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

BULLETIN 427 OCTOBER 18, 1940.

1. CREDIT - AS BETWEEN MANUFACTURER OR WHOLESALER AND RETAILER - HEREIN OF PREFERRED STATUS FOR LIQUOR CLAIMS, OF DENYING LICENSES IF BILLS ARE MORE THAN THIRTY DAYS OVERDUE, OF THE DESIRABILITY OF CREDIT REGULATION, AND OF THE PROPER REMEDY.

LIMITATION OF LICENSES - CONSIDERATIONS APPLICABLE TO STATE-WIDE LIMITATION.

October 5, 1940

Edgar C. Kohlhepp, President,
Brown Friar, Incorporated,
Jersey City, N. J.

My dear Mr. Kohlhepp:

It is true that State and Federal taxes are a considerable part of the price of alcoholic beverages. But it does not follow that liquor indebtedness should therefore be a preferred claim. If it did, it would mean that a preference would also have to be afforded indebtedness for other merchandise subject to similar tax, such as cigarettes and gasoline. It would further mean additional preferences for other special classes, dependent upon the amount or kind of tax they paid. The logical result would be that those who paid the most would be entitled to the greatest benefits, and pretty soon the favored few would be running the show, to the exclusion of the rest of us, and our democratic processes would be an empty shell. There is no relation between taxation and the procedure set up for the enforcement of private obligations. The purpose of taxation is to provide revenue, and so long as equitably distributed, how or from whom it is collected is an incidental matter of procedure. Our system for the enforcement of private obligations is for the purpose of giving one party a remedy in the event that the other party agrees to do something and fails to perform. The contribution of taxes in a democratic institution is the privilege of those who are able to pay, not a method of buying favors, and entitles them to nothing more than is afforded everyone else.

The essence of your suggestion, without this preferential element, is the enactment of a law that licenses be not issued or renewed if there are bills more than thirty days overdue.

Which licenses do you mean? Will it be directed at retailers, or at wholesalers, or at both? If only at retailers, it seems that the proposal is subject to the same criticism as Assembly Bill 346, which was before the Legislature in April of 193. and which the late Commissioner Burnett discussed in Bulletin 313, Item 9. If credit is wrong, why is it wrong for one but not for another? What supports such discrimination? If the reason is sound, why shouldn't it apply all along the line? And what bills would this law require to be paid? Only alcoholic beverage bills, or other bills as well? If only the former, that also is a discrimination. What entitles sellers of alcoholic beverages to this privilege and denies it to the man who sells the cigarettes and gasoline, or the soda and pretzels?

I am not sure I agree with you that all this will involve no material part of the Department's time or effort. What the Department undertakes to enforce, it must also administer. That means forms and procedures must be provided and rules must be set up for their functioning. Wholesalers' claims must be checked and verified and municipalities officially notified. A claim is not necessarily bona fide merely because a wholesaler says so. The retailer may very well have a different idea. Hence the necessity for careful investigation and determination of the validity or invalidity of the account, when the indebtedness was incurred, when payment was due, whether there has been refinancing or substitution, and whose claims are correct, for all of which we now have no appropriation or facilities whatsoever.

It is, to say the least, a novel procedure. The disposition of such matters is customarily considered the function of the courts.

If you sold merchandise to a retailer or a wholesaler, and he didn't pay, and his renewal license was refused, you would not be in a very good position to collect the account. In fact, you'd be in a worse position than before, because the fellow would be out of business, probably with no assets and no visible means of acquiring anything attachable, and you would be holding the bag. The very statute you thought was going to save you would become the instrument that made the account uncollectible. Yet under such a statute there would be no other alternative. We couldn't make fish out of one and fowl out of the other. Nor would we have any way of deciding, or even have the power to decide, whether or not the debtor was a good risk and would eventually pay. If his obligations weren't met on the line, the disqualification provided by the statute would have to operate. The probable result would be the loss of the account in its entirety.

Again, consider that during the course of the license year the retailer may go through bankruptcy and wipe the slate clean. His application for new license could not be refused, under a law as proposed, on the ground that there were bills more than thirty days overdue, for whatever the settlement there would now be no bills.

We must appreciate that credit, properly used, is an asset. It is a sound and established business practice. Without it, business would stagnate. The facts in the case of Sobocienski and Franklin Stores Co. v. Newark and International Liquor Co., Bulletin 309, Item 2, are illustrative. International opened its store in December 1937 with a liquor stock worth approximately $12,000.00 and fixtures worth approximately $7,500.00, or a total of almost $20,000.00, on a capital investment of $3,000.00. The company continued in business until May 1939, when they were bought out by another corporation who at this writing is still at the same address. My understanding is that, although generally to a lesser extent, this is common practice. Yet with a statute prohibiting the carrying over of credit of more than thirty days' standing into the next year, or prohibiting all credit, it would not be possible.

The remedy, as I see it, is to eliminate the financially irresponsible dealer by careful credit investigation. Primarily it is an economic matter to be met by the trade itself, rather than by governmental regulation. If credit were refused to those who did not pay in reasonable time, a great deal would be accomplished. Expecting the State to work out ordinary intra-industry business

problems is no solution. It is the delusion that one individual is entitled to official protection from others because of his failure or inability adequately to cope with an ordinary business transaction on which he voluntarily entered. It has been tried again and again and has always met with failure. It is the difference between interference and regulation. The State is not a collection agency. Its duty is not to run business, but to control it. It enacts laws to promote the public welfare, not to aid private creditors of a special class. It cannot properly be called on to spend taxpayers' money for special administrative machinery to bury the mistakes of the credit man.

You further inquire about State-wide limitation of the number of licenses. Such a bill was also introduced at the 1939 session of the Legislature. It was Assembly Bill No. 358. It failed to pass. I send you herewith copy of the late Commissioner Burnett's report and recommendation dated June 26, 1939 (Bulletin 327, Item 6) on this bill, in which he advised that it not be adopted. I endorse and approve these views. I am convinced that we have far too many retail licenses in New Jersey but no one yet has solved the difficult problem of reducing their number by arbitrary State-wide limitation with equity.

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

2. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA - CHARGES THAT DISTRIBUTION LICENSEE EXCEEDED TERMS OF LICENSE DISMISSED BECAUSE PROOF OF GUILT NOT SUFFICIENT.

In the Matter of Disciplinary Proceedings against ISRAEL WILSON, T/a WILSON'S LIQUOR STORE, 105 Lakeview Avenue, Clifton, N. J., Holder of Plenary Retail Distribution License No. D-2, issued by the Municipal Council of the City of Clifton.	CONCLUSIONS AND ORDER

Victor Greenburg, Esq. and Herman Scott, Esq., Attorneys for Defendant-Licensee.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant is charged, in substance, with:

(1) Selling below Fair Trade price a quart of "Old 'Mr. Boston' Pinch Bottle Blended Whiskey" at his "package" liquor store on April 4, 1940, in violation of Rule 6 of State Regulations No. 30;

(2) Selling a drink or drinks of liquor at his store on that same date, thus exceeding the terms of his plenary retail distribution license and hence violating the Alcoholic Beverage Law (R. S. 33:1-2);

(3) Selling liquor on that same date on other than his licensed premises and hence violating the Alcoholic Beverage Law (R. S. 33:1-2);

(4) Permitting an open container of liquor and such liquor to be consumed at his "package" store on that same date, in violation of Rule 14 of State Regulations No. 20.

The defendant pleads "guilty" to charge (1) and "not guilty" to the remaining charges.

As to such remaining charges, the Department's contention is that, in the morning of April 4, the defendant's wife sold an investigator of this Department one or more drinks of whiskey on the licensed premises and that, in the afternoon, the defendant himself sold this investigator one or more drinks of whiskey in the kitchen of the defendant's living quarters which are located in the same building as the store.

The defendant, his wife and his son (who was apparently in charge of the store on the occasions in question on April 4) deny that such actually occurred. In view of the obvious interest of these persons in having the defendant acquitted of the contested charges, their testimony must, of course, be taken with the proverbial "grain of salt."

However, on the other hand, I find that the evidence in support of the Department's case (taken at two extensive hearings and here pointless to relate because of its length) contains many uncertainties and is at times contradictory. On principles of common fairness, I cannot, on the basis of such evidence, say that the Department has sustained the burden of proof.

Hence, charges (2), (3) and (4), in so far as the said evidence is concerned, are dismissed.

As penalty for the defendant's guilt on charge (1), his license will, in view of his admission of such guilt (and thus obviating the need of testimony on the charge), be suspended for five days in accordance with the rule heretofore established for such cases. See Re Polonsjy and Kiewe, Bulletin 308, Item 9; Re Davidson & Davidson, Bulletin 425, Item 4; Re DeSantis, Bulletin 425, Item 10.

Accordingly, it is, on this 10th day of October, 1940,

ORDERED, that Plenary Retail Distribution License No. D-2, heretofore issued by the Municipal Council of the City of Clifton to Israel Wilson, T/a Wilson's Liquor Store, for 105 Lakeview Avenue, Clifton, be and the same is hereby suspended for a period of five (5) days, commencing October 14, 1940, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT - PLEA OF NOLO CONTENDERE - 5 DAYS' SUSPENSION WHERE SITUATION NOW CORRECTED AND LICENSEE HAS BEEN INDIRECTLY PENALIZED.

In the Matter of Disciplinary Proceedings against WILLIAM A. MORLEY, Fire and Delilah Roads, Farmington, Egg Harbor Twp., Atlantic County, N. J., Holder of Plenary Retail Consumption License No. C-25, issued by the Township Committee of Egg Harbor Township.	CONCLUSIONS AND ORDER

Frank S. Farley, Esq., Attorney for Defendant-Licensee.
Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Stella Reynolds and Louis (or Lewis) Eberle obtained a plenary retail consumption license from the Egg Harbor Township Committee for 1938-9 for the Turkey Ranch at Fire and Delilah Roads in the Township.

Thereafter they renewed such license for 1939-40. However, on April 26, 1940 the State Commissioner, on appeal, set aside such renewal license on the ground that the holders had really obtained it as a "front" for William A. Morley, the present defendant. Hindin v. Egg Harbor, Reynolds and Eberle, Bulletin 399, Item 1.

Thereafter, on May 9, 1940, the defendant, who does not appear disqualified from holding a plenary retail consumption license, obtained a license for the said premises from the Township Committee, which he later renewed for the current licensing year. On appeal then being taken to this Department, such issuance and renewal were sustained, it being held, as regards the question whether the defendant should be deemed necessarily unworthy of a liquor license because of his prior misconduct as to the "front", that it lay within the sound discretion of the Township Committee to determine whether they would give Morley "another chance." Hindin v. Egg Harbor and Morley, Bulletin 418, Item 5.

However, in thus affirming, it was there also specifically stated:

> "....it does not follow that Morley may, by such affirmance, thus be escaping penalty for his alleged misconduct. For, although such misconduct may not be sufficient to characterize respondent's willingness to give Morley a 'second chance' as unreasonable, nevertheless, if such misconduct has occurred, it warrants disciplinary action against him. In view that Morley's testimony in Hindin v. Egg Harbor Township, Reynolds and Eberle, supra, lends support to the charge of such misconduct, I am directing that disciplinary proceedings be instituted forthwith by this Department against him. The fact that Morley may have already been indirectly penalized by reversal of the Reynolds-Eberle license does not stand in bar of such proceedings, although it may perhaps be considered in meting out penalty in the case."

Thereafter, the present charges, all based on the above mentioned "front", were served upon the defendant, alleging (in substance) that:

(1) Stella Reynolds and Lewis Eberle, the defendant's predecessors in interest, violated the Alcoholic Beverage Law (R. S. 33:1-25) by falsely stating in their application for their 1939-40 license that no one other than themselves was interested in the license or the business whereas the defendant had such an interest.

(2) Such predecessors in interest further violated the Alcoholic Beverage Law (R. S. 33:1-26, 52) by permitting the defendant to exercise the rights and privileges of their 1939-40 license.

(3) The defendant himself violated the Alcoholic Beverage Law (R. S. 33:1-26) from July 1, 1939 until April 26, 1940, by in effect exercising the rights and privileges of the said Reynolds-Eberle license for 1939-40.

The first two charges proceed under Rule 2 of State Regulations No. 15, which expressly holds a licensee accountable for any violations of his predecessors in interest. See Re Stuiso, Bulletin 413, Item 3; Re Faresich, Bulletin 419, Item 1.

The third proceeds under R. S. 33:1-31(a), which subjects a licensee to disciplinary proceedings when himself violating any provisions of the Alcoholic Beverage Law. See Re Kloufis and Misthos, Bulletin 396, Item 10.

The defendant pleads "nolo contendere" to the three charges and admits all the facts as to the "front" appearing in the original case (Hindin v. Egg Harbor, Reynolds and Eberle, supra) which set aside the Reynolds-Eberle license.

In view that the defendant thus readily admits the case against him, that he was not himself disqualified from obtaining the Reynolds-Eberle license in his own name (which he should have done) and that the "front" situation there involved has already been fully corrected by the setting aside of such license and the defendant's obtaining one in his own name, ordinarily the penalty for the defendant's misconduct as to the "front" would, in accordance with decisions in like cases, be a ten-day suspension of his present license. Re King, Bulletin 404, Item 5; Re Club Parsippany, Bulletin 411, Item 8. Cf. Re Silver Palm Corp., Bulletin 422, Item 8.

However, in the present case there is, as regards such penalty, the added mitigating fact that the defendant has already been penalized, albeit indirectly, by the setting aside of the Reynolds-Eberle license on April 26, 1940, and his not obtaining a license in his own name until May 9, 1940, a period of thirteen days.

Obviously, such period may not be viewed as the equivalent of an actual thirteen-day suspension, hence warranting the conclusion that now no suspension at all should be imposed. An actual suspension means that the licensee is, by order of the State Commissioner or the local issuing authority, peremptorily deprived of the privileges of his license during the period of suspension. As such, it is vitally different from the present instance where the defendant voluntarily awaited the outcome of the appeal proceedings in Hindin v. Egg Harbor, Reynolds and Eberle, supra (apparently hoping

for a favorable decision) and then only took steps to apply for a new license in his own name, thus himself, through his own management of affairs, causing the lapse of thirteen days.

However, although the defendant cannot thus claim that this thirteen-day lapse be treated as though actually a period of suspension, fairness dictates that such lapse nevertheless be taken into account in fixing proper penalty in the present case. Hence, suspension will here be for five, instead of the usual ten, days.

Accordingly, it is, on this 10th day of October, 1940,

ORDERED, that Plenary Retail Consumption License No. C-25, heretofore issued by the Township Committee of Egg Harbor Township to William A. Morley for premises at Fire and Delilah Roads, Farmington, in Egg Harbor Township, be and the same is hereby suspended for a period of five (5) days, commencing October 14, 1940 at 6:00 A.M.

E. W. GARRETT,
Acting Commissioner.

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

October 10, 1940

Re: Case No. 345

In 1913 applicant was convicted of grand larceny and receiving and after having served a short time in the reformatory, was placed on probation for two years.

Larceny and receiving stolen goods are crimes which ordinarily involve moral turpitude. Re Case No. 297, Bulletin 354, Item 7; Re Case No. 290, Bulletin 346, Item 13. At the hearing, applicant admitted that he had knowingly and actively taken part in the sale and delivery of stolen property and had shared in the ill-gotten proceeds. Under these circumstances, the crimes involve moral turpitude.

It further appears that applicant has been three times convicted of possessing lottery slips. The first conviction, in 1936, resulted in applicant being fined $25.00; on the second occasion, in 1938, he was placed on probation for two years and fined $100.00; the third time, May 15, 1940, he was sentenced to serve sixty days in the penitentiary.

Applicant admitted, at the hearing, that the first two convictions (1936 and 1938) arose out of his employment by a gambling house as a "numbers" writer. As regards the last conviction, in 1940, he testified that it had resulted from his arrest in a raid on a gambling house where he had gone, as a patron, to play "numbers".

The records of the Probation Office, however, disclose that applicant had been arrested, in the possession of lottery material, after information had been received that he was writing lottery tickets and that after pleading non vult to an indictment charging him with possession of lottery slips, applicant, in the course of a pre-sentence investigation by the Probation Department, had stated:

"....so I went and rented a room at _____. I wrote on an average of about $8.00 or $10.00 a day. My cut was 20% on the dollar.....I hope the court gives me a break."

It thus appears, despite his testimony to the contrary, that on the occasion of his third arrest and subsequent conviction on a gambling charge, applicant was again engaged in business as a "numbers" writer.

Convictions for offenses involving commercialized gambling may or may not involve moral turpitude, depending upon the facts. Re Case No. 295, Bulletin 351, Item 10; Re Case No. 239, Bulletin 305, Item 9. Where it appears that the person convicted was connected with the gambling enterprise only as a minor employee, under ordinary circumstances no moral turpitude is involved. Re Case No. 296, Bulletin 353, Item 12; Re Case No. 315, Bulletin 396, Item 4.

Although the applicant in the instant case does not appear to have been anything other than a minor employee in any of the gambling enterprises with which he was connected, he has been convicted of an offense involving commercialized gambling not once (see Re Case No. 296, supra), or two times (see Re Case No. 315, supra), but on three separate occasions within a period of four years. In view of applicant's prior multiple convictions for the same gambling offense of which he was again convicted in 1940, I believe that the crime which led to that third conviction involved moral turpitude. See Re Case No. 324, Bulletin 407, Item 4; 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 be employed by a liquor licensee in this State.

Robert R. Hendricks,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - DE VIVO v. HIGHLANDS.

FANNY DE VIVO, trading as VILLA ROMA, Appellant, -vs- BOROUGH COUNCIL OF THE BOROUGH OF HIGHLANDS, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Edward J. Santoro, Esq. and Leon R. Cantor, Esq., Attorneys for the Appellant.
Quinn & Doremus, Esqs., by Vincent J. McCue, Esq., Attorneys for the Objectors.
Irene R. O'Crowley, an Objector, Pro Se.
Carl Abruzzese, Esq., an Objector, Pro Se.
William L. Parker, Esq. and John M. Pillsbury, Esq., Attorneys for the Respondent.

This is an appeal from the denial by respondent of a plenary retail consumption license to appellant for premises 88 Portland Road, Highlands.

The premises in question were formerly licensed in the name of one Aida Libretti from July 1937 to December 1939, at which time the license was surrendered to respondent after it had refused a transfer thereof to the present appellant, who took no appeal from such refusal. Thereafter, appellant applied for the issuance of a license to her for the same premises for the present fiscal year, and this application was also denied by respondent. Hence this appeal.

It is clear from the evidence that the area where appellant seeks to locate is highly residential in character. The premises is situated in the midst of a number of large private dwellings, all of the "estate" type, built upon spacious grounds. The nearest mercantile business, a roadstand, is more than one thousand feet away.

At the hearing, many of the neighboring residents appeared and voiced their objections to the issuance of a liquor license to appellant at the proposed site. They testified that the prior licensee had improperly conducted the premises; that, at frequent intervals during the summer months, busloads of picnickers visited the premises and created undue noises and disturbances; that many of these persons became intoxicated and trespassed on their property.

The record discloses that respondent had issued and renewed the license to the prior licensee, despite the character of the neighborhood, in view that no protest had ever been received by it against such issuance and renewal. However, where licensed premises are permitted to exist in a residential district, the premises must be operated in such a manner as not to interfere with the quiet and decency of the neighborhood. Wilson v. Highlands, Bulletin 282, Item 8; Wiegand v. High Bridge, Bulletin 397, Item 14. Although a municipality may, in the absence of protest, issue

a license in a residential area, nevertheless, where it appears that such licensee has interfered with the quiet and decency of the neighborhood by improperly conducting the premises, it is not unreasonable to refuse to issue a license for the same premises to a new applicant, especially where the sentiment of the residents in the vicinity is substantially against such issuance. As was said in Mulligan v. Lyndhurst, Bulletin 146, Item 6:

> "Appellant argues that he has no connection with the former licensees and should not be penalized because of the improper manner in which they conducted the premises in the past.
>
> "The reputation of the premises sought to be licensed is a proper factor to be considered by the issuing authority in determining whether to issue a license. Zito v. Newark, Bulletin 69, Item 14; MacGrath v. Haddon, Bulletin 44, Item 9; Alexander v. Trenton, Bulletin 37, Item 13; Lalliker v. New Milford, Bulletin 141, Item 8.
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> "It may well be that the license for the premises should not have been renewed in previous years. However, it is evident that the members of the respondent issuing authority are now convinced that they should not again hazard the recurrence of the neighborhood annoyance caused by the previous operation of the saloon in question. Such a determination, when made in good faith and substantially supported by the evidence, should be sustained. Goodman v. Atlantic City, Bulletin 128, Item 8; Lavelle v. Way, Bulletin 140, Item 1."

The record is barren of any competent evidence that public necessity and convenience require the issuance of a license at the proposed site. Appellant, however, contends that it is essential for the success of her hotel and restaurant business that she be privileged to sell alcoholic beverages there. However, the fact that the licensing of the premises would be personally advantageous to appellant in the conduct of her business is not a sufficient reason why the premises should be licensed. Where, as here, private and public interests conflict, the latter must necessarily prevail. Cf. Landgraff v. North Plainfield, Bulletin 284, Item 9; Pillsbury v. Trenton, Bulletin 415, Item 7; Turner v. Walpack, Bulletin 418, Item 3.

The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 11th day of October, 1940,

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

E. W. GARRETT,
Acting Commissioner.

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

6. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1st, 1940 TO SEPTEMBER 30th, 1940 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	463	172,172.08	60	21,050.00	13	1,222.76			3	407.61	1	538	194,852.45
Bergen	808	268,225.40	237	57,709.66	49	4,602.06	35	1,585.00	6	1,134.96		1135	333,257.08
Burlington	180	58,242.79	15	3,499.32	28	3,125.00	1	25.00				224	64,892.11
Camden	445	188,107.78	50	18,535.20	55	5,296.71			4	890.94		554	212,830.63
Cape May	125	43,748.08	12	3,050.00	5	500.00						142	47,298.08
Cumberland	75	21,445.89	8	1,823.35	26	2,743.24						109	26,012.48
Essex	1421	714,178.83	352	166,975.80	80	10,472.80	19	942.14	1	224.68		1873	892,794.25
Gloucester	110	30,625.27	9	1,237.63	6	400.00						125	32,262.90
Hudson	1624	669,003.63	279	111,304.68	45	5,641.42	52	2,124.32				2000	788,074.05
Hunterdon	84	22,343.90	1	200.00	1	150.00						86	22,693.90
Mercer	438	184,151.78	43	11,100.00	35	4,440.00			1	97.20		517	199,788.98
Middlesex	608	237,869.94	42	11,628.41	31	2,525.00	1	25.00	3	491.52		685	252,539.87
Monmouth	511	207,633.80	72	20,355.13	22	2,493.84	8	300.00	31	8,821.45	2	642	239,604.22
Morris	336	100,139.38	71	17,761.50	28	2,300.00	1	25.00	12	1,797.42		448	122,023.30
Ocean	175	86,738.40	30	10,760.00	7	699.45						212	98,197.85
Passaic	900	345,891.54	122	35,004.04	28	3,425.00	18	797.81	2	327.77	1	1069	385,446.16
Salem	50	15,750.00	4	550.00	9	725.00						63	17,025.00
Somerset	185	63,796.33	22	5,025.00	10	975.00						217	69,796.33
Sussex	157	33,599.52	11	1,790.00	4	210.00			4	600.00		176	36,199.52
Union	553	272,690.41	125	41,857.88	61	7,150.00	19	875.00	2	592.57		760	323,165.86
Warren	137	38,008.11	13	2,307.50	17	1,819.18	1	35.00	4	517.50	2	170	42,687.29
TOTALS	9385	3,774,362.86	1578	543,525.10	560	60,918.46	155	6,734.27	73	15,903.62	6	11,745	4,401,442.31

E. W. GARRETT, Acting Commissioner.
Report for first quarter fiscal year 1940-41.

Respectfully submitted,
Erwin E. Hock,
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - WIFE ALLEGED FRONT FOR HUSBAND - BOTH FULLY QUALIFIED AND LICENSE NOW IN NAME OF BOTH - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against MARIE MASCOLO, T/A "Lakeside", State Highway #4, Manahawkin, Stafford Township, N. J., Holder of Plenary Retail Consumption License C-86 for the fiscal year 1939-40, issued by Honorable Percy Camp, Judge of the Court of Common Pleas and former license issuing authority for the County of Ocean.	CONCLUSIONS AND ORDER

Francis J. Tanner, Esq., Attorney for Licensee.
Emerson A. Tschupp, Esq., Attorney for State Department of Alcoholic Beverage Control.

Licensee was charged with making a false statement in her application for license in that she stated therein that no individual other than herself had any interest directly or indirectly in the license applied for or in the business to be conducted under said license, whereas in truth and in fact James Mascolo was so interested; and also in knowingly aiding and abetting James Mascolo, a non-licensee, to exercise the rights and privileges of her license.

James Mascolo and Marie Mascolo are husband and wife.

I am satisfied from the testimony that the business, which has been licensed since 1934, belongs to the husband and wife. It appears that, from 1934 to July 1, 1938, the license was in the name of the husband and that from July 1, 1938 to July 1, 1940 the license has been in the name of the wife.

In a statement given to investigators on August 8, 1939, James Mascolo said that he had arranged to place the license in his wife's name in 1938 because he intended, at that time, to apply for a license for another place and had been informed that he could not hold two licenses in his name. The application for the other license made by James Mascolo at that time was denied. Despite said denial, the present license was permitted to remain in his wife's name. Marie Mascolo testified, at the hearing, that she had no intention of deceiving in failing to disclose her husband's interest.

Since the institution of these proceedings, the license for the premises in question has been renewed by the Township Committee of Stafford Township (the present license issuing authority), in the names of Antonio Mascolo, James Mascolo and Marie Mascolo. Hence no violation appears to exist at the present time.

I doubt that Marie Mascolo had any intention of deceiving or did, in fact, deceive the issuing authority. Since this case involves a husband and wife, both fully qualified to hold a license, and since the license is now in the names of both husband

and wife, I shall dismiss the proceedings. Cf. Re Waldman, Bulletin 404, Item 11.

Accordingly, it is, on this 11th day of October, 1940,

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

E. W. GARRETT,
Acting Commissioner.

8. 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)

Case No. 118

CONCLUSIONS AND ORDER

On November 2, 1938 petitioner herein was denied a solicitor's permit because of a conviction of the crime of conspiracy. Re Case No. 236, Bulletin 279, Item 2. Five years having elapsed since the date of conviction, he now applies for an order removing his statutory disqualification.

At the hearing herein, petitioner testified that he was never confined to a penal institution as a result of his conviction and that the fine of $1,000.00, then imposed, was subsequently remitted. He testified further that for the past thirty-one years he has lived in the city where he now resides and that for the past five years he has been employed during part of the time as a checker and during the balance of the time as a salesman.

At the hearing herein, an auto salesman, an advertising manager and a liquor salesman, all of whom have known him for more than six years, testified that during that period petitioner has conducted himself in a law-abiding manner and that his reputation in his community is excellent.

The Chief of Police of the municipality in which petitioner resides has certified that since petitioner's conviction in 1934 his "reputation is unblemished and we have every reason to believe that it will continue so". Fingerprint returns fail to disclose any conviction other than that which occurred in 1934.

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

It is, therefore, on this 15th day of October, 1940,

ORDERED, that petitioner's statutory disqualification because of the conviction disclosed herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

9. APPELLATE DECISIONS - GIMBER v. GALLOWAY TOWNSHIP.

ERYLE C. GIMBER,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF GALLOWAY,)
Respondent)

Eryle C. Gimber, Pro Se.
Enoch A. Higbee, Esq., Attorney for Respondent.

Appellant appeals from (1) the denial of his application for renewal of his plenary retail consumption license for premises 1238 White Horse Pike, and (2) the denial of his application for the same type of license for premises 1232 White Horse Pike, both in Absecon Highlands in the Township of Galloway.

As to (1): Appellant held a consumption license for premises 1238 White Horse Pike for the year 1939-40. On June 6, 1940 he was notified, in accordance with the terms of his lease, to vacate the licensed premises on or before July 6th. On June 13th he filed his application for renewal license for premises 1238 White Horse Pike. On June 15th he was served with a notice in dispossession proceedings returnable June 19th, on which date he was ordered by the court to vacate within one week. On June 26th, as he admits, he actually vacated the premises. On June 27th the Township Committee denied his application for renewal for the reason that he no longer had possession and control of the premises sought to be licensed.

It is clear that respondent properly denied appellant's first application for the reason that appellant had no right to possession and control of the premises sought to be licensed. D'Annibale v. Fredon, Bulletin 139, Item 7; Agzigian v. Pequannock, Bulletin 216, Item 1; Eavenson v. South Orange, Bulletin 283, Item 8; Vasapoli v. Plainfield, Bulletin 301, Item 7; Hindin v. Egg Harbor, Bulletin 399, Item 1.

As to (2): After his application for renewal was denied, applicant filed an application for a consumption license at 1232 White Horse Pike. On June 28th his notice of application was published for the first time. On July 2nd, at a special meeting, respondent granted a license for 1238 White Horse Pike to Antonio Marchione, the new owner of said premises. At the same meeting it denied (or refused to consider) appellant's application for the reason that he had not completed advertising his notice of intention. Since both parties have proceeded upon the theory that the application was denied, it will be so considered.

The appeal from denial of appellant's application for a license for premises at 1232 White Horse Pike might well be dismissed upon the technical ground that, prior to taking this appeal, appellant demanded and received the return of 90% of his license fee, thus, by his own act, destroying the subject of the appeal. Cf. Van Alten v. Hoboken, Bulletin 328, Item 8.

However, the real meritorious question involved is whether respondent acted improperly at its special meeting held on July 2nd in granting a license to Marchione instead of to appellant.

The number of licenses to be issued in the township is limited to twenty-seven, and twenty-six licenses, other than those considered herein, have been issued in the township. It appears that the regulation limiting the number of licenses contains an exception in favor of renewals, but the township attorney advised respondent that neither of the applications which it considered on July 2nd could be construed to be an application for a renewal, this being true as to Marchione because he did not previously hold a license, and this being true as to Gimber because his application did not cover the same premises previously licensed. P.L. 1939, c. 281.

It thus appears that respondent was faced with the responsibility of determining, on July 2nd, whether a new license, which would exhaust the quota, should be granted to Marchione for the premises previously licensed, or to Gimber, a former licensee, for premises which had not been previously licensed. So far as appears, both applicants were qualified. Gimber had no "right" to obtain a new license for other premises merely because he had been a licensee during the prior fiscal year. True, his record was clear but so, apparently, was the record of Marchione. There is no evidence that respondent acted unreasonably in deciding to grant the license to Marchione for premises previously licensed instead of to appellant Gimber for new premises. Cf. Walker v. Verona, Bulletin 91, Item 4; Steup v. Wyckoff, Bulletin 155, Item 12; Kristen v. Pequannock, Bulletin 169, Item 1.

The action of respondent is therefore affirmed.

Accordingly, it is, on this 17th day of October, 1940,

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

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
JOSEPH HOLZ and MENDEL HOLZ, T/a HOLZ BROTHERS, 162 Newark Ave., Jersey City, N. J.,) CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License D-82, issued by the Board of Commissioners of the City of Jersey City.)

Holz Brothers, by Mendel Holz, Pro Se.
Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensees have pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on September 12, 1940, in violation of Rule 6 of State Regulations 30.

The usual penalty for this violation is ten 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 16th day of October, 1940,

ORDERED, that Plenary Retail Distribution License D-82, heretofore issued to Joseph Holz and Mendel Holz, T/a Holz Brothers, 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 October 21, 1940, at 2:00 A. M.

E. W. Garrett

Acting Commissioner.