, 1947, defendant was employed  
as a solicitor for a wholesale distributing corporation in the City of  
Newark. As a result of the revocation of his solicitor's permit he  
was forced to discontinue said employment. He has done odd jobs since  
terminating his employment with the alcoholic beverage distributor.  
The latter company has signified in writing its intention to reemploy  
defendant if he obtains the necessary permit from this Department.

The order of revocation of the solicitor's permit prevented de-  
fendant from being associated with the alcoholic beverage industry for  
a period of two years. R. S. 33:1-31. Defendant admits the fact that  
he did not disclose his criminal conviction in the application. How-  
ever, he has been deprived of the privilege of being employed as a  
solicitor for a year and I conclude that he has been sufficiently  
punished for his false statement. Hence, I shall amend the order  
heretofore entered to provide for a suspension of the permit for the  
balance of its term, instead of a revocation thereof.

Under the circumstances, I shall consider the petition filed by  
petitioner for removal of any disqualification that may exist because  
of a prior conviction of a crime. On or about April 19, 1935, peti-  
tioner was convicted, in a United States District Court, of the crime  
of obtaining money by falsely representing himself to be an officer  
and employee of the United States Government, namely, an agent of the  
Federal Bureau of Investigation. As a result of said conviction,  
defendant was sentenced to a Federal prison for a term of three months.  
He has no other criminal record.

At the hearing held herein, three witnesses who have known petitioner six or more years, testified that he bears a good reputation for being a law-abiding citizen in the community in which he lives. After considering all of the evidence, I conclude that petitioner has conducted himself in a law-abiding manner, especially during the past five years, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 8th day of September, 1948,

ORDERED that the Order entered September 3, 1947 in the above entitled disciplinary proceedings be amended by striking therefrom the word "revoked" and inserting in place thereof the words "suspended for the balance of its term"; and it is further

ORDERED that petitioner's statutory disqualification because of his conviction on April 19, 1935 be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2. Petitioner may file a new application for a solicitor's permit.

ERWIN B. HOCK  
Commissioner.

7. LIMITATION OF NUMBER OF RETAIL LICENSES - PETITION FOR DETERMINATION UNDER SECTION 6, CHAP. 94, P.L. 1947, THAT FAILURE TO APPLY FOR RENEWAL WAS DUE TO CIRCUMSTANCES BEYOND CONTROL OF LICENSEE - PETITION GRANTED.

In the Matter of an Application )  
by )

CHRISTOPHER DIOS  
Somerville, N. J., )

ON PETITION  
DETERMINATION  
AND ORDER

For Relief under the Provisions )  
of Sec. 6 of Chapter 94 of the )  
Laws of 1947. )

-----  
Clarkson A. Cranmer, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

The petition herein recites that Christopher Dios was the holder of a plenary retail consumption license for premises at 119 West Main Street, Borough of Somerville, for more than fourteen years, and that his license for the 1947-48 fiscal year expired by its terms at midnight June 30, 1948.

The petition further recites that in August 1947 the landlord of the premises at 119 West Main Street notified petitioner that his lease for the said premises would not be renewed on October 1, 1947 because she had decided to use the premises for other purposes; that, for the reason aforesaid, petitioner lost possession of his licensed premises on October 1, 1947.

It appears from the evidence taken at a hearing held thereon that the petitioner consulted a realtor and his attorney and made numerous attempts, with the assistance of the realtor and his attorney, to find suitable premises for the conduct of his licensed business. Thus

in August 1947 he applied to the local issuing authority for transfer of his license to 7 Somerset Street, but the application for transfer was denied. In October 1947 he applied to the local issuing authority for a transfer of his license to premises at Depot Square, but withdrew his application because he believed that objections filed to the transfer of the license would be sustained. On March 17, 1948 he applied to the Borough Council for an amendment to the zoning ordinance so as to permit the conduct of business on a portion of Davenport Street which was zoned for residential purposes, but the amendment to the zoning ordinance was rejected by the Borough Council on May 19, 1948.

It further appears from the petition and evidence that, on August 24, 1948, petitioner entered into a written agreement with Joan Stabile and Frank J. Stabile, her husband, whereby he agreed to rent for a term of five years a building to be erected for tavern purposes on a plot of ground situated on the easterly side of New Jersey State Highway Route #31, and bounded southerly by the South Branch line of the New Jersey Central Railroad. The petitioner has filed an application for a plenary retail consumption license for said premises with the Borough Council of the Borough of Somerville. This application must be considered as an application for a new license but, since it has been filed within sixty days following the expiration of the license renewal period, petitioner seeks relief under the provisions of Sec. 6 of ch. 94, P.L. 1947. There appears to be nothing in the municipal regulations which would prohibit the issuance of a new plenary retail consumption license in the Borough of Somerville.

Under all the circumstances, I hereby DETERMINE that the applicant's failure to apply for a renewal of the 1947-48 license was due to circumstances beyond his control. In view of this determination, the Borough Council of the Borough of Somerville has authority to grant petitioner's application despite the limitation of licenses set forth in Sec. 2 of ch. 94, P.L. 1947. The determination herein does not mean that the application must be granted. The determination to grant or deny a retail license rests, in the first instance, with the municipal issuing authority, subject to an appeal to the State Commissioner pursuant to R. S. 33:1-22.

Accordingly, it is, on this 8th day of September, 1948,

ORDERED that the relief sought in the petition filed herein be and the same is hereby granted, and the Borough Council of the Borough of Somerville is hereby authorized to consider the pending application for license filed by Christopher Dios upon its merits.

ERWIN B. HOCK  
Commissioner.

8. CANCELLATION PROCEEDINGS - CLUB LICENSEE DID NOT HAVE EXCLUSIVE, CONTINUOUS POSSESSION AND USE OF CLUB QUARTERS FOR THREE YEARS AS REQUIRED BY RULE 4 OF STATE REGULATIONS NO. 7 - LICENSE CANCELLED.

In the Matter of Cancellation )  
Proceedings against )

CLUB OF JOY )  
19 Rose Street )  
Newark 8, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-40 for )  
the 1947-48 fiscal year, issued )  
by the Municipal Board of )  
Alcoholic Beverage Control of )  
the City of Newark. )

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Anthony P. Bianco, Esq., Attorney for Licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The above named licensee was ordered to show cause on June 3, 1948 why the license which it held for the 1947-48 fiscal year should not be cancelled for the following reason:

"Said license was improvidently issued in violation of Rule 4 of State Regulations No. 7, in that your club had not been in exclusive continuous possession and use of a clubhouse or club quarters for at least three (3) years continuously immediately prior to the submission, on June 27, 1947, of your application for license."

Club of Joy was incorporated as a corporation of the State of New Jersey on April 15, 1936. Thereafter for many years it held meetings at least once a month at the homes of various members until February 27, 1947, when it leased #19 Rose Street, Newark. In its application for license filed on June 27, 1947, it fully disclosed these facts so that no question of any false statement is involved in these proceedings.

It is clear, however, that the required "exclusive continuous possession" of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application is totally lacking in this case. Monthly meetings at the home of a member are far from sufficient to meet the requirements of Rule 4 of State Regulations No. 7. Re The Progressive Democratic Club of the 8th Ward, Bulletin 672, Item 3; Re North Camden Civic Club, Bulletin 705, Item 13.

On April 1, 1948 I denied a petition filed by the licensee wherein it requested me to waive the requirements of Rule 4 of State Regulations No. 7.

Ordinarily I would cancel the license and direct that it be surrendered to the issuing authority. However, it appears that the license in question expired by its terms on June 30, 1948, and that no renewal of said license has been issued to date. The effect of the order, therefore, will be to prevent a renewal of the license. Club of Joy is not eligible at the present time to hold a license.

Accordingly, it is, on this 9th day of September, 1948,

ORDERED that Club License CB-40 for the fiscal year 1947-48, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Club of Joy, for premises 19 Rose Street, Newark, be and the same is hereby cancelled.

ERWIN B. HOCK  
Commissioner.

9. 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 )

ALBIE ZAR )  
T/a AMITY CIGAR STORE )  
50 Sip Avenue )  
Jersey City 6, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-13, issued by )  
the Board of Commissioners of )  
the City of Jersey City. )  
----- )

Albie Zar, Defendant-licenses, Pro Se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that he sold alcoholic beverages in original containers at retail for a price below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On August 11, 1948, an inspector of the State Department of Alcoholic Beverage Control purchased at defendant's licensed premises a pint bottle of Schenley Reserve Blended Whiskey for the price of \$2.45. The minimum retail price for said item, as published in State Department of Alcoholic Beverage Control Bulletin 803, effective June 1, 1948, was \$2.54.

Defendant has no prior record. I shall suspend his license for the minimum period for Fair Trade violations, ten days. Re Paradise Wine & Liquors Corp., Bulletin 797, Item 2. Remitting five days thereof because of the plea will leave a net suspension of five days.

Accordingly, it is, on this 9th day of September, 1948,

ORDERED that Plenary Retail Distribution License D-13, issued by the Board of Commissioners of the City of Jersey City to Albie Zar, t/a Amity Cigar Store, 50 Sip Avenue, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. September 20, 1948, and terminating at 9:00 a.m. September 25, 1948.

ERWIN B. HOCK  
Commissioner.

10. DISQUALIFICATION - APPLICANT PREVIOUSLY RULED INELIGIBLE -  
APPLICATION HEREIN GRANTED.

In the Matter of an Application )  
to Remove Disqualification )  
because of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 698.  
- - - - - )

BY THE COMMISSIONER:

In April 1943 petitioner was ruled ineligible to be employed by the holder of a liquor license in New Jersey and to hold such a license by reason of his conviction in November 1942 of a crime involving moral turpitude. Re Case 488, Bulletin 561, Item 3.

In a proceeding decided at the same time, a license held by petitioner's father for the benefit of petitioner was suspended because of the undisclosed interest of petitioner therein. Bulletin 561, Item 2. Subsequently the license was transferred and it appears that petitioner has had no interest in said license since it was transferred.

During the past five years, petitioner has been employed in the trucking business as a truck driver, in defense work and in other unskilled labor. He has had no further trouble with the criminal laws.

The Chief of Police of his home community where he has lived most of his life certifies that "he is one of our good citizens and our records fail to disclose the receipt of any complaints or investigations pending against him."

Petitioner produced three witnesses: business men and neighbors in his community who have known him from ten to twenty years. They testify that petitioner's reputation in his community, particularly for the last five years, is excellent and that he is honest and law-abiding.

From the evidence herein, I conclude that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 13th day of September, 1948,

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

ERWIN B. HOCK  
Commissioner.

11. DISQUALIFICATION - APPLICANT CONVICTED OF GAMBLING AND CONTEMPT OF COURT AND ARRESTED ON OTHER CHARGES DURING FIVE YEARS LAST PAST - APPLICATION TO LIFT DENIED.

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. 691 )  
- - - - - )

BY THE COMMISSIONER:

Petitioner's fingerprint records disclose that in 1928, when fifteen years old, he was sentenced to one year in a correctional school; in 1936 he was fined \$10.00 and costs on a charge of assault and battery; in 1938 he was sentenced to five months in jail after conviction on a charge of petit larceny; in 1939 he received a sentence of two and one-half years in a State prison on a charge of breaking and entering with intent to commit a felony; in 1945 he was charged with possession of material pertaining to a lottery. In the case last mentioned he forfeited his bail and a bench warrant appears to be outstanding against him. In 1945 he was arrested as a deserter from the U. S. Army, and bound over to an Army official, evidently charged with absence without leave. Subsequently, he was discharged from the Army, without honor, September 28, 1945. In 1947 he was fined \$50.00 and costs after a conviction for gambling and again in said year he received a suspended sentence for contempt of court.

It is clear that the 1939 conviction for breaking and entering with intent to commit a felony is the conviction of a crime involving moral turpitude, and that petitioner is disqualified thereby from holding a liquor license in the State or from being employed by or connected in a business capacity with the holder of such a license.

It further appears that, regardless of his disqualification, petitioner worked for a liquor licensee in this State for a period of one and one-half years, ending shortly before he filed his petition herein.

Obviously, the petitioner's record makes it impossible to find that he has been law-abiding during the last five years.

The petition will be dismissed.

Accordingly, it is, on this 13th day of September, 1948,

ORDERED that the petition herein be and the same is hereby denied.

ERWIN B. HOCK  
Commissioner.



## 12. STATE LICENSES - NEW APPLICATION FILED.

The Straight Whiskey Distilling Company of America  
350 Fifth Ave.  
New York, N. Y.

Application for Plenary Wholesale License filed September 10, 1948.

ERWIN B. HOCK  
Commissioner.

## 13. APPELLATE DECISIONS - MOORE v. EGG HARBOR TOWNSHIP AND ARMSTRONG.

JOHN L. MOORE,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF EGG HARBOR, and  
JOHN ARMSTRONG,

Respondents.

ON APPEAL  
CONCLUSIONS AND ORDER

Morris Bloom, Esq., Attorney for Appellant.

Harry Souchal, Esq., Attorney for Respondent, Township Committee of  
the Township of Egg Harbor.

No appearance on behalf of Respondent, John Armstrong.

BY THE COMMISSIONER:

This is an appeal from the renewal of a plenary retail consumption license to respondent Armstrong, for the 1948-49 licensing period, by respondent Township Committee. The license for the prior fiscal year had been issued to appellant and respondent Armstrong.

This matter being opened by Morris Bloom, Esq., attorney for appellant, in the presence of Harry Souchal, Esq., attorney for respondent Egg Harbor Township, and it appearing that the matters and things in controversy have been amicably settled between the parties hereto, and no reason appearing to the contrary;

It is, on motion of Morris Bloom, Esq., attorney for appellant,

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

Dated: September 13, 1948.

*Erwin B. Hock*  
Commissioner.