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

BULLETIN 405 MAY 23, 1940.

1. APPELLATE DECISIONS - FALKENBERG v. PARSIPPANY-TROY HILLS TOWNSHIP.

IRVING FALKENBERG,)
Appellant,)
-vs-) ON APPEAL CONCLUSIONS
TOWNSHIP COMMITTEE OF PARSIPPANY-TROY HILLS TOWNSHIP,)
Respondent)

Frank A. Palmieri, Esq., Attorney for Appellant.
John Grossman, Esq., Attorney for Respondent.

This is an appeal from denial of a plenary retail consumption license for premises located on Halsey Road, Lake Parsippany, in the Township of Parsippany-Troy Hills.

A plenary retail consumption license for the same premises was issued to Irving Falkenberg for the fiscal year 1938-1939. In September 1938 he filed a petition in bankruptcy. On or about October 10, 1938 the receiver in bankruptcy took physical possession of the license and without having had the license extended to him, surrendered it to respondent. On October 24, 1938 a resolution was adopted by the Township Committee accepting the return, cancelling the license and ordering refund to the receiver. Falkenberg made no attempt to operate under his license during the balance of the fiscal year and apparently did not question the action of respondent in accepting surrender of the license at any time during the said fiscal year. However, on August 1, 1939 or August 2, 1939 he filed an application to renew said license. Respondent denied his application; hence this appeal.

There is no question as to appellant's qualification or the suitability of the premises. Unless issuance of the license is barred by the Township ordinance, there appears to be no valid reason for its denial.

Section 4 of "An Ordinance to Regulate the Licensing for Sale and Sale of Alcoholic Beverages, etc." as amended May 23, 1938, provides:

> "The number of Plenary Retail Consumption Licenses issued and outstanding in the Township of Parsippany-Troy Hills, in the County of Morris, at the same time shall not exceed thirty-one and on and after July 1, 1938, no new applicant shall be issued a Plenary Retail Consumption License unless the number outstanding shall be less than thirty."

Thirty consumption licenses are now outstanding in the Township. The question to be decided, therefore, is whether the present

application is an application for a new license, in which case it is barred by section 4, or whether it is an application for renewal of an old license, in which case it would not be barred by said section.

If the surrender of the license by the receiver in bankruptcy in October 1938 was valid, the rights of the licensee thereunder terminated at that time and the application filed in August 1939 would, unquestionably, be an application for a new license. In Barkey v. Parsippany-Troy Hills, Bulletin 331, Item 9, which concerned an application by another individual for a license covering the premises considered herein, the issue as to the legal sufficiency of said surrender was not raised by the parties, and hence not passed upon. That issue, however, is raised herein, and hence the question must be decided.

I believe that a proper interpretation of R. S. 33:1-26 leads to the conclusion that the receiver in bankruptcy had no power to surrender the license and hence that the attempted surrender was a nullity in so far as appellant's rights are concerned. R.S.33:1-26 provides:

> "**In case of ** bankruptcy ** the commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the ** trustee, receiver or other person upon whom the same has devolved by operation of law.***"

In the absence of such extension, the license, representing a personal privilege entrusted to the licensee, does not automatically pass to the receiver or trustee. Re Ewing, Bulletin 312, Item 13. As was said in Re Hausmann, Bulletin 324, Item 10:

> "A liquor license remains in existence despite the filing of a petition or adjudication in bankruptcy. However, it does not automatically pass to the trustee but remains the bankrupt's until and unless the trustee obtains an extension of it in his name as trustee under R.S.33:1-26."

It may be, as was indicated in Hart v. Seacoast Credit Corp., 115 N.J.Eq. 28, that the receiver in bankruptcy, with the aid of the bankruptcy court, could have required the bankrupt to consent to the surrender, but he did not follow that procedure. The attempted surrender without consent of the licensee and without extension of the license to said receiver, was a nullity. Cf. Kasen v. Orange, Bulletin 338, Item 4.

Having reached the conclusion that the appellant herein was the holder of the license on June 30, 1939, the question remains whether his application filed shortly more than a month thereafter may be considered as an application for renewal. Chapter 281, P.L. 1939 does not apply because the Act is not retroactive. Re Backer, Bulletin 356, Item 1. The mere fact that there is a gap between the expiration of the old license and the issuance of the new license will not, of itself, necessarily preclude consideration of the latter license as a renewal. Re Deighan, Bulletin 141, Item 2. The intent to renew, however, may not be the secret undisclosed intention of the licensee, to be invoked or not at his will as it suits his purpose, but rather the reasonably presumable intent gathered from the facts of the particular case. Berger v. Carteret, Bulletin 213, Item 9. In the present case, the owner of the premises testified that Falkenberg leased the premises for a period of one year, on May 25, 1939, and

Falkenberg testified that he caused repairs to be made to the premises several weeks before filing his application. A delay of not more than thirty-three days in filing his application does not lead to the conclusion that appellant intended to abandon his right to renew. Cf. Conway v. Haddon, Bulletin 251, Item 3.

I conclude, therefore, that the application considered herein is an application to renew a license previously held and not an application for a new license; that the issuance of the license, therefore, is not barred by Section 4 of the ordinance heretofore considered.

Section 5 of said ordinance provides:

"No Plenary Retail Consumption License shall hereafter be issued within fifteen hundred (1500) feet of each other, except as follows:
"(a) Plenary Retail Consumption Licenses presently outstanding, may be renewed."

Since the license held by appellant was outstanding at the time of the adoption of said Section 5, it comes within the exception set forth therein, and may be renewed despite the fact that appellant's premises are within fifteen hundred feet of other premises similarly licensed.

For these reasons, the action of respondent is reversed. Respondent is ordered to issue the license as applied for.

E. W. GARRETT,
Acting Commissioner.

Dated: May 16, 1940.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 15 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary Proceedings against WALTER C. GORE, T/a Dunlap Cafe, 2100 Pacific Avenue, Atlantic City, N. J., Holder of Plenary Retail Consumption License C-210, issued by the Board of Commissioners of the City of Atlantic City.	CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.
Walter C. Gore, Pro Se.

Licensee has entered a plea of guilty to charge that on or about September 1, 1939 he possessed illicit alcoholic beverages in that twelve (12) quart bottles found in his licensed premises contained beverages which varied from genuine samples used for comparative purposes in color, proof and acid and solid content, in violation of R. S. 33:1-50.

The usual penalty for this violation is thirty (30) days. However, licensee entered his plea in ample time prior to hearing and thereby saved the Department the time and expense incident to proving its case.

The license will be suspended for fifteen (15) days in accordance with Re Olini, Bulletin 389, Item 3.

Accordingly, it is, on this 16th day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-210, heretofore issued to Walter C. Gore by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for fifteen (15) days, effective May 20, 1940, at 9:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT FOR INDIVIDUAL WHO HAD BEEN DENIED RENEWAL OF HIS LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

CHARLES ROTH,
T/a Market Cafe,
127 Burnet Street,
New Brunswick, New Jersey,

Holder of Plenary Retail Consumption License No. C-77, issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS AND ORDER

Alex Eber, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant is charged with:

(1) Falsely stating in his application for his present license that no one other than himself was interested in his tavern, contrary to R. S. 33:1-25.

(2) Permitting Jacob Lifschitz to exercise the rights and privileges of that and a prior license, contrary to R. S. 33:1-26, 52.

(3) Selling a liquor item below Fair Trade price on November 8, 11, 13 and 14, 1939, contrary to Rule 6 of State Regulations No. 30.

(4) Giving, on those same dates, discounts and free drinks with sale of liquor for off-premises consumption, contrary to Rule 20 of State Regulations No. 20.

(5) Selling various liquor items below Fair Trade price on November 15, 1939, contrary to Rule 6 of State Regulations No. 30.

(6) Selling, on that same date, assorted bottles of liquor at a single aggregate price without specifying the price per bottle, contrary to Rule 19 of State Regulations No. 20.

The only charges contested are (1) and (2), the defendant pleading guilty to the rest.

As to the contested charges, the Department's case, in essence, rests upon the theory that "Jake" Lifschitz is the actual proprietor of the defendant's tavern with the defendant merely holding the license as a "front" for him.

The building is apparently owned by "Jake" Lifschitz, his brother Samuel, and Herman Kalfen (whose identity is not disclosed). At one time, viz., from May 1935 through June 1936, the Lifschitzes held a license for the tavern in their own names. However, because of their alleged misconduct of the tavern, the New Brunswick Board of Commissioners, in July 1936, refused to renew their license for the 1936-7 fiscal year. Later, in September 1936, a license for the tavern was issued to Nathan Rubin, who renewed it for the 1937-8 year, but not thereafter.

The defendant (a 73-year old man, machine operator by trade, and distantly related to "Jake" Lifschitz) claims that he met Rubin in August 1938; that Rubin complained that he could obtain no 1938-9 license for the tavern and would like to sell out; that he (the defendant), without making inquiry as to the extent of the business (and although no license was then outstanding for it), nevertheless agreed to pay $5000.00 for the "business", in monthly installments of $100.00, payment to be secured by a chattel mortgage. On August 24, 1938 the Lifschitzes and Kalfen executed what purports to be a 1-year lease of the premises to the defendant commencing September 1, 1938. Soon thereafter the defendant obtained a 1938-9 license for the tavern, which was renewed for the present (1939-40) fiscal year.

From April 24 through November 15, 1939, agents of this Department, on more than twenty-five scattered visits to the tavern, generally found "Jake" Lifschitz there, behind the bar, but saw the defendant on the premises on only five occasions. They observed various instances of "Jake's" conduct which indicated that he was in charge of the tavern and perhaps the real proprietor.

Thus, on April 24 they observed, during the course of their visit, that "Jake" gave directions to the bartender, on one occasion telling him where to look for certain bottles of beer and, on another, instructing him to replace the top of a container from which the bartender had served food. On April 25 they overheard "Jake" discounting the suggestions of a liquor salesman and placing an order with him, saying "I don't want anything but Eagle (whiskey)." On April 26, when the bartender was about to make a sale below Fair Trade, they observed "Jake" abruptly countermand the sale; on the same visit, when a man asked for change of $5.00, they overheard the bartender state that "Jake" had taken the money out of the cash register. On April 28, when they spoke to "Jake" about installing bagatelle machines of the horse-racing type in the tavern, he declared that "he could not put them in right now because the authorities were watching him and because of complaints, and he had to watch his step; and he said, in two or three weeks, if we come back, he would be ready to talk business...." On Sunday morning, May 28, "Jake" was seen coming to

the tavern before the local Sunday opening hour and entering it (although not for business) with a key of his own. On Sunday morning, July 16, when investigators visited the premises, they found a negro cleaning up and "Jake" in the stockroom. On July 18, when examining the tavern's bills, they discovered that the electricity was being charged to "Jacob Lifschitz." On the occasions of all the prohibited sales in November below Fair Trade price, etc., forming the basis of charges (3), (4), (5) and (6), to which the defendant has pleaded guilty, "Jake" did the selling and arranged for the price without consulting the defendant or anyone else.

Ordinarily, I might perhaps conclude that all this wholly circumstantial evidence proves no more than that "Jake" actively managed the tavern on the defendant's behalf. However, this otherwise possible explanation is exploded by the defendant's varying assertions as to "Jake's" connection with the tavern. On July 16 he declared to investigators of this Department that "Jake" was never employed by him; on November 15, that "Jake" was then working for him; at the hearing in the case, that "Jake" is merely a friend who hangs around all day and, when needed, helps him out for nothing.

These shifting stories by the defendant, together with the fact that his present claim as to "Jake's" status as a gratuitous (but ever-present!) helper-out is sheer balderdash, convince me that the defendant is merely inventing dodges about "Jake" and is refusing to disclose the real truth. Under the circumstances, this leaves me but one rational inference, viz., that "Jake" Lifschitz is not merely a manager at the tavern but, since apparently believing himself, on the basis of the New Brunswick Board's refusal to renew the license held by him and his brother for the tavern back in 1936, unable to obtain a license thereafter, is now operating the tavern under guise of a license in defendant's name. This conclusion is affirmed by the defendant's incredible story of how he purchased the "business" from Rubin.

Hence I find the defendant guilty of charges (1) and (2).

Such guilt (irrespective of the defendant's admitted guilt on the charges as to the prohibited sales) calls for revocation of his license. Re Mraz, Bulletin 274, Item 3; Re Agostino, Bulletin 382, Item 1.

Accordingly, it is, on this 20th day of May, 1940,

ORDERED, that Plenary Retail Consumption License No. C-77, heretofore issued to Charles Roth, T/a Market Cafe, by the Board of Commissioners of the City of New Brunswick, be and the same is hereby revoked, effective immediately.

E. W. GARRETT,
Acting Commissioner.

4. APPELLATE DECISIONS - HOBBS v. LOWER PENNS NECK.

EDITH HOLLAND HOBBS,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LOWER PENNS NECK,)
Respondent)

Joseph Narrow, Esq., Attorney for Appellant.
W. Orvyl Schalick, Esq., by Alvin R. Featherer, Esq., Attorney for Respondent.

In Bulletin 372, Item 6, the Commissioner affirmed a denial of transfer of appellant's consumption license from Main Street and Enlow Place to 29-31 W. Pitfield Street, after finding that the premises to which transfer was sought were located in a residential district. Thereafter, appellant applied for transfer of said license to 39 Main Street, in the Village of Pennsville, Township of Lower Penns Neck. Her second application was denied. Hence this appeal.

Respondent alleges that the present application was denied because "it has been determined by the Township Commiteee *** that said transfer in the issuance of a license in the place applied for would be objectionable to persons in said neighborhood, and contrary to public policy."

The premises known as 39 Main Street are located on the south side of the street, midway between Enlow Place and Broadway, and about 500 or 600 feet to the east of the premises for which the license was originally issued. The south side of Main Street is generally devoted to business from Enlow Place easterly to number 39, and to residential purposes from number 39 to Broadway. The northerly side of Main Street is generally devoted to business from Enlow Place, easterly for a distance of about 300 or 400 feet, and to residential purposes from that point easterly to Broadway. Thus, there are residences directly opposite 39 Main Street and also to the east of said premises. There is another place licensed for consumption on the northerly side of Main Street opposite Enlow Place.

The building known as 39 Main Street is a two-story structure and the first floor, which appellant intends to use, has been devoted to business purposes for the past sixteen years. At one time it was licensed for the sale of 3.2 beer. It was occupied recently by a bakery, prior thereto by a sewing factory, and prior thereto by a shoemaker. It cannot be said that this section of Main Street is so predominantly residential in character as to warrant denial of the transfer on the ground that the premises are located in a residential district. Mere general objections would not justify the issuing authority in refusing to transfer the license to a building and district of this character. Conn v. Kearny, Bulletin 173, Item 1; Land v. Way, Bulletin 232, Item 14; Rucereto v. Dumont, Bulletin 253, Item 6.

The important question to be decided, therefore, is whether the evidence given by the objectors, who reside directly opposite 39 Main Street, was sufficient to warrant denial upon the ground that appellant herein had improperly conducted her licensed premises at Main Street and Enlow Place. Dr. James, who resides at 50 Main Street, testified "there is a lot of drunks that come up that street in the middle of the night, at all times"; that in August 1939 a fight occurred opposite his home, as a result of which he was required to give medical attention to one of the men who was severely injured. He testified, however, that he did not see these men come from Mrs. Hobbs' place of business.

Mrs. Berger, who resides at 44 Main Street, testified that last summer she saw men coming out of appellant's place of business wrangling and fighting; that on another occasion last summer four or five men and a woman came from appellant's premises, stood in front of witness's home and argued and cursed; and, on a third occasion, a man who came from appellant's premises insulted her. Mr. Berger, husband of the previous witness, testified that on July 4, 1939 and again in August 1939 he saw men who came from appellant's premises fighting in the street and that on the latter occasion two of the men broke the fence on his property.

Miss Husted, who resides at 50 Main Street, testified that during the summer men have congregated under her window, cursing and swearing and fighting.

Appellant denies all knowledge of the incidents testified to by the above witnesses.

No complaints appear to have been made to the police at any time and no charges have ever been preferred against appellant. No objections were made to the renewal of her license in 1937, 1938 or 1939. There is no evidence that any violations have occurred upon appellant's premises, with the possible exception of evidence given by an eighteen year old son of Mrs. Berger that on July 4, 1938 he purchased a bottle of beer for his employer. Appellant denies knowledge of this sale.

A transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that a refusal of a transfer was arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed.

Unquestionably, an issuing authority may refuse to transfer a license where it appears that violations have occurred on the licensed premises. Fafalak v. Bayonne, Bulletin 95, Item 5. It is true also that a licensee is responsible for conditions outside of his licensed premises which are caused by his patrons, but in the absence of evidence that the place has become a general nuisance, as in Conte v. Princeton, Bulletin 139, Item 8, or Repici v. Hamilton, Bulletin 201, Item 8, it seems unreasonable to deny a transfer because in a few instances patrons may have misconducted themselves after leaving the licensed premises, particularly where it does not appear that the licensee had any knowledge of such misconduct or received any warning to correct the situation. Cf. Hand v. Woodstown, Bulletin 219, Item 4; Freeland v. Roselle, Bulletin 352, Item 5.

Moreover, it does not appear that transfer was denied because of appellant's prior misconduct. Committeeman Whitesell testified that he favored the transfer although he did not vote; Committeeman Dolbow testified that in denying the transfer he did not consider the manner in which Mrs. Hobbs had conducted her place; Committeeman Stockdale testified:

"Q You voted against the transfer?

"A Yes, in view of the fact a petition was presented to us; we don't have any zoning ordinance for business or residential section, and 39 Main Street to Broadway is strictly residential, and 39 West towards the river it is a mixture, and also that the property owners would have the value of their property lowered, and the petitioner's old location was down at the end of the street and no children had to go by there, but at this new place they would."

Under all the circumstances it appears that the refusal to transfer was unreasonable. Cf. Gross v. Landis, Bulletin 386, Item 5.

The conclusions apply merely to the transfer of the license to these premises which are located in a business district and appear to be suited for the conduct of that business. If the premises are not properly conducted, objectors may request respondent to institute disciplinary proceedings at any time and may object to renewal of the license if unsatisfactory conditions result from the operation of appellant's place of business.

For the reasons aforesaid, the action of respondent is reversed and respondent is directed to issue the transfer as applied for.

E. W. GARRETT,
Acting Commissioner.

Dated: May 20, 1940.

5. DISCIPLINARY PROCEEDINGS - CHARGES CONCERNING PROSTITUTES, IMMORAL ACTIVITIES AND SOLICITATION DISMISSED FOR LACK OF PROOF - LICENSE SUSPENDED 3 DAYS ON PLEA OF GUILT AS TO GAMBLING CHARGE.

In the Matter of Disciplinary Proceedings against)

JOSEPH & SARAH SILIDKER, 128 West Market Street, Newark, N. J.,) CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-541 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, County of Essex.)

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Morris Masor, Esq., Attorney for the Licensees.

The licensees were charged with (1) permitting gambling on the licensed premises by making cash payoffs according to

scores obtained on a bagatelle machine, in violation of State Regulations 20, Rule 7; (2) permitting a known prostitute upon the licensed premises, in violation of State Regulations 20, Rule 4, and (3) permitting immoral activities upon the licensed premises by permitting a prostitute to solicit a patron for immoral purposes, in violation of State Regulations 20, Rule 5.

At the hearing the licensees pleaded guilty to the first charge and not guilty to the second and third charges, having previously indicated their intention to plead guilty to the first charge in advance of hearing.

As to charges 2 and 3, testimony establishes that on September 22, 1939 investigators of this Department visited the licensed premises, the licensees then being absent, and engaged in conversation with Millie T_____, a patron, during the course of which one of the investigators asked Millie: ".....what she was there for and if she stepped out. Millie said she did and it would cost me two dollars and one dollar for the room....." On September 29th the same investigators returned to the premises and finding Millie there, one of the investigators again asked Millie whether she was willing to go out. Receiving an affirmative reply, he summoned Joseph Silidker to the kitchen and said: "Mildred wants to take me out to give her a lay; is it all right with you?" Joseph made no reply because he was summoned by a patron to the bar where he answered: "I am here to sell whiskey over the bar; what she does is her business.", whereupon he walked away. Thereafter, Millie spoke to Sarah Silidker and said: "The boy friends think you are sore at them.", whereupon Sarah replied: "We run a respectable place here and have lots of fun." Subsequently, the investigator gave Millie a marked one dollar and two dollar bill, both left the premises separately, met outside and went to an apartment on Market Street, where shortly after their arrival a raid was made by prearrangement with Newark detectives who found the marked two dollar bill in Millie's purse. Returning to the premises the police officers found the marked one dollar bill in the purse of the woman who occupied the apartment where Millie and the investigator had been found.

Millie, called as a witness by the State, substantially corroborated the testimony of the investigators and further testified on cross-examination that she was accustomed to frequent the licensed premises, sometimes two or three times a week and sometimes not at all during the week; that she was employed as a domestic; that her arrangements with the investigator were made without the apparent knowledge of the licensees; that, advised by the investigator that he was going to ask Joseph if it was all right to take her out, she replied: "That is foolish of you to ask him a question like that."; that after the investigator returned to the bar from the kitchen and received the reply above quoted from Joseph, Sarah served them, whereupon the investigator asked her: "Is it all right to go out with Millie"; that Sarah replied: "I am surprised at you talking like that, (I am here) to run a respectable business and not to be bothered with such talk as that."; that she (Millie) had never told either licensee of her "trouble" (convictions for fornication and prostitution) ten years before; that although she was accustomed to pick up men at this and other licensed premises she never left in their company but always arranged to meet the man outside, following separate departures.

In this posture of the testimony the charges must be dismissed. The charge of permitting a known prostitute on the licensed

premises is unsupported by any evidence that Millie was known to the licensees as a prostitute and that they nevertheless acquiesced in her presence on the premises. Re Foster and Clauss, Bulletin 248, Item 4, where it was held:

> "Mere proof that a prostitute was present on the licensees' premises is insufficient to establish the offense charged. There must, in addition, be adequate proof that the licensees knew that she was a prostitute and nevertheless acquiesced in her presence at the premises. See Re Kaas, Bulletin 239, Item 1:
>
> > "'Unless the offense can be tied in and brought home to the licensees by their knowledge or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club. The mere presence of a prostitute or other person of ill repute on licensed premises does not make out a case.'"

The inquiry of the investigator above quoted falls short of apprising the licensee that Millie was a prostitute. For all the licensee knew, the question may have been inspired by wishful thinking rather than knowledge of Millie's character. On the basis of such a question, should the licensee have asked Millie whether she was in fact a prostitute? That he could not be expected to is at once apparent if it be assumed that she was not.

Nor can I conclude that the licensees permitted immoral activities by permitting a prostitute to solicit a patron for immoral purposes as charged, for the reason that it clearly appears from the testimony of both Millie and the investigators that she did not solicit them but rather one of them solicited her. Millie was merely weak and willing.

Charges 2 and 3 are, therefore, dismissed.

On the charge of permitting gambling by making payoffs according to scores obtained on the bagatelle machine, the usual five-day penalty less two for the plea will be imposed.

Accordingly, it is, on this 22nd day of May, 1940, ORDERED, that Plenary Retail Consumption License C-541, heretofore issued to Joseph and Sarah Silidker for premises 128 West Market Street by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and it hereby is suspended for three days commencing at 3:00 A.M. (Daylight Saving Time) on Monday, the 27th day of May, 1940.

E. W. GARRETT,
Acting Commissioner.

6. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).	CONCLUSIONS AND ORDER
Case No. 95	

In 1930 petitioner was found guilty in Family Court on a charge of fornication and was placed on probation for one year. In 1932 he pleaded guilty in Federal Court to a charge of transporting liquor and was fined $50.00. In 1933 he was convicted on a charge of possessing lottery slips and was placed on probation for three years and ordered to pay a fine of $250.00. In 1934 he pleaded non vult to a charge of possessing illicit wine, and was placed on probation for one year and fined $50.00. The wine was illicit because, as petitioner admits, he had made it in his home without obtaining a permit.

At the hearing, a member of the bar of thirty-one years' standing, who has known petitioner for over twenty years, testified that his reputation is good. Another character witness, a funeral director, who has known petitioner all his life, testified that his reputation in the community is good. Both witnesses testified that they were convinced that petitioner, since his last conviction in 1934, has learned his lesson and has turned over a new leaf.

The report from the police department of the municipality wherein petitioner resides shows that there are no pending complaints or investigations against him.

It is concluded, despite his past record, that petitioner has been law-abiding for at least six years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 21st day of May, 1940,

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

E. W. GARRETT,
Acting Commissioner.

7. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).	CONCLUSIONS AND ORDER
Case No. 96	

In 1917 petitioner, then seventeen years of age, was convicted of robbery and placed on probation; in 1920 or 1921 he pleaded non vult to a charge of what was probably petty larceny (petitioner does not remember the charge and the record is silent as to both the conviction and the charge) and was fined; in 1921 he was convicted on a charge of affray, sentenced to imprisonment from one to three years and paroled after serving some ten months; and in 1931 petitioner pleaded non vult to a violation of the Hobart Act and was fined $500.00.

At the hearing, petitioner testified that since 1931 he has resided in the municipality wherein he now lives, that between 1931 and 1933 he was employed, in turn, in a factory and as an automobile salesman, and that from 1933 up to a short time ago he was employed as bartender in several nearby establishments.

On behalf of petitioner, three character witnesses, a barber, a service station owner, and a tavern manager, who have lived in petitioner's neighborhood and who have known him since childhood, testified that his reputation in the community is good, and that he has been leading an honest and law-abiding life since his last conviction in 1931.

Petitioner's fingerprint record shows that he has not been arrested on any occasion or convicted of any crime since 1931. The Chief of Police in the municipality wherein petitioner resides has certified that there are no pending complaints or investigations against him.

The fact that, while apparently disqualified, petitioner worked on licensed premises for the last several years, raises a question as to whether he should be granted relief herein. When asked at the hearing whether he knew of his disqualification during the time he was engaged as a bartender, petitioner swore that he had been unaware of any such disqualification and that he had learned of it for the first time when he made application for a solicitor's permit on April 15, 1940. Ignorance of the law would not excuse him if this were a criminal or disciplinary proceeding, but knowledge of the law is not a necessary ingredient of the good faith essential in rehabilitation proceedings. Re Case No. 61, Bulletin 338, Item 2. I conclude that he acted in good faith. I find that he has been law-abiding for the past nine years and that his association with the alcoholic beverage industry will not be contrary to public interest.

It is, therefore, on this 21st day of May, 1940,

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

E. W. GARRETT,
Acting Commissioner.

8. PRIMARY ELECTION DAY REPORT

May 22, 1940.

TO: E. W. GARRETT, ACTING COMMISSIONER

FROM: S. B. WHITE

For your information, I submit report of activities on Primary Election Day, May 21st:

COUNTY	NUMBER OF CALLS MADE	VIOLATIONS
Atlantic	364	0
Bergen	946	1
Burlington	198	1
Camden	487	0
Cape May	143	0
Cumberland	105	0
Essex	1,740	1
Gloucester	21	0
Hudson	1,795	0
Hunterdon	82	0
Mercer	503	0
Middlesex	694	0
Monmouth	522	0
Morris	312	0
Ocean	192	0
Passaic	841	0
Salem	59	0
Somerset	191	0
Sussex	96	0
Union	587	0
Warren	121	0
TOTAL	9,999	3

On the basis of preliminary reports, violations appear to have occurred on the following licensed premises:

	BERGEN COUNTY	
North Arlington	Harding Pharmacy, Inc. 48 Ridge Road	D-6
	BURLINGTON COUNTY	
Burlington (City)	Stephen J. Schust 801 Bordentown Road	C-16
	ESSEX COUNTY	
Newark	Harry Block 270 South 11th St.	D-55

S. B. WHITE
CHIEF INSPECTOR

9. DISCIPLINARY PROCEEDINGS - FRONT - CHARGE DISMISSED - EMPLOYING INELIGIBLE PERSON - SUSPENSION 5 DAYS ON FINDING OF GUILT.

In the Matter of Disciplinary Proceedings against JAMES CARLUCCI, 55 Burnett Street, Newark, N. J., Holder of Plenary Retail Consumption License C-499, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.
James L. McKenna, Esq., Attorney for the Licensee.

Licensee was charged with (1) making a false statement in his application for license in that he denied that any individual other than himself was interested in his license, and (2) aiding and abetting another to exercise the rights and privileges of his license.

The only substantial proof of the foregoing is contained in a written statement made by the licensee to the police in August 1936. In that statement he stated that his uncle "started me in the tavern business" and "gave me the money to pay for the license"; that "when my uncle put me in business I was under the impression that it was going to be my business, but since then I find (sic) out that things are much different."

At the hearing the licensee testified that he was but twenty-two years of age when he made that statement and did not realize what he had signed; that "I never had any dealings with police; I was very young; confused, frightened, and what not, and I would have signed anything to get out of the Deputy Chief's office; but none of it is true."

Two other statements signed by the licensee were introduced in evidence, one dated July 13, 1939 and the other January 23, 1940. In both of these statements he asserted that the license belongs solely to him, and denied that his uncle had any interest in the business except that he was employed by him as manager at a stated weekly salary.

An investigator of this Department testified that an investigation conducted at the licensed premises revealed that all bills and other records were in the name of the licensee, and no objective evidence was found that anyone other than the licensee was interested in the operation of the business. No reason appears why the uncle should procure the licensee to "front" for him since it appears that he is fully qualified to hold a license in his own name.

In order to substantiate a charge, such as here made, that a licensee is acting as a "front" for another person, which is essentially a charge that the licensee has perpetrated a fraud upon the issuing authority, it is necessary that the proof be clear,

cogent and convincing. Sobocienski et al. v. Newark et al., Bulletin 309, Item 2; Franklin Stores Co. et al. v. Newark et al., Bulletin 362, Item 2.

The evidence in this case does not meet that standard. The foregoing charges are, therefore, dismissed.

Licensee also pleaded non vult to a charge of employing an ineligible person at the licensed premises. It appears that the father of the licensee is a citizen of Italy and consequently may be employed only pursuant to special permit first obtained from this Department, and then only in a capacity which does not involve the sale or manufacture of alcoholic beverages. On January 23, 1940 two investigators of this Department observed him acting as bartender at the licensed premises and serving liquor to patrons.

The contention of the licensee that he had given explicit instructions to his father "not to serve at any time" constitutes no defense. In the first place, no permit covering his employment was obtained until January 24, 1940, a day after the violation occurred. Again, a licensee is responsible for the acts of his employees, despite his personal innocence. Re Geller, Bulletin 312, Item 1; Re Ziegler, Bulletin 365, Item 7.

The license will be suspended for five days on this charge.

Accordingly, it is, on this 22nd day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-499, heretofore issued to James Carlucci by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective May 27, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. Garrett

Acting Commissioner.