STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 60 — January 22, 1935

1. UNLAWFUL PROPERTY - CONFISCATION PROCEEDINGS - DETERMINATIONS - UNRECORDED CONDITIONAL BILL OF SALE

In the Matter of the Seizure on May 11, 1934 of a still, etc. on premises owned by one Joseph P. Lemmon located in the Township of Pemberton, Burlington County, New Jersey.	ON HEARING CONCLUSIONS, DETERMINATION AND ORDER

No Appearances.

BY THE COMMISSIONER:

This matter comes before me for determination in accordance with the provisions of the Alcoholic Beverage Control Act to decide whether the property described below constitutes unlawful property.

Notices of the hearing were duly posted, published, and mailed as provided by said Act and a hearing was held on May 25, 1934. The facts and circumstances as disclosed at said hearing are substantially as follows:

On May 11, 1934, Investigators of this Department seized a complete distillery and appurtenances together with a motor vehicle on premises owned by Joseph P. Lemmon located in the Township of Pemberton, Burlington County, New Jersey. The seized property included the following:

40	5 gallon cans Alcohol
1	Dodge Sedan, 1933 Model, serial #3666377, license #C19816
1	Small Gasoline engine
12	Empty Metal Drums
14½	Wooden barrels of Molasses, 58½ gallons each
63	Empty 5 gallon cans
5	Wooden Vats, 8' x 10'
1	Copper Column, 22'
3	Steam Pumps
1	Water Pump
200	Feet 2" pipe
1	Galvanized Tank, 4' x 4'
1	Set Copper Coils
1	Copper Tank, 2' x 3'

At the time of the seizure the still was in operation located in a barn on said premises and a quantity of alcohol and molasses was seized at the same time; such still was erected and possessed with intent to be used and was used for the manufacture of alcoholic beverages and was not registered with the Department of Alcoholic Beverage Control and no license had been issued or application made for its use in the manufacture of alcoholic beverages and the aforesaid still was possessed and used in violation of the provisions of the act concerning alcoholic beverages.

It is therefore ADJUDGED and DETERMINED on this 12th day of January, 1935, that all the seized property constitutes unlawful property and is hereby declared forfeited.

After the Hearing, Emanuel Levin, the registered owner of the seized motor vehicle filed an affidavit and requested the return to him of said vehicle. In said affidavit, said Emanuel Levin states that he had loaned the said car to his father-in-law, Morris Franklin, and that he had never been involved in the violation of the National Prohibition Act or in any difficulty of like nature and that he had no knowledge that said automobile was to be used for an unlawful purpose. An investigation to substantiate the facts set up in the said affidavit, has been made and from such investigation it does not appear, to my satisfaction, that the said Emanuel Levin has acted in good faith or has unknowingly violated the provisions of said Act. His claim will be denied.

After such Hearing the Commercial Credit Company filed a claim as the holder of a Conditional Bill of Sale made by Emanuel Levin, the registered owner of said motor vehicle. Proof was presented that a balance of $448.50, representing the balance of the purchase price is due from the said Emanuel Levin to the said company and that said company had no knowledge that the motor vehicle was to be used for an unlawful purpose. The conditional bill of sale was offered in evidence and is valid in all respects except that it was not filed in accordance with the provisions of the Uniform Conditional Sales Act.

The adjudicated cases show a diversity of opinion as to whether such a conditional bill of sale is void as against the rights acquired by the State in a forfeiture of the property covered by such conditional sales contract. The majority view as set forth in the case of General Motors vs. United States, 23 Federal (2nd) 799 and cases cited therein, is that the State in a forfeiture proceeding of this kind is neither a creditor nor a purchaser within the purview of the Conditional Sales Act. This view is based on the theory that a State in forfeiture proceedings cannot destroy the rights of innocent parties under the authority of the Conditional Sales Act which was clearly intended for the protection only of creditors and purchasers for value. The minority view holds that a State seizing property on which there is no record encumbrance in order to enforce its violated laws occupies a superior position to an innocent party who nevertheless neglected to record his encumbrance. The majority holding which protects the property rights of innocent parties is in my opinion the sounder view. It is therefore determined that the conditional sales contract of the Commercial Credit Company, need, therefore, not be recorded in order to establish its validity as a lien in this proceeding.

The lien of the said Commercial Credit Company is therefore hereby recognized as a valid lien to the extent of $448.50 subject to the costs of seizure, storage and such other expenses as have been or may be incurred in connection with such seizure.

It appears that the appraised market value of said car is the sum of $400.00 and does not equal the amount due the Commercial Credit Company and a sale thereof would not be for the best interest of the State.

It further appears that Joseph P. Lemmon is the record owner of said premises; after a consideration of all the facts and including the fact that the record owner of said premises, Joseph P. Lemmon, had no knowledge of the unlawful use of the said premises or knowledge of such facts and circumstances as would have led a person of ordinary prudence to discover such use; it is determined that the Commissioner will not exercise the power given him under the Control Act to restrict the use and occupation of this property.

It is therefore, ORDERED that possession of the said Dodge Sedan be relinquished and released to the said Commercial Credit Company upon payment by it of all costs and expenses paid, due, or accrued by reason of said seizure and upon the further provision that said Company undertake in writing not to return said Motor vehicle to the said Emanuel Levin.

It is further ORDERED that all the seized property above described excepting the said Dodge Sedan shall be destroyed except that such part or parts thereof as can be salvaged shall be sold at public sale for the use of the State subject to rules and regulations to be announced at the sale or retained for the benefit of State Institutions.

D. FREDERICK BURNETT,
Commissioner

2. REVOCATIONS - APPEALS - AD INTERIM STAY - WHEN DENIED

January 12, 1935

Mr. Carl Kisselman,
Camden, N. J.

Dear Mr. Kisselman:

I have yours of the 11th enclosing notice and petition of appeal of Jacob Braunstein vs. City Council of Bridgeton, praying not only that the order of revocation be reversed but also that the City Council be required to show cause why it should not be restrained from effectuating such order.

From Charles P. Corey, City Clerk, I have a certified copy of the resolution of the City Council by which it appears that the Commissioner of Public Safety preferred charges against Jacob Braunstein of selling alcoholic beverages without having first paid the proper taxes; of having in his possession on the licensed premises alcoholic beverages upon which taxes had not been paid; of having in his possession at his residence other non-tax-paid beverages in large amounts. It appears therefrom that the charges were duly served; that an opportunity was afforded the licensee to refute the charges and that the City Council, after considering the evidence produced at the hearing, found him guilty as charged, and thereupon resolved that his license should be revoked.

I have carefully examined your petition of appeal but find nothing therein challenging the jurisdiction of the City Council or the regularity of the proceedings. The gist of your attack is that the City Council reached an erroneous conclusion on insufficient evidence.

You are entirely within your rights in appealing on such grounds and decision on the merits of the appeal will be made in due course as soon as the appeal, which will be set for an early date, has been heard.

There is nothing, however, before me which justifies the issuance of an interim restraint. The questions are entirely factual. The City Council have adjudicated your client guilty, after what appears on the face of the proceedings to have been a

fair trial. The decision therefore of the City Council must be honored and supported in all respects until such time as it appears, if ever, that the revocation should be reversed.

Your petition for ad interim restraint is therefore denied.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

3. RULES AND REGULATIONS GOVERNING REGISTRATION OF STILLS

The following rules and regulations governing registration of stills are hereby promulgated pursuant to the provisions of Chapter 84 of the Laws of 1934, effective immediately:

1. Every still, distilling apparatus and parts thereof, located within this State, whether set up, dismantled or in the process of construction, shall be registered with the State Commissioner of Alcoholic Beverage Control.

2. Such registration shall be upon prescribed forms, designated as registry certificates, which may be obtained upon request addressed to D. Frederick Burnett, State Commissioner of Alcoholic Beverage Control, 744 Broad Street, Newark, New Jersey, and which shall set forth the description and location of the still, distilling apparatus and parts thereof and the name and address of the owner and the person having possession, control or custody thereof.

3. Said certificates must be executed and transmitted to the Commissioner in duplicate, and one of said certificates, bearing due endorsement by the Commissioner of the receipt thereof, shall be returned to the registrant and must at all times be kept on the premises where the still, distilling apparatus and parts thereof are located.

4. Said certificate, bearing endorsement by the Commissioner, together with all registered stills, distilling apparatus and parts thereof described therein, and the premises in which they are contained, shall be subject to inspection by representatives of the Department of Alcoholic Beverage Control.

5. No registered still, distilling apparatus and parts thereof shall be transported, except under written permit first obtained from the Department of Alcoholic Beverage Control and any registered still, distilling apparatus and parts thereof removed from the premises described in the registry certificate without such permit shall be deemed forthwith unregistered.

6. When any registered still, distilling apparatus and parts thereof are sold or become the subject of a contract of sale, the registrant shall forthwith notify the State Commissioner of Alcoholic Beverage Control of the name and address of the purchaser or prospective purchaser and the place where said still, distilling apparatus and parts thereof are to be delivered.

7. None of the foregoing rules and regulations shall apply to any still, distilling apparatus and parts thereof, possessed by or in the custody or control of any licensed distillery or rectifier and blender, when located at the licensed premises and used in connection with the operation of the licensed business and such stills, distilling apparatus and parts thereof are hereby declared registered during the continuance of the license.

D. FREDERICK BURNETT,
Commissioner

Dated: January 15, 1935

4. REGISTRY CERTIFICATE

_____ 19___

The following is a list and description of stills, distilling apparatus and parts thereof, owned by _____ and located at _____ Street, in the City of _____ County of _____, and State of New Jersey, together with the names and addresses of the persons having possession, custody or control thereof:

Names and addresses of person having possession, custody or control	No. of each still	Cubic contents in gallon or size	Description of still and parts	For what purpose still is used

Subscribed and sworn to before me this day of _____, 19___. (Signed) _____

RECEIVED for registry this day of _____, 19__.

D. FREDERICK BURNETT,
Commissioner
By:

B. Carlton Brown,
Deputy Commissioner

5. RULES CONCERNING LICENSEES AND THE USE OF LICENSED PREMISES - RULE 4 PERMITTING NO CRIMINALS UPON LICENSED PREMISES - WHAT CONSTITUTES A CRIMINAL

January 10, 1935

Mr. Charles M. Gedney,
Union Line Hotel,
Kingston, N. J.

Dear Sir:-

I have your letter inquiring whether a person convicted

of selling and transporting beer in violation of law is a criminal within the meaning of the Commissioner's ruling that "no licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, racketeers, gangsters, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill repute." (Rule #4 of rules concerning licensees and the use of licensed premises).

In its broad sense the word "criminal" includes any person who has been convicted of the violation of any criminal statute. See Creeden vs. Boston & Maine Railroad, 79 N. E. 344 (Mass.); Molineaux vs. Collins, 69 N. E. 727, (N. Y.). But the use of the word "criminal" in association with "racketeer", "gangster", etc. evidences an intent to confine its meaning to professional rogues and similar persons universally recognized as social menaces.

Rule #4 was designed to aid in disassociating the liquor industry from its unsavory elements. To be effective, it must be strictly observed and licensees must consistently decline to permit on the licensed premises persons who are known to defy law. Neither the presence nor the absence of a judicial conviction of crime is conclusive. A person who has been convicted of transporting beer in violation of law is not, without more, considered as a professional rogue; a person who has never been convicted of crime but is a member of a gang of racketeers or habitual law violators, is so considered. The latter type of person comes within the proscribed class; the former does not.

It is the ruling of the Commissioner that a conviction for selling and transporting beer in violation of law does not, in itself, bring the violator within the proscribed class listed in rule #4 of the rules governing the conduct of licensees and the use of licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

6. CONSUMPTION LICENSEES - SALE IN OPEN RECEPTACLES - USE OF DECANTERS - WHEN LAWFUL

January 14, 1935

Victor Jacoby, Secretary,
New Jersey State Hotel Association,
Hotel Riviera,
Newark, N. J.

Dear Mr. Jacoby:

I have your inquiry as to whether it is permissible for licensed hotels to fill ounce and a half decanters with alcoholic beverages in advance of orders and serve them during rush hours.

The answer turns on Section 78 of the Control Act which makes it a misdemeanor for a retail licensee to bottle alcoholic beverages for sale or resale.

The salutary rule concerning rebottling must not be weakened or indirectly frittered away. Hence, if the decanter has a stopper or other top of any kind, it is a form of rebottling and therefore prohibited.

On the other hand, if the decanter is of the open type, without stopper or top of any kind, and is used solely for the purpose of facilitating retail service, it is in substance a mere form of open container. The holder of a consumption license has the right to sell for on-premises consumption alcoholic beverages "by the glass or other open receptacle". It is necessary to pour the drink into something to send it to room or table. The open decanter may be used for this purpose as well as any other open glass or container.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

7. SCHOOLS - 200 FOOT RULE - LICENSE MAY NOT ISSUE FOR PREMISES WITHIN 200 FEET OF SCHOOL EVEN THOUGH OPENED ONLY IN EVENING

D. Frederick Burnett, Commissioner.

My dear Sir:

Mr. William Colwell, McKee City, New Jersey has made application to the Township Committee for a Plenary retail consumption license for the McKee City Grange Hall.

Now this building is one hundred and fifty feet (150) from the McKee City School House. Mr. Colwell claims that he wants this license in conjunction with the dance hall which he is operating at the present time. He states that his place will not be open at any time during school hours, as he only wants to sell alcoholic beverages at his dances which are held in the evening.

The Township Committee would like to know if they would be allowed to grant a license for this place under the circumstances above recited.

Yours truly,
CHARLES L. SMITH, Clerk

January 2, 1955

Charles L. Smith, Clerk,
Egg Harbor Township, N. J.

Dear Sir:-

The Commissioner has heretofore ruled that a seasonal license, expressly conditioned that no sales of alcoholic beverages be made except during the summer months and only when the school is actually closed, may be issued for premises located within 200 feet of a school. See Bulletin #24, Item #11.

This ruling, however, may not be extended to the situation presented by Mr. Colwell's application. Although the school is not actually in session during the evening, it is likely that at such time children will be present at the school premises and

that miscellaneous school activities other than class room will be conducted. The recognition of a license conditioned upon the sale of alcoholic beverages only in the evening would logically necessitate the recognition of a license conditioned upon the sale of alcoholic beverages after actual school hours. The legislative prohibition contained in section 76 of the Control Act cannot be circumvented in this manner.

It is the ruling of the Commissioner that a condition to the effect that the licensed premises be opened only in the evening will not justify the issuance of a license for premises located within 200 feet of a school.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

8. APPELLATE DECISIONS - GARRETT and SOMERS VS. NORTHFIELD

CHARLES A. GARRETT and WILLIAM SOMERS, trading as ROSELAWN INN,
Appellants
-vs-
COMMON COUNCIL OF THE CITY OF NORTHFIELD,
Respondent

ON APPEAL
CONCLUSIONS

- - - - - - - - - - - - - - - - -

Lilienfeld & Lilienfeld, Esqs., by Emerson L. Richards, Esq., Attorneys for Appellants
Enoch A. Higbee, Jr., Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied because Charles A. Garrett, one of the appellants was not a resident of New Jersey for five (5) years continuously prior to filing the application.

Section 22 of the Control Act provides:

"No retail license shall be issued to a natural person unless he * * * shall have been a resident of the State of New Jersey for at least 5 years continuously immediately prior to the submission of the application".

In the application filed by appellants, Charles A. Garrett under oath stated that he resided at 1507 Louden Street, Philadelphia, Pa., from 1927 to 1931. At the hearing he admitted that in 1926 he voted in Pennsylvania, and that he did not vote again at all until 1934 when he voted in New Jersey; that from 1928 until

1929 he owned and operated the Colonial Ball Room, Germantown, Pa.; that between 1931 and 1932 he worked for his brother at 3713 North Broad Street, Philadelphia; and that in 1932 and 1933 he was operating a public dance hall at 4742 North Broad Street, Philadelphia. Although he denied that during 1933 and 1934 he had any place of business in Philadelphia, it appeared on cross-examination that during that time he had a license to run a dance hall at 4742 North Broad Street, Philadelphia and that he also had a Pennsylvania Liquor license covering the same premises. In his application for this license he gave his residence as 1507 Louden Street, Philadelphia, which corresponds with his statement on the application in the instant case.

It is now claimed despite the above facts and statements that from 1927 to 1933 Charles A. Garrett resided on California Avenue, Absecon, New Jersey. This does not, however, conform with several licenses issued to Charles A. Garrett under the New Jersey motor vehicle law. On a license for the year 1928 his residence is stated as East Revere Avenue, Northfield, New Jersey. The next license issued to him was for 1931. His residence is stated therein as 1202 Walnut Avenue, West Collingswood, New Jersey. Since then no further motor vehicle licenses have been issued to him in New Jersey.

Respondent's contention is sustained by the evidence. Its action is therefore affirmed.

D. FREDERICK BURNETT,
Dated: January 14, 1935. Commissioner

9. APPELLATE DECISIONS - RIEWERTS VS. ENGLEWOOD

OCHA MAYNARD RIEWERTS,)
Appellant
-vs-)
ON APPEAL
COMMON COUNCIL OF THE CITY) CONCLUSIONS
OF ENGLEWOOD,
Respondent)
- - - - - - - - - - - - - - - - -

Seufert & Elmore, Esqs., by J. Laurens Elmore, Esq., Attorneys for Appellant
F. Hamilton Reeve, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the suspension for four (4) months of the plenary retail distribution license issued to the appellant for premises located at 43 West Palisade Avenue, Englewood.

Respondent contends that appellant's license was properly suspended because on October 7, 1934 appellant had violated respondent's regulation prohibiting the sale of alcoholic beverages earlier than 12 noon on Sundays. Appellant denies the charge, argues that he was not properly notified thereof and afforded a reasonable opportunity to be heard, and points out that on November 6, 1934 a referendum was held and the sale of alcoholic beverages on Sunday affirmatively voted in Englewood.

It appeared at the hearing that appellant has been properly

served with a notice stating that the appellant and/or his agents or employees were charged by C. A. Peterson, Chief of Police of the City of Englewood with the sale of alcoholic beverages at his store at 43 West Palisade Avenue, Englewood at or about 10 o'clock A. M., on Sunday, October 7, 1934, in violation of his license and the rules and regulations of the City of Englewood, which rules and regulations prohibited the sale of alcoholic beverages on Sunday prior to 12 o'clock noon. The notice further contained a statement of the time and place fixed for the hearing and advised appellant that he would be given an opportunity at that time to be present together with his witnesses and counsel and to present any legal evidence to show why his license should not be revoked. This notice was returnable on October 22, 1934 at which time at the request of counsel for appellant, the hearing was adjourned until November 7, 1934. On this date appellant appeared before respondent with counsel, who notified respondent that he did not care to present any testimony or cross-examine any witnesses. Respondent then proceeded to take testimony under oath and on the basis thereof entered the Order now under appeal. The procedure outlined above is in strict accordance with the provisions of Section 28 of the Control Act, which defines the manner in which the suspension of a license shall be effected. Appellant's argument, therefore, is without merit.

The mere fact that pending disposition of the charge made against appellant, a referendum was adopted permitting Sunday sales in Englewood, does not alter the fact that if appellant did sell alcoholic beverages before noon on October 7, 1934, he violated a regulation of respondent and was therefore subject to disciplinary action. His guilt or innocence depends on the facts as they existed on the date of the alleged violation and are not affected by the subsequent referendum, the operative effect of which was prospective and not retroactive.

With reference to the actual charge, the evidence at the hearing established that on Sunday morning, October 7, 1934, one Robert Dorsey purchased a pint of Skyway Whiskey for 85¢, together with a loaf of bread, in appellant's delicatessen store, for which the plenary retail distribution license had been issued. The testimony of Dorsey is corroborated by the Chief of Police of the City of Englewood, who testified that he met Dorsey on the Sunday morning in question and gave him money with which to purchase the whiskey; that Dorsey had no liquor with him at that time; that he observed Dorsey constantly thereafter until he went into appellant's delicatessen store; that when Dorsey came out of said store, he had a package which he delivered to the Police Chief and which contained a pint of Skyway Whiskey and a loaf of bread.

Appellant asserts that he has been ill for about a year and was in California at the time of the alleged violation; that he left the store in charge of his employees, one, his son, and another, a clerk. The employees not only denied the sale, but further testified that Dorsey had not entered the store on the Sunday in question and that Skyway Whiskey was never sold by them in the store for more than 80¢ a pint. They also attacked the credibility of Dorsey by showing that he was trying to obtain an appointment on the Police Department in the City of Englewood, and for that reason his testimony was self-serving.

The contention that the licensee was away is no defense, as a license to sell alcoholic beverages is a privilege, implying

special trust and confidence in the holder thereof. Feigenspan vs. Mulligan, 63 N.J.Eq. 179; Voight vs. Board of Excise Commissioners of Newark, 59 N.J.L. 358; Meehan vs. Excise Commissioners of Jersey City, 73 N.J.L. 382. The licensee may enjoy said privileges only so long as he complies with all the limitations, conditions and restrictions pertaining to his license. Hoboken vs. Greiner, 68 N.J.L. 592.

A licensee may not hide behind the cloak of his employees. The license is his. So is the business. It is his duty to see to it that the business is conducted in accordance with the law. The fact that he was away will not exonerate him from full responsibility for what goes on in the licensed premises. Cf. Abe Kneller, Bulletin #49, Item #4.

It may be true that the testimony of Mr. Dorsey is self-serving, but nevertheless the clear and convincing testimony of the Police Chief that he saw Dorsey enter the store casts doubt not only on the testimony offered on behalf of appellant that Dorsey had never been in the store, but also upon the blanket denial of the sale in question.

The testimony reasonably supports respondent's factual finding that on Sunday, October 7, 1934, prior to noon, appellant violated respondent's regulation with reference to Sunday sales.

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT,
Dated: January 14, 1935 Commissioner

10. APPELLATE DECISIONS - MOUNT VS. RARITAN

GEORGE S. MOUNT,)
Appellant
-vs-)
ON APPEAL
TOWNSHIP COMMITTEE OF THE) CONCLUSIONS
TOWNSHIP OF RARITAN in
Hunterdon County,)
Respondent.
- - - - - - - - - - - - - - - -

Tarantola & Duff, Esqs., Attorneys for Appellant
A. O. Robbins, Esq., by F. E. Suderley, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied because it had adopted a resolution limiting the number of plenary retail consumption licenses to be issued in Raritan Township to five (5) and the issuance of the allotted number. While such a limitation enacted pursuant to Section 37 of the Control Act is subject to appeal, it will not be upset on appeal unless it clearly appears to be unreasonable, either in its adoption or its application to appellant. Ryman vs. Branchburg Township,

Bulletin #37, Item #18.

Appellant does not suggest that the application of the limitation to the exclusion of himself was improper but argues the limitation was unreasonable in its adoption.

Raritan Township is strictly a farming community with a widely scattered population of approximately eighteen hundred (1800) persons. Appellant admits the needs of the Township residents are adequately serviced by the five existing licensed places and that he looks principally to the transient trade and the Borough of Flemington, one quarter mile away, for his patronage. The number of transients passing through the municipality is but one of the factors to be considered. Furman vs. Springfield, Bulletin 49, Item 6. The testimony shows the respondent did consider this and as a result issued four of the five licenses for premises located along the principal highway. No contrary evidence was introduced. Respondent was under no duty to consider the convenience of the residents of an adjoining municipality in determining the maximum number of licenses which the public welfare and sentiment of the local residents demanded. See Skwara vs. Trenton, Bulletin 57, Item 7.

Appellant has, therefore, failed to prove that the limitation was unreasonable in its adoption. Accordingly, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Dated: January 21, 1935 Commissioner

11. APPELLATE DECISIONS - SAILLIEZ VS. TRENTON

EDWARD A. SAILLIEZ,)
Appellant
-vs-)

ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC) CONCLUSIONS
BEVERAGE CONTROL OF TRENTON,
Respondent)

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Edward A. Sailliez, Pro Se
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

Appellant complied with all the formal prerequisites pertaining to his application for a plenary retail consumption license for premises located at #337 W. Hanover Street, Trenton, New Jersey. His character is unquestioned and there is favorable testimony with reference to the suitability of the premises sought to be licensed.

Respondent filed an answer, setting forth that the application was properly denied for the reasons that (1) there is an adequate number of licensed premises now existing in the vicinity of appellant's premises and an additional license for premises in said vicinity would be socially undesirable, and (2) general objections filed by persons residing in said vicinity.

No testimony was introduced, however, in support of either of these contentions.

On this record, appellant is entitled to his license. When an applicant presents a prima facie case, the application may not be arbitrarily denied. For respondent to introduce no evidence in support of its alleged reasons for denying the application, casts doubt upon the validity of these reasons and makes its action appear arbitrary and unreasonable. Powell vs. Bridgeton, Bulletin #30, Item #5. See also Woodrow Wilson Democratic Club Inc. vs. Passaic, Bulletin #56, Item #3.

The action of respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: January 21, 1935

12. APPELLATE DECISIONS - SCIARROTTA VS. TRENTON

JENNIE SCIARROTTA,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent

ON APPEAL
CONCLUSIONS

- - - - - - - - - - - - - - - - -

John H. Kafes, Esq., Attorney for Appellant
No appearance for Respondent

BY THE COMMISSIONER:

Appellant complied with all the formal prerequisites pertaining to her application for a plenary retail consumption license for premises located at #420 No. Clinton Avenue, Trenton, New Jersey. There is favorable testimony with reference to her character and the suitability of the premises sought to be licensed. Respondent filed no answer, did not appear at the hearing and introduced no testimony.

On this record, appellant is entitled to her license. When an applicant presents a prima facie case, the application may not be arbitrarily denied. For respondent to assign no reasons for denying the application and then to stand mute on appeal, makes its action appear arbitrary and unreasonable. Powell vs. Bridgeton, Bulletin #30, Item #5. See also Woodrow Wilson Democratic Club Inc. vs. Passaic, Bulletin #56, Item #3.

The action of respondent Board is reversed.

E. Frederick Burnett

Dated: January 21, 1935 Commissioner