

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

BULLETIN 832

FEBRUARY 10, 1949

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1. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES TRANSPORTED BY HUSBAND IN MOTOR VEHICLE OWNED BY HUSBAND AND WIFE - WIFE WITH ACTUAL OR PRESUMED KNOWLEDGE OF HUSBAND'S WRONGDOING - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED FORFEITED - TOOLS OF TRADE RETURNED TO HUSBAND.

In the Matter of the Seizure on ) Case No. 7311  
August 13, 1948, of 14 one-gallon )  
jugs of alcohol and a Plymouth )  
sedan, in the vicinity of the ) ON HEARING  
Medford Traffic Circle, on Route ) CONCLUSIONS AND ORDER  
20, in the Township of Medford,  
County of Burlington and State of )  
New Jersey. )  
----- )  
Dorothy Perry and Jessie Perry, Pro Se.  
Harry Castelbaum, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 14 one-gallon jugs of alcohol and a Plymouth sedan, described in a schedule attached hereto, seized on August 13, 1948 in the vicinity of Medford Traffic Circle on Route 20 in Medford, N. J., constitute unlawful property and should be forfeited.

It appears that New Jersey State Troopers stopped the aforesaid car at about 3:30 a.m. on the day in question to check on the activities of the five men who were in the car. The troopers found three burlap bags, containing 14 one-gallon jugs of alcohol, in the trunk of the car. The jugs did not bear any tax stamps or labels.

The troopers detained the car, and notified the State Department of Alcoholic Beverage Control. ABC agents arrived on the scene shortly thereafter and took possession of the car and alcohol. The five men, including Jessie Perry, who was driving the car, were arrested on charge of violating the Alcoholic Beverage Law.

The alcohol was analyzed by the Department's chemist, who reports that it is alcohol and water fit for beverage purposes with an alcohol content of 48% by volume.

The alcohol is prima facie illicit because of the absence of any labels or tax stamps or other indicia of tax payment on the jugs. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the Plymouth sedan in which it was being transported are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Dorothy Perry and her husband, Jessie Perry, the registered owners of the motor vehicle, appeared and sought its return. They did not oppose forfeiture of the alcohol.

Jessie Perry, who resides in Philadelphia, testified that he purchased the alcohol from a man whom he met for the first time in a tavern at Lakewood; that he drove to an isolated wooded location with the aforesaid person where the latter brought the jugs of alcohol to the car, and that he then picked up his companions and was on his way to Philadelphia, where he intended to sell the alcohol, when stopped by the State Police. This is substantially the same story he gave when arrested.

It is obvious that so many years after Repeal, Perry knew or should have known that it was unlawful to purchase alcoholic beverages in such a furtive manner and under such suspicious circumstances, especially since in his home state consumers may purchase alcoholic beverages only in a state operated store. Therefore, Perry cannot obtain relief from forfeiture because he did not unknowingly violate the law of this state. See R. S. 33:1-66(e).

Dorothy Perry claims that she knew nothing whatsoever concerning her husband's unlawful activities. However, husband and wife each may be presumed to know of the other's misdeeds. See Seizure Case No. 4563, Bulletin 367, Item 3, Seizure Case No. 6965, Bulletin 750, Item 3, Seizure Case No. 7066, Bulletin 757, Item 8, Seizure Case No. 7161, Bulletin 784, Item 3. This is a logical consequence of the normal relations between husband and wife. Mrs. Perry testified that on the day in question her husband told her he was going somewhere, without naming any specific place. I do not believe that he embarked on his illegal enterprise, carrying over \$200.00, which he paid for the bootleg alcohol (a sum, according to both of them, much larger than the usual amount on hand), without Mrs. Perry having any knowledge thereof whatsoever. Hence, since I find that she knew, or should have known, of her husband's illegal activities, I must deny Mrs. Perry's request for return of the motor vehicle.

It appears that Jessie Perry's tool chest and tools were in the car when seized. He says that he needs his tools to earn a living, has no resources to purchase new ones, and is presently forced to borrow tools. The tools will be returned to him. See Re Arrico, Bulletin 158, Item 3.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, excepting the tool chest and tools, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the State Director of Alcoholic Beverage Control.

ERWIN B. HOCK  
Director.

Dated: January 21, 1949.

SCHEDULE "A"

- 14 - 1-gallon jugs of alcohol
- 1 - Plymouth sedan - Serial #10256790,  
Engine #4243611, Penn. 1948 Reg. 3RP75

2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IMPORTED WITHOUT PAYMENT OF TAX - BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO OWNER-DRIVER WHO DID NOT KNOWINGLY PARTICIPATE IN VIOLATION.

In the Matter of the Seizure on )  
October 22, 1948 of seven bottles )  
of alcoholic beverages and a Mercury )  
sedan at the intersection of )  
Washington and Morgan Streets, in )  
the City of Jersey City, County of )  
Hudson and State of New Jersey. )

Case No. 7335

ON HEARING  
CONCLUSIONS AND ORDER

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Horace Davis, Esq., Attorney for North Jersey Finance Service of Jersey City.

John Cupo, Pro Se.

Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether seven bottles of alcoholic beverages and a Mercury sedan, described in a schedule attached hereto, seized on October 22, 1948 at the intersection of Washington and Morgan Streets, in Jersey City, constitute unlawful property and should be forfeited.

The facts, as admitted by all parties hereto, are that Jersey City police officers suspected that the motor vehicle in question was being used in some unlawful activity (not necessarily liquor) in and around waterfront piers, and had such vehicle under surveillance on the day in question. Officers followed the car as it left one of the piers and questioned its occupants, John Cupo, owner and driver of the car, and Anthony Cupo, John's brother, when it stopped after having been driven a short distance. Anthony Cupo had left the car, carrying three bottles of a foreign brand of liquor. Four other bottles of liquor of the same brand were in the car.

John Cupo told the officers that he did not know that the liquor was in his car until after he left the pier, when he heard the rattle of bottles in the car. He told the officers that his brother then informed him that he had obtained the liquor from a ship. Anthony Cupo likewise told the officers that he had purchased the liquor from a member of a crew of a ship.

The officers seized the car and liquor and arrested John Cupo and Anthony Cupo apparently because the officers concluded that a violation of the United States Customs Laws was involved. The United States Customs authorities were notified and the car and liquor were turned over to the State Department of Alcoholic Beverage Control.

The seven 4/5 quart bottles contained rum of Brazilian manufacture, fit for beverage purposes, and with an alcohol content of 47.0% by volume. These bottles did not bear any stamps or other indication of payment of tax to the Federal government. These alcoholic beverages were therefore prima facie illicit. R.S. 33:1-1(i), R.S. 33:1-88. In this connection, it is to be noted that the United States Customs authorities were paid \$35.00 as a penalty for the illegal landing of the alcoholic beverages

Illicit alcoholic beverages, and the vehicle in which they are transported, are subject to seizure and forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, John Cupo appeared and sought return of the car. Counsel entered an

appearance for the North Jersey Finance Service of Jersey City, which sought recognition of its alleged lien claim against the motor vehicle. No one opposed forfeiture of the rum.

John Cupo testified that he is 26 years of age and has been employed at times as a stevedore, at other times in various industrial plants, and is presently employed as a salesman on a commission basis; that whatever savings he accumulated in the past are now gone and that, without his car, he is severely handicapped in carrying on his current employment.

His story of the events of the day of the seizure is that he drove to the pier in the course of his employment, accompanied by his brother, who is a stevedore. When they arrived at the pier, each went their separate ways. When John returned to the car, his brother and another man were seated therein. John then drove away, heard the bottles rattle, and was accosted by the police shortly thereafter. He says that he did not think that there was anything illegal in the transaction.

Neither John Cupo nor Anthony Cupo have any previous record of violating the liquor laws.

I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law. R.S. 33:1-66(e).

There is nothing to indicate that John Cupo participated in, or had any interest in, the purchase of the seven bottles of rum. There is nothing in his brother's background to indicate a tendency to violate the liquor laws. I accept John Cupo's story and find that he acted in good faith and violated the law unwittingly. Hence, the car will be returned to him.

The car, when returned, will be available to any person who has a lien claim thereon for such proceedings as they may care to pursue. Therefore, it is not necessary to decide in these proceedings whether the North Jersey Finance Service of Jersey City has a valid lien on the motor vehicle.

Accordingly, it is DETERMINED and ORDERED that if on or before the 7th day of February, 1949, John Cupo pays the costs of seizure and storage of the Mercury sedan, it will be returned to him; and it is further

DETERMINED and ORDERED that the seven bottles of rum listed in Schedule "A" attached hereto constitute unlawful property, and that the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the State Director of Alcoholic Beverage Control.

ERWIN B. HOCK  
Director.

Dated: January 26, 1949.

SCHEDULE "A"

- 7 - bottles of alcoholic beverages
- 1 - Mercury sedan, Engine No. 99-A-17491,  
N. J. 1948 Reg. HH-71-Y

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

SPARROW CIGAR CO., INC. )  
124-6 Washington Street )  
Hoboken, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-28 issued by the Board of Commissioners of the City of Hoboken. )

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Defendant-licensee, by Philip Slutzky, President.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads non vult to a charge of selling two one-gallon jugs of Fior Di California Burgundy Scelto wine below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

The file herein discloses that on December 9, 1948, an ABC agent purchased from a clerk employed by defendant two gallons of the wine mentioned in the charge for the sum of \$4.25, whereas the Fair Trade price for this brand of wine was \$2.35 per gallon. See Bulletin 814.

The defendant's record is clear except that on February 3, 1947, the corporation's license was suspended for a period of ten days, less five days for a plea, after it had pleaded non vult to a similar violation. See Bulletin 748, Item 4. It appears that the present stockholders were not involved in the previous violation since they took over the entire stock and operation of the corporation some nine months after the above violation had occurred, namely, on October 21, 1947. Furthermore, the record is barren of any evidence or indication of improper design or motivation in connection with the present members' acquisition of the corporate stock. Under the circumstances I conclude that the penalty to be imposed herein should not be increased because of the prior record. Cf. Re Italian Kitchens, Inc., Bulletin 535, Item 10. There appear to be no aggravating circumstances and, in the absence thereof, I shall impose the usual minimum suspension of ten days, less five days for the plea.

Accordingly, it is, on this 31st day of January, 1949,

ORDERED that Plenary Retail Distribution License D-28, issued by the Board of Commissioners of the City of Hoboken to Sparrow Cigar Co., Inc., for premises 124-6 Washington Street, Hoboken, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. February 7, 1949, and terminating at 9:00 a.m. February 12, 1949.

ERWIN B. ROCK  
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

IRENE FLOR, ADMINISTRATRIX OF THE ESTATE OF CORNELIUS J. FLOR 527 Ocean Avenue Jersey City 5, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-27, issued by the Board of Commissioners of the City of Jersey City. )

Irene Flor, Administratrix, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that she sold alcoholic beverages for a price below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On January 20, 1949, an investigator of the Division of Alcoholic Beverage Control purchased a 52-ounce "Silver Noggin" of Schmidt's Philadelphia Light Beer for the sum of 35¢ from a clerk in charge of defendant's licensed premises. The effective minimum consumer price for said merchandise is 37¢. Bulletin 825.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period for Fair Trade violations, ten days. Re Block & Meyers, Bulletin 800, Item 12. Remitting five days thereof because of the plea will leave a net suspension of five days.

Accordingly, it is, on this 4th day of February, 1949,

ORDERED that Plenary Retail Distribution License D-27, issued by the Board of Commissioners of the City of Jersey City to Irene Flor, Administratrix of the Estate of Cornelius J. Flor, 527 Ocean Avenue, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. February 14, 1949, and terminating at 9:00 a.m. February 19, 1949.

ERWIN B. HOCK Director.

5. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE - CONCEALING MATERIAL FACT (DISQUALIFYING CRIMINAL RECORD) - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH PERMISSION TO QUALIFIED PERSON TO APPLY FOR LIFTING UPON EXPIRATION OF 90 DAYS.

In the Matter of Disciplinary Proceedings against )

ARTHUR J. VALLERY )  
T/a VALLERY TAVERN )  
455 Valley Brook Avenue )  
Lyndhurst, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Township of Lyndhurst. )

Arthur J. Vallery, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he falsely answered "No" to Question 33 in his application for his current license, in violation of R. S. 33:1-25.

In 1934, defendant was convicted in a Criminal Judicial District Court of burglary and larceny, undoubtedly a crime involving moral turpitude. He was sentenced to six months in a County Jail but sentence was suspended. In May, 1948, he filed his application for his current license. In answering the questions in said application, he answered "No" to Question 33, which asks: "Have you...ever been convicted of any crime?". There is some evidence to the effect that the local issuing authority at the time of the granting of the license had been informed of the conviction by a police report. However, any person convicted of a crime involving moral turpitude is ineligible to hold a liquor license in this state. See R.S.33:1-25. Defendant cannot hold such a license until and unless his disqualification is removed, as provided by statute. See R. S. 33:1-31.2. Defendant has filed a petition under the provisions of said statute. I have not yet completed my investigation into the merits of his said application.

I cannot permit the unlawful situation to continue. Under the circumstances, the license will be suspended for the balance of its term, with leave reserved to a qualified person to apply for a lifting of said suspension after the expiration of ninety days from the effective date of the suspension herein. See Re Lorusso, Bulletin 670, Item 2; Re Case No. 350, Bulletin 670, Item 3.

This disposition renders it unnecessary to pass upon the cancellation charge served at the same time as the disciplinary charge herein, which therefore is dismissed.

Accordingly, it is, on this 4th day of February, 1949,

ORDERED that Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Township of Lyndhurst to Arthur J. Vallery, t/a Vallery Tavern, 455 Valley Brook Avenue, Lyndhurst, be and the same is hereby suspended for the balance of its term, effective 2:00 a.m. February 10, 1949; and it is further

ORDERED that any properly qualified person may apply to me, prior to June 30, 1949, for a lifting of the suspension, but in no event will such suspension be lifted prior to the expiration of ninety days from the effective date of the suspension herein.

ERWIN B. HOCK  
Director.



6. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 90 DAYS AND CORRECTION OF ILLEGAL SITUATION - TRANSFER OF LICENSE GRANTED BY MUNICIPAL ISSUING AUTHORITY PRIOR TO ORDER OF SUSPENSION - UNDUE HARDSHIP UPON TRANSFERREES - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 45 DAYS AFTER EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against )

CARMEN M. BALLETTA and CHARLES ROMANO 660 First Street Hoboken, N. J., )

ON PETITION ORDER

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Holders of Plenary Retail Consumption License C-215 issued by the Board of Commissioners of the City of Hoboken. )

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Joseph V. Riggio, Esc., Attorney for Petitioners, Daniel Weiss and Anna Brezinski.

BY THE DIRECTOR:

On December 27, 1948, I suspended defendants' license for the balance of its term, effective at 2:00 a.m. January 3, 1949, after they had pleaded non vult to a charge alleging, in effect, that they had failed to disclose in their application that Carmen M. Balletta had been convicted of a crime. See Bulletin 827, Item 6. In said Order it was provided that a bona fide transferee of the license might apply to me for a lifting of the suspension after at least ninety days of the suspension had been served.

Daniel Weiss and Anna Brezinski have filed a verified petition wherein they set forth that on December 21, 1948, the Board of Commissioners of the City of Hoboken had transferred the license in question from the defendants above named to the petitioners, Daniel Weiss and Anna Brezinski.

The petition further sets forth that the petitioners paid valuable consideration for the purchase of the business, and that they were never apprised that any disciplinary proceedings were pending against the defendants herein until December 28, 1948, which was subsequent to the time they purchased the business and obtained a transfer of the license. Petitioners further allege that a closing down of the premises for a period of three months would cause irreparable harm and damage to them.

From the facts set forth in verified petition I conclude that the petitioners purchased the business without notice of the pending disciplinary proceedings. They were negligent because, if an inquiry had been made at this Division, they could easily have ascertained that the proceedings were pending. However, they appear to have acted in good faith and, under all the circumstances, I shall grant them relief after a period of forty-five days has expired from the effective date of the suspension.

Accordingly, it is, on this 4th day of February, 1949,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-215, issued by the Board of Commissioners of the City of Hoboken, be restored to full force and operation, effective February 16, 1949, at 2:00 a.m. Until that time the license remains under suspension.

ERWIN B. HOCK  
Director.

## 7. APPELLATE DECISIONS - COHEN v. EGG HARBOR TOWNSHIP AND BURCH.

HYMAN COHEN,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP  
OF EGG HARBOR, and ALFONSO F. BURCH,

Respondents.

ON APPEAL  
CONCLUSIONS AND ORDER

William Charlton, Esq., Attorney for Appellant.  
 Harry Souchal, Esq., Attorney for Respondent Township Committee.  
 Coulomb, McAllister & Hunter, Esqs., by Robert N. McAllister, Esq.,  
 Attorneys for Respondent Alfonso F. Burch.

BY THE DIRECTOR:

This is an appeal from the respondent Township Committee's renewal of a plenary retail consumption license for the license year ending June 30, 1949, to the respondent Burch.

On June 24, 1947, the Township Committee transferred a plenary retail consumption license, expiring June 30, 1947, from one Stanley V. Smith to the partnership of the appellant Hyman Cohen and the respondent Alfonso F. Burch; and from premises on Northfield-Margate Boulevard to premises at the Southeast Corner of West Jersey and Mulberry Avenues. On the same date, June 24, 1947, the license was renewed to the said partnership for the license year ending June 30, 1948.

Some time in July, 1947, Cohen and Burch started the operation of their tavern business at the indicated premises. Their right of possession was by virtue of a lease for one year, expiring June 11, 1948, between the partnership and one Samuel J. Burch. In November, 1947, because of difficulties between the partners, operation of the business was discontinued.

On June 16, 1948, the respondent Burch filed an application for a renewal of the license to himself alone.

On June 24, 1948, after publication of Notices of Application by Burch, Cohen filed an application for a renewal of the license in his name alone and for a place-to-place transfer. The application had attached to it a separate paper which purported to be a "consent to transfer" signed by Burch. Cohen also filed formal objection to the issuance of the renewal license to Burch. At a hearing on the objection, held July 1, 1948, Cohen, by his attorney, objected to the issuance of the license to Burch on the ground that Burch, having consented to a transfer of the license, no longer had any interest therein and, therefore, that renewal thereof to Burch was improper. At the conclusion of the hearing on the objection, the Township Committee adopted a resolution determining that Hyman Cohen was not a resident of New Jersey and that he had abandoned the licensed premises and had no present right of possession in the licensed premises; that Burch was in sole possession of the premises (by virtue of a new lease, the old one having expired); and that Burch "is entitled to the renewal of said license".

A partnership license may be "renewed" in the name of an individual surviving partner. As stated in Re Nordheim, Bulletin 310, Item 7: "...the remaining partner who is continuing that business may, if he has the right to immediate exclusive possession of the premises now licensed, obtain a license for the new term in his own name, and such a license constitutes a 'renewal' of the original

license for the purpose....of a municipal ordinance limiting the number of plenary retail consumption licenses except as to 'renewals'. Ordinarily, for the purpose of such renewals, there must be exact identity of person between the holder or holders of the original and of the succeeding licenses. However, there is sufficient identity when the original license was held by partners, one of whom, after dissolution of the partnership, is continuing the business and seeks the successive license."

No action was taken on Cohen's application, obviously for the reason, as found in the indicated resolution, that he was not a resident of New Jersey.

Appellant appeals for the stated reasons in addition to a further reason, advanced at the hearing below, that Burch was not entitled to the license because of certain alleged contracts between Burch and Cohen and on the grounds that Burch was a party to fraud involving the transfer of the license to the partnership.

The alleged consent which was signed in June, 1947 and attached to Cohen's application for renewal is not binding as such. As I understand the evidence in the matter, the detached, undated "consent" was signed before the license it purported to affect had been transferred to the partnership of Cohen and Burch at a time when Burch had no license to transfer. See Grace v. Egg Harbor Township, Bulletin 403, Item 9; Norton v. Union, Bulletin 709, Item 5.

It further appears that the local issuing authority's finding that Cohen was not a resident of New Jersey at the time he filed his application, and that he had theretofore abandoned his interest in the original license issued to the partnership, is well supported by the evidence. As hereinabove remarked, in November 1947 difficulties developing between the partners caused the licensed business to be discontinued. In December 1947 Cohen secured employment with the Continental Distilling Corporation in Philadelphia, and apparently is still employed there. Continental is the holder of a New Jersey wholesale liquor license. Its employees are not eligible to have any interest in a retail liquor license in New Jersey. R. S. 33:1-43. During the winter 1947-48, and continuing apparently through the spring, and even on the date of the hearing herein, Cohen and his family (his wife) apparently lived in Philadelphia making weekend trips to his seashore property, a small bungalow, when road conditions permitted. Cohen voted at a primary election in Philadelphia on April 27, 1948, after signing and filing a certificate that he was qualified to vote at said election. I cannot disturb the finding of the respondent Township Committee to the effect that Cohen was not a resident of New Jersey at the time he filed his application. And R.S. 33:1-25 provides that no retail license shall be issued to one who is not a resident of this state.

I find in the record before me no probatory evidence that Burch was a party to any fraud on the local issuing authority.

The real dispute in the matter appears to be a personal one between Burch and Cohen and appears to involve a contractual relationship between said parties -- issues not within the jurisdiction of the municipal issuing authority or of the Director of the Division of Alcoholic Beverage Control. Cf. Norton v. Union, supra.

A careful consideration of all the facts and circumstances leads me to conclude that the appellant has failed to sustain the burden of proof to establish that the respondent Township Committee abused its discretionary power in granting the renewal to Burch. The evidence in the record before me supports the Committee's action and, therefore, I am constrained to affirm, and do affirm, that action.

Accordingly, it is, on this 7th day of February, 1949,

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

ERWIN B. HOCK  
Director.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

LUCY LAMORGES & ANGELINA RUINA )  
178 Main Street )  
West Orange, N. J., )

CONCLUSIONS  
AND ORDER

----- )  
Holders of Plenary Retail Consump- )  
tion License C-20, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the Town of )  
West Orange. )

Leo J. Berg, Esq., Attorney for Defendant-licensees.  
William F. Wood, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants plead non vult to a charge alleging that, on January 14, 1949, they possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle of "Canadian Club Blended Canadian Whisky", which was not genuine as labeled, in violation of R. S. 33:1-50.

On January 14, 1949, an ABC agent seized the bottle in question when his field tests disclosed that the contents of said bottle were not genuine as labeled. Subsequent analysis of the contents of the bottle by the ABC chemist disclosed differences in characteristics between the alcoholic beverages described on the label and that contained in the bottle.

Defendants have no previous adjudicated record. I shall, therefore, suspend their license for a period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Grandinetti, Bulletin 774, Item 2.

Accordingly, it is, on this 8th day of February, 1949,

ORDERED that Plenary Retail Consumption License C-20, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to Lucy Lamorges & Angelina Ruina, for premises 178 Main Street, West Orange, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. February 14, 1949, and terminating at 2:00 a.m. February 24, 1949.

ERWIN B. HOCK  
Director.

## 9. APPELLATE DECISIONS - GUYER v. WOODLAND TOWNSHIP.

SAMUEL W. GUYER,	)	
	)	
Appellant,	)	
-vs-	)	ON APPEAL
TOWNSHIP COMMITTEE OF THE	)	CONCLUSIONS AND ORDER
TOWNSHIP OF WOODLAND (Burlington	)	
County),	)	
	)	
Respondent	)	

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Howard G. Stackhouse, Esq., Attorney for Appellant.

Lester A. Drenk, Esq., Attorney for Respondent.

William T. Cahill, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The appellant appeals from the denial of his application for a plenary retail distribution license for the fiscal year 1948-49 for premises to be erected on the southwest side of New Jersey State Highway, Route S-40, Woodland Township. Plans and specifications were filed with the application. Re Harris, Bulletin 183, Item 11.

The minutes of the meeting at which the application was considered disclose that the denial thereof was by the vote of two of the members of the respondent Township Committee, the third member of the Committee being absent. The minutes reveal that a petition was presented to the Committee containing the names of taxpayers, residing in the township, who were opposed to the issuance of an additional license.

The evidence adduced for the appellant on the question of public necessity and convenience is confined solely to the appellant's own testimony. He testified that there is no plenary retail distribution license in existence in the township; that the site of the proposed premises is on a main highway and is located at a considerable distance from other buildings of any type; that there are three plenary retail consumption licensed premises within two and a half miles of the appellant's proposed premises, one of the three being located within a mile therefrom.

Several objectors testified that in their opinion there was no public need or convenience to be served by the issuance of another alcoholic beverage license in the township. Six plenary retail consumption licenses are outstanding in Woodland which had a population, according to the 1940 Federal census, of 1,374.

The weight to be given the petition against issuance of the license applied for lay within the respondent's sound discretion. See Schuttenberg v. Keyport, Bulletin 327, Item 3, and bulletin items cited therein.

The evidence falls short of proving that the public convenience and necessity require the granting of the appellant's application. Upon an examination of the entire record I cannot find that the appellant has sustained the burden of proving that the respondent's denial of the application constituted an abuse of discretion or that its determination is so arbitrary and unreasonable that it cannot be permitted to stand. Cf. Iacovone v. Gloucester Township, Bulletin 644, Item 4. The action of the respondent is, therefore, affirmed.

Accordingly, it is, on this 7th day of February, 1949,

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

ERWIN B. HOCK  
Director.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - SEASONAL LICENSE EXPIRED, SUBSEQUENT ORDER TO BE ENTERED FIXING EFFECTIVE DATE OF SUSPENSION WHEN SAID LICENSE RENEWED.

In the Matter of Disciplinary Proceedings against )

VINCENT PETER MCCARTHY )  
T/a THE ALOHA )  
15th Ave. & Ocean Ave. )  
Belmar, N. J., )

CONCLUSIONS AND ORDER

Holder of Seasonal Retail Consumption License CS-6, issued by the Board of Commissioners of the Borough of Belmar. )

----- )  
Vincent Peter McCarthy, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that, on September 7, 1948, he possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle of "Seagram's V. O. Canadian Whisky A Blend", which was not genuine as labeled, in violation of R. S. 33:1-50.

The usual penalty for this one-bottle violation is a suspension for a period of fifteen days, less five days for the plea, leaving a net suspension of ten days. Re Weinmann, Bulletin 830, Item 2.

The defendant held a seasonal retail consumption license at the time of the violation, and such license expired on November 1, 1948. See R. S. 33:1-12(2). Since the defendant presently is not the holder of any liquor license, no effective suspension may be imposed. The determination of the actual suspension period, therefore, will await the defendant's obtaining a renewal of his seasonal retail consumption license for the period commencing May 1, 1949.

Accordingly, it is, on this 8th day of February, 1949,

ORDERED that Seasonal Retail Consumption License CS-6, issued by the Board of Commissioners of the Borough of Belmar to Vincent Peter McCarthy, t/a The Aloha, for premises 15th Avenue and Ocean Avenue, Belmar, be and the same is hereby suspended for a period of ten (10) days. Subsequent order fixing the suspension period will be entered when the defendant obtains a renewal of his seasonal retail consumption license for the period commencing May 1, 1949.

ERWIN B. HOCK  
Director.

11. APPELLATE DECISIONS - KUENSELL v. PEMBERTON TOWNSHIP.

NOAH P. KUENSELL, )  
Appellant, )

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF PEMBERTON (Burlington County), )  
Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Daniel Lichtenthal, Esq., Attorney for Appellant.  
Alexander Denbo, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This appeal is from the action of the respondent in refusing to grant a transfer of a limited retail distribution license from Carl H. Errickson to appellant, and from the east side of Lakehurst Road to the west side of Lakehurst Road, Browns Mills, Pemberton Township.

Appellant's application was denied at a meeting of respondent Township Committee on December 3, 1948, at which time the two members present voted against the transfer. The third member, although absent from the meeting, testified at the instant hearing that he also is opposed to the transfer of the license to the proposed premises. The stated reason for denial was "that the Township Committee did not want a license in the same building as the United States Post Office".

The building to which the transfer was sought is a one-story structure containing two separate stores. One store is occupied by the United States Post Office, whereas the other is used as a market. Appellant wishes to use a section of the latter store for the storage and sale of unchilled, malt alcoholic beverages.

The members of the Township Committee testified that they opposed the sale of alcoholic beverages in a store immediately adjacent to the Post Office because numerous women and children visit the Post Office daily for the purpose of obtaining their mail.

The transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. Where the transfer is denied on reasonable grounds, such action will be affirmed. Cf. Drucker v. Trenton, Bulletin 474, Item 9.

The question whether a particular location is suitable for a licensed premises is also a matter confided to the sound discretion of the issuing authority. The members thereof know the place and the people. Their opinion is worthy of great weight. The burden of showing that the issuing authority abused its discretion rests with appellant. Biscamp et al. v. Teaneck, Bulletin 821, Item 8.

The State Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his personal view on the subject. See Curry v. Margate City, Bulletin 460, Item 9.

Three members of the Township Committee were in agreement that in their opinion the best interests of the general public would not be served by permitting the sale of alcoholic beverages in the premises in question. Under the circumstances of this case I am unable to find that the respondent Township Committee abused its discretionary power

in denying the application for transfer of appellant's license. There is nothing presented herein to indicate that the action of the local issuing authority was either arbitrary or unreasonable or inspired by improper motives.

The action of the respondent Township Committee is hereby affirmed.

Accordingly, it is, on this 8th day of February, 1949,

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

ERWIN B. HOCK  
Director.

12. APPELLATE DECISIONS - OCEAN DRIVE OPERATING CO. v. SEA BRIGHT.

OCEAN DRIVE OPERATING CO., )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 MAYOR AND COUNCIL OF THE BOROUGH )  
 OF SEA BRIGHT, )  
 )  
 Respondent. )  
 ----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Quinn, Doremus, McCue & Russell, Esqs., by Vincent J. McCue, Esq.,  
Attorneys for Appellant.  
A. Henry Giordano, Esq., Attorney for Respondent.  
Milton Arthur Stein, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from the respondent's refusal to grant the appellant's application for a plenary retail consumption license for premises at 1038 Ocean Avenue, Borough of Sea Bright.

The history of this litigation dates from May 1948, when the appellant applied for a transfer of its license from 958 Ocean Avenue to 1145 Ocean Avenue. This application was denied, as was also an application made on June 18, 1948 to transfer its license to 1138 Ocean Avenue. On appeal, the denials of both transfer applications were sustained because the area surrounding both proposed premises was "already well supplied with liquor outlets and respondent's refusal to place an additional liquor license there was based on a sound exercise of the discretion vested in it, in the first instance, to determine the number of licenses which may exist in any particular area of its municipality". See Bulletin 812, Item 12, decided July 29, 1948.

Since the appellant's 1947-48 license had expired on June 30, 1948, and no application for renewal had been filed because the appellant no longer had possession of the premises to which the said license had been issued, the appellant sought relief, under R. S. 33:1-12.18, to authorize it to file an application for a new license for the 1948-49 licensing year, despite the statewide limitation which normally would prohibit the issuance of a new license in the respondent's municipality. See R. S. 33:1-12.14. Since good cause appeared, and there being a vacancy in the local quota, the relief was granted. See Bulletin 817, Item 2.



The appellant's present application for premises known as Charles Manor, operated as an hotel, was denied by the respondent on October 6, 1948 by a 2 to 1 vote. These premises are located more than 1200 feet from those to which the appellant had previously sought to transfer during the 1947-48 licensing year.

I have encountered considerable difficulty in attempting to decide the instant case because of the testimony given by one of the two councilmen voting to deny the application. No useful purpose would be served by detailing all of the evidence given by this councilman. Suffice it to say, it appears that his vote was largely, if not solely, motivated by the mere fact that the respondent's action in denying the two prior transfer applications had been sustained on appeal. He testified that he had voted in favor of both prior applications and, when the denials were upheld, he concluded that the force of the appellate decision precluded the location of any additional licenses on Ocean Avenue. He frankly admitted, as well as denied, that he had not considered the issue of public necessity and convenience when casting his vote on the instant application. A careful review of his testimony fails to convince me that this councilman did consider such issue, which is the paramount guidepost in the issuance of liquor licenses. On the contrary, I find that he was under the mistaken impression that the decision on appeal in the two previous transfer applications had foreclosed the exercise of his discretion on the instant application.

The legislative design, apparent from the provisions of the Alcoholic Beverage Law (R. S. 23:1-1 et seq.), is to vest each local issuing authority, in the first instance, with the discretionary power to determine whether an application for a liquor license shall be granted, subject to review by the State Director, with regard to whether the discretionary function has been properly exercised. Where it appears that the local discretion has not been abused, the State Director may not disturb the action of the issuing authority since he otherwise would, contrary to the statutory design, be substituting his discretion for that of the local authorities. See Hudson Bergen, etc. Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

In this case, the local discretion was not exercised by one of the two councilmen whose votes resulted in a denial of the application, because of his mistaken belief that he was estopped from exercising such discretion in connection with this application. Under the circumstances, the case must be remanded to the respondent with direction that reconsideration be given to the application and that, consistent herewith, the issue of public necessity and convenience, as applied to the particular premises in question and its location, be determined by each member of the respondent Council prior to such reconsideration.

Accordingly, it is, on this 9th day of February, 1949,

ORDERED that the within application be and the same is hereby remanded to the respondent for its further action consistent with this opinion.

*William B. Wick*  
Director.

New Jersey State Library