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

BULLETIN 787 DECEMBER 17, 1947.

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

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1. APPELLATE DECISIONS - RASIN AND LIQUOR PACKAGE DEALERS OF PASSAIC v. PASSAIC ET AL.
FISHMAN AND LIQUOR PACKAGE DEALERS OF PASSAIC v. PASSAIC ET ALS.

AMOS RASIN, et al., individually, and LIQUOR PACKAGE DEALERS OF PASSAIC, NEW JERSEY,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF PASSAIC, and JOSEPH ALBERTI,

Respondents

LOUIS FISHMAN, et al., individually, and LIQUOR PACKAGE DEALERS OF PASSAIC, NEW JERSEY,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF PASSAIC; JAY E. RICH; HARRY SCHIFFMAN; JOSEPH and ROBERT FAZIO; MICHAEL and GEORGE SAYKANICS; JOHN J. NOONAN; ALEXANDER and PETER LUGOWE; JOHN KRANYAK and PETER KRAMER; BENJAMIN P. and EMIL G. MAGGIO; ABE, HENRY and DAVID KAYE; PHILIP W. KRAKOWITZ; PAUL D. RAPPAPORT; DANIEL T. HANLEY; PATRICK J. LOFTUS; and JUSTINE LAFER,

Respondents

ON APPEAL

CONCLUSIONS AND ORDER

Hammer and Hammer, Esqs., by David H. Hammer, Esq., Attorneys for Appellants.
Frazer, Stoffer & Jacobs, Esqs., by David Stoffer, Esq. and Joseph M. Jacobs, Esq., of Counsel, for Appellants.
Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.
Manfield M. G. Amlicke, Esq., Attorney for Respondents Joseph Alberti, Harry Schiffman, and Joseph and Robert Fazio.
Joseph J. Weinberger, Esq., Attorney for Respondents Jay E. Rich, and Benjamin P. and Emil G. Maggio.
Martin Klughaupt, Esq., Attorney for Respondents Michael and George Saykanics, John J. Noonan, and Alexander and Peter Lugowe.
Irving S. Zacharewitz, Esq., Attorney for Respondents John Kranyak and Peter Kramer.
Grossman & Kampelman, Esqs., by Harry Kampelman, Esq., Attorneys for Respondents Abe, Henry and David Kaye.
Elmer Friedbauer, Esq., Attorney for Respondent Philip W. Krakowitz.
Benjamin Osherov, Esq., Attorney for Respondent Paul D. Rappaport.
Martin J. Loftus, Esq., Attorney for Respondents Daniel T. Hanley and Patrick J. Loftus.
Harry A. Kaplan, Esq., Attorney for Respondent Justine Lafer.

BY THE COMMISSIONER:

Appellants appeal from the granting of 15 plenary retail distribution licenses to the individual respondents above named by the respondent Board of Commissioners after remand on November 12, 1946, in a prior appeal. Liquor Package Dealers of Passaic v. Passaic et al., Bulletin 738, Item 2.

Appellants contend that there was no need for the issuance of the instant licenses in addition to the 14 plenary retail distribution licenses then outstanding since, together with the 167 plenary plenary retail consumption licenses outstanding, the municipality (having a population of 61,394 according to the 1940 Federal census) was adequately supplied, and consequently the issuance of the instant licenses was an abuse of the discretionary power conferred upon respondent Board of Commissioners by R. S.33:1-19.

By ordinance adopted September 9, 1941, the number of plenary retail distribution licenses to be issued and outstanding in the City of Passaic was limited to 14. However, by amendments adopted May 14 and July 30, 1946, the limitation was increased successively to 22 and 30. Hence, the issuance of the instant licenses does not contravene any municipal limitation, nor was the issuance in violation of any limitation fixed by state law, P.L. 1946, c. 147, having been declared null and void on October 14, 1946 (Re Chapter 147 of the Laws of 1946, 134 N.J.L. 529) and P.L. 1947, c. 94 not yet having been passed. The issue thus presented is whether the granting of the instant licenses was such an abuse of discretion as requires reversal of the action of the Board of Commissioners.

At the outset it should be noted that by the yardstick established by the Legislature in the enactment of P.L.1947, Chapter 94, the 1940 population considered, the granting of 20 plenary retail distribution licenses would be presently permitted. Hence, of the 15 licenses here involved only 9 would exceed the quota fixed by the State Limitation Law if they had been issued subsequent to its effective date.

Testimony herein discloses that of the 15 licenses, 2 (Rich and Lafer) have been issued for premises in the western part of the city where no similar license had previously been granted; 2 (Hanley and Noonan) have been issued for premises in the northern part of the city where no similar license had previously been granted; and at least 4 (Saykanics, Lugowe, Kranyak-Kramer, and Rappaport) are located in the heavily industrialized (Dundee) section of the city where many thousands of people are employed. The other 7 licenses were issued for premises in business areas of the city.

On behalf of the respondent Board of Commissioners, testimony was adduced that the granting of all of the licenses was motivated by the following considerations:

1. Because the City of Passaic is a marketing hub with a shopping population of approximately 250,000 and hence, one of the 10 best shopping centers in the United States, according to an article in the National Consumers Magazine, and

2. The actual need of the various areas for additional licensed premises.

In support of these conclusions and corroborative of the commercial activity of the city, it was established that the daily average number of passengers on all buses leaving and entering the city was approximately 229,000, and the average hourly flow of traffic on Fridays and Saturdays at six main intersections on Main and Lexington Avenues was 1,300 vehicles. Indicative of the public need requiring service was testimony of substantially all of the licensee-respondents that business has been flourishing and that a high percentage of the customers are from outside the municipality.

The question whether any or all of these licenses should have been granted was a matter confided primarily to the sound discretion of the local issuing authority. R. S. 33:1-19. Matters resting in discretion are not, in general, subject to review on appeal unless abuse of discretion is shown. See Hudson-Bergen, etc. Assn v. Hoboken, 135 N.J.L. 502.

The issuance of these licenses does not violate the principle laid down in Hudson-Bergen, etc. v. Hoboken et als., Bulletin 699, Item 5, where there was a total lack of any proof showing public need and necessity and the "presumption of validity of the act of the board in granting the application had been negatived by the ratio of licenses to population". Idem, 135 N.J.L. 502, 506.

After carefully considering all of the evidence, I find the appellants have failed to sustain the burden of proving that the action of the issuing authority was either arbitrary or unreasonable or otherwise in abuse of its discretionary power. Hence, the determination of respondent Board of Commissioners to issue the instant licenses will be affirmed.

At the present time, P.L. 1947, Chapter 94 prevents the issuance of any new licenses in Passaic.

Accordingly, it is, on this 28th day of November, 1947,

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

ERWIN B. HOCK
Commissioner.

2. APPELLATE DECISIONS - LIQUOR PACKAGE DEALERS OF PASSAIC v. PASSAIC ET ALS.

LIQUOR PACKAGE DEALERS OF PASSAIC, NEW JERSEY,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF PASSAIC, and JOSEPH ALBERTI; JOSEPH FAZIO and ROBERT FAZIO; DANIEL J. HANLEY; DAVID KAYE, HENRY KAYE and ABE KAYE; PHILIP W. KRAKOWITZ; JOHN KRANYAK and PETER KRAMER; EDWARD LAFER and JUSTINE A. LAFER; PATRICK J. LOFTUS; ALEXANDER LUGOWE and PETER LUGOWE; BENJAMIN P. MAGGIO and EMIL G. MAGGIO; JOHN J. NOONAN, JR.; JAY E. RICH; MICHAEL SAYKANICS and GEORGE SAYKANICS; MORRIS SCHEY and BENJAMIN A. SELZER; and HARRY SCHIFFMAN,

Respondents

ON APPEAL
CONCLUSIONS AND ORDER

Frazer, Stoffer & Jacobs, Esqs., by David Stoffer, Esq. and Joseph M. Jacobs, Esq., Attorneys for Appellant.
Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.
Martin J. Loftus, Esq., Attorney for Respondents Patrick J. Loftus and Daniel T. Hanley.
Irving S. Zacharewitz, Esq., Attorney for Respondents John Kranyak and Peter Kramer.
Martin Klughaupt, Esq., Attorney for Respondents Michael and George Saykanics, John J. Noonan, Jr., and Alexander and Peter Lugowe.
Grossman and Kampelman, Esqs., by Harry Kampelman, Esq., Attorneys for Respondents David Kaye, Abe Kaye and Henry Kaye.
Joseph J. Weinberger, Esq., Attorney for Respondents Benjamin P. Maggio, Emil G. Maggio and Jay E. Rich.
Harry A. Kaplan, Esq., Attorney for Respondents Edward Lafer and Justine A. Lafer.

Manfield M. G. Amlicke, Esq., Attorney for Respondents Harry Schiffman, Joseph Alberti, and Robert and Joseph Fazio.
Morris Schey and Benjamin A. Selzer, Pro Se.
Philip Krakowitz, Pro Se.

BY THE COMMISSIONER:

These appeals are from the renewals for the current fiscal year of the plenary retail distribution license held by each of the individual respondents. The issuance of the original licenses for the prior licensing year was sustained on appeal. See Bulletin 787, Item 1.

Since the issues in each of the above appeals are substantially the same as the issues considered in the previous appeals,

It is, on this 28th day of November, 1947,

ORDERED that the action of respondent Board of Commissioners in renewing the licenses held by each of the individual respondents herein be and the same is hereby affirmed, and the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

3. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 633

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In May 1945 a previous petition for relief filed by petitioner herein was denied. Case No. 420, Bulletin 667, Item 8.

I have reviewed the whole case and studied the evidence as to petitioner's behavior since the prior hearing. He has remarried and, while not desiring to relinquish his valuable pension rights by giving up his County Government position, he claims that it is difficult to live on his salary. His desire to accept additional employment to add to his income is understandable.

Since the former hearing petitioner has apparently been in no difficulty with the law. His witnesses testify that he has been living a law-abiding life and that he bears a good reputation in his home community.

I find that petitioner has conducted himself in a law-abiding manner for at least five years last past and I now conclude that his association with the alcoholic beverage industry will not be contrary to public interest. Whether his part-time employment on licensed premises will interfere with the proper discharge of his duties as a county employee is a question which I am not called upon to decide.

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

ORDERED that petitioner's statutory disqualification because of the convictions described in Bulletin 667, Item 8 be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ERWIN B. HOCK
Commissioner.

4. DISQUALIFICATION - BAD RECORD - RELIEF DENIED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction,) CONCLUSIONS
Pursuant to R. S. 33:1-31.2.) AND ORDER
)
Case No. 634.)

BY THE COMMISSIONER:

In February 1943, petitioner was advised that he had been convicted of a crime involving moral turpitude and, consequently, was disqualified from holding a liquor license or being employed by the holder of such a license, R. S. 33:1-25, 26. Eligibility Case No. 480, Bulletin 555, Item 2.

Since that time petitioner has served about two years in the United States Navy during the late war, receiving a Certificate of Satisfactory Service in July 1945.

To give a proper perspective of this petitioner's general attitude toward the law, I will review his entire record. In 1930 he was arrested and charged with breaking and entering with intent to commit rape, and assault with intent to commit rape. These charges were dismissed and are recited merely to show that petitioner apparently is unable to keep out of trouble involving women. In 1942, while working as a bartender, he was convicted of a charge of aiding and abetting prostitution. After serving seven days of a three-month term, his sentence was reduced to a fine of $75.00. In 1942 he was also convicted of a charge of assault and battery, again involving a woman and her husband. In 1946 he was again indicted for rape but was found not guilty. John Castello posted bail for him at least once.

There is no doubt that petitioner has been convicted of at least one crime involving moral turpitude and, therefore, is ineligible to be employed on licensed premises within the purview of R.S.33:1-25,26.

While petitioner apparently has not been convicted of a crime within the last five years, his apparent difficulty in keeping out of "trouble" involving women, and his association with persons of at least questionable character, see Castello, Eligibility Case No. 490, Bulletin 564, Item 10, makes it impossible for me at this time to find, as I am required to do should I grant the relief asked, that petitioner's association with the alcoholic beverage business will not be contrary to the public interest. I shall deny the relief sought.

Accordingly, it is, on this 4th day of December, 1947,

ORDERED that the petition herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN AND MAROTTA.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, Appellant, -vs- BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN, and MILDRED MAROTTA, Respondents	ON APPEAL CONCLUSIONS AND ORDER

David Stoffer, Esq., Attorney for Appellant.
Nathan Zeichner, Esq., Attorney for Respondent Mildred Marotta.
Dominick R. Rinaldi, Esq., Attorney for Respondent Board of Commissioners.

BY THE COMMISSIONER:

On May 13, 1947, the respondent Board granted a 1946-47 application of respondent Mildred Marotta for a plenary retail consumption license for premises at 215 Bloomfield Street; and the Board granted a 1947-48 renewal of said license effective July 1, 1947. These are appeals from the original granting and the renewal.

The respondent Board granted the 1946-47 license by a resolution dated May 13, 1947 -- two days before the effective date of the State Limitation Law (Chapter 94 of the Laws of 1947) which would have prohibited issuance of the license. The Board's resolution contained no statement concerning any public need for the license, and the same is true of the Board's renewal-authorizing resolution of July 1, 1947.

The appellant's petition of appeal alleges:

"....Said Board of Commissioners of the City of Hoboken were guilty of an abuse of discretion in granting said license since there were ample liquor outlets in the immediate vicinity of the licensed premises to take care of all of the public need and necessity of the neighborhood.

* * *

"There was no public need nor public necessity for the granting of said license."

The respondent Board's answer on appeal simply denies the allegations in the petition of appeal concerning public need for the license.

The respondent Marotta's answer on appeal alleges:

"There were not ample liquor outlets holding plenary retail consumption licenses in the immediate vicinity of the premises for which the license....was granted."

At the hearing on appeal a map showing the various retail licenses in Hoboken was introduced. Garden, Bloomfield and Washington Streets are parallel and run north and south. Newark Street and First Street, running east and west, cross Garden, Bloomfield and Washington Streets. The map shows, among other things, the plenary retail consumption licenses outstanding on Bloomfield Street, on Garden Street which is next west from Bloomfield Street, on Washington Street which is next east from Bloomfield Street, on Newark Street and on First Street. It appears that in the "200" block on Bloomfield Street, in which the respondent Marotta's premises are located,

4. DISQUALIFICATION - BAD RECORD - RELIEF DENIED.

In the Matter of an Application)
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To give a proper perspective of this petitioner's general attitude toward the law, I will review his entire record. In 1930 he was arrested and charged with breaking and entering with intent to commit rape, and assault with intent to commit rape. These charges were dismissed and are recited merely to show that petitioner apparently is unable to keep out of trouble involving women. In 1942, while working as a bartender, he was convicted of a charge of aiding and abetting prostitution. After serving seven days of a three-month term, his sentence was reduced to a fine of $75.00. In 1942 he was also convicted of a charge of assault and battery, again involving a woman and her husband. In 1946 he was again indicted for rape but was found not guilty. John Castello posted bail for him at least once.

There is no doubt that petitioner has been convicted of at least one crime involving moral turpitude and, therefore, is ineligible to be employed on licensed premises within the purview of R.S.33:1-25,26.

While petitioner apparently has not been convicted of a crime within the last five years, his apparent difficulty in keeping out of "trouble" involving women, and his association with persons of at least questionable character, see Castello, Eligibility Case No. 490, Bulletin 564, Item 10, makes it impossible for me at this time to find, as I am required to do should I grant the relief asked, that petitioner's association with the alcoholic beverage business will not be contrary to the public interest. I shall deny the relief sought.

Accordingly, it is, on this 4th day of December, 1947,

ORDERED that the petition herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN AND MAROTTA.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN, and MILDRED MAROTTA,
Respondents

ON APPEAL
CONCLUSIONS AND ORDER

David Stoffer, Esq., Attorney for Appellant.
Nathan Zeichner, Esq., Attorney for Respondent Mildred Marotta.
Dominick R. Rinaldi, Esq., Attorney for Respondent Board of Commissioners.

BY THE COMMISSIONER:

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The appellant's petition of appeal alleges:

"....Said Board of Commissioners of the City of Hoboken were guilty of an abuse of discretion in granting said license since there were ample liquor outlets in the immediate vicinity of the licensed premises to take care of all of the public need and necessity of the neighborhood.

* * *

"There was no public need nor public necessity for the granting of said license."

The respondent Board's answer on appeal simply denies the allegations in the petition of appeal concerning public need for the license.

The respondent Marotta's answer on appeal alleges:

"There were not ample liquor outlets holding plenary retail consumption licenses in the immediate vicinity of the premises for which the license....was granted."

At the hearing on appeal a map showing the various retail licenses in Hoboken was introduced. Garden, Bloomfield and Washington Streets are parallel and run north and south. Newark Street and First Street, running east and west, cross Garden, Bloomfield and Washington Streets. The map shows, among other things, the plenary retail consumption licenses outstanding on Bloomfield Street, on Garden Street which is next west from Bloomfield Street, on Washington Street which is next east from Bloomfield Street, on Newark Street and on First Street. It appears that in the "200" block on Bloomfield Street, in which the respondent Marotta's premises are located,

and in the "100" and "300" blocks just south and north therefrom, respectively, a plenary retail consumption license is outstanding at each of the following addresses: 132, 215 (respondent Marotta), 222, 232, 239 and 338. In the corresponding three blocks on Garden Street a plenary retail consumption license is located at each of the following addresses: 86, 87, 88, 96, 105, 141, 142 and 200. In the corresponding three blocks on Washington Street there is a plenary retail consumption license at each of the following addresses: 51, 54, 58, 91, 99, 135, 203, 215-19, 223, 301, 321, 325 and 329. On Newark Street, between Garden and Washington Streets, a plenary retail consumption license is located at No. 150. On First Street, between Garden and Washington Streets, a plenary retail consumption license is outstanding at each of the following addresses: 106, 110, 151 and 159.

Thus, in the small area described (the respondent Marotta's premises being approximately in the center of such area) there are, exclusive of the respondent Marotta's license, 31 plenary retail consumption licensed premises.

At the time of the June 26th hearing of this appeal the respondent Marotta's premises at 215 Bloomfield Street were vacant, and a recent check disclosed that no business was being conducted on the licensed premises.

At the June 26th hearing the respondent Marotta testified on direct examination: "I want to put a tavern there and serve food. There are a lot of furnished rooms in the neighborhood. I feel if I can give them meals it would be so much better." In response to the question, "Is there any such business in that immediate vicinity at this time?", the respondent Marotta replied, "No, there is not." On cross-examination the respondent Marotta was asked, "You say you intend to open up a restaurant in those premises?", and she replied, "Well, a restaurant does sound a little fancy for what I intend to have."

It would seem clear that the contemplated activity was operation, primarily, of another tavern rather than of a restaurant to be used principally for the purpose of providing meals to the public and in which any other business would be only incidental to the restaurant business. Furthermore, assuming a very clear public need for some sort of eating place in the vicinity, it would not follow that the need could be met only by an establishment licensed for the sale of alcoholic beverages.

From all the evidence I conclude that the appellant has sustained the burden of proof that public convenience and necessity did not warrant the granting of the 1946-47 license in question; that respondent Board abused its discretion in issuing the license. The action of the respondent Board in issuing a 1946-47 plenary retail consumption license to the respondent Marotta will, therefore, be reversed and the license held by the respondent Marotta for the present license year will be cancelled. Chapter 94 of the Laws of 1947 prohibited the issuance of a new license on July 1, 1947. The only ground upon which the legality of the present license could be sustained would be that it was a renewal of the 1946-47 license. Since the original license is being set aside, the renewal license must be cancelled.

Accordingly, it is, on this 9th day of December, 1947,

ORDERED that the action of the respondent Board of Commissioners in issuing a plenary retail consumption license for the 1946-47 fiscal year to the respondent Mildred Marotta, for premises at 215 Bloomfield Street, Hoboken, be and the same is hereby reversed, and it is further

ORDERED that the license issued to the respondent Mildred Marotta for the 1947-48 fiscal year be and the same is hereby cancelled, effective immediately.

ERWIN B. HOCK
Commissioner.

6. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN ET ALS.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, Appellant, -vs- BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN; JOHN LENSI; JOHN J. LILLIS, ROSE PIZZINO; EMIL PFEIFER; RAYMOND A. LEWIS; SOPHIE BROTMAN; JOHN NOVAK; DANIEL G. MAROTTA; SYDNEY & LOUIS GORDON; ANTHONY ARNO & JOHN BLACK; ANGELO ANTHONY LUPE; CHARLES MARINELLI; ALPHONSE VanDYCK & JULIA MURRAY; and ROSARIO W. URSO, Respondents	ON APPEAL CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq., Attorney for Appellant.
Frazer, Stoffer & Jacobs, Esqs., by David Stoffer, Esq. and Joseph M. Jacobs, Esq. (Of Counsel).
Dominick R. Rinaldi, Esq., by Charles DeFazio, Jr., Esq., Attorney for Respondent Board of Commissioners.
Joseph B. McFeely, Esq., by Abraham J. Slurzberg, Esq., Attorney for Respondent Raymond A. Lewis.
Edward R. McGlynn, Esq., Attorney for Respondent C. T. Dixon Corporation (transferee of license issued to Emil Pfeifer).
Nathan Zeichner, Esq., Attorney for Respondents John Lensi and Daniel G. Marotta.
Benedict A. Beronio, Esq., Attorney for Respondent Rose Pizzino.
Emanuel M. Brotman, Esq., Attorney for Respondent Sophie Brotman.
Reuben W. Massarsky, Esq., Attorney for Respondents John J. Lillis and John Novak.
Bernard S. Glick, Esq., Attorney for Respondents Sidney Gordon and Louis Gordon.
Anthony P. LaPorta, Esq., Attorney for Respondent Angelo A. Lupo.
Fredman and Fredman, Esqs., Attorneys for Respondent Charles Marinelli.
Alphonse VanDyck and Julia Murray, Pro Se.
Rosario W. Urso, Pro Se.
Norman R. Wynne, Esq., Attorney for Respondents Anthony Arno and John Black.

BY THE COMMISSIONER:

These appeals are from the granting of fourteen 1946-47 plenary retail distribution licenses in the City of Hoboken, and the renewal of thirteen of those licenses for the year 1947-48. One of the licenses (Arno & Black) was not renewed for the current year and, hence, as to that license the appeal herein is moot.

Eleven of the fourteen individual respondents herein had been granted 1945-46 plenary retail distribution licenses which, on appeal, were ordered cancelled by the State Commissioner (Bulletins 699, Item 5; 700, Item 4; 700, Item 7; 702, Item 10), and the orders of cancellation were stayed pending application for writ of certiorari to the Supreme Court (Bulletins 699, Item 8; 700, Item 8; 701, Item 3; 703, Item 8).

The Supreme Court reversed the Commissioner's order of cancellation (Hudson Bergen etc. Assn v. Board of Commissioners, 134 N.J.L. 481), and the Court of Errors and Appeals reversed the judgment of the Supreme Court and confirmed the Commissioner's order (Hudson Bergen etc. Assn v. Board of Commissioners, 135 N.J.L. 502).

The remaining three licenses mentioned herein were not involved in the foregoing litigation, having been granted during its pendency.

The underlying test in the issuance of liquor licenses has been and is the necessity and convenience of the public. (See Paul v. Gloucester County, 50 N.J.L. 585, Court of Errors and Appeals (1888); Zicherman v. Driscoll, 133 N.J.L. 586, Supreme Court (1946)).

On the appeal from the respondent Board's issuance of the 1945-46 licenses, the only evidence on the question of public need was that presented by the appellant in support of its contention that public necessity did not authorize the additional licenses. The Commissioner found the complete absence of any rebutting proofs by respondents to be fatal to the cause of the respondents. He held that the issuing of the additional licenses without regard for the paramount issue of public necessity and convenience constituted an abuse of the respondent Board's discretion, and that any presumption of validity of the Board's action in granting the licenses had been negatived by the ratio of licenses to population.

The instant appeals from issuance of 1946-47 licenses have not been easy to decide. In the light of the whole situation and background, the skeptical observer might suspect that the respondent Board would, under any circumstances (and particularly in view of the Commissioner's emphasis on the point in his order cancelling the 1945-46 licenses), have taken care to include in its 1946-47 license-authorizing resolution a statement regarding the investigation made and the public need found to exist for the licenses. Be that as it may, the respondent Board's resolution granting the 1946-47 plenary retail distribution licenses did set forth in the Preamble: "it appearing to the Board of Commissioners of the City of Hoboken that public convenience and necessity warrant the issuance of all of such licenses."

Additionally, there is evidence in the record before me of some public need, albeit not extensive need in some instances, for each of the licenses herein contested. Each of the individual licensees who are now operating testified at the hearing herein. As to some, the evidence is of "neighborhood" need; as to some, it is of "commuter" need; regarding some, it indicates a particularized "longshoremen or stevedore or passenger liner" trade; and with respect to others it relates to resident and non-resident "industrial employees" trade.

Furthermore, Edward J. Murnane (a Hoboken City Commissioner until the recent election there) testified at this appeal hearing that, as a result of the State Commissioner's order cancelling the 1945-46 licenses, he made a survey, with the aid of the City's Chamber of Commerce, of the number of persons employed in the more than 400 industrial and business establishments in the city; that his estimate of the city's present resident population is "approximately 59,000"; that the survey showed more than 50,000 persons to be employed in the various establishments of which number 25% are Hoboken residents and 75% non-residents; and that, in addition, about 32,000 commuters enter and leave Hoboken each day on the Lackawanna Railroad. Mr. Murnane testified that he thoroughly discussed the results of the survey with his fellow Commissioners before the 1946-47 licenses were granted.

With respect to the question of any consideration by the Board of public need for the 1945-46 licenses, it is pertinent to note Mr. Murnane's testimony in the present appeal that "the number employed in Hoboken and the number of non-residents (shown by the survey) was amazing to us. It was a revelation to us."

As to the renewal of the thirteen licenses for the 1947-48 fiscal year, it appears that these renewals were granted by a new Board of Commissioners elected in May 1947. The licenses were granted after a lengthy hearing at which all interested persons were heard.

The State Limitation Law (Chapter 94 of the Laws of 1947) would have prohibited the issuance of any of the licenses here on appeal. But that law was not then in effect. It will, of course, prevent the granting of new licenses in Hoboken, at least for many years to come.

In the absence of a limiting law or ordinance, the determination as to the number of licenses necessary to be issued in a municipality is a matter confided to the sound discretion of the issuing authority (R. S. 33:1-19, 24), and the burden of establishing abuse of that discretion rests with the appellant. Regulations No. 15, Rule 6. Consequently, the State Commissioner's function in appeals of this type is not to substitute his personal opinion for that of the issuing authority (with which opinion he may, in fact, differ strongly) but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm. Montgomery v. Washington, Bulletin 779, Item 13.

From the record now before me I am unable to find that appellant sustained the burden of proof in establishing that there was no public convenience and necessity to be served by issuance of the licenses here involved. In the light of the present record (which the Board of Commissioners might well have presented in the original appeals, instead of taking the arbitrary stand it chose to adopt), I am unable to hold, as to any of the licenses, that the respondent Board's action herein appealed from constituted an abuse of discretion. The action of the respondent Board of Commissioners will, therefore, be affirmed.

Accordingly, it is, on this 8th day of December, 1947,

ORDERED that the action of respondent Board, in granting and renewing the thirteen licenses considered herein, be and the same is hereby affirmed, and the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

7. APPELLATE DECISIONS - BILL BLOCH, INC. v. UNION CITY (CASE NO. 2).

BILL BLOCH, INC.,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF UNION CITY,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Louis Steisel, Esq., Attorney for Appellant.
James C. Agnew, Esq., by Cyril J. McCauley, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Board of Commissioners of the City of Union City in revoking a license held by appellant Bill Bloch, Inc. for the 1946-47 fiscal period, and from its action in refusing to issue a license in renewal of said license for the 1947-48 fiscal period.

After previous appeals were remanded (Bulletin 772, Items 4 and 5), respondent Board of Commissioners reconsidered and redetermined the matter and found appellant guilty of charges summarized as follows: Charges (2), (3) and (4) involving sale and service of alcoholic beverages to three minors, in violation of State law; charge (8) involving a "hostess"; charges (9) and (10) involving employment of female bartenders, both in violation of a local ordinance; and finally charge (11) alleging that the premises were being conducted as a nuisance, in violation of State Regulations. Two additional charges were nolle prossed and appellant was found not guilty of two other charges.

On the same day respondent Board of Commissioners affirmed the revocation of appellant's license and refused to issue a renewal license because of said revocation.

The petition of appeal advances the following reasons for reversal:

"(a) That the sentence was unwarranted;
(b) That the judgment was against the weight of the evidence;
(c) That the penalty imposed was such as to be a confiscation of the property;
(d) That the action of the respondent was prejudged, and predetermined and that the judgment was based on an order and direction."

We may dismiss further consideration of reason (d) as having been disposed of in the prior appeals. As to the balance of said reasons, counsel for the respective parties stipulated that the appeal should be heard and decided upon a consideration of the stenographic transcript of the hearing below, pursuant to the provisions of Rule 8 of State Regulations No. 15.

A careful reading of the transcript of the hearing below discloses the following situation with respect to the charges of which appellant was found guilty: Three minors, namely, two girls each 17 years of age, and a boy 18 years of age, testified that they had been served and had consumed alcoholic beverages, to wit, beer, on the licensed premises on February 28, 1947. At least two of them also testified that they had been served alcoholic beverages on other occasions prior to said date. Agents of the Department testified that they had

observed the service of said alcoholic beverages on February 28th, and that they had observed service of alcoholic beverages to the two minor girls on three previous occasions. It appears that there was a large attendance at the licensed premises of appellant on February 28th. The only evidence denying the service is that given by Helen King, principal stockholder of defendant-appellant, to the effect that she did not serve any of the minors; testimony by Beatrice Bottomley, who was acting as a waitress at that time on the licensed premises, that she did not serve said minors; and by Joseph Paolucci, that he did not serve the two minor girls. Tommy Rossi, a waiter, was not called by appellant, although there was testimony to the effect that he had made some of the services.

I can see no reason to doubt the testimony of the minors or that of the agents of this Department. There is no question in my mind that three minors were actually served alcoholic beverages and permitted to consume them. In addition, another girl, 19 years of age, who was called to testify on behalf of appellant, said that she and other minors drank whiskey which had been brought to the licensed premises by a sailor. The evidence warrants the conclusion that appellant is guilty of the three charges designated as (2), (3) and (4). Cf. Re Essex Holding Corp., Bulletin 727, Item 3; Essex Holding Corp. v. Hock, 136 N.J.L. 28.

From the testimony of Beatrice Bottomley, called as a witness by appellant, it appears that Mrs. Bottomley was a volunteer worker on the licensed premises and that, on the evening of February 28th, she did accept a beverage at the expense of, and as a gift from, a customer and patron of the licensee, which is a violation of the "hostess" regulation known as State Regulations No. 20, Rule 22. The fact that she was a volunteer makes no difference. Re Lukowski, Bulletin 581, Item 1; Re Haino, Bulletin 295, Item 7. Nor does the fact, as alleged, that the customer was her "boy friend" excuse the violation. Re Hubbard, Bulletin 620, Item 5. The evidence shows that appellant was guilty of charge (7), which was incorrectly referred to in respondent's resolution as charge (8). From the same testimony it appears that the licensee is guilty of charges set forth in charge (9) relating to the same Beatrice Bottomley. There is no denial that she was permitted to serve alcoholic beverages for consumption on the licensed premises. This is a clear violation of Section 22 of the local ordinance concerning alcoholic beverages adopted by the Board of Commissioners of the City of Union City on February 6, 1936, and various supplements and amendments thereto.

There is no question that Helen King was on February 25th, and from then until March 1st, at least acting as a bartender on the premises. This is a direct violation of Section 22 of the above ordinance, and the fact that Mrs. King is the principal, if not only, stockholder of the corporate defendant-appellant, Bill Bloch, Inc., makes no difference. Re Sugrue, Bulletin 370, Item 11.

The finding of guilty on these violations, the fact that two of the minors apparently became intoxicated, and the other evidence of violations of the Alcoholic Beverage Law apparent in the record warrant the conclusion that the premises had been conducted in such manner as to become a nuisance and thus make it necessary to find as a fact that said premises were conducted in such manner. The Supreme Court held in the case of State v. Williams, 30 N.J.L. 102, that:

> "Any place of public resort, whether an inn, a dwelling house, a storehouse, or any other building, or garden, is a public nuisance, in which illegal practices are habitually carried on ***."

Under the testimony herein it would seem that during the whole period of investigation, from February 25th to the morning of March 1, 1947, the agents observed many violations of the Alcoholic Beverage Law of the State and violations of other regulatory laws relating to the conduct of licensed premises. Cf. State v. Elliott, 129 N.J.L. 169.

When it is noted that in appeal cases the burden of proving error is on the person alleging the same (State Regulations No. 15, Rule 6), there would seem to be no question that a full consideration of all the evidence fails to cast any doubt upon the propriety of the finding of guilty as aforesaid. Ross v. Bellmawr, Bulletin 411, Item 9. I must affirm the verdict found by the respondent Board of Commissioners of the City of Union City.

The sentence admittedly is a severe one. Mere severity, however, is not sufficient to warrant my interference. The revocation was affirmed by respondent after reconsidering the case. The Commissioner of Alcoholic Beverage Control has always taken the attitude in disciplinary actions conducted by local issuing authorities that he will not disturb the sentence imposed in such matters by local issuing authorities unless it is clearly an abuse of their discretionary power. Cf. Triano v. Bloomfield, Bulletin 677, Item 10. I do not find that there was any abuse of discretion, especially in view of the fact that this same corporation, although under different management, was previously involved in similar charges. At that time the license was revoked by the local issuing authority and, upon appeal, the revocation was reduced, for reasons apparent in said appeal, to a suspension. Mrs. King then purchased the business and continued to conduct it under the corporate name. Cf. Re Bill Bloch, Inc., Bulletin 624, Item 2 (decided June 15, 1944).

It is obvious from the consideration of both these cases that the reputation of the premises is bad.

Permitting the revocation to stand makes it unnecessary to decide whether or not there should be a renewal. R. S. 33:1-31 provides in part as follows:

> "A revocation shall render the licensee ineligible to hold or receive any other license of any kind or class under this chapter, for a period of two years from the effective date (of such revocation) ***."

Under all the circumstances, the appeal will be dismissed.

Accordingly, it is, on this 9th day of December, 1947,

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

ERWIN B. HOCK
Commissioner.

8. RETAIL LICENSEES - SCHEMES FOR GIVING FREE DRINKS DISAPPROVED - "FREE LUNCH" PERMISSIBLE BUT OUTSIDE ADVERTISING THEREOF DISAPPROVED.

LICENSED PREMISES - MINORS NOT PROHIBITED THEREON BUT MAY NOT GET OR CONSUME ALCOHOLIC BEVERAGES.

November 21, 1947

Hamilton Township Licensed Beverage Association
Mays Landing, N. J.

Gentlemen:

I have before me your letter of November 14th.

You ask whether it is permissible for taverns to serve "free drinks"or "free lunch" or special platters free of charge on certain nights.

While we have no objection to a tavernkeeper's occasionally treating a patron to a drink merely as a gesture of friendship or good will, the Department has consistently disapproved of any practice of giving away any "free drinks" on certain occasions or at certain times (Bulletin 314, Item 4; Bulletin 359, Item 4; Bulletin 372, Item 2; cf. Bulletin 732, Item 8). Any such scheme of pumping drinks into patrons is a practice unduly designed to increase the consumption of alcoholic beverages (R. S. 33:1-39), and is therefore undesirable.

On the other hand, there is nothing in the Alcoholic Beverage Law or the regulations of this Department (Bulletin 132, Item 8; Bulletin 250, Item 12), nor do we find anything in the regulations of your township which prohibits tavernkeepers from engaging, if they wish, in the time-honored custom of giving "free lunch" or other similar edibles free of charge for consumption on the premises. However, the Department expects this custom to be kept within wholly reasonable bounds at all times lest it give rise to any undue problem in sound liquor control. This means, for example, that the licensee is not to let his "generosity" run away with him in the extent to which he furnishes free food (Bulletin 126, Item 7). Moreover, the licensee should not be allowed to overdo the custom by making it an advertised feature of the business and, accordingly, I specifically disapprove of any advertising <u>of any kind</u> by the licensee that "free lunch" or any other food free of charge is available for consumption at the licensed premises except simple statements on the <u>inside</u> of the premises not visible from the exterior.

You also inquire whether it is permissible for minors to be in taverns playing shuffleboard or similar games and being served soft drinks and food but not alcoholic beverages of any kind.

Here again there is nothing in the Alcoholic Beverage Law or the regulations of this Department (Bulletin 125, Item 6; Bulletin 138, Item 3; Bulletin 197, Item 8), nor do we find anything in the regulations of your township, which prohibits minors from being in taverns for the above recited purposes or from being served soft drinks or food. However, the licensee is under the full responsibility of seeing to it that no minor is sold or served or allowed to consume any alcoholic beverages on the licensed premises. See R.S. 33:1-77; State Regulations No. 20, Rule 1.

While there is, as aforesaid, nothing in the Alcoholic Beverage Law or the State Regulations or in the regulations of your township to prevent minors from being in taverns so long as they do not obtain

or consume any alcoholic beverages, nevertheless, depending upon the type of establishment involved, the licensee should use good judgment in deciding whether minors should be allowed to linger there. If licensees do not keep their own houses in order, they merely sow the wind that breeds the whirlwind.

If you are interested in any municipalities other than your township, please let me know and I shall be glad to advise you whether they have adopted any local regulations concerning the above matters.

Very truly yours,
ERWIN B. HOCK
Commissioner.

9. STATE LICENSES - NEW APPLICATIONS FILED.

James C. Maresca
T/a Maresca Beverage Distributing Co.
514 Central Ave.
Jersey City, N. J.
Application filed December 10, 1947 for transfer of State Beverage Distributor's License SBD-171 from Arthur Evans, t/a Peoples Park Distributing Co., 428 - 21st Ave., Paterson, N.J.

Edward Agriss and Walter Fredericks
T/a Premier Beer Company
8 Prospect St.
Neptune, N. J.
Application filed December 12, 1947 for transfer of State Beverage Distributor's License SBD-21 from Joseph Vincent Lowry, t/a Lowry Bros., 35 Delawanna Ave., Clifton, N. J.

Gambarelli & Davitto, Inc.
13-21 Park Row
New York, N. Y.
Application for Wine Wholesale License filed December 12, 1947.

Gallo Wine Sales of New Jersey, Inc.
168-172 Blanchard St.
Newark, N. J.
Application filed December 15, 1947 for transfer of Wine Wholesale License WW-5 from The Gallo Wines Co., Inc., 129 - 47th St., Brooklyn, N. Y.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION AT EXPIRATION OF 60 DAYS OF SUSPENSION - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against

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

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

ON PETITION

O R D E R

Harry R. Rey, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On October 10, 1947, I suspended defendant's license for the balance of its term, effective at 2:00 a.m. October 15, 1947, after I had previously found defendant guilty of various charges. Re The Panda, Bulletin 780, Item 5 (see also Bulletin 774, Item 1).

In said Order leave was given to make application to lift said suspension after sixty days thereof had been served upon correction of the illegal situation. Pursuant to said leave a verified petition has been filed which sets forth certain facts and wherein it is requested that the suspension of the defendant's license be lifted.

The petition recites that Daniel Straver became a citizen of the United States on December 8, 1947. His original certificate of naturalization has been exhibited to me. The petition also recites that certificates of stock which were formerly in the names of other individuals have been surrendered, and that new certificates of stock have been issued to the following individuals: 9 shares to Ethel Lance; 1 share to Mamie Blaedner (mother of Ethel Lance); 1 share to Daniel Straver. The new certificates are being held in escrow by Gerald W. Kolba until the balance due on certain notes given by the present shareholders to former shareholders have been fully paid. Pursuant to agreement between Ethel Lance and Daniel Straver, 1-1/2 shares of defendant's stock will be transferred from her to him after one of these notes has been fully paid.

The local issuing authority has been notified of the above facts in accordance with the provisions of R. S. 33:1-34.

From the evidence submitted it appears that the unlawful situation has been corrected. Sixty days of the suspension imposed have expired. Under all the circumstances I shall lift the suspension heretofore imposed.

Accordingly, it is, on this 15th day of December, 1947,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-180, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be restored to full force and operation, effective immediately.

Erwin E. Hock
Commissioner.