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

BULLETIN 472 AUGUST 8, 1941.

1. DISQUALIFICATION - APPLICATION TO LIFT - CONVICTIONS OF ADULTERY, DRUG ADDICTION, UNLAWFUL USE OF NARCOTICS, UNLAWFUL SALE OF ALCOHOLIC BEVERAGES, AND AS A DISORDERLY PERSON - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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

Case No. 156

CONCLUSIONS AND ORDER

In March 1918 petitioner was convicted of adultery, fined $25.00 and placed on probation; in December 1922 he was sentenced as a drug addict to six months in a House of Correction; in October 1927 and again in January 1929 he was sentenced to a workhouse as a disorderly person; in January 1930 he was sentenced to eighteen months for unlawful use of narcotics; and in April 1935 he was convicted of a sale of alcoholic beverages in violation of the Control Act and sentenced to a workhouse for five months. Since April 1935 he has never been arrested or convicted of crime.

During the past five years petitioner has been employed on various W.P.A. projects and has worked for his father, who has been in the tailoring business for many years.

Petitioner testified that his convictions from 1922 to 1930 resulted from the use of drugs but testified that he has not used drugs during the past ten years. The Hearer reports that he appears to be in good health and shows no physical signs of the use of drugs within recent years. Three character witnesses, each of whom has known petitioner for at least ten years, testified that they have never seen petitioner use drugs; they also corroborated his testimony as to residence and employment.

As to his conviction in April 1935: Petitioner testified that he was convicted of illegally selling a pint of whiskey. He swears that he has never manufactured illicit alcoholic beverages. His testimony as to the circumstances surrounding the illegal sale has been substantially corroborated by independent investigation.

I am satisfied that petitioner has conducted himself in a law-abiding manner for at least five years last past. The evidence also satisfies me that he has not used drugs during the past ten years. Hence I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 1st day of August, 1941,

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

E. W. GARRETT,
Acting Commissioner.

2. DISQUALIFICATION - APPLICATION TO LIFT - PETITION DENIED OCTOBER 10, 1939 WITH LEAVE TO REAPPLY AFTER ONE YEAR - 21 MONTHS ELAPSED - GOOD CONDUCT SINCE DATE OF PRIOR HEARING - APPLICATION GRANTED.

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| In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2. | ON HEARING CONCLUSIONS AND ORDER |
| Case No. 170 | |

In Re Case No. 59, Bulletin 352, Item 13, petitioner's application for removal of disqualification resulting from conviction of a crime involving moral turpitude was denied because it appeared that, some months prior thereto, petitioner had attempted to obtain a liquor license through the medium of a "front." Leave to reapply on or after October 10, 1940 and to present, at that time, further evidence as to his good conduct since the date of the original hearing (April 18, 1939) was therein granted.

Pursuant to said leave petitioner, on July 7, 1941, again made application for removal of disqualification.

At the hearing petitioner testified that, since the time of the original hearing, he has resided in the same municipality; has continued to be engaged in the barrel business; and has not been arrested on any occasion or convicted of any crime.

His fingerprint record shows that he has not been convicted of any crime since 1922. Reports from the Chiefs of Police of the municipalities wherein petitioner resides and conducts his business disclose no pending complaints or investigations against him.

More than a year having elapsed since entry of the original order in this matter and it appearing that petitioner has conducted himself in a law-abiding manner since the date of the hearing therein, his petition will now be granted.

Accordingly, it is, on this 1st day of August, 1941,

ORDERED, that petitioner's statutory disqualification because of the conviction described in Re Case No. 59, supra, be and the same is hereby lifted, in accordance with the provisions of R.S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

3. ELIGIBILITY - SECOND DEGREE RAPE AND ASSAULT, THIRD DEGREE ASSAULT - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

August 1, 1941.

Re: Case No. 386

In 1936 applicant was convicted, in the State of New York, of the crime of rape in the second degree, and assault in the second degree. The probation office advises that this indicates that no force was used in the attack; that it is purely a statutory offense, as the girl was under eighteen years of age. He received a suspended sentence to the State Reformatory and was placed on probation. His conduct during probation was favorable.

In 1939 applicant was convicted of the crime of assault, third degree, and a City Judge sentenced him to sixty days in the County Jail.

At the hearing herein, applicant testified that the rape charge was the outcome of a boy and girl affair, he, at the time, being nineteen years of age and the girl seventeen; that he was keeping steady company with the girl and that they intended to get married, all with the full knowledge of their parents; that they eventually parted because of quarrels over her dates with other boys; that the girl has since married. The light sentence imposed tends to support his story.

"Statutory rape," that is, where consent was given, and the only question is the age, does not necessarily involve moral turpitude; it depends largely on the particular facts. Re Mount Holly, Bulletin 131, Item 2; Re Case No. 68, Bulletin 203, Item 13. Considering the circumstances as here presented, I do not believe that the element of moral turpitude was involved. Cf. Re Case No. 219, Bulletin 242, Item 3.

As to applicant's conviction in 1939, he testified that it was the outgrowth of his flirtation with a woman whom he met on the street. She charged him with pinching her arm, which he denied. He claims that he was not represented by an attorney at his trial before a City Judge, and that he was astonished when sentenced to serve sixty days in jail. The Judge who heard the case has since died and his successor apparently has no record of the matter, other than the fact of his conviction. Applicant will be given the benefit of the doubt and his version of the affair accepted.

Simple assault and battery is not a crime which, per se, involves moral turpitude. Re Case No. 166, Bulletin 180, Item 7; Zicherman v. Newark, Bulletin 227, Item 7; Re Case No. 213, Bulletin 232, Item 6. Where, as here, the physical hurt was apparently secondary to the injury to the woman's sensibilities, I do not believe that the element of moral turpitude is involved.

It is recommended, therefore, that applicant be advised that he is not disqualified, by reason of the aforesaid convictions, from holding a liquor license or being employed by a liquor licensee in this State.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

Harry Castelbaum,
Attorney.

4. ACTIVITY REPORT FOR JULY, 1941

TO: E. W. Garrett, Acting Commissioner

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| ARRESTS: | Licensees | 1 | Bootleggers | 29 | |
| | Total number of persons arrested | | | | 30 |
| SEIZURES: | Stills - 1 to 50 gallons daily capacity | | | 1 | |
| | 50 gallons and more daily capacity | | | 2 | |
| | Total number of stills seized | | | | 3 |
| | Mash - gallons | | | | 22,744 |
| | Motor vehicles - Trucks | | | 2 | |
| | Passenger cars | | | 3 | |
| | Total number of motor vehicles seized | | | | 5 |
| | Beverage alcohol - gallons | | | | 4.50 |
| | Brewed malt alcoholic beverages (beer, ale, etc.) - gallons | | | | 186.52 |
| | Wine - gallons | | | | 772.00 |
| | Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons | | | | 22.80 |

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| RETAIL LICENSEES: | Number of premises in which were found: | | | | | |
| | Illicit (bootleg) liquor | 5 | "Fronts"(concealed ownership) | 2 | | |
| | Gambling devices | 11 | Improper beer tap markers | 1 | | |
| | Prohibited signs | 9 | Stock disposal permits nec. | 15 | | |
| | Unqualified employees | 93 | Other types of violations | 14 | | |
| | Total number of premises where violations were found | | | | | 150 |
| | Total number of premises inspected | | | | | 1,703 |
| | Total number of unqualified employees found | | | | | 150 |
| | Total number of bottles gauged | | | | | 15,634 |

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| STATE LICENSEES: | Premises inspected | 78 |
| | License applications investigated | 18 |

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| COMPLAINTS: | Investigated, reviewed and closed | 160 |
| | Investigation assigned, not yet completed | 523 |

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| LABORATORY: | Analyses made | 120 |
| | "Shake-up" cases (alcohol, water and artificial coloring) | 31 |
| | Liquor found to be not genuine as labeled | 5 |

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| IDENTIFICATION BUREAU: | Criminal fingerprint identifications made | 30 |
| | Persons fingerprinted for non-criminal purposes | 64 |
| | Identification contacts with other enforcement agencies | 215 |
| | Motor vehicle identifications via N. J. State Police Teletype | 71 |

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| DISCIPLINARY PROCEEDINGS: | | |
| | Cases transmitted to municipalities | 20 |
| | Cases instituted at Department | 12 |

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| HEARINGS HELD AT DEPARTMENT: | | | | | | |
| | Appeals | 12 | Seizures | 4 | | |
| | Disciplinary proceedings | 21 | Petition to modify penalty | 1 | | |
| | Eligibility | 13 | Noise complaint | 1 | | |
| | Application for spec.perm. | 1 | Objections to issuance of lic. | 1 | | |
| | Total number of hearings held | | | | | 54 |

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| PERMITS ISSUED: | | |
| | Unqualified employees | 5,154 |
| | Solicitors | 2,352 |
| | Social affairs | 328 |
| | Home manufacture of wine | 76 |
| | Disposal of alcoholic beverages | 86 |
| | Miscellaneous permits | 667 |
| | Total number of permits issued | 8,663 |

Respectfully submitted,
S. J. MacINTOSH,
Inspector.

5. APPELLATE DECISIONS - BERRY v. NEWARK.

TRANSFER DENIED FOR ADDITION TO PREMISES BRINGING THE LICENSED PLACE WITHIN 200 FEET OF A CHURCH - ENTRANCE BEYOND 200 FEET - DENIAL REVERSED.

TRANSFER TO ENLARGE EXISTING PREMISES - OBJECTION OF TOO MANY LICENSED PLACES IN VICINITY WITHOUT MERIT - TRANSFER TO NEW PREMISES DISTINGUISHED.

ELIE BERRY, )
Appellant, )
-vs- ) ON APPEAL
) CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, )
Respondent. )

Sheldon G. Horwitz, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.
Objectors, Pro Se.

This appeal is from respondent's refusal, during the last fiscal year (1940-41), to transfer appellant's then existing plenary retail consumption license from 4-6-8 Boston Street to 2-4-6-8 Boston Street, Newark, the purpose of such proposed transfer being to enlarge appellant's existing tavern by incorporating a vacant store next door.

Respondent denied such transfer solely because of its belief that the proposed enlargement would bring the tavern within 200 feet of the nearby Bethany Baptist Church contrary to R. S. 33:1-76 of the Alcoholic Beverage Law.

Now, although that section in the law peremptorily bars any retail liquor place (with certain exceptions here immaterial) from being located within 200 feet of a church or school, it must be noted that it further provides that such 200-foot distance shall, among other things, be measured "from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed" (underscoring mine).

In the present case, although 2 Boston Street (the proposed addition) has two entrances, one and perhaps both of which are actually within 200 feet of the nearest church entrance, nevertheless the blueprint which appellant filed with his application clearly shows that, when his proposed alterations for the enlargement are made, those two entrances will be entirely eliminated and the only entrance into the tavern will be the same as those which now exist and all of which are actually beyond the 200-foot zone.

Hence, since thus there will, after the proposed addition, still be no tavern entrances within 200 feet of any church entrance, this enlargement will not violate the statutory ban. Cf. Goldberg v. Livingston, Bulletin 163, Item 2 (which holds that closing an entrance actually within the prescribed 200 feet and using only an entrance beyond that distance satisfies the statute). Also see

Eavenson et al. v. South Orange et al., Bulletin 283, Item 8; Re Lizak, Bulletin 446, Item 5. Ds. Goldberg v. Little Falls, Bulletin 177, Item 4 (dealing merely with the extent of an exception to the 200-foot requirement).

While such method of measuring the 200 feet (viz., from entrance to entrance) perhaps may not be without criticism, nevertheless it is expressly prescribed by the statute and may not be varied by this Department.

At the hearing on the present appeal, five objectors appeared against the proposed transfer - viz., the Pastor of the Bethany Baptist Church, the Pastor of another church in the general neighborhood, and three nearby residents.

In so far as these objectors contend that the proposed enlargement of appellant's tavern will bring the tavern within the forbidden distance of the Bethany Baptist Church, such contention, as already shown, actually fails.

However, various of the objectors further contend that the enlargement should not be allowed because of the number of liquor places in the vicinity and because such vicinity is a "poor community."

These same objections were similarly advanced by respondent in a previous case in which it had denied appellant the transfer which he is here once more seeking. On appeal from that denial, such objections were ruled to be without merit in the case and the denial sustained on wholly different grounds (viz., appellant's then lack of requisite possession and control of the premises to be added and his failure to file his plan of alterations). Berry v. Newark, Bulletin 433, Item 8. Thus, it was there expressly stated:

> "At the hearing it appeared that the application was denied because respondent was 'not impressed' with the general neighborhood, the area being 'largely colored and largely relief'; that the present premises 'seemed to be adequate'; and that further 'increase' in the neighborhood was undesirable, taking into consideration the number of taverns in the vicinity.
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> "The reasons.....might well have been cogent had this been an application to transfer a license into the area from elsewhere in the city. They have no weight where, as here, the application is merely to enlarge an existing licensed premises."

By the same token, such reasons are likewise insufficient in the present case though now urged by objectors.

Various of the objectors last contend that appellant's tavern has been a "nuisance" and that to permit the proposed enlargement would merely aggravate this condition.

The present record is insufficient to warrant any actual finding that the tavern has been a nuisance or has been misconducted. Indeed, respondent itself has apparently been satisfied that the conduct of such tavern has been proper since respondent in no way predicated its present or previous denial of the transfer upon any claim of misconduct, and, further, since it has granted renewal of appellant's license for the current (1941-42) fiscal year.

In view of the foregoing, I conclude that the action of respondent, in denying the proposed transfer, was erroneous and that such transfer should have been granted.

Although the 1940-41 license which appellant sought to transfer in the present case has expired pending disposition of this appeal, nevertheless the instant decision is not moot, but, to the contrary, is dispositive of the same issues which may arise should appellant seek a similar transfer of his current renewal license. See Dame v. Fort Lee, Bulletin 428, Item 5, and cases there cited.

Accordingly, it is, on this 2nd day of August, 1941,

ORDERED, that the action of respondent, in refusing transfer of appellant's 1940-41 plenary retail consumption license from 4-6-8 Boston Street to 2-4-6-8 Boston Street, Newark, be and the same is hereby reversed; and that, although no order is being entered herein requiring respondent to transfer that 1940-41 license since it has already expired, the instant decision shall nevertheless be deemed dispositive of the same issues which may arise should appellant apply for a similar transfer of his existing license.

In the event of any application for such transfer of the current license, respondent, if granting the application, should be careful to make such grant subject to the special condition that the transfer shall not become effective until the proposed alterations are made. See Re Salter, Bulletin 184, Item 8.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - PRIOR CONVICTION OF DISSIMILAR OFFENSE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>BENJAMIN SELTZER,<br>65 Passaic Street,<br>Garfield, N. J.,<br><br>Holder of Plenary Retail Distribution License D-3, issued by the Mayor and Council of the City of Garfield. | CONCLUSIONS AND ORDER |

Benjamin Seltzer, Pro Se.
G. George Addonizio, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price in violation of Rule 6 of State Regulations No. 30.

The Department file on this matter shows that on July 2, 1941 Mrs. Sarah Seltzer, wife of the licensee, sold a pint bottle of "Fleischmann's Dry Gin" to an investigator for the price of $1.00. The minimum consumer price at which pint bottles of this product could have been sold, lawfully, at that time, was $1.05. Bulletin 416.

If the defendant had no past record, his license would, since no aggravating circumstances appear in this case, be suspended for ten days for his present offense. Actually, however, the defendant has a past record. The Department records show (Rev. 1016) that the licensee pleaded guilty in a previous disciplinary proceeding by the Mayor and Council of the City of Garfield to the charge of sale of alcoholic beverages during prohibited hours, in violation of local ordinance, whereupon his license was suspended for three days, effective in September, 1937.

Hence, in view that the defendant has such past record, his license will, for his present offense, be suspended for fifteen instead of ten days.

By entering a plea of guilty, the licensee has saved the Department the time and expense of proving its case. Five days of the penalty of fifteen days will, therefore, be remitted.

Accordingly, it is, on this 4th day of August, 1941,

ORDERED, that Plenary Retail Distribution License D-3, heretofore issued to Benjamin Seltzer by the Mayor and Council of the City of Garfield, be and the same is suspended for a period of ten (10) days, effective August 11, 1941, at 6:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

7. APPELLATE DECISIONS - CURRY v. MARGATE CITY.
KELLY AND MONASTRA v. MARGATE CITY.

LIMITATION OF SEASONAL LICENSES TO ONE - DENIAL OF APPLICATION FOR PREMISES IN RESIDENTIAL NEIGHBORHOOD AFFIRMED - DENIAL OF APPLICATION FOR PREMISES IN BUSINESS NEIGHBORHOOD REVERSED.

ELIZABETH CURRY,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF MARGATE CITY,
Respondent.

JOSEPH M. KELLY and SARAH MONASTRA,
Appellants,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF MARGATE CITY,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDERS

Glenn & Glenn, Esqs., by Milton W. Glenn, Esq. and Emory J. Kiess, Esq., Attorneys for the Appellant Elizabeth Curry.
Bolte, Miller & Repetto, Esqs., by Harry Miller, Esq. and Augustine A. Repetto, Esq., Attorneys for the Appellants Joseph M. Kelly and Sarah Monastra.
Enoch A. Higbee, Jr., Esq., Attorney for the Respondent.
Herbert R. Voorhees, Sr., Esq., Attorney for Objectors.

These two cases, since each involves an appeal from a denial of a seasonal consumption license for the current summer season in the same general vicinity of Margate City, are being decided together.

The municipality is a seashore resort several miles below Atlantic City. Curry's premises are located at 9 South Granville Avenue and Kelly and Monastra's (hereinafter called Kelly's for convenience) are about four blocks therefrom at 7809-13 Atlantic Avenue. Both premises are operated as bona fide restaurants but are open only during the summer months.

However, the similarities between both places, so far as is pertinent to these appeals, stop there. Curry's establishment is on a side residential street and the sentiment of the neighboring residents is substantially against the issuance of a license to her. These facts were found in a prior appeal taken by Curry from the denial of a transfer of a plenary retail consumption license (carrying year-round privileges) to the same premises. See Curry v. Margate City, Bulletin 460, Item 9, sustaining such denial. No change has occurred since then either in the character of the neighborhood or the sentiment of the residents. The only difference in the evidence produced by Curry on this appeal is that the summer influx of vacationists, instead of amounting to 1200, more nearly approaches 5000 to 6000.

On the other hand, Kelly's premises front on the municipality's main thoroughfare, which is heavily traveled and traversed by a trolley line. The block in which Kelly's site is located is solidly lined with business buildings. The testimony of Commissioner Tighe, who voted in favor of the granting of Kelly's application, discloses that his premises is situated in a business section on "the business block of Margate City." Moreover, it appears that the premises now occupied by Kelly have ever since 1934 been licensed, the first three years having a plenary retail consumption license and for the four summer seasons since 1937 having a seasonal consumption license. So far as the petitions that were offered in evidence in connection with the Kelly appeal are concerned, it appears therefrom that, while there is a difference of opinion among the neighboring residents as to the desirability of having a licensed establishment at the Kelly premises, the protestants are outnumbered by those in favor by two to one.

There is unquestionably a definite public need for a licensed restaurant in the section of the community where these establishments are located, at least during the summer months when the population is so substantially increased. There is no comparable restaurant having liquor privileges within a mile of either place. The evidence with respect to the question of public necessity for a restaurant with a summer liquor license in the area here involved supports the general statement made in the prior Curry appeal case, heretofore referred to, to the effect that: "In a summer resort of this type, a restaurant where one can also obtain alcoholic refreshments with meals is very often essential to the needs of persons who reside there only during the summer months and who patronize restaurants much more extensively during such period than during the remainder of the year."

However, one such licensed restaurant in this area will satisfy the public necessity and convenience. The evidence does not indicate that more than one such establishment is required to meet such public demand. Further, a local ordinance limits the number of summer seasonal consumption licenses that may be outstanding at any time to one. Thus, the issue resolves itself into a determination of which premises should be licensed. Were all other things equal, Curry, who filed her application before Kelly, would in fairness be entitled to the license. The mere fact of prior filing, however, does not, ipso facto, entitle such applicant to any preferential treatment. The determination of which of any two given premises should receive a

liquor license should be made from the standpoint of the public interest, and consideration should be given, among other things, to the suitability of the location and the number of neighbors in protest. Cf. Giberti v. Franklin Township, Bulletin 150, Item 3; Carmona v. Ship Bottom-Beach Arlington Borough, Bulletin 420, Item 3. In the latter case, it was held that the issuing authority was not unreasonable in its selection of the premises that was located in the area from which came the fewer objections.

The Curry application was denied by the unanimous vote of two members of respondent Board, the third having been called to the service of his country and having tendered his resignation. The Kelly application was denied by a tie vote of such two members, Mayor Spalding being recorded against and Commissioner Tighe in favor. The former testified that the only reason for his negative vote on Kelly's application was because of the objection by residents, and because he had twice voted against the issuance of a license to Curry and, therefore, "I didn't feel as though I would be justified in discriminating one against the other." He stated, however, that he had heretofore always voted in favor of issuing the license to the premises now occupied by Kelly because no one had ever objected thereto.

Commissioner Lewis, who was appointed a member of the Board after the determination of both instant applications, testified that, in his opinion, the Kelly premises were located on a main business street whereas the Curry premises were located on a side residential street and that had he been a member of the Board at the time he would have voted in favor of the Kelly application and against that of Curry.

There would, therefore, appear to be little question as to which premises is entitled to hold a liquor license. Not only is the majority of respondent Board, as presently constituted, in favor of issuing the license to Kelly, but, in addition, his premises has the advantage of being more suitably located and to exist in a vicinity where a majority of the residents are agreeable to the issuance of the license. Moreover, it might here be pointed out that mere general protests by persons living on side residential streets, while they should be heeded by a local issuing authority when considering an application for a license on a residential street, as is Curry's, are without force when directed against an application for premises located on a business street, as is Kelly's. Cf. Guenther v. Parsippany-Troy Hills, Bulletin 121, Item 8; DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1; Conway v. Haddon, Bulletin 191, Item 9; Ford's Tavern, Inc. v. Bergenfield, Bulletin 230, Item 17; Land v. Way, Bulletin 232, Item 14; Temperino v. Vineland, Bulletin 240, Item 8; Brummer v. North Arlington, Bulletin 426, Item 11.

Hence, I deem that a seasonal consumption license should issue to Kelly. However, since the necessity for this license stems only from its use in connection with the restaurant facilities, appropriate conditions to effectuate such use will be attached to the issuance of such license to Kelly, as well as conditions to insure that the operation of his premises will not offend the peace and quiet of the neighboring residents. Kelly has signified his willingness that such conditions be imposed upon the license.

One further point deserves mention. No reasons were given by respondent in its resolution denying the Curry license, nor did any of respondent's members testify at her appeal hearing. In its

answer to her petition of appeal, however, respondent set forth the same reasons in support of its action as it did in her prior appeal. While, in fairness to Curry, respondent should have specified its reasons at the time of its denial, it does not appear that she was in anywise misled thereby; nor did she attempt to show that the matters alleged in the answer were not considered by respondent in reaching its determination. In a similar situation, in the case of Crociata v. Clifton, Bulletin 189, Item 6, in dismissing a contention that the applicant should prevail because of the failure of the issuing authority to state its reasons either in its resolution or at the hearing, it was said:

> "The purpose of the pleadings is to define the issue. The burden of establishing that the action of the respondent issuing authority was erroneous rests with appellant. (Rules Governing Appeals, 6). Until the appellant meets that issue and makes a prima facie case, there is no reason for the introduction of any evidence by the respondent. The mere fact that the municipal resolution did not, as it should in fairness, assign any reason for denying the license does not shift either the ultimate burden of proof or the onus of initiative in establishing a prima facie case that the respondent's action was improper. The appellant had the right to show at the hearing, if he could, that the reasons alleged in the answer were not the true reasons for denying the application but he introduced no evidence of this nature. Instead, he proceeded to meet the issue as raised by the pleadings. His evidence was not sufficient to show any need for another distribution premises, or that there are not too many licensed places in the neighborhood."

So, in the instant case, Curry's evidence is not sufficient to meet her burden of showing that respondent's rejection of her application was so arbitrary and unreasonable as to warrant a reversal of such rejection and a direction that respondent issue the license.

Accordingly, it is, on this 6th day of August, 1941,

ORDERED, that the petition of appeal filed by Elizabeth Curry be and the same is hereby dismissed; and it is

FURTHER ORDERED, that the action of respondent in refusing to grant the application filed by Joseph M. Kelly and Sarah Monastra, be and the same is hereby reversed, and respondent is directed to issue to Joseph M. Kelly and Sarah Monastra forthwith the license as applied for, subject, however, to the following conditions to be inserted in such license:

> "(1) The licensed premises shall be operated and conducted as a bona fide restaurant and the license shall be effective in such premises only so long as the licensed premises is operated and conducted as a bona fide restaurant;
>
> "(2) No alcoholic beverages shall be sold, served or delivered except to patrons seated at tables upon the licensed premises;
>
> "(3) There shall be no orchestra, singing, dancing or other form of entertainment whatsoever, except the playing of a radio and phonograph, upon the licensed premises."

E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - CHARGES DISMISSED - HEREIN OF CLUBS AND CLUB MANAGERS.

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| In the Matter of Disciplinary Proceedings against<br><br>LAKE HARTUNG CLUB, INC.,<br>Club House Lake Hartung,<br>Jefferson Township,<br>P.O. Oak Ridge, N. J.,<br><br>Holder of Plenary Retail Consumption License C-21 issued for fiscal year 1940-41 by the Township Committee of the Township of Jefferson. | CONCLUSIONS AND ORDER |

Stephen K. Sullivan, Esq. and G. Earl Brugler, Esq., Attorneys for Defendant-licensee.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

Defendant-licensee pleaded not guilty to charges alleging, in substance, that (1) in its license application dated June 15, 1940, it falsely stated that no individual other than applicant had any interest, directly or indirectly, in the license applied for or in the business to be conducted thereunder, whereas, in fact, August Toenshoff had such an interest, and (2) from July 1, 1940 to the date charges were filed, it knowingly aided and abetted August Toenshoff, a non-licensee, to exercise the rights and privileges of its license.

The evidence on behalf of the Department consisted of a copy of the application dated June 15, 1940 and a statement taken from August Toenshoff, dated February 18, 1941. In his statement, Toenshoff says that he purchased five lots from the Lake Hartung Developing Corporation and built a log cabin which was used as a clubhouse for the Lake Hartung Club, Inc. and as his residence; that he was a member of the club and managed the restaurant and club; that, since 1938, he has paid all bills and operated the business for his own profit and that he paid the license fee for 1940-1941 with his own money.

At the hearing herein, G. Earl Brugler, an attorney of the State of New Jersey, Vice-President of defendant-licensee, testified that defendant was incorporated, in 1931, to promote the civic, social and recreational welfare of its members who are property owners in the development known as Lake Hartung; that shortly after incorporation, defendant arranged with August Toenshoff to use his log cabin for the social purposes of the club; that defendant first obtained a club license for the log cabin in 1934, which license it renewed from year to year until 1938, when it converted the license to a plenary retail consumption license so as to avoid any question of sales to non-members; that the defendant always got the profits, had all liquor purchased in its name and paid the fee for the 1940-1941 license, partly with its own funds and partly with money advanced by the witness. Mr. Brugler produced his personal cancelled check payable to the Township in payment of the license fee for 1940-1941.

Mr. Brugler further testified that he examined the books each month and assisted in making up the monthly reports; that August Toenshoff, in fact, ran the business as manager or custodian for the club and retained what small profits were realized to reimburse him for facilities furnished for the club.

At the hearing, August Toenshoff testified that he has been Scribe of the club since its incorporation, and manager for the club since it first held a license; that, on behalf of the club, he turned over some money to Mr. Brugler to pay for the 1940-1941 license; that the small profits were kept by him as partial payment for the use of the club quarters.

It seems clear that defendant paid no fixed rental to Toenshoff. The evidence shows that the parties involved could not agree upon a sum for the use of the club quarters; that Toenshoff claims the facilities furnished by him to the club were worth $20.00 per week, and that after applying the small profits to rental, there is still due to him the sum of $300.00.

Reviewing all the testimony, I conclude that Toenshoff paid the bills as manager of licensee; that, in substance, the business was operated for the benefit of licensee; that the fee for the license was paid by the licensee and its Vice-president. The method of operation set forth herein is open to criticism. Apparently, to avoid any question in the future, the license for the present fiscal year has been taken out in the name of August Toenshoff, subject to the outcome of these proceedings. Considering all the facts, I conclude that the Department has not sustained the burden of proof in showing that the license was "farmed out." Cf. Re Fifteenth Ward Political Club, Bulletin 399, Item 6; Re Edward Parkyn Post #48, Bulletin 465, Item 3. Hence, I shall dismiss.

Accordingly, it is, on this 6th day of August, 1941,

ORDERED, that the proceedings herein be and the same are hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION - SALES BY CLUB LICENSEE TO PERSONS NOT MEMBERS OR GUESTS - 5 DAYS' SUSPENSION - SALE BY CLUB LICENSEE FOR OFF-PREMISES CONSUMPTION - 5 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA - GAMBLING ON LICENSED PREMISES - KNOWLEDGE OF LICENSEE NOT SHOWN - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against

POLISH-AMERICAN CITIZENS CLUB, INC., 727 New Jersey Avenue, Lyndhurst, N. J.,

Holder of Club License CB-2 for the fiscal year expiring June 30, 1941, and now holder of Club License CB-2 for the current (1941-42) fiscal year, both licenses having been issued by the Board of Commissioners of the Township of Lyndhurst.

ON HEARING CONCLUSIONS AND ORDER

William L. Bivona, Esq., Attorney for the Defendant.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant club licensee is charged with (1) selling an alcoholic beverage below the Fair Trade price, in violation of Rule 6 of State Regulations No. 30; (2) selling alcoholic beverages to non-members, in violation of Rule 5 of State Regulations No. 7; (3) selling an alcoholic beverage for off-premises consumption, in violation of Rule 5 of State Regulations No. 7; and (4) permitting gambling on its licensed premises, in violation of Rule 7 of State Regulations No. 20.

To charges (1), (2) and (3), the defendant pleads guilty.

As regards these charges, the Department file shows that on May 16, 1941 an investigator of this Department, who was neither a member nor the guest of a member of the defendant-club, entered the licensed premises and purchased several drinks of beer; that on May 17, 1941, the same investigator, accompanied by another Department agent who was neither a member nor the guest of a member, returned and purchased other alcoholic beverages which they drank on the premises, and also purchased an unopened pint bottle of Three Feathers Blended Whiskey for consumption off the licensed premises. For the latter item they were charged $1.25. Even had the unopened pint been sold for immediate consumption on the premises, the minimum consumer price at which it could have been sold, lawfully, at that time, was $1.33. Bulletin 424.

As to charge (4) the defendant has entered a plea of not guilty.

At the hearing the Department investigator who had purchased beer in the licensed premises on May 16, 1941 testified that, at that time, he had observed three men, seated at a table some ten feet removed from one end of the bar, playing pinochle; that while he watched, he saw the loser of two games pay, at the close of each game, twenty-five cents to each of the other players. The investigator testified that no money was placed on the table and that he could not tell whether the bartender saw the money passing from player to player.

The investigator did not disclose his identity on this visit. The bartender testified that he saw no gambling and that no officers of the club were then in the barroom. There being no evidence that any officer, agent or employee of the defendant-club tolerated, knew or had cause to know that the card game was being played for money, the charge that the defendant-club "allowed, permitted and suffered" card playing for money on the licensed premises must be dismissed. See Re Kaas, Bulletin 239, Item 1; cf. Re Schwartz, Bulletin 241, Item 1.

As to penalty for the violations charged in (1), (2) and (3), to which the defendant-club has pleaded guilty: The minimum penalty for sale below Fair Trade price is ten days (Re Gardella, Bulletin 469, Item 11); for sale by a club licensee to non-members and for off-premises consumption, five days on each charge (Re Lodge Arnaldo De Brescia, Bulletin 451, Item 10) -- making a total of twenty days. Since the instant offenses are the defendant-club's first violations of record, the minimum penalty will be imposed. In view of the guilty plea, five days of the total penalty will be remitted -- leaving a net penalty of fifteen days.

This proceeding, although instituted during the licensing term which expired June 30, 1941, does not abate, but remains effective against the defendant-club's renewal license for the current term. State Regulations No. 15.

Accordingly, it is, on this 6th day of August, 1941,

ORDERED, that Club License CB-2, heretofore issued to the Polish-American Citizens Club, Inc. by the Board of Commissioners of the Township of Lyndhurst for the current fiscal year, be and the same is hereby suspended for a period of fifteen (15) days, effective August 11, 1941, at 2:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALES BY CLUB LICENSEE TO PERSONS NOT MEMBERS OR GUESTS - 5 DAYS SUSPENSION, LESS 2 FOR GUILTY PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>WILLIAM A. RUCKI ASS'N,<br>26-28 Houston Street,<br>Newark, N. J.,<br><br>Holder of Club License CB-12, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. | CONCLUSIONS AND ORDER |

Edward V. Rucki, President, for Defendant-Licensee
G. George Addonizio, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant club licensee has pleaded guilty to the charge of selling alcoholic beverages to persons neither bona fide members nor bona fide guests of members of the club, in violation of Rule 5 of State Regulations No. 7.

The Department file discloses that at about 9:10 P.M. on June 21, 1941, two investigators, not members or guests of members of

the licensee club, entered the licensed premises after paying one dollar each at the door to Charles Czajkowski, Financial Secretary of the club. The investigators were not asked whether or not they were members, or guests of members. The admission fee entitled each ticket holder to beer, a hot roast beef plate and entertainment. Inside the club house the investigators sat at a table where they were served beer on three different occasions by Louis F. Sojka, Vice-President and Chairman of all affairs held at the club. Even at this time the investigators were not asked whether they were members, or guests of members.

After the investigators were served the third round of beer, which they subsequently seized for evidential purposes, they disclosed their identities to Sojka. The investigators obtained a signed statement from Sojka in which he admitted the service of the beer. The investigators also obtained a signed statement from Czajkowski, in which he admitted the acceptance of the dollar admission fee. In his statement Czajkowski claimed that he had sold tickets to the investigators because he thought one of them was a member of the association and further, that they were with a party of two women and a man who had come in at the same time as the investigators. Be that as it may, the fact still remains that the investigators were not members nor guests of members and were served alcoholic beverages.

A club license entitles the licensee to sell alcoholic beverages only to bona fide members and their guests. When, however, outsiders are admitted, then the fact that an admission is charged removes them from the category of bona fide guests and a special permit from this Department must first be obtained. Re The Perth Amboy Calabrese Social Club, Bulletin 213, Item 4. No such special permit was issued by this Department. Service of alcoholic beverages to persons who purchase tickets of general admission constitutes a sale of such beverages, even though no separate charge is made for the drinks served. See Re Tomoney, Bulletin 341, Item 11; Re Reilly, Bulletin 348, Item 10.

This is the licensee's first violation of record.

The minimum penalty for sale by club licensee to non-members, is five days. Re East End Republican League, Bulletin 441, Item 9. Re Scully-Bozarth, Bulletin 407, Item 11. Re 15th Ward Political Club, Bulletin 447, Item 1. Re Societa' DiMutuo Soccorso Guglielmo Marconi, Bulletin 451, Item 6.

By entry of the guilty plea the Department has been saved the time and expense of proving its case. Two days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 7th day of August, 1941,

ORDERED, that Club License CB-12, heretofore issued to William A. Rucki Ass'n, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is suspended for a period of three (3) days, effective August 11, 1941, at 3:00 A.M.(Daylight Saving Time).

E. W. Garrett

E. W. GARRETT
Acting Commissioner