Mr. Saum

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 895

January 29, 1951.

TABLE OF CONTENTS

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Department of Law and Public Safety
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1. APPELLATE DECISIONS - VAN HOUTEN v. DEAL.
VAN HOUTEN v. DEAL AND TETTI.

(Case No. 1)
GEORGE and FLORENCE VanHOUTEN, trading as VAN'S TAVERN,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE BOROUGH OF DEAL,

Respondent.

(Case No. 2)
GEORGE and FLORENCE VanHOUTEN, trading as VAN'S TAVERN,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE BOROUGH OF DEAL,

Respondent.

(Case No. 3)
GEORGE VanHOUTEN and FLORENCE VanHOUTEN,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE BOROUGH OF DEAL, and RUDOLPH J. TETTI,

Respondents.

ON APPEAL

CONCLUSIONS AND ORDERS

A. Henry Giordano, Esq. and J. Stanley Herbert, Esq., Attorneys for Appellants.
Solomon Lautman, Esq., Attorney for Respondent Board of Commissioners of the Borough of Deal.
Golden & Hurley, Esqs., by Julius J. Golden, Esq., Attorneys for Respondent Rudolph J. Tetti.

BY THE DIRECTOR:

These appeals, with agreement of counsel, were heard together because of the interrelated facts and issues.

In Case No. 1, reversal is sought of respondent Board's denial on June 19, 1950, of appellants' application for transfer of their 1949-50 plenary retail consumption license from premises at 102 Norwood Avenue to premises at 104 Norwood Avenue. Respondent Board took no action on appellants' application for 1950-51 renewal for premises at 104 Norwood Avenue, and the appeal in Case No. 2 is taken as from a denial of such application. In Case No. 3, appellants seek reversal of respondent Board's action on June 26, 1950, granting respondent Tetti's application for transfer to him of the 1949-50 plenary retail consumption license held by Theodore and Norman Sharp and from premises at 4 Ocean Avenue to the premises at 102 Norwood Avenue.

With respect to Case No. 3, respondent Tetti's Answer to the petition of appeal alleges that appellants are not residents, taxpayers or owners of property in the Borough of Deal and, therefore, have no right in objecting to the granting of respondent Tetti's application. The allegation is without merit. I find that appellants are "aggrieved persons" within the meaning and contemplation of R. S. 33:1-26 and, thus, that they are competent parties to bring the appeal.

While it appears that one Lena Boniello is the owner of record of the premises at 102 Norwood Avenue, it is abundantly clear from the record herein that Rose Tetti, mother of respondent Rudolph J. Tetti, is a real party in interest to the ownership of said premises. Rose Tetti was a party to a plenary retail consumption license for the premises at 102 Norwood Avenue from February 6, 1934, until May 23, 1945, when the license was duly transferred to appellants. Appellants' lease of those premises from May 24, 1945, to May 24, 1950, called for a monthly rental of $85.00. Rose Tetti was asked on direct examination: "How soon, before the lease expired, did Mr. VanHouten get in touch with you concerning renewal?" She replied: "He never got in touch with me at all. I was the one to call him...." She testified that she telephoned Mrs. VanHouten around May 20, 1950, with respect to renewal of the lease. She testified: "So Mr. VanHouten came over to the house and we talked it over. I says, 'Look, Van, I gave you the place for $85.00 a month and six months at ninety. I cannot let it go for that price any more!'" Rose Tetti testified that she "was giving it to him for $125.00."

Mr. VanHouten testified that his first conversation with Mrs. Tetti about the renewal of the lease was "back nearly a year ago". He testified that in the discussion, at that time, he "wanted to know about the rent and get the new lease signed up, so I knew what I was going to do. In the end, she says 'Don't worry about it....Get along and don't worry about it. I am going to raise you $5.00 or $10.00.' Then I asked her again after that and she said the same thing."

The testimony shows that Mrs. Tetti eventually offered to accept a monthly rental of $125.00 and that Mr. VanHouten refused to go along at that figure. He testified that he offered to pay $115.00 a month — that he could not afford to pay more.

At respondent Board's regular meeting held on June 13, 1950, the transfer application was read as was Lena Boniello's objection to the granting thereof. Mayor Lautman stated that a hearing on the objection would be held on June 19, 1950. After the hearing (special meeting of respondent Board on June 19), respondent Board denied appellants' application on the following stated grounds:

> "1. The premises at 102 Norwood Avenue, Deal, have been licensed for the sale of intoxicating liquors ever since repeal of prohibition and there is presently pending an application for a transfer of a license from premises at Ocean Avenue, Deal to said premises.
>
> "2. The premises at 104 Norwood Avenue, to which the applicant desires to transfer his license are not as suitable for the purpose of retail sales as the premises at 102 Norwood Avenue.
>
> "3. The applicant agreed, in writing, in both his lease and bill of sale that at the expiration of his lease he would not apply for transfer of his license to any other premises.
>
> "4. The Board of Commissioners is of the opinion that no additional premises, other than those licensed, should be licensed in the future."

As to Ground 1: In Puri v. Warren Township, Bulletin 266, Item 2, the late Commissioner Burnett stated:

> "Apparently the owners....are in the same position as many other owners of property suitable for the conduct of a a liquor business when a tenant transfers his license to other premises. The problem is discussed at length in Re Konesky, Bulletin 217, Item 7. However, no one place is entitled to a license more than any other, no matter how long it has been previously licensed...."

And, as the late Commissioner stated in Re Konesky, supra:

> "If the rule were otherwise, tenants would have to pay whatever rents favored landlords might exact."

As to Ground 2: It may be that the premises at 102 were more "suitable" than those at 104 but, under the circumstances here present, Ground 2 appears superficial and inadequate. Here we have a situation in which the license holders found themselves without licensed premises, just before renewal time, through no fault of their own but because they were unwilling, and considered themselves unable, to stand so great an increase in rent. We have here, not the question of selection between two new applicants seeking one available license, but the question of selection between applicants for place-to-place transfer of an existing license for a going business and an unlicensed person applying for transfer to him of another license. Without apparent thought to this aspect of the matter, respondent Board in effect made its selection so as to put the license-holders out of business and the new applicant in business. It would seem abundantly clear, in this regard, that respondent Board's action was taken without due consideration to the general equities involved.

As to Ground 3: The agreement, which was an attempt to subject the license to the control of the property owner, is void as against public policy. Walsh v. Bradley, 121 N. J. Eq. 359; Lachow v. Alper, 130 N. J. Eq. 588.

As to Ground 4: This "ground", if a ground, could not be a proper one for denial of appellants' application. Furthermore, it stresses the Board's erroneous preoccupation with respect to protection and continuation of existing licensed premises and, concomitantly, the Board's failure to give impartial consideration to the merits of appellants' application.

An operative ordinance of the Borough of Deal, adopted April 25, 1945, provides that:

> "Not more than one plenary retail consumption license shall be issued and remain outstanding and in force in the section of the Borough known and designated on the Building Zone Map of the Borough of Deal as District Number 1 and not more than three plenary retail consumption licenses shall be issued and remain outstanding and in force in the portions of the Borough of Deal outside of the said District Number 1 as shown on said Building Zone Map."

On June 19, 1950, when appellants' application was denied, two plenary retail consumption licenses (apart from appellants' license which was a valid license albeit appellants had been evicted and, thus, were without premises) were outstanding in the Borough outside of said District Number 1; and the "Sharp" license was outstanding in said District No. 1. Prior to adoption of the ordinance of April 25, 1945, the Borough's ordinance had limited the number of plenary retail

consumption licenses to three, without geographical limitation. On May 9, 1945, the Board of Commissioners issued a new and fourth plenary retail consumption license in District No. 1 for the Oxford Restaurant, subject to the special condition that service of alcoholic beverages should be at tables only. The special condition was continued through various transfers and renewals of the license up to and including the 1949-50 renewal to the Sharps. The special condition, however, was not imposed upon place-to-place transfer of the Sharp license (in the name of Rudolph J. Tetti) to the premises at 102 Norwood Avenue, outside District No. 1.

Respondent Board entered no formal Answer to the petition of appeal herein.

It is significant, indeed, that, prior to respondent Board's denial of appellants' application, the Board had already received the Tetti application which was dated June 8, 1950, and which was advertised on June 12 and June 19, 1950. Furthermore, when appellants' application was denied, respondent Board had not made, nor does it appear that the Board caused to be made, any inspection of the premises at 104 Norwood Avenue. Appellants had legal right to possession of those premises which appear to have been basically and substantially suitable for license with minor changes planned by appellants. Appellants have a clean record, no proceedings ever having been instituted with respect to their license, and there being no evidence that any specific complaint had ever been made concerning their operation of the licensed business.

Respondent's Mayor testified at the hearing herein:

> "....We felt as between the two people who are interested in obtaining this license, that we prefer the Tettis to the VanHoutens, and we also felt that we preferred the Tettis' premises, which is family owned, which has been used for that purpose for so many years, which already is equipped to the premises next door which had been used for a flower bulb shop, which had to have somebody fix it up and about which we know nothing."

When asked for the basis of the opinion "that the premises at 104 are not suitable for the purpose of retail sales as the premises at 102", the Mayor replied:

> "For the reason I already said, that we felt that the other premises at 102 was already fitted, and had been in use for a long time. This was just a place that had been used occasionally by people and didn't last any length of time. It was just running a place where they were selling flower bulbs, I don't think more than a year, a year and a half, and before that the premises was idle for quite a while."

The Mayor was asked by appellants' attorney: "Do you recall, Mr. Mayor, that I stated at the meeting June 19th, at the time that the application of the VanHoutens' license was denied, that the premises at 104 would be placed in a condition which would meet the requirements of the building inspector and ordinance of the Borough?" The Mayor answered: "I think you did." To the further question: "Do you recall also that I suggested that your Body could grant the transfer of this license, conditional upon our doing certain work to put the premises in a suitable and adaptable condition for the retail sale of liquor?", the Mayor replied: "I don't remember that. You may have said it, in all likelihood. You know there were a lot of things said."

Appellants' attorney asked: "Mr. Mayor, did you consider that Mr. VanHouten had been in business for a period of five years and was

making a livelihood; that was the sole method by which he can earn a livelihood? He had a financial interest at stake and possibly the Division of Alcoholic Beverage Control may have reversed you. Did you consider that when you decided that you only wanted to have three licenses in the vicinity?" The Mayor answered: "I did think about the angle. I don't see how, in view of the clauses that were both in the lease and bill of sale, he could rely on any greater length of time than five years, and I subordinated any consideration in his interest to what we felt better for the interest of the Borough."

Then appellants' attorney stated: "As a matter of fact, Mr. Mayor, you were motivated chiefly by the provisions of the lease and bill of sale, in which this licensee, VanHouten, apparently agreed that at the expiration of his lease that he would not apply for a transfer of his license to other premises? Isn't that so?" The Mayor answered: "We were not motivated by that. That was one of the things, at least, that I had in mind....as bearing on his temperament. We had other things in mind. As long as you are asking, I received several telephone calls (there were three people who called), from neighbors in this vicinity who said that from their standpoint they preferred the Tetti operators and experience....to the experience of the VanHouten operators."

When asked whether the indicated comparison was between the VanHoutens and the former Tetti operators, the Mayor replied: "Mrs. Tetti his mother, I think, was the licensee before that. I don't remember whether he (Rudolph J. Tetti) was connected with the license or not. He was in service, I think."

Appellants' attorney asked: "Mr. Mayor, you felt in view of the provision in the lease and bill of sale, you felt that the landlord was entitled to have the license on her premises, isn't that so?" The Mayor answered: "I felt that if a fellow had promised he would do certain things, and that then he didn't keep his promise, that was an indication of his character." Then the question: "Wasn't that basically the chief reason why you voted to deny a transfer of the license?" And the answer: "No, the chief reason that motivated me individually -- I can't speak for the others -- the chief reason was that Tettis owned the property and had been residents for a number of years, and that the people in the neighborhood had called me and that they preferred those Tettis to the VanHoutens, because there was a difference in the way the two places were conducted."

The evidence indicates that a petition, signed by some seventy-three persons and favoring the granting of appellants' application, was presented to respondent Board before the application was denied. When questioned concerning numerical comparison between those who telephoned in favor of the Tettis and those who petitioned in favor of the VanHoutens, the Mayor stated: "Well, I don't put too much stock in any signatures on the petition."

Appellants' attorney asked: "Did you give consideration to the unconscionable raise of rent?" The Mayor replied: "No, because as appears from the testimony -- well, the other things that was said, Mrs. Tetti -- that was testified at the time of the hearing, was that Mrs. Tetti's husband died. Then her sons went into service and (she) tried to keep it running. Her sons came back from service, and her health failed and she was unable to operate it, and for that reason the time limitation was put in the lease, and when it expires, it would be available for her sons when they returned, and what was unconscionable under those circumstances, I don't know. If the increase in rent offsets the desire to have the sons back, I don't know. We just decided in favor of the Tettis. They have been there for years, owned the property, the building, and we felt they were substantially more solid and so forth."

Before the calling of an adjournment for lunch, the Hearer inquired as to the existence of a numerical limitation ordinance (later introduced in evidence) in the Borough, and the Mayor stated: "I think we have an ordinance limiting the number of licenses."

Borough Commissioner Kelly testified, when called to the stand by the Hearer, that his reasons for denying appellants' application and granting respondent Tetti's were substantially the same as testified to by Mayor Lautman. When asked by the Hearer whether he had anything further to say as to his reasons for such denial and granting, Commissioner Kelly stated: "No, with one possible exception, that I don't know whether the Mayor brought out clearly as I saw it in my mind that was in the lease agreement of sale. It appeared to me that the intent of the clauses stipulated in there, were that the property and license revert to Mrs. Tetti at the expiration of the five year lease, and both the VanHoutens and Tettis were partners to that." When asked about the rental figures, the Commissioner expressed his belief that the original rent was $85.00; and when asked whether the figure proposed for renewal of the lease was much higher, he stated: "I am willing to go along on the....figure as was announced, at $160.00." When asked whether he considered the problem of the proposed increase, the Commissioner answered: "Yes, sir"; and when asked: "You weighed the equity of one against the other", he replied: "Oh yes." Then, when asked: "In favor of the Tettis?", he answered: "Well, the obvious intent of the increase in rental to my mind was either to make it worth while to rent the property or have the property revert to Tetti."

Borough Commissioner Behringer testified, when called to the stand by the Hearer, that his reasons for voting to deny appellants' application and grant respondent Tetti's were substantially the same as the Mayor's and Commissioner Kelly's. When asked by the Hearer whether he had anything further to say, Commissioner Behringer replied: "I wouldn't say in so far as the situation is concerned."

> "The right to transfer a license from place to place is not inherent in the license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If the denial of the transfer is arbitrary or unreasonable, the action of respondent must be reversed. If the transfer is denied for good cause, the action of respondent must be affirmed. Such cause, generally speaking, is that which would be necessary and proper to accomplish the object of the Alcoholic Beverage Law and secure compliance with its provisions, e.g., that the premises are unsuitable, or that there are already too many licenses in the vicinity. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6."
> (Gruhler and Edwards v. Phillipsburg, Bulletin 718, Item 3.)

In the Cielukowski case, an ordinance required the consent of the owner of property from which a license was to be transferred. Regarding such an ordinance requirement, I stated:

> "It serves only the private interests of the owners by giving them strangle holds on their tenants whereby refusal to give consent could be made the means of exacting exorbitant rent."

I am thoroughly convinced, from the full record before me, that appellants' application was not denied for a reason that the proposed premises were unsuitable. It is clear, from the record, that the denial of the one application and the subsequent granting of the other were paramountly in protection of the interests of the Tetti family and without due and fair regard to the merits of the transfer sought by appellants. In view of the limitation ordinance, in order to grant the application of respondent Tetti it was necessary to deny

the application of appellants. This the respondent Board proceeded to do in an arbitrary and discriminatory manner and for no properly supportable reason. If respondent Board had considered and granted appellants' application on its merits, respondent Tetti's application could not have been granted since the ordinance quota of three plenary retail consumption licenses, for premises in the particular area, would have been filled.

The situation, while ostensibly complex, was a simple one. An alcoholic beverage license is a personal privilege. Appellants were licensees seeking to continue in business. Rudolph J. Tetti was an applicant who had not theretofore held a license. Respondent Board's choice was not, in essence, between the respective applications of appellants and Rudolph J. Tetti, but between appellants and a family, or, perhaps more accurately, between appellants and Rose Tetti who was not an applicant. The crux of the matter was the ownership of the premises at 102 Norwood Avenue and the protection of the economic interest attendant thereupon. Respondent Board had licensed appellants and had deemed them satisfactory operators for five years, but as against the Tetti family, and the property ownership, appellants were deemed to be in the nature of interlopers.

I find respondent Board's action herein appealed from to have been unreasonable and abusive of discretionary authority. However, it must here be made clear that my determination in this regard carries no implication that the Board's actions, though found unreasonable, smack, as to motivation, of official or personal impropriety. To the contrary, it appears that the members' actions bespoke their sincere convictions at the time and the record contains not the slightest suggestion to any other effect.

Respondent Board's action denying appellants' application for transfer of the 1949-50 license to premises at 104 Norwood Avenue will be reversed. Respondent Board's inaction with respect to appellants' renewal application (such inaction being deemed, for the purposes herein, as a denial) will be reversed as hereinafter set forth.

Respondent Board's action granting respondent Rudolph J. Tetti's application for transfer will be reversed, and the transfer to 102 Norwood Avenue declared null and void, as hereinafter set forth. The action granting renewal for premises at 102 Norwood Avenue, being necessarily based upon the transfer herein declared void, will likewise be reversed and such renewal declared null and void as hereinafter set forth.

The Borough's numerical and geographical limitation ordinance permits issuance of a new plenary retail consumption license in District No. 1, but Section 2 of the State Limitation Law (P.L. 1947, c. 94) provides that no new plenary retail consumption license shall be issued in a municipality unless and until the number of such licenses outstanding in the municipality is fewer than one for each 1,000 of its population as shown by the latest Federal census. Deal's 1930 Federal census population was 800, and its 1940 Federal census population 917. Under Section 2 of the State Limitation Law, a new and fourth plenary retail consumption license could not lawfully be issued for premises in any section of Deal unless the Borough's latest Federal census population were at least 4,000, and it would appear obvious that the Borough's population, as shown by the final official count under the 1950 Federal census, will not reach that figure. However, Section 6 of the State Limitation Law provides:

"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 quoted section's sixty-day period has elapsed but, if Rudolph J. Tetti files an application for a new plenary retail consumption license for premises in District No. 1 within thirty days from the date hereof, and requests my favorable determination under Section 6 of the State Limitation Law, I shall, under the peculiar circumstances and pursuant to the powers granted to me by R.S.33:1-39 (cf. Wardach and Jaskulski v. Camden and Oreb, Bulletin 487, Item 4), grant such request and, in that situation, respondent Board may consider such application for a new license on its merits.

It would be an empty gesture, at this time, to order the granting of appellants' application for transfer of the 1949-50 license. However, the pertinent order of reversal herein will give appellants the standing of licensees as of June 30, 1950, and respondent Board shall grant appellants' renewal application as hereinafter set forth. (Cf. Harty v. Delaware Township, Bulletin 722, Item 5.)

Accordingly, it is, on this 10th day of January, 1951,

ORDERED that the action of respondent Board denying the place-to-place transfer of appellants' 1949-50 license to 104 Norwood Avenue be and the same is hereby reversed; and that appellants have the standing of licensees, for premises at 104 Norwood Avenue, as of June 30, 1950; and that respondent Board's inaction upon appellants' renewal application (deemed a denial, in these Conclusions) be and the same is hereby reversed; and that respondent Board grant such renewal application subject to the special condition that the premises at 104 Norwood Avenue comply with the operative building regulations and health and sanitation regulations in the Borough; and it is further

ORDERED that the action of respondent Board granting transfer of plenary retail consumption license C-3 to Rudolph J. Tetti, and from 4 Ocean Avenue to 102 Norwood Avenue, be and the same is hereby reversed, and such transfer declared null and void; and that the action of respondent Board granting renewal for premises at 102 Norwood Avenue be and the same is hereby reversed and such renewal declared null and void, and that all operations thereunder cease forthwith.

ERWIN B. HOCK
Director.

2. APPELLATE DECISIONS - MONTCLAIR PACKAGE STORES ASSOCIATION ET AL. v. MONTCLAIR AND TOWN HOUSE.

MONTCLAIR PACKAGE STORES ASSOCIATION, INC., a non-profit corporation of the State of New Jersey, WATCHUNG LIQUOR SHOP, INC., a corporation of the State of New Jersey, and WILLIAM C. MOODIE,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF MONTCLAIR, and TOWN HOUSE, a corporation,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Porter & Hobart, Esqs., by Newton H. Porter, Jr., Esq., Attorneys for Appellants Montclair Package Stores Ass'n, Inc. and William C. Moodie.
William J. Camarata, Esq., Attorney for Appellant Watchung Liquor Shop, Inc.
Samuel Allcorn, Jr., Esq., Attorney for Respondent Board of Commissioners.
Ernest F. Keer, Jr., Esq. and M. Eugene Speni, Esq., Attorneys for Respondent Town House.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores Ass'n, an Objector.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board of Commissioners whereby it issued to respondent Town House a plenary retail distribution license for premises at 109 Watchung Avenue, Montclair.

At the hearing held herein, a request was made by the attorney for Montclair Package Stores Association for leave to withdraw as appellant. The request was granted and the case was continued in the names of Watchung Liquor Shop, Inc. and William C. Moodie as appellants.

The petition of appeal alleges in substance (1) that respondent Board of Commissioners abused its discretion by amending an existing ordinance to increase the number of permissible plenary retail distribution licenses; (2) the resolution granting the license contained a condition which had neither been submitted to, nor approved by, the Director of the Division of Alcoholic Beverage Control; and (3) there was no need for a distribution license at 109 Watchung Avenue and, therefore, respondent Board abused its discretionary power in granting the license.

The evidence herein discloses that prior to August 9, 1950, an ordinance of the Town of Montclair limited the number of plenary retail consumption licenses to eleven, and the number of plenary retail distribution licenses to twelve. On August 9, 1950, respondent Town House (which then held a plenary retail consumption license for premises at 636 Bloomfield Avenue) filed with respondent Board an application for a plenary retail distribution license for premises at 701 Bloomfield Avenue. At or about the same time, a proposed amendment of the aforesaid ordinance was introduced, but on August 22, 1950, the proposed amendment of the ordinance was voted down and the pending application filed by respondent Town House was denied "in view of the fact that there was no license to grant".

On October 4, 1950, respondent Town House filed with respondent Board of Commissioners an application for a plenary retail distribution license for premises at 109 Watchung Avenue. At or about the same time, a proposed amendment of the aforesaid ordinance was introduced whereby the number of consumption licenses would be decreased from eleven to ten, and the number of retail distribution licenses would be increased from twelve to thirteen. On October 17, 1950, respondent Board held a joint hearing on the proposed amendment of the ordinance and the pending application for license. At the said hearing letters received from five individuals who objected to the proposed amendment of the ordinance and the granting of the license, and letters received from three individuals who urged the adoption of the amendment of the ordinance and the granting of the application for the license, were read. There was presented to the Board a petition signed by 296 "residents and shoppers", which stated that the signers were of the opinion there was no need for an additional package store in the Watchung shopping district. Attorneys representing the applicant for the license, and an attorney representing the retail package store operators, were permitted to present their arguments for and against the amendment of the ordinance and the granting of the pending application. All persons attending the hearing were apparently given an opportunity to be heard. After the hearing respondent Board of Commissioners adopted at the same meeting the aforesaid amendment of the ordinance and passed the following resolution:

> "RESOLVED by the Board of Commissioners of the Town of Montclair in the County of Essex, that the Town Clerk be and he hereby is authorized and directed to issue an Alcoholic Beverage Plenary Retail Distribution License, effective October 28, 1950, and terminating June 30, 1951, to the Town House (a corp.), for premises at 109 Watchung Avenue, Montclair, New Jersey, upon the condition that the said Town House (a corp.) shall surrender to the Town Clerk on or before October 27, 1950 the Alcoholic Beverage Plenary Retail Consumption license issued to and presently held by it."

Subsequently, the distribution license was issued to Town House for premises at 109 Watchung Avenue at or about the same time it surrendered its consumption license to the Town Clerk.

At the hearing held herein, Commissioner MacBratney testified that, when the matter came before the Board of Commissioners, it was considered desirable to eliminate the consumption license "because we think there are enough taverns in and around the Bloomfield area". He further testified that the Watchung area (which he described as extending from Chestnut Street to Wildwood Avenue and between the west and east borders of the town) was a very busy shopping center which had previously contained only one liquor store, namely, the Watchung Liquor Shop, Inc.

The rather voluminous evidence clearly indicates that the area in the vicinity of 109 Watchung Avenue is definitely a shopping area surrounded by a large residential area. In this shopping area there are super markets, gasoline stations, drug stores, beauty shops, barber shops, electrical applicances stores, and delicatessen stores. In an area of this character the determination of the question as to the number of licenses which should be permitted is a matter confided to the sound discretion of the issuing authority. Kalish v. Linden et al., Bulletin 71, Item 14; Schiff v. Lakewood and Goldberg, Bulletin 869, Item 9.

In view of the fact that the amendment of the ordinance reduced by one the permissible number of plenary retail consumption licenses, I am unable to conclude that respondent Board abused its discretion

by amending the ordinance to increase by one the permissible number of plenary retail distribution licenses. The State-wide limitation act (P.L. 1947, c. 94) permits the issuance of thirteen plenary retail distribution licenses in the Town of Montclair, which had a population of 39,807 according to the 1940 Federal census.

While the evidence herein discloses a difference of opinion as to the need for an additional retail distribution license in the Watchung area, the evidence is clearly inadequate to show that respondent Board acted arbitrarily or abused its discretion in granting the license for premises at 109 Watchung Avenue.

There may be some question as to whether the condition imposed by respondent Board (which required the surrender of the consumption license) was such a condition as would require prior approval by the Commissioner (Director) under the provisions of R. S. 33:1-32. In any event, our records show that ex parte approval of the condition was given by me by letter dated October 27, 1950, sent to the Town Clerk of Montclair.

For the reasons aforesaid, the action of respondent Board will be affirmed.

Accordingly, it is, on this 10th day of January, 1951,

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

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - FAILING TO HAVE LICENSED PREMISES CLOSED - FAILING TO HAVE LICENSED PREMISES OPEN TO PUBLIC VIEW - ALL IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MORRIS BRICK & ESTHER BRICK
207 Water Street
Paterson 4, N. J.,) CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-59, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

Peter P. Zangara, Esq., Attorney for Defendant-licensees.
Vincent T. Flanagan, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that they (1) sold alcoholic beverages on their licensed premises between the hours of 6:45 a.m. and 7:00 a.m. on Thursday, November 9, 1950, (2) failed to have their licensed premises closed during said hours,

and (3) failed during said hours to keep the interior of their licensed premises open to public view from the outside thereof; all in violation of an existing local regulation.

It appears from an examination of the file herein that, on Thursday, November 9, 1950, at 6:45 a.m., ABC agents saw a man enter the front door of defendants' licensed premises. The blinds were drawn and the interior of the premises at the time could not be seen from the street. The ABC agents, however, peered through a section of the blinds which was folded back and observed Morris Brick, one of the licensees, behind the bar serving a bottle of beer to the man who had just entered the premises. The ABC agents thereupon entered the premises and made known their identity to the said Morris Brick.

Defendants have a prior record. In 1944, the license then held by Esther Brick, individually, was suspended for ten days, effective February 14, 1944, by the local issuing authority after a finding of guilt on charges of sales of alcoholic beverages after hours. Effective August 29, 1949, defendants' license was suspended by me for a period of fifteen days after a plea of non vult had been entered to a charge of selling alcoholic beverages in original containers, in violation of Rule 1 of State Regulations No. 38. See Bulletin 852, Item 6.

Under all of the circumstances, I shall suspend defendants' license for a period of thirty-five days, less five days' remission for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 10th day of January, 1951,

ORDERED that Plenary Retail Consumption License C-59, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Morris Brick & Esther Brick, for premises 207 Water Street, Paterson, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m. January 17, 1951, and terminating at 3:00 a.m. February 16, 1951.

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ELIZABETH TOWN & COUNTRY CLUB
917 North Broad Street
Elizabeth, N. J.,

Holder of Plenary Retail Consumption License C-262, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

CONCLUSIONS AND ORDER

O'Connor, Morss & Mancini, Esqs., by Martin B. O'Connor, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on divers days between May 2, 1950 and October 30, 1950, it sold alcoholic beverages at retail at a price below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that, between the two dates mentioned in the charge, defendant engaged in the regular practice of selling to its members bottles of alcoholic beverages for off-premises consumption at a discount of approximately ten per cent. from the price listed for the item in the then currently effective "minimum resale prices" filed pursuant to State Regulations No. 30.

In alleged mitigation the President of defendant-licensee has submitted an affidavit in which he says that the offense complained of "was a practice indulged in solely for the accommodation of Club members and was not carried on with any design or intent to violate laws or the regulations of the Commission". Although under the terms of its license defendant has the right to sell alcoholic beverages for consumption to the general public, I am satisfied that the privilege of purchasing below the Fair Trade price was restricted to members of defendant club. Nevertheless, the violation is serious in character and is aggravated by the fact that many sales were made at reduced prices.

Defendant has no prior record. Under all the circumstances, I shall suspend defendant's license for a period of twenty days, less five for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 9th day of January, 1951,

ORDERED that Plenary Retail Consumption License No. C-262, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Elizabeth Town & Country Club, for premises 917 North Broad Street, Elizabeth, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. January 16, 1951, and terminating at 2:00 a.m. January 31, 1951.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALES TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BEACH HAVEN LODGE NO. 1575, LOYAL ORDER OF MOOSE OF THE WORLD) Northwest Corner of Bay Avenue and Taylor Avenue Beach Haven, N. J.,

Holder of Club License CB-107, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Julius Robinson, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold alcoholic beverages to persons not members or bona fide guests of such members, in violation of Rule 8 of State Regulations No. 7.

On December 16, 1950, after the bartender in charge of the defendant's bar opened the locked door, two ABC agents entered defendant's licensed premises and, upon request, a bottle of beer was sold and delivered to each of them. The agents are not members of the local lodge, nor of any other Lodge of Moose, nor were they then guests of a member of defendant lodge.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period usual in cases of this kind, fifteen days. Re Club Lido, Bulletin 773, Item 2. Five days will be remitted because of the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of January, 1951,

ORDERED that Club License CB-107, issued by the Director of the Division of Alcoholic Beverage Control to Beach Haven Lodge No. 1575, Loyal Order of Moose of the World, for premises Northwest Corner of Bay Avenue and Taylor Avenue, Beach Haven, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 15, 1951, and terminating at 2:00 a.m. January 25, 1951.

ERWIN B. HOCK
Director.

6. STATE LICENSES - NEW APPLICATIONS FILED.

Penn Yan Express, Inc.,
Highway #17 and Prospect Ave., Rochelle Park, N. J.
Application filed January 16, 1951 for transfer of Transportation License T-77 from Pierce Freight Lines, Inc.

National Beer Distributors
Columbus Road & Logan Ave., Burlington, N. J.
Application for State Beverage Distributor's License filed January 24, 1951.

Riss and Company, Inc.
Route #1, Sip Ave., Jersey City, N.J.
Apolication for Transportation License filed January 25, 1951.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE - CONCEALING MATERIAL FACT (NON-RESIDENCE) - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against

GEORGE GILLAS
1568 Bergen Blvd.
Fort Lee, N. J.,

Holder of Plenary Retail Consumption License C-26, issued by the Mayor and Council of the Borough of Fort Lee; and transferred during the pendency of these proceedings to

ERNEST GILLAS,

for the same premises.

CONCLUSIONS AND ORDER

Theodore C. Kiscaras, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he falsified his application for his current license, in violation of R. S. 33:1-25.

Defendant, in his application for license, dated June 2, 1950, set forth his residence as "1568 Bergen Blvd., Fort Lee, N. J." and answered "Yes" to Question No. 27(a), which asks: "Are you *** (an) actual and bona fide resident(s) of the State of New Jersey ****?"

It appears from the record that the defendant has held for many years and presently holds a liquor license in New York and that he has resided with his family in New York since 1941. It further appears that in July 1949 he obtained a retail liquor license in New Jersey, claiming an address in this state. When he obtained his present license he occupied a few rooms over the licensed premises in Fort Lee. This occupancy, however, did not make him a "resident" of New Jersey within the meaning of the terms used in R. S. 33:1-25. I find the defendant guilty as charged.

After charges were brought in the instant case, defendant agreed to sell the New Jersey business to his brother, Ernest Gillas. Ernest is apparently a bona fide resident of New Jersey, living in the rooms over the licensed premises. The sale was consummated and the license has been transferred to Ernest Gillas by the local issuing authority. From the evidence submitted, it appears that said sale is bona fide, divesting the defendant of all interest in the licensed business.

I shall consider the sale of the business and the transfer of the license as a bona fide correction. The license must be suspended for ten days. Re Keane and Prendergast, Bulletin 816, Item 1.

Accordingly, it is, on this 28th day of December, 1950,

ORDERED that Plenary Retail Consumption License C-26, issued by the Mayor and Council of the Borough of Fort Lee to George Gillas, for premises 1568 Bergen Blvd., Fort Lee, and transferred during the pendency of these proceedings to Ernest Gillas, for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. January 8, 1951, and terminating at 3:00 a.m. January 18, 1951.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RANDOLPH DANIELS, SR.
536 Shrewsbury Avenue
Borough of New Shrewsbury
(formerly Shrewsbury Township)
P. O. Red Bank, N. J.,

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the then Shrewsbury Township (now Borough of New Shrewsbury).

CONCLUSIONS AND ORDER

Randolph Daniels, Sr., Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to the charge that, on November 30, 1950, he possessed a mislabeled beer tap in his licensed premises, in violation of Rule 26 of State Regulations No. 20.

An ABC agent, on routine inspection of the defendant's licensed premises on the day in question, found that beer was being drawn from a barrel marked "Krueger" through a spigot labeled "Ruppert".

Defendant contends, in mitigation of penalty, that a bartender inadvertently placed an improper label on a new tap. Nevertheless, defendant is responsible for the violation since he possessed a mislabeled beer tap on his licensed premises. Re Ewtushek, Bulletin 891, Item 16.

Defendant has no previous adjudicated record. The license, therefore, will be suspended for a period of three days, less one day's remission because of the plea entered herein, or a net suspension of two days. Re Hearns, Bulletin 854, Item 4.

Accordingly, it is, on this 3rd day of January, 1951,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the then Shrewsbury Township (now Borough of New Shrewsbury) to Randolph Daniels, Sr., for premises 536 Shrewsbury Avenue, Borough of New Shrewsbury (formerly Shrewsbury Township), be and the same is hereby suspended for a period of two (2) days, commencing at 3:00 a.m. January 8, 1951, and terminating at 3:00 a.m. January 10, 1951.

Erwin B. Hoch

Director.