

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 774

AUGUST 20, 1947.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 774

AUGUST 20, 1947.

1. DISCIPLINARY PROCEEDINGS - FAILURE TO NOTIFY ISSUING AUTHORITY OF CHANGE IN STOCKHOLDINGS - UNDISCLOSED INTEREST OF ALIEN AND UNLAWFUL EMPLOYMENT OF ALIEN - PREVIOUS RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH PERMISSION TO APPLY TO LIFT AFTER 60 DAYS.

In the Matter of Disciplinary Proceedings against

THE PANDA (a corporation)
990 Frelinghuysen Avenue
Newark 5, N. J.,

CONCLUSIONS
AND ORDERS

Holder of Plenary Retail Consumption License C-180 for the 1945-46, 1946-47, and 1947-48 fiscal years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Coult, Satz, Morse and Coult, Esqs., by David M. Satz, Esq.,
Attorneys for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. You failed to file with the Municipal Board of Alcoholic Beverage Control of the City of Newark, within ten days after the occurrence thereof, requisite written notice of changes occurring in the facts set forth in answer to Questions 20, 21, 22, 23 and 24 of your application for your current license, such changes being that

(a) On or about October 11 or 13, 1945 Daniel Straver and Ethel Lance jointly became beneficial owners of five of your ten shares of capital stock and with Irene A. Saperstein and Sylvia Green having a beneficial interest therein by pledge thereof as security for part of the purchase price of those five shares;

(b) On or about October 15, 1945, Daniel Straver and Ethel Lance became directors and Ethel Lance became secretary-treasurer of your company;

(c) On or about February 5, 1946, Daniel Straver and Ethel Lance also jointly became the beneficial owners of the remaining five of your ten shares of capital stock and with Albert Schocket and Evelyn Schocket having a beneficial interest in five of such shares by pledge thereof as security for part of the purchase price of those five shares;

your failure to file requisite notice of such changes being in violation of R. S. 33:1-34.

"2. On or about October 11 or 13, 1945, an alien, Daniel Straver, became and thereafter remained the owner, directly or indirectly, of more than ten per cent of your shares of capital stock, such being an act or happening, which, if occurring before

the making of your application for your current plenary retail consumption license, would by reason of R. S. 33:1-25 have prevented the issuance of such license.

"3. Since October 11, 1945 you have knowingly employed without requisite permit from the State Department of Alcoholic Beverage Control, and you have had connected with you in a business capacity Daniel Straver, a person who, by reason of alienage, would fail to qualify as a licensee; such being in violation of R. S. 33:1-26 and also in violation of Rule 5 of State Regulations No. 13."

The essence of the charges is that the corporate licensee failed to notify the local issuing authority of the real changes in the ownership of its capital stock, thereby concealing that a disqualified alien had acquired more than ten per cent of such stock, with the vendors of such stock retaining a beneficial interest therein as security for the purchase price; and that it employed such alien although he was likewise disqualified from such employment by reason of his alienage.

The evidence presented in support of the charges established that on October 11, 1945, Daniel Straver and Ethel Lance jointly purchased from Irene A. Saperstein and Sylvia Green five shares of the capital stock of the corporate licensee, representing fifty per cent of the total capital stock issued and outstanding.

Contemporaneous with this purchase, the parties executed an agreement which recites such purchase, and sets forth the terms upon which such stock, and all dividends thereon, was to be held by an attorney, for the benefit of Irene A. Saperstein and Sylvia Green, designated as pledgees, until the full purchase price thereof was paid. Under the agreement Straver and Lance retained control of their fifty per cent interest in the corporate licensee, its activities and business, subject to restrictions designed to prevent them from impairing its assets until the purchase price of the stock was paid.

Three certificates for one, two and two shares respectively, endorsed in blank, were turned over to the attorney. These certificates were originally issued to Irene A. Saperstein and Sylvia Green; they were not surrendered, and new certificates were not issued to Daniel Straver and Ethel Lance.

On October 13, 1945, Straver and Lance entered into an agreement between themselves concerning this stock. This agreement recites their joint purchase of the stock, and was designed to give Lance security for Straver's obligation to pay \$6,000.00 of the \$15,000.00 purchase price of such stock. By the terms of the agreement, Straver was to turn over to an attorney, in escrow, for Ethel Lance's benefit, his stock in another corporation, to be held by the attorney until Straver paid the \$6,000.00. All profits accruing to their five shares of "The Panda" stock were to be equally divided. The agreement further provides that four shares of such stock shall be held by Ethel Lance, and one share shall be held by Daniel Straver; and that upon Straver's making full payment, the shares would be equalized by transfer so that each would hold an equal amount.

Whether the transaction of October 11, 1945 was an outright, completed sale of the stock by Saperstein and Green to Straver and Lance, even though no shares were actually issued to Straver and Lance, or in their possession, or registered in their names on the books of the corporation, or was an executory contract for the sale of the stock because the certificates were retained by the vendors'

attorney to secure payment of the full purchase price, is immaterial. In either event, Straver and Lance have a joint proprietary interest, either legally or beneficially, of fifty per cent of the capital stock of the corporate licensee. See Warren v. New Jersey Zinc Co., 116 N. J. Eq. 315; and Martindell v. Fiduciary Counsel, Inc., 133 N. J. Eq. 408 (Errors and Appeals, 1943).

Under their agreement with Straver and Lance, Saperstein and Green had a beneficial interest in the shares of stock, but this did not extinguish or diminish Straver's and Lance's joint ownership thereof, representing an undivided fifty per cent proprietary interest in the corporate licensee. The legal effect of the subsequent agreement between Straver and Lance is to leave their respective interests in the stock and corporate business unchanged. At the very least, by this agreement Lance gave Straver a beneficial interest in two and a half of the five shares of stock under the principle of Martindell v. Fiduciary Counsel, supra.

A corporate licensee must notify the local issuing authority of changes in stockholdings, within ten days after the occurrence thereof, in order that such authority be afforded an opportunity to determine whether such changes, if existing before the application for the license, would have prevented issuance of such license. Re Roberts, Bulletin 366, Item 2. This salutary requirement is designed, among other things, to prevent disqualified aliens, as here, from purchasing a substantial interest in a corporate license after such license had been issued to qualified persons.

On October 25, 1945, the local issuing authority was notified that Daniel Straver was the holder of one share, and Ethel Lance the holder of four shares of the corporate licensee's capital stock. This was not in accord with the actual fact, and the notice omitted any mention of the fact that Irene Saperstein and Sylvia Green had a beneficial interest in Straver's and Lance's stock as pledgees thereof to secure the balance of the purchase price. It did not present the true picture. All material facts must be set forth in the notification of changes occurring in the facts set forth in the application for license. Cf. Re Tanzman's, Inc., Bulletin 747, Item 8.

I am inclined to believe that the notification did not set forth the true facts through design, rather than oversight or carelessness, inasmuch as Straver, being a Russian national, which country has no reciprocal trade treaty with the United States, was disqualified under the New Jersey Alcoholic Beverage Law from either holding a liquor license or owning directly or indirectly more than ten per cent of the stock in any corporate retail liquor licensee in this State. See R. S. 33:1-25; Re Aliens, Bulletin 92, Item 7; Re McGuigan, Bulletin 228, Item 2; Re Londa, Bulletin 693, Item 8. Straver's twenty-five per cent (or more) interest would, of course, disqualify the corporation as a licensee.

According to the testimony of an ABC investigator, Straver virtually admitted to him that he was a Russian national and stated that he had applied for his final citizenship papers, which he expected to receive within a short time. This is confirmed by a statement in the application for the defendant's 1946-47 license reading, "Daniel Straver in process of naturalization". The current 1947-48 application for license, filed recently, likewise recites that Straver is not a citizen.

The record establishes that, subsequent to October 11, 1945, Daniel Straver was employed as manager of defendant's premises without having obtained an employment permit from the State Department of Alcoholic Beverage Control. As a Russian national he was disqualified, for the reasons above set forth, from being employed on

licensed premises without an employment permit and, hence, this constitutes a violation of R. S. 33:1-26 and Rule 5 of State Regulations No. 13.

Upon the facts presented, I find that the corporate licensee is guilty of charges 1(a), 2 and 3. Charge 1(b) is dismissed because the notice dated October 25, 1945 to the local issuing authority included the information that Daniel Straver and Ethel Lance had become directors and Ethel Lance had become secretary-treasurer of the company.

The remaining charge --- 1(c) -- involves the purchase by Ethel Lance on February 5, 1946, from Albert Schocket and Evelyn Schocket, of five shares, representing the remaining fifty per cent of the corporation's capital stock. An escrow agreement, similar in form to the prior one, was executed between the parties. Although Straver is not a party to this agreement, an ABC investigator testified that Ethel Lance informed him that Straver had a verbal agreement with her whereby he was to pay \$3,500.00 on account of the purchase price of these shares and was to receive one-half of the stock.

Whether such an arrangement actually existed is immaterial, since it makes no difference in penalty whether Straver's legal or beneficial interest in the capital stock of the company was actually fifty per cent instead of twenty-five per cent. In any event, the corporate licensee, when reporting this transaction on February 5, 1946 to the local issuing authority, omitted any mention of the fact that Albert Schocket and Evelyn Schocket had a beneficial interest in such shares by pledge thereof as security for part of their purchase price. I therefore find the corporate licensee guilty of this charge.

Although the defendant entered a not guilty plea to the charges herein, there was no substantial dispute of the factual situation. All of the documentary evidence was voluntarily submitted to agents of this Department during the investigation. For these reasons I shall not direct a revocation of the license.

Since the present method of operation of the licensed business is improper by virtue of the unlawful interest still held by the alien, I must suspend the license for the balance of the licensing year. Heretofore, in a case of this character, involving an unlawful interest of a non-citizen, where proof of a bona fide correction has been presented, I have not lifted the suspension until sixty days after the effective date of such suspension. Cf. Re Ferrucci, Bulletin 682, Item 12. On reconsideration of the entire problem of unlawful undisclosed interest, however, I have decided to reduce this penalty in non-citizenship cases to forty-five days. This, of course, applies only to those cases in which the licensee has entered a confessional plea and has made a full and frank disclosure of all pertinent facts.

In this case, however, the defendant pleaded not guilty, albeit technically, and a lengthy hearing was required to be held. In addition, defendant's license was suspended for fifteen days on March 24, 1947 upon charges of possessing illicit liquor. Re Panda, Bulletin 707, Item 9, Bulletin 753, Item 10. Under all the circumstances, I shall entertain a petition to lift the suspension herein after a correction of the unlawful situation has been effected, but in no event will the suspension be lifted until the license has been under suspension for a period of 60 days.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1947-48. State Regulations No. 16.

Accordingly, it is, on this 5th day of August, 1947,

ORDERED that Plenary Retail Consumption License C-180, issued for the current licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Panda (a corporation) for premises 990 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. August 11, 1947; and it is further

ORDERED that, in the event a correction is effected, leave be given as aforesaid to make application to the State Commissioner of Alcoholic Beverage Control to lift the suspension after a period of 60 days have elapsed from the effective date of the suspension imposed herein.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DOMINIC GRANDINETTI)
T/a RAINBOW INN)
93-95 South Broadway)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-47, issued by the Board of Commissioners of the City of Long Branch.)
-----)

Dominic Grandinetti, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on July 1, 1947, he possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle of "The Finest Blended Scots Whiskey Haig & Haig", which was not genuine as labeled, in violation of R. S. 33:1-50.

Since the defendant has no previous record, the usual fifteen-day penalty will be imposed, less five days for the plea, or a net suspension of ten days. Cf. Re Matarazzo, Bulletin 770, Item 4.

Accordingly, it is, on this 7th day of August, 1947,

ORDERED that Plenary Retail Consumption License C-47, issued by the Board of Commissioners of the City of Long Branch to Dominic Grandinetti, t/a Rainbow Inn, for premises 93-95 South Broadway, Long Branch, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. August 12, 1947, and terminating at 2:00 a.m. August 22, 1947.

ERWIN B. HOCK
Commissioner.

3. LIMITATION OF NUMBER OF RETAIL LICENSES - PETITION FOR DETERMINATION UNDER SECTION 6, CHAPTER 94, P. L. 1947, THAT FAILURE TO APPLY FOR RENEWAL WAS DUE TO CIRCUMSTANCES BEYOND CONTROL OF LICENSEE - PETITION GRANTED.

In the Matter of an Application by)

RENATO CANZANESE)
Delaware Township)
Camden County, N. J.)

ON PETITION
DETERMINATION

For Relief under the Provisions of)
Section 6 of Chapter 94 of the)
Laws of 1947.)

John R. DiMona, Esq., appearing for Renato Canzanese.

The petition herein recites that Renato Canzanese was the holder of a 1946-1947 plenary retail consumption license (issued by the Township Committee of the Township of Delaware, Camden County) for premises at Franklin and Chapel Avenues. The license expired by its terms at midnight, June 30, 1947.

The petition further recites that pursuant to distraint proceedings the petitioner, Canzanese, was compelled to vacate the said premises on or about September 1, 1946; that the petitioner thereupon filed application for a transfer of his license to premises on Marlton Pike, Route 40, but objections were made to such transfer; that when it became apparent, sometime in December of 1946, that the Township Committee would not (in view of the objections) grant this transfer, the petitioner diligently attempted to obtain another location which the Committee would deem suitable for transfer and which would be free of individual objectors; that the petitioner contacted every real estate agent in the township and numerous other individuals, and personally toured the township trying to find a suitable location, but was unable to obtain such premises until June 1, 1947, when he leased the premises at the southwest corner of Chapel and Evergreen Avenues and thereafter filed application for license transfer to those premises; that very soon thereafter the petitioner learned that objections to the transfer were being raised to the transfer to the proposed premises which were in a residential building and which would require substantial alterations; that the petitioner thereupon located other premises at Northwood Avenue and Thomas Terrace which premises had previously been operated as a cafe and which required less alterations; that the petitioner then informed the Township Committee (before the application for transfer to premises at the corner of Chapel and Evergreen Avenues had been acted upon) of his desire "to change the transfer premises to Northwood Avenue and Thomas Terrace."

The petition further recites that it had always been the petitioner's understanding "that as long as my application for a transfer had been filed prior to July 1, 1947, and likewise my application for renewal and deposit of Six Hundred (\$600.00) Dollars posted therefor on June 18, 1947 with the Township Clerk that this constituted a legal compliance on the basis that it showed a definite intention to renew my license for 1947. This opinion was also shared by the Township Clerk and others from whom I sought information."

The petition (dated July 31, 1947) then states: "However, several days ago I learned from the Township Clerk that this did not constitute a legal compliance and that application would have to be made to the Commissioner under Section six (of the State Limitation Law) for renewal and transfer."

(The petition's language set forth in the paragraph above is not accurate. The correct, and intended, reference should have been to a petition to the State Commissioner under Section 6 of the State Limitation Law which reads: "Nothing in this act shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State Commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control.")

The petition further recites that on July 23, 1947, the petitioner filed "a new application for renewal and new application for transfer"; that he was advised to readvertise twice so as to comply with the Commissioner's regulations requiring, under the circumstances here present, that the Notices of Application must set forth that plans and specifications of building to be altered may be examined at the office of the Municipal Clerk; and that his first such new Notice of Application was published July 24, 1947, and the second insertion will appear on July 31, 1947.

(Here, again, the petition's language is not accurate. The petitioner should not file application for a transfer. It is too late for a transfer for the 1946-1947 license expired on June 30, 1947 and there is nothing now to transfer. Re Madden and Goldstein, Bulletin 198, Item 1. Furthermore, the license sought could not be a renewal. It would be a new license for to be a renewal it would have to be for the same premises as were licensed on June 30, 1947, and on that date the petitioner was without premises. See R. S. 33:1-96.)

The petition's prayer is, of course, for a favorable determination by the State Commissioner under Section 6 of Chapter 94 of the Laws of 1947.

Under all the facts and circumstances of this case, I hereby determine that the applicant's failure to apply for a renewal of the 1946-1947 license was due to circumstances beyond his control. In view of this determination, and there being no Delaware Township limitation ordinance which prohibits issuance of a new plenary retail consumption license to the petitioner, the Township Committee of Delaware Township has authority pursuant to R. S. 33:1-19 to grant the petitioner's application despite the limitation of licenses set forth in Section 2, Chapter 94 of the Laws of 1947.

The determination herein does not mean that the application must be granted. Even where a new license is not prohibited by the State Limitation Law or municipal ordinance, the determination to grant or deny a retail license application rests in the first instance with the municipal issuing authority (R. S. 33:1-19) and a municipal authority's action granting or denying an application is appealable to the State Commissioner pursuant to R. S. 33:1-22.

It should be pointed out that my determination herein is in no way based upon or related to the statements, in the petition, concerning:

1. The petitioner's loss and expense resulting from his unsuccessful attempt to obtain a transfer to premises opposite the Garden State Race Track, or his personal disappointment at failing in his endeavor "to offer Delaware Township a modern and attractive restaurant and cafe directly opposite the Garden State Track."

- 2. The point that if the requested relief is not granted "the municipality would be deprived of a license which it now has and the income therefrom."

ERWIN B. HOCK
Commissioner.

Dated: August 6, 1947.

4. DISCIPLINARY PROCEEDINGS - ORDER SUSPENDING LICENSE STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

In the Matter of Disciplinary Proceedings against
 THE PANDA (a corporation)
 990 Frelinghuysen Avenue
 Newark 5, N. J.,
 Holder of Plenary Retail Consumption License C-180 for the 1945-46, 1946-47 and 1947-48 fiscal years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

O R D E R

BY THE COMMISSIONER:

It appearing that Conclusions and Order were entered herein on August 5, 1947, suspending Plenary Retail Consumption License C-180 for premises 990 Frelinghuysen Avenue, Newark, effective at 2:00 a.m. August 11, 1947; and

It further appearing that the licensee has notified the Commissioner in writing of its intention to apply to a Justice of the Supreme Court for a writ of certiorari to review the said Conclusions and Order, and for that reason has requested that the aforesaid suspension be stayed in the meantime;

It is, on this 8th day of August, 1947,

ORDERED that the effective date of the suspension in the Order dated August 5, 1947, be and the same is hereby stayed until a further Order is entered herein, upon condition, however, that application for a writ of certiorari shall be made to a Justice of the Supreme Court on or before August 25, 1947, and thereafter prosecuted with due diligence, and upon the further condition that the State Commissioner shall receive at least five days' notice of said application.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL RESOLUTION AND RULE 1 OF STATE REGULATIONS NO. 38 - LISENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BERTHA BOLTON)
220 Graham Avenue)
Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-70, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

Schwartz & Schwartz, Esqs., by Louis Schwartz, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that (1) on Sunday, July 13, 1947, and on Sunday, July 20, 1947, she sold alcoholic beverages during prohibited hours, in violation of local regulation, and (2) on said dates, she sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

On each of the dates aforesaid, between the hours of 9:00 and 10:00 o'clock in the morning, an ABC agent was sold a pint bottle of whiskey by the defendant's husband, who was in charge of the licensed premises on each occasion. The local regulation prohibits the sale of alcoholic beverages on Sunday before 1:00 p.m., and State Regulations No. 38 prohibits the sale of alcoholic beverages in original containers for off-premises consumption at any time on Sunday.

The defendant has no previous record. The usual twenty-day penalty, less five days for the plea, leaving a net suspension of fifteen days, will be imposed. Cf. Re Wasiluk, Bulletin 608, Item 10.

Accordingly, it is, on this 12th day of August, 1947,

ORDERED that Plenary Retail Distribution License D-70, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Bertha Bolton, for premises 220 Graham Avenue, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. August 18, 1947, and terminating at 9:00 a.m. September 2, 1947.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION CONCEALING NATURAL FACT - AIDING AND ABETTING NON-LICENSEES (NON-RESIDENT AND ALIEN) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against)

SAMUEL S. MENTINE)
White Horse Pike & Myrtle Ave.)
Lindenwold, N. J.,)

CONCLUSIONS AND ORDER

Holder of Seasonal Retail Consumption License CS-2 and Plenary Retail Consumption License C-10, both issued by the Mayor and Council of the Borough of Lindenwold.)

-----)
Walter S. Keown, Esq.; Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that (1) he falsified his license application dated November 30, 1946 by concealing the fact that two other individuals had an interest in the license applied for and the business conducted thereunder, and (2) he permitted the said individuals to exercise the rights and privileges of his license.

By written agreement, dated November 4, 1946, the defendant formed a partnership with Frank Carmalingo and Anthony Salera in the operation of the licensed business. When applying for his winter seasonal license on November 30, 1946, the defendant concealed the interest of his two partners, both of whom are disqualified from holding a liquor license in this State because of non-residence and, in addition, one of them is further disqualified by virtue of his Italian alienage.

It appears from the file that the partnership was informally dissolved at the beginning of this year and that there are no longer any disqualified interests in the business operated by the defendant. Thus, a fixed period of suspension may now be imposed and, since one of the concealed interests involves a non-citizen, I shall impose a penalty for a period of forty-five days. Cf. Re The Panda, Bulletin 774, Item 1.

The defendant is now conducting his tavern under a summer seasonal consumption license and also a plenary retail consumption license. The issuance of these licenses is presently the subject of appeal before this Department. Since some time will elapse before these appeals are ready for decision, it is appropriate that the instant matter be disposed of without awaiting the determination in the appeal cases.

Accordingly, it is, on this 12th day of August, 1947,

ORDERED that Seasonal Retail Consumption License CS-2 and Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Lindenwold to Samuel S. Mentine, for

premises White Horse Pike & Myrtle Avenue, Lindenwold, be and the same are hereby suspended for a period of forty-five (45) days, commencing at 3:00 a.m. August 18, 1947, and terminating at 3:00 a.m. October 2, 1947.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SUSPENSION REIMPOSED UPON AFFIRMANCE OF COMMISSIONER'S DECISION BY SUPREME COURT.

In the Matter of Disciplinary Proceedings against
ESSEX HOLDING CORPORATION
T/a HOTEL ESSEX HOUSE
1048-1050 Broad Street
Newark 2, N. J.,
Holder of Plenary Retail Consumption License C-935, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

O R D E R

BY THE COMMISSIONER:

On August 16, 1946 the defendant's license was suspended for a period of twenty days after it was found guilty of allowing, permitting and suffering the consumption of alcoholic beverages by minors on its licensed premises. Bulletin 727, Item 3. Prior to the actual commencement of the suspension, the defendant obtained a writ of certiorari from the New Jersey Supreme Court to review my decision and, accordingly, the suspension was held in abeyance pending determination by the Court. Bulletin 727, Item 11. On July 29, 1947 the writ of certiorari was dismissed by the Court and my decision affirmed.

The twenty-day suspension will now be reinstated against the present plenary retail consumption license issued to the defendant.

Accordingly, it is, on this 5th day of August, 1947,

ORDERED that Plenary Retail Consumption License C-935, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Essex Holding Corporation, t/a Hotel Essex House, 1048-1050 Broad Street, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. August 10, 1947, and terminating at 2:00 a.m. August 30, 1947.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

JOHN PATRICK DRENNAN
T/a JACKIES
904-6 Springwood Avenue
Asbury Park, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-69, issued by the City Council of the City of Asbury Park.

John Patrick Drennan, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he (1) possessed ten bottles of illicit alcoholic beverages at his licensed premises, all of which were not genuine as labeled, in violation of R. S. 33:1-50, and (2) sold alcoholic beverages in original containers for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38.

On July 17, 1947, an ABC agent tested the contents of 38 open bottles of liquor at the defendant's tavern and seized ten of such bottles. The defendant admitted in a written statement that he had refilled all of the said ten bottles with another whiskey because he was "temporarily short of money".

On Saturday, July 26, 1947, at 8:10 a.m., the defendant's bartender sold an ABC agent a pint bottle of whiskey. On the same day, at about 11:35 p.m., several ABC agents witnessed the sale of three bottles of beer to a patron. Both of these sales were made for off-premises consumption and were in violation of Rule 1 of State Regulations No. 38, which prohibits the sales of alcoholic beverages in original containers for off-premises consumption on a weekday before 9:00 a.m., and after 10:00 p.m.

The defendant has no previous record. Under all the circumstances, including the plea entered, I shall suspend the license for a period of sixty days.

Accordingly, it is, on this 14th day of August, 1947,

ORDERED that Plenary Retail Consumption License C-69, issued by the City Council of the City of Asbury Park to John Patrick Drennan, t/a Jackies, 904-6 Springwood Avenue, Asbury Park, be and the same is hereby suspended for a period of sixty (60) days, commencing at 3:00 a.m. August 21, 1947, and terminating at 3:00 a.m. October 20, 1947.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF MUNICIPAL REGULATION - FAILURE TO HAVE PREMISES OPEN TO PUBLIC VIEW IN VIOLATION OF MUNICIPAL REGULATION - PREVIOUS RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

HYMAN COHEN)
30 Bridge Street)
Paterson, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-266, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

Harry Dudkin, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that, on Sunday, July 13, 1947, he (1) sold alcoholic beverages during prohibited hours and (2) failed to keep the interior of the licensed premises open to public view, both in violation of local regulations.

The municipal regulations prohibit the sale of alcoholic beverages on Sunday before 1:00 p.m., and further provide that, during the hours that sales are prohibited, the interior of the licensed premises shall be open to the public view from the outside.

On the Sunday in question, shortly before 10:00 a.m., two ABC agents were sold several drinks of alcoholic beverages by the defendant's bartender. In addition, the doors in the wood paneling behind the show windows were kept closed, and the view through the front door was obstructed, so that it was not possible to see into the interior of the licensed premises from the sidewalk.

The defendant's license was first suspended about nine years ago when he received a two-day suspension for sales during prohibited hours. His record is then clear until January 31, 1947, when he received a net suspension of fifteen days after pleading non vult to an illicit liquor charge. See Bulletin 748, Item 8. A consideration of all the attendant circumstances, including the lapse of time since the first violation, and also the plea herein, leads me to conclude that a thirty-day penalty should be imposed. Such will be the order.

Accordingly, it is, on this 18th day of August, 1947,

ORDERED that Plenary Retail Consumption License C-266, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Hyman Cohen, 30 Bridge Street, Paterson, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m. August 25, 1947, and terminating at 3:00 a.m. September 24, 1947.

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - APPICI AND PEZZULLO v. STILLWATER TOWNSHIP.

NICHOLAS APPICI and)
LORENZO PEZZULLO,)

Appellants,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF STILLWATER,)

Respondent)
-----)

Dolan and Dolan, Esqs., Attorneys for Appellants.
Willis H. Sherred, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellants' application for a plenary retail consumption license for premises known as Twin Oaks, located on Mt. Benevolent Road, Township of Stillwater.

Appellants contend that the action of respondent was erroneous because (1) no reason was assigned for failure to grant the license to appellants, (2) the Township Committee took action prior to April 23, 1947 to grant a license to appellants, (3) there was no objection to the granting of the license to appellants, and (4) the action of the Board was arbitrary, discriminatory, and confiscated additional investments made by appellants in reliance upon the Township Committee's promise to grant a license to them.

The application was filed on January 20, 1947 and was denied at a meeting of the Township Committee held on April 23, 1947. The reason given by the Township Committee for denial, according to the minutes taken at the meeting on April 23, 1947, was "due to local conditions". The petition of appeal was filed with the State Commissioner on May 23, 1947.

Appellants testified that they spoke to Amos F. Dixon, Chairman of the Township Committee, previous to filing their application for the license in question and they were led to believe that the application would be acted upon favorably by the Township Committee. Chairman Dixon did not appear at the within hearing. I might add, however, that the alleged promise of Chairman Dixon, even if true, is nevertheless incompetent to limit the freedom of the full Township Committee when passing upon any application before it. Cf. Pergola v. Jamesburg, Bulletin 398, Item 6. Although no written objections were filed with the local issuing authority, the members thereof are, nevertheless, under a duty to investigate and determine whether the application should be granted and to reach a decision as a result of their independent investigation. Cf. Delbono v. New Brunswick, Bulletin 322, Item 12.

Committeeman Frederick MacDonald testified that he inspected appellants' premises and, from his observation, it was not in proper condition to be operated as licensed premises. Committeeman MacDonald said that although the members of the Township Committee requested plans and specifications of the proposed changes, adequate plans and specifications upon which to base any decision were not presented to them.

Committeeman MacDonald further testified that in his opinion the population of the Township did not warrant the issuance of another liquor license. The right of a municipality to deny an application

where the granting thereof would result in the existence of too many licensed premises in said municipality is well settled. Bumball v. Burnett, 115 N. J. L. 254. There are fourteen plenary retail consumption licenses in the Township of Stillwater which, according to the Federal census of 1940, has a population of 679. The refusal by unanimous vote of the Township Committee to issue another license is neither arbitrary nor unreasonable.

Furthermore, from the testimony adduced in the instant case, it appears that when the application was filed neither appellant was a bona fide resident of the State of New Jersey.

I might add too that, apart from the merits and the question of residence already mentioned, the issuance of the license applied for is now prohibited by the State Limitation Law, Chapter 94 of the Laws of 1947. See DePadova v. Little Falls, Bulletin 770, Item 9.

Accordingly, it is, on this 19th day of August, 1947,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
JOSEPH CASCONO)
353 - 21st Avenue)
Paterson 3, N. J.,)
Holder of Plenary Retail Distri-)
bution License D-15, issued by)
the Board of Alcoholic Beverage)
Control of the City of Paterson.)
-----)

CONCLUSIONS
AND ORDER

Joseph Cascone, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he sold alcoholic beverages below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On August 1, 1947, the defendant sold to an ABC agent four one-gallon jugs of G & D Vermouth for the total sum of \$13.50. The established price for an individual jug of this product is \$4.79 (see Bulletin 765, page 26), resulting in a minimum price of \$19.16 for four of such items.

The defendant has no previous record. The license will be suspended for the usual ten-day period, less five days for the plea, leaving a net suspension of five days. Cf. Metz & Mininsohn, Bulletin 764, Item 10.

Accordingly, it is, on this 18th day of August, 1947,

ORDERED that Plenary Retail Distribution License D-15, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joseph Cascone, for premises 353 - 21st Avenue, Paterson, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. August 25, 1947, and terminating at 9:00 a.m. August 30, 1947.

ERWIN B. HOCK
Commissioner.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Application for transfer of Public Warehouse License filed August 8, 1947 from Paul Pontani, t/a Casa Lido Bar and Grill to Paul, Lawrence, Louis and Lino Pontani,
T/a Casa Lido Bar & Grill
12-14 E. Lafayette St.
Trenton, N. J.

Anthony Mercadante
255 Irvington Ave.
South Orange, N. J.

Application for State Beverage Distributor's License filed August 15, 1947.

The Gibson Distilling Company
350 Fifth Avenue
New York, New York.

Application for Plenary Wholesale License filed August 15, 1947.

Wilson Freight Forwarding Co., Inc.
4107 Dell Ave.
North Bergen, N. J.

Application for Transportation License filed August 18, 1947.

Application for transfer of Limited Wholesale License filed August 19, 1947 from Edward & John Burke, Ltd. to Edward & John Burke, Ltd. (A New Corporation)
47-24 - 27th St.
Long Island City, New York.

Erwin B. Hock
Commissioner.