

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1629

August 18, 1965

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - STITES, INC. v. PEMBERTON.
2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN HOTEL - CLAIM OF OWNER FOR RETURN OF PERSONAL PROPERTY REJECTED - CLAIMS OF OWNERS FOR RETURN OF PERSONAL PROPERTY ADJUDICATED - ALCOHOLIC BEVERAGES, COMMINGLED CASH AND BALANCE OF SEIZED PROPERTY ORDERED FORFEITED.
3. DISCIPLINARY PROCEEDINGS (South River) - PURCHASE FROM ANOTHER RETAILER - FOUL LANGUAGE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (South River) - SALE TO ANOTHER RETAILER - TRANSPORTATION WITHOUT INVOICE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
5. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

BULLETIN 1629

August 18, 1965

1. APPELLATE DECISIONS - STITES, INC. v. PEMBERTON.

Stites, Inc., t/a Mayo's Sunset View Inn,)	
)	
Appellant,)	
)	
v.)	On Appeal
)	
Township Committee of the Township of Pemberton,)	O R D E R
)	
Respondent.)	

Parker, McCay & Criscuolo, Esqs., by Barry T. Parker, Esq.,
Attorneys for Appellant.
Alexander Denbo, Esq., by Maurice Denbo, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

Appellant appeals from respondent's action suspending its license for fifteen days effective April 1, 1965 for sale to minors.

Upon filing of the appeal I entered an order staying the suspension pending the determination of the appeal.

Subsequent to the hearing on appeal, by letter of June 11, 1965 appellant advised me that the appeal was withdrawn. In the meantime the license was suspended by the municipal issuing authority for fifteen days "commencing and including Saturday, June 5, 1965 through and including Saturday, June 19, 1965", again for sale to minors.

No reason appearing to the contrary, it is on this 16th day of June 1965,

ORDERED that the appeal herein be and the same is hereby dismissed, It is further

ORDERED that the fifteen-day suspension be reinstated, and Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Pemberton to Stites, Inc., t/a Mayo's Sunset View Inn, for premises Pemberton Road, Pemberton Township, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing and including Sunday, June 20, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until and including Sunday, July 4, 1965.

JOSEPH P. LORDI
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN HOTEL - CLAIM OF OWNER FOR RETURN OF PERSONAL PROPERTY REJECTED - CLAIMS OF OWNERS FOR RETURN OF PERSONAL PROPERTY ADJUDICATED - ALCOHOLIC BEVERAGES, COMMINGLED CASH AND BALANCE OF SEIZED PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure on	:	
September 20, 1964 of a quantity	:	Case No. 11,334
of alcoholic beverages, three cases	:	
of soda, furniture, fixtures,	:	On Hearing.
equipment and \$58.37 in cash at the	:	
Bayview Hotel, 50 Marshall Street,	:	CONCLUSIONS AND
in the City of Elizabeth, County of	:	ORDER
Union and State of New Jersey.	:	

.....

- Rinaldo & Rinaldo, Esqs., by Anthony D. Rinaldo, Esq. appearing for claimants, James Parham, Ruth Hayes and Edward Thomas Gill.
- Fast & Fast, Esqs., by Kenneth H. Fast, Esq., appearing for claimants, R. E. Bierman, Murray Ohrbach and Herman L. Fast.
- Schapiro, Steiner & Schapiro, Esqs., by Harry Steiner, Esq., appearing for claimant, Automatic Music Service.
- Plainfield Trust Company, claimant, by William B. Stevens, Collection Manager.
- Leffler Brothers, claimant, by Louis Esner.
- Exclusive Decorators, claimant, by Egon Ney, owner.
- Charles Barnard, claimant, Pro Se.
- I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 88 containers of alcoholic beverages, three cases of soda, furniture, fixtures, equipment and \$58.37 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on September 20, 1964 at the Bayview Hotel, 50 Marshall Street, Elizabeth, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, several claimants, represented by counsel, sought return of certain specific items of personal property, and the cash. These claims will be separately considered in this report.

No one appeared to oppose forfeiture of the alcoholic beverages.

At the outset of this hearing, Anthony D. Rinaldo, attorney for Edward Gill, James Parham and Ruth Hayes moved to

"suppress this hearing", and for an Order for the return of the personal property seized on the ground that the said seizure was a violation of "the Constitution of the United States, the Constitution of the State of New Jersey, in violation of all the decisions concerning unlawful search and seizure; particularly Mapp versus Ohio". He further asserted that no search warrant was obtained and that the seizure was made without a search warrant after an arrest had been made. He further represented that in the criminal proceedings instituted as a result of the said arrest the County Court suppressed all of the items seized except for the property found in the room containing a makeshift bar.

There were introduced into evidence Orders entered in the Union County Court, Law Division -- (Criminal) -- dated December 16, 1964. An Order in the matter of State of New Jersey vs. Jean Thomas denied a motion to suppress, in part, and grant, in part, as indicated hereinabove. In the Matter of State of New Jersey vs. James Parham, the County Court denied the motion to suppress; and in the matter of State of New Jersey vs. Ruth Hayes, the County Court denied the motion to suppress, in part, and granted the motion, in part, as indicated hereinabove.

It should be specifically noted that the County Court did not order the return of the items seized, and the suppression of the said evidence relates solely to the criminal proceedings. As counsel for the Division noted, this is an in rem action under R.S. 33:1-66 which seeks forfeiture against the property, and bears no relationship to the criminal proceedings, which are in personam.

With respect to the agent's authority to seize the said property without a search warrant, that will be discussed after a recital of the facts and the law applicable thereto.

The factual setting for the Division's case was developed through the testimony of two ABC agents and may be summarized as follows: Acting upon a specific assignment to investigate the alleged illegal sale of alcoholic beverages at the Bayview Hotel, several visits were made to the premises. In the company of certain members of the Elizabeth Police Department Confidential Squad headed by Detective John McGuire, the ABC agents returned to these premises on September 20, 1964, at approximately 1:00 P.M.

Fortified with "marked" dollar bills, the serial numbers of which had been previously recorded, Agent M entered the corridor of the hotel and observed that to his right there was a large dance area which contained a bandstand; he further observed a large lobby with two doors leading from it, one into a room in which the makeshift bar was located, the other door leading into a kitchen. From the room with the makeshift bar there was a door leading to a bedroom which had an entrance to the kitchen.

Upon entering the lobby, he observed five males in that area standing or sitting at tables, and consuming cans of beer. He then entered the room which contained a makeshift bar, two stereo radios, record player combination, two sofas, and end tables. A female was sitting at the bar and another female, later identified as Jean Thomas, was tending bar.

He ordered and was served by Miss Thomas, a can of beer for which he paid the sum of 35¢ from the "marked" dollar bill. Upon being served, he went to the telephone booth in the lobby and called a member of the Elizabeth Police Department who had been heretofore alerted. He then returned to the bar and purchased a second can of beer from Miss Thomas with another "marked" dollar bill and received 65¢ in change. The "marked" bills and the list which had been previously prepared were admitted into evidence. Shortly thereafter, Agent R and members of the Elizabeth Police Department entered the premises. At the same time one Ruth Hayes came out of another room, and he questioned her. She identified herself as the lessee of the first floor premises. The agents then interrogated her with reference to the persons who were consuming alcoholic beverages and she insisted that they were all "old friends" of hers. She specifically identified Agent R as "a friend named George". The agent thereupon identified Miss Thomas as the person who had just sold alcoholic beverages to him; and both women were placed under arrest.

A search of the rear of the bar disclosed a cash box containing \$56.37 which were commingled with the two "marked" dollar bills. It was further established that, according to the records of this Division, no license or permit had been issued either to Jean Thomas, James Parham or Ruth Hayes, for the premises in question, or to anyone authorizing the sale of alcoholic beverages on these premises. Shortly thereafter, James Parham appeared at the premises and identified himself as the lessee of the hotel, and he informed the agents that he had sub-leased the first floor to Mrs. Hayes.

There was received in evidence a certified copy of a chemical analysis of alcoholic beverages by the Director of this Division which report sets forth that analysis by the Division chemist of one six-ounce bottle containing five ounces of alleged Krueger Beer proved that it is an alcoholic beverage, fit for beverage purposes, with an alcoholic content by volume of 5.5%. The report further shows that similar analyses were made of the contents of other alcoholic beverages seized at the time which also proved that they were alcoholic beverages, fit for beverage purposes.

This witness further testified that a search of the bedroom, as hereinabove described, contained, among other things, a substantial number of cases of Rolling Rock Beer, bottled soft drinks and other personal property. The beverages and some of the personal property, excluding the clothing and the bed, were seized. The agents also seized a television set, electric fan and soda dispensing machine in the lobby as well as a cigarette machine, juke box, refrigerator, the bar, a bandstand, tables and chairs which were located in the dance area.

On cross-examination, the agent detailed each of the items seized as set forth in the inventory attached hereto. He admitted that Mrs. Hayes asked whether he had a search warrant, and he informed her no search warrant was obtained prior to the arrest and search of the premises.

It was stipulated that the testimony of ABC Agent R would be substantially corroborative of the testimony of Agent M from the time that Agent R entered the premises and

until the time that the seizure was completed, particularly with respect to the observations and the conversations that took place.

The record further discloses that Jean Thomas was charged with selling alcoholic beverages without a liquor license in violation of R.S. 33:1-50(a); and Ruth Hayes was charged with possessing alcoholic beverages with intent to sell the same contrary to R.S. 33:1-50(b). They were arraigned in the Elizabeth Municipal Court and held for action by the Union County Grand Jury.

At this point in the proceedings, counsel renewed his motion that the seized personal property and cash be returned because the seizure was illegal in the absence of a search warrant. R.S. 33:1-66, authorizing the seizure of unlawful property sets forth in pertinent part in paragraph (a) as follows:

- "a. Any officer knowing, or having reasonable cause to believe, that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property,.... All property when seized shall be under the jurisdiction of the Director of the Division of Alcoholic Beverage Control subject to this chapter."

The agents were lawfully present on the hotel premises and the unlawful sales of liquor were made directly to an ABC agent. Under these circumstances, no search warrant was required. Cf. The Atlantic (C.C.A.N.Y.) 68 Fed 2nd 8. R.S. 33:1-4 provides that all division investigators shall have authority to arrest without for violation of the Alcoholic Beverage Act committed in their presence. Cf. The Helen 72 Fed. 2d 772, United States v. 146, 157 Gallons of Alcohol (D.C., D.N.J.) 3 Fed. Sup. 450.

Since the arrest was validly made, the officers may then search reasonably incidental to said arrest. State v. Doyle, 42 N.J. 334, 342; Preston v. United States, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964); Ker v. California, 374 U.S. 23, 83 S. Ct. 1623 (1963); Annotation, 94 L. Ed. 671 (1950).

I therefore find that since the sale was made directly to the agent, an arrest was made, and a search made incidental thereto and reasonably contemporaneously therewith, the defense of illegal search and seizure must be rejected. State v. Doyle, supra; Cf. State v. Smith, 37 N.J. 481; Carroll v. United States, 267 U.S. 132, 161; Husty v. United States, 282 U.S. 694, 700.

As noted in the early part of this report, these proceedings are civil and concern the forfeiture of the property. Therefore, they are not affected by any action involving the individuals in the criminal proceedings.

Jurisdiction over the property seized resides in this Division under and by virtue of R.S. 33:1-66.

James Parham, testifying on his own behalf stated that he is the lessee and manager of this three-story hotel building which contains a total of 33 sleeping rooms and he gave the following account: Mrs. Hayes is a sub-lessee of a three-room apartment on the first floor of this building, consisting of a living room, kitchen and bedroom. The first floor also contains a lobby, a hallway and a storeroom. One of the rooms containing a bar also had a cigarette machine and a Wurlitzer music machine. He owned a stereo Hi-Fi in Mrs. Hayes' living room which is the room in which the bar was located. He purchased this Hi-Fi together with the bar at the Exclusive Decorators in Perth Amboy, New Jersey in 1959, at a cost of \$500.00. He had no proof of ownership and promised to send the same within a few days after the hearing. This information was never received.

On cross-examination, he stated that Ruth Hayes had rented the apartment from him and pays a weekly rental of \$12.00. He is her close friend, and has visited her apartment frequently. He also noted that she had a bar in her living room which contained a refrigerator, but denied seeing any people going into the living room from the lobby or sitting around drinking cans of beer. However, he admitted seeing people drink cans of beer from time to time and assumed they themselves brought it into the premises.

He further admitted that there were numerous affairs and parties which took place on these premises because "... it's a club". He also volunteered the information that he had occasion to put a few people out of the hotel for bringing in alcoholic beverages. However, he stoutly denied that he had ever seen any beer or whiskey in Mrs. Hayes' apartment. Finally, he admitted that he himself had served beer to members of a club and to members of a local ball team. He was then asked whether he offered any explanation at the time of the raid by the ABC agents as to the sale and service of liquor. His answer: "I said, 'Nobody is supposed to be selling beer here'."

Ruth E. Hayes testified in support of her claim for the return of an Emerson television set listed as Item No. 24 in the Complete Inventory of Seizure, which was seized in the bedroom of her apartment. She stated that she had purchased the same at the Linden Appliance Company in Elizabeth. She did not produce a bill of sale and could not recall how much she paid on it and how much was due. She further stated that she was not present when Miss Thomas allegedly sold beer to the agents but protested the search of her bedroom and asked the officers whether they had a search warrant.

She explained that, on the afternoon prior to the date of the seizure, a ball club had a get-together and brought its own beer and liquor. There was some quantity of liquor remaining after they left and she was merely holding the same for them until they returned at a later date. She explained that the reason she had the beer in her living room was that "I use it for my company, because I have a lot of aunts and cousins, because I was getting ready for Christmas". She stated that she purchased the bar and the

bar stools for the sum of \$281.00 but is making no claim at this time for the return of the said bar; her only claim is for the return of the Emerson television set. She insisted that a large quantity of Rolling Rock Beer was her own personal property and she had no intention of selling either that beer or the beer in the other room.

On cross-examination, she denied selling liquor or authorizing Miss Thomas to sell any liquor. She explained that there was just a group of friends there, drinking, and having a party, and playing records. She was then asked whether she didn't admit to the police that she had accumulated the beer "From different places, a bottle or two at a time". She admitted that she had said that. She was then asked, "...how much you charged, you said, 'Thirty-five cents for the beer and thirty-five to fifty cents for a shot of whisky'." Her answer: "I said, if I sell any of this, that's what I would do; but I wasn't selling any."

Mrs. Hayes was recalled at the continued date of this hearing and produced what purported to be a statement from a store which set forth the purchase price of the television set. Since the only purpose for offering the same was to establish a claim of a third party, the offering of that exhibit into evidence was rejected. Therefore, so far as these proceedings are concerned, Mrs. Hayes can only testify in support of her proprietary claim to the return of the television set.

In rebuttal, the Division recalled Agent M, who testified with respect to the alleged conversation at the time of the confrontation of ABC agents and local police officers with Ruth Hayes and Jean Thomas. This witness challenged the truth of the testimony of Mrs. Hayes as follows: Mrs. Hayes was questioned in the company of Jean Thomas at police headquarters. She was asked specifically where she had purchased the alcoholic beverages and she replied that she had purchased them at different times, in different places. She also admitted that she sold alcoholic beverages at the premises in question and charged thirty-five cents for the beer and thirty-five cents to fifty cents (for shots of whiskey). Jean Thomas admitted that she remembered selling the agent at least one can of beer and that she had been serving as bartender at the express request of Mrs. Hayes. The witness further stated that his search of the bedroom revealed 46 - 7 oz. bottles of Rolling Rock Beer. The other alcoholic beverages were found behind the bar.

I have had an opportunity to evaluate the testimony offered herein and to observe the demeanor of the witnesses as they testified. I am convinced that Mrs. Hayes and Parham were playing fast and loose with the truth. This was forcefully apparent with respect to Mrs. Hayes whose testimony is replete with obvious, transparent contradictions. The testimony of the agents stands in a much better posture and, in my opinion, presents a credible and convincing reflection of what actually transpired. Thus, I find that there were illegal sales of alcoholic beverages on the premises.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(1). Such illicit alcoholic beverages, the personal property and the cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66. Seizure Case No. 11,182, Bulletin 1568, Item 5.

Unlawful property as defined under R.S. 33:1-1(y) includes all alcoholic beverages, fixtures and personal property located in and upon the premises. Such personal property, including the property in the bedroom, and the cash which was clearly commingled, as set forth in Schedule "A" herein, constitutes unlawful property, and is subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66. With reference to the cash the evidence clearly shows that the money in the cash box was commingled with "marked" bills obtained through the unlawful sale; thus, all of the money is subject to forfeiture. Seizure Case No. 10,009, Bulletin 1391, Item 4; Seizure Case No. 10,646, Bulletin 1435, Item 5; R.S. 33:1-2; R.S. 33:1-66.

Since it has been clearly established that the alcoholic beverages are illicit for the reasons above stated, it is recommended that an order be entered forfeiting the same.

In considering the various claims presented for the return of certain identified items of personal property seized herein, it might be well to state the applicable legal principle relating to such claims. The Director has the discretionary authority to return property subject to forfeiture to a person who has established to his satisfaction that the claimant has acted in good faith, and did not know or have any reason to believe that the property would be used for unlawful liquor activity. R.S. 33:1-66(f). However, in addition to this, there must be affirmative proof to support the claim of ownership.

In the absence of these essential elements, the Director has no authority to relieve the claimant of forfeiture. R.S. 33:1-66(e); Seizure Case No. 11,059, Bulletin 1533, Item 8; Seizure Case No. 10,695, Bulletin 1444, Item 6.

1. The credible evidence adduced at this preliminary hearing establishes that Ruth Hayes participated in the proscribed liquor activity, and the property claimed was used therein. Accordingly, I recommend that her application for the return of the Emerson television set be denied.

2. Similarly, I am persuaded that James Parham, who is the manager of the premises in which the illegal liquor activity took place, knew or should have known, of such activity. He has also not established by affirmative proof his title to the claimed property. I therefore recommend that his application for the return of the Bogen Hi-Fi set, with bar attachment, be denied. Seizure Case No. 11,095, Bulletin 1563, Item 1.

3. A claim was presented by the Exclusive Decorators of Perth Amboy, N.J. which sought the return of the set referred to in paragraph No. 2, and the following picture was presented: Egon, the owner of this claimant, testified that numerous items of personalty were purchased by James Parham under a conditional sales contract, the title of which items reverted back to the claimant in the event of a default in the payments thereon, according to the terms of the said contract. Among the items included was the Bogen Stereo Hi-Fi set referred to hereinabove, which also included an amplifier, a Garrard turntable,

with a speaker line. Parham is presently in default and therefore, claimant asserts that under the contract, title now resides in the said claimant. There is presently due on the total contract the sum of \$1049.90 and the present value of this set, exclusive of the cabinet, is estimated at \$350.00.

The witness further stated that the reason he extended credit to Parham was that Parham had established an excellent credit rating with him, and he considered that on the basis of his investigation of his employment and other factors, he was entitled to and received an extension of credit of approximately \$700.00 to \$800.00.

On cross-examination, he admitted that he had never even heard of the Bayview Hotel at which premises this set was seized but was informed by Parham the set was being kept at his place of residence in Rahway. He, of course, denied that he knew or had any reason to believe that this set would be used in illegal liquor activity.

Under these circumstances, I am convinced that this claimant acted in good faith and did not know or have any reason to suspect that this set might have been used in connection therewith.

Accordingly, I recommend that the said Bogen Stereo Hi-Fi set be returned to it upon payment of the costs of seizure and storage.

4. R. E. Belrman, a one-third owner of the Bayview Hotel, sought the return of thirteen chairs and nine wooden tables, being Items No. 25, 26 and 29 on the Complete Inventory of Seizure, which was admitted into evidence. He gave the following account: He leased the entire hotel to James Parham and this lease included the above-mentioned items. He visited the hotel about once every week or every other week and usually would meet Parham in the lobby. He denied seeing any persons consuming any alcoholic beverages and was unaware of any illegal liquor activity at any time. He was unable to establish his claim through any documentary proof of ownership of the chairs, but stated that the furniture had been purchased many years ago at the time of the original purchase of the hotel; consequently, he was unable to obtain that proof.

From the evidence herein, I conclude that this claimant did not know or have any reason to believe that illicit alcoholic beverage activity was being engaged in by the lessees or any other persons at the premises and I recommend that the aforementioned items be returned to him.

5. Edward T. Gill sought the return of a General Electric Stereo Hi-Fi which is listed as Item No. 17 on the Complete Inventory of Seizure. He gave the following account: He purchased this set from the Goodyear Service Stores and evidenced the bill of sale reflecting such purchase. He kept the set in the bedroom of Ruth Hayes, who is his cousin, and he did visit her quite frequently. He also acknowledged that he saw a bar in the bedroom but denied that he ever saw anyone consuming alcoholic beverages. He was then asked, on cross-examination,

"Q When you saw that, what did you think the bar was there for?

A I don't know what it's there for. It's her bar. I don't know nothing about the bar.

Q You saw bar stools. Isn't that right?

A Yes.

Q Now, did you have any idea that soda or beer or whisky was sold there?

A Maybe it were; I don't know."

This claimant admits that he had frequently visited his cousin and often drove her home from her place of employment. He has given no satisfactory explanation for placing this Hi-Fi set in the bedroom of Mrs. Hayes, rather than at his own place of residence. I am not persuaded that on his frequent visits to these premises he did not observe persons consuming alcoholic beverages or the sale of alcoholic beverages. His answers to pointed questions relating thereto appear to me to be evasive and untruthful. I therefore conclude that there is an absence of good faith on the part of this claimant and he has demonstrated a careless indifference to the use to which his set was being put. I therefore recommend that his claim for the return of the said Hi-Fi set be rejected, and an order be entered directing the forfeiture of the same. Seizure Case No. 11,095, supra.

6. Herman Halperin, testifying on behalf of claimant, Automatic Music Service, which sought the return of a Wurlitzer Music Machine and a National cigarette machine gave the following account: He is employed as a salesman for the claimant and produced documentary evidence of ownership of these two items which are listed as No. 31 and No. 32 of the Complete Inventory of Seizure. These machines were installed in the club-room upon a lease agreement executed with one Ricco McCombs who acted as the assistant-manager in the absence of Parham. Before entering into this agreement he visited the premises and saw no liquor activity being carried on at that time.

Charles Reissner testified that he was employed as a salesman by the Automatic Music Service and serviced these machines every Monday at about 10:00 A.M. At none of his visits did he see any liquor sales take place. In fact, he states that he saw no alcoholic beverages on the premises at any time during his visits.

I am satisfied that, on the evidence presented, this claimant appeared to make a reasonable investigation and did not know or have any reason to suspect that illicit alcoholic beverage activity was being conducted at these premises, or that these machines were being used in connection therewith. I therefore recommend that the said machines be returned to it.

7. Charles Barnard, a claimant, made application for the return of a three-way combination Olympic television

set with stereo, record player and radio, which is listed as Item No. 21 in the Complete Inventory of Seizure. He testified to the following effect: He purchased this set from the Rite-Way Sales Company in Newark on July 9, 1964 and the purchase was financed by the Seaboard Finance Co. He offered into evidence a statement reflecting a \$500.00 bill and stated that he is supposed to re-pay thereon the sum of \$26.77 a month. He paid about \$28.00 to Seaboard Finance Co. and is now about six months in default. The reason he had not made any payments is that the set was seized. The set was seized by this Division and he felt that he didn't want to continue making the payments.

He further testified that he moved to the Bayview Hotel on the night of the raid and occupied a room on the third floor. He placed the set in the lobby because he couldn't get anyone to help him move it upstairs. Intending to get some assistance on the following day, he let it remain in the lobby. He told James Parham: "I can't bring my TV upstairs. I am going to hold you in charge of it in the lobby." He denied that he saw anyone drinking any alcoholic beverages or making any sales of same. He retired that night at about 11:00 o'clock, and when he returned to the lobby the following morning, he was then informed that the set had been seized by ABC agents.

No claim was asserted on this set by the Seaboard Finance Co. or the Rite-Way Sales Company.

My evaluation of the testimony with respect to the testimony of the claimant satisfies me that, on the evidence presented, this claimant acted in good faith and did not have any reason to believe that there was illegal liquor activity at these premises. There is further evidence that this set was not in use and was, in fact, not plugged in to the electric outlet during that night or at the time of its seizure. I therefore recommend that this set be returned to him.

8. Leffler Brothers of New York City presented a claim and sought the return of an R.C. Allen cash register. Louis Esner, who is employed as a collector for this claimant, testified that this cash register, which is listed as Item No. 35 in the Complete Inventory of Seizure, was sold under a conditional sales contract dated July 7, 1964 (presented in evidence) to one Henry Shaw. Shaw represented to them that he operated a pool parlor at 228 - 3rd Street in Elizabeth. When Shaw defaulted upon payments thereon, this witness tried to get in touch with him and found, on a number of occasions, that the store was closed. This pool parlor is located around the corner from the Bayview Hotel.

The witness insisted that this claimant was unaware of the fact that the register was taken from the pool parlor to the hotel, and was first apprised of that fact subsequent to the date of seizure. Such removal was made without permission and against the express condition in the said conditional sales contract. No payments were made on the account of the cash register by Shaw, with the exception of an initial down payment of \$20.00.

Under the facts and circumstances herein, I am convinced that this claimant acted in good faith, and I recommend

that the said cash register be returned to it, without costs.

9. The Canada Dry Corporation, a claimant, made application for the return of a Canada Dry soft drink vending machine listed as Item No. 20 on the Complete Inventory of Seizure. Robert Garrity, a salesman for this claimant, produced a lease agreement, entered into between this claimant and the Bayview Hotel but admitted that he did not visit the premises at any time subsequent to the execution of the said lease agreement. He explained that a route salesman visited these premises once weekly; that no representative of the vending department would visit the premises except where required to service the machine in the event of mechanical failure.

On cross-examination, he stated that James Parham executed the lease agreement on behalf of the owner of the premises. The witness further admitted that no investigation was made to determine whether or not these premises were engaged in the sale of alcoholic beverages or whether illegal liquor activity took place on the premises. "When we put machines in we don't investigate the moral aspects of the clientele who operate these various establishments. We don't check to see where they are breaking the law, where they are not. We feel that's beyond our jurisdiction."

Furthermore, this claimant failed to produce the route salesman who was in charge of the collection of receipts from this machine, who was apparently available as a witness, and who would have been in a position to testify with respect thereto. The claimant failed to produce this witness notwithstanding his receipt of a letter from this Division advising him that such testimony would be necessary in order to establish that the claimant did not know or have any reason to believe that this machine would be used in the unlawful operation at the premises.

Furthermore, no records were produced to establish that adequate investigation was made by this claimant at the time of the execution of the lease agreement. Since there is an absence of an affirmative showing of good faith it follows that the claimant manifested a careless indifference to the use to which this machine would be put.

Under these circumstances, I am constrained to recommend that the claim of the Canada Dry Corporation for the return of the said machine be denied.

Finally, I recommend that, with the exception of the claims specifically identified and allowed herein, that an Order be entered, directing the forfeiture of the balance of the personal property, including the cash, as set forth in the Schedule annexed hereto.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is on this 18th day of June, 1965

DETERMINED and ORDERED that if on or before the 1st day of July, 1965, Exclusive Decorators of Perth Amboy, N.J. pays the costs of seizure and storage of the Bogen Stereo Hi-Fi set with bar attachment, said item will be returned to it; and it is further

DETERMINED and ORDERED that if on or before the 1st day of July, 1965, R. E. Beirman pays the costs of seizure and storage of thirteen chairs and nine wooden tables, said items will be returned to him; and it is further

DETERMINED and ORDERED that if on or before the 1st day of July, 1965, Automatic Music Service pays the costs of seizure and storage of the Wurlitzer Music Machine and National Cigarette Machine, said items will be returned to it; and it is further

DETERMINED and ORDERED that if on or before the 1st day of July, 1965, Charles Barnard pays the costs of seizure and storage of a three-way combination Olympic television set with stereo, record player and radio, said item will be returned to him; and it is further

DETERMINED and ORDERED that the claim of Leffler Brothers of New York City be recognized for the return of an R.C. Allen cash register and the said item will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages, the balance of the seized personal property, and cash, 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 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.

JOSEPH P. LORDI
DIRECTOR

SCHEDULE "A"

- 80 - cans of beer
- 1 - bottle of creme de cacao
- 4 - bottles of whiskey
- 1 - bottle of vodka
- 1 - bottle of gin
- 1 - bottle of bourbon
- 3 - cases of assorted soda
- 7 - barstools
- 1 - Bogen Hi-Fi set
- 1 - stereo set - General Electric Serial No. 0390763
- Assorted glasses
- 3 - fans
- 1 - Canada Dry soda machine

SCHEDULE "A" (Continued)

- 1 - 21" Emerson television set
- 1 - 21" Olympic television set with phono and radio combination No. K965
- 1 - Lionel phonograph
- 13 - chairs
- 9 - tables
- 1 - National Vendors cigarette machine - State Stamp G238903
- 1 - Wurlitzer juke box Serial No. 553624
- 1 - Hotpoint refrigerator
- 1 - punch bowl set
- 1 - cash register - R.C. Allen No. 10-04-1
- 1 - metal cash box
- \$58.37 - in cash

3. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER - FOUL LANGUAGE - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Merlin W. Hauge & Josephine Hauge
 t/a Black Cat
 168 Whitehead Avenue
 South River, N. J.) CONCLUSIONS and ORDER

 Holders of Plenary Retail Consumption License C-35, issued by the Borough Council of the Borough of South River.)

Benjamin Kleinberg, Esq., Attorney for Licensees
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) between November 30, 1964 and May 13, 1965, they purchased alcoholic beverages from another retail licensee, in violation of Rule 15 of State Regulation No. 20, and (2) on April 29, May 5, 6 and 10, 1965 they permitted foul, filthy and obscene language (by patrons and management personnel) on licensed premises, in violation of Rule 5 of State Regulation No. 20.

As to the first charge, reports of investigation disclose that during the period alleged the licensees purchased all of their requirements of alcoholic beverages from another retailer (Ralph Cost, t/a Cost Liquor Store, Corner of Washington Street & Obert Street, South River, the subject of affiliate proceedings in Re Cost, Bulletin 1629, Item 4, decided herewith), evidenced by one hundred ten delivery slips in total amount of approximately \$1,600, all apparently billed and paid at full retail price.

Licensees have a previous record of suspension of license by the municipal issuing authority for five days, effective March 4, 1965, for sale during prohibited hours.

Considering the large amount of alcoholic beverages involved, the license will be suspended on the first charge for twenty days (Re Four Hundred- 21st Avenue, Inc., Bulletin 1405, Item 6) and on the second charge for ten days (Re Lafayette Bar, Inc., Bulletin 1603, Item 7), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Saffos, Bulletin 1616, Item 5), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 14th day of June 1965,

ORDERED that Plenary Retail Consumption License C-35, issued by the Borough Council of the Borough of South River to Merlin W. Hauge & Josephine Hauge, t/a Black Cat, for premises 168 Whitehead Avenue, South River, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 2 a.m. Monday, June 21, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Wednesday, July 21, 1965.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO ANOTHER RETAILER -
TRANSPORTATION WITHOUT INVOICE - LICENSE SUSPENDED FOR
30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Ralph Cost
t/a Cost Liquor Store
Corner of Washington Street & Obert Street
South River, N. J.,
Holder of Plenary Retail Distribution License D-4, issued by the Borough Council of the Borough of South River.

CONCLUSIONS
and
ORDER

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) between November 30, 1964 and May 13, 1965, he sold alcoholic beverages to another retailer, in violation of Rule 15 of State Regulation No. 20, and (2) on divers days during May 1965, transported alcoholic beverages without requisite accompanying delivery slip, in violation of Rule 3 of State Regulation No. 17.

As to the first charge: Reports of investigation disclose that during the period alleged the licensee sold to another retailer (Merlin W. Hauge and Josephine Hauge, t/a Black Cat, 168 Whitehead Avenue, South River, the subject of affiliate proceedings in Re Hauge, Bulletin 1629, Item 3, decided herewith) all of their requirements of alcoholic beverages evidenced by one hundred ten delivery slips, in a total amount of approximately \$1,600, all apparently billed and paid at full retail price.

Absent prior record, but considering the large amount of alcoholic beverages involved, the license will be suspended on the first charge for twenty days (Re Steinweiss, Bulletin 1401, Item 7) and on the second charge for ten days (Re Kuruc, Bulletin 1339, Item 5), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 14th day of June 1965,

ORDERED that Plenary Retail Distribution License D-4, issued by the Borough Council of the Borough of South River to Ralph Cost, t/a Cost Liquor Store, for premises Corner of Washington Street & Obert Street, South River, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 9 a.m. Monday, June 21, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 9 a.m. Friday, July 16, 1965.

JOSEPH P. LORDI
DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

Laird & Company

Laird Road

Scobeyville, New Jersey

Application filed August 17, 1965 for place-to-place transfer of Rectifier and Blender License R-1 to include additional space.

Laird & Company

Laird Road

Scobeyville, New Jersey

Application filed August 17, 1965 for place-to-place transfer of Limited Distillery License SL-2 to include additional space.


Joseph P. Lordi
Director