

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

July 15, 1964

BULLETIN 1568

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

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BULLETIN 1568

1. APPELLATE DECISIONS - PETE JACOBS, INC. v. WINSLOW.

PETE JACOBS, INC.,	)	
t/a MAPLE INN,	)	
	)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
	)	
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF WINSLOW,	)	
	)	
Respondent.	)	

Joseph A. Maressa, Esq., Attorney for Appellant.  
Samuel L. Supnick, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is the second of two appeals filed by appellant from the action of respondent in adjudging appellant guilty of an "hours" violation occurring on February 23, 1963. Appellant's premises are located at Egg Harbor Road and 7th Street, Blue Anchor, Winslow Township.

By resolution and order dated July 26, 1963, respondent found appellant guilty of sale and permitting consumption of alcoholic beverages on its licensed premises after 2:00 a.m. on February 23, 1963, in violation of a local ordinance and imposed a fifteen-day suspension of license effective August 8, 1963. Appellant appealed to this Division from the action of respondent. Thereafter, appellant withdrew the appeal and an order dated September 19, 1963, was entered by the Acting Director dismissing the appeal and vacating the stay of suspension. Pete Jacobs, Inc. v. Winslow, Bulletin 1535, Item 3.

It appears that subsequent thereto, appellant requested respondent to accept a plea of guilty to the charge and to consider a reduction of the fifteen-day penalty theretofore imposed. However, respondent imposed the same penalty of fifteen days by resolution and order dated November 29, 1963, to become effective December 2, 1963. Appellant then filed the instant appeal.

The appeal herein was heard de novo, pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings held before respondent was received in evidence and marked Exhibit R-1.

At a hearing before respondent on July 12, 1963, an ABC agent testified that at 2:25 a.m. on February 23, 1963, he ordered and was served a glass of beer by an employee of appellant and consumed some of the contents thereof. Another ABC agent

testified that at 2:25 a.m. of the day in question he peered through the window of appellant's licensed premises and observed his fellow agent seated at the bar and being served a glass of beer by the barmaid.

Peter Jacobs, president of appellant corporation, testified before respondent that when the last glass of beer was served to the ABC agent by the barmaid, he did not look at the clock in order to ascertain the time of the service of said beer. He stated that when the said agent was served, he (Jacobs) was "guessing, approximating. All I know, at two o'clock no beers were served. I know that. I know that."

Appellant produced two patrons who testified that they were present on the early morning of February 23 but they never looked at the clock when the last beer was served to the agent.

I am satisfied, after careful consideration of the testimony herein, that a glass of beer was served to an agent at 2:25 a.m. in accordance with the testimony of both agents aforementioned. The testimony of Peter Jacobs and the other two witnesses produced by appellant was uncertain, especially with respect to the time when the last glass of beer was served to the agent.

The record is not clear whether the respondent permitted appellant to retract its former plea of not guilty and, in lieu thereof, enter a plea of guilty to the charge. Regardless, the suspension imposed remained at fifteen days.

In In re 17 Club, Inc., 26 N.J. Super. 43 (App. Div. 1953), where an original confessional plea was entered to charges for alleged violations of the Alcoholic Beverage Law and, after the license was revoked, an application by the licensee to change its plea to not guilty was denied, Judge Jayne stated:

"...one cannot always expect to rescue oneself from the disadvantageous consequences of a speculative choice of action by means of grasping upon some thin thread of the law however ably the strand is polished."

Further, Judge Jayne, commenting on a plea of non vult, said:

"While in practice some favorable consideration is normally given to the submission by an accused of such a plea, we are not aware of any precedential authority that unqualifiedly attaches such a provisional limitation on the acceptance of the plea."

Another question to be decided is whether the suspension imposed by respondent is excessive. The suspension imposed in local disciplinary proceedings rests in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify a penalty imposed by a local issuing authority will be sparingly exercised and then only with the greatest caution. Robinson and Fountain v. Newark, Bulletin 54, Item 2; Engelhorn v. Belmar, Bulletin 1083, Item 1.

The application for mitigation of penalty made to respondent was denied. There appears to be no abuse of discretion by its action.

Under the circumstances and after careful examination of the testimony and facts presented herein, it is recommended that an order be entered affirming the action of the respondent, vacating the order dated December 3, 1963 staying the order of suspension, fixing the effective dates of the fifteen-day suspension imposed by respondent, and dismissing the appeal filed herein.

Conclusions and Order

No written exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the evidence in the case, the oral argument of the attorneys for the respective parties at the instant appeal hearing, 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 12th day of May 1964,

ORDERED that the action of the respondent be and the same is hereby affirmed, the order staying suspension is hereby vacated, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Winslow to Pete Jacobs, Inc., t/a Maple Inn, for premises at Egg Harbor Road and 7th Street, Blue Anchor, Winslow Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Tuesday, May 19, 1964, and terminating at 2 a.m. Wednesday, June 3, 1964.

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - INDECENT MATTER - CONTRACEPTIVES - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against

WALLY'S TAVERN, INC.  
196 Monroe Street  
Passaic, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-159, issued by the Board of Commissioners of the City of Passaic.

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David & Albert L. Cohn, Esqs., by David Cohn, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On September 10, 1963, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures and representations, viz., a deck of forty-five 'playing cards' bearing photographic representations and illustrations of male and female persons in obscene, indecent, filthy, lewd, lascivious and disgusting poses, positions, practices and acts; in violation of Rule 17 of State Regulation No. 20.
- "2. On September 10, 1963, you possessed prophylactics against venereal disease and contraceptive and contraceptive devices, in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20."

To substantiate the charges, the Division produced John F. Corbin and Carl Chiaventone of the New Jersey State Police, who were investigating the licensed premises.

Succinctly stated, their testimony shows the following: On Tuesday, September 10, 1963, they entered the licensed premises at about 1:15 p.m. and apprized Joseph Koledo (who said he was in charge of the premises and had an interest in the establishment) of their mission. Thereafter, they searched the premises and found in the lower section of one of several back bar cabinets a number of prophylactics in four plastic cartons, three of which also contained United States currency in various denominations. They also found in an upper drawer of the same cabinet a deck of used playing cards on the faces of which were pornographic photographs. The detective seized the articles and questioned Mr. Koledo who denied knowing anything about them. The cartons of prophylactics and the deck of cards were received in evidence as Exhibits S-1 and S-2, respectively.

Appearing on behalf of the licensee were Walter Pitkewicz, president, and Joseph Koledo, secretary of the corporate licensee.

Mr. Pitkewicz testified in substance that he has been associated with the licensee for over twenty-five years; that he was not on the premises on September 10, 1963; that he is a widower and Joseph Koledo is his stepfather; that the prophylactics (Exhibit S-1) were purchased by him seven or eight years ago and he took them home; that, having learned that his six-year-old daughter had found them, he took them to the tavern and hid them behind several rows of boxes and that none of them was ever sold or offered for sale. He further testified that he acquired his brother's one-third interest in the corporation holding the license; that ever since he was held up and robbed, it was his custom to take the cash out of the register and put it in five or six boxes in the cabinets, including those containing the prophylactics, and the next day he would take the money out of the boxes and put it in envelopes used to cash customers' checks. Respecting the pornographic cards (Exhibits S-2), he testified that he never knew they were there but learned from his brother, after the detective found them there, that the cards were brought in by a patron six or seven years ago.

Mr. Koledo testified in substance that he and his stepson bought the tavern in 1938; that he was behind the bar in the licensed premises on September 10 when the two State Police officers came in; that, after searching behind the bar, one of them showed him the deck of cards and that he told the officers it was the first time he had seen them and to throw them in the garbage. Respecting the contraceptives, he said he had seen them in the tavern and asked his stepson "Here, you keep them" and Walter Pitkewicz said "That is mine. No worry about it", and that he never showed them to customers or sold any of them.

I have carefully considered the evidence adduced herein and, while I find that the prophylactics were not sold or offered for sale in the licensed premises and that the pornographic cards were not used in connection with the licensed business, it is admitted by both stockholders of the corporate licensee that the articles in question were on the licensed premises for a long period of time and that they were aware of the fact and allowed them to remain there. Under the circumstances, I conclude that the Division has established the truth of the charges by the necessary preponderance of the evidence, and I recommend that the licensee be found guilty as charged.

The licensee herein has a prior adjudicated record. Effective October 23, 1950, its license was suspended for one day by the Passaic Board of Commissioners for sale during prohibited hours in violation of Rule 1 of State Regulation No. 38.

Since the dissimilar violation occurred more than five years ago, it should not be considered in fixing the penalty herein. I therefore further recommend that an order be entered suspending the license for fifteen days on Charge 1 (Re Novelty Inn, Bulletin 1473, Item 3) and for ten days on Charge 2 (Re Club Harlem, Inc., Bulletin 1539, Item 2), making a total suspension of twenty-five days.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, written exceptions to the Hearer's Report were filed with me by the attorneys for the licensee.

Having carefully considered the record herein, including the transcript of the proceedings, exhibits, the memorandum filed on behalf of the licensee, the Hearer's Report and exceptions and written argument with reference thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations. Hence I shall enter an order as recommended.

Accordingly, it is, on this 11th day of May 1964,

ORDERED that Plenary Retail Consumption License C-159, issued by the Board of Commissioners of the City of Passaic to Wally's Tavern, Inc., for premises 196 Monroe Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, May 18, 1964, and terminating at 3 a.m. Friday, June 12, 1964.

JOSEPH P. LORDI  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ORDER DEFERRING EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against )

WALLY'S TAVERN, INC. )  
196 Monroe Street )  
Passaic, N. J. )

AMENDED  
ORDER

Holder of Plenary Retail Consumption License C-159, issued by the Board of Commissioners of the City of Passaic. )

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David & Albert L. Cohn, Esqs., by David Cohn, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On May 11, 1964, I entered an order suspending the license herein for twenty-five days commencing May 18, 1964. Re Wally's Tavern, Inc., Bulletin 1568, Item 2.

Licensee has requested that the imposition of the suspension be deferred for one week and, for good cause appearing, I have granted the request.

Accordingly, it is, on this 14th day of May, 1964,

ORDERED that the previous order of suspension herein is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-159, issued by the Board of Commissioners of the City of Passaic to Wally's Tavern, Inc. for premises 196 Monroe Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, May 25, 1964, and terminating at 3:00 a.m. Friday, June 19, 1964.

JOSEPH P. LORDI  
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES WITHOUT LICENSE - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 11,159
November 1, 1963 of a quantity of	)	
alcoholic beverages, at the Villa	)	ON HEARING
Capri Restaurant, 4 Franklin Avenue,	)	CONCLUSIONS
in the Town of Nutley, County of Essex	)	AND ORDER
and State of New Jersey.	)	

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Angelo Nardone, Pro se.

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 came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28, to determine whether 8 bottles of alcoholic beverages, and 4 sample containers of alcoholic beverages, more particularly described in an inventory as set forth in a schedule annexed hereto, made part hereof, and marked "Schedule A", seized on November 1, 1963 at the premises of the Villa Capri Restaurant, 4 Franklin Avenue, in the Town of Nutley, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered by Angelo Nardone, who sought the return of the alcoholic beverages.

The Division's case was presented through the testimony of Detectives Alexander De Lorenzo and LeRoy VanDerWende, of the Nutley Police Department, and may be briefly summarized as follows: The police officers entered the subject premises on November 1, 1963 at about 7:25 p.m. armed with a search warrant for the arrest of one Angelo Nardone on a petty larceny charge. This restaurant is owned and operated by Nardone. After entering the restaurant, the officers noted a quantity of sealed whiskey bottles. They asked Nardone whether he had a license for dispensing alcoholic beverages at this restaurant and he informed them that he did not have a license but "he was running a private party for his customers which he runs once a year, a masquerade party, and he supplies food and drink".

Nardone was thereupon arrested and brought to headquarters, pursuant to the warrant, and shortly thereafter, released on bail.

Later that evening, the two officers returned to the

premises and upon entering the front door were stopped by a man in costume who informed them that the charge for admission to this party was \$6.00, which would entitle them to food and drink. They thereupon identified themselves, confiscated the bottles of whiskey and several drinks of patrons and placed Nardone under arrest, charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50. Nardone admitted that the patrons had paid \$6.00 for admission which entitled them to food and alcoholic beverages. Several receipts indicating the admission payment, were received in evidence, as well as the form of invitation which clearly set forth that patrons would be entitled to drink alcoholic beverages in consideration of their admission fee.

Report of chemical analysis by the Division chemist shows, in part, that a sample of a one-quart bottle containing 8 ounces (7 left) labeled "Schenley Reserve Blended Whiskey, 86 Proof is an alcoholic beverage, fit for beverage purposes, with an alcoholic content by volume of 43.2%". The report also reflects similar analyses of 4 other samples. Angelo Nardone admittedly does not hold any license authorizing the sale of alcoholic beverages and the premises were not licensed for that purpose. The seized alcoholic beverages were intended for sale and hence, are illicit. Such illicit alcoholic beverages constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66. Although the aforementioned statute also grants authority for the seizure of all other personal property on the premises, no such seizure was made.

Nardone was arraigned in the Nutley Municipal Court on the aforementioned charge and released on bail for action by the Essex County Grand Jury.

Angelo Nardone, seeking the return of the seized alcoholic beverages, testified that he is the owner of the Villa Capri Restaurant, and that on the date in question organized a private party.

He admitted that the \$6.00 admission fee entitled patrons to food and drink, but that it was actually organized for his friends. However, he admitted that these friends were entitled to bring other friends to the party provided they paid the stated admission fee.

On cross-examination, he denied that the alcoholic beverages were his, but that, in fact, his brother brought the whiskey to the party and was gratuitously donating the same. He explained that his brother was out of the country at this moment and therefore, could not appear at this hearing.

He was then asked the following:

"Q You knew you had to have a license to sell liquor?"

A Yes.

Q Is that correct? A Yes.

Q Didn't you think you had to have a license to charge six dollars for a person coming in to drink liquor?"

A I didn't get that.

Q Was it your understanding you needed a liquor license in order to charge a person six dollars to come in and eat food and drink liquor at your restaurant?

A Well, the six dollars it was understood it was to close the place down to the public and for the food we had. There was no intentions for the liquor.

Q Are you saying now the six dollars was not to include drinks of liquor? A No, it wasn't.

Q Did they have to pay for the drinks of liquor?

A.No.

Q How did they get the drinks of liquor then?

A They served it themselves. People that brought it in they just served themselves.

Q Your invitation D-2 says, 'Food and drinks will be served'?

A Yes.

Q Is that correct? A Yes.

Q You had this printed up? A Yes."

Detective De Lorenzo, recalled by the Division, refuted the testimony of Nardone and insisted that when he questioned Nardone about the liquor, Nardone informed him that he, personally, had purchased it for the party. This rebuttal testimony was corroborated by Detective VanDerWende.

From the testimony adduced herein, I find, as a fact, from the overwhelming proofs, that the claimant sold and intended to sell the illicit alcoholic beverages. He would certainly not be entitled to the return of these alcoholic beverages because, by his own admission, they were not his. This, he stated positively, in answer to my direct question to him and this would be dispositive of his claim.

What he is now seeking, in effect, is the return of alcoholic beverages which he insists were donated to this party by his brother. There is no evidence showing that his brother authorized him to appear as his agent to establish such claim.

It should be stated parenthetically, that even had his brother appeared to assert such claim, it would have been rejected upon the facts presented.

I therefore recommend that the claim of Angelo Nardone be rejected and that instead, an Order be entered forfeiting the alcoholic beverages and the glasses; and that they be disposed of in accordance with law. R.S. 33:1-1(1) and (y); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 10,444, Bulletin 1391, Item 5.

Conclusions and Order

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

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

Accordingly, it is on this 7th day of May, 1964,

DETERMINED and ORDERED that the alcoholic beverages and the glasses, as set forth in Schedule "A", attached hereto, constitute unlawful property, and the same are hereby forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained, under State Regulation No. 29, for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI  
DIRECTOR

SCHEDULE "A"

- 8 - containers of alcoholic beverages
- 4 - glasses

- 5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CAMP - SEARCH WARRANT UNNECESSARY WHERE SALE MADE TO AND IN PRESENCE OF AGENTS AND SEARCH MADE AS INCIDENT OF ARREST - STOCK OF ALCOHOLIC BEVERAGES, EQUIPMENT AND COMMINGLED CASH ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 11,182
January 12, 1964 of a quantity of	)	
alcoholic beverages, a refrigerator	)	ON HEARING
and counter, a juke box and \$27.86 in	)	CONCLUSIONS
cash at a dwelling, Beilenson's Camp,	)	AND ORDER
Bergen Mills Road, in Millstone	)	
Township, County of Monmouth and	)	
State of New Jersey.	)	

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Thomas F. Shebell, Esq., by Thomas F. Shebell, Jr., Esq.,  
 appearing for Irvin Davis.  
 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 came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28, to determine whether 3 bottles of alcoholic beverages, 1 gallon jug, 1/2 full of alleged port wine, 169 cans of beer, a refrigerator and counter, a juke box and \$27.86 in cash, set forth in an inventory attached hereto, and marked "Schedule A", seized on January 12, 1964 at premises known as Beilenson's Camp, Bergen Mills Road, in Millstone Township, Monmouth County, N. J., constitute unlawful property and should be forfeited.

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

When the matter came on for hearing, pursuant to R.S. 33:1-66, Irvin Davis, represented by counsel, appeared at such hearing and sought return of all of the personal property, including the alcoholic beverages.

The testimony of ABC agents C and B, who were produced as Division witnesses reflected the following: At approximately 3:50 a.m. on Sunday, January 12, 1964, the 2 ABC agents arrived at the premises in the company of State police officers. These premises consist of a one and a half story wood frame building containing two doors at the rear, one of which led into the kitchen. Agent C entered alone and the other officers remained at a point of observation. As he passed into the kitchen, there was a large room containing a juke box, chairs and couches.

He noted that there were about 20 to 25 persons consuming beer from beer cans. He also observed that Davis acted as a bartender, served the patrons and received payment therefor, which he placed in a green money bag. He then approached Davis, ordered a can of beer, which Davis obtained from the refrigerator. He gave him a \$1.00 bill, the serial number of which had been previously recorded, and received 65¢ change. The agent consumed a portion of the beer and retained the rest for evidence.

At 4:15 a.m. the other ABC agent, in the company of State Police entered the premises, and upon being apprised of said transaction, placed Davis under arrest on the charge of selling alcoholic beverages without a license. Davis was ordered to empty his pockets and the contents of the said green bag. The \$1.00 bill was found commingled with the other money obtained from the green bag.

A search of the property revealed a large quantity of beer found in the refrigerator and a substantial quantity of whiskey, wine and beer was found on the second floor. Davis admitted the ownership of the said alcoholic beverages and property, but denied the sale. He was thereupon arrested and charged with the sale of alcoholic beverages without a license, in violation of R.S. 33:1-50(a); possession of alcoholic beverages without a license with intent to sell. R.S. 33:1-50(b) and R.S. 33:1-2; was arraigned on the same day at Millstone Township Municipal Court, and held in bail for appropriate criminal action.

There was received in evidence a certified copy of a chemical analysis of alcoholic beverages by the Director of this Division, which report sets forth that analysis by the Division chemist of the contents of one six-ounce bottle containing four ounces of alleged Schaefer beer proves that it is an alcoholic beverage fit for beverage purposes, with an alcoholic content by volume of 4.9%.

On cross-examination, Agent C was searchingly interrogated about the absence of a search warrant. He explained that Davis admitted him into the premises, engaged in these illegal transactions involving the alcoholic beverages in his presence, and it was, therefore, not necessary to obtain a search warrant.

Agent B, in corroboration of the testimony of Agent C, produced a list containing a serial number of the \$1.00 bill in

Davis' possession, which list had been prepared prior to their arrival at the premises. Davis admitted that he was an occupant of this house and owned all of the personal property and alcoholic beverages seized by the agents of this Division.

Irvin Davis, the claimant, did not testify, nor were any witnesses produced on behalf of the claimant herein.

The records of this Division disclose that no license was issued to Davis or for the premises herein for the sale of alcoholic beverages.

In summation, counsel for the claimant advocates that both the arrest of Davis and the search of the premises were illegal because of the failure of the ABC agents to obtain a search warrant. A strong objection is particularly taken to the search of the rooms on the second floor. However, the evidence clearly manifests that a substantial quantity of alcoholic beverages was found in one of the rooms on the second floor. Thus, since Agent C was voluntarily admitted to the premises by Davis who made the illegal sales in the presence of the ABC agent, and, indeed, sold the alcoholic beverages without a license issued to him, such search and seizure of the property, and arrest of Davis were clearly permissible without having to get a search warrant. The area of lawful search includes in this case the entire one-family residence of the claimant.

"Unlawful property", as defined under R.S. 33:1-1(y) includes all alcoholic beverages, fixtures and personal property located in or upon the premises; building; yard, or enclosure connected with the building in which illicit beverage is found, possessed, stored or kept. It should be further pointed out that R.S. 33:1-4 specifically provides that all Division investigators shall have the authority to arrest, without warrant, for violation of the Alcoholic Beverage Law committed in their presence.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the cash as set forth in Schedule "A" herein, constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66.

With particular reference to the cash, the evidence clearly shows that the money obtained from Agent C was commingled with other monies obtained through the unlawful sale; thus, all of the money is subject to forfeiture, as well as the furnishings and equipment. Seizure Case No. 10,009, Bulletin 1391, Item 4; Seizure Case No. 10,646, Bulletin 1435, Item 5; R.S. 33:1-2; R.S. 33:1-66(b).

My examination of the testimony convinces me that the Division has established its case by clear and convincing evidence and I therefore recommend that all of the equipment and personal property, cash, and alcoholic beverages be declared to be unlawful property, and that an Order be entered forfeiting the same. R.S. 33:1-66, Seizure Case No. 10,009, supra; Seizure Case No. 10,918, Bulletin 1504, Item 3.

Conclusions and Order

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

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

Accordingly, it is on this 12th day of May, 1964,

DETERMINED and ORDERED that the seized property, including the \$27.86 in cash, more fully described in Schedule "A", attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained, under State Regulation No. 29, for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI  
DIRECTOR

SCHEDULE "A"

3 - bottles of alcoholic beverages  
1 - 1 gallon jug 1/2 full of alleged port wine  
169 - cans of beer  
1 - refrigerator and counter  
1 - juke box  
\$27.86 in cash

6. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION AND POSSESSION OF "MOONSHINE" WHISKEY - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 11,255
April 21, 1964 of a quantity of	)	
alcoholic beverages and a Buick	)	ON HEARING
sedan on the public highway,	)	CONCLUSIONS
Route #30, a/k/a White Horse Pike,	)	AND ORDER
Berlin Boro, County of Camden and State	)	
of New Jersey.	)	

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

BY THE DIRECTOR:

This matter comes before me pursuant to Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28, to determine whether 32 one-gallon jugs of alcoholic beverages and a Buick sedan, described in a schedule annexed hereto and made part hereof, seized on April 21, 1964 on a public highway, Route #30, a/k/a White Horse Pike, Berlin Boro, Camden County, New Jersey constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, no one appeared to seek return of the motor vehicle of the alcoholic beverages.

The records of this Division disclose that on April 21, 1964 at 10:15 p.m. ABC agents acting upon information, apprehended the within described motor vehicle on Route No. 30. Their inspection of the car disclosed 6 cases containing 4 - one-gallon jugs of "moonshine" on the rear seat of the said motor vehicle and 2 cases containing 4 - one-gallon jugs of untaxed alcoholic beverages in the trunk.

George A. Rozier admitted that he was transporting "moonshine" whiskey, but that he was merely operating the vehicle for the owners of the car who were passengers therein at the time; they were later identified as Joseph D. Shields and Cecilia Campbell.

These three persons were thereupon charged with the transportation and possession of untaxed alcoholic beverages in violation of R.S. 33:1-50 and R.S. 33:1-2; held in bail for arraignment in the Burlington Borough Municipal Court.

The Division chemist's report discloses that a sample of one of the bottles analyzed is an alcoholic beverage fit for beverage purposes with alcohol by volume of 47.6%. None of the jars had affixed any stamps indicating payment of tax; they were possessed with intent to be used in unlawful liquor activity.

Such alcoholic beverages and the motor vehicle in which they were transported and found are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

Accordingly, it is 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.

JOSEPH P. LORDI  
DIRECTOR

Dated: May 29, 1964

SCHEDULE "A"

- 32 - 1 gallon jugs of alcoholic beverages
- 1 - 1955 Buick sedan, Serial No. B3015018, Pennsylvania Registration 777-668.

7.

ACTIVITY REPORT FOR JUNE 1964

<b>ARRESTS:</b>		
Total number of persons arrested	-----	22
Licenseses and employees	13	
Bootleggers	9	
<b>SEIZURES:</b>		
Motor vehicles - cars	-----	1
Alcohol - gallons	-----	5.5
Distilled alcoholic beverages - gallons	-----	8.521
Wine - gallons	-----	28.175
Brewed malt alcoholic beverages - gallons	-----	3.478
<b>RETAIL LICENSEES:</b>		
Premises inspected	-----	701
Premises where alcoholic beverages were gauged	-----	447
Bottles gauged	-----	5,291
Premises where violations were found	-----	48
Violations found	-----	63
Unqualified employees	23	Gambling devices on premises 1
Reg. #38 sign not posted	15	Other mercantile business 1
Application copy not available	11	Other violations 10
Disposal permit necessary	2	
<b>STATE LICENSEES:</b>		
Premises inspected	-----	7
License applications investigated	-----	32
<b>COMPLAINTS:</b>		
Complaints assigned for investigation	-----	356
Investigations completed	-----	350
Investigations pending	-----	176
<b>LABORATORY:</b>		
Analyses made	-----	132
Refills from licensed premises - bottles	-----	51
Bottles from unlicensed premises	-----	5
<b>IDENTIFICATION:</b>		
Criminal fingerprint identifications made	-----	5
Persons fingerprinted for non-criminal purposes	-----	543
Identification contacts made with other enforcement agencies	-----	291
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities	-----	7
Violations involved	-----	7
Sale during prohibited hours	6	Sale to minors 1
Cases instituted at Division	-----	33
Violations involved	-----	46
Sale to minors	8	Failure to close prem. dur. proh. hrs. 2
Possessing liquor not truly labeled	7	Hindering investigation 2
Sale during prohibited hours	5	Service to women at bar (local reg.) 1
Permitting immoral activity on prem.	5	Possessing indecent matter 1
Permitting foul lang. on premises	3	Fraud in application 1
Permitting lottery activity on prem.	3	Conducting business as a nuisance 1
Permitting hostesses on premises	2	Possessing pinball machine on premises 1
Sale below filed price	2	
Permitting bookmaking on premises	2	
Sale to intoxicated persons	2	
Cases brought by municipalities on own initiative and reported to Division	-----	31
Violations involved	-----	45
Sale to minors	19	Permitting minors unaccomp. by parent on premises (local reg.) 2
Sale during prohibited hours	8	Permitting foul language on prem. 1
Permitting immoral activity on prem.	4	Hindering investigation 1
Conducting business as a nuisance	3	Permitting prostitutes on prem. 1
Permitting brawl on premises	3	Employment w/o ident. card (local reg.) 1
Failure to close prem. dur. proh. hrs.	2	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held	-----	51
Appeals	7	Seizures 1
Disciplinary proceedings	29	Applications for license 1
Eligibility	12	Applications for permit 1
<b>STATE LICENSES AND PERMITS ISSUED:</b>		
Total number issued	-----	4,676
Licenses	1	Social affair permits 497
Solicitors' permits	2,756	Miscellaneous permits 132
Employment permits	671	Transit insignia 512
Disposal permits	82	Transit certificates 25
<b>OFFICE OF AMUSEMENT GAMES CONTROL:</b>		
Licenses issued	46	Premises where violations were found 10
Premises inspected	297	Number of violations found 10
Enforcement files established	11	SG lic. affixed to wrong MG lic. 6
		Wrong stand no. on lic. cert. 1
		No questionnaire 3

JOSEPH P. LORDI  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

Dated: July 6, 1964

8. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

SCHULTZ & FRIEDMAN PHARMACIES, INC. )  
t/a DEAL PHARMACY )  
256-258 Norwood Avenue )  
Ocean Township )  
PO Deal, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Ocean, County of Monmouth. )

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Stout and O'Hagan, Esqs., by Sidney Hertz, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 27, 1964, it sold ten quart bottles of whiskey below filed price, in violation of Rule 5 of State Regulation No. 30.

The licensee has a previous record of suspension of license for premises 272 Norwood Avenue, Ocean Township, by the municipal issuing authority for two days effective November 25, 1941, for local hours violation, and by the Director for ten days, effective November 5, 1959, for purchase from an improper source. Re Schultz & Friedman Pharmacies, Inc., Bulletin 1310, Item 3.

The prior record of suspension for dissimilar violation in 1941 occurring more than five years ago disregarded, the license will be suspended for the minimum period of ten days (Re Merit Liquor Stores, Inc., Bulletin 1549, Item 6), to which will be added five days by reason of the record of suspension for previous dissimilar violation in 1959 within the past five years (Re Vamos, Bulletin 1541, Item 5), or a total of fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days.

Accordingly, it is, on this 11th day of May, 1964,

ORDERED that Plenary Retail Distribution License D-3, issued by the Township Committee of the Township of Ocean, County of Monmouth, to Schultz & Friedman Pharmacies, Inc., t/a Deal Pharmacy, for premises 256-258 Norwood Avenue, Ocean Township, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. Monday, May 18, 1964, and terminating at 9:00 a.m. Thursday, May 28, 1964.

*Joseph P. Lordi*  
Joseph P. Lordi  
Director