

26 Rose Avenue,
Madison,
Morris County, New Jersey
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 872

APRIL 11, 1950.

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

BULLETIN 872

APRIL 11, 1950.

1. APPELLATE DECISIONS - THE GREEN CRYSTAL v. NEWARK.

THE GREEN CRYSTAL,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

Stanley N. Agnieszko, Esq., by David Weinick, Esq., Attorney for Appellant.

Charles Handler, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of the respondent Board suspending its license for a period of fifteen days, after appellant had been found guilty of selling and serving alcoholic beverages to a minor on October 22, 1949, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

At the time of the filing of the appeal an order was entered staying the effect of the suspension until the entry of a further order herein. R. S. 33:1-31.

The stenographic transcript of the testimony taken before the local issuing authority was admitted as part of the record of the instant case. Rule 8 of State Regulations No. 15. Additional testimony was also presented at the hearing of the appeal.

The charge preferred against the appellant by the respondent issuing authority resulted from an investigation by police of an alleged disturbance which occurred on the street a block away from the licensed premises early on the morning of October 23, 1949.

The minor, Daniel J----, testified before the local issuing authority that he arrived alone at appellant's licensed premises on October 22, 1949, at approximately 11:00 p.m., and left the premises at 12 midnight or a little later; that during his stay he purchased eight glasses of beer from the bartender, Theodore Jania, and consumed said beer; that several hours later he was apprehended by a police officer at about 2:30 a.m. on Tenth Street and Springfield Avenue, Newark, following his involvement in a disturbance with another man, and that he had never been in the appellant's premises prior to October 22, 1949. The testimony of the minor at the hearing of this appeal was substantially the same except for a few minor discrepancies.

The police officer who arrested Daniel J---- testified before the local issuing authority that, from his observation, the minor

had been drinking. Two detectives who were assigned to investigate the matter testified before the local issuing authority that the minor's testimony before such issuing authority was "practically the same" as his statement taken by these police officers. One of the detectives, when asked if he knew whether Daniel J---- was in the licensed premises at the time specified in the charge, answered, "Only what he told me."

Theodore Jania, who according to the record was tending bar on the licensed premises on the night in question, denied seeing the minor on that evening. He further testified that, when confronted with the minor by the police officers, he recalled seeing the youth in the company of five young men and two girls in the appellant's premises on October 20, and stated that he refused to serve the group alcoholic beverages because "the fellows were pretty high". According to Jania, the group then accepted the service of soft drinks. Jania said he later told the group to leave the premises because of their actions. Two patrons who testified that they were on the licensed premises on the evening of October 20 stated that they observed Daniel J---- as one of the group of young people who were ordered to leave.

One Daniel W---- testified that he knew Daniel J---- from meeting him in an adjacent municipality on several occasions, and that on the evening of October 22, 1949, he saw Daniel J---- at all times between 9:30 p.m. and 11:45 p.m. in another tavern some distance from the appellant's licensed premises. Lorraine F----, who did not testify at the hearing below, testified that she was in the company of Daniel W---- during the above mentioned hours, and that she recognized Daniel J---- as the person with whom her companion had engaged in conversation in the tavern located some distance from the appellant's.

In view of the totally uncorroborated testimony of the minor, the emphatic denial of Theodore Jania that he had either seen or served the youth on October 22, the testimony of two patrons who testified that the minor had been in the appellant's licensed premises on October 20 despite the minor's assertion that he had never been in the appellant's premises prior to October 22, and the testimony of Daniel W---- and Lorraine F---- that the minor was in another tavern on October 22, 1949, between 9:30 and 11:45 p.m., the preponderance of evidence necessary to support a finding of guilt is lacking. I shall, therefore, reverse the action of the respondent Board.

Accordingly, it is, on this 31st day of March, 1950,

ORDERED that the respondent's action, in finding the appellant guilty of the aforesaid charge and suspending its license for a period of fifteen days, be and the same is hereby reversed.

ERWIN B. HOCK
Director.

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

In the Matter of Disciplinary
Proceedings against

DANTE AZARIO
T/a DANTE'S INN
Madison Avenue
Morris Township
P.O. Convent, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-2, issued by the
Township Committee of the
Township of Morris.

Dante Azario, 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 possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 28 of State Regulations No. 20.

On November 30, 1949, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined 45 bottles of alcoholic beverages on defendant's premises and seized a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" when field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottle were not genuine as labeled.

The licensee denied tampering at any time with the contents of the seized bottle. Nevertheless, the licensee is strictly responsible for the contents of his stock of liquor.

Defendant has no previous adjudicated record. I shall, therefore, suspend defendant's license for a minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Weaver, Bulletin 851, Item 1.

Accordingly, it is, on this 31st day of March, 1950,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Morris to Dante Azario, t/a Dante's Inn, for premises on Madison Avenue, Morris Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 a.m. April 10, 1950, and terminating at 1:00 a.m. April 20, 1950.

ERWIN B. HOCK
Director.

April 3, 1950

3.

ACTIVITY REPORT FOR MARCH 1950

ARRESTS:

Total number of persons arrested - - - - -	19
Licensees and employees - - - - -	5
Bootleggers, etc. - - - - -	14

SEIZURES:

Distilled alcoholic beverages - gallons - - - - -	358.47
Wine - gallons - - - - -	171.75
Brewed malt alcoholic beverages - gallons - - - - -	29.61

RETAIL LICENSEES:

Premises inspected - - - - -	874
Premises where alcoholic beverages were gauged - - - - -	869
Bottles gauged - - - - -	15,202
Premises where violations were found - - - - -	36
Violations found - - - - -	42

Type of violations found:

Unqualified employees - - - - -	21	Other mercantile business - - - - -	2
Probable fronts - - - - -	6	Prohibited signs - - - - -	1
Gambling devices - - - - -	3	Reg. #38 sign not posted - - - - -	1
Improper beer taps - - - - -	2	Other violations - - - - -	6

STATE LICENSEES

Premises inspected - - - - -	18
License applications investigated - - - - -	21

COMPLAINTS:

Complaints assigned for investigation - - - - -	330
Investigations completed - - - - -	379
Investigations pending - - - - -	137

LABORATORY:

Analyses made - - - - -	151
"Shake-up" cases (alcohol, water and artificial color) - bottles - - - - -	10
Liquor found to be not genuine as labeled - bottles - - - - -	6

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	23
Persons fingerprinted for non-criminal purposes - - - - -	182
Identification contacts made with other enforcement agencies - - - - -	123
Motor vehicle identifications via N. J. State Police Teletype - - - - -	4

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	20
---	----

Violations involved:

Sale during prohibited hours - - - - -	13	Permitting hostesses on premises - - - - -	1
Permitting brawls on premises - - - - -	2	Employing unqualified persons - - - - -	1
Sale to intoxicated persons - - - - -	2	Sale by retailer on credit - - - - -	1
Sale to minors - - - - -	2	Permitting lottery activity on premises (punch boards) - - - - -	1

Cases instituted at Division - - - - -

25

Violations involved:

Possessing illicit liquor - - - - -	9	Hindering investigation - - - - -	1
Sale under Fair Trade price - - - - -	6	Purchase from improper source - - - - -	1
Fraud and front - - - - -	2	Delivery without bona fide invoices - - - - -	1
Failure to report retailer in default - - - - -	2	Storage off licensed premises - - - - -	1
Delivery on credit to retailer in default - - - - -	2	Permitting immoral activity on premises - - - - -	1
Mislabeled beer taps - - - - -	2	Failure to afford view into premises during prohibited hours - - - - -	1
Sale during prohibited hours - - - - -	2		

Cases brought by municipalities on own initiative and reported to Division - - - - -

2

Violations involved:

Permitting brawls on premises - - - - -	1
Permitting bookmaking on premises - - - - -	1

HEARINGS HELD AT DIVISION:

Total number of hearings held - - - - -	38		
Appeals - - - - -	4	Seizures - - - - -	6
Disciplinary proceedings - - - - -	20	Application for license - - - - -	1
Eligibility - - - - -	6	Application for certificate - - - - -	1

PERMITS ISSUED:

Total number of permits issued - - - - -	700		
Employment - - - - -	109	Social affairs - - - - -	238
Solicitors - - - - -	113	Special wine - - - - -	2
Disposal of alcoholic beverages - - - - -	97	Miscellaneous - - - - -	141

ERWIN B. HOCK, DIRECTOR

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

4. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1949 to MARCH 31, 1950
AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO RS 33:1-19.

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	487	\$ 203,050.00	69	\$ 25,950.00	17	\$ 1,578.36						573	\$ 230,578.36
Bergen	819	296,916.37	296	78,518.00	69	6,514.55	52	\$ 2,280.82	6	\$ 1,596.79	8	1234	385,826.53
Burlington	186	72,175.00	30	8,400.00	36	5,050.00	1	25.00				253	85,650.00
Camden	456	216,550.00	82	29,325.00	61	5,794.71			1	375.00	1	599	252,044.71
Cape May	133	65,750.00	11	4,150.00	15	1,583.29						159	71,483.29
Cumberland	81	34,800.00	14	3,650.00	29	3,910.00						124	42,360.00
Essex	1376	759,560.00	349	201,850.00	100	13,489.03	33	1,650.00				1858	976,549.03
Gloucester	107	33,450.00	15	2,350.00	14	1,400.00						134	37,800.00
Hudson	1562	677,292.45	298	117,733.16	76	9,259.46	74	3,136.58			1	2009	807,454.65
Hunterdon	79	24,075.00	6	1,787.50	5	600.00						90	26,462.50
Mercer	425	255,000.00	51	20,470.83	52	6,798.78			1	120.00	1	528	282,389.61
Middlesex	635	300,954.62	70	22,245.00	62	5,741.32	5	225.00				772	329,165.94
Monmouth	548	270,645.00	112	38,420.52	31	3,700.00	11	386.32	29	12,535.48	30	701	325,687.32
Morris	353	118,515.00	95	27,158.31	39	3,832.29	7	450.00	6	1,230.42	6	494	151,187.02
Ocean	190	106,412.87	45	19,050.00	13	1,291.64						248	126,754.51
Passaic	882	361,897.95	163	50,440.00	34	4,113.08	14	628.36				1093	417,079.39
Salem	50	18,900.00	7	1,300.00	11	1,000.00						68	21,200.00
Somerset	185	75,815.00	36	9,489.35	21	2,336.81						242	87,641.16
Sussex	172	45,055.00	16	3,104.45	7	376.71			1	225.00	2	194	48,761.16
Union	545	288,200.00	142	57,300.00	62	7,051.85	24	1,161.34				773	353,713.19
Warren	148	41,380.00	17	3,307.50	28	2,655.00			2	247.54	2	193	47,590.04
Total	9419	\$4,266,394.26	1922	\$726,632.62	782	\$88,077.88	221	\$9,943.42	46	\$16,330.23	51	12339	\$5,107,378.41

Respectfully submitted,

John H. Michelson, Deputy Director.

ERWIN B. HOCK, DIRECTOR.

5. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAILER FROM OTHER THAN NEW JERSEY MANUFACTURERS OR WHOLESALERS, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

BESSIE CURTIS)
 T/a CURTIS BAR & RESTAURANT)
 Route 9-4)
 Berkeley Township)
 P.O. Bayville, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-8, issued by the)
 Township Committee of the Township)
 of Berkeley.)

 James Del Mauro, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she purchased or obtained alcoholic beverages from persons who are not the holders of any New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulations No. 20.

It appears from the file herein that, on February 17, 1950, Theodore Curtis, husband of defendant and manager of her licensed premises, obtained from another New Jersey retail licensee three 4/5 quart bottles of Old Grand-Dad Kentucky Straight Bourbon Whiskey upon a promise to pay to the other retailer the wholesale price of said items.

Violations of this nature go to the very root of control. A licensee is not permitted to purchase alcoholic beverages except from a New Jersey manufacturer or wholesaler. Rule 15 of State Regulations No. 20.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days, remitting five days for the plea, leaving a net suspension of ten days. See Bulletin 840, Item 10, and Bulletin 868, Item 13.

Accordingly, it is, on this 3rd day of April, 1950,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Berkeley to Bessie Curtis, t/a Curtis Bar & Restaurant, for premises on Route 9-4, Berkeley Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. April 10, 1950, and terminating at 2:00 a.m. April 20, 1950.

ERWIN B. HOCK
 Director.

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

In the Matter of Disciplinary
Proceedings against

NORMAN S. & PHILIP KRUVANT
22-24 East Park Street
Newark 1, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-
tion License C-586, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Defendant-licensees, by Merick Cross, Manager.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 28 of State Regulations No. 20.

On February 16, 1950, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, seized a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" and a 4/5 quart bottle labeled "Seagram's V. O. Canadian Whisky" when field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottles were not genuine as labeled.

Defendants have no previous adjudicated record. I shall, therefore, suspend defendants' license for a minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Huczko, Bulletin 860, Item 6.

Accordingly, it is, on this 3rd day of April, 1950,

ORDERED that Plenary Retail Consumption License C-586, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Norman S. & Philip Kruvant, for premises 22-24 East Park Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. April 10, 1950, and terminating at 2:00 a.m. April 20, 1950.

ERWIN B. HOCK
Director.

7. 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)

WILLIAM CARMEL)
T/a BILL CARMEL'S LIQUOR STORE)
314 Monroe Street)
Passaic, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-)
bution License D-4, issued by the)
Board of Commissioners of the)
City of Passaic.)
-----)

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold
alcoholic beverages below the minimum consumer price, in violation
of Rule 5 of State Regulations No. 30.

On March 13, 1950, the defendant sold a pint bottle of P M
DeLuxe Blended Whiskey for the sum of \$2.25. The then effective
minimum resale (consumer) price, as published in a pamphlet issued
by the State Division of Alcoholic Beverage Control and effective
January 1, 1950, was \$2.27.

Defendant has no previous adjudicated record. I shall, there-
fore, suspend his license for a minimum period of ten days. Five
days will be remitted because of the plea entered herein, leaving a
net suspension of five days. Re Fox, Bulletin 864, Item 4.

Accordingly, it is, on this 3rd day of April, 1950,

ORDERED that Plenary Retail Distribution License D-4, issued
by the Board of Commissioners of the City of Passaic to William
Carmel, t/a Bill Carmel's Liquor Store, for premises 314 Monroe
Street, Passaic, be and the same is hereby suspended for a period of
five (5) days, commencing at 9:00 a.m. April 10, 1950, and terminating
at 9:00 a.m. April 15, 1950.

ERWIN B. HOCK
Director.

8. 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

DAVID KAYE, HENRY KAYE, ABE KAYE
T/a KAYE'S LIQUORS
372 Monroe Street
Passaic, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distri-
bution License D-18, issued by the
Board of Commissioners of the City
of Passaic.

Grossman & Kampelman, Esqs., by Harry Kampelman, Esq.,
Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold alcoholic beverages at retail for a price below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On March 13, 1950, an employee of defendants sold, on the licensed premises, a pint bottle of Schenley Reserve Blended Whiskey to a person employed by a liquor dealers' association, in the presence of an agent of the Division of Alcoholic Beverage Control, for the price or sum of \$2.50. The minimum consumer price for the beverage mentioned herein, as listed in the then current "List of Minimum Resale Prices", effective January 1, 1950, was \$2.54.

Defendants offer, in mitigation, that this was a first offense and that the violation was committed by a part-time clerk, contrary to specific instructions by defendants. Licensees, however, are responsible for a violation even when caused by carelessness or negligence of an employee. Cf. Grant Lunch Corporation, Bulletin 517, Item 3; Grant Lunch Corporation v. Driscoll, 129 N.J.L. 408, aff'd 130 N.J.L. 554.

Considering the lack of a prior adjudicated record, and finding no aggravating circumstances, I shall suspend the license for the minimum period in "Fair Trade" violations -- ten days. Remitting five days for the plea will leave a net suspension of five days. Re Alevras, Bulletin 858, Item 7.

Accordingly, it is, on this 3rd day of April, 1950,

ORDERED that Plenary Retail Distribution License D-18, issued by the Board of Commissioners of the City of Passaic to David Kaye, Henry Kaye, Abe Kaye, t/a Kaye's Liquors, for premises 372 Monroe Street, Passaic, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. April 10, 1950, and terminating at 9:00 a.m. April 15, 1950.

ERWIN B. HOCK
Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT STILL PARTS IN MOTOR VEHICLE - STILL PARTS AND MOTOR VEHICLE ORDERED FORFEITED - LIEN CLAIM ON MOTOR VEHICLE HELD BY INNOCENT LIENOR RECOGNIZED.

In the Matter of a Seizure on)
February 7, 1950 of a copper pre-)
heater, a gooseneck and a Dodge)
truck on Cooper Street near Delsea)
Drive, Deptford Township, County of)
Gloucester, and State of New Jersey.)
-----)

Case No. 7582

ON HEARING
CONCLUSIONS AND ORDER

Cole, Morrill & Nadell, by Daniel Parke Lieblich, Esq., Attorney for Eastern Acceptance Corporation.
Margaret Baptiste, 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, Revised Statutes of New Jersey, to determine whether certain still parts and a Dodge truck, described in a schedule attached hereto, seized on February 7, 1950 on Cooper Street near Delsea Drive, Deptford Township, New Jersey, constitute unlawful property and should be forfeited.

It appears that on the day in question a New Jersey State Trooper halted the motor vehicle for a traffic violation and discovered the still parts in the car. The trooper took Leo Baptiste, the driver, into custody, seized the car and the still parts, and notified the Division of Alcoholic Beverage Control.

The records of the Division disclose that in 1934 and again in 1940 an illicit still was found in Baptiste's home, and that he was convicted in criminal proceedings in this state on each occasion.

The still parts seized in the car were used or intended to be used in the unlawful manufacture of alcoholic beverages and hence constitute unlawful property. R.S. 33:1-1(y). Such still parts and the vehicle in which they were transported are therefore subject to forfeiture.

When the matter came on for hearing pursuant to R.S. 33:1-66, Margaret Baptiste appeared and sought return of the motor vehicle. An appearance was also entered for Eastern Acceptance Corporation, which sought recognition of a lien which it claimed on such motor vehicle. No one opposed forfeiture of the still parts.

The Dodge truck, when seized, bore license plates issued to Margaret Baptiste. However, it was developed at the hearing that she executed a motor vehicle bill of sale for the car to an automobile dealer on November 29, 1949, and that such dealer executed a bill of sale for the car to Edward J. Baptiste, her son, on the following day. Hence, aside from her knowledge of her husband's past liquor law violations, Mrs. Baptiste is not the owner of the car and, consequently, not entitled to its return. Her request for such return is therefore denied.

The Eastern Acceptance Corporation presented evidence that in 1947 it financed the purchase of the truck by Margaret Baptiste. The finance company obtained a report from an independent investigating agency concerning Mrs. Baptiste's background and character. The agency reported that Margaret Baptiste owned her home jointly with her husband; that he was an iron worker; that she and her family had a favorable

reputation in the community, and that she conducted a cut flower business with an estimated income of \$2500.00 per year; that her son, Edward, drove a taxicab and that two other children were likewise gainfully employed.

On the basis of this report, the finance company advanced part of the purchase price of the truck and had its lien noted on the records of the Division of Motor Vehicles of New Jersey.

Any reasonably prudent person would have been satisfied by the agency report that he was dealing with a law-abiding person, operating a business of her own. Under such circumstances seemingly there would be no necessity to investigate Mrs. Baptiste's husband.

On November 28, 1949 Mrs. Baptiste paid the finance company \$110.00, the balance due on her loan. On November 30th, the finance company granted her son, Edward, a loan of \$398.52 on the motor vehicle and had its lien noted on the records of the Division of Motor Vehicles of New Jersey.

While the nature of this transaction, as between mother and son, is obscure, it did not, of itself, tend to indicate any change in the character or background of either. The finance company did not investigate Edward Baptiste at this time; it loaned him the money on the basis of its past satisfactory loan to his mother.

Neither Mrs. Baptiste nor her son appear to have any record for violating any liquor laws. The finance company apparently had no reason to investigate Leo Baptiste.

I am therefore satisfied that the Eastern Acceptance Corporation has acted in good faith and had no knowledge of the unlawful transportation of the still in the motor vehicle or of such facts as would have led a person of ordinary prudence to discover such use. Accordingly, I shall recognize its lien.

The amount presently due on this lien claim is \$360.00. The retail value of the Dodge truck exceeds the amount of the lien and the Director of the Division of Purchase and Property of the State Department of the Treasury advises that such Department is interested in retaining the motor vehicle for the use of a state institution. Hence, an Order will be entered retaining the motor vehicle for the use of the state, conditioned upon the payment of the lien claim thereon of \$360.00.

Accordingly, it is DETERMINED and ORDERED that the Dodge truck, described in Schedule "A" attached hereto, constitutes unlawful property and be retained for the use of the State of New Jersey conditioned upon payment to the Eastern Acceptance Corporation of its lien claim in the amount of \$360.00; and it is further

DETERMINED and ORDERED that the still parts more fully described in the aforesaid Schedule "A", constitute unlawful property and 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 Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: April 4, 1950.

SCHEDULE "A"

- 1 - copper preheater and gooseneck
- 1 - Dodge truck, Serial #81176815, engine #T 112,
1949 N. J. Reg. XA 8136
- Miscellaneous personal property

10. SEIZURE - FORFEITURE PROCEEDINGS - STOCK OF ALCOHOLIC AND OTHER BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on)
December 10, 1949 of a quantity)
of alcoholic beverages, various)
fixtures, furnishings, equipment)
and merchandise at 169 Bloomfield)
Avenue, in the Town of Montclair,)
County of Essex and State of New)
Jersey.)
-----)

Case No. 7548

ON HEARING
CONCLUSIONS AND ORDER

Seth Beller and Ralph Stern, trading as Television Rentals, Pro Se.
N & L Vending Machine Co., by Jack Miller.
Malkin-Illion Co., by Frank Resnick.
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, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages and various fixtures, furnishings and equipment, itemized in a schedule attached hereto, seized on December 10, 1949 at 169 Bloomfield Avenue, Montclair, New Jersey, constitute unlawful property and should be forfeited.

It appears that ABC agents made the seizure because of alleged unlawful sales of alcoholic beverages at the above address, in the ostensible "club" room of the Business and Professional Men's Club.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered for N & L Vending Co. which sought return of two vending machines; for Television Rentals, which sought return of a television set; and for Malkin-Illion Co. which sought return of two vending machines.

The facts established by the evidence presented at the hearing are that on December 3rd and 10th, 1949 Horace George Royster unlawfully sold alcoholic beverages to an ABC agent at the "club". ABC agents obtained a search warrant upon the basis of the sale on December 3rd, and on December 10th made the seizure pursuant thereto. Royster, in a signed statement, said that Philip Branch and Marcellus Henderson were the owners and operators of the establishment; that he was employed there and that his services are paid for by Branch, and that he sold beer to the ABC agent and to other persons.

Henderson and Branch were present when the seizure was made. Henderson told the agents that he and Branch owned and operated the place. The "club" quarters, as well as an adjoining office or store, had been rented to Branch. Both places bear the same street address. Branch denied that there were any alcoholic beverages in the adjoining office or store. However, when the agents searched the office they found therein 12 quart bottles and 23 pint bottles of whiskey and three cases of beer, in addition to a quantity of beer and whiskey which they found in the "club" quarters.

The agents seized all of the alcoholic beverages and all of the personal property in both stores and arrested Branch, Henderson and Royster.

After the seizure hearing in the case, Philip Branch obtained return of the articles seized in the office or store, excluding the alcoholic beverages, upon payment of the sum of \$300.00, the appraised retail value of such articles, to the Director of the Division of

Alcoholic Beverage Control, under protest, pursuant to R.S. 33:1-66 and pursuant to a stipulation that such Director was to determine, on the basis of the evidence presented at such hearing, whether such articles or the \$300.00 deposited in place thereof should be forfeited or returned to Philip Branch.

Neither Branch, Henderson nor Royster held any license authorizing any of them to sell or serve alcoholic beverages at the premises.

It is clearly evident that the alcoholic beverages seized in the "club" quarters were intended for unlawful sale and hence are illicit. R.S. 33:1-1(i). It is a fair inference, in the absence of a satisfactory explanation, that the alcoholic beverages found in the office were likewise intended for unlawful sale. Therefore, the illicit alcoholic beverages in the "club" quarters, and all other alcoholic beverages and personal property found therewith on the premises are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R. S. 33:1-66.

It appears from the evidence that Branch was one if the principals in operating the speakeasy under the guise of a club. Hence, he cannot obtain any relief from forfeiture. Cf. Seizure Case No. 7517, Bulletin 869, Item 10. The \$300.00, deposited by him, representing the value of the property which was returned to him, will therefore be forfeited.

The other persons seeking return of their equipment claim to be innocently involved in the matter. I have the discretionary authority to return property subject to forfeiture to a person who establishes to my satisfaction that he acted in good faith and did not know or have any reason to suspect that his property was in a speakeasy. R.S. 33:1-66(f).

Ralph Stern and Seth Beller are the owners of a coin-operated television set seized in the place. N & L Vending Co. is the owner of a candy vending machine and a gum vending machine, and Malkin-Illion Co. is the owner of a cigar vending machine and a cigarette vending machine also seized there. These claimants placed their equipment in the establishment on a profit-sharing basis in the regular course of their business. The place had the outward appearance of a clubroom. They dealt with Mr. Branch as the representative of the club. The persons who visited the place to service the machines each testified that there were no alcoholic beverages visible whenever they were there and that there was nothing which came to their attention from which they could suspect that alcoholic beverages were being sold there. I am satisfied that each of the claimants acted in good faith and had no knowledge of or reason to suspect the true nature of the establishment. Accordingly, I shall recognize the respective claims. Cf. Seizure Case No. 6928, Bulletin 709, Item 9.

Accordingly, it is DETERMINED and ORDERED that if on or before the 13th day of April, 1950, Seth Beller and Ralph Stern, trading as Television Rentals, N & L Vending Machine Co., and Malkin-Illion Co., each pay their proportionate share of the costs of seizure and storage, as allocated by the Director, the television set, candy and gum vending machines, and cigarette and cigar vending machines respectively will be returned to the respective claimants; and it is further

DETERMINED and ORDERED that the various articles returned to Philip Branch, as itemized in an inventory made thereof, which inventory is referred to as if incorporated herein at length, constitute

unlawful property, and the sum of \$300.00, representing the retail value thereof, paid under protest to the Director of the Division of Alcoholic Beverage Control by Philip Branch be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the currency in the various vending machines, 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 Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: April 4, 1950.

SCHEDULE "A"

- 24 - pints of whiskey
- 13 - 4/5 qt. bottles of whiskey
- 89 - cans of beer
- 13 - assorted whiskey glasses
- 168 - bottles of assorted soda
- 10 - cases of empty soda bottles
- 38 - chairs
- 1 - electric clock
- 1 - television set
- 1 - Coca Cola ice cooler
- 4 - tables
- 2 - radios
- 1 - cigar vending machine and currency therein
- 1 - cigarette vending machine and currency therein
- 1 - gum vending machine and currency therein
- 1 - fluorescent light
- 4 - stoves and pipes
- 1 - ice box
- 3 - leather seats
- 2 - desks
- 1 - electric fan
- 1 - paper rack
- 1 - cot
- 13 - cartons of assorted shoes
- 1 - vacuum cleaner
- 1 - typewriter
- 1 - check writing machine
- 1 - desk set, pen and stand
- 1 - metal strong box
- 1 - desk blotter frame
- Quantity of foodstuffs
- 1 - candy vending machine and currency therein

11. APPELLATE DECISIONS - HOLZBERG v. ORANGE.

SAMUEL A. HOLZBERG, trading as)	
TERMINAL TAVERN,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS AND ORDER
-vs-)	
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY OF)	
ORANGE,)	
)	
Respondent.)	
-----)		
Ralph N. Solodar, Esq., Attorney for Appellant.		
Felix J. Verlangieri, Esq., Attorney for Respondent.		

BY THE DIRECTOR:

This is an appeal from a 90-day suspension by respondent Board of appellant's plenary retail consumption license for premises 355-357 Washington Street, Orange. Appellant pleaded guilty before respondent Board (the local issuing authority) to a charge of sale of alcoholic beverages in an original container for off-premises consumption on Sunday, January 22, 1950, at about 12:20 p.m., in violation of Rule 1 of State Regulations No. 38, and Section 11 of a local ordinance which prohibits any alcoholic beverage activity on licensed premises on Sundays between the hours of 2:00 a.m. and 1:00 p.m.

A stay of suspension pending determination of this appeal was denied and appellant's license has been under suspension since 2:00 a.m. March 7, 1950.

Appellant's sole contention is that the suspension of his license for a period of 90 days is excessive. In support of this contention, appellant's attorney cited certain disciplinary cases decided on appeal by the Commissioner (now Director) of Alcoholic Beverage Control wherein the penalty as originally imposed by the local issuing authority was decreased. In those cases, however, I might point out that the circumstances peculiar to each case were of necessity the determining factors which motivated the modification of the penalty. Respondent contends that the suspension imposed herein was reasonable because appellant, after pleading guilty to a violation of Rule 1 of State Regulations No. 38, had his license suspended for a period of ten days, effective September 2, 1949. At that time the members of the respondent Board, according to its attorney, took into consideration the fact that an employee, apparently without the knowledge of the licensee, had committed the violation.

The two ABC agents who had reported the violation committed by the appellant, although present at the hearing of the instant appeal, were not called upon to testify. Their testimony was unnecessary because of the guilty plea at the hearing below and the limited issue raised herein. An examination of their investigation in the matter, however, discloses that the ABC agents stationed themselves for approximately one hour a short distance to the rear of appellant's licensed premises on the morning in question, during which time they observed a man handing packages to various persons through a rear window. The agents proceeded to the window and one of them purchased a bottle of whiskey from a man who was subsequently identified as the licensee. Upon making known their identity, the ABC agents were told by the licensee that business was bad and he was attempting to "catch

up". These facts were recited by the respondent's attorney and were not in any way refuted by the attorney for appellant herein.

It is well settled that the penalty imposed following a local disciplinary proceeding, in the first instance, within reasonable limitations, rests within the sound discretion of the municipal issuing authority. The power of the State Commissioner (now Director) to reduce a penalty on appeal should be exercised only in those cases where the penalty imposed is manifestly unreasonable and clearly excessive. Dzieman v. Paterson, Bulletin 233, Item 10; Schmidt v. Morristown, Bulletin 457, Item 7; Gene's Pizzeria, 644 Inc. et al. v. Bayonne, Bulletin 510, Item 11; Creston Holding Company v. Belleville, Bulletin 544, Item 2; Ruoff v. Gloucester, Bulletin 749, Item 1.

In the matter before me there is nothing to indicate that the respondent was either arbitrary or unreasonable in imposing the penalty in question. It was a second similar violation within a short period and it appears to have been a deliberate violation by appellant. Therefore, the action of respondent will be affirmed.

Accordingly, it is, on this 6th day of April, 1950,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

12. STATE LICENSES - NEW APPLICATION FILED.

Latrobe Brewing Company
119 Ligonier St.
Latrobe, Pennsylvania.

Application for Limited Wholesale License filed April 5, 1950.

Erwin B. Hock
Director.