

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

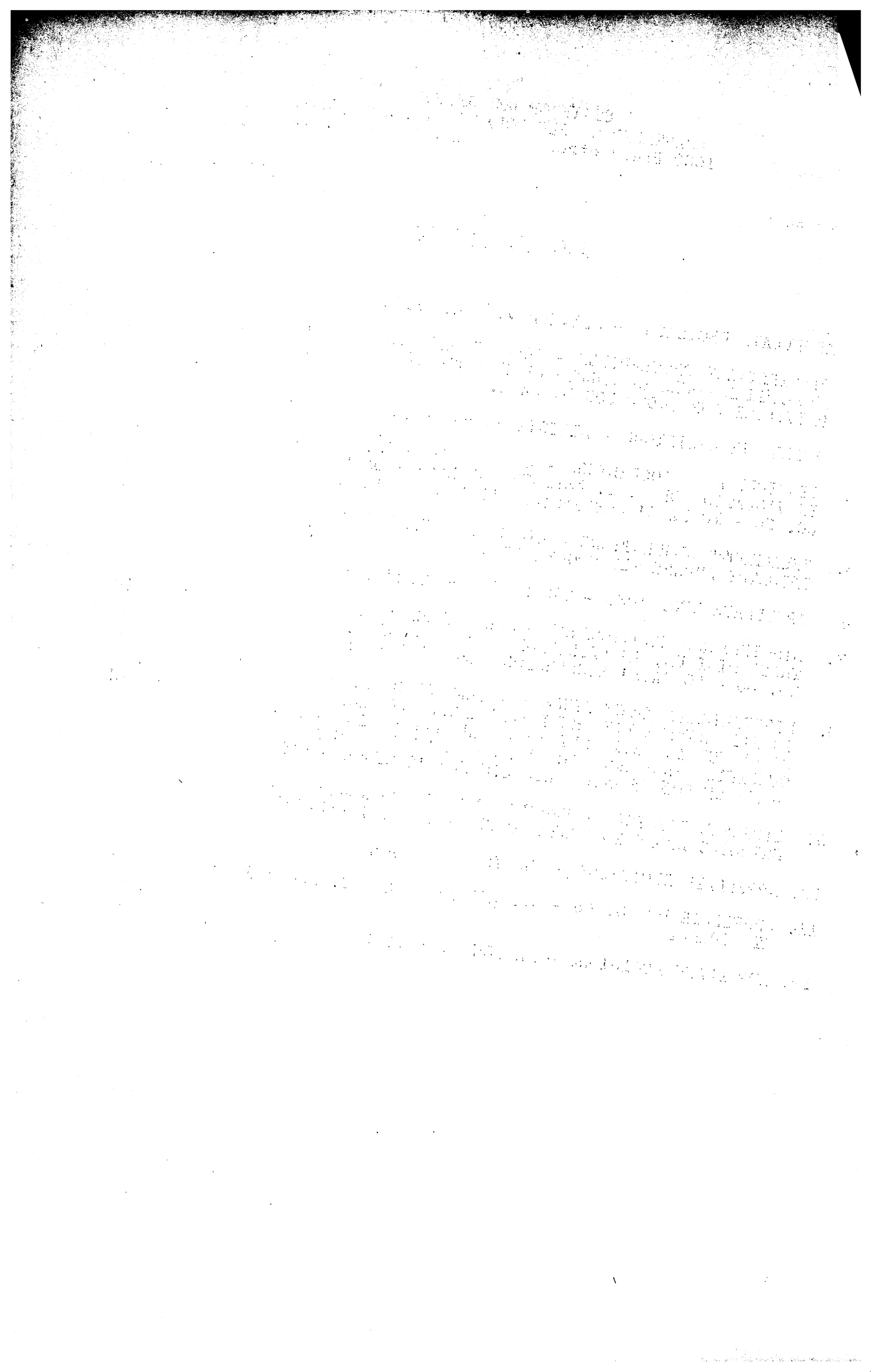
BULLETIN 575

JULY 2, 1943

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - SLIMMER v. MILLVILLE.
2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS BY HOLDER OF EMPLOYMENT PERMIT (ALIEN) - PERMIT PRIVILEGE SUSPENDED FOR 30 DAYS.
3. APPELLATE DECISIONS - ELLIOTT v. BAYONNE.
4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.
5. "BLACKOUT" REGULATIONS - LICENSEES EXPECTED TO COMPLY WITH - INDUSTRY APPARENTLY COOPERATING.
6. APPELLATE DECISIONS - SAN REMO CORPORATION v. FORT LEE.
7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS - VIOLATION OF R. S. 33:1-34 - FAILURE TO FILE NOTICE WITH MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF CHANGE IN FACTS SET FORTH IN APPLICATION - CORPORATION DISQUALIFIED FROM HOLDING LICENSE BECAUSE OF CRIMINAL RECORD OF OWNER OF 50% OF CORPORATE LICENSEE'S STOCK - LICENSE REVOKED.
9. LICENSED PREMISES - HEREIN OF "COZY CORNERS" - BOOTHS WITH SWINGING DOORS TO SCREEN OCCUPANTS NOT TOLERATED.
10. APPELLATE DECISIONS - SLENIS v. NEWARK.
11. APPELLATE DECISIONS - MT. EPHRAIM POST NO. 150 AMERICAN LEGION v. MT. EPHRAIM.
12. APPELLATE DECISIONS - MARECH v. NEWARK.



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

BULLETIN 575

JULY 2, 1943.

1. APPELLATE DECISIONS - SLIMMER v. MILLVILLE.

PAUL F. SLIMMER,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
CITY OF MILLVILLE,)

Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Samuel Adler, Esq. and Philip P. Wodlinger, Esq., Attorneys for Appellant.

Santo J. Salvo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the refusal of the Board of Commissioners of the City of Millville to renew a plenary retail consumption license for the year 1942-43 for premises located at 7 West Main Street, in the City of Millville.

Respondent assigned the following grounds for its refusal to grant appellant's application for renewal of his license: (a) there is absentee ownership; (b) there is absentee management; (c) the actual management is incompetent and irresponsible; (d) there has repeatedly been disorderly conduct accompanied by fights, rowdyism, loud noises and profane language; (e) repeatedly patrons have become intoxicated in this taproom or have bought liquor after being intoxicated, or both; and (f) the nominal owner is not the real owner.

It lies within the sound discretion of the issuing authority to determine whether an appellant is worthy of a renewal license. No licensee enjoys a vested right to a renewal. I have consistently ruled that the question of whether or not an applicant should be deemed worthy of a retail liquor license lies within the sound judgment of the issuing authority and that its determination is accordingly entitled to great weight. The determination of the municipal issuing authority, however, must be based upon sound and adequate grounds. Due heed must of necessity be given public welfare.

After carefully studying the record in this case, I have reached the conclusion that the determination of the respondent not to grant appellant's application for a renewal of his license is based on sound grounds. It further appears that its decision is fully consistent with the public welfare.

From the testimony it appears that, beginning some time in 1941, appellant was employed in the City of Camden, where he maintained a lodging room. He visited Millville on week-ends and occasionally during the week. Appellant's visits to the licensed premises were admittedly infrequent and of a most casual nature. He testified that on week-ends he would "go in and hang around probably a couple of hours; go back of the bar and draw a few beers"; and then leave. As time passed, his visits to the premises became less

frequent. In December of 1940, appellant executed an instrument entitled a "power of attorney." In this instrument, which was offered in evidence, appellant named Joseph T. Riley "to take charge of, operate and manage the said saloon under the said license and all renewals thereof for a period of one year ***." The "power of attorney" authorized Riley to receive all moneys and deposit the same in banks subject to withdrawal by Riley. The latter was also authorized to take care of all sales and purchases as well as the "hiring and firing of all employees." In the "power" Riley was directed to pay certain personal obligations of the appellant. Appellant agreed that the instrument characterized as a "power", and in one or more instances referred to as a contract or agreement, was "not to be revoked for one year" unless the appellant-licensee first paid or satisfied all of his outstanding creditors. On November 17, 1941 a similar instrument was executed by appellant. This "power" likewise provided that it was "not to be revoked for one year" except upon the payment of appellant's outstanding debts. These documents, which may be accepted as indicative of the intent of the licensee, go well beyond the normal appointment of an attorney-in-fact or agent to carry on the business in the absence of the licensee.

To all intents and purposes, the licensee transferred the licensed premises, together with the privilege granted by the license to sell alcoholic beverages, to a third person, who proceeded to operate the business for the benefit of appellant's creditors. This virtual abandonment of the license was not in the public interest and is not permitted by the Alcoholic Beverage Law. It must be remembered that a license is a privilege and not a right. This privilege cannot be transferred or disposed of even momentarily except in the manner expressly provided in the Alcoholic Beverage Law.

Absentee ownership and management in the liquor business is extremely dangerous. Except in those cases where the exigencies of the war make it necessary, it should not be encouraged. A municipal issuing authority is on sound ground when it determines, as a matter of policy, that it will not permit the privilege to be delegated to third parties over whom it has little, if any, control.

The burden of proving fitness for a license rests with the applicant. The reasonable objections of the respondent on the grounds of absentee ownership and management are fully supported by the testimony.

It further appears from the record that the licensed premises are not favorably located. Over-indulgence permitted on the premises during the last fiscal year has resulted in loud noises, profane language and occasional acts of rowdyism in the neighborhood. These incidents, which have been followed by complaints from citizens and required attention by the police, may have been in part the result of the licensee's absence from the premises. Likewise they may be indicative of the character of the neighborhood and of some of those who frequented the premises. In either event, respondent was fully justified in considering the same as valid objections to the renewal of the license.

The burden of proving that respondent acted improperly in the performance of its duties rests with the appellant. The record in this case fails to disclose any evidence that the action of respondent was inspired by improper motives. On the contrary, the testimony supports the refusal of respondent to grant the renewal.

The action of the respondent is affirmed.

Accordingly, it is, on this 24th day of June, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS BY HOLDER OF EMPLOYMENT PERMIT (ALIEN) - PERMIT PRIVILEGES SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary)
Proceedings against)

ROBERT OTTO SCHWADE)
56 Plane Street)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Employment Permit)
No. 803, issued by the State)
Commissioner of Alcoholic)
Beverage Control.)

Sidney Simandl, Esq., Attorney for Defendant-Permittee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of an alien's employment permit, was served with the following charge:

"On January 14, 1943, you were convicted in the Family Court of the City of Newark, N. J. for selling alcoholic beverages during prohibited hours, in violation of Section 1 of Ordinance No. 2368, adopted by the Board of Commissioners of the City of Newark on July 25, 1934, as amended by Ordinance No. 3021, adopted by said Board on September 9, 1942; such conviction being an act or happening occurring after the time of making your application for your current employment permit, which, had it occurred before said time, would have prevented the issuance of said employment permit."

The defendant admits that he was convicted as specified in the charge. This conviction also necessarily involves a finding that the defendant sold and served alcoholic beverages in violation of the terms of his permit, because, until the recent amendment to Section 26 of the Alcoholic Beverage Law which became effective April 8, 1943, alien permittees were disqualified from selling or serving any alcoholic beverages.

The defendant's present employment permit expires on June 30, 1943. Since but a few days remain until such time, I shall allow this permit to run its course without imposing any suspension against it. However, the defendant has filed an application for permit for the next fiscal year commencing July 1, 1943, in which the conviction is disclosed. In punishment for the offense committed by the defendant, I shall direct that issuance of a permit to the defendant for the ensuing fiscal year be withheld for a period of thirty days from July 1, 1943.

Accordingly, it is, on this 23rd day of June, 1943,

ORDERED, that defendant's employment permit for the fiscal year 1943-44, application for which has heretofore been made to this Department, shall not issue until July 31, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - ELLIOTT v. BAYONNE.

GEORGE ELLIOTT,)
)
Appellant,)
)
-vs-)
)
BOARD OF COMMISSIONERS OF THE)
CITY OF BAYONNE,)
)
Respondent)
-----)

ON APPEAL
ORDER

Ben M. Horwech, Esq., Attorney for Appellant.
William Rubin, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's action in revoking appellant's plenary retail consumption license for premises 490 Broadway, Bayonne, because of his conviction in the Hudson County Court of Quarter Sessions of a crime involving moral turpitude.

It was agreed between the attorneys for the respective parties that in the event of an affirmance of appellant's criminal conviction by the Court of Errors and Appeals, the instant appeal should be dismissed. An affirmance of the criminal conviction by the Court of Errors and Appeals has been entered. See 130 N. J. L. 174. This appeal, therefore, may now be dismissed.

Accordingly, it is, on this 23rd day of June, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

EMILY G. CHRISTMAS)
T/a MOONLITE INN)
117 N. South Carolina Ave.)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Board of Commissioners of the City of Atlantic City.)
-----)

William A. Dart, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges alleging that (1) she sold alcoholic beverages to a minor, in violation of R. S. 33:1-77; and (2) she permitted the service of alcoholic beverages to a minor and permitted the consumption of alcoholic beverages by such minor on her licensed premises, in violation of Rule 1 of State Regulations No. 20; and also in violation of a local ordinance.

This is defendant's first adjudicated offense. In the absence of previous record or aggravating circumstances, the minimum penalty of a ten-day suspension, less five days for the plea, will be imposed. Re Salvato, Bulletin 565, Item 7.

Accordingly, it is, on this 23rd day of June, 1943,

ORDERED, that Plenary Retail Consumption License C-15, heretofore issued by the Board of Commissioners of the City of Atlantic City to Emily G. Christmas, trading as Moonlite Inn, for premises 117 N. South Carolina Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, effective June 28, 1943, at 12:01 A.M.; and it is further

ORDERED, that if any license be issued to this licensee, or other person, for the premises in question for the 1943-44 fiscal year, such license shall be under suspension until 12:01 A. M. July 3, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. "BLACKOUT" REGULATIONS - LICENSEES EXPECTED TO COMPLY WITH -
INDUSTRY APPARENTLY COOPERATING.

June 24, 1943

Mr. Manuel Mercado
T/a My Own Cafe
Penns Grove, N. J.

Dear Sir:

On review of our files as to your tavern at the above address, I note that on March 9, 1943 you failed to turn out the lights in your barroom during an air raid "blackout" despite previous warnings by the air raid warden. It further appears that, as a result, you were brought before Justice of the Peace Adams and that, on your plea of guilty, you were fined \$10.00.

Both this Department and the general public expect that all liquor licensees will cooperate fully and patriotically with all "blackout" and similar war-time regulations. Indeed, common sense, if nothing else, should impel all licensees to adhere scrupulously to such regulations.

I am glad to note that, so far as our records show, the industry, with only isolated exceptions, such as in your own case, is apparently responding, with a full sense of patriotism and cooperation, to the demands of these regulations.

I am confident that you will not repeat your defalcation.

A word to the wise is sufficient.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - SAN REMO CORPORATION v. FORT LEE.

SAN REMO CORPORATION,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH)	
OF FORT LEE,)	
)	
Respondent)	
-----)	

VanderBurgh & Aronsohn, Esqs., by I. William Aronsohn, Esq.,
Attorneys for Appellant.
Lawrence A. Cavinato, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the imposition in appellant's plenary retail consumption license for premises 817 Abbott Boulevard, of the following condition:

"That no radio, music, or loud speaking devices be permitted to operate on the premises at any time and that all unnecessary noises be stopped."

Pending the appeal, appellant was granted a place to place transfer of his license to a location about 150 feet further distant from the home of the lone objector to the noises emanating from appellant's original premises. In view of the transfer, the objector has advised me that he has withdrawn his objection "as I do not think it will cause me any more annoyance."

It is, therefore, unnecessary at this time to determine whether the condition was reasonable as applied to appellant's former premises. Since no reason presently appears for subjecting appellant's new location to any such restriction, I shall direct that the condition be set aside. This determination is further fortified by the renewal of appellant's license for his present premises for the ensuing fiscal year without the imposition of any such condition therein.

Accordingly, it is, on this 24th day of June, 1943,

ORDERED, that the aforesaid condition be and the same is hereby set aside.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

LEE'S WINES & LIQUOR CO., INC.,
N/W Cor. Boulevard and North 21st St.)
Kenilworth, N. J.,

Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Kenilworth.
-----)

CONCLUSIONS
AND ORDER

Carl J. Yagoda, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge alleging that, on March 24, 1943, it sold a 4/5 quart bottle of Calvert Reserve Blended Whiskey below the minimum retail price, in violation of Rule 6 of State Regulations No. 30; and non vult to a supplemental charge alleging that, on October 29, 1942, it sold six quart bottles of Golden Wedding Blended Straight Rye Whiskey below the minimum retail price, in violation of Rule 6 of State Regulations No. 30.

This is defendant's first adjudicated offense on the licensed premises. In the absence of previous record as to the store in question, or aggravating circumstances, the minimum penalty of a ten-day suspension for each violation, less five days for the plea, will be imposed. Re Molosso, Bulletin 563, Item 8.

Accordingly, it is, on this 24th day of June, 1943,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued by the Borough Council of the Borough of Kenilworth to Lee's Wines & Liquor Co., Inc., for premises N/W Cor. Boulevard & North 21st Street, Kenilworth, be and the same is hereby suspended for the balance of its term, effective June 28, 1943, at 3:00 A.M.; and it is further

ORDERED, that if any license be issued to this licensee, or other person, for the premises in question, for the 1943-44 fiscal year, such license shall be under suspension until 3:00 A. M. July 13, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - VIOLATION OF R. S. 33:1-34 - FAILURE TO FILE NOTICE WITH MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF CHANGE IN FACTS SET FORTH IN APPLICATION - CORPORATION DISQUALIFIED FROM HOLDING LICENSE BECAUSE OF CRIMINAL RECORD OF OWNER OF 50% OF CORPORATE LICENSEE'S STOCK - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against
GARDEN TAVERN, INC.,
130-130A Broadway
Paterson, N. J.,
Holder of Plenary Retail Consumption License C-164 issued by the Municipal Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS
AND ORDER

Charles Turndorf, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to the following charge:

"You failed to file with the Municipal Board of Alcoholic Beverage Control of the City of Paterson, within ten days after the occurrence thereof, a written notice of change occurring in the facts set forth in answer to Question 23 of your application for your current plenary retail consumption license, such change being that during the early part of December 1942 Irving Haber became the beneficial owner of one-half of the shares of stock being held by Max Tubis; your failure to file the aforesaid notice of such change being in violation of R. S. 33:1-34."

It appears that, on July 22, 1942, the license in question was transferred from a former licensee to defendant herein. In the application for such transfer it was disclosed that one Max Tubis held twenty-three shares of a total of twenty-five shares issued by defendant corporation. In December 1942 Tubis sold a half interest in his shares to Irving Haber, who is disqualified from holding a license because of a criminal record. Notification of the change in beneficial ownership of said shares was not given to the local issuing authority as required by R. S. 33:1-34.

Because of defendant's failure to comply with the statute, an unqualified person was permitted to engage in the alcoholic beverage business from December 1942 until a few weeks ago, when the licensed business was discontinued. Under the circumstances of this case, the only proper penalty is revocation. Cf. Re Eagle Cafe Inc., Bulletin 431, Item 10; Re 12 East Park Street Tavern Inc., Bulletin 490, Item 5.

Accordingly, it is, on this 24th day of June, 1943,

ORDERED, that Plenary Retail Consumption License C-164, issued by the Municipal Board of Alcoholic Beverage Control of the City of Paterson to Garden Tavern, Inc., for premises 130-130A Broadway, Paterson, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

9. LICENSED PREMISES - HEREIN OF "COZY CORNERS" - BOOTHS WITH SWINGING DOORS TO SCREEN OCCUPANTS NOT TOLERATED.

June 28, 1943

Dear Mr. _____:

On review of our files as to your above tavern, I note that our investigators visited the premises during May and found that you have two booths in the barroom and that both of these booths have swinging doors which hide the occupants from view.

These "cozy corners", designed to shield the patrons and their activity from scrutiny, will not be tolerated. What must be hidden in this way is, indubitably, not desirable on licensed premises.

Hence, these doors are out. You are hereby directed to remove them forthwith, and to assure me by return mail that you have actually removed them.

Violation will be cause for outright revocation of your license.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - SLENIS v. NEWARK.

JOSEPH SLENIS,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent)

Sidney Simandl, Esq., Attorney for Appellant.
Louis A. Fast, Esq. and Joseph A. Ward, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

On August 12, 1942 respondent found appellant guilty on a charge alleging that, on June 13, 1942, he allowed, permitted and suffered in and upon his licensed premises (214 Mulberry Street, Newark) disturbances, brawls and unnecessary noises in violation of Rule 5 of State Regulations No. 20. Thereupon respondent suspended appellant's plenary retail consumption license C-459 for a period of fifteen days commencing August 17, 1942. On August 21, 1942, after serving four days of the suspension, appellant filed this appeal, alleging, among other reasons for reversal, that the decision of respondent was contrary to the weight of the evidence. By order entered on the same day, the further effect of the suspension was stayed pending determination of the appeal. R. S. 33:1-31.

It clearly appears from the evidence that, during the early morning hours of June 13, 1942, a serious disturbance occurred on the licensed premises. The sole question is whether or not the evidence is sufficient to show that appellant allowed, permitted or suffered the disturbance to occur within the meaning of these terms as used in Rule 5 of Regulations No. 20.

Carl Engstrom, who is much bigger physically than the licensee, admits that on the morning in question he picked up the licensee, threw him against a wall and broke licensee's wrist. Engstrom served time in a penitentiary after pleading guilty to criminal charges of atrocious assault and battery preferred against him by the licensee.

The testimony of the licensee, supported by that of Joseph Romanowicz, another patron, is that Engstrom "all of a sudden" said to Slenis, "You gave my wife a black eye", grabbed Slenis by the collar and throat and threw him across the room; whereupon the licensee requested the other patrons to call the police.

Engstrom denies that on the morning in question he made any reference to his wife, who was not then on the premises. He says that he saw another woman fall and "from the corner of my eye I saw her pushed and the only one there was Slenis"; that, when he attempted to pick up the woman, he was attacked by Slenis, whom he then threw against the wall.

The testimony of the police officers is not helpful upon the issue here in question because, when they arrived, the disturbance had ended. No one corroborates Engstrom's version of the affair and

he admits that he has a lengthy criminal record and that he had been drinking heavily before and after he entered appellant's premises. The licensee, Joseph Romanowicz, the bartender and the woman patron all denied at the hearing that the licensee struck or pushed the woman patron at any time. Chairman Crosta of the Newark Board testified at the hearing that he would not believe this woman patron if she testified "on a stack of Bibles." Nevertheless, after discounting her testimony, the greater weight of the evidence supports licensee's version of the affair rather than the version given by Engstrom. Upon the evidence produced herein, some of which was not presented before the Newark Board, I must reverse the action of respondent. Re Finkel, Bulletin 423, Item 1; Re Silver, Bulletin 441, Item 12; Re Dubnowski, Bulletin 505, Item 7. This I do rather reluctantly because I am not impressed with the type of patrons who apparently frequent appellant's premises.

Accordingly, it is, on this 28th day of June, 1943,

ORDERED, that the order of respondent dated August 12, 1942, suspending appellant's plenary retail consumption license for a period of fifteen days, be and the same is hereby reversed.

ALFRED E. DRISCOLL
Commissioner.

11. APPELLATE DECISIONS - MT. EPHRAIM POST NO. 150 AMERICAN LEGION
v. MT. EPHRAIM.

MT. EPHRAIM POST NO. 150)
AMERICAN LEGION (DEPARTMENT)
OF N. J.),)
Appellant,)
-vs-)
BOROUGH COUNCIL OF THE BOROUGH)
OF MT. EPHRAIM,)
Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

C. Richard Allen, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the refusal to renew a club license for the year 1942-43 for premises located in the Borough of Mt. Ephraim. Pursuant to R. S. 33:1-22, the license was extended pending determination of the appeal.

Respondent, in its answer to the petition of appeal, alleges the following as grounds for its action: (1) that numerous complaints were received from citizens and residents of the Borough, as well as members of the police force, objecting to licensee's mismanagement of the licensed premises; (2) fights and disorderly conduct have occurred on the licensed premises; (3) licensee, in violation of the terms of its license, sold alcoholic beverages to persons who were neither bona fide members of the club nor guests thereof; (4) that, under the guise of a club license, the licensee carried on a plenary retail consumption business.

R. S. 33:1-12 provides: "The holder of this (club) license shall be entitled, subject to rules and regulations, to sell only to bona fide members and their guests, alcoholic beverages intended for immediate consumption on the licensed premises." (Underlining ours.) The cited section likewise provides: "The governing board or body of each municipality may, by ordinance, enact that no club licenses shall be granted within its respective municipality. Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and comply with all conditions which, subject to rules and regulations, may be imposed by the commissioner."

The appellant has 38 members registered with its National Headquarters. In addition, there is an Auxiliary of 32 or 36 members. Members of the Auxiliary are apparently granted all of the privileges of the club. In addition, it was the practice of the appellant to give out associate membership cards. These cards were apparently given to friends and acquaintances of various members. There is testimony in the case to the effect that the associate members were "vouched for" by a member and that the approval of the House Committee, or a member thereof, was required before the card was delivered. In theory, at least, each new Commander was permitted to issue his own associate membership cards, which were good for a period of one year. In practice, however, no effort was apparently made to call in the cards issued by previous Commanders. The holders of these associate membership cards were apparently admitted to the premises without question. The associate members paid no dues and were not required to be members of the American Legion.

The holder of a club license is entitled to sell alcoholic beverages only to bona fide club members and their guests. Guests are persons expressly invited to the club by a member and who, on arrival at the club, are not only sponsored but personally attended by their respective hosts. Re Club Licenses, Bulletin 100, Item 3. In Re McCormack, Bulletin 143, Item 7, Commissioner Burnett pointed out:

"Real guests are the personal joy of individual members. Why then should they need any card? It would be a strange lapse of memory indeed if a host needed cards or an index to remind him who were his guests!

"A guest card of itself has no legal standing. If the guest is a bona fide guest, you may sell and serve him alcoholic beverages. If he is not a bona fide guest, the card won't make him one."

In the instant case I am convinced that the holders of the associate membership cards were neither bona fide members of the club nor the guests of members within the definition of the statute. The sale of alcoholic beverages to these persons by the appellant was, therefore, contrary to the express terms of appellant's license and in violation of R. S. 33:1-12.

From the testimony it appears that on several occasions members of the Borough Council received complaints from citizens of the Borough relative to the conduct of the licensed premises. On one occasion, a fight or brawl developed on the licensed premises which required the attention of the police.

Testimony was introduced on behalf of the appellant to the effect that the premises were properly run and that in serving and selling alcoholic beverages to the holders of associate membership cards it was not aware that it was violating the law.

It lies within the sound discretion of an issuing authority to determine whether an appellant is worthy of a renewal license. No licensee enjoys a vested right to a renewal. American Legion v. Beverly, Bulletin 200, Item 14. The sale of alcoholic beverages is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. "No one has a right to demand a license: license is a special privilege granted to the few, denied to the many." Ibid 596. It therefore follows that applicants for licenses or the renewal thereof must be prepared to affirmatively prove that they are fully qualified to hold the same. A municipal issuing authority, in its consideration of an application, should properly study the previous record of the applicant.

In its determination not to grant a renewal where the record discloses that the applicant had been selling beyond the terms of its license, respondent was clearly acting within the discretionary power vested in it by the Alcoholic Beverage Control Law. The testimony in this case fails to disclose any evidence that the action of respondent was fraudulent, corrupt or inspired by improper motives. On the contrary, the testimony indicates that the respondent, mindful of the obligation imposed upon it by the statute (R. S. 33:1-24), endeavored to do its duty as it saw it.

The action of respondent is affirmed.

This decision is confined to the issues raised by the instant appeal. It does not deprive the respondent of its right to reconsider the whole question in the event of an application for a license for the 1943-44 fiscal year.

Accordingly, it is, on this 29th day of June, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

12. APPELLATE DECISIONS - MARECH v. NEWARK.

PHILIP AND KATE MARECH,)

Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)

BEVERAGE CONTROL OF THE CITY)

OF NEWARK;)

Respondent)

David H. Wiener, Esq., Attorney for Appellant.

Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney
for Respondent.

BY THE COMMISSIONER:

Appellants herein appeal from a fifteen-day suspension of License C-227 for premises at 60 Frelinghuysen Avenue, Newark. The suspension was imposed after appellants had been found guilty of selling alcoholic beverages to a minor in violation of R. S. 33:1-37 and Rule 1 of State Regulations No. 20.

Appellants contend: (1) the verdict of guilt is not based upon testimony produced at the hearing; (2) the verdict is contrary to the weight of the evidence; and (3) the penalty is excessive.

From the evidence produced herein it appears that, on the evening of March 24, 1943, Esther ---, Elmer --- and Joseph --- entered appellants' premises. Esther --- (born on July 23, 1925) was then seventeen years and eight months of age. Her companions were both over the age of twenty-one years.

The testimony further shows that Kate Marech, one of the appellants, went to the table at which the three patrons were seated for the purpose of taking the order. It is apparent that one of the three patrons ordered two glasses of beer and a Tom Collins. It is apparent also that this licensee inquired as to the girl's age and that someone in the party told her the girl was twenty-one. The licensee apparently doubted this information because she insisted that a written statement be signed. After leaving a slip of paper on the table, the said Kate Marech went behind the bar and told her husband, Philip Marech, the other licensee, that she "left a slip with the young lady who insists that she was twenty-one but that I didn't think she was." Philip Marech brought a tray containing two glasses of beer and a Tom Collins to the table. When he arrived at the table, Philip Marech told the young lady that she did not appear to be twenty-one, but apparently the three members of the party insisted that the girl was of full age. Thereupon Joseph --- signed the girl's name to the slip of paper and inserted "July 23, 1915" as the date of her birth. Philip Marech testified at the hearing that he picked up the piece of paper and said, "This is all monkeyed around; it don't look right to me."

Marech's testimony indicates that the alcoholic beverage was left on the table during the time necessary for him to go to the kitchen and secure a sandwich. There is sufficient testimony that Philip Marech served the three drinks and that the girl consumed part of her drink before the party left the premises.

The testimony of Catherine Monticello and Leo Collins is not impressive. Catherine Monticello tries to insist that she saw and heard everything that happened at this table. However, she did not observe the service of the sandwich witnessed by all the other persons present. Collins' only observation was at the bar where he saw a Tom Collins returned, apparently, but not certainly, untouched.

The attorney for the appellants places great stress upon the so-called "minor slip", Exhibit R-1. I cannot attempt to determine the motive for the tearing of this slip or for the saving of the pieces. I can readily see that the minor slip may well have been destroyed by Mrs. Marech on her husband's statement to her that the minor had not been served, but I cannot see the real motive for Mr. Marech saving the pieces, especially if he thought there was no question as to the service and consumption of this beverage.

The Hearer reports that Esther --- appeared to him to be much younger than twenty-one years of age, and I am satisfied from the evidence that neither of the appellants believed her to be twenty-one years of age or over.

R. S. 33:1-77 provides that the establishment of all the following facts by a person making the sale to a minor shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over. In this case the slip was not signed by the minor but by a third person in the presence of one of the licensees. The appearance of the minor was such that an ordinary prudent person would not believe her to be twenty-one years of age or over, and apparently Philip Marech placed no faith in the information contained in the slip which showed that the girl was born in 1915 and was twenty-seven years of age. Under these circumstances the defense has not been established as required by R. S. 33:1-77.

P. L. 1937, c. 135 provides:

"Any person who shall misrepresent **** the age of any other person for the purpose of inducing any licensee **** to sell, serve **** alcoholic beverages to a person under the age of twenty-one years shall be **** a disorderly person ****"

I recommend to issuing authorities a more frequent use of this statute.

I conclude that the finding of guilt was based upon the evidence and that the finding of guilt was not contrary to the weight of the evidence. It is a well established and recognized rule that questions of fact as determined by the trial tribunal will not be disturbed on appeal where there is sufficient testimony to warrant the finding or unless the findings of fact are palpably erroneous. Campbell v. Enslie, 72 N. J. L. 37.

I am not warranted in moderating penalties imposed by issuing authorities, except in those cases where it appears that the penalty imposed below is "clearly excessive." I cannot characterize this penalty as excessive. Re Einmore Corp., Bulletin 533, Item 5. The

age of the minor and the prior record of the licensee certainly indicate a penalty of fifteen days. The action of respondent is hereby affirmed.

Accordingly, it is, on this 30th day of June, 1943,

ORDERED, that the appeal herein be and the same is hereby dismissed and the fifteen-day suspension reinstated; and it is further

ORDERED, that the fifteen-day suspension which was held in abeyance pending decision of the appeal be and the same is hereby restored and, in view of the fact that plenary retail consumption license C-227, against which this penalty was invoked, is about to expire, said penalty will be effective against any renewal thereof and shall commence at 2:00 A. M. July 6, 1943 and terminate at 2:00 A. M. July 21, 1943.

Alfred E. Dusco
Commissioner.