

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

BULLETIN 407

JUNE 6, 1940.

1. DISCIPLINARY PROCEEDINGS - CHARGE OF IMMORAL ACTIVITIES
DISMISSED FOR LACK OF PROOF - 10 DAYS FOR SELLING TO PERSON
ACTUALLY DRUNK - 5 DAYS FOR PERMITTING GAMBLING.

In the Matter of Disciplinary)
Proceedings against)

M. F. TAVERN, INC.,)
301 Mulberry St.,)
Newark, New Jersey,)

Holder of Plenary Retail Consump-)
tion License No. C-340 for the)
licensing year expiring June 30,)
1939, and now holder of Plenary)
Retail Consumption License)
No. C-450 for the current (1939-40))
licensing year, issued by the)
Municipal Board of Alcoholic Bever-)
age Control of the City of Newark.)
-----)

CONCLUSIONS
AND ORDER

Moe Fisch, President of M. F. Tavern, Inc., for Defendant-Licensee
Richard E. Silberman, Esq., Attorney for State Department of
Alcoholic Beverage Control.

The defendant was served with the following charges
(here, for convenience, listed according to the dates of the al-
leged offenses):

- (1) that on March 31 and April 4, 1939 he permitted "lewd-
ness and immoral activities" at his tavern, contrary
to Rule 5 of State Regulations No. 20, in that he
permitted vile and indecent language to be used there
by his patrons;
- (2) that on April 4, 1939 he sold and served liquor at
his tavern to, and there permitted the consumption of
liquor by, persons apparently or actually drunk,
contrary to Rule 1 of State Regulations No. 20; and
- (3) that on April 4 and April 17, 1939 he permitted
gambling in the tavern by "paying off" winning scores
on a bagatelle machine there, contrary to Rule 7 of
State Regulations No. 20.

This proceeding, though instituted during the last li-
censing term, does not abate but remains effective against the
defendant's renewal license for the current term. State Regula-
tions No. 15; Re Laurence Brook Country Club, Bulletin 335, Item 6
Re Finkel, Bulletin 338, Item 7; Re Williams, Bulletin 339, Item 4

As to (1): Investigators Hill and Finzel of this De-
partment visited the defendant's tavern on the afternoons of Fri-
day, March 31, and Tuesday, April 4, 1939. On each such visit a
woman patron called "Sue" was in the barroom. On the first occa-
sion the investigators heard her make a filthy remark which, while

spoken audibly enough to be heard in the room, apparently was directed to no one in particular. On the second occasion they heard "Sue" use, in a similarly audible tone, various obscene words of gutter variety in a short conversation with a man whom she apparently knew. On neither occasion did the bartender or any of the patrons in the tavern pay any attention to her filth.

There is no evidence that "Sue" is a prostitute or a person of ill repute. The defendant's managing president testified that she is a patron who lives in the neighborhood and who generally comes into the tavern during the daytime; that, although she is a "drinking girl", he has never had any trouble with her.

Filthy language may, depending upon the circumstances, constitute or contribute to lewdness. Hence, where it is permitted in a tavern in such case, the licensee is strictly accountable. Re Clover Inn, Bulletin 327, Item 2. However, where, as here, the filthy language occurs in the occasional remarks of a patron, which were apparently, and perhaps wisely, disregarded by the bartender and everyone else in the tavern, it may not be deemed lewdness or immoral activity within the meaning of the State rule.

As was said in Re Lipman, Bulletin 324, Item 1:

"Occasional filthy remarks of so-called barroom variety are, while reprehensible, nevertheless insufficient to constitute lewdness." Cf. Re Mulberry Tavern, Bulletin 406, Item 9.

Accordingly, charge (1) is dismissed.

As to (2): The investigators testified that the man with whom "Sue" had her short conversation on April 4 "seemed to be slightly 'high'" when he entered the tavern; that "he was drunk before long and kept right on drinking"; that, although he showed clear signs of being drunk (viz., wobbling, red eyes, high spirits, thick and incoherent speech, etc.), the bartender continued to serve him drinks.

Hence, I find the defendant guilty on charge (2).

As to (3): When the investigators were in the tavern on April 4, Finzel played a bagatelle machine on the premises and, on twice obtaining a winning score, was "paid off" two nickels on each occasion by the bartender. On April 17, Hill played the machine, and similarly was "paid off" two nickels on two occasions by the bartender.

Hence I find the defendant guilty on charge (3).

As to penalty: The defendant's license will be suspended for ten days for sale and service of liquor to a person actually or apparently drunk (contrary to State rule), and for an additional five days for permitting gambling, viz., "payoffs" on his bagatelle machine (contrary to State rule); or a total suspension of fifteen days.

Accordingly, it is, on this 28th day of May, 1940,

ORDERED, that Plenary Retail Consumption License No. C-450 for the current (1939-40) licensing year, heretofore issued by the

Municipal Board of Alcoholic Beverage Control of the City of Newark to M. F. Tavern, Inc., for 301 Mulberry Street, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A.M. (Daylight Saving Time) on Monday, June 3, 1940.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - FRONT FOR PERSON APPARENTLY QUALIFIED - LICENSE SUSPENDED FOR BALANCE OF TERM - LEAVE TO APPLY, AFTER 10 DAYS, FOR LIFTING SUSPENSION IF LICENSE TRANSFERRED.

In the Matter of Disciplinary Proceedings against
MARY A. NICHOLS,
121 E. Main St.,
Chester Township,
Burlington County,
P.O. Maple Shade, N.J.,
Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Chester, County of Burlington.

CONCLUSIONS
AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Harry M. Wendell, Esq., Attorney for the Defendant-Licensee.

Licensee has pleaded guilty to charges of making a false statement in her application in that she denied that any individual other than herself had any interest in the business, and aiding and abetting a non-licensee to exercise the rights and privileges of the license.

She admitted that the license was taken in her name because the undisclosed person, who is apparently duly qualified personally to hold a license, was involved in a law suit.

In accordance with Re King, Bulletin 404, Item 5, the license will be suspended for the balance of the term, with leave to the licensee to apply to transfer the license to a duly qualified applicant. The minimum period of suspension is fixed at ten days.

Accordingly, it is, on this 28th day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Mary A. Nichols by the Township Committee of the Township of Chester, County of Burlington, be and the same is hereby suspended for the balance of the term, effective June 3, 1940, at 2:00 A.M. (Daylight Saving Time); and it is further

ORDERED, that if and when transfer of said license is granted by the local issuing authority to a duly qualified applicant, upon proper proof shown, the suspension herein ordered will

be vacated, provided, however, that in no event shall said suspension be vacated prior to the expiration of ten (10) days from the effective date hereof.

E.W. GARRETT,
Acting Commissioner.

3. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application)	
to Remove Disqualification)	
(because of a conviction, pur-)	CONCLUSIONS
suant to R. S. 33:1-31.2 (as)	AND ORDER
amended by Chapter 350,)	
P.L. 1938).)	
Case No. 78)	
-----)	

Francis G. Homan, Esq., Attorney for Petitioner.

Petitioner was, in Re Case No. 300, Bulletin 353, Item 13, ruled to be disqualified from holding a liquor license or working for a liquor licensee in New Jersey by reason of his conviction in 1928 for possessing and selling narcotics.

Such disqualification may, pursuant to his present petition, be removed if it satisfactorily appears that he has been leading an honest and law-abiding life for at least the last five years.

Petitioner, when released from prison in 1929, returned to his former residence and to the operation of his former restaurant business in one of the cities of this State. In March 1934 he entered the tavern business in that city and continued as a licensee of such tavern until February 1939. He then, after having learned that his conviction in 1928 might disqualify him, obtained a transfer of his license to his wife. However, he continued to work in the tavern (as, so he claims, manager) until receiving formal notice from this Department in August 1939 to cease.

Three witnesses, friends or neighbors of petitioner, testified favorably as to his character and reputation since his release in 1929. His local Chief of Police, upon inquiry by this Department, states that the Police Department has not received any complaint or conducted any investigation against petitioner since that year.

However, it appears, from the investigation files of this Department, that petitioner has been guilty of liquor violations at the tavern. They show that on July 27, 1936, while the tavern was still in petitioner's name, one or perhaps two bottles of illicit (to wit, "refilled") liquor were, contrary to the Alcoholic Beverage Law, found there, petitioner claiming, however, that he was personally innocent of any such refilling.

The files further reveal that on Special Election Day, June 20, 1939, when the tavern was in the name of petitioner's wife, an investigator (accompanied by a local policeman) visited the tavern during the voting hours to check whether, in violation of State regulation, liquor was then being sold or served to the

public; that the investigator, finding the tavern door to be locked, nevertheless peered through a window and saw petitioner in the barroom behind the bar and two men with glasses, apparently of beer, sitting at a table in front of the bar; that, when the investigator demanded entry, petitioner, instead of unlocking the door, impeded the investigation (thus violating the Alcoholic Beverage Law) by first permitting the two men to leave the tavern through a back way, then picking up the glasses from the table and washing them, and only then permitting the investigator to enter; that petitioner pleaded with the investigator to "forget" the whole matter.

When these two cases were transmitted to the local Board of Alcoholic Beverage Control for suspension or revocation of the license for the tavern, the Board, although apparently administering a reprimand to the licensee in the first case, nevertheless dismissed both proceedings.

Despite the local Board's action of dismissal in those disciplinary cases, the State Commissioner may none-the-less here review afresh, in this totally independent type of proceeding, the evidence of petitioner's misconduct at the tavern in seeking to determine whether, in his judgment, the petitioner has, for the last five years, been leading an honest and law-abiding life warranting removal of his disqualification.

In view of such evidence, more particularly that which relates to petitioner's misconduct at the tavern on June 20, 1939, and in further view that petitioner, after obtaining a transfer of his license to his wife in February 1939, nevertheless continued to work at the tavern until August 1939 despite his belief or suspicion of his ineligibility, it cannot be concluded that he has been leading, for five years last past, a sufficiently blameless life to warrant removal of his disqualification.

His petition is, therefore, dismissed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 29, 1940.

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

May 29, 1940

Re: Case No. 324

Applicant was arrested in May 1938 on a charge of running a gambling house. The record shows that he was discharged.

In March 1939 he was arrested on a charge of possessing horse race slips, adjudged a disorderly person, and fined \$100.00. At the hearing he testified that this arrest and conviction resulted after police had found slips representing horse race bets in his home.

In May 1939 applicant was again arrested on a gambling charge when police raided a room in a private house which he admittedly used for the purpose of taking bets on horse races.

Two months later, in July 1939, he was once again arrested on a gambling charge.

Applicant was subsequently indicted on both charges and on January 17, 1940 he pleaded non vult to separate charges of holding bets on horse races. On the charge arising out of the arrest in May 1939, he was sentenced to six months in the penitentiary. Execution of the jail sentence was suspended, however, and applicant was placed on probation for three years and ordered to pay a weekly fine of \$1.00. Sentence on the other charge was suspended.

As to the arrest in May 1939, applicant testified at the hearing that the room where the raid took place was in his cousin's home, that he neither rented the room nor paid for the telephone but simply "used to come up there and there was a telephone there" and "once in a while I took a few bets." The Probation Officer of the county wherein applicant was convicted, in answer to inquiry concerning the circumstances surrounding this particular conviction, reports that applicant "rented a furnished room, had a telephone installed and took bets on horse races over the telephone."

As to the arrest in July 1939, applicant testified that this arrest and subsequent conviction followed the finding, by police, in his home, of horse race betting material.

It thus appears that within a period of two years applicant has been arrested on gambling charges on four separate and distinct occasions, two of these arrests resulting in convictions under State Gambling Laws and one in a conviction under the Disorderly Persons Law.

In view of applicant's multiple arrests and convictions for gambling offenses and his seeming inability to abide by the rules and regulations of organized society, I believe that his convictions on January 17, 1940 were convictions for crimes involving moral turpitude. Re Case No. 314, Bulletin 393, Item 9; Re Case No. 246, Bulletin 293, Item 10.

It is recommended that applicant be advised that he is ineligible to hold a liquor license or to be employed by a liquor licensee in this State.

Robert R. Hendricks,
Attorney.

APPROVED MAY 29, 1940.
E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - BUSINESS OPERATED BY PART-
NERSHIP UNDER LICENSE IN NAME OF ONE PARTNER - PARTNERSHIP
TERMINATED - LICENSE SUSPENDED 5 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
)
 MORTY STOLZ,)
 Stolz-Sheridan Inn,)
 Colts Neck-Scobeyville Road,)
 Atlantic Township,)
 Monmouth County, N. J.,)
)
 Holder of Plenary Retail Consump-)
 tion License C-7, issued by the)
 Township Committee of the Town-)
 ship of Atlantic, County of)
 Monmouth)
 - - - - -)

CONCLUSIONS
AND ORDER

J. G. Keely, Esq., Attorney for the State Department of
 Alcoholic Beverage Control.
 Sidney G. Goldberg, Esq., Attorney for the Respondent-Licensee.

Charges were served upon the licensee alleging (1) that the licensee had falsified his application for license by failure to disclose the interest of one John J. Sheridan in the licensed business, and (2) that he had knowingly aided and abetted Sheridan, a non-licensee, to exercise the rights and privileges of the license.

It appears that the licensee, with Sheridan as a partner, first obtained a liquor license in May of 1939; that on the occasion of renewal in June 1939 notice of application was published indicating that the licensee and Sheridan were applying for a license; that the application for the license, however, was signed and sworn to only by Morty Stolz; that the license for the present fiscal year was issued in the name of Morty Stolz, but thereafter the business was conducted by Stolz and Sheridan as partners.

Stolz claimed that when he signed the application he told the Township Clerk that Sheridan was a silent partner who was employed elsewhere and "could not take off another day to keep coming down"; that he (Stolz) has been authorized by Sheridan to sign the application. He further said that the Township Clerk had written the answers to the questions in the license application and that he had merely signed it. Even if that be true, it appears that Question 28 of the license application, which asks whether any person other than the applicant is interested in the license applied for or the business to be conducted thereunder, was answered falsely, and to that false answer the licensee subscribed and swore.

The partnership was terminated prior to hearing herein. It thus appears that Stolz is now the only person interested in the conduct of the licensed business.

Although licensee did not produce the Township Clerk to corroborate his evidence, there exists a doubt as to whether Stolz intended to deceive the issuing authority and there is no proof of any ulterior motive in obtaining the license in his name alone

since both partners appeared to be qualified. However, licensees must learn that applications are to be answered fully and truthfully.

Under all the circumstances, I shall suspend the license for five days.

Accordingly, it is, on this 29th day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Morty Stolz for premises Colts Neck-Scobeyville Road, Atlantic Township, Monmouth County, be and the same is hereby suspended for five days, effective 1:00 A.M. (E.S.T.), June 3, 1940.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - PREMISES OPEN AND SALE MADE DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

NICK GAMBA,)
287 Morris Avenue,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-840, issued by the)
Municipal Board of Alcoholic Beverage Control of the City)
of Newark.)
-----)

Nick Gamba, Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that during prohibited hours on May 18, 1940 his licensed premises were open, and also that he sold alcoholic beverages therein, in violation of Newark Ordinance No. 3930, adopted December 21, 1938.

The usual penalty for each violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 29th day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-840, heretofore issued to Nick Gamba by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective June 3, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - GUILTY PLEA TO CHARGES OF SERVICE TO INTOXICATED PERSON AND EMPLOYING UNQUALIFIED PERSON - 6 DAYS' SUSPENSION - HOSTESS CHARGE DISMISSED BECAUSE NEWARK RESOLUTION REPEALED.

In the Matter of Disciplinary Proceedings against)

FRENCHY'S TAVERN, INC.,)
1126 Broad Street,)
Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-650 issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)
-----)

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Anthony Giuliano, Esq., Attorney for the Licensee.

The licensee was charged with (1) service of alcoholic beverages to an intoxicated person, in violation of State Regulations 20, Rule 1; (2) employing non-resident entertainers without permit, in violation of R. S. 33:1-26 and State Regulations 11, Rule 1, and (3) employment of hostesses, in violation of Section (c) of resolution adopted by the Newark Municipal Board of Alcoholic Beverage Control on August 29, 1934.

To the first two charges the licensee pleaded guilty. The license will be suspended for five days, less two for the plea on each charge, or a total of six days.

The third charge must be dismissed for the reason that the hostess regulation was alleged to have been violated on July 26, 1939. In Re Morchower, Bulletin 406, Item 1, decided after the institution of the instant proceedings, it was ruled that the hostess regulation had been repealed as of May 24, 1939.

Accordingly, it is ORDERED that Plenary Retail Consumption License C-650, issued to Frenchy's Tavern, Inc. for premises 1126 Broad Street, Newark, N. J. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and it hereby is suspended for six days, commencing at 3:00 A.M. (Daylight Saving Time) on June 3, 1940.

E. W. GARRETT,
Acting Commissioner.

Dated: May 28, 1940.

8. ENFORCEMENT DIVISION ACTIVITY REPORT FOR MAY, 1940.

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - 32
 Licensees - 0 Non-licensees - 32

SEIZURES: Stills - total number seized- - - - - 14
 Capacity 1 to 50 gallons - - - - - 9
 Capacity 50 gallons and over - - - - - 5

Motor Vehicles - total number seized- - - - - 5
 Trucks - 1 Passenger cars - 4

Alcohol
 Beverage Alcohol - - - - - 212

Mash - total number of gallons - - - - - 4745

Alcoholic Beverages
 Beer, Ale, etc. - - - - - 33
 Wine - - - - - 166
 Whiskies and other hard liquor - - - - 103

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1571
 Illicit (bootleg) liquor - - - - - 20
 Gambling violations- - - - - 3
 Sign violations- - - - - 21
 Unqualified employees- - - - - 101
 Other mercantile business- - - - - 17
 Disposal permits necessary - - - - - 2
 "Front" violations - - - - - 3
 Improper beer markers- - - - - 2
 Other violations found - - - - - 9
 Total violations found - - - - - 178
 Total number of bottles gauged- - - - - 15467

STATE LICENSEES:

Plant Control inspections completed - - - - 79
 License applications investigated - - - - - 18

COMPLAINTS:

Investigated and closed - - - - - 309
 Investigated, pending completion- - - - - 456

LABORATORY:

Analyses made - - - - - 124
 Alcohol and water and artificial coloring
 cases - - - - - 14
 Poison and denaturant cases - - - - - 1

Respectfully submitted,

S. B. White,
 Chief Inspector.

9. APPELLATE DECISIONS - DASHEFSKY v. ORANGE ET AL.

EVA DASHEFSKY,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF ORANGE and THE NUT CLUB,)	
)	
Respondents)	

Milton Lowenstein, Esq., Attorney for the Appellant.
 Edmond J. Dwyer, Esq., Attorney for the Respondent Board.
 Louis J. Goldberg, Esq., Attorney for the Respondent Licensee,
 The Nut Club.

This is an appeal from the granting of an application to transfer the plenary retail consumption license held by The Nut Club, Inc. from premises at 12 Main Street to premises across the street at 31 Main Street, a distance of less than 250 feet.

The appellant, one of the owners of an apartment house at 41 Main Street, and several other objecting residents in the vicinity, contend that the closer proximity of the tavern will depreciate the value of their property. However, there was no substantial proof in support of this contention. Moreover, the vicinity in question is located in a business zone, although there are scattered residences located there. To characterize the neighborhood in the light most favorable to appellant, it would appear that it is mixed residential and business, with the latter predominant. In such situation, the contention made, as well as mere general objections not affecting the personal fitness of the licensee or the suitability of the premises, are unavailing, especially as against a transfer of license merely from one side of the street to the other. Guenther v. Parsippany-Troy Hills, Bulletin 121, Item 8; DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1; Ford's Tavern Inc. v. Bergenfield, Bulletin 230, Item 17; Land v. Way, Bulletin 232, Item 14; Rucereto v. Dumont, Bulletin 253, Item 6; Gross v. Landis, Bulletin 386, Item 5.

Further objection relates to the improper conduct of the premises at the old address. The only evidence of such misconduct was the statements by several of the nearby residents that the music played there was loud and that intoxicated persons were observed in the neighborhood. Testimony showed that the tavern employed a four-piece orchestra consisting of a piano, bass fiddle, accordion and violin, which was hardly capable of making sufficient noise to disturb the peace of the neighborhood. As to the intoxicated persons, most of the objectors testified that they did not know whether they came from The Nut Club or from other taverns in the vicinity. On the other hand, several other persons testified on behalf of the licensee that its premises were never unusually noisy and that they had never seen intoxicated persons in the tavern or any emerging therefrom. The Chief of Police, and a police officer assigned to that neighborhood, testified that the premises were conducted in a highly proper manner and that they had never received any complaints against the licensee.

Lastly, appellant contends that a traffic hazard will exist at the new location because of insufficient parking facilities. The evidence, however, showed that the licensee has arranged for the parking of one hundred automobiles at a garage located at 28 Main Street.

Appellant has failed to sustain the burden of showing that the issuing authority has abused its discretion in granting the transfer of the license.

The action of the respondent Board is, therefore, affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: June 3, 1940.

10. DISCIPLINARY PROCEEDINGS - FRONT - PREVIOUS ORDER AMENDED -
LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary)
Proceedings against)
)
NICHOLAS DI GIOVANNI,)
96-98 Astor Street,)
Newark, N. J.,)
)
Holder of Plenary Retail Consump-)
tion License No. C-1009, issued)
by the Municipal Board of Alco-)
holic Beverage Control of the)
City of Newark.)
-----)

ORDER

In Bulletin 401, Item 6, Conclusions and Order were entered herein, reserving the right to enter further order suspending license for the balance of its term if, on or before May 31, 1940, no proof was submitted to this Department that said license had been transferred to Nicholas DiGiovanni and Harry DiGiovanni; and

It appearing that no proof of said transfer has been submitted,

It is, on this 1st day of June, 1940,

ORDERED, that Plenary Retail Consumption License No. C-1009, heretofore issued to Nicholas DiGiovanni by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and same is hereby suspended for the balance of its term, effective June 6, 1940, at 3:00 A.M. (Daylight Saving Time), with leave granted to licensee or to any transferee of said license to apply, on or after June 11, 1940, for an order lifting said suspension.

E. W. GARRETT,
Acting Commissioner.

12. APPELLATE DECISIONS - TUZI v. SOMERDALE.

GENE TUZI,)	
	Appellant,)
-vs-)	ON APPEAL
		CONCLUSIONS
BOROUGH COUNCIL OF THE)	
BOROUGH OF SOMERDALE,)	
	Respondent)
-----)	

Bernhard G. Luethy, Esq., Attorney for Appellant.
 Frank Nelson Jess, Esq., Attorney for Respondent.

Appellant appeals from the denial of plenary retail consumption license for premises located on the east side of White Horse Pike, Somerdale.

Respondent denied the license because "there are a sufficient number of licensed premises in the vicinity to take care of the needs of both the resident and transient trade."

There are at present seven plenary retail consumption licensees and one seasonal retail consumption licensee in the Borough, which has a population of about eleven hundred. There appear to be plenty of licensed places to take care of the needs of the inhabitants of the Borough.

The sole question seems to be whether an additional license is needed to take care of transient traffic. White Horse Pike is one of the principal highways between Philadelphia and Atlantic City and the traffic thereon is heavy, particularly during the summer months. On the east side of the Pike, upon which side appellant's premises are located, there are no licensed premises between Somerdale Inn, which is about one-half mile from appellant's premises, and a licensed place in another municipality, which is about two and one-half miles in the opposite direction from appellant's premises. However, it appears that on the west side of the Pike there is a licensed place about one block away from appellant's premises, and another licensed place on Odlin Avenue, which is about two and one-half blocks from appellant's premises.

It is argued by appellant that the additional license should be granted to him because traffic proceeding on the easterly side of the Pike must cross traffic proceeding in the opposite direction in order to reach the licensed premises on the west side of the Pike. That reason, however, is scarcely sufficient to require respondent to issue an additional license in this section of the Borough, which seems adequately supplied with licensed premises.

The burden of proof in showing that respondent acted in an arbitrary or unreasonable manner has not been sustained by appellant.

The action of respondent is, therefore, affirmed.

E. W. GARRETT,
 Acting Commissioner.

Dated: June 5, 1940.

13. DISCIPLINARY PROCEEDINGS - SALES ON ELECTION DAY - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

HARRY BLOCK,)
270 South 11th Street,)
Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-55, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Leo J. Berg, Esq., Attorney for Defendant-Licensee.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charge of selling alcoholic beverages on Primary Election Day.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days.

Accordingly, it is, on this 4th day of June, 1940,

ORDERED, that Plenary Retail Distribution License D-55, heretofore issued to Harry Block by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective June 10, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

14. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).)

CONCLUSIONS AND ORDER

Case No. 97)
-----)

In 1932 petitioner was convicted of grand larceny of an automobile and placed on probation for one year; in 1933 he was sentenced to a ten-day jail term for contempt of court for violating a court order arising out of a domestic difficulty.

At the hearing, he testified that, after his release from prison he did not receive steady employment until March 1934, since which time he has been employed by a brewery as a truck driver.

Three witnesses testified on his behalf and stated that his reputation as an honest and law-abiding citizen in the community is good. One of the witnesses, who is petitioner's

supervisor, has known him since March 1934; another, who owns a confectionery store in the neighborhood where petitioner resides, has known him for seventeen years; the third is associated with petitioner as a fellow-worker at the brewery and has known him for six years.

The Chief of Police of the municipality where petitioner resides reports that there are no pending complaints or investigations against him. His probation officer advises that his relations with petitioner were "satisfactory" and that "he did not impress us as having any criminal habits". His fingerprint returns disclose no arrests or convictions since 1933.

Although petitioner has been employed on licensed premises despite his ineligibility because of the aforesaid convictions, I am satisfied that he did not know of such disqualification prior to March 8, 1940, when he applied for a solicitor's permit. Relief should not, therefore, be denied on this ground. Cf. Re Case No. 96, Bulletin 405, Item 7.

However, petitioner denied, in his application, that he had ever been convicted of a crime. For such false statement, his disqualification will not be lifted for another ten days.

Accordingly, it is, on this 5th day of June, 1940,

ORDERED, that petitioner's statutory disqualification be and the same is hereby removed, effective June 15, 1940, in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. Barrett

Acting Commissioner.