

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

BULLETIN 452

APRIL 3, 1941

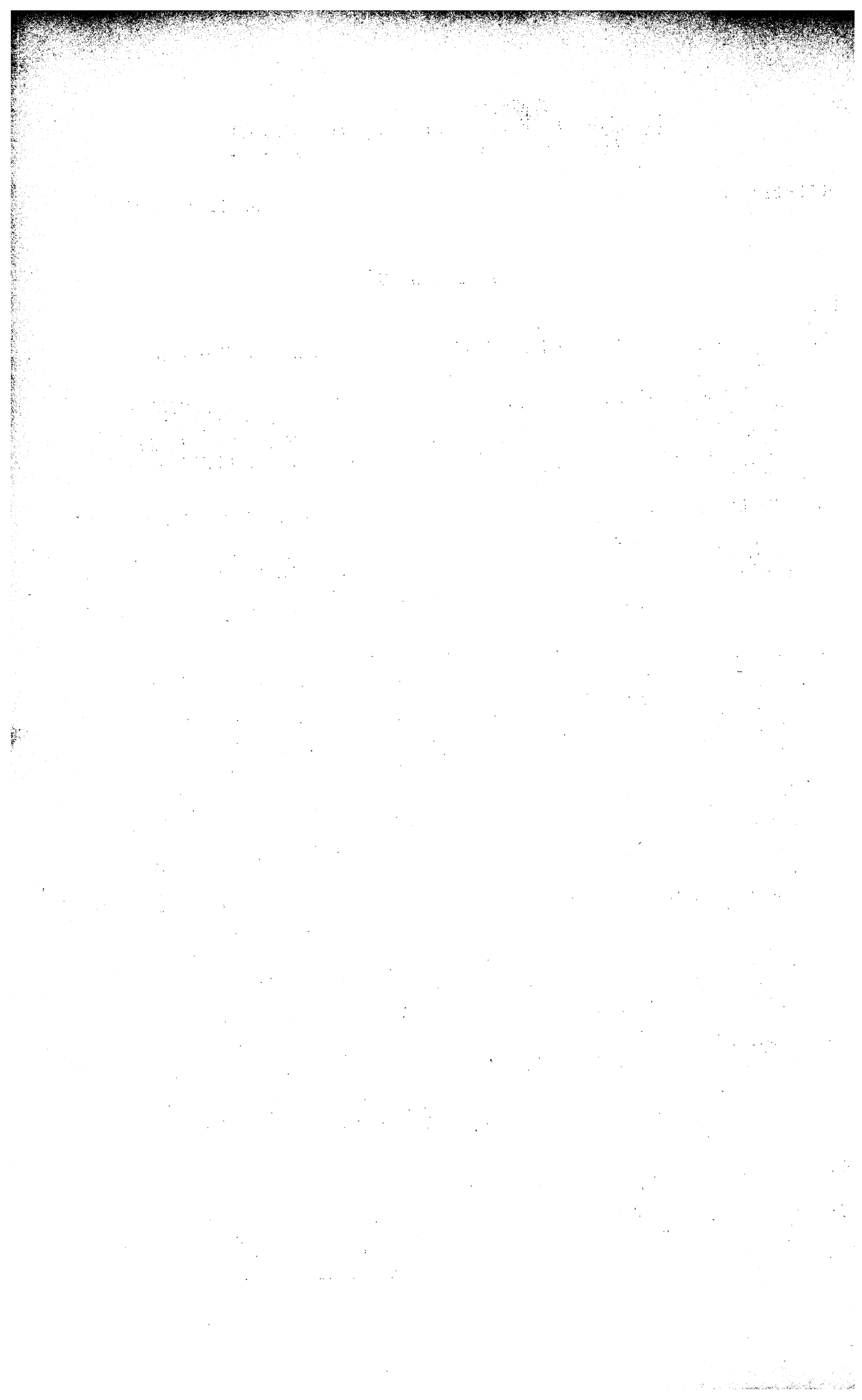
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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street, Newark, N. J.

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1. APPELLATE DECISIONS - FRANCO AND SWICK v. PHILLIPSBURG AND NUSSMAN.

ISSUANCE OF LICENSE APPEALED AS CONTRARY TO PREVIOUS DECISION OF THE COMMISSIONER AND UNWARRANTED FROM THE STANDPOINT OF PUBLIC NECESSITY - APPARENT CONSIDERATION OF PUBLIC CONVENIENCE AND NECESSITY BY THE MUNICIPAL LICENSE ISSUING AUTHORITY ON THE MERITS - ISSUANCE AFFIRMED.

HERBERT J. FRANCO and)	
WILLIAM H. SWICK,)	
Appellants,)	
-vs-)	ON APPEAL
	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE)	
TOWN OF PHILLIPSBURG and)	
JACOB NUSSMAN,)	
Respondents)	
-----)	

Robert S. Meyner, Esq., Attorney for Appellants.
Sylvester C. Smith, Jr., Esq., Attorney for Board of Commissioners
of the Town of Phillipsburg.
Saul N. Schechter, Esq., Attorney for Jacob Nussman.

Each appellant, by a separate petition of appeal, appeals from the action of respondent Board of Commissioners, on October 7, 1940, in granting a plenary retail distribution license to respondent, Jacob Nussman, for premises at Union Square, Phillipsburg. At the hearing the two appeals were consolidated.

On March 11, 1940 the Commissioner entered conclusions in a prior appeal involving the same parties and Roy Huff, wherein, on the evidence then presented, he set aside and vacated an ordinance of the Town of Phillipsburg, dated August 16, 1939, which increased the number of plenary retail distribution licenses from three to five, and also cancelled and declared void the two additional licenses issued thereunder to Nussman and Huff, respectively. Franco et al. v. Phillipsburg, et als., Bulletin 392, Item 5. Thereafter, the Supreme Court, on certiorari, reversed so much of the Commissioner's order as purported to set aside or vacate the ordinance but affirmed the action of the Commissioner in cancelling the two licenses issued thereunder. Town of Phillipsburg v. Burnett, 125 N. J. L. 157 (Sup. Ct. 1940). In the opinion rendered therein, the court said:

"We think that the Commissioner, under the proofs and under his finding, based upon the proofs, that public necessity and convenience did not warrant the granting of those additional plenary retail distribution licenses, had authority to revoke the licenses."

While the proceedings were pending in the Supreme Court, respondent Board of Commissioners renewed the Nussman license for the fiscal year beginning July 1, 1940, subject to the outcome of said

proceedings. After the Supreme Court rendered its decision, Nussman surrendered his renewed license after proceedings had been instituted by this Department to cancel that license. Franco et al. v. Phillipsburg et als., Bulletin 425, Item 7. On October 7, 1940 respondent Board of Commissioners issued a new plenary retail distribution license to Jacob Nussman and it is from this action that the present appeals have been taken.

The issuance of the license considered herein did not exceed the permissible quota of five now existing by ordinance. Licenses of this type had been issued to each of the appellants and one Ghetti, and a fourth license issued on September 30, 1940 to Roy Huff.

At the hearing, the Hearer ruled that the testimony taken in the prior appeal between these parties would be considered as evidence herein, but afforded all parties an opportunity to introduce additional testimony. I am considering the evidence taken in the prior appeal and also the additional evidence taken in the present case. There appears to be no substantial change as to conditions in the Town of Phillipsburg described in the prior conclusions, with the possible exception that the industrial situation has somewhat improved since the time of the first hearing. However, additional testimony was given herein by the four members of the Board of Commissioners, who testified at the prior hearing, and by Commissioner Potts, who did not testify at said hearing. All voted in favor of the issuance of the present license. Each of these five witnesses now testify that they voted to grant the present license because public convenience warrants a distribution license at Nussman's premises; that they believe such a license will serve the needs of persons residing in the Hillcrest section of the town and the needs of the large number of people, variously estimated between 600 and 2000, who daily cross the free bridge on foot from Union Square to Easton, Pennsylvania. These Commissioners, of course, have also had the opportunity to observe conditions in the municipality during the period of more than a year, during which Nussman was operating the licensed premises pending litigation upon his first license.

Considering all the evidence, local sentiment appears to be divided with, perhaps, a preponderance of such sentiment against the existence of more than three distribution licenses. However, R. S. 33:1-19 grants to respondent Board the power to administer the issuance of retail licenses in the Town of Phillipsburg. It is only where it clearly appears that the exercise of discretion has been arbitrary or unreasonable that the Commissioner will reverse an issuing authority exercising its discretionary powers. On the evidence presented in the first appeal, the action of the Board of Commissioners appeared to have been taken without considering the question as to whether the granting of the Nussman license was consistent with the interests of the community. On the evidence herein, it amply appears that the members of the Board, before granting the present license, gave proper consideration to that question. In view of all the facts, I cannot say that, in exercising their discretionary powers, they acted unreasonably. The action of respondent Board of Commissioners is, therefore, affirmed.

Accordingly, it is, on this 27th day of March, 1941,

ORDERED, that the appeals herein be and they are hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

2. APPELLATE DECISIONS - FRANCO AND SWICK v. PHILLIPSBURG AND HUFF.

ISSUANCE OF LICENSE APPEALED AS CONTRARY TO PREVIOUS DECISION OF THE COMMISSIONER AND UNWARRANTED FROM THE STANDPOINT OF PUBLIC NECESSITY - APPARENT CONSIDERATION OF PUBLIC CONVENIENCE AND NECESSITY BY THE MUNICIPAL LICENSE ISSUING AUTHORITY ON THE MERITS - ISSUANCE AFFIRMED.

HERBERT J. FRANCO and)
WILLIAM H. SWICK,)
Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)
TOWN OF PHILLIPSBURG and)
ROY HUFF,)
Respondents.)

Robert B. Meyner, Esq., Attorney for Appellants.
Sylvester C. Smith, Jr., Esq., Attorney for Board of
Commissioners of the Town of Phillipsburg.
Louis S. Beers, Esq., Attorney for Roy Huff.

Each appellant, by a separate petition of appeal, appeals from the action of respondent Board of Commissioners, on September 30, 1940, in granting a plenary retail distribution license to respondent, Roy Huff. At the hearing the two appeals were consolidated.

The history of the prior litigation is set forth in Franco et al. v. Phillipsburg et als., decided herewith. Bulletin 452, Item 1.

While the proceedings were pending in the Supreme Court, respondent Board of Commissioners renewed the Huff license for the fiscal year beginning July 1, 1940, subject to the outcome of said proceedings. Huff surrendered this renewal license after the Supreme Court's decision was rendered and proceedings instituted by this Department to cancel that license. Franco et al. v. Phillipsburg et als., Bulletin 425, Item 7. Thereafter, on September 30, 1940, respondent Board of Commissioners issued a new plenary retail distribution license to Roy Huff, and it is from this action that the present appeals have been taken.

The question as to whether a retail liquor license should be issued rests in the sound discretion of the local issuing authority. The issue herein is whether respondent Board has abused that discretion.

Evidence, in addition to that given at the prior appeal, was given herein by respondent Roy Huff, who did not testify at the hearing of the first appeal, and by the four Commissioners, who did testify at said hearing. Each of these Commissioners and Commissioner Potts voted in favor of the issuance of the present license. The evidence given by respondent Huff shows that his premises are located in a small business district in what is known as the hill section of the Town of Phillipsburg; that this section is thickly populated; that the other distribution licenses have been issued for premises located in the flat section of the town, a considerable distance away from Huff's premises. Each of the

four Commissioners who testified stated that the issuance of the Huff license serves the convenience of people living in the hill section and results in a proper distribution of the number of licenses permissible under the terms of the ordinance. The Commissioners, of course, have had the opportunity to observe conditions in the municipality during the period of more than one year during which Huff was operating the licensed premises pending litigation upon his first license.

Had this evidence clearly appeared at the hearing on the prior appeal, the original issuance of Huff's license might well have been sustained. It now appearing for the first time, I do not believe that the action of respondent Board in issuing a license to Huff can be deemed unreasonable. The facts show that geographically it is entirely reasonable for a license to be issued for Huff's premises despite the liquor places already established in the town. The action of respondent Board of Commissioners is, therefore, affirmed.

Accordingly, it is, on this 27th day of March, 1941,

ORDERED, that the appeals herein be and they hereby are dismissed.

E. W. GARRETT,
Acting Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF PERSON CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - GUILTY PLEA, AND OTHER CHARGES BEING ADJUDICATED - 5 DAYS' SUSPENSION - FALSE STATEMENTS IN APPLICATION FOR LICENSE AND AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - GUILTY PLEA, BUT AGGRAVATED CIRCUMSTANCES - 30 DAYS' SUSPENSION - FALSE STATEMENT IN APPLICATION FOR LICENSE THAT NO ONE MENTIONED THEREIN HAD EVER BEEN CONVICTED OF CRIME - GUILTY PLEA, AND OTHER CHARGES BEING ADJUDICATED - 5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 45 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
)
 CLUB MURRAY CORPORATION,)
 1140½ Broad Street,)
 Newark, N. J.,)
)
 Holder of Plenary Retail Consump-)
 tion License C-960, issued by the)
 Municipal Board of Alcoholic)
 Beverage Control of the City)
 of Newark.)
 - - - - -)

CONCLUSIONS
AND ORDER

Saul C. Schutzman, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

Charges were preferred against the licensee alleging in substance that:

- (1) It knowingly employed Abraham Marder, alias Al Marder, who had been convicted of crimes involving moral turpitude, in violation of R. S. 33:1-26;

(2) In its application for the current license it denied that any individual other than the stockholders set forth therein had any beneficial interest, directly or indirectly, in the stock held by the stockholders, whereas in fact Abraham Marder had an interest in the stock of Anna Marder and Ernie Marder, listed as stockholders, said false statement being in violation of R.S. 33:1-25;

(3) In said application it denied that any individual other than the applicant had any interest, directly or indirectly, in the license applied for, whereas in fact Abraham Marder had such an interest, said false statement being in violation of R.S. 33:1-25;

(4) It knowingly aided and abetted Abraham Marder, a non-licensee, to exercise the rights and privileges of its license, contrary to R. S. 33:1-26 and in violation of R. S. 33:1-52;

(5) In said application it denied that any person mentioned therein had ever been convicted of any crime, whereas in fact Abraham Marder had been so convicted, said false statement being in violation of R. S. 33:1-25;

(6) In said application it falsely named Al Marder as registered agent and secretary, whereas in fact said registered agent and secretary was named Abraham Marder, said false statement being in violation of R. S. 33:1-25; *Re Case No. 135*

(7) Its licensed premises were open on December 2, 1940 at or about 3:43 A.M., in violation of local regulation;

(8) It allowed, permitted and suffered a brawl and disturbance in and upon the licensed premises on December 2, 1940, in violation of state regulation. *Re Case No. 135*

As to (1):

The corporation has pleaded guilty to the first charge. Abraham Marder, alias Al Marder, Abram Marder and Abe Marder, has been employed at the licensed premises as bartender. He has a somewhat lengthy record with the police, which need not be reviewed in detail as two of his convictions will be sufficient for our present purpose. In June of 1928 he was convicted, after pleading guilty to both charges, of passing a worthless check and of grand larceny. The first involved an attempt to obtain \$90.00 from a Newark department store. The second involved the pawning of a ring secured without payment, pending a girl friend's approval. In October of 1929 he was convicted, after apparently pleading guilty, on two charges of embezzlement. The offense involved the embezzling of constable fees from a lawyer. Passing worthless checks may or may not involve moral turpitude, depending upon the facts of the case. Re Case No. 358, Bulletin 438, Item 2; Re Case No. 356, Bulletin 435, Item 10. Grand larceny and embezzlement generally involve moral turpitude. Re Case No. 135, Bulletin 449, Item 6; Re Case No. 136, Bulletin 448, Item 3; Re Case No. 365, Bulletin 445, Item 7; Re Case No. 362, Bulletin 443, Item 10. As to the worthless check, in the light of the guilty plea and the circumstances, I would say that the element of moral turpitude was present. As regards the larceny and the embezzlement, that is surely so, for nothing whatsoever has been shown in palliation and the guilty pleas are dispositive. It is clear that Marder has been convicted of crimes involving moral turpitude. Marder's knowledge thereof as secretary of the corporation is attributable to the corporation. The corporation, in pleading guilty, has conceded that. In view of the guilty plea, and the findings on the other charges to be

hereafter made, the penalty on the first charge will be five (5) days. I consider the employment of Marder, under the circumstances, as an aggravated offense. If this charge alone were being adjudicated, the penalty would be greater.

As to (2), (3) and (4):

The corporation has also pleaded guilty to these charges. In its application for the current license, it is stated that the stockholders were Anna Marder $1\frac{1}{2}$ shares, Ernie Marder 1 share, Joseph Berger $2\frac{1}{2}$ shares. These 5 shares apparently comprise all of the outstanding stock. Joseph Berger has stated that although the license was held by the corporation, the licensed business was in fact owned and operated by himself and Abraham Marder, and the net profits were divided equally between them. It appears that the shares held by Anna and Ernie Marder were really Abraham Marder's; that consequently, Abraham Marder, who is not listed as a stockholder, actually was interested in the business; that Berger knew the application was wrong in this respect and together with the corporation knowingly aided and abetted Marder to exercise the rights and privileges of the corporation's license. This condition existed since March or April 1938. There was evidently no attempt at any distribution on the basis of the corporate set-up or stockholdings. By its guilty plea, the corporation has admitted the violation. True, full and frank disclosure has been made and the situation has apparently been corrected. But it is to be noted that both took place after the serving of the charges. Where the licensee is a front for a person with a disqualifying criminal record, a substantial penalty is indicated although, in view of the correction, it need not be revocation. See Re Luker, Bulletin 423, Item 7; Re Savoy Bar & Grill, Inc., Bulletin 422, Item 12; Re Silver Palm Corporation, Bulletin 422, Item 8. Hence a thirty (30) day suspension will be imposed on charges (2), (3) and (4).

Joseph Berger has testified that to correct the situation he borrowed \$1500.00 from his mother, Mrs. Bertha Berger, with which he acquired Anna Marder's and Ernie Marder's interests. Anna Marder has testified that she received \$900.00, and Ernie Marder has testified that he received \$600.00. Both Anna Marder and Ernie Marder testified that they have no further stockholdings or interest in the corporation. There is no substantiation that Joseph Berger borrowed \$1500.00 from his mother. There is no testimony as to the present officers, directors and stockholders. It is merely alleged that the Marders are no longer interested. Independent investigation will, therefore, be conducted with respect to these matters.

As to (5):

Abraham Marder, as heretofore appears, has been convicted of crime. Abraham Marder is the same person as the Al Marder mentioned in the license application. Consequently, the statement in the application that no one therein mentioned had been convicted of crime is false. The licensee has pleaded guilty. The suspension will be five (5) days. As aforesaid with respect to charge (1), if the adjudication were on this offense alone, the suspension would be greater.

As to (6):

Licensee pleaded not guilty as to this charge, which alleged in substance that it falsely named in its application Al Marder as registered agent and secretary, whereas in fact his true name is Abraham Marder. It appears from the evidence, however, that while the individual in question is named Abraham Marder, he has used the name

Al Marder for many years, and, since 1938, has been known solely by the latter name to Joseph Berger, who executed the application for the license on behalf of the corporation. The sixth charge is dismissed.

As to (7):

Section 1 of Ordinance No. 3930, adopted by the Board of Commissioners of the City of Newark on December 21, 1938, provides that establishments where the principal business is the sale of alcoholic beverages shall be closed on weekdays between the hours of 3:00 A.M. and 7:00 A.M. On December 2, 1940, a Monday, the premises of this licensee, the principal business of which is the operation of a tavern, were open until after 3:45 A.M. The licensee pleaded guilty with the explanation that no drinks were served after 3:00 A.M. That is immaterial. Marder's own testimony is that when the Newark police entered at about 3:45 A.M., two customers were still in the premises. Consequently the premises were open after 3:00 A.M. As to charge (7), there will be an additional suspension of five (5) days.

As to (8):

Rule 5 of State Regulations No. 20 provides that no licensee shall allow, permit or suffer in or upon the licensed premises any disturbances or brawls. That there were blows struck either in or on the street in front of the licensed premises on the morning of December 2, 1940 is clear. Whether the blows were struck in the tavern or on the street, or in both places, is not clear. The evidence is confusing. The charge was preferred on the strength of statements by two customers, on one hand, as against the bartender's, on the other, that the blows were first struck in the tavern and that the bartender was the aggressor. Only one of these two customers was available to testify at the hearing. He stated that as he left the premises, Marder, who was tending bar, jumped from behind the bar and struck his friend with his fist, after which he was also struck. The friend, although he had previously made a statement, was not available to testify. Marder's version is entirely different. He says that one of the men was using bad language, that he asked them to leave, that he escorted them to the street whereupon they started to fight, and he, in self defense, fought back, that no blows were struck, nor was there any brawl or disturbance in the tavern. Marder's testimony was corroborated by another customer, apparently disinterested, who was still on the premises when the police arrived and who testified that no fight occurred in the tavern.

Without deciding if, under other circumstances, a licensee may be held accountable for a brawl which begins on the licensed premises but is carried to a point outside of the premises, the conflicting evidence herein leads me to conclude that the burden of proof in showing that the licensee is guilty as to charge (8) has not been carried, and hence charge (8) is dismissed.

The aggregate of the foregoing suspensions is forty-five (45) days.

Accordingly, it is, on this 26th day of March, 1941,

ORDERED, that Plenary Retail Consumption License C-960, issued to Club Murray Corporation by the Municipal Board of Alcoholic

Beverage Control of the City of Newark, be and the same is hereby suspended for a period of forty-five (45) days, effective March 31, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR LICENSE THAT APPLICANT HAD NEVER BEEN CONVICTED OF CRIME - RELIANCE UPON ERRONEOUS ADVICE OF MUNICIPAL POLICE COMMISSIONER - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
GIRO DERRICO,
59 Bay Street,
Montclair, N. J.,
Holder of Plenary Retail Consumption License No. C-2, issued by the Board of Commissioners of the Town of Montclair.

CONCLUSIONS
AND ORDER

Anthony D. Appice, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.
Charles H. Hanks, Jr., Esq., Attorney for Town of Montclair.

Charge served upon the licensee alleged, in substance, that in his application for a license dated June 7, 1934, and in each subsequent application to and including his application filed for license for the present fiscal year, licensee denied that he had ever been convicted of any crime, whereas, in fact, he had been convicted of the crime of maintaining a lottery, said false statement being in violation of R. S. 33:1-25.

It appears that, on November 27, 1928, licensee pleaded non vult to the crime of maintaining a lottery and was placed on probation for three years and fined \$250.00. In Re Derrico, Bulletin 444, Item 5, it was determined that said crime did not involve moral turpitude. It appears also that in each of the applications referred to herein, Giro Derrico answered "No" to the question: "Have you *** ever been convicted of any crime?"

At the hearing herein licensee testified that, when he received his first application in 1934, he consulted the then Police Commissioner of the Town of Montclair, was told that his case had been investigated and was instructed by the Police Commissioner to answer "No" to the question: "Have you *** ever been convicted of any crime?"; that, pursuant to said instructions, he answered "No" in said application and gave the same answer to the same question in each of his subsequent applications.

On behalf of defendant-licensee, it is argued that the charge should be dismissed because of laches of the Board of Commissioners in failing to inspect the police records of the Town and in failing to take any action in 1937, when, it appears, one or more members of the Board received some information that the licensee had been convicted of a crime in 1928. I find no evidence of

laches and, in any event, the failure of the issuing authority to investigate or take action would be immaterial in the present case. The sole question to be considered herein is whether the licensee knowingly misstated any material fact in his applications. R. S. 33:1-25.

When licensee filed his first application he must have known that he had been convicted of a crime, even if he relied upon the erroneous advice of the then Police Commissioner. Such reliance cannot be considered as an excuse, although it may be considered in mitigation of the penalty. I find the licensee guilty as charged.

In fixing a penalty I am taking into consideration the fact that licensee served no time in jail as a result of his conviction, the fact that he was apparently misled by erroneous advice of the Police Commissioner in answering the question, and the further fact that his record as a licensee is clear. Under all the circumstances, I shall suspend his license for five days because of the false affidavit. Cf. Re Zaun, Bulletin 240, Item 3; Re Blanker, Bulletin 254, Item 6; Re Gulka, Bulletin 263, Item 9; Re Hearing No. 166, Bulletin 180, Item 7.

Accordingly, it is, on this 26th day of March, 1941,

ORDERED, that Plenary Retail Consumption License No. C-2, heretofore issued to Giro Derrico by the Board of Commissioners of the Town of Montclair, be and the same is hereby suspended for a period of five (5) days, effective March 31, 1941, at 6:00 A.M.

E. W. GARRETT,
Acting Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER THIRTY DAYS IF SITUATION CORRECTED - 53 DAYS ELAPSED - SITUATION CORRECTED - PETITION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

MARY B. BORETH,)
801 S. Clinton Ave.,)
Trenton, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-287,)
issued by the Board of Commissioners of the City of)
Trenton.)
- - - - -)

Leon L. Levy, Esq., Attorney for Defendant-Licensee.

Heretofore in this case I found the defendant guilty of charges showing that she held her license as a "front" for her husband, Rubin C. Boreth (who is disqualified by lack of five years' residence in this State from himself holding any retail liquor license in New Jersey - R. S. 33:1-25). I thereupon suspended the defendant's license from February 3, 1941 through the balance of its term, but with leave to petition to lift such suspension if the "front" were corrected by transfer of the license to a bona

fide purchaser and if at least thirty days of such suspension had been served. Re Boreth, Bulletin 442, Item 7.

The defendant has now submitted a verified petition requesting lifting of the suspension. However, her petition alleges, not that the license has been transferred to a bona fide purchaser, but, in sum, that the defendant is now sole and actual owner of the tavern; that her husband has conveyed all his interest in such tavern to her (a copy of such bill of sale being attached to the petition); that, in fact, her husband has, since suspension of the license, been employed as an accountant in Harrisburg, Pennsylvania; and that hereafter he will not be permitted to work or serve in any capacity whatsoever at the tavern.

The provision in the original order of suspension that such suspension would be lifted only if, among other things, the "front" were corrected by transfer of the license to a bona fide purchaser, was for the purpose of making certain that a "front" no longer existed. I was hesitant, when entering that order, to allow a correction by having the defendant's husband merely transfer his interest to the defendant, because of the danger that such might be a "fake" transfer and the husband actually continue to be the real operator of the tavern.

However, the defendant's representation that hereafter her husband will not work or serve at the tavern in any capacity convinces me of her good faith and seems an adequate guarantee against her continuing to hold the license as a "front" for him. There would, indeed, be little point in Boreth's seeking to operate the tavern under guise of the defendant if he is barred from being there to work or serve in any way whatsoever.

Hence, in view of the petition, and especially the defendant's representation therein that her husband will no longer work or serve in any capacity at the tavern, I am satisfied that the "front" has been and will remain corrected. More than thirty days (in fact almost two months) having already elapsed since the suspension became effective, the defendant's petition for immediate lifting of such suspension will be granted, but only on condition, of course, that she comply at all times with her representation as to her husband. Should he attempt any task in the tavern, however trivial, and even though as a purported favor or casual help to the defendant, her license will be subject to immediate revocation.

Accordingly, it is, on this 28th day of March, 1941,

ORDERED, that the suspension heretofore imposed in this case on the defendant's license, from February 3, 1941 through the balance of its term, be and hereby is lifted and the license restored to operation, effective immediately, on the condition and further order, likewise effective immediately, that the defendant's husband shall not work or serve at her licensed premises in any capacity whatsoever, whether gratuitously or otherwise.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - PERMITTING AN ALIEN EMPLOYEE TO SELL ALCOHOLIC BEVERAGES - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN EMPLOYEE HOLDING AN EMPLOYMENT PERMIT - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

TULLIO RAUSSE,)
2115 West Street,)
Union City, N. J.,)

Holder of Plenary Retail Consumption License C-93, issued by the Board of Commissioners of the City of Union City;)

and)

ANTONIO CRESCO,)
435 (2115) West Street,)
Union City, N. J.,)

Holder of Employment Permit No. 621, issued by the State Commissioner of Alcoholic Beverage Control.)
- - - - -)

CONCLUSIONS AND ORDER

Tullio Rausse)
Antonio Cresco) Pro Se.

Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee is charged with allowing, permitting and suffering an alien employee who is the holder of an employment permit for a person disqualified by reason of non-citizenship (to sell alcoholic beverages) in violation of Rule 3 of State Regulations No. 11. The defendant-permittee is charged with selling and serving alcoholic beverages contrary to the condition upon which his employment permit was issued. Separate pleas of guilty have been entered on behalf of both defendants. Since both proceedings have arisen out of the same sale and service of alcoholic beverages, both matters will be treated and disposed of herein.

The investigation file shows that, on March 4, 1941, two Department agents entered the licensed premises of the defendant-licensee, where they were each served a glass of wine with a meal by Antonio Cresco, an alien holder of an employment permit for a person disqualified by reason of non-citizenship; that later they proceeded to the bar where the said alien was tending bar and they were each again served a glass of wine. Also on the premises was the defendant-licensee, to whom the investigators disclosed their identity. He informed the investigators that Cresco was an elderly person who was given a home by him; that he, the licensee, on occasion permitted Cresco to serve alcoholic beverages, and, under the circumstances, did not consider the practice a serious violation.

The licensee is strictly accountable for the actions of his employees. Nor does ignorance of the law afford any excuse. Licensees and their employees must know the rules and scrupulously adhere to them.

It appears further that the violation is not an isolated instance but that the alien permittee made, and was permitted to make, a practice of selling alcoholic beverages.

The minimum penalty for this violation, in so far as the defendant-licensee is concerned, is five days. In so far as the defendant-permittee is concerned, under similar circumstances the penalty of thirty days has been heretofore imposed. Re Societa Di Mutuo Soccorso Guglielmo Marconi and Cosimo Lubriano, Bulletin 451, Item 6.

By the entry of the guilty pleas, the Department has been saved the time and expense of proving its case. Two days of the penalty imposed on the licensee and five days of the penalty imposed on the permittee will, therefore, be remitted.

Accordingly, it is, on this 28th day of March, 1941,

ORDERED, that Plenary Retail Consumption License C-95, heretofore issued to Tullio Rausse by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of three (3) days, effective April 2, 1941, at 3:00 A.M.; and it is further

ORDERED, that Employment Permit No. 621, heretofore issued to Antonio Cresco by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, effective April 5, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

7. EDUCATIONAL CAMPAIGN

April 1, 1941

Addresses by members of the Department during the period January 1, 1941 to March 31, 1941, and the organizations before which appearances were made:

1941

Jan.

3	Long Branch Rotary Club	Sydney B. White
6	Williamstown Rotary Club	Frank M. Middleton
7	South Amboy Rotary Club	Sydney B. White
7	Presbyterian Brotherhood of Newton	Judiah Higgins
7	Newark Tavern Association, Inc.	Earle W. Garrett
8	N. J. Institute of Wine and Spirit Distributors	Earle W. Garrett
8	Carteret Liquor Dealers' Association	David J.H. Murray
9	Perth Amboy Exchange Club	David J.H. Murray
9	Women's Club of Clementon Borough	Bayard M. Sullivan
9	Penns Grove Rotary Club	Frank M. Middleton
13	Lambertville Kiwanis Club	Hobart B. Poole

1941
Jan.

13	Men's Club of St. Paul's Lutheran Church, Elizabeth	John E. Shafto
14	Asbury Park Lodge No. 128, B.P.O.E.	David J.H. Murray
15	Men's Brotherhood of the Methodist Church, Newton	Earle W. Garrett
15	Y's Men's Club, Moorestown	Frank M. Middleton
15	Asbury Park Rotary Club	William S. Codd
16	Gloucester County Firemen's Association	Frank M. Middleton
20	Moorestown Junior School Assembly	Bayard M. Sullivan
20	Business & Professional Women's Club, Morristown	Stanton J. MacIntosh
20	Bartenders' Union, Local 131, A.F. of L., Newark	Sydney B. White
22	Rutherford Lions Club	Erwin B. Hock
22	Morristown Rotary Club	Charles Basile
23	New Brunswick Junior Chamber of Commerce	Charles Basile
23	Morris Guards, Atlantic City	James F. McTighe
24	Licensees in neighborhood of Fort Dix, Wrightstown	Earle W. Garrett
27	Berlin Rotary Club	Frank M. Middleton
28	Trenton Post No. 93, American Legion	John P. Tomaini
28	Belvidere Rotary Club	Judiah Higgins
28	Princeton Lions Club	Stanton J. MacIntosh
28	Joint meeting of East Side and West Side Improvement Associations, Rutherford	Joseph A. Hemsley
28	Morristown Exchange Club	Stanton J. MacIntosh
30	Perth Amboy Lions Club	Hobart B. Poole
30	Asbury Park Kiwanis Club	Richard E. Silberman
30	Hackensack Kiwanis Club	Edward Lurie

Feb.

3	Lakewood Rotary Club	Hobart B. Poole
3	Princeton Shrine Club	Charles Basile
3	Catholic Daughters of America, No. 380, Asbury Park	John P. Tomaini
4	Roselle Park Royal Arcanum	Samuel Kaufman
4	Freehold Rotary Club	John E. Shafto
5	Atlantic City Exchange Club	David J.H. Murray
5	Passaic County Republican League	Stanton J. MacIntosh
6	Swedesboro Kiwanis Club	William M. Brooks
6	Harold N. Halsted Post No. 430, Veterans of Foreign Wars, Somerville	Louis B. Lippitt
6	Glassboro Rotary Club	Bayard M. Sullivan
10	American Legion Post No. 59, Morristown	William S. Codd
10	Rutherford Baptist Church	James N. Clinch
10	Elks Club of Elizabeth	Charles Basile
11	Asbury Park Women's Republican Club, Inc.	Hobart B. Poole
12	South River Lions Club	John E. Shafto
12	Women's Christian Temperance Union, Rockaway	William S. Codd

1941
Feb.

12	Clementon Lions Club	William M. Brooks
12	Elizabeth Rotary Club	David J. H. Murray
12	Affiliated Republican Women, Asbury Park	Hobart B. Poole
13	Cumberland County Association of Township Committeemen	Frank M. Middleton
13	Frenchtown Lions Club	Horace Roxbury
13	Metuchen Council No. 1673 Royal Arcanum	William S. Codd
13	Hackensack Exchange Club	Edward Lurie
14	Elizabeth Old Guard	Sydney B. White
16	Hudson-Bergen Retail Liquor Stores Association	Earle W. Garrett
17	American Legion Post No. 24, Asbury Park	David J.H. Murray
18	Century Lodge No. 100, F.&A.M., South Orange	Charles M. Kenney
19	Milltown Lions Club	John E. Shafto
19	State Beverage Distributors Association	Erwin B. Hock
20	Hoboken Kiwanis Club	Emerson A. Tschupp
20	Spirit Salesman's Club of Atlantic County	Simon Lippman
20	Women's Christian Temperance Union, Madison	Earle W. Garrett
21	Women's Christian Temperance Union, Boonton	Richard E. Silberman
24	Princess Marie Jose Lodge No. 1897, Order Sons of Italy in America, Asbury Park	Charles Basile
25	Men's Club of Elmora Presbyterian Church, Elizabeth	Alfred Beck
26	Teaneck Rotary Club	Stanton J. MacIntosh
26	Parent Study Group of Roselle Park P.T.A.	John E. Shafto
27	Hackensack Rotary Club	Erwin B. Hock

Mar.

3	N. J. Emblem Club No. 72, Lyndhurst	Erwin B. Hock
4	Elizabeth Lions Club	Richard E. Silberman
4	Progress Club of Elizabeth	Samuel Kaufman
5	Forum Club of Raritan Township	David J. H. Murray
6	Elizabeth Kiwanis Club	Stanton J. MacIntosh
6	Passaic Lions Club	Sydney B. White
6	Men's Hebrew Association, Englewood	Edward Lurie and Philip Finzel
10	Bridgeton Ministerial Association	Roscoe C. Lockwood
11	Lakewood Kiwanis Club	David J. H. Murray
13	Belleville Lions Club	Stanton J. MacIntosh
13	North Hudson Lions Club, Union City	Edward Lurie
17	Men's Club of Grace Episcopal Church, Rutherford	Robert Higginbotham
18	Salem Exchange Club	Bayard M. Sullivan
19	Samaritan Lodge No. 98, F. & A.M., Sussex	Stanton J. MacIntosh
19	Contemporary Junior Woman's Club, Lyndhurst	Maurice E. Ash
20	Merchantville Lions Club	William M. Brooks

1941

Mar.

- 21 Rutherford Rotary Club Erwin B. Hock
- 23 South Jersey Retail Liquor Dealers Association Earle W. Garrett
- 24 Westwood Rotary Club Maurice E. Ash
- 25 North Hudson Exchange Club, Union City Stanton J. MacIntosh
- 27 Westville Republican Club Bayard M. Sullivan
- 27 New Jersey Licensed Beverage Association, Sussex County Division #38 Earle W. Garrett
- 28 Phalanx Fraternity, Lyndhurst Joseph A. Hemsley

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8. DISCIPLINARY PROCEEDINGS - CONDUCT OF LICENSED BUSINESS DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - PERSONS OTHER THAN EMPLOYEES ON THE PREMISES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

KATHERINE P. PENDERGAST, T/a Little Oaks, 440 - 57th St., West New York, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-56 issued by the Board of Commissioners of the Town of West New York.)

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Katherine P. Pendergast, Pro Se. Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that on March 8, 1941 she (1) conducted her licensed business and (2) allowed persons other than herself, her actual employees and agents in and upon the licensed premises after 4:00 A.M., in violation of a resolution adopted by the Board of Commissioners of the Town of West New York on July 11, 1939.

The Department file discloses that, at 4:00 A.M. on March 8, 1941, the outside lights of the licensed premises were extinguished and the front door was locked. At this time sixteen patrons, in addition to two Department investigators, were in the premises drinking alcoholic beverages. Between 4:00 A.M. and 4:35 A.M., at which time the investigators identified themselves to the licensee, several patrons came and left, and all, including the investigators, were served alcoholic beverages. Twenty-two patrons were present when the investigators identified themselves and ordered the premises cleared. The licensee frankly admitted the violation when questioned by the investigators, and offered no excuse therefor. In fact there can be no excuse. Re Grande, Bulletin 442, Item 4. "Clock watching" is usually frowned upon in business. However, when that business is the maintenance of a retail liquor establishment, "clock watching" is not only a virtue - it is an essential.

The minimum penalty for each violation is five days, making a total of ten days. Re Belmont Tavern, Inc., Bulletin 451, Item 1. In view that this is the licensee's first offense of record, that penalty will be imposed.

By entering a guilty plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 1st day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-56, heretofore issued to Katherine P. Pendergast, T/a Little Oaks, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for five (5) days, effective April 7, 1941, at 4:00 A.M.

E. W. Garrett

Acting Commissioner.