

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Boulevard Newark 2, N. J.

BULLETIN 1297

SEPTEMBER 14, 1959

TABLE OF CONTENTS

- ITEM
1. DISCIPLINARY PROCEEDINGS (UNION CITY) - LEWDNESS AND IMMORAL ACTIVITIES (PERMITTING ARRANGEMENTS FOR ILLICIT SEXUAL INTER-COURSE) - LICENSE REVOKED.
 2. DISCIPLINARY PROCEEDINGS (JERSEY CITY) - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS.
 3. APPEAL CASES - JULY 1, 1957, THROUGH JUNE 30, 1959.
 4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - APPLICATION BY NOMINAL OWNER FOR RETURN OF MOTOR VEHICLE DENIED BECAUSE OF CARELESS INDIFFERENCE TO ITS USE BY ANOTHER - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.
 5. DISCIPLINARY PROCEEDINGS (JERSEY CITY) - SALE IN VIOLATION OF RULE 1 of STATE REGULATION NO. 38 - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN EMPLOYEES OR AGENTS ON PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
 6. DISCIPLINARY PROCEEDINGS (UNION CITY) - CHARGES ALLEGING POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED NOLLE PROSSED.
 7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL IN MOTOR VEHICLE AND TRAILER - TRAILER RETURNED TO INNOCENT LESSOR - LIEN ON MOTOR VEHICLE HELD BY INNOCENT LIENOR RECOGNIZED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.
 8. APPELLATE DECISIONS - WETTERLING v. LAKEWOOD - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1297

SEPTEMBER 14, 1959

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(PERMITTING ARRANGEMENTS FOR ILLICIT SEXUAL INTERCOURSE) -
LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

KIT KAT LOUNGE, INC.)
4800 Hudson Boulevard)
Union City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-108 for the 1958-59 licensing)
period, issued by the Board of Com-)
missioners of the City of Union City.)

Joseph N. Falbo, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On February 18, 20, 21, 25, March 11, 18 and 19, 1959, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, by yourself and through persons employed on your licensed premises, made offers to male patrons and customers on your licensed premises to procure and did procure a female to engage in acts of sexual intercourse and/or perverted sexual relations with said male patrons and customers, and participated in and allowed, permitted and suffered the making of overtures and arrangements, in and upon your licensed premises, by said female with male patrons and customers for acts of illicit sexual intercourse and/or perverted sexual relations, as aforesaid; in violation of Rule 5 of State Regulation No. 20.'

"At the hearing, two ABC agents (hereinafter designated as Agent G and Agent J) testified on behalf of the Division. Their testimony may be summarized as follows:

"On all occasions mentioned in the charge preferred herein, excepting March 11, 1959, both Agent G and Agent J were in defendant's licensed premises. On March 11th Agent G remained seated in the car parked outside the premises while Agent J went into the establishment. All of the visits were made at night, the first thereof being at about 9:20 p.m. on February 18, 1959 when a man called Blackie was tending bar and a man, subsequently identified as Walter McCormack (hereinafter referred to as Walter) who appeared to be intoxicated, was seated in a booth in the sitting room. Blackie told the agents that Walter was the bartender and mentioned that on weekends women were available at a

cost of \$10 to engage in illicit sexual intercourse. He further stated that if the agents would come to the premises on Friday or Saturday nights between eleven and twelve o'clock, he could fix it up for them. He further informed the agents that if he were absent when they called, they should tell Walter that he (Blackie) sent them and also tell him that they wished to obtain females to engage in sexual intercourse. A short time prior to leaving the premises, two men entered and when they asked Blackie if he could get women for them, he told one to make a telephone call and ask for 'Johnny' and then he (Blackie) would speak to him. The man did as directed and then called to Blackie and when the latter came out of the booth he stated to the men that they were 'out of luck' as Johnny could not locate any of the girls. As the agents were leaving the premises, Blackie remarked, 'I'll see you over the weekend between eleven and twelve.'

"At 10:50 p.m. on Friday, February 20th, the two agents entered defendant's premises and observed Walter (who had been seated in a booth on the prior visit) tending bar. At about 11:30 p.m. Agent G informed Walter that he and his companion were waiting for Blackie and after Walter ascertained that they were the men Blackie had told him were in the place on a previous occasion and who desired women he stated, 'If he (Blackie) doesn't show up, I'll see what I can do for you.' During the time the agents remained on the premises several men entered and asked Walter if there were any girls available and he informed them that he was waiting for Blackie. At 12:15 a.m. on the following Saturday morning the agents again inquired about Blackie and Walter volunteered to make a call to see what he could do for them and leaning over the bar in a confidential manner stated that he had two or three who charge \$10 and added that he had a girl who would perform an unnatural sex act for \$5. He said he was busy but would have someone make the call. He then spoke to a male patron at the end of the bar and handed him some change, the man went to the telephone and after a few minutes came out of the booth, spoke to Walter who gave him another coin. He again entered the booth and after emerging therefrom, spoke to Walter. The latter came over to the agents and said, 'I'm sorry. We can't locate any of the girls. I guess you're out of luck tonight.' He then stated that he had a girl from New York who would cover over if he can guarantee her five men for \$10 apiece. As the agents prepared to leave, Walter suggested they call on a week night when the girls weren't busy and the agents said they would be in on the following Wednesday.

"On February 25th at about 9:20 p.m. the agents entered the premises and shortly thereafter Walter told them that he had contacted a girl on the telephone and that she would be in between '9:30 and 10' and that her charge would be \$5. About 10:25 p.m. three men came into the premises and Walter engaged in conversation with them and thereafter Walter approached the agents and stated that one of the men was a 'pimp' for the girl he (Walter) had promised to obtain for the agents. After half an hour elapsed and the girl did not appear, the agents called that to Walter's attention but were told by him 'to stick around for a while'. About fifteen minutes thereafter Walter told the agents that he would telephone her on the following morning. At one time during the evening a man with two girls came into the premises and when they left, Walter told the agents that the dark-haired girl was from New York and was the one he had told the agents demanded a \$50 guaranty before she would come to this state to engage in sexual relations.

"On March 11th both agents arrived in the vicinity of defendant's premises and at 9:00 p.m. Agent J went into the premises while Agent G remained in the car. Agent J spoke to Walter about the girl that had failed to show up on February 25th and Walter said the girl is working on her own and charges \$10. Although Agent J told Walter he (Agent J) had a date that night, Walter took a slip of paper containing numbers from his wallet and a dime of the agent's money from the bar and proceeded to the telephone booth. On his way to the booth he asked a male patron whether he wanted to engage in sexual intercourse that night and when the man answered in the affirmative, Walter continued to the booth. After he returned and as he passed the patron he told him he was out of luck because there was no answer. He repeated the fact that there was no answer to Agent J, but promised if Agent J would come in the following Wednesday night or the following week, he (Walter) would get in touch with the girl and would surely have her there.

"On Wednesday, March 18th at 9:30 p.m., Agent G and Agent J visited defendant's premises, at which time each had two five-dollar bills (the serial numbers of which had been previously recorded) in his possession. As the agents were taking their seats at the bar, Walter approached them and said, 'She will be in in a little while.' A short time later Agent G inquired of Walter if he thought she would show up and Walter said 'Yes', adding, 'I was talking to her on the phone the other night, and I told her I had two guys for her. She will show up.' Agent J asked the price again and Walter said, 'She was getting \$5 and she tried to raise it to \$10, but I told her you guys were good friends of mine and she should only charge you \$5.' Agent J asked Walter if she was good and Walter answered, 'I don't know. I never had her myself, but the boys say she is a good --- job.' A man had a conversation with Walter and when he left, Walter came over to the agents and said, 'That man was looking for Vicky, he had a couple of guys that wanted to get ---, too.' The phone rang and after Walter had answered it, he came over to the agents and said, 'That was Vicky. She said she would be here in twelve minutes.' About fifteen minutes later a girl came into the premises and standing away from the bar, looked at Walter who pointed to the agents and nodded his head in their direction. The girl came over, took a seat to the left of Agent G and as she sat down said, 'Hi'. Agent G asked if she was Vicky and she said, 'Yes. Walter told me you fellows were waiting for me. I am sorry I am late. I got tied up.' The agent offered to buy a drink for her and in a loud voice Vicky said, 'Hey, Walt! How about a little service?' Walter served her a drink of whiskey with ice and after she hurriedly consumed the drink said, 'Let's go down to the end of the bar.' After taking up their new positions at the bar, they had a round of drinks and then arrangements were made by the agents and Vicky to leave the premises for the purpose of engaging in perverted sexual relations for a price of \$15. Vicky left the agents and went up to the end of the bar and engaged Walter in conversation. Thereafter she returned to where the agents were seated and said, 'Let's go', but before leaving, at the suggestion of one of the agents, they had another round of drinks (Walter included) and while consuming same, Agent G said to Walter, 'We are all fixed up. It is all set', to which Walter replied, 'Good!'. The agents and Vicky left in Agent G's car and while enroute to find a place to park, Agent J gave Vicky \$15 in 'marked' bills which were recovered when they had fallen from Vicky's coat after being apprehended by other agents and a local detective.

"Defendant called Anthony Acciardi, an officer of defendant corporate-licensee, who testified that he is the general manager but who was not present at the times when the agents were in

defendant's premises, nor was he aware of the immoral practices occurring on the premises. Acciardi testified that the place is only at night each week from 7:00 p.m. to 2:55 a.m. the following morning; that he visits the establishment during the day to prepare it for the night trade; that he usually arrives at the premises at 11:00 p.m. on Friday and also works three hours on Saturdays, but so far as the operation is concerned of opening the bar and being in the place, 'I always let the bartender handle that'; that Walter has been employed 'about a year and a half'.

"The attorney for the defendant cross-examined the agents at length but the testimony given by them during direct examination remained unshaken. There were no witnesses produced by defendant to refute in any way whatsoever the testimony of the agents with reference to what occurred on the defendant's premises on the dates in question. The evidence presented discloses that the defendant's place of business was known by many as a place where females could be obtained for the purpose of engaging in illicit sexual relations. This is evident by the fact that on several occasions during the time that the agents were in the premises various male patrons questioned Blackie and Walter about procuring females to engage in immoral activities.

"The attorney for the defendant contends that in his opinion the manner in which the investigation was conducted by the agents was open to criticism and he claims it was necessary for them to make five visits to the defendant's licensed premises before making contact with the female in question. Furthermore, he states that Walter may have been 'bluffing' for five days and it could be a mere coincidence that the female came into the premises on March 18th. This latter argument is surely untenable as the testimony of the agents discloses that at 11:20 p.m. on March 18th after Walter had answered the telephone, he approached the agents and told them that was Vicky. About fifteen minutes thereafter Vicky came into the defendant's premises and Walter pointed to the agents. Vicky immediately came over, sat down beside Agent G and after identifying herself as 'Vicky', said that 'Walt' told her that they were waiting for her. Surely under such circumstances it is apparent that the arrival of Vicky in the premises could not be coincidental. The criticism of the investigation that it was necessary to make five visits to the premises before arrangements to engage in perverted sexual relations were made, is also without merit. It is obvious that if the agents had identified themselves to Walter, he, as an employee of defendant, would studiously avoid any immoral conduct or appearance thereof in the agents' presence.

"The attorney for defendant claims that the agents resorted to entrapment in their efforts to have a female procured for them. The record does not substantiate such claim as it is apparent from the agents' testimony that Walter was the moving party in the arrangements made to procure a female, and did actually procure one for the purpose of engaging in illicit sexual activities.

"I have given this case most careful consideration, especially as to the recommended penalty to be imposed herein. It has consistently been held that solicitation for immoral purposes and the making of arrangements for illicit sexual relations cannot and will not be tolerated on licensed premises. The public is entitled to be protected from these sordid and dangerous evils. I recommend that defendant be found guilty of the charge preferred herein.

"Defendant has no prior adjudicated record. Despite this fact, I am satisfied that under the circumstances appearing in

this case, the only penalty warranted is revocation of the license. I, therefore, recommend that defendant's license be revoked. In Re 17 Club, Inc., 26 N.J. Super. 42 (App. Div. 1953); Re Schumacher, Bulletin 901, Item 5; Re Sevak, Bulletin 1012, Item 2; Re Shaw, Bulletin 1028, Item 1; Re Club Hi Li, Inc., Bulletin 1198, Item 3."

Written exceptions to the Hearer's Report and argument in support thereof were filed with me by the attorney for the defendant pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings herein, the Hearer's Report, the exceptions taken thereto and the argument advanced by defendant's attorney, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 29th day of July, 1959,

ORDERED that Plenary Retail Consumption License C-108 (for the 1958-59 licensing period), issued by the Board of Commissioners of the City of Union City to Kit Kat Lounge, Inc., for premises 4800 Hudson Boulevard, Union City, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

Lafayette Mens Bar, Inc.)
t/a Lafayette Mens Bar, Inc.)
404 Communipaw Avenue)
Jersey City, New Jersey)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-216 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Warren, Chasan & Leyner, Esqs., by Joel A. Leyner, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charges:

- '1. On February 25, 28, March 3 and 4, 1959, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery commonly known as the "numbers game" in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- '2. On February 25, 28, March 3 and 4, 1959, you allowed, permitted and suffered tickets and

participation rights in a lottery commonly known as the "numbers game" to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.'

"At the outset it should be noted that the defendant-licensee relies strongly for its defense on the contention that to warrant a finding of guilt it is essential that the proofs establish that its agents or employees were personally implicated in any gambling activities being conducted on licensed premises. This contention has repeatedly been held to be without merit and not to constitute a defense. Re Bressler, Bulletin 1091, Item 5; Re Llewellyn Recreation Center, Bulletin 1146, Item 1; Re Bedkowski, Bulletin 1204, Item 11. The underlying principle involved is that licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith vs. Passaic, Bulletin 527, Item 3.

"Whether or not gambling activities were conducted on the licensed premises, as alleged, is therefore the paramount issue.

"The evidence presented by the Division on that issue is substantially as follows:

"ABC agents were at defendant's licensed premises on February 25, February 28, March 3 and March 4, 1959. On each occasion William Morchower, president of the corporate licensee, was tending bar and James Murphy, a confessed 'numbers' bets bookie, was present. On the first visit the agents, over a period of two hours, observed Murphy answer a number of telephone calls and converse with various men from whom he received sums of money. On their second visit the agents, over a period of about 2½ hours, observed similar activities on Murphy's part. In addition, they witnessed Murphy make notations on a slip of paper, overheard a patron say to Murphy '645 for 50¢' and observed Murphy accept 50¢ from this patron and make a notation on a slip of paper and further observed Murphy hand 50¢ to Morchower who returned the money to Murphy and told him to keep it and put it on a bet.

"On their third visit the agents, over a period of about 1½ hours, observed Murphy again engage in activities similar to those observed on their first visit. One of the agents attracted Murphy's attention while Morchower was at the beer tap directly in front of the agents. The agent said to Murphy, '123 and 468' and handed Murphy a one-dollar bill with the remark, '50¢ each'. Murphy accepted the money and repeated the numbers.

"On their last visit on March 4th the agents observed a man hand Murphy an envelope, which the latter placed in the pocket of his jacket which was hanging on the wall. A few moments later an agent approached Murphy and said to him, '123 and 168 for 50¢ each'. Murphy repeated the numbers and accepted from the agent a one-dollar bill, the serial number of which had been previously noted. After placing this bet, the agent returned to his seat at the bar and remarked to Morchower that he had not made out so well on the previous day's numbers but he just 'gave' Murphy two numbers which he hoped 'came out', to which Morchower made no response.

"At about 12:50 p.m. other agents and local police officers entered the premises, by prearrangement, and all of the officers revealed their identity to Murphy and Morchower. The dollar bill used by the agent to place his bet was recovered from Murphy. A slip listing 18 'numbers' bets was also found in Murphy's possession, and two slips listing number bets were found in the envelope in Murphy's jacket on the wall.

"The agents then held various conversations with Morchower concerning Murphy's gambling activities in the licensed premises and they relate that Morchower admitted to them that he knew that Murphy took numbers bets but he did not know that Murphy was accepting bets on the premises; that he remembered the agent's remarks to him that he had played a 'number' but he did not recollect that the agent told him that he placed such a bet with Murphy. His attention was called to the incident on February 28th when he told Murphy to place the 50¢ in question on a bet. Morchower stated that it could have happened. Asked why he allowed Murphy to take bets in the premises he replied, 'I don't allow him to take bets in the premises, but I know he takes numbers. I thought he took them outside.'

"The agents were subjected to an exhaustive cross-examination designed to establish that Morchower was not in a position to witness Murphy's numbers activities in the premises. This examination did not develop any contradiction of their recital of what they had observed. At the conclusion of the presentation of the evidence on the Division's behalf, counsel for the licensee moved for dismissal of the proceedings on the contention that the preponderance of the evidence did not establish that the licensee had knowledge of Murphy's gambling activities on the premises. I recommend that the motion be denied on the basis of the principle hereinabove cited.

"After decision on the motion was reserved by the Hearer, James Murphy was presented as a witness on the licensee's behalf. He testified that he had been a patron of the licensed premises since 1933 and was employed there as a bartender for a period of four years during the war; that he is usually at the premises every day, night and day, and was present on the occasions when the agents were there; that he took number bets at the premises every day for about a year, including the bets placed by the agents; that the 50¢ incident on February 28th represented his change from his purchase of alcoholic beverages and was not a bet placed by Morchower and that he was convicted in 1951 for placing a bet on a horse.

"William Morchower testified that he has been connected with the corporate licensee for four years and did not see or hear anyone place a number bet on the premises on the occasions testified to by the agents. Concerning the 50¢ incident on February 28th, he stated that Murphy obtained sandwiches and coffee for himself and Morchower because Morchower was tired of his own food which he served at the premises; that his 50¢ in payment of such food lay on the bar for about an hour and a half and finally he told Murphy to pick it up and he might have said to Murphy, in jest, 'Buy a house', 'Play the stock market', or 'Play a number', 'but you don't say, "Play a number" any more than you say, "bet a horse".' Further, that it is possible that the agent told him about his bet with Murphy; that he heard that Murphy was taking number bets on the outside, but he did not say anything to him about it because it was none of his business; that he did not tell Murphy not to take bets in his place because Murphy knew that he would not permit 'anything --- he did not permit even card games'; that many persons in the premises approached Murphy because he had been a union official before he retired; that Murphy could not get along on his social security and had been taking numbers on the outside. Asked, in view of this knowledge, whether he concentrated on Murphy's activities in the licensed premises, Morchower replied, 'Frankly, I don't know whether it (Murphy's reputed numbers activities) were true or false -- I didn't pay attention to it (the rumors)'; that it never occurred to Morchower to ask Murphy about his activities in the place.

"When Morchower's attention was called to the fact that the agents on their four visits had no conversation whatsoever with Murphy other than that one agent named two numbers to Murphy on each occasion and placed the bets, indicating they were aware from his activities in

the premises that Murphy was writing numbers, and it was suggested to Morchower that he had a much greater opportunity to come to a similar conclusion, he replied that the agents were looking for something specific while he was working behind the bar not looking up and down 'to see what I could see'.

"I am of the opinion that the preponderance of the evidence establishes the guilt of the defendant as charged not only because any alleged lack of participation by the licensee in the gambling activities on the licensed premises presents no defense for the reasons above set forth, but further, because the corporate licensee's officer knew or should have known of the acceptance of number bets in the premises by Murphy. I recommend that the licensee be found guilty of the charges and that its license be suspended for a period of twenty-five (25) days. Re Llewellyn Recreation Center, Bulletin 1146, Item 1, the facts in which are substantially similar to the facts in this case."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the evidence, the Hearer's Report and the exceptions and written argument, I concur in the conclusions of the Hearer and adopt said conclusions as my conclusions herein.

Accordingly, it is, on this 29th day of July, 1959,

ORDERED that Plenary Retail Consumption license C-216 for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Lafayette Mens Bar, Inc., t/a Lafayette Mens Bar, Inc., for premises 404 Communipaw Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, August 10, 1959 and terminating at 2:00 a.m., Friday, September 4, 1959

WILLIAM HOWE DAVIS
DIRECTOR

3. APPEAL CASES - JULY 1, 1957 THROUGH JUNE 30, 1959.

TO: William Howe Davis, Director
FROM: Edward J. Dorton, Deputy Director

APPEAL CASES -- July 1, 1957 through June 30, 1958

Cases Undecided June 30, 1957	16	
Cases filed for period July 1, 1957 through June 30, 1958	<u>63</u>	
Total		79

Disposition

Affirmed	38	
Reversed	15	
Remanded	1	
Modified	1	
Withdrawn	8	
Undecided (11 cases heard)		
5 " not heard)	<u>16</u>	
Total		79

Continued

APPEAL CASES -- July 1, 1958 through June 30, 1959

Cases Undecided June 30, 1958 16

Cases filed for period July 1, 1958 through June 30, 1959 74

Total 90

Disposition

Affirmed 35

Reversed 13

Remanded 4

Modified 1

Withdrawn 7

Undecided (22 cases heard) 30

8 " not heard)

Total 90

EDWARD J. DORTON
DEPUTY DIRECTOR

Dated: July 31, 1959

- 4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - APPLICATION BY NOMINAL OWNER FOR RETURN OF MOTOR VEHICLE DENIED BECAUSE OF CARELESS INDIFFERENCE TO ITS USE BY ANOTHER - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on May 2, 1959 of a quantity of alcohol and a Buick sedan on the New Jersey Turnpike, at the 39 Mile Post, in the Township of Mount Laurel, County of Burlington and State of New Jersey.

Case No. 9965

CONCLUSIONS AND ORDER

Mattie Sue Green, 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:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether 94 two-quart 'Mason' jars of alcohol and a Buick sedan, described in a schedule attached hereto, seized on May 2, 1959 on the New Jersey Turnpike, in Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

"Mattie Sue Green, the registered owner of the Buick sedan, appeared at the hearing, and sought its return. No one opposed forfeiture of the alcohol.

"Reports of ABC agents and other documents in the file, presented in evidence with the consent of Mattie Sue Green, disclosed the following facts:

"A New Jersey State Trooper halted the Buick sedan on the above date and location during his routine patrol of traffic on the highway. The trooper ascertained that the driver of the motor vehicle was Charles H. Turnage, who was accompanied by four passengers. When the trooper discovered the 94 jars of alcohol in the trunk of the car, without a

stamp on any of the jars indicating the payment of tax on alcoholic beverages, he took into custody the motor vehicle and alcohol. Later such motor vehicle and alcohol were turned over to ABC agents.

"A sample of the contents of one of the jars was analyzed by the Division chemist who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 47.5 percent.

"In a signed statement Charles H. Turnage asserts, among other matters, that he resides in Brooklyn, New York, and was in Georgia, where he told an acquaintance that he was unemployed, and received the alcohol from such person, and was transporting the alcohol to New York to sell it there when he was apprehended.

"The seized alcohol is illicit under the provisions of R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the Buick sedan in which such illicit alcohol was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y) and R.S. 33:1-2, R.S. 33:1-66.

"Mattie Sue Green testified that Charles H. Turnage is her son, who was the former owner of the car. He became unemployed, was unable to maintain his installment payments to a finance company which had a lien on the motor vehicle, and transferred title thereto to her, whereupon she continued such payments. She does not have a license to operate a motor vehicle. She intended to return the car to her son if he reimbursed her, because she does not need it, and her son does. The car was at all times parked on the street in front of the home of her son, who used it whenever he so desired. This evidence establishes that Mattie Sue Green is only the nominal owner of the motor vehicle, used by her son at will, so that her conduct may be considered tantamount to a careless indifference to what use her son made of the car. Under such circumstances, I recommend that the request of Mattie Sue Green for return of the car be denied. Seizure Case No. 8554, Bulletin 1034, Item 9.

"I, therefore, further recommend that an order be entered directing forfeiture of the seized alcohol and Buick sedan."

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 30th day of July, 1959,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or 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.

William Howe Davis,
Director.

SCHEDULE "A"

- 94 - two-quart "Mason" jars of alcohol
- 1 - Buick sedan, Serial No. 36859681,
Engine No. V888905, New York Registration 7Z1461.

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - CONDUCTING BUSINESS AND PERMITTING PERSONS OTHER THAN EMPLOYEES OR AGENTS ON PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

John Lotz and Elizabeth Lotz t/a Lotz's Tavern 333 Grand Street Jersey City, N. J.)

CONCLUSIONS

and

ORDER

-----)
Holders of Plenary Retail Consumption License C-133, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Defendant-licensees, by John Lotz, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to charges alleged that (1) during prohibited hours they sold and delivered alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38; (2) during prohibited hours they conducted their licensed business, and (3) during such hours they permitted persons other than their actual employees and agents in and upon their licensed premises, in violation of a local ordinance.

On Sunday, June 7, 1959, at about 11:40 a.m., an ABC agent observed through a window of defendants' licensed premises two men therein, later identified as John Lotz (one of the licensees) and Robert Witherspoon. Lotz, by a motion of his hand, indicated that the agent should go towards a hallway, and the agent followed this suggestion. There, at a doorway to the tavern, another man was waiting. Witherspoon opened the door and the man asked for a pint bottle of wine. Witherspoon asked the agent what he wanted, whereupon the agent requested a pint bottle of wine and handed Witherspoon payment therefor. Shortly thereafter Witherspoon returned and handed a bottle of wine to the agent and a bottle of wine to the other man. Both men then departed. The agent joined a fellow agent who had remained outside, entered the premises, knocked on the door, and were admitted by Witherspoon to the barroom. There the agents revealed their identity to Lotz and Witherspoon, whereupon they both acknowledged the sale of alcoholic beverages above set forth.

Defendants have no prior adjudicated record. Under the circumstances in this case I shall suspend the license of defendants for twenty days. Cf. Re Parlegreco, Bulletin 1232, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 3rd day of August, 1959,

Ordered that plenary retail consumption license C-133, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Lotz and Elizabeth Lotz, t/a Lotz's Tavern, for premises 333 Grand Street, Jersey City, be and the same is hereby suspended for

fifteen (15) days, commencing at 2 a.m. Monday, August 10, 1959, and terminating at 2 a.m. Tuesday, August 25, 1959.

William Howe Davis,
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against)

Joseph Lopiano, Executor of the Estate of Albert Lopiano. 1000 Central Avenue Union City, N. J.)

CONCLUSIONS

and

Holder of Plenary Retail Consumption License C-204, issued by the Board of Commissioners of the City of Union City)

ORDER

-----)

Edward G. Gunther, Esq., Attorney for Defendant-licensee
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control

On July 22, 1959, charges were served upon the defendant alleging that on June 18, 1959, he possessed on his licensed premises alcoholic beverages in two bottles which bore labels which did not truly describe their contents.

However, on July 16, 1959, after the investigation was conducted but before the date of service of the aforementioned charges, the Union City Board of Commissioners transferred the license from defendant to Robert and George Thaler. The contract for the sale of the business to the latter apparently was executed on June 8, 1959, prior to the institution of the investigation which resulted in the aforementioned charges. There is no evidence that the Thalers had any interest in the licensed business at the time of the violation, other than as prospective transferees under contract, or that defendant has any connection with the business at the present time.

Although, under Rules 1 and 2 of State Regulation No. 16, these proceedings are not barred by the transfer of the license, no useful purpose would be served, under the above circumstances, by suspension of the license in the hands of these transferees.

Accordingly, it is, on this 3rd day of August, 1959,

ORDERED that the charge in this case be and the same is hereby nolle prossed

William Howe Davis,
Director.

By:
Edward J. Dorton,
Deputy Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL IN MOTOR VEHICLE AND TRAILER - TRAILER RETURNED TO INNOCENT LESSOR - LIEN ON MOTOR VEHICLE HELD BY INNOCENT LIENOR RECOGNIZED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on :
 March 8, 1959 of a quantity of : Case No. 9921
 alcohol, a Pontiac sedan and a :
 trailer on the New Jersey Turn- : On Hearing
 pike at the 36 Mile Post in the :
 Township of Mount Laurel, County : Conclusions and Order
 of Burlington and State of New :
 Jersey. :

Joseph L. Freiman, Esq., Attorney for Arthur Brown
 Chivian & Chivian, Esqs., by Louis J. Chivian, Esq., Attorney for
 General Motors Acceptance Corporation.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether 12 two-quart 'Mason' jars of alcohol, a Pontiac sedan and a trailer, described in a schedule attached hereto, seized on March 8, 1959 on the New Jersey Turnpike at the 36 Mile Post, Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

"Arthur Brown, the registered owner of the Pontiac sedan, appeared at the hearing and sought its return and also sought return of the trailer which he had hired on a temporary basis. An appearance was also entered on behalf of General Motors Acceptance Corporation which sought recognition of its alleged lien on the Pontiac sedan. No one opposed forfeiture of the alcohol.

"Reports of ABC agents and other documents in the file presented in evidence with the consent of counsel for the claimants disclose the following facts:

"A New Jersey State trooper halted the Pontiac sedan and trailer on the above date and location during his routine patrol of traffic on the highway. He ascertained that the motor vehicle was being operated by Henry Whiteside and that Arthur Brown, its registered owner and two other persons were passengers therein. The attached trailer was registered in the name of Eldo Trailer Service, Inc. of Jamaica, New York. When the trooper discovered in the trunk of the car 12 two-quart 'Mason' jars of alcohol without a stamp on any of the jars indicating the payment of tax on alcoholic beverages he arrested Brown, who asserted full responsibility for the transportation and possession of such alcohol, and took into custody the alcohol, Pontiac sedan and trailer. Later such items were turned over to ABC agents.

"A sample of the contents of one of the jars was analyzed by the Division Chemist, who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 44.0 percent.

"According to Arthur Brown's testimony he asserts that he is 33 years of age, married and resides with his wife and sister, Rose Walker, at an address in New York City; that he has been employed as a truck driver by a transportation company and his wife is employed as a cashier in a supermarket; that previous to the incident in question he did not possess or transport untaxed alcoholic beverages; that his mother formerly resided in New York City and was about to move to South Carolina so that on March 6,

1959 he rented the trailer to transport a stove to her new residence; that while in South Carolina he went to a house party where untaxed alcohol was being served; that he inquired where he could obtain such alcohol and ultimately purchased the alcoholic beverages in question, intended for his personal consumption, although previously he only purchased and drank beer; that he did not know or realize that he was violating the law by purchasing and transporting moonshine alcoholic beverages and since has paid a fine of \$500.00 in criminal proceedings in the case; and that the concern from whom he rented the trailer told him they would hold him personally responsible for its loss.

"The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle and trailer in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R. S. 33:1-2, R.S. 33:1-66.

"Arthur Brown admits, in effect, that it is common knowledge in South Carolina that trafficking in corn whiskey is in violation of the law. Even though it may be that Arthur Brown had not engaged in unlawful alcoholic beverage activity in the past it is clear that he cannot successfully claim that he possessed and was transporting the alcoholic beverage in question in good faith and unknowing violation of the law. In the absence of those essential elements the Director has no authority to relieve him of forfeiture. R.S. 33:1-66(e). However, I recommend that the trailer be returned to the lessor thereof, although the claim is presented by Brown, since the owner of the trailer appears to have acted in good faith and Brown's background is wholly devoid of any element which should have put it on notice that the trailer would be involved in the unlawful transportation of alcoholic beverages.

"General Motors Acceptance Corporation has presented in evidence a conditional sales contract dated July 27, 1956 signed by Arthur Brown and Rose Walker covering the purchase of the Pontiac sedan in question. The present balance due on such contract (which the finance company holds for assignment) is \$503.22.

"The branch credit manager of the finance company testified that from his records it appears that before extending credit to finance the purchase of the motor vehicle and accepting such contract, the finance company received information as to Brown's residence, marital status and employment similar to that which Brown stated in his testimony. In addition, it was furnished with business and personal references. The finance company made an independent check of this information and found it to be accurate.

"However, check of his credit references disclose that two retailers who sold small amounts of merchandise to Brown on installment plan in 1954 and 1955 had some difficulty in receiving payment. On the basis of its investigation the credit supervisor recommended that Rose Walker act as a co-signer on the contract since her background revealed that she was employed and had previously been a co-signer with Brown on his previous purchase of a motor vehicle which had been paid off and that she was considered a very good credit risk.

"I therefore recommend a finding that the finance company acted in good faith and did not know or have any reason to suspect that Arthur Brown would unlawfully transport alcoholic beverages in such Pontiac sedan. I therefore recommend that the lien of General Motors Acceptance Corporation upon the motor vehicle in question be recognized to the extent of \$503.22.

"It appears likely that the amount realized at public sale of the motor vehicle will exceed the cost of seizure and amount of the lien, and I therefore recommend that such vehicle be sold at public sale subject to the lien."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for Arthur Brown within the time limited by Rule 4 of State Regulation No. 28.

Having carefully considered the entire record including the evidence, the Hearer's Report and the exceptions and written argument, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is on this 3rd day of August, 1959,

DETERMINED and ORDERED that the Pontiac sedan 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 shall be offered for sale at public sale pursuant to State Regulation No. 29 and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained; otherwise the motor vehicle will be returned to General Motors Acceptance Corporation upon payment of the costs of its seizure, storage and sale; and it is further

DETERMINED and ORDERED that if the Pontiac sedan is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second, out of the balance if any, there shall be paid to the General Motors Acceptance Corporation its lien claim, recognized to the extent of \$503.22; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

DETERMINED and ORDERED that the trailer listed in the aforesaid Schedule "A" be returned to Arthur Brown upon payment of the costs of its seizure and storage; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed 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.

William Howe Davis,
Director.

SCHEDULE "A"

- 12 - two-quart "Mason" jars of alcohol
- 1 - Pontiac sedan, Serial No. L856H111131, New York
Registration 6U3524
- 1 - trailer, New York Registration 18-211.

8. APPELLATE DECISIONS - WETTERLING v. LAKEWOOD - EFFECTIVE DATES
FIXED FOR SUSPENSION PREVIOUSLY IMPOSED AFTER TERMINATION OF PRO-
CEEDINGS TO REVIEW.

Albert Wetterling, t/a)
 East Fourth Street Bar,)
) Appellant,)
) v.)
 Township Committee of the)
 Township of Lakewood)
) Respondent.)
 -----)

O R D E R

BY THE DIRECTOR:

On July 6, 1959, I affirmed the thirty-day suspension imposed herein by respondent. Appellant thereafter appealed to the Superior Court, Appellate Division, and the suspension was stayed by order of said Court. On July 24, 1959, a stipulation and agreement of dismissal, signed by all the parties, was entered in the Superior Court, Appellate Division. The suspension, therefore, may now be reimposed.

Accordingly, it is, on this 30th day of July, 1959,

ORDERED that the suspension of thirty days heretofore imposed against plenary retail consumption license C-12, issued by the Township Committee of the Township of Lakewood to Albert Wetterling, t/a East Fourth Street Bar, for premises 143 E. Fourth Street, Lakewood, be and the same is hereby reimposed, effective at 2 a. m. Monday, August 3, 1959, and terminating at 2 a. m. Wednesday, September 2, 1959.


 William Howe Davis
 Director