

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

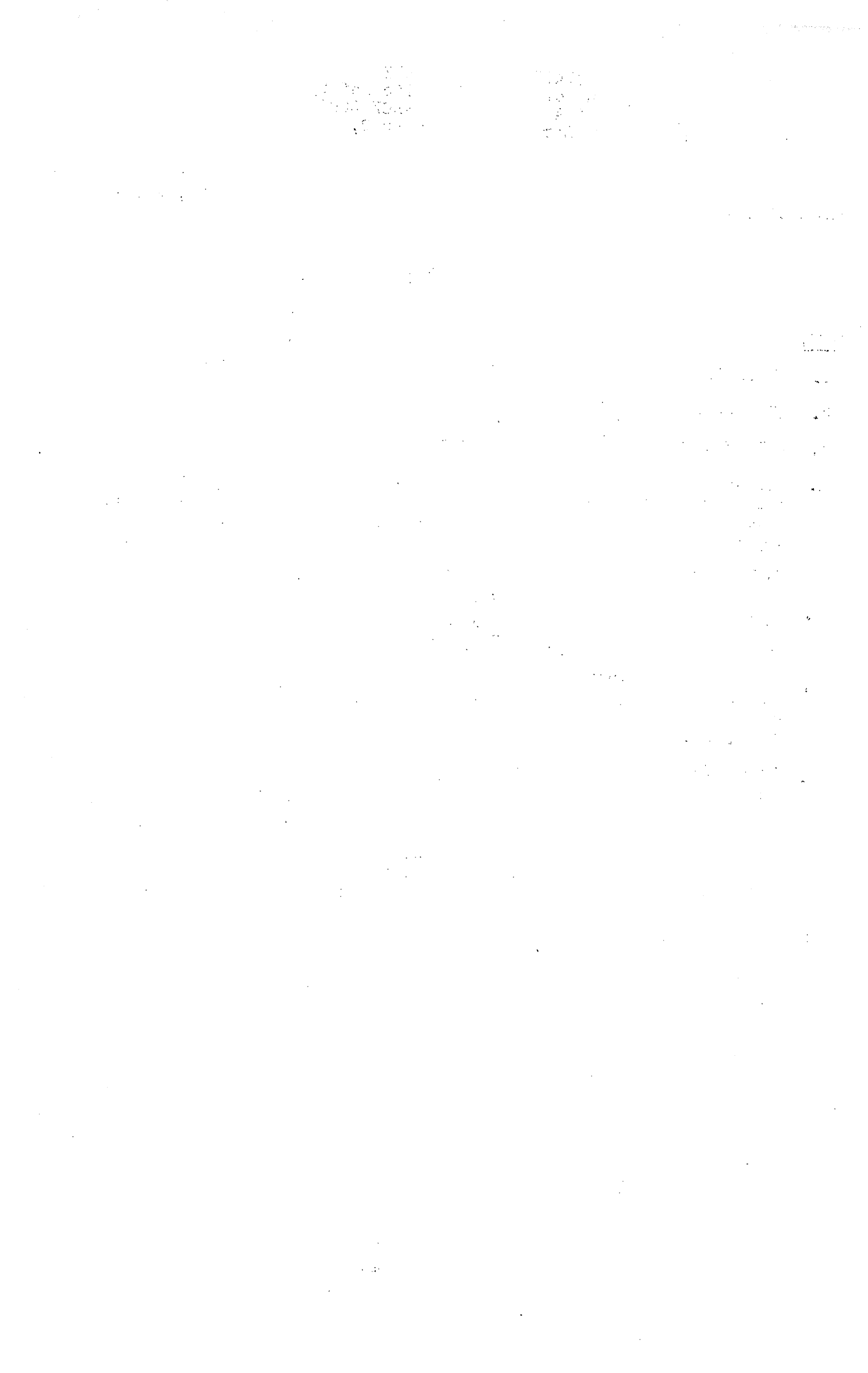
BULLETIN 984

SEPTEMBER 21, 1953.

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

BULLETIN 984

SEPTEMBER 21, 1953.

1. APPELLATE DECISIONS - HABA REALTY CORP. v. LONG BRANCH.

HABA REALTY CORP.,)	
)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE)	
CITY OF LONG BRANCH,)	
)	
Respondent.)	

Sidney Alpern, Esq., Attorney for Appellant.
Edward F. Juska, Esq., by Clarkson S. Fisher, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent, on June 2, 1953, whereby it denied appellant's application for a plenary retail consumption license for premises at 126 Brighton Avenue, Long Branch. The application was denied by unanimous vote of the members of respondent Board. No reason was stated for the denial.

Appellant contends that the premises in question constitute a bona fide hotel containing fifty sleeping rooms and that respondent's action was erroneous in that it was contrary to a local ordinance and the Statutes of the State of New Jersey, and arbitrary and capricious because there was no testimony produced at the hearing upon which the denial could be properly predicated.

Respondent, in its answer, denies these allegations and alleges that the premises in question has, in the past, been used as a means, through transfers, of circumventing the limit imposed upon the number of liquor licenses issued by the respondent following the limitations imposed by law "and that the premises in question is not a bona fide hotel containing more than fifty sleeping rooms and is not qualified for the license".

This appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15.

From the evidence adduced at the hearing it appears that the City has a population of approximately 26,000 according to the 1950 Federal census; that there are sixty-two plenary retail consumption licenses in the City; that in the area within 200 yards of the proposed location there are 13 such licenses (within two city blocks); that there have been previous licenses issued at the proposed new location and that two licenses have been transferred from such proposed location to other premises, the last being a transfer of a license held by Pat Pace, Jr. from the proposed location to a place directly across the street therefrom. This last transfer occurred in August 1952, since which time the building at the proposed location has been without a license.

The evidence also discloses an ordinance of the City of Long Branch adopted May 16, 1940 which provides, among other things, that no plenary retail consumption license shall be granted unless and until the number of such licenses issued and outstanding shall be less than fifty, but which contains the following exception, in Section 5 thereof:

"Section 5. The provisions of this ordinance shall not apply to bona fide hotels having fifty rooms or more, nor shall it apply to seasonal licenses nor shall it apply to applicants for licenses on premises situate on the beach front, or premises fronting on Ocean Avenue, throughout the entire length of said avenue from the north to the south boundary line of the City."

It is clear that the application in question was made under the exception. The President of appellant corporation testified that, when he was negotiating for the purchase of the property, he was told that the license which was then located in the building (and operated by Pat Pace, Jr.) belonged to the hotel but that he later discovered that such was not the case. He admitted, however, that he did not seek to ascertain the true situation from anyone connected with the City. He further testified that, at the hearing on appellant's application, he was the only witness and that he there testified that he had invested a considerable amount of money in the property, that he had spent additional monies in improvements and planned to spend further monies on further improvements. He also testified that, when question was raised with respect to the possibility that this license also would be moved out of the hotel building, he offered to accept a license subject to the special condition that he could not transfer to other premises.

The building inspector testified that he had inspected the building when the application for the license was filed and found it to be in a dangerous condition. He testified that there were fire hazards there; that the building was unsafe because "... the first floor has dropped so badly some of the partitions are suspended in the air. I don't think it's safe for a number of people to be in the building." On cross-examination he admitted that it contained fifty bedrooms and thirteen rooms which could be converted into bedrooms.

Two members of the local issuing authority testified at the hearing on this appeal. Commissioner Bonforte testified that, when the issuing authority was considering the application of Pat Pace, Jr., to transfer his plenary retail consumption license from the hotel building in question to premises across the street, appellant objected to such transfer but later withdrew its objection. He further testified that, upon withdrawal of the objection, the Board approved the place-to-place transfer but that there was a discussion among the members with respect to the inadvisability of permitting licenses issued for hotel purposes to be transferred to premises other than hotels. However, he admitted that the Board had not adopted a formal policy with respect to that matter. He gave as one of his reasons for voting to deny appellant's application for a license his desire to prevent an increase in the number of plenary retail consumption licenses in the City by the simple device of issuing, to a fifty-room hotel, a license otherwise prohibited by the quota fixed by the State Limitation Law or local ordinance, and the subsequent transfer of such license to non-hotel premises. Testifying with respect to what took place when the Pat Pace, Jr. transfer was granted, he said that one of the commissioners had stated at that time, "We are not going to let any more licenses come out of this hotel. We are not going to let any licenses come into that particular area. There are thirteen now within a radius of two or three hundred yards". He gave as his other reasons the thirteen licenses in the area and the fact that the building inspector had found the building to be unsafe.

On cross-examination he admitted that he knew that appellant's application had been made under the "hotel exception"; that appellant was making some repairs; that he knew of appellant's offer to accept a license so conditioned that it could not be transferred to other premises and that he knew that the issuing authority has control of

license transfers. He explained, however, that, despite the fact that the Board has control of licensing matters, he personally would be a City commissioner "for a limited time" and that he might not be on the Board at a "time when an application might be made for transfer to other premises" of licenses issued under the "hotel exception".

Commissioner Woolley testified substantially to the same general effect. He further testified that the number of plenary retail consumption licenses in the City was over the limit and that there are a number of bars in the same section of the City as the proposed location. He also stated that he was opposed to the issuance of the license for the reason that it might be transferred to other premises, thus creating an additional license, and also stated that he might not be a member of the Board when the matter comes up again.

On appeal the burden of proving that the action of respondent was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15. More specifically, "In an appeal from denial of license the burden of proof in establishing that public convenience and need will be best served by the issuance of the license rests upon the appellant. Gorcica v. Wallington, Bulletin 659, Item 10." Kowalski v. Harrison, Bulletin 725, Item 5. "The judgment of the issuing authority, where supported by evidence, is entitled to great weight." Spector v. Roselle, Bulletin 703, Item 1.

With respect to respondent's failure to state the reasons for its denial, it has been repeatedly indicated that, in all fairness, a local issuing authority should state the reasons for its decisions (Rosenvinge v. Metuchen, Bulletin 249, Item 6; Paini v. Bloomsbury, Bulletin 300, Item 13), but such failure is not fatal. Since this is a trial de novo appellant is being accorded its full day in court. Furthermore, the reasons were set forth in respondent's answer. Trinity Methodist Church of Rahway, N. J. v. Rahway, Bulletin 972, Item 3.

In the instant case the evidence discloses that the number of plenary retail consumption licenses in the City is in excess of the quota fixed by local ordinance and far exceeds the quota fixed by the State Limitation Law (P. L. 1947, c. 94). The evidence further discloses that there are a considerable number of plenary retail consumption licensed premises in the immediate vicinity of the proposed location and thus it would appear that the area is generously served by these existing licensed premises.

There is no inherent right to a liquor license. Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946). Nor is a bona fide hotel, which meets the minimal requirements of the State Limitation Law or a municipal ordinance, ipso facto entitled to a license merely because it is such a hotel. "The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed". Current v. Fredon, Bulletin 184, Item 1. See also Lincoln Avenue Corporation v. Wildwood, Bulletin 540, Item 2; Szczesna v. Wildwood, Bulletin 852, Item 1. In view of the result hereinafter to be reached it is unnecessary to determine whether the building in question is a bona fide hotel containing fifty or more sleeping rooms within the meaning of the statute and ordinance.

Commissioners Bonforte and Woolley testified that they were influenced by the fact that if the license were granted under the "hotel exception" it might thereafter be transferred in violation of the letter or spirit of the "hotel exception" in the statute and ordinance. Basically, they envisaged the possibility that the intent and purpose of the limitation law and ordinance might be circumvented by using hotel premises as a "springboard" for transfers to non-hotel premises. Clearly, if such a practice were to be permitted the restrictive provisions of the law and ordinance would be

rendered nugatory. However, it is unnecessary to pass on this question in the instant case since we are not here confronted with that situation. In any event, the evidence with respect to the all important question of public necessity and convenience is such that I find that appellant has failed to sustain its aforementioned burden. Consequently I cannot find that the action of respondent, in denying the application for license, was arbitrary or capricious, warranting reversal. The respondent's action is therefore affirmed.

Accordingly, it is, on this 9th day of September, 1953,

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

DOMINIC A. CAVICCHIA
Director.

2. APPELLATE DECISIONS - KLEINBERG v. HARRISON.

PAUL R. KLEINBERG, Assignee for)
the Benefit of Creditors of Jeanne)
Tomshe and Louise Swiers,)
Appellant,)

-vs-

MAYOR AND COUNCIL OF THE TOWN OF)
HARRISON, N. J.,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Max J. Mareiniss, Esq., Attorney for Appellant.
Daniel F. Gilmore, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent on July 7, 1953, whereby it denied appellant's application for a renewal of a Plenary Retail Distribution License for the 1953-54 licensing period.

The record shows that respondent's resolution denying the renewal recited the fact that, in their application for the 1952-53 licensing period, Jeanne Tomshe and Louise Swiers (the assignors) had falsely denied under oath the existence of a chattel mortgage, in violation of R. S. 33:1-25, and concluded

"WHEREAS, after a careful consideration of all the evidence, including the affidavits submitted by the attorney for the aforesaid assignee, the Mayor and Council of the Town of Harrison deem it in the best interest of the Town of Harrison that the application for renewal of plenary retail distribution license #D-5 for the year 1953-1954 filed by Paul R. Kleinberg, assignee for the benefit of creditors of Jeanne Tomshe and Louise Swiers, be denied.

"Therefore be it resolved by the Mayor and Council of the Town of Harrison, County of Hudson, State of New Jersey,

"That the application for renewal of Plenary Retail Distribution License #D-5 for the year of 1953-1954 of Paul R. Kleinberg, assignee for the benefit of creditors of Jeanne Tomshe and Louise Swiers, is hereby denied for the reasons above stated."

Appellant contends that respondent's action was erroneous because (1) the assignors did not knowingly misstate the answer or

make a false statement to mislead or defraud; (2) a misstatement by the assignors is not chargeable to the assignee who is acting in a representative capacity for the benefit of creditors and a denial of the application to renew the license deprives the creditors of a valuable asset; (3) the denial of the application to renew, is in effect, a revocation of the license and respondent failed to give the required notice and hearing; (4) respondent's action is harsh, capricious and oppressive.

Respondent, in its answer, denies appellant's allegations and, further, contends that the license is neither a portion of the assignors' "assets" nor the assignors' "property" within the meaning of N. J. S. 2A:19-13. Respondent also contends that appellant has no standing on this appeal because the license is a personal privilege and such assignee was granted the privilege (by extension to him of the 1952-53 license) subject to the conduct of the assignors and did not appeal or dissent from such condition.

The appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15.

The record discloses that the assignors (Jeanne Tomshe and Louise Swiers) obtained the license by transfer in September 1950. In their application for such transfer they disclosed (in answer to question 32) the existence of a chattel mortgage to D. Allen Shulman and explained that he had "loaned" them money to aid "...in financing the purchase of the business...". In their applications filed for 1951-52 and 1952-53 licensing periods question 32 was answered "no" despite the fact that the aforementioned chattel mortgage has not been paid and has not yet been cancelled of record. Jeanne Tomshe testified that the entire amount is still due but it appears from other testimony that a settlement has been agreed upon although not yet concluded. Jeanne Tomshe testified that, whereas the transfer application had been prepared by the attorney who handled the closing, the subsequent applications were prepared by their accountant. The accountant stated, in an affidavit, that he had "inadvertently" answered question 32 improperly and that the answer should have been "yes" instead of "no". Jeanne Tomshe further sought to escape responsibility for the false answer by claiming that she was unfamiliar with legal terminology and remembered only that she had signed notes and did not remember signing a chattel mortgage.

The record further discloses, that in February 1951, the license was suspended for fifteen days for sales of alcoholic beverages to minors. The license was renewed thereafter and, on May 18, 1953, Jeanne Tomshe and Louise Swiers executed an assignment to appellant for the benefit of creditors and purported to include in such assignment Plenary Retail Distribution License D-5. The assignment was recorded in the Hudson County Clerk's office on May 20, 1953 and on the same day appellant (the assignee) applied to respondent for an extension of the license "for the purpose of resale". On May 28, 1953 appellant sold the assets of the assignors together with his right, title and interest in and to the license and, on May 29, 1953 obtained an order confirming the sale, which order also authorized him to consent to transfer of license. Respondent considered the matter at its June 2, 1953 meeting, at which time appellant had not complied with Rules 5 and 7 of State Regulations No. 5. Respondent then referred the application to its licensing committee and adjourned the matter with consent of appellant's attorney. On June 5, 1953 appellant obtained an order permitting him to continue to conduct the business (nunc pro tunc as of May 18, 1953) until the further order of the court or until the transfer of the license in accordance with the order confirming the sale.

On June 23, 1953 respondent again considered appellant's application for extension of the license. Appellant's attorney and the attorney for the successful bidder were called into conference with the members of the issuing authority and confronted with the aforementioned false answer in the previous applications filed by the assignors. After some discussion it was agreed that respondent would extend the license to appellant for the balance of its term (one week) subject to an inquiry with respect to such false answer. Respondent then adopted the following resolution:

"BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF HARRISON COUNTY OF HUDSON AND STATE OF NEW JERSEY:

1. That Plenary Retail Distribution License #D-5 is hereby extended subject to all its terms and conditions and specifically subject to an inquiry as to whether fraud, false statements, or misrepresentation existed in the application filed by Jeanne Tomshe and Louise Swiers.
2. This extension shall terminate on June 30th, 1953.
3. The extension is made from Jeanne Tomshe and Louise Swiers to Paul R. Kleinberg, assignee for the benefit of creditors of Jeanne Tomshe and Louise Swiers."

Appellant accepted the extension so granted and, on June 26, 1953, filed the application for renewal (which forms the basis of this appeal) disclosing the existence of the aforementioned chattel mortgage. On July 7, 1953, respondent again conferred with appellant's attorney and the attorney of the successful bidder and advised them that the renewal was going to be denied because of the false answer of the assignors, aforementioned. Later, at its public meeting, respondent adopted the resolution here appealed from. At the hearing on this appeal Mayor Rodgers and Councilman Nugent testified that, while they knew that the assignors owed the Town approximately \$300.00 in personal property taxes and, while there had been an objection filed by another licensee, they had voted to deny appellant's application for renewal because of the false answer of the assignors and their prior record (fifteen-day suspension for sales to minors). Both denied that they were influenced by any other factors, except that Councilman Nugent testified that he had served as Councilman only since January 1, 1953; that he had conducted an investigation of his own and learned from the licensing committee chairman that the Town was "over the quota" and that he took that fact into account along with the false answer and the prior record. He further testified, however, that he believed the false answer alone would justify a denial of the renewal.

Appellant's contention that the assignors did not knowingly make a false answer and that he, as assignee for the benefit of creditors, is not chargeable with such false answer, is without merit. Jeanne Tomshe had had previous experience in business matters and had previously executed and delivered other chattel mortgages. Thus I am not impressed by her claim of ignorance; nor can licensees avoid responsibility for a false answer in an application filed by them merely because the application was prepared by someone else. A signature to a sworn document imputes to the affiant knowledge of its contents even though it may not have been read by or to him. State v. Siegler, 12 N. J. 520 (Sup. Ct. 1953).

While there is a conflict with respect to whether or not respondent denied appellant a hearing, in view of the result hereinafter to be reached; it is unnecessary to consider that question or any other questions raised by appellant.

Respondent's contentions with respect to appellant's position in this matter is, in effect, that, because the license is not property but a mere privilege, it may not be "sold" by an assignee for the benefit of creditors and that appellant has no standing as an applicant (appellant) because he accepted the extension of the license to him subject to an inquiry with respect to previous conduct by the assignors.

With respect to the first of these contentions, while it is true that a license is not to "...be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter [the Alcoholic Beverage Law]", nevertheless extension of the license to persons "other than the licensee" is provided by the statute. R. S. 33:1-26. The privilege may be a very valuable one and, while it cannot be "sold" or alienated merely by action of the parties concerned, it can be transferred by the issuing authority upon proper application therefor. R. S. 33:1-26. Thus, while the assignment for the benefit of creditors may have been ineffectual in so far as it may have purported to "grant, bargain, sell, convey and assign" the license to appellant, nevertheless it must be viewed as having invested him with the power to consent to the transfer of the license under proper circumstances and to the same extent as the assignors. So also, while the sale to the successful bidder did not accomplish the transfer of the license to such bidder, nevertheless the assignee must be viewed as having agreed to consent to the transfer of such license to the successful bidder and the order confirming the sale takes due notice thereof. Clearly appellant was the proper (and perhaps only) person to apply for a renewal of the license. Respondent itself recognized appellant's position as such assignee and did, in fact, extend the license to him, as assignee.

The contention that the assignee has no standing as an appellant because he took the extension subject to the prior misconduct of the assignors is without merit. I agree that an assignee may be visited with the transgressions of his assignors. However, this goes to the question of the ultimate determination to be reached in this matter but does not affect appellant's standing as a party appellant.

In appeals of this nature the burden is on the appellant to establish that the action of the issuing authority was erroneous and should be reversed. Rule 6 of State Regulations No. 15. The question in this case is whether or not appellant has sustained this burden.

It is well established that there is no inherent right to a renewal of a license. Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946). However, it is equally well established that an application for renewal of a license may not be denied capriciously or merely to reduce the number of licenses. Such denial must be based on reasonable grounds or it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; McGuire v. Paulsboro, Bulletin 392, Item 10.

Examination of the record in this case reveals that respondent relied on the fact that the assignors falsely denied, under oath, the existence of a chattel mortgage and the further fact that, more than two years ago, the assignors had suffered a fifteen-day suspension of their license for sale of alcoholic beverages to minors. While it is true that all statements in any application required to be made by law or by Rules and Regulations are deemed to be material, and that false statements or the suppression of material facts in

securing of a license are grounds for suspension or revocation of the license (R. S. 33:1-25) and while misconduct on the part of the assignors may be considered in determining proper action to be taken against the assignee, nevertheless there are other factors in this case which must be considered. For example, when respondent granted appellant's application for extension of the license it knew that appellant sought the extension "for the purpose of resale" and it also knew that appellant had sold the assets of the assignors to the highest bidder and that it was proposed to apply for a transfer of the license to such successful bidder. Thus respondent knew that the assignors (Jeanne Tomshe and Louise Swiers) who had made the false statements and who had suffered the previous suspension were no longer going to conduct the licensed business. In fact the current application was filed not by the assignors but by the assignee for the purpose of permitting him to later apply for a transfer to the successful bidder. Another fact is most significant. The chattel mortgage in question was disclosed in the first application filed by these assignors. Such fact appears hardly consistent with a conclusion that they were endeavoring to fraudulently conceal the existence of the chattel mortgage for the purpose of misleading the local issuing authority or anyone else.

Under the peculiar circumstances of this case I conclude that respondent was not justified in refusing to renew the license for the reasons stated.

The situation in this case is not to be confused with that which arises upon a transfer of a license after the commission of an offense by a licensee but before penalty can be imposed. Nor is anything herein to be deemed dispositive of the merits of any future application for transfer of the license.

Accordingly, it is, on this 9th day of September, 1953,

ORDERED that the action of respondent be and the same is hereby reversed, and the respondent is directed and ordered to issue to the appellant a license for the current fiscal year, pursuant to the Conclusions herein.

DOMINIC A. CAVICCHIA
Director.

3.

ACTIVITY REPORT FOR AUGUST 1953

ARRESTS:			
Total number of persons arrested - - - - -			32
Licensees and employees - - - - -	7		
Bootleggers - - - - -	25		
SEIZURES:			
Motor vehicles - cars - - - - -			3
- trucks - - - - -			2
Still - over 50 gallons - - - - -			2
- 50 gallons or under - - - - -			2
Alcohol - gallons - - - - -			3.67
Mash - gallons - - - - -			650.00
Distilled alcoholic beverages - gallons - - - - -			100.73
Wine - gallons - - - - -			196.29
Brewed malt alcoholic beverages - gallons - - - - -			37.98
RETAIL LICENSEES:			
Premises inspected - - - - -			1,065
Premises where alcoholic beverages were gauged - - - - -			491
Bottles gauged - - - - -			10,898
Premises where violations were found - - - - -			98
Violations found - - - - -			151
Type of violations found:			
Unqualified employees - - - - -	85	Other mercantile business - - - - -	3
Prohibited signs - - - - -	6	Reg. #38 sign not posted - - - - -	2
Disposal permit necessary - - - - -	6	Improper beer taps - - - - -	1
Gambling devices - - - - -	3	Probable front - - - - -	1
		Other violations - - - - -	44
STATE LICENSEES:			
Premises inspected - - - - -			12
License applications investigated - - - - -			12
COMPLAINTS:			
Complaints assigned for investigation - - - - -			356
Investigations completed - - - - -			360
Investigations pending - - - - -			160
LABORATORY:			
Analyses made - - - - -			96
Bottles from unlicensed premises - - - - -			26
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made - - - - -			28
Persons fingerprinted for non-criminal purposes - - - - -			204
Identification contacts made with other enforcement agencies - - - - -			191
Motor vehicle identifications via N. J. State Police Teletype - - - - -			2
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities - - - - -			14
Violations involved:		Possessing chilled malt alcoholic beverage (DL Lic.) - - - - -	1
Sale to minors - - - - -	7	Storage off licensed premises - - - - -	1
Sale during prohibited hours - - - - -	6	Failure to afford view into premises during prohibited hours - - - - -	1
Sale to intoxicated persons - - - - -	2		
Permitting hostesses on premises - - - - -	2		
Cases instituted at Division - - - - -			18
Violations involved:		Sale to non-members by club - - - - -	1
Sale to minors - - - - -	6	Sale outside scope of license - - - - -	1
Sale during prohibited hours - - - - -	5	Permitting bookmaking on premises - - - - -	1
Fraud and front - - - - -	4	Permitting foul language on premises - - - - -	1
Permitting hostesses on premises - - - - -	2	Permitting immoral activity on prem. - - - - -	1
Permitting gambling (cards) on premises - - - - -	2	Unqualified employee - - - - -	1
Cases brought by municipalities on own initiative and reported to Division - - - - -			9
Violations involved:		Permitting lottery on premises - - - - -	1
Sale to minors - - - - -	7	Sale during prohibited hours - - - - -	1
Permitting brawl on premises - - - - -	1		
HEARINGS HELD AT DIVISION:			
Total number of hearings held - - - - -			29
Appeals - - - - -	3	Seizures - - - - -	2
Disciplinary proceedings - - - - -	14	Tax revocation - - - - -	1
Eligibility - - - - -	9		
PERMITS ISSUED:			
Total number of permits issued - - - - -			813
Employment - - - - -	187	Social affairs - - - - -	295
Solicitors - - - - -	82	Miscellaneous - - - - -	185
Disposal of alcoholic beverages - - - - -	64		

DOMINIC A. CAVICCHIA
Director.

Dated: September 1, 1953.

4. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR BALANCE OF TERM - IF ILLEGAL SITUATION CORRECTED, LEAVE GIVEN TO APPLY FOR AN ORDER LIFTING SAID SUSPENSION AFTER 35 DAYS FROM EFFECTIVE DATE THEREOF.

In the Matter of Disciplinary Proceedings against)

THE GLASS BAR, INC.)
T/a THE GLASS BAR)
151 First Street)
Hoboken, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-191, issued by the Board of Commissioners of the City of Hoboken.)

The Glass Bar, Inc., by Louise Pisani, President.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to charges alleging that (1) its current license application falsely denied that anyone other than the stockholders named therein had an interest in the stock held by said stockholders, whereas Ferdinando Pisani was the real and beneficial owner of all the stock, in violation of R. S. 33:1-25; (2) its current license application falsely denied that anyone other than the applicant had an interest in the license or in the business to be conducted under said license, in violation of R. S. 33:1-25; (3) it knowingly aided and abetted said Ferdinando Pisani to exercise, contrary to R. S. 33:1-26, the rights and privileges of its license, in violation of R. S. 33:1-52, and (4) its current application falsely stated the address of Isidore B. Sinatra (listed as vice-president, director and stockholder).

The file herein discloses that, in June 1950, defendant acquired the license by transfer from Ferdinando Pisani who had held it since April 1945. Both Ferdinando Pisani and Louise Pisani, his wife, admitted that the reason for the transfer was their fear that said Ferdinando Pisani would "lose his license" because of his arrest, on January 27, 1950, for possession of lottery slips (Italian lottery), of which charge he was convicted February 2, 1951 and fined \$250.00. They also admitted that defendant corporation was then organized; that 990 shares were allocated to Louise Pisani and 5 shares each to Isidore B. Sinatra and William E. Baker but that no money was invested by any of these three persons and that Ferdinando Pisani was the real owner of the business. In fact, no stock certificates were ever filled out or issued and no entries appear in the corporation's minute book.

Baker also admitted that he had not invested any money in the corporation and took no part in its management. Sinatra could not be reached, but for several years he has not resided at the address listed in the current license application and the local issuing authority has not been notified of the change of address.

Clearly the corporation was created as a deliberate "front" for Ferdinando Pisani. Undoubtedly it was believed that the crime of which he was later convicted involved moral turpitude and that he would thereby be rendered ineligible to hold a license. See R. S.

33:1-25. While commercialized gambling may or may not involve moral turpitude I am of the opinion that, under the circumstances in this case the crime of which Ferdinando Pisani was convicted did not involve moral turpitude. See The Glass Bar, Inc., Bulletin 908, Item 10. Cf. Re Case No. 633, Bulletin 945, Item 13. Thus Ferdinando Pisani was not thereby rendered ineligible to hold a license.

Defendant has a prior record. Its license was suspended by the State Director for fifteen days, effective June 4, 1951, on charges that its predecessor (Ferdinando Pisani) permitted sale and possession of lottery tickets upon the licensed premises and permitted such premises to be used in furtherance and aid of an illegal activity resulting in a criminal conviction (Re The Glass Bar, Inc., supra). Prior thereto the license of said Ferdinando Pisani, for the same premises, was suspended by the then Deputy Commissioner for fifteen days, effective February 24, 1947, for possession of illicit liquor. Re Pisani, Bulletin 735, Item 4 and Bulletin 749, Item 2. Since the crime of which Ferdinando Pisani was convicted in 1951 did not involve moral turpitude the minimum period of suspension for the violations set forth in charges 1, 2 and 3 is thirty days. Re Benson, Bulletin 742, Item 6. An additional five days will be added for the violation set forth in charge 4. The prior suspension against Ferdinando Pisani in 1947, being for a violation dissimilar in nature and occurring more than five years ago, will be disregarded. Re Goldberg, Bulletin 962, Item 4. However, because the fifteen-day suspension in 1951 for a violation dissimilar in nature occurred less than five years ago, an additional five-day penalty will be imposed. (Re Cohen, Bulletin 968, Item 2). This makes a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

However, since the illegal situation still continues I have no alternative but to suspend defendant's license for the balance of its term. In the event that such illegal situation is corrected, application may be made to me for the lifting of such suspension, but in no event will an order lifting the suspension be entered prior to the expiration of thirty-five days from the effective day hereof.

Accordingly, it is, on this 8th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-191, issued for the 1953-54 licensing period by the Board of Commissioners of the City of Hoboken to The Glass Bar, Inc., t/a The Glass Bar, 151 First Street, Hoboken, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., September 14, 1953; and it is further

ORDERED that in the event a correction of the illegal situation is effected, leave will be given to make application to me for the lifting of the suspension, as aforesaid.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ELSIE REYNOLDS T/a REYNOLD'S TAVERN 5615 Hudson Avenue West New York, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-24, issued by the Board of Commissioners of the Town of West New York.

Elsie Reynolds, Defendant-licensee, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On May 2, 1952, and on divers days prior thereto, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20."

The file discloses that on the afternoon of May 2, 1952, three Investigators employed by the Hudson County Prosecutor entered defendant's licensed premises. One of the Investigators heard Richard Reynolds telephoning horse race bets to an unidentified number. Richard Reynolds, who is the husband of defendant, was then, and for seven years prior thereto had been, working as bartender on the premises. During the course of their investigation the Investigators found two slips of horse race bets and a large sum of money in the possession of Richard Reynolds and several slips containing bets on horses in the possession of Alfred Smith, a patron. In signed statements given to the Investigators, Richard Reynolds admitted accepting a few bets on horse races for a few friends and Alfred Smith admitted that he had placed four or five bets on horse races with Richard Reynolds previous to May 2.

Effective February 24, 1947, when the license was in the name of defendant and her husband, the Deputy Commissioner suspended said license for ten days for possessing illicit liquor. See Re Reynolds, Bulletin 735, Item 3 (as modified in Bulletin 749, Item 2). However, since said dissimilar offense occurred more than five years ago, I shall disregard it. Re Burday & Budowsky, Bulletin 970, Item 10. I shall suspend defendant's license for the minimum period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. Re Ways, Bulletin 955, Item 5.

Accordingly, it is, on this 2nd day of September, 1953,

ORDERED that Plenary Retail Consumption License C-24, issued by the Board of Commissioners of the Town of West New York to Elsie Reynolds, t/a Reynold's Tavern, for premises 5615 Hudson Avenue, West New York, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. September 9, 1953, and terminating at 3:00 a.m. September 24, 1953.

DOMINIC A. CAVICCHIA Director.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FLEMING'S WINE & LIQUOR, INC.)
298 Bergen Avenue)
Jersey City 5, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-71, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
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Fleming's Wine & Liquor, Inc., by Thomas Fleming, President. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on Tuesday, July 28, 1953, at about 8:45 a.m., it sold and delivered an alcoholic beverage in the original container for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

The file discloses that two ABC agents arrived in the vicinity of defendant's licensed premises on July 28, 1953 at approximately 8:30 a.m. One of the agents endeavored to gain admission to the licensed premises at 8:30 a.m. but was told by Peter Fleming, Vice-President of the corporation, that it was too early. The agents remained in the vicinity of the licensed premises until 8:45 a.m., at which time they saw a man and woman enter the store. One of the agents then entered the front door of the licensed premises which was open. Peter Fleming asked the agent what he would have. When the agent asked for a pint of Seagram's 7 Crown Whiskey, Peter Fleming looked at the clock, removed a pint bottle labeled Seagram's 7 Crown Whiskey from a shelf behind the counter, placed it in a brown paper bag, and handed it to the agent who paid \$2.83 therefor.

The agent left the licensed premises with the paper bag containing the pint of whiskey, and immediately re-entered with the other agent who had remained outside. Peter Fleming admitted making the sale before hours but declined to give a written statement.

Defendant has no prior record. I shall impose the fifteen-day minimum penalty for a violation of this kind. Re Driscoll and Sullivan, Bulletin 978, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 1st day of September, 1953,

ORDERED that Plenary Retail Distribution License D-71, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Fleming's Wine & Liquor, Inc., for premises 298 Bergen Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. September 8, 1953, and terminating at 9:00 a.m. September 18, 1953.

DOMINIC A. CAVICCHIA
Director.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH NAPP)
381 Jackson Avenue)
Jersey City 5, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-242, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Ralph Napp, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on Sunday, August 9, 1953, he sold an alcoholic beverage at retail in its original container for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38.

The file discloses that on Sunday, August 9, 1953, at 3:30 p.m., an ABC agent, who was then in defendant's licensed premises, asked Charles Bender, the bartender, for one pint of Gordon's Gin to take home. The bartender placed a pint bottle of Gordon's Distilled London Gin in a brown paper bag and handed the bag to the ABC agent after receiving \$2.45 from the agent. The ABC agent left the licensed premises with the bag and returned immediately with another ABC agent who had remained outside. The bartender admitted the violation.

Defendant has a prior record. Effective August 31, 1936, the local issuing authority suspended his license for four days for conducting business and remaining open during prohibited hours. Effective February 27, 1939, the local issuing authority suspended his license for three days on similar charges and on an additional charge of failing to afford a clear view of his premises while his premises were required to be closed. Effective November 20, 1939, the Commissioner suspended his license for ten days for a fair trade violation. Re Napp, Bulletin 299, Item 13, and Bulletin 362, Item 1. Inasmuch as the two violations which are essentially similar to the present violation occurred more than ten years ago and the dissimilar violation occurred more than five years ago, I shall not consider them in aggravation of the present charge. Re Wally's, Inc., Bulletin 931, Item 9; Re Grembowiec, Bulletin 946, Item 4. Therefore, I shall suspend defendant's license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Kaiser, Bulletin 954, Item 7.

Accordingly, it is, on this 2nd day of September, 1953,

ORDERED that Plenary Retail Consumption License C-242, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ralph Napp, for premises 381 Jackson Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 9, 1953, and terminating at 2:00 a.m. September 19, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

EARL LONGO & MARIE LONGO
S/s Delilah Rd., near Pleasantville
City Line, Egg Harbor Township
P.O. Box 170, Pleasantville, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Egg Harbor.

Coulomb, McAllister & Hunter, Esqs., by Robert N. McAllister, Esq.,
Attorneys for Defendant-licensees.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded not guilty to the following charge:

"On Saturday, June 27, 1953 between about 12:30 A.M. and about 2:30 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., quart bottles of beer, at retail in their original containers for consumption off your licensed premises; in violation of Rule 1 of State Regulations No. 38, which prohibits any such sale or delivery before 9:00 A.M. or after 10:00 P.M. on weekdays."

At the hearing herein Earl Longo, one of the defendants, admitted that George Parker, who is of full age, entered defendants' premises on June 26, 1953, at about 9:00 p.m. and purchased three quart bottles of beer in original containers. The Division does not allege that any violation occurred at that time, but the admission of Earl Longo is set forth herein because it substantially agrees with the testimony of George Parker that he purchased bottles of beer in defendants' premises early on the evening of June 26. The sole issue in the case is whether or not George Parker returned to defendants' premises on the early morning of June 27 and purchased additional bottles of beer in original containers.

On behalf of the Division, George Parker testified that he left his home on June 26 at about 9:00 p.m. and that, after driving around in his automobile with Paul Parker, Ralph Price and Emerson Walmsley, he stopped at defendants' premises and purchased bottles of beer before 10:00 p.m. This witness testified that, later in the evening, he drove to the place where Vera Wood is employed; that she entered the car shortly after midnight and that, after driving Paul Parker home, he drove to defendants' premises and parked the car in front of the tavern. This witness further testified that he entered defendants' premises alone and purchased four quart bottles of beer for the sum of \$2.00 from Earl Longo. He stated that this purchase had been made at "2:30, 1:30, something like that." On cross-examination this witness testified that he could not remember whether or not this beer had been sold in cartons. However, Vera Wood testified that, at about 12:30 a.m. on June 27, George Parker entered defendants' premises without any package in his hands and returned to the car with four quart bottles of beer; that, after they had driven to other

premises and cashed a check, they returned to Longo's where George Parker got three more bottles of beer. Ralph Price testified that, after Vera joined the group, they drove to defendants' premises where the car was parked; that he saw George Parker go in the tavern and that he saw him come out with four quart bottles of beer "around 12:30, 1 o'clock." Emerson Walmsley, who was called as a witness on behalf of defendants, also testified that George Parker came out of defendants' premises with four quarts of bottled beer.

On behalf of defendants, Earl Longo testified that he had no definite recollection as to whether or not George Parker returned to the licensed premises after midnight, but testified that "if I served him, he probably got three containers" because "I serve nothing but containers of beer after 12 o'clock." A medical doctor and a salesman who testified that they were in defendants' premises on the early morning of June 27 testified that nothing but containers of beer were served after midnight but neither of these witnesses had any distinct recollection of seeing George Parker on the premises at that time.

After considering all the testimony I conclude that Earl Longo sold bottles of beer at retail in their original containers to George Parker during the early morning hours of June 27, 1953, and hence I find defendants guilty as charged.

Defendants have no prior adjudicated record. I shall suspend defendants' license for a period of fifteen days. Re Kaiser, Bulletin 954, Item 7; Re Scheib, Bulletin 971, Item 4.

Accordingly, it is, on this 8th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Egg Harbor to Earl Longo & Marie Longo, for premises on s/s Delilah Road, near Pleasantville City Line, Egg Harbor Township, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. September 14, 1953, and terminating at 7:00 a.m. September 29, 1953.

DOMINIC A. CAVICCHIA
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Harwood Distillers Agency, Inc.
135 East 42nd Street
New York, New York.

Application filed September 3, 1953 for Plenary Wholesale License.

Dominic A. Cavicchia
Dominic A. Cavicchia
Director.