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

BULLETIN 401 MAY 10, 1940.

1. APPELLATE DECISIONS - NEW JERSEY LICENSED BEVERAGE ASSOCIATION v. CAMDEN and JACKSON.

NEW JERSEY LICENSED BEVERAGE ASSOCIATION, an association incorporated not for pecuniary profit,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CAMDEN and JOHN J. JACKSON,

Respondents

ON APPEAL
CONCLUSIONS

William C. Egan, Esq., Attorney for Appellant.
Edward V. Martino, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control of the City of Camden.
John J. Jackson, Pro Se.

Appellant appeals from the issuance of a plenary retail consumption license to respondent, Jackson, for premises 837-839 Lawrence Street, Camden.

The sole ground of appeal is that said license was issued in violation of the provisions of a Camden ordinance, hereafter considered.

There is no question of licensee's qualifications or the suitability of the licensed premises.

The evidence shows that respondent Jackson was the holder of a plenary retail consumption license for premises known as 727 South 8th Street, Camden, for the period expiring June 30, 1939; that on July 29, 1939 he filed his application for premises known as 837-839 Lawrence Street; that his application was subsequently granted without objection and that he is now operating his business at 837-839 Lawrence Street.

On July 9, 1936 the Board of Commissioners of the City of Camden adopted certain amendments to its liquor ordinance. The only part of said amendment pertinent to the present case reads as follows:

> "Section 7. No more than 200 Plenary Retail Consumption licenses shall be in effect in this municipality at any one time hereafter, and no new such licenses shall be issued for any premises within five hundred (500) feet of any other Plenary Retail Consumption licensed premises."

There is no valid section in said amended ordinance which exempts the renewal of licenses already issued from the effect of said

Section 7 because Section 20, which may have been intended to accomplish such a result, refers to Section 19 and not to Section 7. Hence there appears to be no reason for considering the technical question as to whether respondent Jackson's application for the present fiscal year should or should not be considered a renewal.

The liquor ordinance of the City of Camden, as originally adopted on December 27, 1934, provided that no more than two hundred and fifty consumption licenses should be in effect. When the ordinance was amended on July 9, 1936, the permissible number was reduced from two hundred and fifty to two hundred. Nevertheless the local Board has, each year, issued licenses in excess of two hundred to those who previously held licenses and has issued two hundred and nine for the present fiscal year. From these facts it seems evident that the local Board, in construing Section 7 of the ordinance as amended on July 9, 1936, concluded that said Section 7 did not apply to existing licensees and was not intended to drive out of business, on the renewal date, any of those who held licenses for the prior fiscal year; otherwise, there would be no warrant for issuing any licenses in excess of two hundred. There is a presumption that the construction placed upon Section 7 by the local Board is reasonable. From all the facts it does not appear that such construction is unreasonable.

Since it is determined that the issuance of the license did not violate the provisions of the ordinance, the action of respondent, Municipal Board of Alcoholic Beverage Control of the City of Camden, in issuing the license to John J. Jackson, is affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 2, 1940.

2. DISCIPLINARY PROCEEDINGS - CLUB OPERATED FOR PRIVATE GAIN OF INDIVIDUAL - CLUB LICENSE CANCELLED.

In the Matter of Proceedings to Cancel, Suspend or Revoke Club License No. CB-2, issued to

SPORTSMAN'S CLUB,
Pleasant Mills Road,
Hammonton, New Jersey,

By the Town Council of the Town of Hammonton.

CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Amy M. Neil, President, for the Defendant-Licensee.

It is charged, among other things, that the defendant, holder of a club liquor license, is disqualified under Rule 2 of State Regulations No. 7 from holding such license.

Rule 2 of State Regulations No. 7 provides in part that club licenses shall be issued only to bona fide clubs. A club is defined in Rule 1(a) of State Regulations No. 7 to be an

organization, corporation or association consisting of five or more persons operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain.

The president of the defendant-licensee has admitted that the organization was composed in large part of residents in Trenton and Philadelphia who were interested in hunting and desired to use the facilities of her home to that end. The president stated that some semblance of a club organization was created, although it was admitted that the president of the club personally operated under the privileges of Club License CB-2 and paid all bills by her personal checks. It was conceded that such operation was improper.

It satisfactorily appears that the improper operation was unwitting and caused by ignorance rather than design. Nevertheless, the Sportsman's Club was not a bona fide club but rather was operated for private gain of an individual. As presently constituted, the defendant-licensee does not appear qualified to hold a club license.

In view that this license must be cancelled, it is unnecessary to consider other charges.

Accordingly, it is, on this 2nd day of May, 1940,

ORDERED, that Club License CB-2, heretofore issued to the Sportsman's Club by the Town Council of the Town of Hammonton, be and the same is hereby set aside, cancelled and declared null and void, effective immediately.

E. W. GARRETT,
Acting Commissioner.

3. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).	CONCLUSIONS AND ORDER
Case No. 89	

In Case No. 308, Bulletin 383, Item 2, petitioner's application for solicitor's permit was denied because on February 7, 1935 he had been convicted of a crime involving moral turpitude.

Five years have elapsed since the date of conviction and petitioner now seeks removal of the statutory disqualification.

At the hearing herein, a business man and constable who has known petitioner since he was a boy, and a farmer who has known him for the last twelve years, testified that petitioner bears an excellent reputation as a law-abiding citizen. A representative of the wholesaling company which formerly employed petitioner as a helper on its trucks, and who has known petitioner during the two years that he worked for the company, testified that petitioner was "one of the finest boys I ever had working

for us" and that in the event his disqualification is lifted, he will be re-employed. The County prosecutor's office and the Chief of Police of the municipality wherein petitioner now resides have certified that there are no complaints or pending investigations against him. His fingerprint returns show that he has not been arrested or convicted of any crime since 1935.

In view of the foregoing, it satisfactorily appears that petitioner has been a law-abiding citizen for five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 3rd day of May, 1940,

ORDERED, that petitioner's statutory disqualification because of the conviction hereinbefore set forth, 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.

4. 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. 81.	

In April 1930 petitioner was sentenced to a jail term of two to four years after pleading guilty to the crime of bigamy. He was released on parole on November 24, 1931 and discharged from parole on March 18, 1934.

At his hearing, three witnesses testified that they have known petitioner for upwards of five years and that his reputation in the community is good. Two of the witnesses were lawyers, one of whom has practiced his profession for ten years, and the other for eighteen years. The third witness is an investigator for an insurance company.

A report received from his parole officer states that: "I can highly recommend his record as a parolee while under my supervision". Petitioner's record since 1930 is clear and the Police Department of the municipality where he resides advises that "there are no pending complaints or investigations against this man nor reports in which he is involved."

Upon his release from prison, petitioner was employed in a florist shop, where he remained until the latter part of 1937 when he was discharged for economic reasons. After being out of work for several months, he was given a small interest in a tavern business by his brother. He retained that interest until May 1938, since which time he has been employed at the tavern as manager.

It satisfactorily appears that petitioner was unaware of his disqualification from being associated with the liquor

industry. When he learned that because of his conviction of bigamy he might be ineligible to be employed in the tavern, he consulted an attorney and filed a petition to have his disqualification lifted. Indeed, his fingerprint returns are entirely clear of any convictions, and it was only through his frank disclosures and earnest cooperation that this Department obtained the necessary particulars. Disciplinary proceedings against his brother's liquor license have resulted in the determination that the failure to disclose petitioner's interest therein was not done with any deliberate intent to deceive. (Departmental file S-417).

Under all of the circumstances, it is determined that petitioner has been a law-abiding citizen for five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 4th day of May, 1940,

ORDERED, that petitioner's statutory disqualification because of the conviction hereinbefore set forth 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.

5. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

May 4, 1940

Re: Case No. 301

Applicant, last September, applied to this Department for a solicitor's permit.

Upon hearing as to his eligibility for such permit, it appeared that applicant had been convicted in October 1937 of putting a "slug" in a subway turnstile in New York City, for which he was fined $1.00 and sentenced to one day in jail; that he had also been arrested in June and convicted in July 1939 in connection with his personal use of heroin and was released on five years' probation; that he had become addicted to this drug when fighting in Italy during the last World War; that, on his return to this country, he abstained from the habit for a considerable length of time but then once more succumbed to it, ultimately resulting in his said conviction in July 1939.

It was ruled that the crimes of which applicant was thus convicted did not, in light of all the facts, involve moral turpitude, and hence did not mandatorily disqualify him from a solicitor's permit, but that, nevertheless, applicant, in view of his recent indulgence in drugs, should not at that time be deemed fit, within the Commissioner's discretion, for a permit. See Re Case No. 301, Bulletin 358, Item 6.

Applicant now asks for a determination as to his eligibility for such a permit at the present time.

Since his release on probation in July 1939, he has been living with one of his brothers in this State, and at present is

employed at a plant in Paterson in technical work of a mechanical nature. He states that this job, however, has no assured permanence; that he has prospect for a very good job as salesman for a liquor house in this State; and that he has rigorously abstained from any drugs since his arrest last June.

A physician, who has been practicing medicine in New Jersey for six years and has had experience with drug addicts, testified that he has, within the last several months, examined applicant three times for the specific purpose of determining whether he is still using heroin or any other drugs; that, upon examination of applicant's state of nutrition and health, his nervous system, his mental state, his kidneys and blood pressure, his eyes, his skin and the mucous membrane of his nose, applicant, in his opinion, has not been using drugs either recently or "for some months approximating a year."

Applicant's probation officer gave a good report of applicant and testified that, although applicant appeared restive for the first few months of his probation, he thereafter settled down, became wholly normal and, in his (the probation officer's) opinion, has not been using any drugs.

Applicant's brother, at whose home applicant has been living, testified to a like effect.

In view of the foregoing, it satisfactorily appears, I believe, that respondent has, since last June, a period of almost a year, successfully abstained from drugs. On the other hand, it would, I believe, be rash to conclude that applicant is now permanently cured, since it is common knowledge that, unfortunately, drug addicts, though deemed to be cured, often relapse to their addiction.

However, in view of all the facts - the original cause of applicant's addiction (service abroad during the last World War), his abstinence for well nigh a year, and the good report of his probation officer, it is recommended that applicant be declared presently eligible for a solicitor's permit but that any such permit issued to him be on the express condition that such permit may be revoked by the State Commissioner at will if the Commissioner believes or suspects that applicant has returned to his drug habit.

Nathan Davis,
Attorney-in-Chief.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT - INTEREST OF BROTHER NOT DISCLOSED - 5 DAYS' SUSPENSION IF LICENSE TRANSFERRED.

In the Matter of Disciplinary Proceedings against

NICHOLAS DI GIOVANNI,
96-98 Astor Street,
Newark, N. J.,

Holder of Plenary Retail Consumption License No. C-1009, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

George R. Sommer, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded guilty to charges alleging (1) that he falsely stated in his application for license that no other individual was interested in the license, whereas in fact his brothers Harry and Gilbert were so interested, and (2) that he knowingly aided and abetted his brothers to exercise the rights and privileges of licensees.

When the license was first obtained in 1937, Nicholas had an eighty per cent interest and each of his brothers had a ten per cent interest. There is testimony that the license was taken solely in the name of Nicholas because he had the largest interest and because his credit rating was better than that of his brothers. The evidence leads me to conclude that the interest of Gilbert was transferred to Nicholas in 1938 but it is admitted that Harry still has a ten per cent interest in the licensed business.

The situation must be corrected and licensee should make application to the local Board immediately to transfer his license to himself and Harry Di Giovanni. The local Board, if satisfied that both are qualified and that statutory requirements for the transfer have been complied with, may transfer the license to them subject to the suspension hereinafter imposed.

Because of the family relationship and the apparent absence of deliberate intent to deceive, the license will be suspended for five (5) days instead of ten (10) days, as in previous "front" cases.

Accordingly, it is, on this 4th day of May, 1940,

ORDERED, that Plenary Retail Consumption License No. C-1009, heretofore issued to Nicholas DiGiovanni, be and the same is hereby suspended for five (5) days.

If, on or before May 31, 1940, proof is submitted to this Department that the license has been duly transferred as herein provided, this order shall become effective on June 6, 1940, at 3:00 A.M. (D.S.T.).

The right is hereby reserved to enter further order herein to suspend license for the balance of its term if, on or before May 31, 1940, no proof is submitted to this Department that the license has been duly transferred as herein provided.

E. W. GARRETT,
Acting Commissioner.

7. SEIZURES - CONFISCATION PROCEEDINGS - UNLAWFUL TRANSPORTATION - AUTOMOBILE FORFEITED, LIEN DENIED.

In the Matter of the Seizure on February 7, 1940, of a Pontiac Cabriolet and eight 5-gallon cans of alcoholic beverages contained therein, at the intersection of Delilah Road and Absecon Boulevard, in the City of Absecon, County of Atlantic and State of New Jersey.	Case 5678 ON HEARING CONCLUSIONS AND ORDER

Charles Wallen, T/a Coast Auto Parts Co., Pro Se.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On February 7, 1940, investigators of this Department seized a Pontiac Cabriolet and a quantity of alcoholic beverages found therein at the intersection of Delilah Road and Absecon Boulevard, Absecon. The automobile bore license plates which were issued to Brownie Cross of 354 N. Pennsylvania Avenue, Atlantic City, and covered a Pontiac sedan. The driver jumped from the car and escaped.

The alcohol was presumably bootleg, since, although fit for beverage purposes, it bore no tax stamps. P.L. 1939, c. 177. Moreover, the car was not licensed to transport any liquor or alcohol. R. S. 33:1-2, 50.

Hence it is determined that the car and the alcohol constitute unlawful property. R. S. 33:1-1(i), (y).

Charles Wallen, T/a Coast Auto Parts Co., alleges that he has a bona fide lien on the automobile.

Under the Alcoholic Beverage Law, the State Commissioner, when determining whether seized unlawful property shall be forfeited, may, in his discretion, recognize the bona fide and valid property rights therein of innocent persons who have acted in good faith and without knowledge of or reason to suspect the illegal activity with which such property was connected. R. S. 33:1-66.

On February 6, 1940, Charles Wallen entered into a conditional sales agreement with Brownie Cross wherein Cross purchased from Wallen the automobile in question for $125.00. Wallen accepted, as payment, $25.00 in cash and a Pontiac sedan, for which he allowed $50.00, leaving a cash unpaid balance of $50.00, which was secured by the above conditional sales agreement. On the 10th or 11th of February, Cross advised Wallen that the car had been seized by this Department. Wallen testified that he had made no investigation of the past record or reputation of Cross, and that he relied solely on the fact that he had previously sold Cross a car under the same circumstances, and further, that the balance was so small that he could afford to take a "chance", and that he was not aware that Cross had a record as a violator of the liquor laws.

The records of this Department disclose that Cross has been arrested in Atlantic City on numerous occasions for violations of the Alcoholic Beverage Control laws and, on at least two occasions, has been convicted.

Since, so far as appears, Charles Wallen made no effort whatsoever to obtain any information as to past record or reputation of Brownie Cross, I find that he failed to make a reasonable investigation. Hence his claim will not be allowed.

Accordingly, it is ORDERED that the alcohol and automobile seized in this case and described in Schedule "A" are hereby forfeited in accordance with the provisions of R. S. 33:1-66 and that the automobile be retained for the use of hospitals and State, County and municipal institutions, and that the alcohol be retained for the same use or destroyed in whole or in part at the direction of the Commissioner.

E. W. GARRETT,
Acting Commissioner.

Dated: May 4, 1940.

SCHEDULE "A"

8 - 5-gallon cans of alcoholic beverages
1 - Pontiac Cabriolet, Serial No. 804860P8, Engine No. 922854, N. J. 1939 Registration No. AE 691.

8. APPELLATE DECISIONS - FALONE and COLL v. ENGLEWOOD CLIFFS.

ANTHONY FALONE and CLETUS COLL,

Appellants,

-vs-

MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF ENGLEWOOD CLIFFS,

Respondent.

ON APPEAL
CONCLUSIONS

Berthold Vorsanger, Esq., Attorney for Appellants.
Thomas S. Clancy, Esq., Attorney for Respondent.

This appeal is from a fifteen-day suspension of appellants' license for their tavern at Hudson Terrace and New Street, Borough of Englewood Cliffs.

The suspension was imposed after appellants pleaded guilty, before respondent, to the charge of having kept their tavern open after 4:00 A.M. on Monday, March 11, 1940, in violation of Section 7 of Borough ordinance of May 12, 1938.

Appellants' sole contention is that the suspension is excessive.

In brief, the facts of the violation are: On the day in question Investigator Williams of this Department and three other persons (ordinary patrons) entered appellants' tavern at 4:00 A.M. (the local curfew hour). Some five or ten minutes later Investigator Anderson and two other persons (ordinary patrons) entered. The investigators remained in the tavern drinking until about 4:25 A.M., when they identified themselves. During their stay, both licensees were present in the tavern.

Councilman Dempster, who is also Police Commissioner in the Borough, testified that, ever since the recent opening of appellants' tavern (January 1940), complaints were steadily received that appellants were staying open during the forbidden hours; that, on one occasion, Councilman Ermeti warned the appellants; that, on several other occasions, the local Police Chief warned them; and that, on one occasion a week or two before the violation in question, he (Dempster), in company with Councilman Rose, warned Falone, one of the appellants, and received from him the assurance that there would be no further cause for complaint.

It also appears, from the records of this Department, that Coll, the other of the appellants, holds a license for premises in Union City and that, back in May 1938, his then outstanding license for such premises was suspended for five days for selling during the prohibited hours in that municipality.

Since the penalty to be imposed by a local issuing authority lies within its sound discretion, such penalty will not be reduced on appeal unless clearly shown to be an abuse of that discretion. Robinson et al. v. Newark, Bulletin 54, Item 2; Dzieman v. Paterson, Bulletin 233, Item 10; Agostino v. Newark, Bulletin 251, Item 11.

In the present case, in view of the repeated warnings to appellants, Falone's assurance that there would be no further cause for complaint, and Coll's previous record, respondent's fifteen-day suspension of their license for staying open after hours on the occasion in question cannot be viewed as being in anywise arbitrary or unreasonable. To the contrary, it would appear to be well-deserved. Cf. Dzieman v. Paterson, supra.

The action of respondent is, therefore, affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 6, 1940.

9. SEIZURES - CONFISCATION PROCEEDINGS - STILL - PROPERTY FORFEITED - INNOCENT MORTGAGEE NOW OWNER OF PREMISES - PADLOCK DENIED.

In the Matter of Seizure of a still, a quantity of household furniture, three motor vehicles and miscellaneous personal property at 4872-74 Hudson Boulevard, Town of West New York, County of Hudson and State of New Jersey.	Case 5454 ON HEARING CONCLUSIONS AND ORDER

Walter Leichter, Esq., Attorney for Spartan Corporation.
Thomas S. Clancy, Esq. and George S. Pearse, Esq., Attorneys for Lucia Apice.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On June 15, 1939, agents of this Department raided a dwelling and commercial garage at 4872-74 Hudson Boulevard, West New York. In the dwelling, then occupied by James Dalton and his wife, they found a large and recently installed bootleg still,

various equipment and materials for its operation, and a quantity of alcohol. In the garage, which was connected with the dwelling by an underground passageway, they found a steam boiler for operating the still and a can of alcohol.

Since the still was not registered with this Department, it and the various articles (more specifically listed in Schedule "A") which the investigators found and seized at the premises constitute unlawful property. The forfeiture of this property is not contested. R. S. 33:2-1 et seq.

However, the Spartan Corporation, owner of the premises at the time of the raid, seeks to avoid padlock of those premises. R. S. 33:2-5. That company no longer has standing to contest such padlock since its rights in the premises have been lost through a foreclosure sale on September 28, 1939, at which the mortgagee bought in the premises.

Lucia Apice, the said mortgagee and now owner of the premises, also seeks to avoid padlock.

The evidence discloses that she acquired her mortgage in April 1937 on assignment from its then holder (a family corporation of which she was a member); that her son managed the mortgage on her behalf; that he, because of arrearages in the principal of the mortgage ($7500.00) and interest and taxes, took over the property in August 1937 on an informal agreement with the mortgagor to apply the rents against those arrearages; that, in April 1939, after finding that he was making little progress and, on being informed that the mortgagor had a good prospective tenant, he returned management of the premises to the mortgagor; that, however, after the raid on June 15, 1939 (and apparently because little prospect then remained for payment of the mortgage), foreclosure proceedings were instituted, which eventuated in the sale to the mortgagee.

In view that the still was apparently installed at the premises soon after Lucia Apice's son ceased collecting rents there, considerable testimony was taken to determine whether Lucia Apice or her son were in any way connected with that still. However, there is nothing in the evidence to justify any finding that either she or he knew or should have known about such still or were in any way implicated in the still activity.

Hence, no padlock will issue.

Accordingly, it is ORDERED that the seized property set forth in Schedule "A" be and hereby is forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

E. W. GARRETT,
Acting Commissioner.

Dated: May 6, 1940.

SCHEDULE "A"

9 bags sugar
1 gas boiler
1 copper dephlegmator
2 pieces copper column
3 sections copper column
2 Century electric pumps
1 copper cooker
1 galvanized cooling tank
1 galvanized receiving tank
3 wood vats with mash
Approximately 56 gallons alcohol
26 articles of household furniture and a quantity of clothing
Miscellaneous personal property
1 Marquette Sedan, Engine 226221-2
1 Ford Coupe, Engine A4039085
1 Buick Sedan, Engine 198334

10. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - DISMISSED FOR LACK OF CREDIBLE TESTIMONY AS TO GUILT.

In the Matter of Disciplinary Proceedings against

1. MARYA LASKA,
79-81 Hayes St.,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-517, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

2. NICHOLAS MARAD,
T/a Rainbow Tavern,
53 Rankin Street,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-215, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

3. PAUL BOEHM,
T/a Walnut Tavern,
71 Walnut St.,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-104, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

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Richard E. Silberman, Esq., for the State Department of Alcoholic Beverage Control.
Marya Laska, Pro Se.
Mario V. Farco, Esq., for the Defendant-Licensee Nicholas Marad.
Maurice H. Pressler, Esq., and
Richard Lifland, Esq., for the Defendant-Licensee Paul Boehm.

All three licensees were charged with sale of alcoholic beverages to Sophie W_____ and Irene McG_____, minors, in violation of R. S. 33:1-77 and State Regulations 20, Rule 1. In addition, Laska was charged with employing a waitress to serve alcoholic beverages in her tavern, in violation of Newark regulation. All pleaded not guilty.

The three cases were tried separately. Different reasons for dismissal were urged in the respective cases but for convenience all three will be considered together, linked as they are by the peregrinations of the participants, and the reasons for dismissal, applicable as they are equally to all cases, will be considered as having been urged by each licensee.

The charges served upon the licensees alleged that the violations had occurred on or about June 20 and 21, 1939, in reliance on reports of the Newark Police who had made the investigation. At the hearing of the case against Marad, it appeared that on those dates his licensed premises were closed for the very good reason that his license was then under the suspension imposed in Re Marad, Bulletin 324, Item 3, which was effective from June 18th to June 26th. Yet both girls testified that they were in Laska's place on the night of June 20th, whence they went to Marad's place early in the morning of June 21st, and thence to Boehm's later in the morning of June 21st. Obviously, if I can't believe that they were in Marad's on the morning of June 21st, I am compelled to disbelieve that they were at Boehm's later that morning and at Laska's the night before. Elsewhere in their testimony they testified that they had visited the three places on a Saturday night and a Sunday morning. Of this they were sure — understandably so, since generally the day of the week upon which an event occurs is more easily remembered than the date of the month. Names are ever easier to remember than mere numbers. But June 20 and 21, 1939 were a Tuesday and Wednesday! The truth of the matter seems to be that the three licensed premises were visited on Saturday and Sunday, June 17 and 18, 1939. The matter of the correct day and date is only further confused by testimony of a Newark Police Officer that he took a statement (to which no reference was made in the police report on which the charges were based) from Sophie W_____ in which she said that she entered Boehm's place at 1:00 A.M. June 17th.

I am aware that the New Jersey Supreme Court has ruled in State v. Lewandowski, 121 N. J. L. 612, in which testimony fixed the operation of a lottery on January 6th when the indictment charged the operation had occurred on January 1st, that the averment of time in the indictment was purely formal and the defendant in no wise prejudiced by the variation. But this is not a case of variance between indictment and proof. Here there is no credible testimony that the alleged violations occurred on or about the dates charged.

The charges are therefore dismissed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 6, 1940.

11. APPELLATE DECISIONS - WINSLOW v. PENNSAUKEN.

WALTER WINSLOW,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PENNSAUKEN,)

Respondent)

Joseph P. Wilson, Esq., Attorney for Appellant.
Thomas F. Salter, Esq., Attorney for Respondent.

Respondent denied appellant's application for transfer of his plenary retail consumption license from 6907 Maple Avenue to 4911 Westfield Avenue, on the ground, among others, that there are already a sufficient number of licensed establishments in the vicinity. This is an appeal from such denial.

Westfield Avenue is a mixed business and residential street. On the block between 49th Street and Browning Road, where appellant seeks to transfer, in addition to the businesses there being conducted, thirteen families reside. Immediately across the street from the proposed premises there is now located a tavern, and another is within 700 feet.

The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2. The privilege of a place to place transfer of an outstanding license is subject, among other things, to the reasonable and bona fide exercise of that discretion. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Ninety-One Jefferson St., Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Polansky v. Millburn, Bulletin 258, Item 2; Mita v. Orange, Bulletin 266, Item 10; Gomulka v. Linden, Bulletin 294, Item 8; Smith v. Winslow, supra; Alpert v. Asbury Park, supra.

In view of the proximity of the other two taverns in the vicinity, it would appear that respondent was not unreasonable in refusing to issue a third consumption license in that area.

However, appellant testified that there was public need for a third tavern in the neighborhood. He produced no other witnesses to corroborate such claim. On the other hand, two members of the Township Committee and twenty-two Township residents, almost all of whom reside within five blocks of the proposed premises, testified that public necessity or convenience did not require the additional license in the neighborhood. Under the circumstances, appellant has not sustained the burden of proving that the two present taverns do not adequately service the liquor needs of the vicinity.

It is, therefore, not necessary to consider the other reasons assigned by respondent for refusing the transfer.

The action of respondent is affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 8, 1940.

12. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - PADLOCK ORDERED.

In the Matter of the Seizure on February 4, 1940, of certain still parts and a Ford Coach on Florence Maffucci's property, located on Oyster Landing Road, Lanoka Harbor, Township of Lacey, County of Ocean and State of New Jersey.	Case 5672 ON HEARING CONCLUSIONS AND ORDER

Frank Metro, Esq., Attorney for Florence Maffucci.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

On February 4, 1940, investigators of this Department, accompanied by State troopers, discovered a partially erected "bootleg" still in a house, and some loose still parts in a small cabin, on the premises of Florence Maffucci, Oyster Landing Road, Lanoka Harbor, Lacey Township. They seized the incomplete still, various still parts and also an automobile (found in the yard) belonging to Charles Peet; and arrested Frank Rocco, William Molino (alias Emil Nole) and Frank LaMantino, who were found in the house.

Since neither the partially erected still nor any of the loose still parts was registered with this Department, they and the automobile found on the premises constitute unlawful property. The forfeiture of this property is not contested. R. S. 33:2-1 et seq.

However, Florence Maffucci seeks to avoid padlock of her premises, which apparently are a summer home. R. S. 33:2-5.

Her husband, who has been managing the property, testified that last January they advertised it for rent; that, of the five responses, they followed up only James Massi's, since he was the only one interested in year-round rental, the others seeking summer rental; that Massi told them he was a sick man suffering from stomach trouble, and wanted a place to rest and convalesce; that, after seeing the premises, he took them for a year commencing February 1, 1940, at a rental of $27.00 per month, $54.00 being posted as security; that he was given permission to use the furniture at the house and also, since the building lacked heat, to install a supposed heating system in it at his own cost (some $300.00); that the first Maffucci knew of any still activity at the premises was on February 6, two days after the seizure; that Maffucci has, on behalf of his wife, reentered possession of the premises and cancelled the lease in accordance with the provisions

thereof, because of the illegal use to which the premises had been put; that the premises are now idle and probably will remain so until July 1.

The unusual fact of a convalescent man wishing, in mid-winter, to retire for a year to a dwelling which contained no heating system and being willing to go in at once and install such a system on his own for $300.00 should have prompted Maffucci to make a reasonable investigation as to the reliability of the tenant, his source of income for his "retirement" and the actual purpose to which he intended to put the premises. However, Maffucci admits that he made absolutely no such investigation and, in fact, did not even inquire of Massi as to his business or address.

Landlords (or their agents) who rent out premises with such indifference as to suspicious circumstances concerning the tenant must abide the risks when the tenant turns out to be a "bootlegger" who wants the premises for illegal still purposes. Re Seizure Case No. 5673, Bulletin 393, Item 2.

Hence, padlock will here issue for forty-five days.

Accordingly, it is ORDERED that the seized property set forth in Schedule "A", be and hereby is forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner; and it is further

ORDERED, that the premises of Florence Maffucci, located on Oyster Landing Road, Lanoka Harbor, Township of Lacey, including both the dwelling and the cabin, being the premises where the incomplete still and the various still parts were found, shall not be used or occupied for any purpose whatsoever for a period of forty-five days, commencing the 15th day of May, 1940.

E. W. Burnett

Acting Commissioner.

Dated: May 6, 1940.

SCHEDULE "A"

3 - sections of copper column
1 - copper dephlegmator
2 - sections of iron cooker
1 - galvanized cooler with copper coils
1 - hydrometer
1 - copper tribox
1 - Ford Coach, Serial No. 18-2702218, Engine No. 18-2702218, 1939 N. J. Registration No. F-B 899