

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

BULLETIN 1313

December 28, 1959

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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.

BULLETIN 1313

December 28, 1959

1. DISCIPLINARY PROCEEDINGS - GAMBLING - HINDERING INVESTIGATION -
PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA,
EFFECTIVE DATES TO BE FIXED BY SUBSEQUENT ORDER.

In the Matter of Disciplinary)
Proceedings against)

MINNIE MECKER & E. HARRY MECKER)
t/a LAKE HARTUNG CLUB)
North end of Roosevelt Road)
Lake Hartung, Jefferson Township)
PO Oak Ridge, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-35, issued by the Township)
Committee of Jefferson Township.)

Defendant-licensees, by Minnie Mecker, A partner.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to the following charges:

- "1. On August 15 and 16, 1959, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of pool and bowling-machine games for stakes of money; in violation of Rule 7 of State Regulation No. 20.
- "2. On Sunday, August 16, 1959 between 3:30 a.m. and 4:20 A.M., while an Inspector and an Investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35."

During the early morning hours of August 15, 1959, an ABC agent at the licensed premises participated with Harry Mecker (one of the licensees) and two patrons in a number of games of pool, the losers purchasing drinks for the winners. This agent and a fellow agent returned to the premises at about 10:30 p.m. on the same day. Evelyn Mecker was tending bar and Minnie Mecker and Harry Mecker were present. Harry was observed playing pool for drinks and then played with a male patron for a bet of \$1, which he lost and paid. The agents came back to the premises at about 2:10 a.m. (Sunday, August 16). At this time Harry was observed playing a bowling machine with three other persons for a bet of \$1 a game, losers additionally paying for drinks.

The agents left a few minutes before closing time, but kept the premises under surveillance. After the closing hour they noted a number of motor vehicles remained parked adjacent to the premises which was illuminated by a small night-light. Observing through a window that two patrons were still consuming alcoholic beverages and

Harry and Evelyn Mecker were also drinking alcoholic beverages, the agents tried the door and found it locked. They knocked on the door and, getting no response, went to another door and knocked on that door. Minnie Mecker came to this door and the agents displayed their credentials through a window, stated they were ABC agents and asked to be admitted. Minnie Mecker did not comply but returned to the barroom. Harry and Evelyn came to this door and Harry was heard to tell Evelyn not to open the door. However, Harry opened the door within two or three minutes after the agents first identified themselves. The ABC agents then entered, at which time all traces of the consumption of alcoholic beverages had been removed. Harry verbally admitted that he played pool and the bowling machine for bets of money.

Defendants have a prior adjudicated record. Effective August 11, 1952, their license was suspended by the local issuing authority for five days for sale to a minor. Effective April 30, 1957, their license was suspended by the local issuing authority for ten days for an "hours" violation.

The licensees have submitted a letter of alleged mitigating circumstances which does not disclose any reason why I should impose less than the established penalty in such case. The dissimilar violation which occurred more than five years ago will not be considered in imposing penalty. I shall suspend defendants' license for fifteen days on Charge 1 (Re Venezia, Bulletin 1277, Item 2) and for fifteen days on Charge 2 (Re Iacuzzi, Bulletin 1295, Item 8), to which five days will be added for the previous record for a dissimilar violation within the past five years (Re Lotz, Bulletin 1299, Item 5), making a total suspension of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Investigation discloses that defendants' business is now being conducted only in a limited way. Thus no effective penalty can be imposed at this time. The effective dates of the suspension, therefore, will be fixed by further order which will be entered by me after the licensed premises shall have fully resumed business for the 1960 season.

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

ORDERED that Plenary Retail Consumption License C-35, issued by the Township Committee of Jefferson Township to Minnie Mecker & E. Harry Mecker, t/a Lake Hartung Club, for premises at North end of Roosevelt Road, Lake Hartung, Jefferson Township, be and the same is hereby suspended for thirty (30) days, the effective dates to be fixed by subsequent order, as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

The agents, in the course of their duty, discovered three contraceptives in a cigar box behind the bar. A short time later, John Mooney entered the premises and eight Irish Sweepstakes' tickets were found on his person.

Franklin Paxton, in a signed, sworn statement, acknowledged that on August 1, 1959 he accepted a horse race bet from one of the agents and turned the bet over to Van Ness; that he turned over to Van Ness another horse race bet which he received over the telephone; that he personally placed horse race bets with Van Ness; and that he was aware that Van Ness was accepting horse race bets in the premises.

Defendant has no prior adjudicated record. It is urged on its behalf that the officers of the corporate licensee did not personally participate in the violations, but that it merely involved the misconduct of one of its customers (this overlooks the fact that at least two of its bartenders directly participated in placing bets); that Mooney was not on duty when the Sweepstakes' tickets were found in his possession; that the contraceptives were on the premises for a long period of time, and that new stockholders have acquired control of the licensed premises. None of the circumstances presented warrant the imposition of less than the minimum penalty for such violations.

I shall suspend defendant's license for the minimum period of twenty-five days on Charges 1 and 2 inasmuch as commercialized gambling is involved and participated in by the licensee's employees (Re Rosenthal, Bulletin 1278, Item 4) and for the minimum period of ten days on Charge 3 (Re Roignant, Bulletin 1278, Item 1), making a total suspension of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 28th day of October 1959,

ORDERED that Plenary Retail Consumption License C-3, issued by the Town Council of the Town of Bloomfield to Ganser's Tavern, Inc., for premises 378 Broad Street, Bloomfield, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m., Monday, November 9, 1959 and terminating at 2:00 a.m., Wednesday, December 9, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - EMPLOYING MINOR ON PREMISES - OBSCENE LANGUAGE - SALE IN VIOLATION OF REGULATION NO. 38 - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BERNIE'S TAVERN, INC.
81 First Street
Elizabeth, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the City Council of the City of Elizabeth.

Nicholas Sylvester LaCorte, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On July 15, 16 and August 21, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Anthony --- age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such person on July 15 and 16, 1959, in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. On June 27, 28 and July 11, 1959 and on divers other days, you allowed, permitted and suffered a person under the age of twenty-one (21) years, viz., Anthony ---, age 20, to sell, serve and solicit the sale of alcoholic beverages in and upon your licensed premises; in violation of Rule 2 of State Regulation No. 13.
- "3. On July 11, 28 and 29, 1959, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.
- "4. On Friday, August 21, 1959 at about 10:40 p.m., you allowed, permitted and suffered the removal of alcoholic beverages in their opened containers from your retail licensed premises; in violation of Rule 1 of State Regulation No. 38."

The violations set forth in the charges were observed by ABC agents during five visits to defendant's premises, namely, on the evenings of June 27, 1959; July 11, 1959; July 15, 1959; July 28, 1959 and August 21, 1959. On some of these visits the agents remained on the premises until the early hours of the following morning.

As to Charges 1 and 4: On the first and third visits the agents observed Anthony --- (age 20) consuming alcoholic beverages on the licensed premises, and on the fifth visit they observed Anthony --- as he opened two bottles of beer and carried the bottles out of the barroom to a hallway in the same building. The contents of the bottles were being consumed by Anthony and a bartender who were

seated on a door-step in the hallway when the agents identified themselves and seized the bottles.

As to Charge 2: On the first and second visits the agents observed Anthony --- tending bar in the licensed premises.

As to Charge 3: On the second visit a female (identified as Stella) and a male patron used filthy and indecent language while seated at the bar. During their conversation the male patron exposed his privates in the presence of the female. The agents report that Bronislaw Brodzicki, majority stockholder of defendant corporation, was then behind the bar and directly opposite these patrons and that he made no attempt to stop the indecent language and conduct. On the fourth visit Stella was present and used indecent language while conversing with the agents, but there is nothing to show that this occurred in the presence of any agent of defendant corporation.

Defendant has no prior adjudicated record. Defendant's attorney has submitted to me a letter setting forth alleged mitigating circumstances. Therein he says that Bronislaw Brodzicki permitted Anthony to consume alcoholic beverages and to help out a few times behind the bar, after the young man had shown him a draft card indicating that he was of full age. He further alleges that Bronislaw Brodzicki has assured him that he never saw the indecent conduct although he admits that the female patron used indecent language. The investigation herein discloses that Anthony admitted to the agents that he had paid a sum of money to a friend to change the year of his birth appearing on his draft card from 1939 to 1938. Anthony has been held by a Magistrate for action of the Grand Jury on a charge of altering a Federal draft card. It appears to me that there are some mitigating circumstances as to Charges 1 and 2 and that the violation set forth in Charge 4 is technical in nature. Considering all the circumstances, including the letters submitted to me as to the good moral character of Bronislaw Brodzicki, I shall suspend defendant's license for twenty-five days. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 27th day of October, 1959,

ORDERED that Plenary Retail Consumption License C-13, issued by the City Council of the City of Elizabeth to Bernie's Tavern, Inc., for premises 81 First Street, Elizabeth, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Wednesday, November 4, 1959, and terminating at 2 a.m. Tuesday, November 24, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

4. PLENARY WINERY LICENSE - OBJECTIONS TO ISSUANCE HELD TO BE MERITORIOUS APPLICATION DENIED.

In the Matter of an Objection to)
the issuance of a Plenary Winery)
License to)

CONCLUSIONS

JOHN E. VOLPE)
18 Washington Avenue)
Nutløy, N. J.)

E. Gustave Greenwald, Esq., Attorney for the Applicant.
Abraham M. Buchman, Esq., Attorney for the Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The applicant herein has filed an application with this Division for a plenary winery license for premises 18 Washington Avenue, Nutley. A written objection to the issuance of the license having been filed by New Jersey Vintners Association, a hearing was held thereon pursuant to the provisions of Rule 12 of State Regulation No. 1.

"At the hearing, William J. Ghiglione, president of New Jersey Vintners Association, the objector herein, testified that in view of the limited manner of operation which applicant must conduct his contemplated business, it is his opinion that there is virtually no chance for applicant to remain in business for any length of time. He further testified that such licensees are apt to resort to price cutting in order to remain in business and that such practices would have an adverse effect in the wine market.

"Applicant testified that he has been experimenting in wine making and that he has succeeded in making a fermented grape sparkling wine which does not require carbonation or any other ingredient. He testified that he intends to purchase a California wine from a manufacturer of wine in New Jersey and that the wine will be stored in 500 gallon glass lined tanks in the basement of his premises until bottled by him.

"The objections advanced by the objector herein appear to be merely conjectural in nature as no substantial proof has been presented that the fears expressed would ever materialize.

"It might be well to point out that the plenary winery license for which defendant has made application entitles him, subject to rules and regulation, 'to manufacture any fermented wines, and to blend, fortify and treat wines, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter (Chapter 1, Alcoholic Beverage Law) and to churches for religious purposes, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse.' Applicant will not have the right to sell wine at retail on the licensed premises. (Underlining added)

"The investigator who made the preliminary investigation required in matters of this kind reported that to his knowledge there appeared no reason why the application should not be approved. Furthermore, the objector has presented no meritorious reason why the license should not be issued. I, therefore, recommend that the license be issued if and when the application is in proper form."

For the reasons hereinafter stated, I do not concur in the Hearer's Report.

Applicant seeks to license premises located in a three-story frame building at 18 Washington Avenue, Nutley, New Jersey, the upper two floors of which are tenant occupied, with the first floor presently being used by the applicant in the conduct of his grocery business. The specific area which applicant seeks to cover with a license consists of a rear room 12' x 24' in size and separated from his grocery store by partition, with manufacturing processes to be conducted as well in the basement area approximately 24' x 32'. Applicant has had no practical experience in manufacturing wine for commercial purposes, his experience apparently being limited to a personal experimentation resulting in what he claims to be the "discovery" of a new process of manufacturing a sparkling wine unlike any other wine presently on the market. No mention was made by him of his novel manufacturing process to achieve superior qualities of wines at the time of our investigation of his application. During the course of an investigation conducted by our Enforcement Bureau, he stated orally and in writing to the investigator that he merely intended to purchase bulk wines from a New Jersey manufacturing licensee, for subsequent filtering and bottling by him and for redistribution only to local retailers. Applicant stated that he intends to invest the sum of \$6,000.00 in his proposed wine project to be partially obtained by loans from three relatives and with a contemplated initial outlay of \$738.00 for tanks and filtering and bottling machines.

It has been my policy, as it has been of my predecessors in office, to require that any applicant for a new license establish that there is a definite public need for issuance of a license to him. A new license is not properly issuable to serve private, individual interests. It is not amiss to state at this point that even in the absence of objections being filed to this or any other application for new license, it has been the long standing policy of this Division to require that the applicant attend a hearing to adduce testimony to establish that public necessity or convenience require an additional license under present day conditions in the industry.

I am not at all impressed with the applicant's contention that he has a novel and "secret" method of manufacturing a superior type of sparkling wine nor with his testimony and that of a supporting witness, a baker who admittedly is not a wine expert, that a public demand would be created with introduction of his new product in the market. I am convinced that if license were granted, the applicant's principal endeavors would be to seek the promotion and distribution of wine manufactured by another and merely bottled and distributed by him in a market already over-abundantly supplied. The applicant's contention that the need exists for an additional Plenary Winery License in this State falls of its own weight in light of the known fact that already thirteen Plenary Winery licensees are operating in this State, with some struggling for economic survival.

Accordingly, I hereby deny the license application.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: October 28, 1959

5.

ACTIVITY REPORT FOR NOVEMBER 1959

| | | |
|--|-----------|--|
| ARRESTS: | | |
| Total number of persons arrested | ----- | 26 |
| Licensees and employees | ----- 9 | |
| Bootleggers | ----- 17 | |
| SEIZURES: | | |
| Distilled alcoholic beverages - gallons | ----- | 6.37 |
| Wine - gallons | ----- | 9.27 |
| Brewed malt alcoholic beverages - gallons | ----- | 16.50 |
| RETAIL LICENSEES: | | |
| Premises inspected | ----- | 427 |
| Premises where alcoholic beverages were gauged | ----- | 419 |
| Bottles gauged | ----- | 6,826 |
| Premises where violations were found | ----- | 29 |
| Violations found | ----- | 51 |
| Unqualified employees | ----- 33 | Improper beer taps |
| Application copy not available | ----- 9 | Reg. #38 sign not posted |
| Prohibited signs | ----- 2 | Other violations |
| | | 5 |
| STATE LICENSEES: | | |
| Premises inspected | ----- | 39 |
| License applications investigated | ----- | 5 |
| COMPLAINTS: | | |
| Complaints assigned for investigation | ----- | 388 |
| Investigations completed | ----- | 377 |
| Investigations pending | ----- | 179 |
| LABORATORY: | | |
| Analyses made | ----- | 52 |
| Refills from licensed premises - bottles | ----- | 4 |
| Bottles from unlicensed premises | ----- | 20 |
| IDENTIFICATION BUREAU: | | |
| Criminal fingerprint identifications made | ----- | 19 |
| Persons fingerprinted for non-criminal purposes | ----- | 237 |
| Identification contacts made with other enforcement agencies | ----- | 154 |
| Motor vehicle identifications via N. J. State Police teletype | ----- | 2 |
| DISCIPLINARY PROCEEDINGS: | | |
| Cases transmitted to municipalities | ----- | 14 |
| Violations involved | ----- | 14 |
| Sale to minors | ----- 7 | |
| Sale during prohibited hours | ----- 4 | |
| Possessing chilled beer (DL licensee) | ----- 2 | |
| Employing female bartender (local reg.) | ----- 1 | |
| Cases instituted at Division | ----- | 24 |
| Violations involved | ----- | 31 |
| Sale to minors | ----- 6 | Permitting gambling (cards) on premises |
| Sale during prohibited hours | ----- 6 | Sale to non-members by club |
| Possessing liquor not truly labeled | ----- 5 | Permitting immoral activity on premises |
| Conducting business as a nuisance | ----- 3 | Permitting hostesses on premises |
| Hindering investigation | ----- 2 | Sale to intoxicated persons |
| Possessing indecent matter | ----- 1 | Permitting bookmaking on premises |
| Failure to file notice of change | ----- 1 | Permitting lottery activity (numbers, football pool) on premises |
| in application | ----- 1 | |
| Cases brought by municipalities on own initiative and reported to Division | ----- | 16 |
| Violations involved | ----- | 17 |
| Sale to minors | ----- 10 | Failure to close premises during prohibited hours |
| Sale during prohibited hours | ----- 3 | Conducting business as a nuisance |
| Hindering investigation | ----- 1 | |
| Permitting brawl on premises | ----- 1 | |
| HEARINGS HELD AT DIVISION: | | |
| Total number of hearings held | ----- | 41 |
| Appeals | ----- 6 | Seizures |
| Disciplinary proceedings instituted | ----- 24 | Tax revocations |
| Eligibility | ----- 3 | |
| STATE LICENSES AND PERMITS ISSUED: | | |
| Total number issued | ----- | 1,515 |
| Licenses | ----- 6 | Social affair permits |
| Solicitors' permits | ----- 40 | Wine |
| Employment | ----- 214 | Miscellaneous |
| Disposal | ----- 62 | Transit insignia |
| | | Transit certificates |
| | | 21 |

Dated: December 3, 1959

WILLIAM HOWE DAVIS
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB - STOCK OF ALCOHOLIC BEVERAGES, AND FIXTURES, FURNISHINGS AND EQUIPMENT ORDERED FORFEITED.

| | | |
|-------------------------------------|---|-----------------------|
| In the Matter of the Seizure |) | Case No. 10,044 |
| on July 19, 1959 of a quantity of |) | |
| alcoholic beverages, various |) | ON HEARING |
| fixtures, furnishings and equipment |) | CONCLUSIONS AND ORDER |
| and \$10.84 in cash from Heyward |) | |
| Harvey at premises 378 East 9th |) | |
| Avenue in the Borough of Roselle, |) | |
| County of Union and State of New |) | |
| Jersey. |) | |

 Heyward Harvey, Pro Se.

E. 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 further pursuant to a stipulation dated July 28, 1959 signed by Heyward Harvey, to determine whether a quantity of alcoholic beverages, \$10.84 in cash, and various fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on July 19, 1959 at 378 East 9th Avenue, Roselle, New Jersey, constitute unlawful property and should be forfeited.

At the time of the seizure Heyward Harvey deposited \$250.00 in cash under protest pursuant to R.S. 33:1-66 with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the aforesaid fixtures, furnishings and equipment, and thereupon obtained return of all of the seized property, excluding the alcoholic beverages and \$10.84 in cash. Thereafter Heyward Harvey stipulated in writing that the Director determine in these seizure proceedings whether such sum of \$250.00 should be forfeited or returned to him.

When the matter came on for hearing pursuant to R.S. 33:1-66 and the aforesaid stipulation Heyward Harvey appeared and stated that he was present at such hearing merely because he had received a notice of the hearing and had the impression that he was required to appear acknowledged that he held no license authorizing him to sell alcoholic beverages, and specifically stated that he did not intend to ask for the return of the \$250.00 on deposit.

Reports of ABC agents and other documents in the file presented in evidence disclose the following facts: On July 18, 1959 an ABC agent was at the above address to investigate a complaint that alcoholic beverages were being sold there without a license, and he and other persons present purchased drinks of alcoholic beverages in the basement of the building, which was equipped as a barroom. On July 19, 1959 another agent at the premises purchased drinks of alcoholic beverages and observed other persons do likewise. Thereafter local police officers and ABC agents entered the premises, revealed their identity, and made the seizure, including the stock of alcoholic beverages on the premises and money in possession of the bartenders, which included the money used by the agent to pay for alcoholic beverages served to him. The agents ascertained that the establishment was operated by Heyward Harvey ostensibly as a social club.

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 \$10.84 in cash, and the other personal property seized in the premises constitute unlawful property and 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 alcoholic beverages and \$10.84 in cash, more fully described in Schedule "A" attached hereto, constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and that the alcoholic beverages be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the various fixtures, furnishings and equipment, described in Schedule "A" constitute unlawful property and that the sum of \$250.00 representing the retail value of such fixtures, furnishings and equipment returned to Heyward Harvey, paid under protest to the Director of the Division of Alcoholic Beverage Control by Heyward Harvey, be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law.

Dated: October 29, 1959

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- | | |
|---|------------------------------------|
| 18 - bottles of whiskey | 1 - table |
| 140 - cans of beer | 1 - chair |
| 17 - bottles of soda | 1 - bar |
| 1 - music machine and currency therein | 1 - refrigerator |
| 8 - bar stools | 1 - radio |
| 3 - upholstered chairs | 1 - gas stove |
| 1 - couch | Miscellaneous personal property |
| 1 - sofa | \$10.84 in cash |

7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED - LIEN OF INNOCENT LIENOR ON MOTOR VEHICLE RECOGNIZED.

| | | |
|-----------------------------------|---|-----------------------|
| In the Matter of the Seizure |) | Case No. 10,047 |
| on July 19, 1959 of 63 half-pint |) | |
| bottles of whiskey, a gallon jug |) | ON HEARING |
| of alcohol and a Mercury sedan on |) | CONCLUSIONS AND ORDER |
| Route 130, Burlington Township, |) | |
| County of Burlington and State of |) | |
| New Jersey. |) | |

Milton S. Kramer, Esq., Attorney for Associates Discount Corporation.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 63 half-pint bottles of taxpaid whiskey, a gallon jug of alcohol, and a Mercury sedan, described in a schedule attached hereto, seized on July 19, 1959 on Route No. 130, Burlington Township, 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 on behalf of Associates Discount Corporation which sought recognition of its alleged lien on the Mercury sedan. No one opposed forfeiture of the whiskey and alcohol.

Reports of ABC agents and other documents in the file, presented in evidence, disclose the following facts:

Two New Jersey State Troopers questioned the four passengers in the Mercury sedan in question as they were at or near a restaurant on the above date and location, during their routine patrol of traffic on the highway. The troopers ascertained that the above alcoholic beverages were being transported in the motor vehicle, and that the gallon jug of alcohol did not have affixed thereto a tax stamp indicating the payment of tax on alcoholic beverages. Each of the persons in the car disclaimed ownership of the car or alcoholic beverages, and stated that they borrowed the car from its owner, Coulbar Gay, foreman on a nearby farm where they were employed. Coulbar Gay was then questioned and told the troopers that he had purchased the motor vehicle in Florida, that there was a balance due thereon of about \$1600.00 to a finance company; that enroute from Florida he purchased the taxpaid whiskey in Maryland, and purchased the gallon of corn whiskey in Georgia.

The officers seized the Mercury sedan and alcoholic beverages, and thereafter turned over these articles to ABC agents. A sample of the contents of the jug of corn whiskey was analyzed by the Division chemist who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 46.5 percent.

The seized jug of alcohol (corn whiskey) is illicit under the provisions of R.S. 33:1-1(d), R.S. 33:1-88. Such illicit alcohol, the other alcoholic beverages, and the motor vehicle in which such alcoholic beverages were transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Associates Discount Corporation has presented in evidence a conditional sales contract dated May 20, 1958, signed by Coulbar Gay evidencing the conditional sale of the Mercury sedan in question for the purchase price of \$3086.75, which contract Associates Discount Corporation holds by assignment. The present balance due thereon, after rebate for prepayment, is \$1695.51.

An affidavit of B. Thomas Shean, the Fort Lauderdale branch manager of the finance company, sets forth that on May 19, 1958, a representative of an automobile dealer advised him that he was negotiating the sale of the motor vehicle in question to Coulbar Gay, and wished to discount the account with the finance company. Mr. Shean was furnished with the information that Coulbar Gay was 35 years of age, married, had two children, was employed with his wife for eight years as farm hands in Del Ray Beach and resided on the farm, and husband and wife earned \$85.00 a week.

Mr. Shean checked with the owner of the farm and confirmed the employment and wages of the Gays; was told that their employer considered Mr. Gay well-behaved and reliable, and had not heard any derogatory information about him. Mr. Shean also checked with two finance companies which had been furnished as a reference and was told that Gay had financed the purchase of various cars with such companies, who found the accounts satisfactory; that from his information he had no reason to suspect that Gay would transport alcoholic beverages in violation of law. Coulbar Gay does not appear to have any previous criminal record for violating any alcoholic beverage laws.

I am satisfied from the evidence presented that the finance company acted in good faith and did not know or have any reason to suspect that Coulbar Gay would transport illicit alcohol in the Mercury sedan. I shall therefore recognize its lien to the extent of \$1695.51.

It appears that the appraised retail value of the Mercury sedan does not exceed the amount of the lien claim and the costs of the seizure and storage of the motor vehicle. Such motor vehicle will therefore be returned to Associates Discount Corporation upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 13th day of November, 1959 Associates Discount Corporation pays the costs of the seizure and storage of its Mercury sedan, more fully described in Schedule "A" attached hereto, it will be returned to Associates Discount Corporation; and it is further

DETERMINED AND ORDERED that the alcoholic beverages, as listed in Schedule "A", constitute unlawful property and that the same be and hereby are forfeited, in accordance with the provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

Dated: November 2, 1959

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 63 - half-pint bottles of whiskey
- 1 - one-gallon jug of alcohol
- 1 - Mercury sedan, Serial No. L8Z527488,
Florida Registration 10W55701.

8. DISCIPLINARY PROCEEDINGS - LOTTERY - MITIGATING CIRCUMSTANCES -
LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

KONNER'S GRILL, INC.
t/a KONNER'S GRILL
802-802½ Main Street
Bradley Beach, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the Borough of Bradley Beach.

Anshelewitz & Barr, Esqs., by Max M. Barr, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On or about May 20, 1959, you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as a baseball pool, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On May 20, 1959, ABC agents visited the defendant's licensed premises and, in a drawer behind the bar, found a bound note book containing a number of sheets which apparently had been used in connection with the operation of baseball pools. Upon interrogation by the agents, Milton and Irving Konner, officers of the defendant corporate licensee, admitted that the sheets had been used in conducting "pools" off the licensed premises by a club of which they are members.

By way of mitigation, the attorney for the defendant has submitted four affidavits, one from Matthew Bligh, secretary of aforesaid club (Men's Club of Bradley Beach), one from Joseph Lombardi, a member of said club, one from Milton Konner and one from Irving Konner. From these affidavits, it appears that all of the business relative to aforesaid baseball pools was conducted at meetings of the club held in a local public building; that the proceeds of said pools were used to purchase athletic equipment for boys of the local grammar school; that the aforesaid participating tickets were sold and paid for at the various club meetings; that no tickets were sold or paid for at the licensed premises and that, subsequent to the baseball season (1958) the "pools" and club meetings were discontinued and the aforesaid sheets were brought to the licensed premises as a convenient place for the members of the club to inspect the same.

Defendant has no prior adjudicated record. Ordinarily, I would suspend the defendant's license for fifteen days. Re Samsel, Bulletin 1225, Item 2. Under all the circumstances and being satisfied that no element of commercialized gambling was involved, I shall suspend defendant's license for ten days (Cf. Re Marx, Bulletin 1273, Item 10). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

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

ORDERED that Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the Borough of Bradley Beach to Konner's Grill, Inc., t/a Konner's Grill, for premises 802-802 $\frac{1}{2}$ Main Street, Bradley Beach, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, November 16, 1959 and terminating at 2:00 a.m., Saturday, November 21, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

ADVERTISING - DISPLAY OF CHRISTMAS TREES ON LICENSED PREMISES
PERMISSIBLE SUBJECT TO RESTRICTIONS.

December 21, 1959

Joseph Zimmerman, President
United Tavern Owners Association
of N. J.

This will confirm the conference with you and other members of your Association at which I advised that, effective immediately, I have relaxed the previous policy of prohibiting displays of Christmas trees upon licensed premises.

Henceforth it will be permissible for retail licensees to display in their show windows or elsewhere upon their licensed premises the traditionally decorated Christmas tree provided (1) that there shall be no display or use of any decorations or objects having any religious, spiritual or biblical significance and (2) that there shall be no display of toys or devices which are susceptible of undue appeal or attraction to children.

In relaxing the previous prohibition against the use of Christmas trees in window displays, I am mindful of your assurance that the members of your Association and that other retail licensees will use moderation in their displays. If the added privilege is not exercised wisely or should any undue adverse public criticism arise, I will not hesitate to ban again the use of Christmas tree displays upon licensed premises.

WILLIAM HOWE DAVIS
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LOUIS A. CARALUZZO)
213 - 14th Street)
Hoboken, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-33, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.)

Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that, on September 29, 1959, he sold alcoholic beverages at less than the price listed in the minimum consumer resale price list then in effect, in violation of Rule 5 of State Regulation No. 30.

On the afternoon of September 29, 1959, an ABC agent who was in defendant's premises purchased from defendant twenty-four 12-ounce cans of Rheingold beer for four dollars. The minimum consumer resale price then in effect in Area A for the item in question was four dollars and forty cents. The agent left the premises with the beer but returned immediately with another ABC agent. The agents identified themselves and defendant admitted the violation.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of ten days (Re Foti, Bulletin 1284, Item 6). Five days will be remitted for the plea, leaving a net suspension of five days.

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

ORDERED that Plenary Retail Consumption License C-33, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Louis A. Caraluzzo, for premises 213 - 14th Street, Hoboken, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, November 16, 1959, and terminating at 2:00 a.m., Saturday, November 21, 1959.

William Howe Davis
Director

New Jersey State Library