

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

BULLETIN 353

OCTOBER 17, 1939

1. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on )	
July 10, 1939 of 43 pints of )	X-722(a)
Southland Whiskey and 11 quarts )	
of Lincoln Club Whiskey at 98 )	ON HEARING
Frelinghuysen Avenue, in the City )	CONCLUSIONS AND ORDER
of Newark, County of Essex and )	
State of New Jersey. )	
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Harry Castelbaum, Esq., Attorney for State Department of  
Alcoholic Beverage Control.  
No Other Appearances.

BY THE COMMISSIONER:

On July 10, 1939 an investigator of this Department seized 43 pint bottles of Southland whiskey and 11 quart bottles of Lincoln Club whiskey which had been stored at a licensed public warehouse at 98 Frelinghuysen Avenue, Newark, N. J., by Southland Distillers Distributing Co. (hereinafter referred to as Southland), a New Jersey wholesaler. None of these bottles bore the name and address of the bottler, or a statement of the alcoholic content by proof, as required, respectively, by Federal Alcohol Administration Regulations No. 5, Article 3, Sections 35(d) and 36(a).

Departmental investigation disclosed that all of the liquor had been manufactured and bottled for Southland by Joseph Krieg-Fink Co., a former New Jersey rectifier and blender licensee, located at North Bergen, New Jersey; that the 11 quart bottles had been sold to a retail licensee and returned, after discovery of the improper labels, to Southland, which in turn transported the same to the warehouse; that Southland also transported the 43 pint bottles from the plant of the rectifier and blender to the warehouse.

At a hearing duly held to determine whether the seized articles should be confiscated, no one appeared to contest the proceedings. The retailer has received other merchandise in place of that returned, and the wholesaler has indicated a desire, in view of the expense that rebottling and relabeling would necessitate, to have the liquor destroyed or donated to a charitable institution.

The failure of the bottles to bear the mandatory information required by the aforesaid Federal regulations is violative of State Regulations No. 24, which incorporate by reference the regulations of the Federal Alcohol Administration. Under R.S.33:1-66(c) alcoholic beverages which are manufactured, sold, or transported in violation of rules and regulations promulgated by the State Commissioner are declared to be unlawful property and subject to forfeiture.

Accordingly, it is adjudged that the seized property constitutes unlawful property and is hereby forfeited in accordance with the provisions of R. S. 33:1-66, and shall be retained for the use of hospitals, State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

Dated: October 10, 1939.

D. FREDERICK BURNETT,  
Commissioner.

New Jersey State Library

2. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED -  
PADLOCK DENIED.

In the Matter of the Seizure	)	Case #5492
on July 12, 1939, of a still at	)	
300 North 11th Street, in the	)	ON HEARING
City of Camden, County of Camden	)	CONCLUSIONS AND ORDER
and State of New Jersey.	)	

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Harry Castelbaum, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
Oscar H. Higginbotham, Agent for the owner of the realty.

BY THE COMMISSIONER:

On July 12, 1939, investigators of this Department, in co-operation with several officers of the Camden Police Department, discovered an unregistered still in the living quarters located over a store at 300 North 11th Street, Camden, New Jersey. They arrested Albert Garner, proprietor of the store, his helper, and Leroy Gibson, who was found in possession of the living quarters and, pursuant to the provisions of R. S. Title 33, Chapter 2, seized the still and appurtenant paraphernalia listed in Schedule "A" annexed hereto.

At a hearing duly held to determine whether the seized articles should be confiscated and the premises padlocked, no one appeared to contest the forfeiture of the seized property. Oscar H. Higginbotham, a real estate agent, appeared on behalf of the owner of the realty for the purpose of avoiding padlocking the premises.

From the evidence, it appears that Higginbotham has acted as agent for the premises for fifteen years; that he rented the entire premises, consisting of a store and living quarters overhead, to Garner about two months prior to the seizure; that Garner furnished references, and a further check of his reputation and character was made in the neighborhood; that the agent passed the premises almost daily and observed that a fruit and vegetable market was being conducted at the store; that neither he, nor the owner of the realty, visited the living quarters above the store and did not know that Gibson was in possession thereof, or that any illicit still operation was being carried on there; that immediate steps would be taken to dispossess Garner despite the fact that only Gibson had been found guilty of the illegal operation of the still. In view of the foregoing, good cause has been shown why a padlocking penalty should not be imposed.

Accordingly, it is adjudged that the seized property constitutes unlawful property, and is hereby forfeited in accordance with the provisions of R. S. 33:2-5, and shall be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,  
Commissioner.

Dated: October 10, 1939.

SCHEDULE "A"

- 1 - copper cooker
- 4 - semi-circular copper containers
- 1 - condenser
- 1 - set copper coils
- 1 - copper gooseneck
- 9 - 50 gal. barrels of mash
- 1 - two burner oil stove
- Miscellaneous personal property

### 3. SEIZURES - CONFISCATION PROCEEDINGS - APPLICATION TO VACATE PADLOCK ORDER GRANTED IN PART.

In the Matter of the Seizure of ) #5246  
 a still at 1814 Baltic Avenue,  
 in the City of Atlantic City, ) ON APPLICATION TO VACATE  
 County of Atlantic and State of ) PADLOCK ORDER  
 New Jersey. ) ORDER  
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Belle C. Haskins, President of B. C. Lynch, Inc., for  
 Charles I. Burkhardt  
 Harry Castelbaum, Esq., Attorney for the State Department  
 of Alcoholic Beverage Control.

BY THE COMMISSIONER:

In Re Seizure at 1814 Baltic Avenue, Bulletin 328, Item 1, the premises at 1814 Baltic Avenue were ordered padlocked for six months. When notice of the order was received by Charles I. Burkhardt, the owner of the premises, Belle C. Haskins, President of B. C. Lynch, Inc., the renting agent, appeared at the Department and represented that the true facts had not been presented and that she could establish that Mr. Burkhardt and herself had exercised reasonable prudence and were innocent of any wrongdoing. Accordingly, her request for rehearing was granted. In the meantime the operation of the padlock order was stayed.

Testimony shows that B. C. Lynch, Inc. is in actual charge of the property. The evidence upon which the request for the lifting of the padlock order rests is that one Max Swan was the tenant of the second floor apartment until October 25, 1938; that from that date until sometime after January 15, 1939, no one from the renting agency had occasion to visit the premises and hence no one was aware that a Barney Loffland (who confessed that he operated a still in the premises commencing November 1, 1938) occupied the apartment; that on November 30, 1938, a man visited the agency's office and paid a \$10.00 deposit for the apartment in the name of Annie Smith, who was to take possession on December 10, 1938, and pay the balance of the rent sometime between December 15, 1938 and January 1, 1939; that on January 2, 1939, a woman, presumably Annie Smith, paid the balance of the rent at the agency's office; that after January 15th, when Annie Smith failed to pay her rent, the secretary of the agency visited the apartment on two occasions, and finding no one at home, concluded that the premises were vacant. Loffland was arrested and the still seized on January 30th.

Passing the discrepancies between the version now given and the contradictory statements submitted on behalf of the owner,

summarized in the previous order, it sufficiently appears that reasonable prudence was not exercised when the premises were rented to the unnamed man on November 3, 1938. The complete lack of investigation was admitted by Mrs. Haskins, who testified:

"Q Is it your practice to accept tenants without any investigation as to who they were?

A Yes. That class of tenants."

Furthermore, when the secretary went to collect the rent after it was unpaid on January 15th, she knocked on the door and got no response, whereupon she left a note requesting the occupant to call at the office. Two days later when she returned and again got no response, from the fact that there were no curtains she assumed that the premises were vacant and thereupon re-listed them for rent but did not attempt to gain access with a pass key, nor did she make inquiries from the tenant on the first floor as to whether the second floor tenant still occupied the premises.

Landlords cannot rent premises to tenants without investigation and then expect to get off scot-free when the tenant is apprehended using the premises for illicit alcoholic beverage activities. No good cause appears why the padlock order should be vacated.

However, it appears that the entire premises at 1814 Baltic Avenue is arranged for the occupancy of two families, having three rooms on the first floor and six rooms and bath on the second. No reason appears why the dwelling accommodations on the first floor should be padlocked, the violation having occurred in the second floor dwelling. Accordingly, the order heretofore entered is modified to the extent that only the six rooms on the second floor, excluding the bathroom (which presumably is used by the occupants of the three rooms on the first floor), shall not be used or occupied for any purpose whatsoever for a period of six months commencing the 11th day of November, 1939.

D. FREDERICK BURNETT,  
Commissioner.

Dated: October 11, 1939.

#### 4. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on	)	#5451
June 14, 1939, of a still in the	)	
vicinity of Lots 65-66, Steelman-	)	ON HEARING
town-Woodbine Road, in Upper Town-	)	CONCLUSIONS AND ORDER
ship, Cape May County and State	)	
of New Jersey.	)	
- - - - -	)	
Henry William Horne, by William Smith, Esq.		
Harry Castelbaum, Esq., for the State Department of Alcoholic		
Beverage Control.		

BY THE COMMISSIONER:

On June 14, 1939, agents of this Department, patrolling in the vicinity of the Steelmantown-Woodbine Road in Upper Township, Cape May County, followed a woods road for about two miles to a farmhouse. About a quarter of a mile beyond the farmhouse, they discovered a large alcohol still in operation. The agents seized

the still and appurtenances as described in Schedule "A" attached hereto. The occupant of the farmhouse, Henry William Horne, was arrested and charged with aiding and abetting in the operation of an unregistered still.

At the hearing to determine whether the seized articles should be confiscated, no one appeared to contest their forfeiture. Henry William Horne appeared but only to avoid padlocking of his premises under misapprehension that a padlock order might be entered against his home. However, the land on which the still was found was uncultivated woodland not owned by Horne, and because of its nature no padlock order will be entered.

Under the Alcoholic Beverage Law an unregistered still and articles used, or adaptable for use in connection with, are subject to confiscation. No cause appears why confiscation should not result in the instant case.

Accordingly, it is determined that the seized property constitutes unlawful property, and it is ORDERED that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, and that it shall be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,  
Commissioner.

Dated: October 11, 1939

SCHEDULE "A"

- 1 - Steam Boiler
- 1 - Copper Column
- 1 - Copper Preheater
- 1 - Copper Dephlegmator
- 4 - Galvanized Tanks
- 1 - Cast Iron Mixing Tank
- 2 - Wagner Steam Pumps
- 1 - Gardner-Denver Steam Pump
- 7 - Wooden Vats with mash
- 29 - Empty Molasses Drums
- 8 - Drums of Molasses
- Miscellaneous personal property

5. SEIZURES - CONFISCATION PROCEEDINGS - BOND DISCHARGED ON CONDITION.

In the Matter of the Seizure on )	#5433
May 29, 1939, of a Buick Sedan )	
and two cases of beer found )	ON HEARING
therein, in the vicinity of )	CONCLUSIONS AND ORDER
116 Shanley Avenue, in the City )	
of Newark, County of Essex and )	
State of New Jersey. )	

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 Samuel Moskowitz, Esq., Attorney for Royal Wine & Liquor Store, Inc.  
 Harry Castelbaum, Esq., Attorney for the State Department of  
 Alcoholic Beverage Control.  
 BY THE COMMISSIONER:

On May 29, 1939 investigators of this Department observed an employee of Royal Wine & Liquor Store, Inc., a retail licensee,

transport two cases of beer in a Buick sedan owned by one of the officers of the corporation, in an attempt to make a delivery of the beer to a customer. The Buick sedan bore no transit insignia, whereupon it and the beer were seized as unlawful property pursuant to R. S. 33:1-66.

Thereafter, Royal Wine & Liquor Store, Inc., as principal, and Seaboard Surety Company, as surety, executed a bond in the penal sum of One Thousand Dollars (\$1,000.00), conditioned that the retail value of said sedan should be paid to the State Commissioner of Alcoholic Beverage Control in the event that it was declared unlawful property, and reclaimed the Buick sedan. The beer remained in the possession of the Department pending collective seizure hearing to determine whether it should be confiscated.

At the hearing, Royal Wine & Liquor Store, Inc. urged that it should be relieved of forfeiture of the Buick sedan because it had acted in good faith and had not consciously intended to violate the law.

Testimony shows that this was the first delivery of alcoholic beverages other than by hand to be made by Royal Wine & Liquor Store, Inc. since the then stockholders took over the business about five weeks before; that the managing President did not know that motor vehicles used for delivery of alcoholic beverages required transit insignia; that the employee who made the delivery used the car without express direction of the President but that he was accustomed to use the car at will for purposes other than delivery of alcoholic beverages.

Royal Wine & Liquor Store, Inc. has already been penalized by a three-day suspension of its license in disciplinary proceedings, in which it pleaded guilty to the same unlawful transportation here involved. Re Royal Wine & Liquor Store, Inc., Bulletin 339, Item 13. Except for the instant matter, the record of the licensee is clear.

Under the circumstances, the condition of the bond may be discharged provided that Royal Wine & Liquor Store, Inc. pays, on or before November 11, 1939, the costs involved in the seizure of the Buick sedan, and applies for and completes all steps necessary to obtain a special permit to validate retroactively the unlawful transportation, and pays the fee therefor, which will be twenty-five dollars (\$25.00).

Accordingly, it is ORDERED, that Royal Wine & Liquor Store, Inc., as principal, and Seaboard Surety Company, as surety, be and they hereby are released from any liability to pay the full retail value of said Buick sedan to the State Commissioner of Alcoholic Beverage Control on their joint bond (bearing no serial number), heretofore executed on June 5, 1939, in the sum of One Thousand Dollars (\$1,000.00) in favor of D. FREDERICK BURNETT, Commissioner, on condition, however, that Royal Wine & Liquor Store, Inc., on or before the 11th day of November, 1939, shall pay the costs of the seizure of the Buick sedan and shall apply for and complete all steps necessary to obtain such special permit and pay the aforesaid fee therefor.

D. FREDERICK BURNETT,  
Commissioner.

Dated: October 11, 1939.

6. APPELLATE DECISIONS - BAMBO v. BELLEVILLE.

ANGELO BAMBO,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
BOARD OF COMMISSIONERS OF THE	)	
TOWN OF BELLEVILLE and JOSEPHINE	)	
C. AQUINO,	)	
	)	
Respondents	)	
	)	
Cases No. 1 and No. 2	)	
-----	)	

Sugrue & Hoey, Esqs., by Joseph B. Sugrue, Esq., Attorneys  
for Appellant.  
Lawrence E. Keenan, Esq., Attorney for Respondent, Board of  
Commissioners of the Town of Belleville.  
Edward J. Abromson, Esq., Attorney for Respondent,  
Josephine C. Aquino.

BY THE COMMISSIONER:

Both cases involve substantially the same issues and have been submitted on testimony taken in Case No. 1. Appellant appeals in Case No. 1 from the granting of a plenary retail distribution license for the fiscal year 1938-1939 to respondent, Josephine C. Aquino, for premises known as 5 Heckel Street, Belleville, and appeals in Case No. 2 from renewal of said license for the present fiscal year.

Appellant contends that the granting and renewal of said license should have been denied because (1) there were a sufficient number of licensed places in that section of the town; (2) such action was contrary to the provisions of a municipal ordinance regulating licensed premises and licensees; (3) respondent, Josephine C. Aquino, is not the real party in interest; and (4) the action of respondent, Board of Commissioners, was contrary to the powers vested in respondent by the Alcoholic Beverage Control Act.

As to (1): The evidence shows that appellant holds a plenary retail consumption license for premises located at 12 Bloomfield Avenue, which is "two doors away" from premises licensed to respondent Aquino; that there are seven other places licensed for consumption within a short distance of 5 Heckel Street. The evidence also shows, however, that there are no other premises licensed for distribution in this section of the Town, which is known locally as Silver Lake and has a population of about 5000; that the nearest place licensed for distribution is more than two miles from Aquino's premises. A package goods license fills a need quite distinct from that supplied by the tavern and it may well be an important matter of social convenience and necessity that such a license be granted. Budd Lake Market, Inc. v. Mount Olive, Bulletin 160, Item 6. Cf. Hubert v. Linden, Bulletin 251, Item 6.

Commissioner Noll testified:

"As I looked over the town map and through discussion of this matter it appeared to me that the nearest package store in that location where this applicant wanted this store was from two to four miles from any other package store and the neighborhood warranted the location of a package store there."

Appellant complains that the granting of the license herein will work a hardship upon him. A limitation of the number of licenses, however, is valid, if at all, because it promotes the public welfare and not because it protects the private business of existing licensees. The number of licenses which may exist in any section of a municipality is primarily to be determined by the local issuing authority as a matter of public policy. Appellant has not shown that respondent abused its discretion in granting a distribution license in this section of the Town, far removed from premises for which a similar license has been issued.

As to (2): At the time the original application was filed on March 8, 1939, the ordinance of the Town of Belleville then in effect provided that the number of plenary retail distribution licenses issued and outstanding "shall not exceed four." There were four such licenses then in existence. On April 4, 1939, respondent passed at first reading the following amendment to said ordinance:

"Section 10 B - (1). That in addition to the present Plenary Retail Distribution Licenses issued and outstanding, the Board of Commissioners of the Town of Belleville may in their discretion grant one additional Plenary Retail Distribution License; anything in this ordinance to the contrary notwithstanding."

At the same time respondent passed at first reading an amendment to said ordinance, striking therefrom Section 10 C, which has prevented the issuance of any new licenses to premises within 1500 feet of existing licensed premises. The amendments were adopted at final reading on May 9, 1939. Later, on the same evening, respondent adopted a resolution granting a plenary retail distribution license to Josephine C. Aquino for 5 Heckel Street. Said resolution contained the following:

"AND BE IT FURTHER RESOLVED that this resolution shall become effective at the same time an amending ordinance regulating alcoholic beverages in the Town of Belleville which said amending ordinance was passed on third and final reading on the date hereof."

It appears that the above resolution was so worded, pursuant to the advice of the Town Counsel, that the amendment to the ordinance adopted on the same evening would not become effective until ten days after passage thereof. The license was issued on May 22, 1939. The evidence shows that the licensee never conducted business under said license and in view of this testimony it appears to be unnecessary to consider whether the license for the fiscal year 1938-1939 was granted contrary to the provisions of the ordinance of the Town of Belleville. Assuming without deciding that it was, the question appears to be academic at this time.

The application for the license for the present fiscal year was filed on or about June 14, 1939, at which time it clearly appears that the ordinance, as adopted on May 9, 1939, permitted



the granting of the license. The second ground of appeal is therefore insufficient to warrant a reversal, at least in so far as the license for the present fiscal year is concerned.

As to (3): Respondent, Josephine C. Aquino, is the wife of Cyrus Aquino, Secretary and Treasurer of John Aquino Company, the holder of a wine permit in the State of New York. Cyrus Aquino is ineligible to have any interest in the retailing of alcoholic beverages in New Jersey by reason of his interest in the wine permit in the State of New York. R. S. 33:1-43 (Control Act, Sec. 40). The mere fact, however, that he is the husband of Josephine C. Aquino does not, in and of itself, prevent her from obtaining a retail license in New Jersey. Re Rosenberg, Bulletin 125, Item 1. Such a situation, however, must be scrutinized with the utmost care, to the end that full and bona fide compliance is made, both with the letter and spirit of the article cited above. Mrs. Aquino testified that she has been married thirteen years; that she has saved money from her allowance and paid the license fee from her own bank account; that prior to the hearing, she entered into various contracts to fix up the licensed premises, which contracts amounted to at least \$1175.00, all of which is to be paid out of her own account; that she paid the rent to the landlord out of her own money and leased the premises in her own name.

Cyrus Aquino testified that John Aquino Company is not authorized to do business in New Jersey; that he knew his wife had made application for a retail liquor license in the Town of Belleville and that she had discussed with him the contracts for fixing up the premises. The evidence is not sufficient to show that any person other than Josephine C. Aquino has an interest in the licensed premises.

As to (4): Appellant apparently contends, under this heading, that the premises to be conducted by Josephine C. Aquino are known as 3 and 8 Bloomfield Avenue and that respondent, therefore, had no power to issue a license for premises known as 5 Heckel Street. The building in which the licensed premises are situated is located at the corner of Bloomfield Avenue and Heckel Street, with an entrance at the corner. This store was originally occupied by the owner, Illaria, as a drug store and there was a print shop behind the drug store, with a door opening on Heckel Street. Appellant has offered some evidence which would tend to show that the print shop was known as 5 Heckel Street. The owner Illaria testified that his entire premises are known as 3 and 8 Bloomfield Avenue and 5 Heckel Street; that he has now moved his drug store to the rear of the building and occupies the portion thereof formerly used by the print shop and also part of the premises formerly used as a drug store. Respondent Aquino has taken possession of part of the store formerly occupied by the owner. Mrs. Aquino testified that all her negotiations with the owner concerned the corner store. Respondent, Board of Commissioners, raised the question as to the exact location of the licensed premises, as a result of which a sketch and photographs were presented to respondent, Board of Commissioners, at the hearing held on May 9th, and these papers were subsequently attached to the application. The diagram clearly shows that the license was sought for the corner store and it cannot be contended that respondent Board of Commissioners was in any way misled.

Mrs. Aquino testified that, in designating the premises as 5 Heckel Street, she intended to designate the corner store, and in view of the fact that the entrance is on both streets, it appears

that she might reasonably designate the premises as being either on Bloomfield Avenue or Heckel Street. In applying for her license for the present fiscal year, Mrs. Aquino designated the premises as "5 Heckel St. also known as 3/8 Bloomfield Ave.", although the license itself was issued for 5 Heckel Street. There appears to be some confusion as to the proper street number or numbers of the building in question. Cf. Weiss and Kushner v. Clifton, Bulletin 215, Item 10. The premises, however, are sufficiently identified as 5 Heckel Street and it is clear that the respondent was not misled in any way.

For the above reasons, the action of respondent, Board of Commissioners of the Town of Belleville, in granting the license to Josephine C. Aquino for the fiscal year 1938-1939 and the renewal thereof is affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: October 11, 1939.

7. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCKING MODIFIED IN PART.

In the Matter of the Seizure on )	Case #5410
May 16, 1939, of two stills at )	
178 Brunswick Street, in the City )	ON SUPPLEMENTAL HEARING
of Newark, County of Essex and )	CONCLUSIONS AND ORDER
State of New Jersey. )	
----- )	

James Howell and wife, Pro Se.  
Harry Castelbaum, Esq., for the State Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

By Conclusions and Order entered June 24, 1939, it was ordered that the dwelling at 178 Brunswick Street, Newark, New Jersey, shall not be used or occupied for any purpose whatsoever for a period of six months commencing June 30, 1939. That order was made after failure of anyone to appear at a hearing duly held to determine whether certain still parts and other illicit personal property should be confiscated, and the premises padlocked.

The premises consist of a two story building, tenanted by one family on each of the two floors. The order was executed only as to the second floor of the said premises, where the illicit still was found. Subsequently, padlocking of the first floor was deferred at the Commissioner's order, and opportunity given to James Howell and his wife, owners of said premises and occupants of the first floor, to contest the padlock order as to the first floor.

At the supplemental hearing, Mrs. Howell testified that she and her husband have owned the premises in question since 1918, and have occupied the first floor ever since that time; that the second floor had been rented to a John Perry about a year prior to the discovery of the still; that her husband worked as a chef at a hotel in Clifton, New Jersey, and came home only one day a week; that she was out all day doing missionary work, except on the rare occasions when she was able to find employment; that she had no

knowledge of the illicit still until several days before its discovery, whereupon she immediately served notice upon the tenant to vacate; that they are in arrears on a mortgage covering the property, held by the Home Owners Loan Corporation; that if they are compelled to move, they will be without the means to find other living quarters; that neither she nor her husband had ever been arrested. Her husband corroborated her story.

Under the circumstances, to compel them to move from their home would result in an undue hardship. The interests of society have been served by the padlocking of the second floor, with consequent deprivation of revenue therefrom for a period of six months.

Accordingly, it is ORDERED that so much of the order of June 24, 1939 as padlocks the entire dwelling located at 178 Brunswick Street, in the City of Newark, County of Essex and State of New Jersey, is hereby amended so as to except therefrom the first floor of said premises. In all other respects, the said order shall continue in full force and effect.

D. FREDERICK BURNETT,  
Commissioner.

Dated: October 11, 1939.

8. DISCIPLINARY PROCEEDINGS - FAIR TRADE - HEREBIN OF THE FUTILITY OF PLEAS OF GUILT COUPLED WITH EXPLANATIONS IN THE NATURE OF ARGUMENTATIVE DEFENSE.

In the Matter of Disciplinary Proceedings against	)	
	)	
IRVING BALAS,	)	
312 No. Day Street,	)	CONCLUSIONS
Orange, New Jersey,	)	AND ORDER
	)	
Holder of Plenary Retail Distribution License D-16 for the fiscal year 1938-1939, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.	)	
-----	)	

Ellamarye H. Failor, Attorney for Department of Alcoholic Beverage Control.  
Irving Balas, Pro Se.

BY THE COMMISSIONER:

Licensee pleads guilty with an explanation to a charge alleging that on May 5, 1939 he sold a pint bottle of Calvert's "Special" Blended Whiskey below the minimum retail price in violation of State Regulations No. 30.

On May 5, 1939, Investigators Palmieri and Arts of this Department purchased the item in question for \$1.15 from the licensee's wife at the licensed premises. The Fair Trade price of said Item was \$1.16.

Licensee's explanation is that the investigators "lured my wife into a sin." Licensee appears to base his contention upon the

fact that the price tag on the shelf showed that the item in question was selling for \$1.16 and, as licensee says, "they didn't have to try to bring her down to \$1.15." However, the investigators testified that licensee's wife quoted them the price as \$1.15 and she testified at the hearing that she had sold the item at \$1.15 because a storekeeper came in and said that her husband was "a penny higher." There is no evidence that the investigators "lured" the licensee's wife into committing the violation. In fact, she said she did it by mistake.

Penny "chiseling" is no different in principle from cheating in dimes and dollars. Re Revallo, Bulletin 303, Item 2; Re Wardach, Bulletin 308, Item 11.

No credit is allowed for guilty pleas except they are out and out. When they are accompanied by "explanations", which amount to an argumentative defense, testimony will be taken and the merits fully examined, but if found baseless, the full penalty will be imposed. Licensees may not play fast and loose. The license will be suspended for ten (10) days.

Subsequent to the institution of these proceedings, the license then held by the licensee expired and has been renewed by the issuance of plenary retail distribution license D-16 for the present fiscal year.

Accordingly, it is, on this 11th day of October, 1939,

ORDERED, that Plenary Retail Distribution License D-16 for the present fiscal year, heretofore issued to Irving Balas by the Municipal Board of Alcoholic Beverage Control of the City of Orange, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ELECTION DAY SALES - HEREIN OF  
SUCCESS IN BLAMING IT ON EVE.

October 11, 1939

George E. Bell,  
Clinton Township Clerk,  
Annandale, N. J.

My dear Mr. Bell:

I have before me staff report and your letter of June 28th re disciplinary proceedings conducted by the Township Committee against Charles Suhr, Highway 30, Allerton, charged with sale of alcoholic beverages on Special Election Day last past, and note that his license was suspended for five days.

According to the staff report, the sale was made at 1:57 P.M. Daylight Saving Time, and as soon as the violation was called to the licensee's attention he claimed that he understood that sales need stop only at 2:00 P.M. Daylight Saving Time. To prove it, he produced an article from the Newark Evening News which stated clearly and correctly that the polls would be open

for voting from 1:00 P.M. to 9:00 P.M., Daylight Saving Time, whereupon he explained that his wife had read the item and had misinterpreted the mention of Daylight Saving Time as Standard Time.

In view of the licensee's explanation, which, although somewhat incredible, might nevertheless have appeared to the Committee to have the ring of truth, or, at least, be reminiscent of old father Adam blaming the skirts, I deem that the five-day suspension is adequate even though it be less than the recommended ten-day minimum.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - TRANSFERS OF LICENSE BY PARTY CHARGED - HEREIN OF AN EASY AVENUE OF ESCAPE IF A TRANSFEREE IS ALLOWED TO SERVE AS A SCAPEGOAT.

October 11, 1939

George MacDonald,  
Acting City Clerk,  
Bayonne, N. J.

My dear Mr. MacDonald:

I have before me staff report and City Clerk Lee's letter of September 8th re disciplinary proceedings conducted by the Board of Commissioners against Benny Fernandez, charged with employing hostesses and non-residents without a permit and permitting his licensed premises to be open during prohibited hours, and note that his license was suspended for two days.

Please express to the members of the Board of Commissioners my appreciation for their conduct of these proceedings.

I understand from the transcript of the testimony that the licensee requested leniency for the reason that application for transfer of the license was pending and that any suspension would penalize the transferee rather than the licensee. The trouble with this is that the licensee escaped scot-free just because he found a transferee to serve as a scapegoat for dodging the suspension.

It would be well if transferees were taught by your Board that they take a license by transfer subject to any pending disciplinary proceedings and any penalty that might be imposed therein.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 11. LICENSEES - REPELLING BOARDERS - RATS.

October 12, 1939

Mr. Harry Murray,  
Jersey City, N. J.

My dear Mr. Murray:

What's this I hear about shooting rats in your tavern, at 1:30 A.M. on September 29th, with a .22.

That's a dangerous thing to do, especially in a place licensed to sell alcoholic beverages. If someone with a couple too many gets a hold of that gun, somebody is going to get hurt.

I understand that on the 29th a couple of shots went through your next door neighbor's bedroom window! Not such a good aim, eh!

Now, if you've got rats, use a trap or poison, or hire a Pied Piper. Take that gun home and leave it there or where you please, but keep it out of your tavern.

I desire your written assurance by return mail.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 12. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 14, 1939.

Re: Case No. 296

Applicant seeks a determination of whether the crime of possessing lottery slips, of which he was convicted in 1937, involved moral turpitude, thus disqualifying him from holding a liquor license or being employed by a liquor licensee in this State. R. S. 33:1-25, 26.

At the hearing, he testified that he had been selling Italian lottery slips at his small confectionery store for a period of two months prior to his arrest; that he had sold about "two or three hundred" slips involving, in all, \$70.00 or \$80.00; that he had agreed to handle these slips only upon the insistent urging of a friend, and had derived no financial benefit whatever from the sales.

The arresting officer testified that he had visited the confectionery store upon specific complaint, but observed no sales being made; that he arrested the applicant and charged him with possessing lottery slips; that since the arrest no further complaints of any kind have been received against the applicant.

Conducting commercialized gambling in the form of a large-scale lottery ordinarily involves moral turpitude. Re Case No. 283, Bulletin 337, Item 14. There, the Commissioner denied an "ARC" permit to a "lieutenant" who was intimately connected with the operation of an extensive lottery. However, where, as here, the applicant was neither the owner nor otherwise closely associated with the lottery, but, at most, a mere sub-altern, it was held that a conviction for conspiracy to conduct

a lottery did not involve moral turpitude. See Re Case No. 295, Bulletin 351, Item 10, where it was stated, "In the present case, however, it appears that the extent to which the applicant was involved in the conspiracy was merely that of a minor employee at a small weekly salary. He was not one of the master minds or one of the lieutenants who put into operation the unlawful activities."

Applicant's record is otherwise clear.

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

Samuel B. Helfand,  
Attorney.

APPROVED:

D. FREDERICK BURNETT,  
Commissioner.

13. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 14, 1939

Re: Case No. 300

Applicant seeks a determination as to whether he is disqualified by his criminal record from holding a liquor license or being employed by a liquor licensee in this State.

In May 1928 he was, after trial, convicted in Federal Court of possessing and selling narcotics, in violation of the Harrison Act, and sentenced to imprisonment for a year and a day at hard labor. On March 30, 1929 the Federal Court, on a writ of habeas corpus, ordered him released, apparently because, with time off for good behavior, his term was up.

Applicant now denies that he possessed or sold any narcotics. However, he may not here collaterally attack the merits of his conviction. Re Rehabilitation Case No. 67, Bulletin 345, Item 7; Re Case No. 291, Bulletin 346, Item 16; Re Case No. 293, Bulletin 351, Item 12.

Peddling narcotics in violation of law ordinarily involves moral turpitude. Re Instructions and Explanations, Bulletin 2, Item 8; Re Ulhich, Bulletin 70, Item 2. Cf. Re Rehabilitation Case No. 7, Bulletin 224, Item 2. No facts here appear to cleanse applicant's crime of that element.

It is, therefore, recommended that applicant, by reason of his conviction, be declared ineligible to hold a liquor license or work for a liquor licensee in this State. R. S. 33:1-25, 26.

Nathan Davis,  
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT,  
Commissioner.

14. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary )  
 Proceedings against )

LOUIS BERG, )  
 466 Orange Street, )  
 Newark, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Distri- )  
 bution License D-166, issued by )  
 the Municipal Board of Alcoholic )  
 Beverage Control of Newark. )  
 - - - - -

Ellamarye H. Failor, Attorney for the Department of Alcoholic  
 Beverage Control.

Louis Berg, Pro Se.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at his licensed premises on September 1, 1939, in violation of Rule 6 of State Regulations No. 30. His license will, therefore, be suspended for five (5) days instead of the usual ten (10) days.

The usual practice of the Department is to reserve the effective date of such suspension for future determination, pursuant to notice of December 17, 1938, Bulletin 289, Item 1. However, it now appearing that the licensee is desirous of serving said suspension and getting it over with regardless of the ultimate determination of the constitutionality of Chapter 208 of the Laws of 1938 and the Fair Trade regulations adopted pursuant thereto;

It is, therefore, on this 16th day of October, 1939,

ORDERED, that Plenary Retail Distribution License D-166, heretofore issued to Louis Berg for premises 466 Orange Street, Newark, N. J. by the Municipal Board of Alcoholic Beverage Control of Newark, be and the same is hereby suspended for a period of five (5) days effective October 23, 1939, at 3:00 A.M.

*LG The Clerk of Board*

Commissioner.