

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

BULLETIN 776

SEPTEMBER 9, 1947

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BULLETIN 776

SEPTEMBER 9, 1947.

1. APPELLATE DECISIONS - TRIO BAR CORPORATION v. HIGHTSTOWN.

TRIO BAR CORPORATION,)

Appellant,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH)
OF HIGHTSTOWN,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Crawford Jamieson, Esq., Attorney for Appellant.
James S. Turp, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application to transfer appellant's plenary retail consumption license from 118 to 118-122 Mercer Street, Hightstown.

The building in question is a two-story structure containing three stores on the ground floor with apartments on the second floor. The two stores which are the subject of this appeal are separated in the front part of the building by a street entrance to a stairway leading to the apartments on the second floor of the building. At the time of the hearing, the store desired to be added as part of the licensed premises was used as a barber shop.

In the present licensed premises, and behind the aforesaid stairway, is another stairway leading to the cellar. At right angles to the cellar door and extending to the rear of the building is a common wall dividing the rear portion of the present licensed premises from the rear portion of the aforementioned barber shop. There is an outline of a doorway in the common wall near the cellar entrance which would be broken through to connect the two stores in question.

Appellant alleges as grounds for appeal (a) the reason given for denial by the Borough Council of the Borough of Hightstown is insufficient; (b) the reason given for denial by the Borough Council of the Borough of Hightstown was unjust, unreasonable, oppressive and arbitrary; (c) the denial of appellant's application was prejudicial, and an abuse of discretion by the Borough Council of the Borough of Hightstown; (d) the decision of the Borough Council of the Borough of Hightstown was based on an erroneous interpretation of the laws of New Jersey, and (e) the decision of the Borough Council of the Borough of Hightstown was founded upon irrelevant and immaterial considerations.

It appears from the testimony of Salvatore Tomascelli, President of appellant corporation, that on or about March 15, 1947, which was shortly after the license was transferred to appellant, extensive alterations were made to the exterior of the building and to the interior of the licensed premises. Mr. Tomascelli testified: "I have a circular bar inside and took everything out, I did that; there was nothing left there; there was no space, it was all occupied by the bar." He further testified that appellant's plans for alteration of the licensed premises include the use of the barber shop for the purpose of storage and also for use in the sale of "package goods". If, as alleged, appellant has no space for storage of liquor, this would seem to be due to the alterations made by appellant. The

fact that appellant voluntarily made these alterations does not require the respondent to extend its licensed premises. Cf. Rainbow Grill v. Bordentown, Bulletin 245, Item 4.

Ernest L. Davison, Chief of Police of Hightstown, testified that the section of the municipality wherein appellant's licensed premises are located is congested by traffic, especially in the summertime, and that the enlargement of appellant's premises would tend to aggravate the present existing condition. Chief Davison further testified that there are four liquor establishments within a short distance of appellant's premises. The Borough Council of the Borough of Hightstown in, in a resolution denying appellant's application to transfer, set forth the reason for the denial "that it is an extension of an existing license in a congested area".

While technically the transfer of appellant's license would not increase the number of licenses outstanding, the practical effect of the transfer would be to increase the available facilities for the sale of liquor in original containers. A transfer of a license is a privilege not inherent in appellant's license. VanSchoick v. Howell, Bulletin 120, Item 6. A municipal issuing authority, in the exercise of the discretion vested in it by law, may refuse to grant a transfer designed to increase the extent of licensed premises where, in its judgment, there are already ample facilities in the neighborhood for the sale of alcoholic beverages. Peters v. Bloomfield, Bulletin 697, Item 1. In any conflict between the private interests of an individual property owner and the interests of the public, the latter must prevail. Lingelbach v. North Caldwell, Bulletin 180, Item 8.

In view of the facts adduced at the instant hearing, it is quite apparent that the denial of the application to transfer by the local issuing authority was neither arbitrary, unreasonable nor inspired by improper motives. Consequently I shall sustain the denial, and the appeal will be dismissed.

Accordingly, it is, on this 22nd day of August, 1947,

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

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

OLYMPIC PARK, INC.)
Foot of 43rd Street)
Irvington, N. J.,)

Holder of Plenary Retail Consumption License C-50 for the fiscal year 1941-42, and now holder of Plenary Retail Consumption License C-70 for the current fiscal year, both issued by the Board of Commissioners of the Town of Irvington; and also holder of Plenary Retail Consumption License C-2 for the fiscal year 1941-42, and now holder of Plenary Retail Consumption License C-2 for the current fiscal year, both issued by the Township Committee of the Township of Maplewood.)

CONCLUSIONS AND ORDER

-----)
Fred G. Stickel, Jr., Esq. and Charles M. Hosp, Esq., Attorneys for Defendant-licensee.
Richard E. Silberman, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. On or about August 30, 1941 you sold alcoholic beverages to Michael --- and Lillian ---, minors, in violation of R. S. 33:1-77.

"2. On or about the date aforesaid you sold, served, delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Michael --- and Lillian ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by said persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The delay in deciding this case was due to conditions prevailing during the war. Cf. Re Dailey, Bulletin 769, Item 6.

Defendant conducts a large amusement park which is visited by thousands of persons daily during the summer season. The evidence herein shows that on August 30, 1941, Lillian --- and Michael ---, both of whom were then minors, visited the skating rink on defendant's premises and thereafter entered an adjoining building which contained a bar and tables and chairs. Apparently there were three other young men with the minors, and the entire party, consisting of five people, took seats at a table in the barroom. Michael --- testified that he first ordered three glasses of beer which were served by a waiter, and that thereafter he ordered five glasses of beer which were served by the same waiter. Michael further testified that he consumed the contents of one glass at the time of the service of each round of beers, and that Lillian --- consumed the contents of one glass at the time of service of the second round of beers. Lillian --- testified that Michael had ordered three rounds of beer and that she drank the contents of one glass at the time of each service.

On behalf of defendant, the waiter who allegedly served the beer testified that he did not see either of the minors on the licensed premises at any time. It is clear that the premises were crowded, and the failure of the waiter to recall having seen the minors is not sufficient to offset the positive testimony of the minors that they were present and that they were served with and permitted to consume alcoholic beverages.

It is argued on behalf of the defendant that it is not responsible for the acts of its employees. I find no merit to this argument because, in a disciplinary proceeding of this character, it is well established that the licensee is responsible for the wrongdoings of his servants. Re Kneller, Bulletin 49, Item 4; Re Jacobs, Bulletin 315, Item 8; Cedar Restaurant and Cafe Co. v. Hock, Bulletin 748, Item 9. I find defendant guilty as charged.

Under all the circumstances of this case, I shall suspend defendant's licenses for a period of ten days.

Although this proceeding was instituted during a prior licensing term, it does not abate but remains fully effective against the renewal licenses for the current term. State Regulations No. 16.

Accordingly, it is, on this 22nd day of August, 1947,

ORDERED that Plenary Retail Consumption License C-70 for the fiscal year 1947-48, issued by the Board of Commissioners of the Town of Irvington to Olympic Park, Inc., and also Plenary Retail Consumption License C-2 for the fiscal year 1947-48, issued by the Township Committee of the Township of Maplewood to Olympic Park, Inc., both licenses for premises at Foot of 43rd Street, Irvington, be and the same are hereby suspended for ten (10) days, commencing at 2:00 a.m. September 2, 1947, and terminating at 2:00 a.m. September 12, 1947.

ERWIN B. HOCK
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

HAMMONTON LODGE NO. 357)
Loyal Order of Moose)
111 South Egg Harbor Road)
Hammonton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-2, issued by the Town Council of the Town of Hammonton.)
-----)

Hammonton Lodge No. 357, Loyal Order of Moose, by Anthony Castone, Governor, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that on June 26, 1947, it possessed illicit alcoholic beverages at its licensed premises, to wit, one 4/5 quart bottle labeled "Lord Calvert Blended Whiskey" which was not genuine as labeled, in violation of R.S.33:1-50.

Defendant has no previous adjudicated record. The minimum fifteen-day penalty will be imposed, less five days for the plea, leaving a net suspension of ten days. Cf. Re Matarazzo, Bulletin 770, Item 4.

Accordingly, it is, on this 22nd day of August, 1947,

ORDERED that Club License CB-2, issued by the Town Council of the Town of Hammonton to Hammonton Lodge No. 357, Loyal Order of Moose, for premises 111 South Egg Harbor Road, Hammonton, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. September 2, 1947, and terminating at 2:00 a.m. September 12, 1947.

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SAMUEL J. ROBERTS LODGE #979)
I.B.P.O.E. of W.,)
75 Orange St.)
Bridgeton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-3, issued by the City Council of the City of Bridgeton.)
-----)

Stanger and Howell, Esqs., by Robert G. Howell, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge that it possessed illicit alcoholic beverages at its licensed premises, in violation of R. S. 33:1-50.

On April 9, 1947, an inspector of the Alcohol Tax Unit, Internal Revenue Service, seized one 4/5 quart bottle labeled "Kinsey Blended Whiskey", one 4/5 quart bottle labeled "Idaho Distilled Dry Gin", and one 4/5 quart bottle labeled "Gold Coin Rye Liqueur", when his field tests disclosed that the contents of said bottles were not genuine as labeled. Subsequent analyses of the contents of the bottles in question by the Federal chemist disclosed several differences in characteristics between the alcoholic beverage described on the labels and that contained in the bottles.

In view of the fact that defendant has no previous adjudicated record, I shall suspend its license for a period of twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days. Re Ivanowski, Bulletin 745, Item 2.

Accordingly, it is, on this 3rd day of September, 1947,

ORDERED that Club License CB-3, issued by the City Council of the City of Bridgeton to Samuel J. Roberts Lodge #979, I.B.P.O.E. of W., for premises 75 Orange Street, Bridgeton, be and the same is hereby suspended for fifteen (15) days, commencing at 8:00 a.m. September 8, 1947, and terminating at 8:00 a.m. September 23, 1947.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR SOLICITOR'S PERMIT - PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against)

JOSEPH T. LICHTENSTERN)
6051 Boulevard East)
West New York, N. J.,)

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit)
No. 2281, issued by the State)
Commissioner of Alcoholic)
Beverage Control.)
-----)

Joseph T. Lichtenstern, Defendant-Permittee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to a charge alleging that he falsified his application for a solicitor's permit by denying that he had ever been convicted of a crime, in violation of R. S. 33:1-25.

The defendant admitted that he was convicted on or about April 19, 1935, in a United States District Court, of the crime of obtaining money by falsely representing himself to be an officer and employee of the United States Government, namely, an agent of the Federal Bureau of Investigation. As a result of said conviction, defendant was sentenced to a Federal prison for a term of three months. The crime of obtaining money by false representation is one that ordinarily involves moral turpitude.

The defendant contends that he answered the question relative to criminal convictions in the negative because he was of the opinion that the question pertained only to the five years last past. The question reads: "Have you ever been convicted of any crime?"

The explanation offered by defendant relative to the misinterpretation of the question is too naive for belief.

The permit will be revoked.

Accordingly, it is, on this 3rd day of September, 1947;

ORDERED that Solicitor's Permit No. 2281, issued by the State Commissioner of Alcoholic Beverage Control to Joseph T. Lichtenstern, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - UNREGISTERED STILL PARTS AND APPURTENANT ARTICLES ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure on) Case No. 7147
 July 3, 1947 of a number of still)
 parts at a farm occupied by Charles)
 Lupica located off the Buttonwood)
 Corner Road in East Amwell Township,) ON HEARING
 County of Hunterdon and State of) CONCLUSIONS AND ORDER
 New Jersey.)
 -----)

Italo Tarantola, Esq., Attorney for Charles Lupica.
 Harry Castelbaum, Esq., appearing for State Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a number of still parts, described in a schedule attached hereto, seized on July 3, 1947, at a farm owned and occupied by Charles Lupica, located off the Buttonwood Corner Road, East Amwell Township, New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

It appears that ABC agents entered the farm on the day in question to check a complaint that an illicit still was there. They were met by Lupica, and near a barn observed some tanks which Lupica characterized as junk. The agents then entered the barn, where they found various still parts and a number of empty five-gallon cans. Two steam boilers and a number of tanks and drums were in the barnyard.

Lupica told the agents that about a year before the seizure he entered into an arrangement with four men, known to him only by their first names, whereby he permitted them to store articles of this character in and about his farm, for which he was paid \$20.00 a year; that from time to time these men removed some articles and brought other articles there; that these men, when making this arrangement, told him that they intended to manufacture beer.

The agents seized the still parts and other paraphernalia, and arrested Charles Lupica on charge of possessing unregistered still parts.

The still parts, and other articles seized therewith, constitute unlawful property, subject to forfeiture, because the still parts were not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1. In addition, the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing pursuant to R. S. 33:2-4, counsel entered an appearance for Charles Lupica, who seeks to avoid padlocking. No one appeared to oppose forfeiture of the seized articles.

The evidence presented by Lupica discloses that he is 72 years of age and has occupied the farm for over 30 years, residing there alone for the last 12 years. He ekes out a meager living from the products of the farm, where he keeps a cow and a few chickens. He stores hay in the barn. He does not own any other property and has little, if any, money. He has previously never been arrested, or accused of illegal liquor activities.

There is an old dwelling, two poultry houses and the old barn on the farm. All of the buildings are in a dilapidated and ramshackle condition, and the barn is the only structure which can be used for storage of farm implements and hay.

Lupica's age, appearance and background indicate that the prospect of any cash for the use of his farm for storage purposes would have a well-nigh unsurmountable appeal. Having succumbed to this temptation, he is now faced with criminal proceedings. So far as is apparent, he did not personally participate in the illicit still activities.

Under the circumstances, it seemingly would be unduly harsh to compel Lupica to vacate his home. No purpose would be served by padlocking the dilapidated barn or other shacks, aside from the fact that padlocking of the barn would compel Lupica to seek a makeshift place for the storage of his hay and farm implements. I shall therefore waive padlocking. However, this action is in no wise to be regarded as indicative of any opinion as to whether or not Lupica is responsible in criminal proceedings for the presence of the unregistered still parts on his farm. See Seizure Case No. 7080, Bulletin 749, Item 7.

Accordingly, it is DETERMINED and ORDERED that 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. 33:2-5 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
Commissioner.

Dated: September 4, 1947.

SCHEDULE "A"

3 - sections of copper column
 1 - copper cooker
 1 - copper dephlegmator
 1 - copper gooseneck
 1 - copper cooler and coils
 16 - sections galvanized smoke stack
 1 - galvanized receiving tank
 6 - 5-gallon cans
 5 - iron vats
 1 - sheet metal cooker and coils
 1 - sheet metal tank
 2 - boilers
 120 - vat staves and wooden bottom
 5 - vat hoops
 miscellaneous pipes, fittings and valves

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - SALE TO A WOMAN OVER THE BAR IN VIOLATION OF A LOCAL ORDINANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THE PROGRESSIVE DEMOCRATIC CLUB)
OF THE 8th WARD)
1009 Ferry Avenue)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-5 issued)
by the Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

-----)
Charles W. Carter, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges that it (1) sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages on its licensed premises on Sunday after 2:00 a.m. in violation of a local ordinance of the City of Camden prohibiting any such activity, and (2) served beverages to a woman directly over a bar on said licensed premises, in violation of a further section of said ordinance.

Defendant urges in mitigation the fact that no charge was made for the beer so served. This is no defense nor does it entitle the defendant to any consideration in determining the appropriate penalty. There was admittedly "service" and actually a sale within the definition of the Alcoholic Beverage Law which provides, among other things, that the term "sale" includes "the gratuitous delivery or gift of any alcoholic beverage by any licensee". R. S. 33:1-1(w).

The minimum suspension for the first charge is fifteen days (Re Fraternal Order of Eagles, Bulletin 671, Item 9) and, for the second, five days (Re Segal, Bulletin 629, Item 12). In addition thereto it is noted that defendant's license was cancelled in 1944 after a finding of guilty to charges of falsification of its application (Bulletin 672, Item 3). I shall, in consideration of defendant's previous record and its plea herein, suspend the license for twenty-five days, and remit five days therein, leaving a net suspension of twenty days.

Accordingly, it is, on this 4th day of September, 1947,

ORDERED that Club License CB-5, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to The Progressive Democratic Club of the 8th Ward, for premises 1009 Ferry Avenue, Camden, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. September 10, 1947, and terminating at 2:00 a.m. September 30, 1947.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - POSSESSION OF OBSCENE SIGNS AND CARDS IN VIOLATION OF RULE 17 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

DOROTHY HOULIHAN & JOHN QUERING)
T/a DOT & BUCK'S INN)
2570 White Horse Pike)
Galloway Township)
P.O. Cologne, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-21 issued by the Township Committee of the Township of Galloway.)

Frank S. Farley, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead non vult to a charge that on April 12, 1947, and prior thereto, they allowed, possessed and distributed in or about their licensed premises "menus", "business cards" and a wall sign, all containing obscene, indecent, filthy, lewd, lascivious and disgusting printing thereon, in violation of Rule 17 of State Regulations No. 20.

During the course of an investigation a number of alleged "menus", "business cards" and a wall sign were seized by ABC agents because the writings thereon were positively indecent. Defendants contend that the "menus" and the sign were left at the licensed premises by patrons. They do admit, however, that the "business cards" were specially printed for them.

In view of the revolting nature of the printed matter, the proper penalty might well be outright revocation. However, the defendants, who have held the license for approximately three years, have an otherwise clear record. I shall, therefore, suspend defendants' license for a period of sixty days.

Although this proceeding was instituted during the 1946-47 licensing period, it does not abate but remains fully effective against the renewal license for the 1947-48 licensing year. State Regulations No. 16.

Accordingly, it is, on this 4th day of September, 1947,

ORDERED that Plenary Retail Consumption License C-21, issued by the Township Committee of the Township of Galloway to Dorothy Houlihan & John Quering, t/a Dot & Buck's Inn, for premises 2570 White Horse Pike, Galloway Township, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. September 15, 1947, and terminating at 2:00 a.m. November 14, 1947.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT FOR PERSONS NOT RESIDENTS OF MUNICIPALITY AS REQUIRED BY LOCAL REGULATION - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

R. J. S. INC.)
T/a THE COLONY RESTAURANT)
175 South Street)
Morristown, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-2 for the 1946-47 fiscal year, and now holder of Plenary Retail Consumption License C-2 for the present fiscal year; both issued by the Mayor and Board of Aldermen of the Town of Morristown.)

Mills, Jeffers and Mountain, Esqs., by Worrall F. Mountain, Jr., Esq., Attorneys for Defendant-licensee.
Emerson A. Tschupp, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. In your application dated June 8, 1946, filed with the Mayor and Board of Aldermen of the Town of Morristown, upon which you obtained your current plenary retail consumption license, you, after listing your stockholders as Charles Crist Delmonico III 90 shares, Charles Crist Delmonico 5 shares and Shirley G. Delmonico 5 shares, falsely stated 'No' in answer to Question 23 which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinabove set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', and also falsely stated 'No' in answer to Question 30 which asks: 'Has any individual, partnership, corporation or association other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact The Morristown Colony Restaurant, Inc. was the real and beneficial owner of the licensed business and all the shares of stock listed in the names of Charles Crist Delmonico III, Charles Crist Delmonico and Shirley G. Delmonico; said false statements being in violation of R. S. 33:1-25.

"2. From May 4, 1946, and until the present time, you knowingly aided and abetted The Morristown Colony Restaurant, Inc. to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52."

Defendant corporation has held a liquor license since November 3, 1944. In April 1946 the individuals mentioned in charge (1) nominally acquired the respective number of shares of defendant corporation set forth in said charge, and it is not contended by the Department that there was any false statement as to the number of shares held by these individual stockholders. However, the Department does contend, and the plea admits, that thereafter the licensed business was operated for the benefit of another corporation known as Morristown Colony Restaurant, Inc. and that the latter corporation was in fact the beneficial owner of all the shares of defendant corporation.

At the time mentioned herein a local ordinance of the Town of Morristown provided in effect that each officer, director and stockholder holding more than ten per cent of the stock of the licensed corporation must be a resident of Morristown or engaged in business therein for a period of two years prior to the issuance of the license. At that time Camilla Steinbrugge and Charles A. Dana, Jr. each held more than ten per cent of the stock of Morristown Colony Restaurant, Inc., and neither of them was a resident of Morristown or engaged in business two years therein. Apparently the "front" was created and continued for some time because of these facts.

It now appears that on May 27, 1947 Morristown Colony Restaurant, Inc. was duly merged into and consolidated with R. J. S. Inc. At present Camilla Steinbrugge and Charles A. Dana, Jr. each hold less than ten per cent of the stock of defendant corporation. It thus appears to my satisfaction that the illegal situation has been corrected.

Defendant has no prior adjudicated record. Under all the circumstances I shall suspend its license for the minimum period of twenty days. Cf. Re Russo, Bulletin 741, Item 4.

Although this proceeding was instituted during the 1946-47 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1947-48. State Regulations No. 16.

Accordingly, it is, on this 4th day of September, 1947,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Board of Aldermen of the Town of Morristown, for the 1947-48 fiscal year, to R. J. S. Inc., for premises 175 South Street, Morristown, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. September 11, 1947, and terminating at 2:00 a.m. October 1, 1947.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SUSPENSION TEMPORARILY LIFTED.

In the Matter of Disciplinary Proceedings against)

R. J. S. INC.)
T/a THE COLONY RESTAURANT)
175 South Street)
Morristown, N. J.,)

Holder of Plenary Retail Consumption License C-2 for the 1946-47 fiscal year, and now holder of Plenary Retail Consumption License C-2 for the present fiscal year; both issued by the Mayor and Board of Aldermen of the Town of Morristown.)

ON PETITION
O R D E R

-----)
Mills, Jeffers and Mountain, Esqs., Attorneys for Petitioner.

BY THE COMMISSIONER:

On September 4, 1947, the license herein was suspended for a period of twenty days commencing at 2:00 a.m. September 11, 1947, and terminating at 2:00 a.m. October 1, 1947.

It appears from a petition filed herein that prior to September 4, 1947, defendant had made arrangements for a wedding reception to be held at its licensed premises on Saturday, September 13th. The petition recites that the affair will be attended by at least 100 guests.

It appearing, therefore, that numerous innocent persons will be inconvenienced by suspension of defendant's license on September 13, 1947,

It is, on this 8th day of September, 1947,

ORDERED that the suspension of twenty days heretofore imposed in this proceeding shall commence at 2:00 a.m. September 11, 1947, and continue in effect until 2:00 a .m. on September 13, 1947; that thereafter said suspension shall be lifted until 2:00 a.m. September 14, 1947, when it shall again become effective and continue in effect until 2:00 a.m. October 2, 1947.

ERWIN B. HOCK
Commissioner.

12. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND EQUIPMENT IN SPEAKEASY IN PRIVATE RESIDENCE ORDERED FORFEITED -- RETURN OF JUKE BOX DENIED FOR FAILURE OF OWNER TO INVESTIGATE BACKGROUND AND ACTIVITIES OF SPEAKEASY OPERATOR.

In the Matter of the Seizure on)
June 8, 1947 of a quantity of)
alcoholic and other beverages, and)
fixtures, furnishings and equipment)
at premises occupied by Edgar Kenton,)
located on Goshen Road, Swainton, in)
the Township of Middle, County of)
Cape May and State of New Jersey.)
-----)

Case No. 7143

ON HEARING
CONCLUSIONS AND ORDER

Samuel Katz, Pro Se.
Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me 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, furnishings and equipment, itemized in a schedule attached hereto, seized on June 8, 1947, at premises occupied by Edgar Kenton, located on Goshen Road, Swainton, in Middle Township, N. J., constitute unlawful property and should be forfeited.

It appears that the State Department of Alcoholic Beverage Control received a specific complaint that Edgar Kenton was operating a speakeasy in his dwelling at the above address. Accordingly, two ABC agents proceeded to the premises shortly after midnight on June 8, 1947. One agent remained outside, while the other entered the building and purchased four drinks of whiskey from Edgar Kenton. The agent left without disclosing his identity, informing Kenton that he would return shortly with a companion.

Within a short time this agent returned, accompanied by another agent. Both entered the building and purchased drinks of alcoholic beverages. They observed other patrons there, likewise purchasing alcoholic beverages from Kenton. Another ABC agent and state troopers entered the premises, and all of the officers disclosed their identity.

The officers obtained a signed statement from Kenton in which he admitted that he had sold alcoholic beverages to the ABC agents and that he had made a practice of selling alcoholic beverages for some time prior thereto. They also obtained statements from some of the patrons admitting that they purchased alcoholic beverages from Kenton. Kenton did not hold any license authorizing him to sell or serve alcoholic beverages, and the premises were not licensed for the sale of alcoholic beverages.

Kenton was arrested on charges of selling alcoholic beverages without a license and possessing alcoholic beverages with intent to sell the same unlawfully. The ABC agents seized a quantity of beer and other alcoholic beverages, and a bar, music box and other equipment in the place.

The evidence warrants the conclusion that the seized beer and other alcoholic beverages were intended for unlawful sale at the premises, and are therefore illicit. R. S. 33:1-1(y). Such illicit alcoholic beverages, and the other articles seized therewith in the building, constitute unlawful property 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 Katz appeared and sought return of the music box. No one appeared to oppose forfeiture of the other seized property.

I have discretionary authority to return the music box if Katz establishes to my satisfaction that he acted in good faith and did not know or have any reason to suspect that his music box was in a speakeasy. R. S. 33:1-66(f), Seizure Case No. 7044, Bulletin 760, Item 8, Seizure Case No. 7092, Bulletin 766, Item 2.

Katz testified that he placed the machine in Kenton's living quarters in November 1946, at Mrs. Kenton's request, under an arrangement whereby she was to pay \$7.00 a week for its use. He had no previous acquaintance with Mrs. Kenton, and did not investigate her character or background or that of her husband. He says that he accepted at face value her statement that she intended to operate a restaurant at the place although there was nothing visible to substantiate that fact. He did not visit the place again until after the seizure in June 1947, a period of about seven months. He made no effort whatsoever to determine the nature of the activities carried on at the place.

Katz admits that in all other instances his machines were placed in commercial establishments excepting an occasional one day rental for a social affair. Apparently his only concern was whether his transaction with Mrs. Kenton would be profitable to him.

I am compelled to deny Katz's application for return of the music box because he placed it in a private residence and permitted it to remain there for an extended period of time without an adequate check of what activities were being carried on there. See Seizure / Case No. 7091, Bulletin 763, Item 11, and cases cited therein.

Accordingly, it is DETERMINED and ORDERED that 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
Commissioner.

Dated: September 4, 1947.

SCHEDULE "A"

- 47 - bottles of beer
- 6 - bottles of other alcoholic beverages
- 2 - jars of cherries
- 22 - bottles of soda
- 1 - bar
- 9 - chairs
- 1 - stool
- 1 - Coca Cola icebox
- 1 - Seeburg Symphonola Music Box #34250 and
currency therein
- 1 - icebox
- 9 - service trays
- 1 - 3 burner oil stove
- 1 - Soda King shaker
- 1 - cracker bowl
- 50 - assorted drinking glasses

13. STATE LICENSES - NEW APPLICATIONS FILED.

Pilot Freight Carriers, Inc.
Polo Road & Cherry St. Ext.
Winston Salem, N. C.

Application for Transportation License filed August 20, 1947.

Peter Lusardi, Inc. (State Beverage Distributor's License SBD-55)
6-10 N. Doughty Ave., Somerville, N. J.

Application for additional warehouse at New Street,
Somerville, N. J., filed August 29, 1947.

Theo. Hamm Brewing Co.
720 Payne Ave.
St. Paul, Minnesota

Application for Limited Wholesale License filed September 2, 1947.

Shirks Motor Express Corporation
1704 Union Turnpike
North Bergen, N. J.

Application for Transportation License filed September 2, 1947.

Erwin B. Hock
Commissioner.