Gossweiler

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

August 21, 1968

BULLETIN 1805

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ITEM

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

August 21, 1968

BULLETIN 1805

1. COURT DECISIONS - PLAY PEN INCORPORATION v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-584-67

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Plaintiff-Respondent,

vs.

PLAY PEN INCORPORATION, t/a Play Pen Inc., 789-791 Palisade Avenue, Cliffside Park, New Jersey,

Defendant-Appellant.

Argued June 3, 1968 -- Decided June 14, 1968

Before Judges Sullivan, Foley and Leonard

On appeal from the Division of Alcoholic Beverage Control.

Mr. Leopold A. Monaco argued the cause for Defendant-Appellant (Messrs. Andora and Baron, attorneys).

Mr. Stephen Skillman, Deputy Attorney General, argued the cause for Plaintiff-Respondent (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from Director's decision in Re Play Pen Incorporation, Bulletin 1778, Item 5. Director affirmed. Opinion not approved for publication by the Court committee on opinions. Notice of appeal to New Jersey Supreme Court filed June 26, 1968, stay continued pending determination.)

2. COURT DECISIONS - BUCKLEY v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-432-67

GERALDINE BUCKLEY,

Appellant,

vs.

STATE OF NEW JERSEY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Respondent.

Argued June 10, 1968 -- Decided June 21, 1968

Before Judges Gaulkin, Lewis and Kolovsky.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Laurence Semel argued the cause for appellant.

Mr. Morton R. Covitz argued the cause for the Borough of Wallington and for respondent (Mr. Robert D. Gruen, attorney).

Mr. Arthur J. Sills, Attorney General of New Jersey, attorney for respondent Division of Alcoholic Beverage Control (Mr. Howard M. Kaplan, Deputy Attorney General, of counsel), filed Statement in Lieu of Brief.

PER CURIAM.

(Appeal from the Director's decision in Buckley v. Wallington, Bulletin 1772, Item 1. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

3. APPELLATE DECISIONS - BAKER v. NEWARK.

HENRY BAKER, t/a HILLSIDE LIQUORS, Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Martin G. Margolis, Esq., William Osterweil, Esq., of Counsel, by Clarence Talisman, Esq., Attorney for Appellant.
Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent whereby on January 10, 1968, by a vote of 2-to-0 (one member being absent) it denied the application for a person-to-person and place-to-place transfer of a plenary retail distribution license from Samuel Miller and Gerald Grabelle to appellant and from premises 44 West Runyon Street to premises 215-217 Hillside Avenue, Newark.

Appellant's petition of appeal alleges in substance that the determination of respondent was erroneous in that it was contrary to the evidence, arbitrary, and constituted an abuse of discretion.

Respondent's answer denies the substantive facts of the petition and states that its decision was based upon factual testimony before it, from which it, in its sound discretion, concluded that the transfer should be denied.

The transcript of the hearing below was submitted into evidence by respondent, in accordance with Rule 8 of State Regulation No. 15. Testimony was also taken before me on the appeal de novo, which afforded counsel full opportunity to present additional testimony and to cross-examine witnesses. Rule 6 of State Regulation No. 15.

It appears from the record herein that the West Runyon Street premises, for which the license was issued and which had been destroyed by fire in July 1967 during a riot, is located across the street from appellant's premises on Hillside Avenue, a distance of eighty-five feet. Appellant operates a food market for which the license is sought. No liquor outlets are located within 600 feet of the proposed licensed premises. There have been no objections entered to the character of appellant, to the proposed premises or to the manner in which he conducts his present business.

The objectors to the transfer were a city councilman and numerous persons residing in the area. Some of the witnesses testified that the present holders of the license in question sold

alcoholic beverages to persons who became drunk and disorderly, which conduct constituted a nuisance to the residents in the neighborhood. One witness contended that empty bottles were strewn in the street and on property of those living in the area. Witnesses also stated that there was no need for a license at the proposed site.

It was agreed after hearing the testimony of several objectors that all of the other objectors, if called upon to testify, would substantially corroborate the testimony given by those who had taken the opportunity to testify.

Calvin D. West, Councilman-at-large, testified that he resides "about 4 blocks, 4½ blocks, 5 blocks" from the proposed licensed premises and often frequents the area. He further testified that his concern is with the children who pass the premises going to and returning from a school located a block away but at a distance of more than 200 feet from the premises sought to be licensed. Councilman West also said that he had noticed on numerous occasions individuals loitering around the licensed premises while it was in operation, consuming alcoholic beverages. He stated at the hearing below that in his opinion, "Denying this transfer would be a step towards rehabilitating this area, and likewise throughout our city, in every way possible and would alleviate this bad situation, to get rid of some of these taverns." (But note that this is a package store license.)

The record at the appeal hearing discloses that the present holders of the license have operated at the premises in question from 1950 until July 1967, when the building was destroyed by the aforementioned fire. Prior to 1950, the said license had been held for many years by Samuel Miller, one of the partners, as an individual. The school mentioned by the objectors, on West Runyon Street near Belmont Avenue, has been in use since February 1962; and the licensed premises also were in operation during that time until 1967. There is no adjudicated record of any violation of the Alcoholic Beverage Law by the transferors during those years or, in fact, at any time prior thereto.

Before considering the facts and contentions raised by the pleadings herein, the principles which guide us in the disposition of a case of this type should be restated.

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Club Warren, Inc. v. Newark, Bulletin 1585, Item 4. As the court pointed out in Bivona v. Hock, 5 N.J.Super. 118, 120:

> "It seems to us that the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940)."

The court further pointed out (p. 121):

> "... the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather

> has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition."

The municipality wherein a liquor license is located has original power to pass on an application for transfer. However, its action is subject to appeal to the Director of the Division of Alcoholic Beverage Control. On such appeal, the Director conducts a de novo hearing and makes the necessary factual and legal determinations on the record before him. Hightstown v. Hedy's Bar, 86 N.J.Super. 561; Fanwood v. Rocco, 33 N.J. 404.

There is no denial that the premises for which the license was issued had, in fact, been destroyed by fire and that the licensees would suffer by reason of the denial of appellant's application for transfer. This might well be termed and come under the category of a hardship case. Nothing in the record indicates that the holders of the license were in any way responsible for the destruction of their licensed premises. Moreover, the distance between the present premises and the proposed premises is only eighty-five feet. In cases where the local issuing authority has denied such applications for transfer, the Director did not hesitate to reverse where he considered the action to be unreasonable and an abuse of discretion. Henderson v. Teaneck and Stanley's, Inc., Bulletin 1588, Item 1; Gruber v. Newark, Bulletin 1071, Item 1; cf. Helms v. Newark and Cardinal Wines and Liquors, Inc., Bulletin 1398, Item 3; Bivona v. Hock, supra; Piccirillo v. Lyndhurst, Bulletin 1578, Item 3, aff'd sub nom. Moderelli and Lyndhurst v. Piccirillo (App. Div. 1966), not officially reported, recorded in Bulletin 1662, Item 1; Bomwell v. Newark, Bulletin 1639, Item 1, aff'd App. Div. 1966, not officially reported, recorded in Bulletin 1667, Item 1; L. Kubisky, Inc. v. Paterson, Bulletin 1662, Item 2.

The proposed premises being located on the opposite corner to the site where the licensed premises was located, it is, in fact, at a greater distance from the school mentioned as a reason for denying the transfer of the license. The school, as already indicated, has been in existence for five years and all during that time the licensees operated their licensed business. No evidence has been presented showing that there were any unfortunate incidents, or any incidents whatsoever, involving the pupils who passed the licensed premises during the school terms.

It is understandable that concern may exist for the welfare of children in the area. However, if the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), children or other persons who may have occasion to pass the proposed licensed premises, or who reside in the vicinity, have nothing to fear. If, perchance, the licensed premises are operated in violation of the Alcoholic Beverage Law, the licensee will subject his license to suspension or revocation.

It has been consistently held that "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." Lakewood v. Brandt, 38 N.J.Super. 462; Moreover, the court stated (p. 466):

"The desire of these committeemen to reduce the number of licenses, because too many were outstanding, is commendable. But this they should have attempted through some less arbitrary means than through destroying the transferability of outstanding licenses."

The evidence discloses that there are no liquor establishments in the area within a radius of 600 feet, so as to be in violation of an applicable ordinance. Inasmuch as the two premises, both present and proposed, are in the same vicinity, it is apparent that the transfer of the license would not result in the existence of any additional license or increase the number of present licenses in the general area.

I have carefully examined the testimony of the witnesses whose views were adopted by respondent and am satisfied that they were insufficient under the circumstances herein to deny the application for transfer. By reason thereof, it is my opinion that respondent's denial of appellant's application was unreasonable, arbitrary and an abuse of its discretion.

I am satisfied that appellant has sustained the burden imposed on him under Rule 6 of State Regulation No. 15 and it is, therefore, recommended that the action of respondent be reversed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcripts, the exhibit and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 29th day of May, 1968,

ORDERED that the action of respondent be and the same is hereby reversed; and it is further

ORDERED that respondent transfer the license to appellant in accordance with the application heretofore made.

JOSEPH M. KEEGAN
DIRECTOR

4. APPELLATE DECISIONS - FERRARO v. PATERSON.

THOMAS FERRARO & OLGA FERRARO, t/a T. F.'s Lounge, Appellants, v. BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondent	)	ON APPEAL CONCLUSIONS AND ORDER

Benjamin S. Goldstein, Esq., Attorney for Appellants
Samuel K. Yucht, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) which on April 10, 1968 suspended the appellants' plenary retail consumption license for premises 596-598 - 21st Avenue, Paterson, for a period of ten days effective April 29, 1968, after finding appellants guilty of a charge alleging that on Saturday, January 27, 1968, they employed in and upon their licensed premises a person not a resident of the State of New Jersey, viz., one Barbara Woodard, without requisite employment permit, in violation of Rule 4 of State Regulation No. 13.

Upon the filing of the appeal an order dated April 18, 1968, was entered by the Director staying the Board's order of suspension until further order herein.

In their petition of appeal appellants contend that the said non-resident did not in fact work in the licensed premises on the date charged; that there was entrapment on the part of local police officers, and that the findings were contrary to law.

In its answer the Board denies the substantive allegations and sets up in its separate defense that the fact of physical presence of a non-resident with intent to work, coupled with payment, constitutes employment within the contemplation of Rule 4 of State Regulation No. 13.

This appeal was based solely upon the transcript of the testimony taken in proceedings before the Board, pursuant to Rule 8 of State Regulation No. 15.

Rule 4 of State Regulation No. 13 provides:

> "No retail licensee, except a plenary retail transit licensee or a retail licensee conducting a bona fide hotel or public restaurant, shall employ any person who is not a resident of the State of New Jersey, or allow, permit or suffer the employment of any such person, in or upon the licensed premises unless such person shall (1) have first obtained an employment permit from the Director of the Division of Alcoholic Beverage Control or (2) within ten (10) days after becoming employed, have filed with the Director of the Division of Alcoholic Beverage Control the application and fee for his employment permit or (3) be covered under a blanket employment permit issued to his employer pursuant to Rule 10 hereof...."

The transcript of the testimony reflects the following: Thomas Ferraro (a co-licensee) arranged for the services of Barbara from a New York theatrical agency and she reported to the tavern on the evening of January 27. He left specific instructions, however, that she was not to commence her performance as a dancer until he arrived at the tavern. After Barbara came to the tavern on the said evening, two local police officers entered the said premises and questioned her. They ascertained that she was a non-resident and had not obtained a prior permit to perform at these premises. She informed them that she was unaware that as a non-resident over the age of twenty-one years she was required to obtain a permit. Sergeant Mahull then warned her that she would not be permitted to perform in a New Jersey licensed premises without a permit. However, he advised her that "she would be allowed to

continue for the night but after she would need a permit." These officers had no knowledge as to whether or not she actually performed on that occasion.

Barbara testified that, after she was informed that a permit was required, she did not perform or engage in any activity in these premises on the date charged herein. When Ferraro entered the premises after her conversation with the police officers, she informed him of that fact. She admitted that she was paid for her time in coming to these premises.

The sole issue on this appeal is whether or not the appellants employed or allowed, permitted or suffered the employment of this non-resident within the contemplation of Rule 4 of State Regulation No. 13.

The general rule is that to "employ" is to make use of the services of another; to have or to keep at work; to entrust with some duty, as distinguished from to "hire." Re Vlaminck, Bulletin 147, Item 4; Re Haino, Bulletin 295, Item 7. Thus, if a person at no time renders service to or for the benefit of the alleged employer, he is not an employee in the first instance. 56 C.J.S., Master and Servant, p. 39; see cases cited in Note 30 on p. 39.

In Kravis v. Hock, 137 N.J.L. 252, at p. 255, the court considered the issue of employment in the following language:

> "Webster defines the word 'employ:' 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.'"

In this case the court was considering the interpretation of the word "employ" as used in Rule 22 of State Regulation No. 20. The court stated:

> "The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one."

See also 30 C.J.S., Employ, p. 669, and cases cited therein.

This Division has from the beginning of its administration of the Alcoholic Beverage Law held to such construction. Thus in Re Zenda, Bulletin 271, Item 5, the Commissioner held that, whenever one utilizes the services of another to accomplish his business, he is employing that other. See also Re Neim, Bulletin 1772, Item 2.

It is clear that the services of Barbara were not actually utilized on the night in question. It would be straining the definition of the word "employ", and indeed the entire spirit of the regulation, to hold the licensee liable where the services were not actually utilized. The regulation was not meant merely to charge an individual with a violation on a contract to perform at a later date. This is further evidenced by the latitude in the said regulation which permits such non-resident to obtain a permit within ten days after the date of the said employment.

Further, this performer, although warned by the local police officers that she could not perform without a permit, was assured

that she could perform without violating the rule on that particular evening. The fact is, however, that she did not perform or engage in any services, although under the rule she may well have performed if she obtained an employment permit from the Director of the Division of Alcoholic Beverage Control within ten days after becoming employed.

I am persuaded that the applicable regulation must not be interpreted puristically or mechanically and that under the factual complex herein there was no violation of the said rule. Thus the appellants have met the burden of establishing that the action of the Board herein was erroneous. Rule 6 of State Regulation No. 15.

It is therefore recommended that the action of the Board be reversed and the charge herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the hearing below and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of June, 1968,

ORDERED that the action of respondent be and the same is hereby reversed and the charge herein be and the same is hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

5. APPELLATE DECISIONS - ANCONETANI v. MAGNOLIA.

ALFRED & BARBARA ANCONETANI t/a Blanck's Liquor Store, Appellants.	)	ON APPEAL ORDER
v.	)	
MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MAGNOLIA, Respondent.	)	

Richman, Berry and Ferren, Esqs., by Edwin T. Ferren, III, Esq., Attorneys for Appellant
Joseph A. Maressa, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellants appeal from respondent's action suspending their license for twenty days effective May 27, 1968, for sale to a minor.

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

Prior to the hearing on appeal, appellants' attorneys advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 29th day of May 1968,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the twenty-day suspension be reinstated against Plenary Retail Consumption License C-3, issued by the Mayor and Borough Council of the Borough of Magnolia to Alfred & Barbara Anconetani, t/a Blanck's Liquor Store, for premises 540 North White Horse Pike, Magnolia, commencing at 2 a.m. Tuesday, June 4, 1968, and terminating at 2 a.m. Monday, June 24, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION IN VEHICLE WITHOUT TRANSIT INSIGNIA, OR SPECIAL PERMIT - CLAIM FOR RETURN OF MOTOR VEHICLE REJECTED ABSENT GOOD FAITH - SUM SECURED BY BOND AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on December 15, 1967 of a quantity of alcoholic beverages and a 1965 Ford Van Truck at the New Jersey State Police Barracks on Route 130, in the Borough of Hightstown, County of Mercer and State of New Jersey	))))	Case No. 11,989 ON HEARING CONCLUSIONS AND ORDER

Schragger, Schragger & Lavine, Esqs., by Bruce M. Schragger, Esq., appearing for Arcoa, Inc., claimant.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter was heard concurrently with the matter of an application for a transportation license by Specialized Trucking Corp. The testimony developed at the joint hearing indicates that separate Hearer's Reports are required.

The instant matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28 and, further, pursuant to a surety bond in the sum of $1,000.00, deposited with the Director of Alcoholic Beverage Control by Arcoa, Inc., to determine whether 375 containers of alcoholic beverages and one 1965 Ford Van Truck, seized on December 15, 1967 at the New Jersey State Police Barracks on Route 130, in the Borough of Hightstown, New Jersey, constitute unlawful property and should be forfeited; and, further, to determine whether the sum of $500.00 as secured by the said bond in the penal sum of $1,000.00, deposited by Arcoa, Inc., under protest, representing the appraised retail value of the Ford Van Truck should be forfeited or returned to it.

The seizure was made by State troopers because of alleged unlawful transportation of alcoholic beverages.

When the matter came on for hearing pursuant to State Regulation No. 28, Arcoa, Inc., represented by counsel, appeared and entered a claim for the return and discharge of the bond posted in accordance with the stipulation herein entered.

The testimony reflects the following facts: On December 15, 1967 William Kispert, a truck driver employed by the American Travelers Club, was operating the aforementioned 1965 Ford Van Truck on Route 130 in Hightstown when he was stopped by a State trooper for a traffic violation. Upon being questioned by the trooper, Kispert informed him that he was in the process of delivering packages of alcoholic beverages from his employer's warehouse in New York to various persons in Trenton.

The trooper looked into the truck, saw the alcoholic beverages in the rear of the truck and directed Kispert to accompany him to the State Police Barracks.

At the Barracks, the State trooper was joined by ABC Agents H and B who were shown the contents of the truck by Kispert. The contents were clearly visible from the driver's seat since there was no partition between the driver's seat and the storage portion of the vehicle. At their request, Kispert produced invoices covering the said alcoholic beverages which supported his statement that the said liquor was to be delivered to customers in the Trenton area. The truck and the liquor were thereupon adopted by the agents of this Division.

Kispert admitted that he did not have any New Jersey State license or permit authorizing the transportation of alcoholic beverages in or through this State, nor was there any transit insignia affixed to or an inscription painted on the motor vehicle in which these alcoholic beverages were transported, as required by the alcoholic beverage law and the Rules and Regulations of this Division.

John Bertoline testified that he was employed as a traffic manager on the date of seizure, for the American Travelers Club, and had been so employed for that company for more than a year prior thereto. He explained that American Travelers Club made deliveries of alcoholic beverages from New York to New Jersey on behalf of the House of York, Ltd.

He dispatched Kispert to make deliveries in a U-Haul Truck rented by the American Travelers Club, to various customers in the Trenton area. The truck was the truck seized herein and bore the Colorado registration. He estimated that there are about 80 gallons of liquor, representing five bottles to a gallon, all of which were destined for delivery to New Jersey customers.

He further admitted that he was aware that the truck did not have a transportation license or permit to make deliveries in New Jersey; nevertheless, the truck was dispatched because "It is once again a long involved story of a corporation. It had gone out by truck even though we were aware of the fact that we needed a license, because sending through REA with pilferage and breakage and discontented customers was such a great extent it was decided by my superior to take a chance and try to get a shipment out with all in one piece for a change."

He knew that such deliveries were in violation of the New Jersey law.

Several patrons of American Travelers Club, who reside in the Trenton area, testified that shipments from the American Travelers Club were destined for delivery by truck to them on the date alleged herein.

Since these alcoholic beverages were being transported without the requisite New Jersey transportation license or permit, as required by R.S. 33:1-13 and Rule 2 of State Regulation No. 18, and in an unlicensed vehicle which did not bear any transit insignia affixed thereto or an inscription painted thereon, in violation of the law and Rule 2 of State Regulation No. 17, such alcoholic beverages so unlawfully transported are illicit. R.S. 33:1-1(i). The Alcoholic Beverage Law provides that it shall be unlawful to transport alcoholic beverages without a license except in limited amounts for personal consumption, as defined in R.S. 33:1-2. All such illicit beverages and the vehicle in which they were transported are, therefore, unlawful property. R.S. 33:1-1(y). Such unlawful property must be seized by any officer knowing or having any reasonable cause to believe it to be unlawful property. R.S. 33:1-66(a); Seizure Case No. 11,670, Bulletin 1701, Item 4; Seizure Case No. 10,707, Bulletin 1467, Item 4.

Robert B. Kreider, testifying in support of the claim of Arcoa, Inc. gave the following account: He is the vice-president of U-Haul of New Jersey and is generally familiar with the operations of Arcoa. Arcoa is the central clearing house and holding company of various U-Haul corporations operating in various states. These U-Haul companies rent or lease vehicles, such as the one rented by the American Travelers Club, and one of the conditions set forth in the printed form of contract is that the vehicle shall be used only for lawful and personal use.

As a matter of policy, the specific U-Haul vehicles are franchised to the individual companies. To his knowledge, his company was not aware of the sale or delivery of alcoholic beverages by the American Travelers Club to persons in New Jersey.

On cross-examination, he acknowledged that he did not know the name of the particular agency which rented the seized vehicle to the American Travelers Club or even under what circumstances the same was rented. He specifically denied being familiar with a dealership held by Gus and Virginia Rodrigues of Jamaica, nor did he make any check or investigation to determine which dealership actually rented this vehicle to the American Travelers Club.

ABC Agent B, testifying in rebuttal, stated that he participated in an investigation with Agent H regarding the dealership connected with the rental of this truck. Upon finding a business card in the glove compartment of the seized vehicle, which seemed to indicate that the said vehicle was rented from Gus' U-Haul in Jamaica, New York, he made numerous efforts to contact the said agency by telephone, but was unsuccessful. A search of the contents of the vehicle did not disclose any contract or rental agreement with respect to the rental of the said vehicle.

Counsel for Arcoa, Inc. first argues that the search and seizure of the said vehicle and its contents were unlawful because of the same were made without a search warrant. The record, however, clearly supports the fact that Kisperg readily admitted to the State trooper that he was transporting liquor in the truck. Since there was no transit insignia affixed to the truck, the trooper had proper cause to believe that unlawful transportation of alcoholic beverages was taking place in the Stateoof New Jersey. The record supports the validity and legality of such search and seizure in view of the testimony of Bertoline who admitted that the truck in question was wilfully sent out into New Jersey with

full knowledge that it was a violation of the laws to transport liquor therein without a transit insignia or other license or permit.

Further, the record shows that the officers were able to see the alcoholic beverages in the truck merely by looking through the front door of the truck into the storage compartment. It is an established principle that a search and seizure without a warrant is justified where the officer has direct knowledge through his sight, hearing or other senses of the violation of the liquor laws, or where it is in his presence and he can plainly see the same. Seizure Case No. 10,934, Bulletin 1510, Item 5; Cf. The Helen 72 Fed. 2nd 772; U.S. v. Martin 176 Fed. Supp. 262. Thus, the defense of illegal search and seizure must be rejected.

With respect to the application for the return of the vehicle, the claimant must establish that it is the owner of the seized vehicle; that it acted in good faith and inadvertently violated the laws of our State. The burden is clearly upon the claimant to produce testimony from the person who actually rented or let the truck on behalf of this claimant in order to establish that a "good faith" inquiry was made relative to the purposes to which the vehicle would be put, and in order to show that the lessor had no knowledge or reason to believe that it would be used to transport alcoholic beverages in this State in violation of our State laws.

Such evidence was not presented, although counsel for the Division indicated at the time of hearing that such evidence was clearly necessary. It is difficult to understand why Rodrigues was not produced, if, in fact, the Gus U-Haul was actually the lessor of this vehicle. In any event, the only evidence produced in support of the claim was that given by Kreider, an officer of the New Jersey U-Haul who obviously had no knowledge of the facts of this particular transaction.

Under these circumstances, I conclude that this claimant has not established that it is the owner of the said vehicle, that it has acted in good faith, and did not know or have any reason to believe that the said vehicle would be used in unlawful liquor activity. In the absence of such proof, the Director lacks authority to order the return of said seized property. R.S. 33:1-66(e). I, therefore, recommend that the claim for the return of the sum secured by the surety bond be denied, and that an order be entered forfeiting the said property and requiring payment of the sum so secured. It is further recommended that an order be entered forfeiting the said alcoholic beverages as set forth in the annexed Schedule.

JOSEPH H. LERNER,
CHIEF HEARING OFFICER

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the attorney for the claimant, Arcoa, Inc. pursuant to Rule 4 of State Regulation No. 28.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, Hearer's report, and the written exceptions, all of which I have examined and find have either been considered in the Hearer's report or are without merit, I concur in the recommended conclusions in

in the Hearer's report and adopt them as my conclusions herein.

Accordingly, it is on this 1st day of July, 1968,

DETERMINED and ORDERED that the seized property, as set forth in Schedule "A" attached hereto, constitutes unlawful property; the sum of $500.00 secured by surety bond in the penal sum of $1,000.00, representing the appraised retail value of a 1965 Ford Van Truck owned by Arcoa, Inc., claimant herein (which was returned to Arcoa, Inc.) deposited under protest with the Director of the Division of Alcoholic Beverage Control by the said Arcoa, Inc. be and the same is hereby forfeited in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages be and the same are hereby forfeited, and shall be retained for the use of hospitals, State, county and municipal institutions, or destroyed in whole, or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

375 - containers of alcoholic beverages
1 - Ford Van Truck (1965), Serial No. E16JH678647, Colorado Registration AA-138.

7. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - CHARGE NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against)
)
ELCOR, INC.) ORDER
t/a Entertainer's Club)
169 Westminster Avenue)
Atlantic City, N. J.)

Holder of Plenary Retail Consumption License C-36, issued by the Board of Commissioners of the City of Atlantic City.)

James F. McGovern, Jr., Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

By notice dated May 12, 1967, a charge was preferred against the licensee alleging that on March 26, 1967, it permitted congregation of apparent homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Thereafter on November 6, 1967 the N. J. Supreme Court reversed earlier convictions in three similar cases wherein congregation of apparent homosexuals was charged. One Eleven Wines & Liquors, Inc. v. Div. Alcoholic Bev. Cont., 50 N.J. 329, reprinted in Bulletin 1763, Item 1.

The attorney for the Division now moves for a nolle pros of the charge because of such reversal.

Good cause appearing, I shall grant the motion.

Accordingly, it is, on this 31st day of May 1968,

ORDERED that the charge herein be and the same is hereby nolle prossed.

JOSEPH M. KEEGAN
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BORGES, INC.
t/a R & B Lounge
11 Park Avenue
Paterson, N. J.

Holder of Plenary Retail Consumption License C-10 issued by the Board of Alcoholic Beverage Control for the City of Paterson

CONCLUSIONS AND ORDER

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 12, 1968, it sold a mixed drink of an alcoholic beverage to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Rodilosso, Bulletin 1750, Item 6.

Accordingly, it is, on this 3d day of June, 1968,

ORDERED that Plenary Retail Consumption License C-10, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Borges, Inc., t/a R & B Lounge, for premises 11 Park Avenue, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Monday, June 10, 1968, and terminating at 3:00 a.m. Thursday, June 20, 1968.

JOSEPH M. KEEGAN
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against EMILY LEWCZAK 249 Ferry Street Newark, N. J. Holder of Plenary Retail Consumption License C-495 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark	CONCLUSIONS AND ORDER

Saul A. Wolfe, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 24, 1968, she possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Sanderson, Bulletin 1794, Item 9.

Accordingly, it is, on this 15th day of July, 1968,

ORDERED that Plenary Retail Consumption License C-495, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Emily Lewczak for premises 249 Ferry Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, July 22, 1968, and terminating at 2:00 a.m. Saturday, July 27, 1968.

Joseph H. Keegan
Director