

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

BULLETIN 766

JUNE 5, 1947.

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

BULLETIN 766

JUNE 5, 1947.

1. APPELLATE DECISIONS - LECNIA LIQUORS INC. v. LEONIA.

LEONIA LIQUORS, INC.,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH) CONCLUSIONS AND ORDER
OF LEONIA,)
Respondent)

Charles L. Hannelly, Esq., Attorney for Appellant.
Jesse B. Leslie, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant a person-to-person and place-to-place transfer of a plenary retail distribution license in the Borough of Leonia.

The license sought to be transferred is held by The Great Atlantic and Pacific Tea Company for premises formerly operated by it at 311 Broad Avenue. Appellant desires to locate at 250 Fort Lee Road. The premises in question are located a comparatively short distance from one another.

The application for transfer was unanimously denied by the five members of the Council present. One member of the Council was absent at the time. The resolution denying the application for transfer set forth the following reasons:

"1. The applicant for transfer is a corporation whose stockholders are not residents of the Borough, and which corporation has never been engaged in business within the Borough, and therefore is not qualified under the terms of our Ordinance, i.e., Ordinance #476, to receive a license.

"2. The premises intended to be used, that is, #250 Fort Lee Road, Leonia, in the opinion of this Council, is not a suitable or desirable location for a liquor store.

"3. The Community is being amply served now by the present licensees and there is no necessity for an additional liquor store in the Borough at this time."

Appellant contends, among other things, that respondent's action in refusing the transfer was arbitrary and unreasonable.

The testimony presented herein appears to be in agreement that the particular section on Fort Lee Road where appellant's premises are located is a busy thoroughfare. A current ordinance prohibits parking of motor vehicles at any time on the south side of Fort Lee Road between Broad Avenue and Oaktree Place, which is a distance of approximately 200 feet. The ordinance also prohibits parking at any time on the north side of Fort Lee Road for its entire length within the Borough.

Appellant's premises for which the license is desired are described by Ralph S. Day, who is engaged in the real estate business in the Borough of Leonia, as a "business building, two-story business

building, real estate office on the first floor, barber shop, jewelry store -- I believe an oil burner outfit, plumbing supply office and store which is being completed." There has been no evidence introduced on behalf of respondent which in any way indicates that the proposed premises are unfit for use as a package goods store.

Three Borough Councilmen, all of whom had voted against the transfer of the license, testified at the within hearing. Their main objections to the transfer of the license appear to be (a) that a bus stop was located directly in front of the proposed premises and that the traffic congestion prompted the Borough Council to approve an ordinance prohibiting parking in the block between Broad Avenue and Oaktree Place, and (b) that there was no need or necessity for an (additional) license in the community.

The transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Masarik v. Milltown, Bulletin 283, Item 10.

On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 294, Item 7.

Respondent claims in its Answer that a provision in an ordinance, approved June 24, 1946, prohibits issuance of a license to appellant, a corporate body, because its stockholders have not been residents of the Borough for a period of one year, and that the corporation has not been in business in the Borough for a period of six months. Inasmuch as no reference has been made to a corporation in said ordinance, the contention herein advanced by respondent is ineffective. Sachs v. Trenton et al., Bulletin 321, Item 12.

The situation in this appeal is closely comparable to that in Costa v. Verona, Bulletin 501, Item 2, in which the Commissioner stated:

"It is apparent from an examination of the record that the major motivation for the denial is respondent's desire to reduce the number of licensed establishments now existing in the vicinity in question. This is a perfectly proper objective. I regard as wholly salutary a local policy to alleviate an area reasonably considered by the issuing authority to contain an overabundance of licensed places.

"Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as in the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained. Cf. Van Schoick v. Howell,

Bulletin 120, Item 6; Re Morten, Bulletin 126, Item 14; Kirschhoff v. Millville et al., Bulletin 254, Item 8; DiMattia v. Bellmawr, Bulletin 254, Item 4; Bartole v. Harrison, Bulletin 304, Item 2; Randall v. Camden et al., Bulletin 420, Item 7.*****"

In this appeal, unlike Costa v. Verona, supra, there is, as hereinabove stated, a question concerning the lack of parking facilities in the neighborhood of the appellant's premises. But, according to testimony presented herein, various other stores are located adjacent to and near those premises. It does not appear that operation of a plenary retail distribution license in the proposed premises would change the traffic situation in any appreciable way. Standing alone, the contention regarding the "no parking" regulation would not be sufficient to sustain respondent's action.

Under the circumstances, I am constrained to hold that the respondent's action denying appellant's transfer application was unreasonable and must, therefore, be reversed.

Accordingly, it is, on this 16th day of May, 1947,

ORDERED that the action of respondent in refusing transfer of the plenary retail distribution license held by The Great Atlantic and Pacific Tea Company for premises 311 Broad Avenue to appellant for premises 250 Fort Lee Road, Leonia, be and the same is hereby reversed, and respondent is directed to issue forthwith the transfer for which application was made by appellant.

ERWIN B. HOCK
Commissioner.

2. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGE IN RESTAURANT SPEAKEASY ORDERED FORFEITED - JUKE BOX RETURNED TO OWNER WHO ESTABLISHED THAT HE DID NOT KNOW OR SUSPECT CHARACTER OF ESTABLISHMENT.

In the Matter of the Seizure on)
January 11, 1947, of a bottle of)
whiskey and a music box at 356 Oak)
Place, Potter's Corner, in the)
Township of Raritan, County of)
Middlesex and State of New Jersey.)
- - - - -)

Case No. 7092

ON HEARING
CONCLUSIONS AND ORDER

William Reeves, Pro Se.
Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a bottle of whiskey and a music box, seized on January 11, 1947, at 356 Oak Place, Potter's Corner, Raritan Township, New Jersey, constitute unlawful property and should be forfeited.

There is a one-story, four-room, frame, log cabin type structure at the above address. It was known as the "Log Cabin Chicken Shack", with a home-made counter, a table, a few chairs and a music box in the dining room, and two benches in what is designated as the living room. The two other rooms were a small kitchen and a bedroom.

On December 27, 1946, an ABC agent, checking a complaint that speakeasy activities were being carried on at the premises, purchased alcoholic beverages there. ABC agents thereafter obtained a search warrant, searched the premises on January 11, 1947, and seized the bottle of whiskey and the music box.

Dorothy Caffrey, who operated the establishment, was absent at the time, but was located by the agents and brought to the premises within a few minutes after the seizure. She did not hold any license authorizing her to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages. She was therefore arrested on the charge of selling alcoholic beverages without a license.

When Dorothy Caffrey was brought to the local police headquarters, she was confronted with the ABC agent who had purchased alcoholic beverages at the premises. Thereupon she admitted that she had sold alcoholic beverages to this agent on December 27, 1946 and stated that she had been selling alcoholic beverages at the premises for about six months. She then pleaded guilty to the charge of selling alcoholic beverages without a license in violation of the local ordinance and was sentenced to pay a fine of \$250.00 or, in the alternative, to be imprisoned for three months in the county jail. She was also held for action by the Grand Jury for violating the Alcoholic Beverage Law.

The facts amply warrant the conclusion that any alcoholic beverage in the premises was intended for unlawful sale and is therefore illicit. R. S. 33:1-1(i). Hence, the bottle of whiskey seized in the place is an illicit alcoholic beverage and, with the music box found therewith in the building, constitutes unlawful property, 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, William Reeves appeared and sought return of the music box. No one appeared to contest forfeiture of the whiskey.

If Reeves establishes to my satisfaction that he acted in good faith and did not know or have any reason to suspect that his machine was in a speakeasy, I have the discretionary authority to return the machine to him. R. S. 33:1-66(f). Also see Seizure Case No. 7044.

Reeves, whose place of business is in Newark, testified that on or about August 9, 1946 he placed the machine in Mrs. Caffrey's premises at the request of John McGee, a casual acquaintance.

Although the premises were described by Reeves as "odd looking all the way round" -- different from a tavern, restaurant, or other commercial establishment where he usually placed his machines, he says that his observation thereof when installing the machine convinced him that Mrs. Caffrey was operating a restaurant and, hence, he accepted her statement that such was the nature of her activities at the premises. Reeves did not investigate Mrs. Caffrey's character or background.

Reeves testified that when he was in the place from time to time to collect the receipts and to service the machine, he observed several persons eating and drinking coffee but did not observe any alcoholic beverages being served to such persons or visible on the premises.

It is evident that Mrs. Caffrey actually carried on some restaurant activities at the premises. The appearance of the place seemingly would not have suggested to a reasonably prudent person that speakeasy activities were being carried on there. Reeves'

failure to investigate Mrs. Caffrey's character or background is not controlling inasmuch as, even if he had made such inquiry, it appears that Mrs. Caffrey did not have any record or reputation for unlawful beverage activities. In these respects this case is similar to Seizure Case No. 7088, in which case the machine was returned to its owner.

Reeves' old record for violating the liquor laws, voluntarily disclosed by him, does not of itself warrant the assumption that he was specially qualified to and actually did recognize the establishment as a speakeasy. I have also carefully considered the large income of the machine in Mrs. Caffrey's premises in comparison with his similar machines in well-established and better locations, as evidenced by records voluntarily produced by Reeves, and conclude that a reasonably prudent person could as easily assume that it was a legitimate establishment where the music machine was a popular item as it would be for him to assume that it was a speakeasy.

Hence, I have determined not to reject Reeves' application for return of the machine merely upon the basis of his record, and the income of the machine.

Accordingly, it is DETERMINED and ORDERED that if on or before the 25th day of May, 1947, William Reeves pays the costs of seizure and storage of the music box, it will be returned to him; and it is further

DETERMINED and ORDERED that the bottle of whiskey constitutes unlawful property, and that 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 Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Commissioner.

Dated: May 15, 1947.

3. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND APPURTENANT EQUIPMENT ORDERED FORFEITED - ALL BUILDINGS, EXCEPT ONE HOUSING LIVESTOCK, ORDERED PADLOCKED.

In the Matter of the Seizure) Case No. 7106
of a still on March 9, 1947, at)
363 Banta Avenue, in the City)
of Garfield, County of Bergen and) ON HEARING
State of New Jersey.) CONCLUSIONS AND ORDER

Richard J. Baker and Anthony A. Calandra, Esqs., Attorneys for
John J. Hartmann and Johanna Hartmann.
Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a still, and appurtenant equipment, described in a schedule attached hereto, seized on March 9, 1947 at 363 Banta Avenue, Garfield, N. J., constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

It appears that a large still, including a considerable quantity of mash and about 100 gallons of illicit alcohol, was seized by local police officers and ABC agents in a barn at the above address. John J. Hartmann, one of the owners of the premises, was arrested on charge of aiding and abetting the possession of an unregistered still.

The still and all other personal property seized therewith on the premises constitute unlawful property, subject to forfeiture, because the still was not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1. In addition, the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing pursuant to R. S. 33:2-4, counsel entered an appearance for John J. Hartmann and Johanna Hartmann, the owners of the premises, who seek to avoid padlocking. They did not oppose forfeiture of the seized property, nor did any other person appear to contest such forfeiture.

In addition to the barn where the still was found, there is a frame, six-room dwelling, a milk house, a poultry house and a cow barn on the premises. John Hartmann, who had charge of the premises, claims that in the Fall of 1946 he leased the entire premises except the cow barn, to a person who gave his name as Frank Graziano and said he resided in Paterson, N. J.

Hartmann claims that he did not know, or have any reason to suspect, that there was an illicit still in the barn. The evidence presented is to the contrary. It follows the familiar pattern in cases of this nature of a lease to a strange man, met casually, whose activities, residence and background allegedly remained unknown to the owner of the premises.

The padlocking penalty has been consistently imposed in such cases because a lease of this nature is always suspect, seldom accepted at face value, and viewed, at the very least, as evidencing negligence in failing to ascertain the identity and character of the tenant. Cf. Seizure Case No. 5673, Bulletin 393, Item 2; Seizure Case No. 5672, Bulletin 401, Item 12; Seizure Case No. 6136, Seizure Case No. 6232, and Seizure Case No. 6588 (the three last mentioned cases are not reported in the official Bulletin). Also see Seizure Case No. 6836, Bulletin 686, Item 1.

Moreover, as is usual in such cases, Hartmann furnished the electric current and water supply to the still, and otherwise had ample opportunity to discover the illicit still in the barn. Hence, all that is to be determined is the extent to which the premises are to be padlocked.

According to Hartmann, the place had been vacant for approximately two years. However, throughout this period, Hartmann kept poultry, pigs and cows in the cow barn, and was there mornings and evenings to feed the livestock and his dog. No serious effort was made to sell or rent the premises, which were considered a good investment for future sale.

Padlocking of at least all of the buildings except the cow barn follows as a matter of course. In view of the absence of any previous criminal record against Hartmann, I shall forego padlocking of the latter building in order to spare him the considerable inconvenience of finding another place for his livestock.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, 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 Commissioner of Alcoholic Beverage Control, and it is further

ORDERED that all of the buildings, except the cow barn, on premises known and described as 363 Banta Avenue, in the City of Garfield, in the County of Bergen and State of New Jersey, being the premises on which the still was seized, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the 23rd day of June, 1947.

ERWIN B. HOCK
Commissioner.

Dated: May 14, 1947.

SCHEDULE "A"

- 22 - 5-gallon cans of alcohol
- 1 - copper cooker
- 4 - sections of copper columns
- 2 - coolers with copper coils
- 1 - dephlegmator with copper coils
- 2 - 100 lb. paper bags of Dumont Crystal Urea
- 1 - receiving tank
- 1 - copper gooseneck
- 1 - 5-gallon milk can
- 1 - funnel
- 12 - steel vats with mash
- 200 - lbs. sugar
- 100 - lbs. yeast
- 12 - 50-gallon empty steel drums
- 65 - empty 5-gallon cans
- 1 - platform scale
- 1 - water pump, Wagner electric motor, #602202
- 1 - Master Motor Pump, Style 108459, Serial #PG10752
- 1 - Super Electric Product Oil Burner, attached type AE12684, Serial #160783
- 1 - cast iron house boiler
- 1 - steel boiler
- 1 - Craftsman Ballbearing Pump, Serial #1156823
- 1 - oil trap
- 4 - steel tanks
- miscellaneous articles

4. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOL AND OTHER ARTICLES SEIZED THEREWITH ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 7081
December 19, 1946, of a jug of)	
alcohol, 16 bottles of beer, and)	
various other articles, on prem-)	ON HEARING
ises occupied by William Butler,)	CONCLUSIONS AND ORDER
located on Lincoln Place, Potters)	
Section, in the Township of Raritan,)	
County of Middlesex and State of)	
New Jersey.)	

Harvey A. Lieb, Esq., Attorney for William Butler.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a gallon jug with alcohol, 16 bottles of beer, and various other articles, described in a schedule attached hereto, seized on December 19, 1946, on premises occupied by William Butler on Lincoln Place, Potters Section, Raritan, N. J., constitute unlawful property and should be forfeited.

It appears that Butler was arrested on the above date at his home on charge that he possessed illicit alcoholic beverages, in violation of the local ordinance, and the Alcoholic Beverage Law, in that the jug of alcohol found there bore no label, nor any tax stamp, or other indicia of tax payment. Butler has since pleaded non vult to such charge, both in the local police court and the county criminal court.

When the matter came on for hearing pursuant to R.S. 33:1-66, William Butler appeared with counsel, and seeks return of all of the property seized except the gallon jug of alcohol.

Under the provisions of R. S. 33:1-1(i) and R. S. 33:1-88, the alcohol is prima facie illicit because there is no label or tax stamp on the jug. Illicit alcoholic beverages, and all personal property seized therewith on the premises, are subject to seizure and forfeiture as unlawful property. R. S. 33:1-1(y), R.S. 33:1-66. Hence all of the items seized in the instant case are subject to forfeiture.

Under R. S. 33:1-66(e), 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. Butler does not advance any such claim. He relies upon the claim, in effect, that the articles he seeks to have returned are not connected with his possession of the illicit alcohol, or with the operation of an illicit still. Even if such were the fact, the law does not authorize me to return the articles on that account. See Seizure Case No. 6917, Bulletin 693, Item 1.

Moreover, there is substantial evidence that most, if not all, of the seized articles were intended for, or adaptable for use in, unlawful alcoholic beverage activity.

A large gasoline burner, of the type not generally used in a home, was found in the attic. About 50 pounds of sugar was found in an alcove. A new sheet of copper was found in the cellar. A copper tank, a cast iron fire base and a 30-gallon barrel which, according to an ABC agent, contained mash, were found in the yard in rear of

the building. The agent testified that all of these articles were typical of articles used in the operation of an illicit still.

However, the issue is not whether these articles were actually used or intended for use in the operation of an illicit still because the instant proceeding is pursuant to R.S. 33:1-66, governing forfeiture of illicit alcoholic beverages and other personal property seized therewith, and not pursuant to R.S. 33:2-5, governing forfeiture of illicit stills. The character of the articles as adaptable for use in the operation of an illicit still is referred to only to indicate that they were directly connected with illegal liquor activities, and are not merely innocuous items. The claim of Mr. and Mrs. Butler that these articles were used by them in their normal household activities merits little, if any, consideration, in view of Mr. Butler's illegal liquor activities at the premises. His application for return of the seized property is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, 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 Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Commissioner.

Dated: May 14, 1947.

SCHEDULE "A"

- 1 - gallon jug with alcohol
- 1 - gasoline burner
- 1 - gasoline pressure tank
- 16 - bottles beer
- 1 - jug with syrup
- 1 - copper tank
- 1 - sheet of copper
- 1 - bag of sugar
- 1 - funnel
- 1 - 30-gallon barrel containing mash
- 1 - 50-gallon wooden barrel (still)
- 1 - cast iron fire base.

5. ACTIVITY REPORT FOR MAY, 1947

ARRESTS:

Licensees and employees - - - - - 15 Bootleggers - - - - - 15
Total number of persons arrested - - - - - 30

STILLS:

Brewed malt beverages - gallons - - - - - 31.12
Illicit alcohol - gallons - - - - - 28.42
Wine - gallons - - - - - 138.02

RETAIL LICENSEES:

Total number of premises inspected - - - - - 858
Total number of premises where alcoholic beverages were gauged - - - - - 854
Total number of bottles gauged - - - - - 13,120
Total number of premises where violations were found - - - - - 35
Total number of violations found - - - - - 42
Type of violations found:
Unqualified employees - - - - - 13 Other mercantile business - - - - - 2
Illicit liquor - bottles - - - - - 9 Gambling devices - - - - - 1
Regulations No. 38 sign not posted - - - - - 8 Prohibited signs - - - - - 1
Probable fronts - - - - - 5 Other violations - - - - - 5

STATE LICENSEES:

Premises inspected - - - - - 15
License applications investigated - - - - - 191

COMPLAINTS:

Complaints assigned for investigation - - - - - 293
Complaints investigated, reviewed and closed - - - - - 260
Investigations completed - not closed administratively - - - - - 7
Investigations assigned, not yet completed - - - - - 200

LABORATORY:

Analyses made - - - - - 110
"Shake-up" cases (alcohol, water and artificial color) - - - - - bottles 4
Liquor found to be not genuine as labeled - - - - - bottles 16

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - - 17
Persons fingerprinted for non-criminal purposes - - - - - 210
Identification contacts made with other enforcement agencies - - - - - 209
Motor vehicle identifications via N.J.State Police Teletype - - - - - 2

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - - 16
Violations involved:
Sale to minors - - - - - 6 Possessing contraceptives - - - - - 2
Sale during prohibited hours - - - - - 5 Permitting gambling (punch boards) - - - - - 1
Permitting bookmaking - - - - - 2 Sale outside scope of license - - - - - 1
Permitting brawls - - - - - 2
Cases instituted at Department (2 cases* also involve cancellation proceedings) - - - - - 23
Violations involved:
Fraud and front - - - - - 9* Sale to minors - - - - - 2
Possessing illicit liquor - - - - - 4 Sale to non-members by clubs - - - - - 2
Sale under Fair Trade - - - - - 3 Filing false tax report - - - - - 1
Purchase from improper source - - - - - 2 Permitting gambling - - - - - 1
Sale during prohibited hours - - - - - 2
Cases brought by municipalities on own initiative and reported to Department - - - - - 8
Violations involved:
Sale to minors - - - - - 5 Permitting brawls - - - - - 1
Employing unregistered bartender - - - - - 1 Sale during prohibited hours - - - - - 1
Hindering investigation - - - - - 1 Sale to intoxicated person - - - - - 1
Permitting bookmaking - - - - - 1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - - 57
Appeals - - - - - 20 Seizures - - - - - 2
Disciplinary proceedings - - - - - 24 Application for license - - - - - 1
Eligibility - - - - - 10

PERMITS ISSUED:

Total number of permits issued - - - - - 918
Employment - - - - - 108
Solicitors - - - - - 160
Social affairs - - - - - 407
Disposal of alcoholic beverages - - - - - 157
Miscellaneous permits - - - - - 86

LAWIN B. HOCK,
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

LAWRENCE MARTIN & ANNA MARTIN)
Cor. Crescent Ave. & Wyckoff Ave.)
Waldwick, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Waldwick.)
-----)

Lawrence Martin and Anna Martin, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge alleging the sale of an alcoholic beverage in violation of State Regulations No. 38, Rule 1.

On Friday, April 18, 1947, at about 10:30 p.m., Lawrence Martin sold, for off-premises consumption, two bottles of whiskey, one to each of two customers.

Rule 1 of State Regulations No. 38 prohibits such sales after 10:00 p.m. on weekdays.

Defendants have no prior adjudicated record.

In the absence of any aggravating circumstances, I shall impose the minimum suspension for violations of this type, fifteen days, and remit five days because of the plea, leaving a net suspension of ten days. Re Chyla, Bulletin 678, Item 9.

Accordingly, it is, on this 27th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Waldwick to Lawrence Martin and Anna Martin, for premises corner Crescent Avenue and Wyckoff Avenue, Waldwick, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. June 2, 1947, and terminating at 2:00 a.m. June 12, 1947.

ERWIN B. HOCK
Commissioner.

7. APPELLATE DECISIONS - SINASHOPOULOS v. ASBURY PARK.

GEORGE SINASHOPOULOS,)
 t/a TURNER HOTEL,)
)
 Appellant,)
)
 -vs-)
)
 CITY COUNCIL OF THE CITY OF)
 ASBURY PARK,)
)
 Respondent)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

Vincent P. Keuper, Esq., Attorney for Appellant.
 Frankel & Frankel, Esqs., by Charles Frankel, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises known as 209 Lake Avenue, Asbury Park.

Respondent denied appellant's application for a license, according to the Answer filed herein, on the following grounds, viz., (1) said licensed premises are unnecessary, (2) said licensed premises are adjacent and contiguous to a merry-go-round where many children gather, (3) said premises do not constitute a bona fide hotel, (4) said premises do not constitute a bona fide restaurant, and (5) under the terms of an ordinance of the City of Asbury Park, the full limit of plenary retail consumption licenses has been issued.

Appellant does not urge as a reason for the granting of the application that appellant's premises constitute a bona fide hotel. Appellant does contend, however, that the premises for which the license is sought is a bona fide restaurant. Louis F. Lipsey, who is employed as an inspector of Alcoholic Beverage Control by the City of Asbury Park, testified that upon inspection of the premises he "found a restaurant with tables and booths, a kitchen, and everything it takes to make a restaurant", and that the seating capacity thereof was "somewhere between 150 and 175". Mr. Lipsey classified appellant's premises as a bona fide restaurant. There being no testimony offered by respondent to refute that given by Mr. Lipsey, I shall, for the purpose of the instant appeal, assume that appellant's premises are conducted as a bona fide restaurant.

There has been testimony offered on behalf of respondent that appellant's premises are in close proximity to a merry-go-round which attracts a large number of children during the vacation season. I am not impressed with this argument. Asbury Park is a summer resort and, regardless of where licensed premises might be located in the amusement district, a number of young people would of necessity gather or pass by during the course of the vacation season.

Respondent further contends that it has inaugurated a policy whereby it will not approve applications for liquor licenses for premises located on Lake Avenue, east of Main Street. Appellant's premises are located in this particular section.

The Mayor and members of the City Council voted unanimously to deny the application filed by appellant.

Appellant has stressed the fact that the application was filed with the sole purpose in mind of supplying alcoholic beverages with meals. It is frequently argued that licenses are necessary adjuncts to restaurant accommodations. Issuing authorities, however, are not compelled to grant a license merely because an applicant represents that he will install only a service bar. While bona fide restaurants are excepted under the local ordinance, adopted May 12, 1942, whereby the number of plenary retail consumption licenses are limited and restaurants are not to be discriminated against in the issuance of licenses, it does not follow that a bona fide restaurant is entitled to a license as a matter of right.

It must be remembered that licenses are a privilege and not a right. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. "No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many." Ibid. 596. In view of the testimony of the City Manager of Asbury Park that there are ten licensed premises, several of which are operating as restaurants, within two blocks of appellant's premises, I cannot say that respondent Mayor and Council acted arbitrarily or unreasonably, or have abused the power conferred upon them by the Alcoholic Beverage Control Law. On the contrary, there would appear to be presently outstanding an overabundance of liquor licenses within the area in question.

I conclude, after careful consideration of the entire record presented in the instant case, that appellant has not sustained the burden of proof or shown that respondent acted unreasonably, arbitrarily, or contrary to the public interest. Hence, I shall affirm the action of respondent in denying appellant's application for the license in question.

Accordingly, it is, on this 27th day of May, 1947,

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

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS - CUMMINGS v. BERKELEY.

WILLIAM H. CUMMINGS, JR.,)
 Appellant,)
 -vs-)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF BERKELEY,)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

 David Novack, Esq., Attorney for Appellant.
 Percy Camp, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial by respondent of appellant's application for a plenary retail distribution license for premises 1501-2 Southwest corner 15th and Central Avenues, Township of Berkeley.

Appellant's premises are situated in the section of the Township of Berkeley which is separated from the mainland by a body of water known as Barnegat Bay, and is referred to by the residents of the Township as the "island". At the present time there are three plenary retail consumption licenses issued and outstanding on the "island".

Appellant testified that there are about 100 all-year-round residents on the "island" and in the summertime, due to the influx of vacationists, the population is increased to 1700 or 2,000. Appellant argues that the action of the Township Committee in denying his application for a "package goods" license was arbitrary, unfair, illegal and without merit. He bases his contention on the fact that many persons who would purchase alcoholic beverages for off-premises consumption would not patronize a holder of a plenary retail consumption license. Furthermore, appellant alleges that he is entitled to a license and the Township Committee has deprived him of that right without justifiable cause.

Respondent produced the Chairman and another member of the Township Committee who testified that in their opinions the inhabitants of the "island" are adequately served in so far as alcoholic beverages are concerned by the existing consumption licenses. Committeeman Butler testified that in his opinion the summer population of the "island" does not exceed 600.

No one has a right to demand a license. A license to sell alcoholic beverages is a special privilege granted to the few and denied to the many. In Paul v. Gloucester, 50 N.J.L. 585, 596, Mr. Justice Van Syckel, speaking for the Court of Errors and Appeals, said:

"We will probably *** be led into error, if we reason upon this subject, as we may in respect to those pursuits which are open to all on the mere payment of a license fee."

The observation of Mr. Justice Van Syckel, made in 1888 in the paul case, supra, applies with full force today.

The testimony presented by appellant in the instant case does not indicate that necessity or convenience of the citizens of the "island" would warrant the issuance of an additional license. The contention that a package store should be permitted on the "island" because it is unreasonable to compel a person to enter a tavern to purchase bottled liquor is without merit. Boody v. Gloucester,

Bulletin 300, Item 11; Jacovone v. Gloucester, Bulletin 644, Item 4; Becker v. Fair Haven, Bulletin 713, Item 3.

The burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed shall rest with the appellant. State Regulations No. 15, Rule 6. This the appellant in the instant case has failed to do.

Accordingly, it is, on this 27th day of May, 1947,

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

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATE FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

JOSEPH MARESCA)
T/a MEADOWBROOK INN)
Meadowbrook Avenue)
Wanaque, N. J.,)

Holder of Plenary Retail Consumption License C-10 issued by the Borough Council of the Borough of Wanaque, and transferred during the pendency of these proceedings to)

ANGELO SCRIVANI)
T/a MEADOWBROOK INN,)

for the same premises.)

O R D E R

BY THE COMMISSIONER:

It appearing that by Order dated November 7, 1946, the license herein was suspended for a period of ten days, and that the effective dates of said suspension were not fixed because the premises were closed (Re Maresca, Bulletin 737, Item 2), and

It further appearing that the premises have now been reopened for business;

It is, on this 27th day of May, 1947,

ORDERED that the ten-day suspension heretofore imposed herein shall commence at 3:00 a.m. June 2, 1947, and terminate at 3:00 a.m. June 12, 1947.

ERWIN B. HOCK
Commissioner.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Motor Freight Express, Inc.
313-327 Bright St.
Jersey City, N. J.

Application for Transportation License filed June 2, 1947.

Angelo DeMarco
361 Little Mill Road
Franklin Township
Franklinville, N. J.

Application for State Beverage Distributor's License filed
June 3, 1947.

ERWIN E. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

EAST CAMDEN POST #705 VFW, Inc.)
2808 Federal Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

John H. Mohrfeld, 3rd, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that, on April 26, 1947, it sold alcoholic beverages to persons neither bona fide members nor bona fide guests of a member of its club, in violation of Rule 8 of State Regulations No. 7.

Since this is the defendant's first violation, and no aggravating circumstances appear to have attended the instant offense, the usual fifteen-day penalty will be imposed. Five days will be remitted for the plea, leaving a net suspension of ten days.
Re American Legion, Monmouth Post #54, Bulletin 761, Item 7.

Accordingly, it is, on this 27th day of May, 1947,

ORDERED that Club License CB-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to East Camden Post #705 VFW, Inc., 2808 Federal Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. June 2, 1947, and terminating at 2:00 a.m. June 12, 1947.