

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

BULLETIN 465

JUNE 16, 1941.

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

BULLETIN 465

JUNE 16, 1941.

1. APPELLATE DECISIONS - BROADWAY LIQUOR STORE, INC. v. TRENTON.

TRANSFER OF LICENSE TO NEW PREMISES REVOKED FOR ALLEGED FRAUD - THE ESSENTIALS TO RECONSIDERATION ON THE GROUND OF FRAUD - BENEFICIAL INTEREST IN CORPORATE STOCK, OR INTEREST IN LICENSE OR BUSINESS, NOT CREATED BY A CONTINGENT INTEREST WHICH WILL VEST ONLY UPON THE HAPPENING OF AN UNCERTAIN EVENT - REVOCATION OF TRANSFER VACATED.

BROADWAY LIQUOR STORE, INC.,)	
)	
Appellant,)	
-vs-)	ON APPEAL
		CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE)	
CITY OF TRENTON,)	
)	
Respondent.)	
-----)	

Nathan L. Jacobs, Esq., Attorney for Appellant.
 John A. Brieger, Esq. and Frank I. Casey, Esq.,
 Attorneys for Respondent.

On or about September 9, 1940, charges and notice to show cause were served by Thaddeus J. Burns, City Clerk, on behalf of the Board of Commissioners of the City of Trenton, on Broadway Liquor Store, Inc., the holder of Plenary Retail Distribution License No. 18 for premises 601 North Olden Avenue, Trenton.

The charges alleged that Broadway Liquor Store, Inc. (1) committed acts of fraud and made false and misleading statements in violation of R. S. 33:1-25 and R. S. 33:1-26, and (2) misrepresented and suppressed material facts in violation of the same sections, by reason of certain allegedly erroneous answers in an application filed by the corporation with the City on July 1, 1940, for the transfer of its license from 2½ East State Street to 601 North Olden Avenue, and other erroneous statements, to wit:

- (a) That in answering Question 8(a), it stated that the premises to be licensed were leased or rented from George Levine, whereas the Corporation at that time had not leased the premises, nor was it authorized to lease the premises, from said George Levine;
- (b) That it answered "no" to Question 23 asking: "Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest directly or indirectly in the stock held by such stockholders", whereas the interest of the stockholders as set forth in the application was to be transferred to others in the event that the transfer of license applied for was accomplished;
- (c) That it answered "no" to Question 28 asking: "Has any individual, partnership, corporation, or association other than the applicant any interest directly

or indirectly in the license applied for or in the business to be conducted under said license", whereas the interest of the stockholders as set forth in the application was to be transferred to others in the event that the transfer of license applied for was accomplished;

- (d) That the Corporation told certain members of the Board of Commissioners that one of the reasons for the transfer was because business was bad at 2½ East State Street, whereas the transfer was sought to enable the then stockholders to sell the business at a profit, which sale was conditioned upon the transfer being granted;
- (e) That the Corporation told the Board of Commissioners that one of the reasons for the transfer was that its lease was about to expire and the landlord refused to renew, which statement was known to be false.

A third charge alleged that Broadway Liquor Store, Inc., on or about August 16, 1940, displayed on the exterior of the licensed premises certain signs in excess of 1½" x 1½", advertising prices of alcoholic beverages being sold in original containers for off-premises consumption, in violation of Rule 3 of State Regulations No. 21 (Pamphlet Rules, page 67).

The corporation was directed to take notice that a hearing would be held in the Commission Chamber, City Hall, Trenton, on Friday, September 20, 1940, at 10:00 A.M., Daylight Saving Time, at which it would be afforded full opportunity to be heard and show cause why its license should not be suspended or revoked and the licensed premises declared ineligible to become the subject of any further license for two years.

So far, the procedure the Board adopted has the appearance of regular disciplinary proceedings. See Instructions No. 6 (Pamphlet Rules, page 20). The notice to the licensee informs the licensee that it may be heard and that it may show cause why its license should not be suspended or revoked. A hearing was duly held. It was apparently at the conclusion of the hearing that the Board went off the track. Notice and order in the proceedings, entered September 27, 1940, by Thaddeus J. Burns, City Clerk, on behalf of the Board of Commissioners, and directed to Broadway Liquor Store, Inc., declares that the Board, after hearing the charges and considering the evidence, determines that the licensee is guilty of the charges, and orders that the transfer of the license from 2½ East State Street to 601 North Olden Avenue, be revoked.

Now that is a rather unique order. Disciplinary proceedings cannot terminate with a revocation of a transfer. Disciplinary proceedings are directed towards the suspension or revocation of the license. The statute is clear as to that. See R. S. 33:1-31. But notwithstanding the finding of guilt on all charges, including the alleged violation of Regulations No. 21, no action to suspend the license was taken. Instead, the transfer was revoked. It is from this action that the appellant appeals, denying the charges and alleging that the charges were unfounded in fact or law, that the action of the Board was arbitrary and unreasonable, that the proceedings were instituted at the instigation of competitors, that the Board's decision was improperly influenced by competitors, that the punishment was excessive, and that the order of the Board was not within the charges preferred against the appellant and was without statutory authority.

Let us first see if the procedure can be sustained. The Board instituted proceedings apparently disciplinary in nature. It ended with a result that could not properly follow from disciplinary proceedings. Consequently, they were not disciplinary proceedings. Nevertheless, the procedure may have been adequate. While it is generally considered that the right of a deliberative body to reconsider its action on a matter of a judicial or quasi-judicial nature ceases when a final determination has been reached, such reconsideration may properly take place and a new determination may be reached if there has been fraud. Plager v. Atlantic City, Bulletin 80, Item 11. The authority to do this is not in the Alcoholic Beverage Law. It is, rather, an inherent power which stems from the power expressly conferred upon the Board to exercise jurisdiction over the matter in the first place. Such a procedure applied to the instant case could very properly result, if fraud were shown, in the action the Board took on September 27, 1940, to wit, in a rescission of the transfer. The fact that specific charges were served instead of merely notifying the licensee of the Board's intention to reconsider the transfer on the ground of alleged fraud set forth in the charges, would not invalidate the proceedings. I conclude, therefore, that the order rescinding the transfer is not defective because of any impropriety in procedure.

Hence I shall consider the action of the Board to have been a reconsideration and rescission of the transfer on the ground of fraud.

Our next inquiry is: Does the Commissioner have jurisdiction to entertain an appeal from an action taken after reconsideration on the ground of fraud. I think that jurisdiction exists. The reconsideration and subsequent rescission is the equivalent of a denial in the first place, and as the denial could be appealed (R. S. 33:1-22), so may the subsequent rescission.

That brings us to the question of whether or not this was a proper reconsideration on the ground of fraud, i.e., if there was such fraud as could support the reconsideration and rescission.

It is said that:

"Fraud practiced upon the court is always ground for vacating the judgment, as where the court is deceived or misled as to material circumstances, or its process abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair." 34 C.J. 282.

But the fraud must relate to a matter material to the issue involved; that is, it must be "the efficient, inducing, and proximate cause, or the determining ground of action." 26 C.J. 1102. This is the rule that has been followed in New Jersey. Wise v. Fuller, 29 N.J. Eq. 257; Byard v. Holmes, 34 N.J.L. 296; Lembeck v. Gerken, 86 N.J.L. 111. To illustrate: An applicant for license was required by law to accompany his application with the signatures of a certain number of householders. The applicant represented that the signatures submitted were those of householders, whereas in fact certain of the signatures were not, thereby not furnishing the requisite number. Held that it was fraud going to the jurisdiction. Bachman v. Phillipsburg, 68 N.J.L. 552. To illustrate the converse: An applicant for license was required by law to accompany his application with the signatures of a certain number of freeholders. The applicant swore in his application that the signatures attached were those

of freeholders, whereas in fact certain of the signatures were not. However, a sufficient number of authentic signatures was furnished. Held that it was not fraud, since the licensing authority was not prejudiced as the requirement in any event had been met. Lantz v. Hightstown, 46 N.J.L. 102. See also Decker v. Board of Excise, 57 N.J.L. 603; Vanaman v. Adams, 74 N.J.L. 125. Cf. Freeman v. Hague, 106 N.J.L. 137; Matthews v. Asbury Park, 113 N.J.L. 205; Lehigh Valley R.R.Co. v. Jersey City, 7 N.J. Misc. 154.

Applying the principle to the instant case, it is apparent that none of the matters here alleged to be fraud is essential or material fraud. We are here concerned with the transfer of a liquor license to new premises. As will be later shown at length, specification (a) that the corporation had not leased the new premises nor was authorized to lease the new premises, was unfounded. Specifications (b) and (c) have nothing whatsoever to do with the question of whether or not the license should be transferred from place to place. Specifications (d) and (e) are wholly unsupported by the testimony, and even if supported, would also be immaterial. Whether business is good or bad is one person's or another's opinion. Stockholders are entitled to sell at a profit. Landlord-tenant relationships are private matters of the parties, and not the concern of licensing boards.

The alleged fraud is purely collateral. It is not such fraud as would support reconsideration. Hence the action of the Board of Commissioners in reconsidering the granting of the transfer was without lawful authority and void.

A consideration of the charges on the merits brings us to the same result.

The first specification alleges that the corporation stated the premises to be licensed were leased from George Levine, whereas the corporation at that time had not leased the premises, nor was it authorized to lease the premises, from said George Levine. On June 24, 1940 Charles Tattory (Treasurer), Helen Tattory (President), and Gus Agabati (Secretary), who were then the owners of all the stock of the corporation, holding 1 share, 8 shares and 1 share respectively, entered into a written agreement with Jack Bernstein to sell and convey to him all of the stock of the corporation and all of the fixtures for \$1,300.00, \$100.00 of which was paid as a deposit and the balance of which was to be paid when the license was transferred from 2½ East State Street to 601 North Olden Avenue. Mr. Bernstein was represented in the negotiations by Irving H. Lewis, a Trenton attorney. Mr. Lewis testified that the answers to Question 8 were correct, that he rented the premises at 601 North Olden Avenue on behalf of the corporation from George Levine at \$30.00 per week, that the arrangement was in effect at the time the application for the transfer was made. Mr. Tattory first testified that he took care of most of the negotiations and authorized no lease of 601 North Olden Avenue, but later testified that he knew the place to which the transfer was to be made, that he knew arrangements had been made for the new place, and that the arrangements had his authority. Mrs. Tattory testified that the corporation held no lease or agreement to lease at the time of application, but that she knew that arrangements were being made for a new place and that Mr. Lewis was to take care of these arrangements. In view of this, I conclude that Mr. Lewis had the apparent authority to act for, or at least the acquiescence of, the corporation in renting the new premises from Mr. Levine. And in view of his testimony that all arrangements to rent the premises had in fact been made, it appears that the answers to Question 8 were true.

The second specification alleges that the corporation stated in its application that no one other than the stockholders therein set forth had any beneficial interest, directly or indirectly, in the stock held by those stockholders, whereas the stock was to be transferred to others upon the transfer of the license. The respondent apparently relies for the existence of this alleged beneficial interest on the agreement between the stockholders and Mr. Bernstein, pursuant to which the stock was to be conveyed to Mr. Bernstein if the transfer of the license went through.

I am not so sure that this agreement gave Mr. Bernstein a beneficial interest in the stock. A beneficial interest is defined as a "Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control." But if the interest is contingent, "no present interest exists." Bouvier's Law Dictionary. "It is not the uncertainty of enjoyment in the future, but the uncertainty of the right to that enjoyment, which makes the difference between a vested and a contingent interest." 2 Words & Phrases 1502. See also, 1 Words & Phrases 749. It thus appears that a beneficial interest must be a present as distinguished from a contingent interest.

"It has been said that the terms 'beneficially entitled' and 'beneficially interested'.....when considered with regard to the time when the beneficiary becomes so entitled or interested, are construed to refer to the time when the beneficiary has the title to the property or is entitled to the possession thereof, or when a contingent interest vests, or when a defeasible interest becomes indefeasible." People v. McCormick, 208 Ill. 437, 64 L.R.A. 775.

The interest of Mr. Bernstein in the stock of the corporation was contingent and inchoate. Until the transfer took place, it was not a beneficial interest within the meaning of Question 23 and required no disclosure therein.

The third specification alleges that the corporation stated in its application that no one other than the applicant had any interest directly or indirectly in the license applied for or in the business to be conducted under the license, whereas the interest of the stockholders was to be transferred to others upon the transfer of the license. The respondent apparently here also relies upon the above mentioned agreement between the former stockholders and Mr. Bernstein. The argument is patently inadequate. The corporation was asked if anyone else had a present interest in the license or business. The respondent alleges that a present interest exists because one may be created in the future by the happening of an uncertain event! It is apparent that neither Bernstein nor any of the subsequent stockholders had any interest in the license or business at the time the application was filed. Negotiations to purchase a business, without more, do not give the prospective purchaser an interest in the business. Neither do mere agreements to purchase at a later date or on some contingency, whether oral or written. The testimony discloses nothing more than mere negotiation. It follows that the answer to Question 28 was also correct. The interest of the new stockholders arose when the transfer took place, when as aforesaid the contingent interest vested, at which time notice of changes in stockholdings was duly given the respondent as the statute requires. R. S. 33:1-34.

The fourth specification that the corporation told certain Commissioners that the transfer was being made because business was bad, whereas it was really to enable the sale of the business at a profit, and the fifth specification that the corporation told certain Commissioners that the transfer was being made because its lease was about to expire and the landlord had refused to renew, whereas such was not the case, are not only unsupported in but also denied by the testimony, and as previously mentioned, even if true, would be immaterial to a determination of whether or not the transfer should be granted.

The third charge, respecting the unlawful exterior signs, on which there was a finding of guilt but a suspended sentence by the respondent, will not be considered as the appeal from that part of respondent's determination was abandoned by the appellant at the hearing.

Since the action of respondent must be set aside on the merits, it is unnecessary to consider the other reasons for reversal alleged by appellant.

Accordingly, it is, on this 9th day of June, 1941,

ORDERED, that the order heretofore entered by respondent herein on September 27, 1940, revoking the transfer granted on July 12, 1940 of Plenary Retail Distribution License No. 18, held by Broadway Liquor Store, Inc., from 2½ East State Street to 601 North Olden Avenue, Trenton, be and the same is hereby vacated, set aside and for nothing holden; and it is further

ORDERED, that the said transfer be and the same is hereby restored to full force and effect.

E. W. GARRETT,
Acting Commissioner.

2. APPELLATE DECISIONS - SECOND WARD DEMOCRATIC CLUB v. BRIDGETON.

CLUB LICENSE DENIED ALLEGING RESIDENTIAL NEIGHBORHOOD AND PROXIMITY TO CHURCHES AND SCHOOLS - DENIAL AFFIRMED.

SECOND WARD DEMOCRATIC CLUB OF)	
THE CITY OF BRIDGETON, NEW JERSEY,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
)	
CITY COUNCIL OF THE CITY OF)	
BRIDGETON,)	
)	
Respondent)	
-----)	

Harry Adler, Esq. and Samuel Adler, Esq., Attorneys for Appellant.
John A. Casarow, Esq., Attorney for Respondent.

This is an appeal from respondent's refusal to grant appellant's application for a club license for premises 100 South Pine Street, Bridgeton.

Among other reasons, respondent assigns in support of its unanimous action that the proposed premises is located in a residential neighborhood, with three churches and a school in close proximity, and that many of the persons residing there are opposed to the issuance of the license in question.

From the proof in the record, and report of the Hearer, who, with consent of the parties, took a view of the vicinity, I am satisfied that the club quarters are situated in the midst of a strictly residential district. Within 500 feet of the club there are three churches and within 325 feet there is a public school. The only businesses of any kind in that area are several small neighborhood food stores, a barber shop and a small luncheonette.

Club licenses are reasonably denied where the premises are located in a residential district. Re Cranford American Legion, Bulletin 83, Item 3; Re Passaic Elks, Bulletin 95, Item 4; Re Cranford Veterans, Bulletin 126, Item 11; Re Manasquan River Yacht Club, Bulletin 190, Item 11; cf. Nuova Vito Lodge v. North Plainfield, Bulletin 355, Item 8.

Appellant apparently does not dispute the fact that its quarters are situated in a residential area. It contends, however, that respondent has unfairly discriminated against it because the Italian-American Political Club on Willow Street has, for many years, held a club license in a section which appellant alleges is also residential in character. However, the testimony, corroborated by a view taken by the Hearer, shows that the neighborhoods are not comparable. Within 200 feet of the Italian-American Political Club there is a railroad siding and the land in between is undeveloped; a large shirt factory exists but 100 feet away; a gasoline service station is within 150 feet and a public garage for the storage of trucks is also nearby. At best, this neighborhood is mixed industrial and residential. Appellant's claim of discrimination is, therefore, without merit.

Moreover, although the three churches and the public school are more than the statutory distance of 200 feet away (see R. S. 33:1-76), an issuing authority may, within its sound discretion, decline to issue licenses for premises which, although beyond the said 200 feet distance, it reasonably considers as being too near churches and schools. Staciewicz v. Trenton, Bulletin 35, Item 10; Serafin v. Bayonne, Bulletin 107, Item 3; Hill v. Montville, Bulletin 148, Item 9; Rafalowski v. Trenton, Bulletin 155, Item 8; Wenzel v. Maywood, Bulletin 310, Item 3; Purpuro v. Passaic, Bulletin 425, Item 1. Although the cited cases are concerned with public licenses as differentiated from club licenses, the principle is here equally applicable. Cf. Re Passaic Elks, supra.

Nor does the fact that a vacancy exists in the local quota of club licenses entitle appellant to such license as a matter of course. Despite such vacancy, an issuing authority may validly deny an application for good independent cause. Re Somerville, Bulletin 110, Item 6; Zakarew v. South Bound Brook, Bulletin 216, Item 4; Ander v. Woodbridge, Bulletin 409, Item 11; Roberts v. Delaware, Bulletin 447, Item 11. The foregoing reasons given by respondent for its denial in this case constitute such good independent cause.

The action of respondent is affirmed.

Accordingly, it is, on this 10th day of June, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN APPLICATION FOR LICENSE - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - CHARGES DISMISSED - HEREIN OF THE COMPENSATION OF CLUB STEWARDS.

In the Matter of Disciplinary Proceedings against EDWARD PARKYN POST #48 AMERICAN LEGION, 14 East Columbia Avenue, Palisades Park, N. J., Holder of Special Permit SM-615, issued by the Acting Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Paul J. Trapani, Commander of Parkyn Post, Appearing for Licensee. Charles Basile, Esq., Attorney for State Department of Alcoholic Beverage Control.

Defendant-licensee pleaded not guilty to charges alleging, in substance, that in its application for club license dated June 24, 1940 it suppressed the fact that Frank W. Petersen had an interest directly or indirectly in the license and that from July 1, 1940 until January 10, 1941 it knowingly aided and abetted Frank W. Petersen, a non-licensee, to exercise the rights and privileges of its license.

The Post originally obtained a club license in 1934 and thereafter renewed its license from year to year to and including the fiscal year beginning July 1, 1940. During the course of a routine investigation in December 1940, the Department learned that two members of the Borough Council were also members of the Post and thereupon the Post was notified that, in accordance with the provisions of R. S. 33:1-20, the application for the license should have been made directly to the Commissioner of Alcoholic Beverage Control. Accordingly, on January 10, 1941, the Post surrendered its Club License CB-1, issued by the Borough Council of the Borough of Palisades Park, and filed application with this Department for a club license. The issuance of the latter license was withheld pending investigation as to the interest, if any, of Frank W. Petersen in the license, and in the meantime Special Permit SM-615 was issued to the Post, under which permit it is now operating.

It appears from the testimony of Paul J. Trapani, Commander, whose testimony is partially supported by documentary proof, that for a long time past the club has been paying a rental of \$35.00 per month for the use of its premises; that the license fees have been paid by the club; that all monthly reports to the State Tax Department are made by the club, and that all bills for liquor purchased are made out in the name of the club and paid in cash from the bar receipts. It further appears from the testimony of the Commander that a part of the profits, which are very small, is used to purchase additional refreshments for the members and that the club considers itself responsible for any losses. All of this evidence points to the fact that the club is the real licensee.

The only evidence that the license was farmed out is contained in a statement made by Frank W. Petersen on January 15, 1941, wherein he states that for the past four years he has been employed as steward and janitor at the premises occupied by the Post; that

he pays in cash for the alcoholic beverages and retains any profits as his compensation. It is permissible for the steward, as agent of the club, to pay the bills rendered to the club for alcoholic beverages, and hence the only question concerns the retention of the profits. It appears from Petersen's statement that in the beginning he was paid a salary of \$25.00 per week. It further appears from a statement obtained from Past Commander Earle that because of financial difficulties, the Post was unable to continue payment of a fixed salary, and hence entered into the present arrangement with its steward. Commander Trapani testified that the Post considers the license as its own and that he believes that no one else has any interest in the business.

The present arrangement is not entirely satisfactory and it would be advisable if the licensee would arrange to deposit the receipts from the bar in its bank account and pay the bills for alcoholic beverages by its check instead of permitting the steward to pay these bills in cash. It should also arrange to pay the steward a fixed salary rather than permit him to keep the small net profits. The case, however, differs from Re Laurence Brook Country Club, Inc., Bulletin 335, Item 6, wherein the steward in effect paid for the license and obtained a definite concession on the understanding that he take all losses and profits. It differs also from Re Club Araby, Bulletin 458, Item 9, wherein the Treasurer of the club admitted that he paid for the license.

On all of the evidence I am satisfied that Frank W. Petersen was a mere employee, that the Post is the real licensee, and that the license was not rented out or farmed to the steward.

Accordingly, it is, on this 10th day of June, 1941,

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

E. W. GARRETT,
Acting Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER 20 DAYS IF SITUATION CORRECTED - 21 DAYS ELAPSED - SITUATION CORRECTED - PETITION TO LIFT GRANTED.

In the Matter of Disciplinary)
Proceedings against)
JENNIE LIPIZ,)
199 W. Ingham Avenue,)
Trenton, N. J.,)
Holder of Plenary Retail Consump-)
tion License No. C-56, issued by)
the Board of Commissioners of the)
City of Trenton.)
-----)

ON PETITION
CONCLUSIONS AND ORDER

Defendant-Licensee, Pro Se.

Heretofore in this case I suspended the defendant's license from May 20, 1941 through the balance of its term, after she had pleaded guilty to charges showing that she was a "front" for her husband. However, at the same time, leave was granted to petition this Department for the lifting of such suspension once the "front" were actually corrected, provided, however, that the suspension would not be vacated until at least twenty days thereof had been served. Re Lipitz, Bulletin 460, Item 8.

Such petition has now been filed, setting forth (as also appears from the records of this Department) that on June 5, 1941 the license was transferred by the Board of Commissioners of the City of Trenton to Romeo Quansi, subject, however, to the said suspension. The petition also sets forth that neither the defendant nor her husband has any further interest, direct or indirect, in the license or in the business; and that neither of them will be employed at the licensed premises or be in anywise concerned in operation of the business there.

In view of the transfer and the representations in the petition, especially the representation that neither the defendant nor her husband will be employed at the licensed premises, I am satisfied that a bona fide correction has occurred. See Re Boreth, Bulletin 452, Item 5.

In view of such fact, and since at least twenty days of the suspension have already been served, the defendant's petition for immediate lifting of such suspension is granted.

Accordingly, it is, on this 10th day of June, 1941,

ORDERED, that the suspension heretofore imposed on the license in question, from May 20, 1941 through the balance of its term, be and hereby is lifted, and such license restored to full force and operation, effective immediately.

E. W. GARRETT,
Acting Commissioner.

5. LICENSES - PERAMBULATING PREMISES NOT PERMISSIBLE.

Mr. Robert E. Anderson,
New York City.

June 12, 1941.

My dear Mr. Anderson:

I have yours of June 4th with reference to licensing vehicles equipped to dispense draught and/or packaged beer "very roughly, similar to those in use at present in dispensing ice cream." The answer does not need to be — as you suggest — of the "tentative or qualified sort."

There is no doubt that your idea is conceived in GOOD FAITH, but it will definitely not be received in this State in GOOD HUMOR. To give you a "very rough" reply, your proposal will be met with a shoulder as cold as the beer you intend to sell. Furthermore, would not the inevitable jostling of the travelling tavern shake the collar off the beer?

Imagine a typical sweltering summer night, with New Jersey's good citizens footsore, weary and worn, sprawled on porches, fire escapes, and at open windows, eager for a cool evening breeze — welcome relief from the harrowing heat. Suddenly the summer's sultry stillness breaks, a bell clangs and the stentorian tones of your salesman proudly pipe from his perambulating purveyor, "Ice cold beer!" Sweating citizens swarm around like flies and stagger back like barflies, their parched thirsts slaked by foamy brew. The night then seems filled with music and the cares that plague the day fold their tents like the Arabs and as silently steal away. The mobile tavern sells, and having sold, moves on.

An intriguing picture!!

Here's the catch: Reputedly when Mohammed wouldn't go to the mountain, the mountain came to Mohammed — but when the public won't go to the bar, the bar can't come to the public. Re Carlton, Bulletin 195, Item 7.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

6. APPELLATE DECISIONS - ALBERTS AND SCHOENFELD v. ROSELLE AND LENA GARFINKLE, INC.

ISSUANCE OF LICENSE APPEALED ALLEGING FRONT FOR DISQUALIFIED PERSON AND SUFFICIENT PLACES IN VICINITY - FRONT NOT SHOWN - ABUSE OF DISCRETION NOT DEMONSTRATED - ISSUANCE AFFIRMED.

MEYER ALBERTS and MOLLIE)	
SCHOENFELD,)	
)	
Appellants,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE BOROUGH)	
OF ROSELLE and LENA GARFINKLE, INC.,)	
a corporation of New Jersey,)	
)	
Respondents.)	
-----))	

Philip Cohen, Esq., Attorney for Appellants.
Stanley W. Greenfield, Esq., Attorney for Respondent, Lena Garfinkle, Inc.
No appearance on behalf of Respondent Mayor and Council of the Borough of Roselle.

Because of doubt as to the extent of the licensed premises, this case was remanded to respondent Mayor and Council, Bulletin 444, Item 1. Thereafter, on March 13, 1941, the license was restricted to the following area in premises at 1181 St. George Avenue, Roselle:

"Ground floor, westerly window of store and space adjoining the window 10 ft. long and 8 ft. from the wall, together with entire cellar under the entire store."

Certification of such restriction having been received, it becomes necessary to determine the meritorious issues.

Appellant, Meyer Alberts, who holds a liquor license in the City of Linden and appellant, Mollie Schoenfeld, who holds a liquor license in the Borough of Roselle, allege that the license herein was illegally and improperly granted (1) because the corporation, Lena Garfinkle, Inc. is a mere subterfuge and shield used by Lena Garfinkle, who is ineligible to hold a license, and (2) because respondent issuing authority abused its discretion since there are a sufficient number of licensed premises in the immediate neighborhood.

For the past few years Lena Garfinkle has operated a grocery and delicatessen store at 1181 St. George Avenue. On June 20, 1940 she filed with respondent Mayor and Council an application for a plenary retail distribution license for said premises and admitted

that at that time she had resided only two and one-half years in the State of New Jersey. On June 27, 1940, at a hearing held upon said application and after the objectors had pointed out that she was personally ineligible to hold a liquor license, her attorney, Mr. Greenfield, announced that he withdrew said application and that a corporation would be formed to obtain a license. Respondent, Lena Garfinkle, Inc. was incorporated on July 2, 1940. Its incorporators were Morris Holland, Lena Garfinkle and her husband, Benjamin Garfinkle. Three days later the application for the present license was filed by Lena Garfinkle, Inc., accompanied by Mr. Greenfield's certified check for \$250.00 in payment of the license fee. The application listed Morris Holland as President and holder of ninety shares of stock; Lena Garfinkle as Secretary and Treasurer and holder of nine shares of stock; Benjamin Garfinkle as Vice-President and holder of one share of stock. Written objections having been filed, a hearing was held before the Mayor and Council of the Borough, and on July 25, 1940, by a four to one vote, the present license was granted to Lena Garfinkle, Inc. On the following day ten shares of stock were issued to Mr. Greenfield.

The facts set forth above give rise to suspicion that the corporation may be a mere "front" to enable Lena Garfinkle, an ineligible person, to hold a liquor license. With that thought in mind, the evidence has been carefully considered. Morris Holland testified that nearly thirty years ago he operated a saloon in the State of New York but that he has been engaged in business as a carpenter since that time and has resided in the State of New Jersey for more than five years last past. He swears that he suggested to Mrs. Garfinkle the formation of the corporation when he found out that she could not obtain the license in her own name; that he contributed \$400.00 in cash to the corporation in payment for the shares issued to him; that he is not related in any way to the Garfinkles, although he has been friendly with them for the past two or three years.

It appears from the sworn testimony that none of the other stockholders paid any cash for their shares and that the attorney accepted his shares in part payment of his bill for legal services. Mrs. Garfinkle has sworn under oath that she did not give Holland the money to pay for his shares and that she has no understanding of any kind with him in reference to the shares held in his name.

The testimony of Holland is somewhat weakened by the fact that during 1939 he was out of work for a period of about nine months and that his bank account shows only small deposits and withdrawals. However, the Hearer reports that he appeared to be telling the truth and in view of the sworn testimony of the interested parties, I must, on the record as it now stands, conclude that the issuance of the stock to Holland was bona fide. Lena Garfinkle, who leases the entire store at 1181 St. George Avenue for \$45.00 per month, has sublet in writing to Lena Garfinkle, Inc., by instrument dated July 26, 1940, that portion of the store covered by the license at a monthly rental of \$10.00. Despite the suspicious circumstances, I must conclude on the evidence that appellants have not sustained the burden of proof in showing that the corporation is a mere subterfuge.

Unquestionably, there are a large number of licensed premises in this section of the Borough and the licensing situation is made worse by reason of the fact that the City of Linden has issued numerous licenses on the opposite side of St. George Avenue, which is the dividing line between Roselle and Linden. However, this is a business and shopping center. Until June 1940 the only distribution license

in the immediate vicinity was that held by appellant, Mollie Schoenfeld, who operates the Chandler Pharmacy at 1199 St. George Avenue. In June 1940 respondent Mayor and Council issued a new distribution license to Southern Wine & Liquor Company for premises conducted as a fruit and vegetable store, located at 1149 St. George Avenue. In July 1940 it issued the distribution license from which this appeal was taken. The Mayor and Council have adopted no municipal regulation limiting the number of licenses and apparently believe that this business section of the Borough is particularly suited for this type of business. The number of licenses which shall be granted, especially in a business district of this type, is peculiarly within the discretion of the issuing authority. Sobocienski v. Newark, Bulletin 239, Item 8; Fanel v. Newark, Bulletin 284, Item 10; Sachs v. Trenton, Bulletin 321, Item 12. Under the circumstances, I do not find that respondent Mayor and Council abused its discretion in granting another distribution license in this section of the Borough.

For the reasons aforesaid, the action of respondent Mayor and Council in granting a Plenary Retail Distribution License to Lena Garfinkle, Inc. is affirmed.

Accordingly, it is, on this 11th day of June, 1941,

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

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
 EAGLE LIQUOR STORES, INC.,
 178 Newark Avenue,
 Jersey City, N. J.,
 Holder of Plenary Retail Distribution License D-9, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS
AND ORDER

 Eagle Liquor Stores, Inc., by Jacob D. Rosenfeld, Treasurer.
 Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee 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 April 29, 1941 Jacob D. Rosenfeld, the Treasurer of the defendant-licensee, sold a gallon bottle of Manischewitz White Label Malaga Wine to an investigator for the price of \$1.75. The minimum consumer price at which gallon bottles of this product could have been sold, lawfully, at that time was \$1.79. Bulletin 416.

The minimum penalty for sale below Fair Trade price is suspension of license for ten days. Re Koenig, Bulletin 463, Item 6. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed. In view of the guilty plea, five days of said penalty will be remitted - leaving a net penalty of five days.

Accordingly, it is, on this 11th day of June, 1941,

ORDERED, that Plenary Retail Distribution License D-9, heretofore issued to Eagle Liquor Stores, Inc. by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) days, effective June 16, 1941, at 2:00 A.M. (Day-light Saving Time).

E. W. GARRETT,
Acting Commissioner.

8. ELIGIBILITY - ASSAULT AND BATTERY - POSSESSION AND SALE SINCE REPEAL OF TWO BOTTLES OF BEER - NO AGGRAVATING CIRCUMSTANCES - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

June 12, 1941

Re: Case No. 375

On February 28, 1930 applicant was convicted in a Police Court on a charge of assault and battery and received a suspended sentence. Applicant testified herein that no weapons were used and that his arrest was the result of a fist fight. I do not believe that the crime involves moral turpitude. Re Case No. 361, Bulletin 441, Item 11.

On November 4, 1936 applicant pleaded non vult in a Court of Quarter Sessions to an indictment for possessing and selling certain alcoholic beverages without a license in violation of Section 48 of the Control Act. He was sentenced to serve two months in a penitentiary, but on November 6, 1936 this sentence was vacated and he was placed on probation for three years.

At the hearing applicant testified that in May 1936 two men are alleged to have purchased bottles of beer in a store where applicant had formerly conducted business under a retail license which expired on June 30, 1935 and was not renewed. Independent investigation disclosed that at the time of the alleged sale a social club was occupying the store and that applicant herein was not on said premises when the alleged sale was made. While his guilt or innocence cannot be redetermined, I find no aggravating circumstances, and hence conclude that this single violation of the Control Act does not involve moral turpitude. Re Case No. 366, Bulletin 445, Item 10. The provisions of P.L. 1941, Chapter 97 do not bar applicant from obtaining a license or working on licensed premises. Said act is not retroactive in effect, and hence, in the absence of a finding that the crime involves moral turpitude, said act does not disqualify applicant. Bulletin 463, Item 10.

It is recommended, therefore, that applicant be advised that he is not disqualified by statute from holding a liquor license or being employed by a liquor licensee. However, if he applies for a license, the question of his fitness should be carefully considered by the issuing authority in view of his record set forth above and a number of arrests prior to 1936 on various charges, none of which resulted in convictions.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

9. MORAL TURPITUDE - GRAND LARCENY BY CHEATING AT CARDS INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

In the Matter of an Application)	
to Remove Disqualification be-)	
cause of a Conviction, pursuant)	CONCLUSIONS
to R. S. 33:1-31.2.)	AND ORDER
Case No. 152)	
- - - - -)	

Petitioner has a lengthy criminal record. In 1910, when he was nineteen years of age, he was convicted of loitering and sentenced to six months in jail; in 1913 he was convicted of the crime of grand larceny and sentenced to a one year jail term; in 1920 he was fined \$10.00 on a charge of gambling and in 1921 he was given a suspended sentence on a charge of assault and battery. In addition, he was fined \$15.00 in 1930 for violation of a municipal fire ordinance and was held in 1934 as a material witness in a murder case. Since then he has not been arrested or convicted of any crime.

His conviction of grand larceny resulted from his having defrauded a person of the sum of \$60.00 by cheating at cards. In such circumstances, the crime of grand larceny indubitably involves moral turpitude. It is unnecessary, therefore, to consider the nature of any of his other convictions.

On behalf of petitioner, an engineer, a municipal employee and a businessman engaged in the wholesale tile business, who have known petitioner respectively for twenty, seven and nine years, testified that, to the best of their knowledge, petitioner's reputation, at least for the last five years, is good, and that, in their judgment, he has been leading an honest and law-abiding life during that period.

The Chief of Police in the municipality in which petitioner has resided for many years advises that there are no warrants, complaints, reports or investigations pending against petitioner in his department.

I am satisfied from the evidence that petitioner has led an honest and law-abiding life for more than five years last past. In view thereof and the report of the Chief of Police, I shall give petitioner the benefit of the doubt in concluding that, despite his past record, his association with the alcoholic beverage industry in the future will not be prejudicial to the best interests of the industry.

Since 1924 petitioner has been employed as a cook by one employer, who, for the past several years, has held a liquor license. He does not handle, sell or serve alcoholic beverages. Petitioner, who is not well educated and speaks English poorly, swore that he did not know that he was ineligible to be employed on licensed premises. He testified that immediately upon being informed of his disqualification he communicated with his attorney and promptly filed the instant petition. There is nothing in the record to indicate any bad faith on the part of petitioner, and in view of his lack of education, I shall accept as true his assertion that he was unaware of the disqualification resulting from the terms of the statute. Cf. Re Case No. 141, Bulletin 455, Item 5.

Accordingly, it is, on this 12th day of June, 1941,

ORDERED, that petitioner's application to lift his statutory disqualification because of the convictions referred to herein be and the same is hereby granted, in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

10. RETAIL LICENSES - ISSUANCE - NECESSITY FOR IMMEDIATE REPORTS FROM MUNICIPAL CLERKS.

June 16, 1941

To: Municipal Clerks,
Clerks of Municipal Boards of Alcoholic Beverage Control.

It is the duty of all issuing authorities to report forthwith to the Commissioner upon the issuance of all licenses.
R. S. 33:1-19.

During the next fifteen days more than 11,000 retail licenses will be issued throughout the State for the next fiscal year.

We cannot do our part of the work quickly and satisfactorily unless we have your close and valued cooperation. For example, we cannot issue transportation insignia unless and until you certify to us the issuance of the license.

Will you, therefore, have a heart and promptly certify all licenses as issued and not later than the day following issuance. Let's not delay some licensee from receiving his delivery privilege.

Certification should set forth: (1) Name of Licensee, (2) Trade name, if any, (3) Address of licensed premises, (4) License number, (5) Kind of license, (6) Date authorized, (7) Effective date, (8) Fee charged, (9) Special Conditions, if any.

Thanks immensely.

E. W. Garrett

Acting Commissioner.