

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

BULLETIN 731

SEPTEMBER 26, 1946

TABLE OF CONTENTS

ITEM

1. CANCELLATION PROCEEDINGS (Long Branch) - LICENSE ISSUED IN VIOLATION OF P.L. 1946, CHAPTER 147, SECTION 2 - LICENSE SURRENDERED - PROCEEDINGS DISMISSED.
2. SEIZURE - FORFEITURE PROCEEDINGS - RESTAURANT OWNER'S EQUIPMENT AND STOCK ORDERED FORFEITED BECAUSE OF UNLAWFUL SALE OF ALCOHOLIC BEVERAGES THEREIN BY EMPLOYEE WITH OR WITHOUT OWNER'S CONSENT - EXTENT OF SPEAKEASY ACTIVITIES IMMATERIAL - OWNER'S APPLICATION FOR RETURN OF EQUIPMENT DENIED.
3. SEIZURE - FORFEITURE PROCEEDINGS - RESTAURANT OWNER'S EQUIPMENT AND STOCK ORDERED FORFEITED BECAUSE OF UNLAWFUL SALE OF ALCOHOLIC BEVERAGES THEREIN BY HIS WIFE WITH OR WITHOUT HIS CONSENT - EXTENT OF SPEAKEASY ACTIVITIES IMMATERIAL - OWNER'S APPLICATION FOR RETURN OF EQUIPMENT DENIED - ICE CREAM FREEZER AND PEANUT VENDING MACHINE ORDERED RETURNED TO CLAIMANTS WHO ESTABLISHED THEIR GOOD FAITH AND ABSENCE OF KNOWLEDGE OF OR REASON TO SUSPECT SPEAKEASY ACTIVITIES AT ESTABLISHMENT.
4. DISCIPLINARY PROCEEDINGS (Atlantic City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.
5. SEIZURE - FORFEITURE PROCEEDINGS - RESTAURANT OWNER'S EQUIPMENT AND STOCK ORDERED FORFEITED BECAUSE OF UNLAWFUL SALE OF ALCOHOLIC BEVERAGES THEREIN - OWNER'S APPLICATION FOR RETURN OF EQUIPMENT DENIED.
6. DAYLIGHT SAVING TIME - ENDS AT MIDNIGHT SATURDAY, SEPTEMBER 28 - CHAPTER 97 OF THE LAWS OF 1946.
7. DISCIPLINARY PROCEEDINGS (Union City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.
8. APPELLATE DECISIONS - GARRIGUES v. WILDWOOD and STUSKI.
9. DISCIPLINARY PROCEEDINGS (Camden) - PERMITTING THE SALE OF LOTTERY TICKETS (NUMBERS GAME) ON LICENSED PREMISES - PERMITTING GAMBLING ON LICENSED PREMISES - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.
10. STATE LICENSES - NEW APPLICATIONS FILED.

2. SEIZURE - FORFEITURE PROCEEDINGS - RESTAURANT OWNER'S EQUIPMENT AND STOCK ORDERED FORFEITED BECAUSE OF UNLAWFUL SALE OF ALCOHOLIC BEVERAGES THEREIN BY EMPLOYEE WITH OR WITHOUT OWNER'S CONSENT - EXTENT OF SPEAKEASY ACTIVITIES IMMATERIAL - OWNER'S APPLICATION FOR RETURN OF EQUIPMENT DENIED.

Case No. 7002

In the Matter of the Seizure on June 24, 1946 of a quantity of alcoholic and other beverages and fixtures and furnishings at 36 Oak Street, in the City of Paterson, County of Passaic and State of New Jersey.

ON HEARING CONCLUSIONS AND ORDER

Vincent C. Duffy, Esq., Attorney for Maria Sogaert
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, and fixtures and furnishings, described in a schedule attached hereto, seized on June 24, 1946 at 36 Oak Street, Paterson, New Jersey, constitute unlawful property and should be forfeited.

On June 24, 1946 an ABC agent, checking a complaint that speak-easy activities were being carried on there, entered Maria Sogaert's restaurant at the above address. Frank Salvato was in charge of the establishment. The agent ordered a cup of coffee from Salvato and, at the same time, asked him for a "shot" in the coffee. Salvato then poured into a whiskey glass a drink of whiskey for the agent from a bottle which was underneath the counter. The agent paid Salvato for the cup of coffee and the drink of whiskey and then ordered another cup of coffee. The agent then identified himself and called another agent, who had remained outside, into the restaurant. Salvato gave the agents a signed statement in which he acknowledged that he had sold the drink of whiskey.

Neither Frank Salvato nor Maria Sogaert held a license authorizing either of them to sell or serve alcoholic beverages, and the premises were not licensed for the sale of alcoholic beverages.

The agents seized the bottle of whiskey underneath the counter, a gallon of home made wine underneath another counter, 12 bottles of beer in a refrigerator, a quantity of soda, and the equipment, furniture and fixtures in the restaurant.

Frank Salvato was arrested on charges of selling alcoholic beverages without a license and possessing alcoholic beverages with intent to sell such beverages unlawfully and is presently awaiting the outcome of such criminal proceedings.

The circumstances warrant the inference that the seized alcoholic beverages were intended for sale at this unlicensed restaurant and hence such alcoholic beverages are illicit. R. S. 33:1-1(i). In this connection it is to be noted that Mrs. Sogaert claims that her brother and one of his friends frequently came to her restaurant for meals, with which she served them drinks of alcoholic beverages, but only charged for the meals. While it is not the gravamen of the instant case, and the practice is claimed to have been limited to these two men, nevertheless serving alcoholic beverages with meals constitutes the sale of alcoholic beverages. Re Amato, Bulletin 726, Item 8. Alcoholic beverages possessed for that purpose by the owner of a restaurant not licensed to sell alcoholic beverages are likewise illicit.

The illicit alcoholic beverages, together with the other beverages and the fixtures and furnishings seized in this restaurant, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Maria Sogaert appeared with counsel and sought return of the seized property.

Under R. S. 33:1-66(e), I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law. This provision is intended to relieve persons who have innocently violated the law from forfeiture of their property.

Mrs. Sogaert asserts that she is innocent of wrongdoing, in that she claims that the seized alcoholic beverages were for her personal consumption; that she has never sold any alcoholic beverages in the restaurant; that she was not present when Salvato made the unlawful sale, had no knowledge thereof and did not have any reason to suspect that Salvato, allegedly not an employee but a mere helper, would commit such an offense. She maintains that it was a casual isolated offense committed by Salvato out of sheer stupidity.

The fact that there was a specific complaint that speakeasy activities were being carried on in Mrs. Sogaert's restaurant indicates at least a probability that it was not a casual offense. In any event, Mrs. Sogaert cannot avoid forfeiture by reason of any claimed lack of knowledge of what occurred in her restaurant. In forfeiture proceedings under the Alcoholic Beverage Law, she is responsible for a violation of such law committed, with or without her knowledge, by her employee or a person left in charge of her restaurant.

The principle of general law which seems to be applicable is that, to relieve a master from liability for the act of his servant done by the servant while engaged in his master's work, the act done by the servant must be entirely disconnected from the service. Bedell v. Mandell, 108 N. J. L. 22 (Sup. Ct.), Demerest v. Guild, 114 N. J. L. 472 (E. & A.), Efstathopoulos v. Federal Tea Co., 119 N. J. L. 408 (E. & A.)

Salvato, who was at the restaurant to serve Mrs. Sogaert's patrons, sold the agent a drink of whiskey while serving him with a cup of coffee, and Mrs. Sogaert is chargeable with his offense. To relieve the owner of a speakeasy from forfeiture under such circumstances would seriously undermine the legislative intent to forfeit the stock in trade and equipment found in a speakeasy, since many speakeasy proprietors would probably attempt to avoid such penalty by adopting the simple expedient of personally abstaining from selling alcoholic beverages at their establishments, meanwhile professing ignorance of such sales by their employees.

The case, so far as forfeiture is concerned, must, therefore, be treated as if Mrs. Sogaert personally made the unlawful sale of alcoholic beverages. This leads to a consideration of a further contention which she advances, namely, that forfeiture of the seized property for a single isolated offense, which she did not personally commit or have any knowledge of, will inflict severe financial loss upon her.

While Mrs. Sogaert's story, if accepted at face value, displays many sympathetic aspects, nevertheless it cannot serve to relieve her from forfeiture of the seized property. The plain intent of the law is to discourage speakeasy operators, whether long or recently established, by forfeiture of all articles which contribute to the success of its operation. Cf. Seizure Case No. 6991, Bulletin 727, Item 10.

Fine distinctions such as the comparative success or non-success of the speakeasy, the motives which prompted the offense, comparison of the character of the speakeasy proprietors and comparison of the pecuniary loss that each may suffer are speculative, difficult of determination and not to be considered as factors in this type of a case. For the reasons above stated, Mrs. Sogaert's application for return of the seized property is denied.

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

ERWIN B. HOCK
Deputy Commissioner.

Dated: September 23, 1946.

SCHEDULE "A"

- 12 -- bottles of beer
- 1 -- bottle of whiskey
- 1 -- gallon of wine
- 96 -- bottles of soda
- 8 -- bar stools
- 1 -- electric fan
- 1 -- General Electric radio
- 3 -- chairs
- 1 -- electric refrigerator
- 2 -- porcelain tables
- 1 -- National cash register, Serial #S-384760-F,
with \$2.41 in currency therein
- 1 -- electric toaster
- 33 -- drinking glasses
- 2 -- wooden counters
- 2 -- gas ranges
- 1 -- kitchen cabinet
- miscellaneous restaurant equipment

3. SEIZURE - FORFEITURE PROCEEDINGS - RESTAURANT OWNER'S EQUIPMENT AND STOCK ORDERED FORFEITED BECAUSE OF UNLAWFUL SALE OF ALCOHOLIC BEVERAGES THEREIN BY HIS WIFE WITH OR WITHOUT HIS CONSENT - EXTENT OF SPEAKEASY ACTIVITIES IMMATERIAL - OWNER'S APPLICATION FOR RETURN OF EQUIPMENT DENIED - ICE CREAM FREEZER AND PEANUT VENDING MACHINE ORDERED RETURNED TO CLAIMANTS WHO ESTABLISHED THEIR GOOD FAITH AND ABSENCE OF KNOWLEDGE OF OR REASON TO SUSPECT SPEAKEASY ACTIVITIES AT ESTABLISHMENT.

In the Matter of the Seizure)
on June 27, 1946 of a quantity)
of alcoholic beverages, furniture,)
fixtures and other personal prop-)
erty at 109 Union Street, in the)
Borough of Lodi, County of Bergen)
and State of New Jersey.)

Case No. 7003

ON HEARING
CONCLUSIONS AND ORDER

James A. Coolahan, Esq., Attorney for Anthony Nozzio.
Joseph J. Corn, Esq., Attorney for Capitol Ice Cream Company.
Jack Pecorella, Pro se.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, and various items of furniture, fixtures and other personal property, seized on June 27, 1946 at 109 Union Street, Lodi, N. J. constitute unlawful property and should be forfeited.

The seizure was made in Anthony Nozzio's restaurant at the above address. Mr. Nozzio opened the restaurant in April, 1946 and attempted to obtain a license to sell alcoholic beverages there, but his application was denied by the municipality.

On June 26, 1946, while checking a complaint that speakeasy activities were being carried on there, an ABC agent purchased food and a bottle of beer from Anthony Nozzio's wife, Virginia Nozzio, who was in charge of the restaurant. On June 27th this agent returned to the restaurant accompanied by another agent, and on this occasion the first agent purchased from Mrs. Nozzio food and two bottles of beer, one for himself and one for the other agent.

The agents then identified themselves and Mrs. Nozzio gave them a signed statement in which she acknowledged that she had sold the bottles of beer on the days in question.

The stock of merchandise and the entire equipment of the restaurant, including an ice cream freezer and a peanut vending machine, were seized. Eight gallon bottles of wine, 12 bottles of beer, 26 empty beer bottles and 28 empty 1-gallon wine bottles found in another part of the premises were also seized.

Virginia Nozzio was arrested on charges of selling alcoholic beverages without a license and possessing alcoholic beverages with the intent to sell such alcoholic beverages unlawfully, and has since pleaded guilty to the charges and sentenced to pay a fine of \$100.00.

The evidence compels the inference that the seized alcoholic beverages were intended for sale at this unlicensed restaurant. Hence, such alcoholic beverages are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages, and the other personal property seized on the premises, constitute unlawful property and are subject to seizure and forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, counsel entered an appearance for Capitol Ice Cream Company, which sought return of its ice cream freezer. Jack Pecorella, owner of the peanut vending machine, also appeared and sought return of such machine. Anthony Nozzio requested return of the balance of the seized property, exclusive of the alcoholic beverages.

Under R. S. 33:1-66(e), I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law. This provision is intended to relieve persons who have innocently violated the law from forfeiture of their property.

The ice cream company and Pecorella have established to my satisfaction that they placed their respective articles in Nozzio's restaurant only a short time before the seizure; that to all outward aspects it appeared to be nothing more than a small restaurant; that there were no alcoholic beverages on display or anything else visible which would have led a reasonably prudent person to suspect that speakeasy activities were being carried on there. Neither Anthony Nozzio nor his wife, Virginia Nozzio, appear to have had a reputation for unlawful alcoholic beverage activities or to have been convicted of violating any liquor laws. Accordingly, the freezer and vending machine will be returned to the respective claimants upon payment by each of the costs incurred in the seizure and storage of their respective equipment. Cf. Seizure Case 6880, Bulletin 713, Item 8.

Nozzio's request for return of the seized property is based largely upon his claim that he has an honest, law-abiding and industrious background; that this restaurant was his first small business venture wherein his wife unwittingly, either through ignorance or carelessness rather than a deliberate intent, sold the beer to the ABC agent and thus brought about Nozzio's present predicament. In other words, he urges that he is not a persistent speakeasy operator but a "casual" who accidentally fell afoul of the law, and that the loss of his restaurant equipment will be a serious financial setback.

Of course, it is equally reasonable to conclude that it was a deliberate violation of the law in that Nozzio chose to sell alcoholic beverages even though his application for a license was denied.

Nozzio's contention that he should not be held accountable for the violation committed by his wife is similar in many respects to the contention advanced and rejected in Seizure Case 7002, decided contemporaneously herewith. Indeed Nozzio's case is even weaker because of his application for a license and the denial thereof. Sales of beer on successive days to the ABC agent and the beer and wine readily available for sale in the restaurant are strongly persuasive of the existence of a practice of selling alcoholic beverages at the restaurant rather than isolated, accidental offenses.

Similarly, for the reasons expressed in detail in Seizure Case 7002, *supra*, I must reject Nozzio's plea that I should refrain from forfeiting his property because his wife committed the offense. His assurance that he did not make a practice of carrying on speakeasy activities at his restaurant, his previous good background, his absence from the restaurant when his wife sold the beer, and the financial loss that he may suffer are matters that are speculative, difficult of determination, and not to be regarded as factors in a case of this type. Mr. Nozzio's application for return of the seized property is therefore denied.

Accordingly, it is DETERMINED and ORDERED that, if on or before the 30th day of September, 1946, Capitol Ice Cream Company pays the cost of seizure and storage of the ice cream freezer, it will be returned to such company; and it is further

ORDERED, that if on or before the 30th day of September, 1946, Jack Pecorella pays the cost of seizure and storage of the peanut vending machine, it will be returned to him; and it is further

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

ERWIN B. HOCK
Deputy Commissioner.

Dated: September 23, 1946.

SCHEDULE "A"

- 8 - gallon bottles with wine
- 1 - 4/5 quart bottle with wine
- 12 - bottles of beer
- 54 - empty beer bottles
- 178 - bottles of soda
- 8 - restaurant tables
- 28 - chairs
- 1 - electric refrigerator
- 1 - show case
- 2 - wooden counters
- 1 - radio
- 6 - boxes with cigars
- 15 - cartons of cigarettes
- 1 - gas stove
- 1 - coat rack
- 1 - buffet
- 1 - stove
- dishes, glasses and other miscellaneous restaurant furnishings and equipment

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

GEORGE LYDON,)
t/a Del Monte Bar,)
2601 Atlantic Avenue,)
Atlantic City, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-102, issued by the Board of Commissioners of the City of Atlantic City.)

George Lydon, Defendant-licensee, Pro se.
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that he possessed two 4/5 quart bottles of "Gold Bar Extra Quality Martin's Original V.V.O. Brand Special Liqueur Blended Scotch Whiskey", two 4/5 quart bottles of "White Label Blended Scotch Whiskey", two 4/5 quart bottles of "Old Angus Liqueur Blended Scotch Whiskey", and one 4/5 quart bottle of "Hildick Five Apple Brandy", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

During an inspection of defendant's premises on August 3, 1946, an ABC agent tested twenty-nine bottles of the open stock of liquor and seized the seven bottles in question. Analysis by the ABC chemist disclosed that the bottles contained alcoholic beverages not genuine as labeled.

Defendant denied any knowledge of the violation. However, a licensee must be held strictly responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Therefore, I shall suspend his license for a period of thirty days.

Accordingly, it is, on this 24th day of September, 1946,

ORDERED that Plenary Retail Consumption License C-102, issued by the Board of Commissioners of the City of Atlantic City to George Lydon, t/a Del Monte Bar, for premises 2601 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of thirty (30) days. In accordance with notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK,
Deputy Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - RESTAURANT OWNER'S EQUIPMENT AND STOCK ORDERED FORFEITED BECAUSE OF UNLAWFUL SALE OF ALCOHOLIC BEVERAGES THEREIN - OWNER'S APPLICATION FOR RETURN OF EQUIPMENT DENIED.

In the Matter of the Seizure)
on May 26, 1946, of a quantity)
of alcoholic beverages, a)
quantity of other beverages,)
three music machines, a baga-)
telle machine, two cash registers,)
and other furnishings and fixtures,)
at premises located on the North-)
east corner of Stanger Avenue and)
Pine Street, in Glassboro Lawns,)
in the Township of Elk, County of)
Gloucester, and State of New)
Jersey.)
-----)

Case No. 6990

ON HEARING
CONCLUSIONS AND ORDER

Vernon F. Fisler, Jr., Esq., Attorney for Samuel Warren and Lillian Warren.

Harry Castelbaum, Esq., Appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1, of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, three music machines, a bagatelle machine, two cash registers and other furnishings and fixtures, described in a schedule attached hereto, seized on May 26, 1946 at premises located at the intersection of Stanger Avenue and Pine Street in Glassboro Lawns, Elk Township, New Jersey constitute unlawful property and should be forfeited.

The seizure was at a small restaurant not licensed to sell alcoholic beverages. On May 26, 1946, an ABC agent, checking a complaint that speakeasy activities were being carried on there, observed Lillian Warren sell a bottle of beer to a patron. Shortly thereafter other ABC agents entered the restaurant, at which time the bottle of beer was in front of this patron, who identified Mrs. Warren as the person who had sold her the beer. Mrs. Warren, according to the agents, admitted that such was the fact.

The agents then seized bottles of beer which were in the restaurant, and in the basement (where there was a counter, tables and chairs), bottles of soda, and the furniture, furnishings and equipment which were in the restaurant and basement.

Lillian Warren was arrested on charge of selling alcoholic beverages without a license, and her husband, Samuel Warren, was arrested on charge of possessing alcoholic beverages with intent to sell such beverages unlawfully.

At the hearing conducted herein, Mrs. Warren admitted that when the agents entered the restaurant on May 26th, a patron had a bottle of beer in front of her, and pointed out Mrs. Warren as the person who had sold her the beer. However, she denies that she admitted to the agents that she had made such sale, claiming that the agents did not ask her that question. It is to be noted that although she denies making any admission of sale, she does not deny that she actually sold the beer to the patron.

This restaurant has a considerable record as a speakeasy. In 1941, alcoholic beverages were sold at the premises and Stanley Warren, son of Samuel Warren, was arrested. He pleaded guilty in the Special Sessions Court of Gloucester County and was fined \$100. In 1943, ABC agents seized alcoholic beverages at the place, arrested Samuel Warren on charge of unlawful sale of alcoholic beverages there, and he pleaded guilty in the Special Sessions Court of the County and was fined \$100. It also appears that Samuel Warren was convicted in 1941 in Philadelphia, Pennsylvania, of violating the liquor laws of that state.

I am convinced, from the facts presented and the background of the restaurant, that Lillian Warren sold the beer on the date in question and that the seized beer was possessed for a similar purpose. Hence, the beer is illicit (R. S. 33:1-1(i)) and, together with the music machines, bagatelle machine, cash registers, coins and currency in such machines, and the furniture, fixtures and equipment seized in the restaurant and basement, constitutes unlawful property and is subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Samuel Warren and Lillian Warren appeared and sought return of the seized property by way of appeal to my discretionary authority, rather than by way of denial that the property is legally subject to forfeiture.

Mr. Warren claims that he had recently presented all of the seized property to his wife, who was to conduct the restaurant; that he was employed elsewhere; and that he did not know that she had the beer. This appears to be an attempt to take advantage of the absence of any record against Mrs. Warren for violating any liquor laws. However, the Warrens displayed considerable confusion as to whether it was best for the husband, or the wife, to claim to be the owner of the seized property.

Actually, it makes little, if any difference whether it is the property of the one or the other. As between husband and wife, normally each may be presumed to know of the other's misdeeds. Cf. Seizure Case No. 4563, Bulletin 367, item 3, and Seizure Case No. 6282. Indeed, Mrs. Warren, who was married to Samuel Warren in 1938, acknowledges that she knew of Stanley Warren's arrest in the restaurant in 1941, and of her husband's arrest there in 1943. Neither Mr. Warren nor Mrs. Warren can, therefore, claim to be unwitting violators of the liquor laws.

Under R. S. 33:1-66(e), I have the discretionary authority to return property subject to forfeiture to a person who has satisfied me that he acted in good faith and unknowingly violated the law. I am not so satisfied.

The application for return of the seized property is denied.

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

Dated: September 24, 1946.

ERWIN B. HOCK
Deputy Commissioner

Schedule "A"

- 40 - bottles of beer
- a large number of empty soda bottles
- 1 - Wurlitzer Simplex Music Machine, Model P-12,
Serial No. 6252 and currency therein
- 1 - Multiple Selector Music Machine, Model 61,
Serial No. 577761 and currency therein
- 1 - Mills Music Machine, Serial No. 34679 and
currency therein
- 1 - Bagatelle Machine and currency therein
- 2 - National Cash Registers
- 18 - metal stools
- 1 - Pepsi-Cola Ice Cabinet
- 1 - Coca Cola Ice Box
- About 400 bottles of soda
- Empty glasses.

6. DAYLIGHT SAVING TIME - ENDS AT MIDNIGHT SATURDAY, SEPTEMBER 28 -
CHAPTER 97 OF THE LAWS OF 1946.

Chapter 97 of the Laws of 1946 amended Section 1:1-2.3
of the Revised Statutes to read:

"1:1-2.3. The standard time of this State shall be the time of the seventy-fifth meridian west from Greenwich, and wherever time is named within this State, in any manner whatsoever, it shall be deemed and taken to be such standard time except that the time of this State shall be one hour in advance of such prescribed time from the last Sunday in April until the last Sunday in September and except where otherwise expressed."

The quoted law is State-wide in its application and is binding on all municipalities.

At midnight Saturday, September 28th, the five-month Daylight Saving period ends and Eastern Standard Time -- one hour slower than Daylight Saving Time -- is resumed. To illustrate: As of midnight Saturday, September 28th, clocks are to be turned back one hour. If the regulations of "Municipality X" require closing between the hours of 2:00 a. m. and 7:00 a. m., that municipality's licensees are not required to close until the changed clock-time reaches 2:00 a. m. and may not reopen until the changed clock-time reaches 7:00 a. m.

ERWIN B. HOCK
Deputy Commissioner.

Dated: September 24, 1946.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

LOUIS OLIVER)
4705 Bergenline Avenue)
Union City, New Jersey)

CONCLUSIONS)
AND)
ORDER)

Holder of Plenary Retail Consumption License C-226 issued by the Board of Commissioners of the City of Union City.)
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Wilbur L. Ross, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to the following charge:

"On August 12, 1946, you possessed illicit alcoholic beverages at your licensed premises, viz., one 4/5 quart bottle labeled 'Three Star Laird's Apple Brandy', which bottle contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On August 12, 1946, an investigator employed by the Department of Alcoholic Beverage Control seized the bottle mentioned in the charge when it appeared from his preliminary test that the contents thereof were not genuine as labeled.

Subsequently the contents of the seized bottle were analyzed by a chemist employed by the Department of Alcoholic Beverage Control, and copy of analysis of the apple brandy originally placed in the seized bottle by the manufacturer was received from Laird & Company. The analysis of the contents of the seized bottle discloses that the proof is 6.4° lower, and the solids approximately fifteen times greater, than the proofs and solids set forth in the analysis made by the manufacturer's chemist.

In mitigation defendant alleges that he has been ill for a long time, and that he has had to rely upon the integrity and honesty of his three employees "in whom he places the utmost confidence." Despite the personal innocence of the licensee, he is responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, item 2.

Defendant has no prior record. I shall suspend his license for a period of fifteen days. Re Rudolph, Bulletin 680, item 1.

Accordingly, it is, on this 24th day of September, 1946,

ORDERED that plenary retail consumption license C-226, issued by the Board of Commissioners of the City of Union City to Louis Oliver, for premises 4705 Bergenline Avenue, Union City, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, item 12, the effective date of said suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

8. APPELLATE DECISIONS - GARRIGUES v. WILDWOOD and STUSKI.

OSCAR GARRIGUES,)

Appellant,)

v.)

BOARD OF COMMISSIONERS OF THE)
CITY OF WILDWOOD, and HELEN D.)
STUSKI, trading as The Riptide,)

Respondents.)

ON APPEAL

CONCLUSIONS AND ORDER

Harry Tenenbaum, Esq., Attorney for Appellant.
Irving Shenberg, Esq., Attorney for Respondent Board of Commissioners.
Kirkman, Mulligan & Harris, Esqs., by Frank P. Mulligan, Esq.,
Attorneys for Respondent Helen D. Stuski.

This is an appeal from the granting by respondent Board of Commissioners of a transfer of the plenary retail consumption license held by respondent Helen D. Stuski for the fiscal year 1945-46 to permit an addition to the licensed premises erected as an ell off the side at the rear of such premises. The addition, which is approximately 16 feet by 36 feet, contains two dressing rooms, a rear entrance to the bar through a corridor 16 feet long by 6 feet wide, and a storage room.

The transfer was granted subject to the following conditions:

- (1) That the proposed canopy approaching the new entrance to and exit from the additional premises shall not extend more than 10 feet from said doorway; and
- (2) That no lighted signs shall be installed on the Atlantic Avenue side, unless it be on the easterly wall of the former premises.

The grounds for reversal urged by appellant are:

"(a) There is no need, necessity or convenience for establishing a new entrance to the 'Riptide.' (b) A new entrance will have the force and effect of establishing a new license, contrary to the ordinance of the municipality limiting the number of licenses for the sale and consumption of alcoholic beverages. (c) The new entrance-way is bound to create additional noises and confusion to those usually incidental in the operation of a licensed premises at a seashore resort. (d) It will destroy the established policy of the issuing authority and the governing body of the said City of Wildwood to maintain Atlantic Avenue North of Oak Avenue free of licensed premises."

The original Stuski licensed premises called "Riptide" is located at 245-47-49 East Oak Avenue, approximately 100 feet west of the northwest corner of East Oak Avenue and Atlantic Avenue. A vacant lot, 40 feet by 100 feet, facing Atlantic Avenue, adjoins the east side of the licensed premises at the rear, about midway between Oak and Wildwood Avenues. The rear of the premises as formerly licensed had a door and windows opening on a small alleyway adjacent to the rear of the Hotel Dayton. This Hotel is operated by appellant.

One of the amusement centers of Wildwood is located in the

immediate vicinity of the Stuski premises. On the southeast corner of East Oak and Atlantic Avenues is the Casino Arcade, having a Carousel, a "Jitter Bug" Dance Hall, and several other amusement devices, stands and other concessions similar to the midway of a circus. On the northwest corner is a licensed premises, the "Bolero", operated by Mary J. Diamond, and on the southwest another licensed premises, the "Hofbrau". It is agreed by all the witnesses that the neighborhood is "very noisy".

The vacant lot, on the rear 16 feet of which is now located the "additional licensed premises," has for some years been an eyesore grown up in weeds and used as a "dump". It is located between the rear of the "Bolero" and the side of the Hotel Dayton. The improvement of the lot by fencing, landscaping, etc., was a part of the plan proposed for the "additional premises". The new entrance-exit is 84 feet from the building line of Atlantic Avenue, and consists of a 16 feet long by 6 feet wide enclosed corridor with doors at each end. In my opinion the construction of this entrance should not add to the noise emanating from the "Riptide". There is no claim that in the past "noise" has been the cause of any complaints by neighbors. Whether the additional entrance will result in too much "noise" is for future determination. If unsatisfactory conditions arise as a result of the entrance, the situation can be adequately handled by disciplinary action at any time or upon application for renewal of the license. Cf. Hobbs v. Lower Penns Neck, Bulletin 405, item 5.

It is well established that an extension of the license to cover adjacent premises, or an addition to existing premises, even though an additional entrance is provided thereby, does not require a new license, if the old premises and the addition thereto constitute a single place of business. New Jersey Licensed Beverage Assn. et al. v. Camden et al., Bulletin 215, item 5. The reasons for reversal designated (b) and (c) have no dispositive weight.

As to reason (d), there is no evidence of a policy such as alleged therein. True, no new licenses have been granted for premises on Atlantic Avenue north of Oak Avenue - only two such applications have been made. However, a fair reading of the testimony herein warrants the finding, as a fact, that each application is considered on its merits. It would further appear that, as a safety measure, the additional entrance has undisputed value. I am inclined to agree with one of the members of the respondent Committee who said at the hearing below "*** the building as it is now (prior to the extension) constructed is a fire hazard." The additional entrance should help to correct this condition. The reasons for reversal designated (a) and (d) likewise have no dispositive weight.

The neighborhood is a business section of the City. Oak Avenue is largely business. Atlantic Avenue on its west side between Oak and Wildwood is occupied by a licensed premises, the premises added to the respective licensed premises, and a large hotel. Most of the objectors except appellant who operates the said hotel, are some considerable distance removed from the premises herein or are on side streets. In addition, most of the objections are, strictly speaking, from persons operating other businesses - hotels, rooming houses, boarding houses and the like.

The weight to be given such general objections is a matter for the careful consideration of the local issuing authority and their finding cannot be lightly set aside by me. My function in appeals of this nature is not to inflict or substitute my opinion upon or for the issuing authority but, rather, to determine whether

reasonable grounds support its decision and, if so, to affirm whatever their view and irrespective of my own. Spector v. Roselle, Bulletin 703, item 1.

The hearing below appears to have given all objectors an opportunity to fully express their objections. All the facts affecting the whole situation seem to have been well considered by respondent Board of Commissioners of the City of Wildwood. This is clear from the conditions imposed when the transfer was granted. These conditions seem to insure that the main entrance will continue to be on East Oak Avenue and not on Atlantic Avenue.

I can find no reason in fact or law to disturb the decision of the respondent.

Accordingly, it is, on this 25th day of September, 1946,

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

ERWIN B. HOCK,
Deputy Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - PERMITTING THE SALE OF LOTTERY TICKETS (NUMBERS GAME) ON LICENSED PREMISES - PERMITTING GAMBLING ON LICENSED PREMISES - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THOMAS MAYERS,)
T/a Hi Hat Club,)
224 Market Street)
Camden, New Jersey)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-149 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

William T. Cahill, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to the following charges:

- "1. On July 16 and 17, 1946, and prior thereto, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game,' to be offered for sale and to be sold on or about your licensed premises, in violation of Rule 6 of State Regulations No. 20.
- "2. On July 16 and 17, 1946, and prior thereto, you allowed, permitted and suffered gambling, commonly called 'numbers writing,' on and about your licensed premises, in violation of Rule 7 of State Regulations No. 20."

The file herein discloses that on July 16, 1946, ABC agents who were present in defendant's premises observed several men enter the premises, and hand money and empty paper match books to the

bartender. After one of the agents had stated that he wanted to play some numbers, the bartender asked the agent what numbers he wanted to play and the agent mentioned three numbers and gave the bartender sixty cents. On the following day the same agent placed another bet for twenty cents on a certain number with the bartender and another agent placed a bet of twenty-five cents on certain numbers with Mrs. Mayers, wife of the licensee.

In attempted mitigation of the violation, the defendant alleges that he did not participate in any way in the gambling and that he has been attempting to keep a close watch on his bartenders to prevent gambling on the licensed premises. He states that, if his wife participated in the violation, it was against his express orders and without his knowledge. Despite the fact that he did not personally participate in the violation, defendant is guilty as charged.

Defendant has a prior record. On June 1, 1943, his license was suspended for a net period of five days after he had pleaded non vult to charges similar to the charges herein, and to an additional charge that he had served beverages to women directly over the bar in violation of a local ordinance. Re Mayers, Bulletin 571, item 9. It appears also that on January 10, 1946, dice were seized on defendant's premises by ABC agents and the licensee received a warning letter. Under the circumstances I shall suspend defendant's license for a period of twenty days, less five days for the plea, making a net suspension of fifteen days. Any further gambling violations upon the licensed premises may result in revocation or the imposition of a very substantial suspension.

Accordingly, it is, on this 25th days of September, 1946,

ORDERED that plenary retail consumption license C-149, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Thomas Mayers, t/a Hi Hat Club, for premises 224 Market Street, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a. m. October 1, and terminating at 2 a. m. October 16, 1946.

ERWIN B. HOCK,
Deputy Commissioner.

10. STATE LICENSES -- NEW APPLICATIONS FILED.

New Pennsylvania Motor Express, Inc.
18 East Weidman Street
Lebanon, Pennsylvania.

Application for Transportation License
filed September 19, 1946.

Malkin Motor Freight Co.
245 West 18th Street
New York, New York

Application for Transportation License
filed September 20, 1946.

Erwin B. Hock
Deputy Commissioner.