

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

Ambrose
Ambrose

BULLETIN 1776

FEBRUARY 1, 1968

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Atlantic City) - HOSTESS ACTIVITY - LEWDNESS AND IMMORAL ACTIVITY (INDECENT CONDUCT) - NUISANCE - LICENSE SUSPENDED FOR 170 DAYS.
2. APPELLATE DECISIONS - TRAYCHRIS, INC. v. MIDDLETOWN.
3. DISCIPLINARY PROCEEDINGS (Atlantic City) - ORDER REMITTING PORTION OF SUSPENSION FOLLOWING COURT DECISION.
4. SEIZURE-FORFEITURE PROCEEDINGS - SPEAKEASY OPERATION - CLAIM FOR RETURN OF CASH DEPOSITED POSTED ON STIPULATIONS DENIED IN ABSENCE OF GOOD FAITH - DEPOSITS, PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.
5. DISCIPLINARY PROCEEDINGS (South Hackensack) - GAMBLING (HORSE RACE AND NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS - NO REMISSION FOR PLEA ENTERED AFTER PARTIAL HEARING.
6. DISCIPLINARY PROCEEDINGS (Cliffside Park) - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Nutley) - ORDER IMPOSING DEFERRED SUSPENSION.
8. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1776

FEBRUARY 1, 1968

1. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - LEWDNESS AND IMMORAL ACTIVITY (INDECENT CONDUCT) - NUISANCE - LICENSE SUSPENDED FOR 170 DAYS.

In the Matter of Disciplinary Proceedings against)

TWO SIXES, INC.)
t/a Hialeah Club)
1917 Atlantic Ave. &)
13-15 N. Michigan Ave.)
Atlantic City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-133 issued by the Board of Commissioners of the City of Atlantic City)

Sherman L. Kendis, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on June 9-10, June 10-11, June 11 and June 19, 1967, it permitted female entertainers to drink at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20, (2) on June 10-11, 1967, it permitted lewdness and immoral activity and conduct on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (3) on June 9-10, June 10-11 and June 11, 1967, it conducted the licensed business as a nuisance by permitting bartenders, entertainers and female patrons to solicit male patrons to purchase drinks, to overcharge for drinks served and to charge for drinks not served, in violation of Rule 5 of State Regulation No. 20.

With respect to the first charge, reports of investigation disclose that on the dates alleged, female entertainers drank at the expense of male patrons splits (6.4 ounces) of the cheapest domestic champagne (retailing at 59¢) at a charge of \$7 each. In addition, it appears that on one occasion a total of seven bottles was served to two entertainers who added insult to injury by "spitting back" the champagne instead of consuming it.

With respect to the second charge, reports disclose that on the occasion alleged, a female entertainer, while seated at the bar, fully exposed her breasts and placed the hands of a male patron thereon and thereafter exposed and handled the private parts of the patron.

All of the circumstances considered, including the lack of prior record of the licensee as well as the confessional plea entered, the license will be suspended for one hundred seventy days.

Accordingly, it is, on this 14th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-133, issued by the Board of Commissioners of the City of Atlantic City

to Two Sixes, Inc., t/a Hialeah Club, for premises 1917 Atlantic Avenue and 13-15 N. Michigan Avenue, Atlantic City, be and the same is hereby suspended for one hundred seventy (170) days, commencing at 7:00 a. m. Monday, December 18, 1967, and terminating at 7:00 a. m. Wednesday, June 5, 1968.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - TRAYCHRIS, INC. v. MIDDLETOWN.

Traychris, Inc.,)	
t/a Paradise Grill,)	
)	
Appellant,)	
v.)	
)	
Township Committee of the)	On Appeal
Township of Middletown,)	
)	CONCLUSIONS
Respondent.)	AND ORDER
)	
Fredric Baar, Esq., Attorney for)	Appellant
Whitney Crowell, Esq., by Robert H. Otten, Esq.,)	
Attorney for Respondent)	

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is from a five-day suspension imposed by respondent on appellant's plenary retail consumption license for premises 1009 Highway #35, Middletown, effective August 12, 1967, as the result of its finding appellant guilty (by a vote of 3 to 1) of the following charge:

"On June 3, 1967 at or about approximately 2:44 A.M., you allowed the consumption of an alcoholic beverage on your premises in violation of Section 1.17 of the 'Revised Ordinances of the Township of Middletown' and N.J.S.A. 33:1-31(h)."

Upon the filing of the appeal, an order dated July 31, 1967 was entered by the Director staying respondent's order of suspension until further order herein.

Appellant, in its petition of appeal, contends that the action of respondent was erroneous and should be reversed because the evidence presented failed to establish that appellant was guilty of allowing consumption of alcoholic beverages during prohibited hours.

Respondent, in its answer, denies the aforesaid allegation contained in the petition of appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted on notice authorized by Rule 8 of State Regulation No. 15, which transcript was supplemented at the hearing herein by testimony of witnesses on behalf of appellant.

Section 1.17 of the Revised Ordinances of the Township of Middletown provides as follows:

"No licensee shall sell, serve, deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage or allow the consumption of any alcoholic beverage on licensed premises between the following hours on the following days:

"(d) On weekdays between the hours of 2:00 a.m. and 8:00 a.m."

The transcript of the hearing held before respondent discloses the pertinent testimony of Elwood E. Seeley, a local police sergeant, to be: At 2:44 a.m. on June 3, 1967, Sgt. Seeley entered the barroom of appellant's licensed premises through the unlocked front door and observed George Moyes, a bartender and three women standing "outside of the immediate bar area... between the bar and a little like a piano and stuff on the side of the room;" that "the three women were dressed--I thought they were waitresses at the time and they were drinking beer;" that he observed only the three women drinking; that he did not actually see the women drinking but "they had the beer glasses in their hand;" that "there were glasses in their hand and other glasses on the bar but I don't know what was in them;" that he knows "a glass of beer when I see it" but "I didn't go taste it or smell it but I've seen beer. I drank beer on several occasions."

George Moyes, president of the corporate appellant, testified that on the evening of June 2 and the early morning of June 3, 1967, he was on duty as manager of the licensed premises; that the place was very busy because June 2 was "the opening day for Monmouth Race Track;" that he started closing the premises at 1:45 a. m. and all customers had left shortly before 2:00 a. m.; that two waitresses, the bartender, the piano player and himself were the only persons in the premises after the closing hour; that all of the employees with the exception of the piano player were "clearing tables, clearing the bar, washing glasses, stocking the beer boxes, setting the register up for the next day, clearing up, what we have to do in the kitchen;" that there was a knock at the window and Moyes directed the bartender (who was washing glasses behind the bar at the time) to open the door and, when he did so, Officer Seeley entered with a flashlight in his hand; that the officer remarked to him, "I see the help is here tonight," to which Moyes answered "Yes" and the officer then pointed the flashlight toward the piano and after a few minutes left the premises. At the time, the bar lights were on and, although dim, lights were on in the dining room and over the booth in the small dining room.

Alexander Emslie, the bartender, testified that he was on duty during the evening and early morning of June 2-3 and after 2:00 a. m. was restocking the bar and washing glasses which were brought to him by the two waitresses and Moyes; that he answered the knock at the front door and admitted Officer Seeley; that he heard the officer say to Moyes, "I see you have the help here tonight;" that because of the large number of patrons, it was necessary to request Moyes to assist him at the bar during the evening; that the only persons on the premises after 2:00 a. m. were the two waitresses, the piano player, Moyes and himself.

James D. Carroll testified that he was the piano player at appellant's premises on the evening and early morning in question and remained in the premises after the closing hour

because he was waiting for Moyes to drive him home; that Moyes, Emslie, Mary Moyes and Jean Emslie, the waitresses, were cleaning up the premises when Officer Seeley entered.

Jean Emslie (the bartender's wife) and Mary Moyes (secretary-treasurer of appellant) testified that they were working as waitresses on the night of June 2-3; that after 2:00 a. m. they were engaged in picking up glasses from tables in the dining room and from the booths and bringing them to the bar to be washed; that they were also gathering dishes from the dining room and taking them to the kitchen. Both waitresses denied consuming alcoholic beverages after the closing hour.

Although the testimony of Officer Seeley and the five witnesses who testified in appellant's behalf is not in accord concerning certain occurrences which are alleged to have taken place in the licensed premises after Officer Seeley entered, there is no disagreement whatsoever that the waitresses did not actually consume alcoholic beverages as charged. Seeley admitted that this was true, and the waitresses also denied consumption of any alcoholic beverages by them after 2:00 a. m. on June 3.

The ordinance under which the charge in this matter was preferred is unambiguous in its terms. The rule of construction as to ordinances is the same as the rule of construction as to statutes. In Camden v. Local Government Board, 127 N.J.L. 175, 178 (Sup. Ct. 1941), the court said:

"We are enjoined to interpret and enforce the legislative will as written, and not according to some supposed unexpressed intention."

In Burnson v. Evans, 137 N.J.L. 511, 514 (Sup. Ct. 1948), the court cited Lewis' Sutherland Statutory Construction (2d ed.), sec. 366:

"Even when a court is convinced that the legislature really meant and intended something not expressed by the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of language which is free from ambiguity."

See also Kingsley v. Hawthorne Fabrics, Inc., 41 N.J. 521, 528.

The attorney for respondent contends that the mere possession in the hands of the waitresses of glasses which contained an alcoholic beverage is sufficient to base an inference that the persons in question had consumed alcoholic beverages. The cases cited above specifically state that although a court (which includes an administrative body) believes that the Legislature intended something "not expressed by the phraseology of the act," it will not deem itself authorized to accept anything other than the plain meaning of the language when free from ambiguity. In the instant matter, there may have been suspicion on the part of the police officer that the waitresses had consumed the contents of the glasses which they held in their hands. However, be that as it may, there is no proof that such consumption had taken place after 2:00 a. m. Cf. Caribe Hilton Lounge, Inc. v. Irvington, Bulletin 1704, Item 2.

For the reasons aforesaid and under the circumstances herein, I am satisfied that the action of respondent must be reversed and so recommend.

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 record, including the transcripts of the testimony, the exhibits and the Hearer's report, I adopt the conclusions and recommendation of the Hearer as my conclusions herein.

Accordingly, it is, on this 7th day of December, 1967,

ORDERED that the action of respondent in finding appellant guilty of the charge preferred herein and suspending its license be and the same is hereby reversed.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ORDER REMITTING PORTION OF SUSPENSION FOLLOWING COURT DECISION.

In the Matter of Disciplinary Proceedings against)

800 N. Massachusetts, Inc.)
t/a The Jet Set Bar & Lounge)
15-17 North Illinois Avenue)
Atlantic City, N. J.)

AMENDED ORDER

Holder of Plenary Retail Consumption License C-139 issued by the Board of Commissioners of the City of Atlantic City)

Edward I. Feinberg, Esq., Attorney for Licensee)
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control)

BY THE DIRECTOR:

On September 20, 1967, I entered an order herein suspending the license for one hundred forty-five days commencing September 27, 1967, for permitting solicitation for prostitution (90 days) and permitting congregation of apparent homosexuals on the licensed premises (60 days), with remission of five days for the plea entered. Re 800 N. Massachusetts, Inc., Bulletin 1763, Item 2.

In view of the recent decision of the New Jersey Supreme Court in One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control, 50 N.J. 329, reprinted in Bulletin 1763, Item 1, invalidating the basis of conviction on a charge of permitting congregation of apparent homosexuals on licensed premises, I am remitting that portion of the penalty heretofore imposed on the second charge, viz., sixty days, thus imposing herein a net penalty of eighty-five days on the first charge.

Accordingly, it is, on this 18th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City to 800 N. Massachusetts, Inc., t/a The Jet Set Bar & Lounge, for premises 15-17 North Illinois Avenue, Atlantic City,

be and the same is hereby suspended for eighty-five (85) days, commencing at 7:00 a. m. Wednesday, September 27, 1967, and terminating at 7:00 a. m. Thursday, December 21, 1967.

JOSEPH P. LORDI
DIRECTOR

4. SEIZURE-FORFEITURE PROCEEDINGS - SPEAKEASY OPERATION - CLAIM FOR RETURN OF CASH DEPOSITED POSTED ON STIPULATIONS DENIED IN ABSENCE OF GOOD FAITH - DEPOSITS, PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)
 May 20, 1967 of a quantity of)
 alcoholic beverages, miscellane-)
 ous fixtures, furnishings, equipment)
 and \$113.55 in cash in the Community) On Hearing
 Body & Fender Shop located at 64
 Sackett Street, in the City of) CONCLUSIONS
 Jersey City, County of Hudson and) AND ORDER
 State of New Jersey.)

- - - - -
 Davis and Roth, Esqs., by Norman H. Roth, Esq., appearing for
 Mid-State Vending, Inc. and Ferraro Vending Co.
 I. Edward Amada, 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, and, further, pursuant to two stipulations, each dated July 11, 1967 executed by Mid-State Vending, Inc. and Ferraro Vending Co., respectively, to determine whether 234 containers of alcoholic beverages, miscellaneous fixtures, furnishing, equipment and \$113.55 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on May 20, 1967 at premises designated as the Community Body and Fender Shop located at 64 Sackett Street, Jersey City, N. J. constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$250.00 from Mid-State Vending, Inc. and \$500.00 from Ferraro Vending Co. deposited under protest for the Director, representing the retail value of fixtures, furnishings and equipment set forth separately in the aforesaid stipulations should be forfeited or returned to them.

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

When the matter came on for hearing pursuant to R.S. 33:1-66, James Withers appeared on behalf of the Sackett Social Club, and sought the return of the seized cash, alcoholic beverages and miscellaneous furnishings and equipment, exclusive of the property claimed by the other claimants.

The Ferraro Vending Co. trading as Park Vending, represented by counsel, entered a claim for the return of the deposit based on stipulation, covering the cigarette vending machine and pool table.

Mid-State Vending, Inc., represented by the same counsel, entered an appearance of its claim for the return of the monies deposited under the stipulation relating to the juke box.

The file of this Division was admitted into evidence by stipulation of the said claimants, and included the affidavit of mailing, affidavit of publication, Division's chemist's report certifying to the alcoholic content of the seized alcoholic beverages, the "marked" money, the original stipulations, a copy of the cash receipt and the inventory of the seized property.

Reports of ABC agents and other documents in the file disclose that at about 2:30 A. M. on Saturday, May 20, 1967 an ABC agent, in possession of a \$5.00 bill and two one-dollar bills, the serial numbers of which had been previously recorded, entered the subject premises, which are located in a large cinder block garage. A sign on the face of the building contained the following legend: "Community Body and Fender Shop" in large letters. There was no other identification of these premises. The door leading in to the premises contained a bell, a buzzer and a glass peephole.

The agent made his entry through the premises as a group of patrons was leaving. The interior of the premises contained two thirty-foot bars with 41 stools, the back bars of each bar of which was equipped with displays of alcoholic beverages. The pool table, cigarette machine and a juke box were located in this room.

The agent observed that there were about 100 male and female patrons in the premises consuming and paying for alcoholic beverages. He ordered and was served a scotch drink by a female bartender, and in payment therefor, presented a "marked" five-dollar bill, and received \$4.25 in change. Shortly thereafter the agent ordered and was served a can of beer by another barmaid and paid therefor with a "marked" one-dollar bill, and received fifty cents in change.

At about 3:00 A. M. the agent was served another scotch drink and paid the bartender therefor with a "marked" one-dollar bill and received twenty-five cents in change.

At about 3:10 A. M. other ABC agents, accompanied by local police officers, by pre-arrangement, approached the premises, knocked on the door and rang the buzzer. In response thereto, a male looked through the peephole on the door, and thereupon admitted the agents and police officers. The agents immediately made their identification known, and the agent who had purchased the drinks, as hereinabove stated, identified the females who had served him as aforesaid; the two bartenders were then placed under arrest. The agents also arrested Clarence Williams who stated that he was the owner of the premises; and James Withers claimed that the alcoholic beverages and fixtures belonged to him. Thereafter, a search and seizure of the premises were made; the "marked" five-dollar bill and the "marked" one-dollar bill, commingled with the cash in the sum total of \$113.55, was seized.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages issued to Clarence Williams, James Withers or for the premises where the violations took place.

On May 29, 1967, a sample of the contents of one

six-ounce bottle of one of the seized bottles of beer was analyzed by the Division chemist, who certified that it was an alcoholic beverage fit for beverage purposes, with alcohol by volume of 4.79%. 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, personal property and the commingled cash, as set forth in Schedule "A", constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 11,898, Bulletin 1500, Item 2.

James Withers represented himself as the president of the Sackett Social Club and sought the return of some of the seized personal property. He gave the following account: He does not recall when the Sackett Social Club was organized, nor how many members it has, nor how long it has been operating at this address. The property is not his property, but belongs to the Sackett Social Club. The property claimed consists of bar stools, refrigerators, two air conditioners, three automobile tires, a quantity of alcoholic beverages and the cash. He could not, however, state either the makes, or the serial numbers of the property nor did he produce any indicia of ownership or title thereto.

On cross examination, he denied any knowledge of the fact that these premises had been previously raided on September 11, 1966. He was then questioned about the operation of the group which was formerly known as the Normal Social Club. He stated that he entered into the picture after November 1966, and became its manager. At the time of the raid on May 20, 1967 Clarence Williams, the owner of these premises was present, but Withers denied being present during the confrontation. Nevertheless, he admits that he was thereafter arrested and, upon being found guilty, was fined in the Municipal Court for the unlawful sale of alcoholic beverages.

He further admitted that at the time of the raid he informed ABC Agent S that the alcoholic beverages and the fixtures belonged to him. He now states that it does not actually belong to him but belongs to the Sackett Social Club; that he is merely the manager in charge of the club. He also admitted that the statement read by the Division attorney was true except that he does not know anything about the "marked" money found with the commingled cash.

Finally, he admitted that he had prior convictions of crime and the record of his convictions was admitted into evidence.

ABC Agent M who participated in the raid of these premises, in rebuttal testimony elaborated upon the statement of the Division attorney, and explained the details of his purchase of alcoholic beverages on the early morning of May 20, 1967. He stated that on that visit, and, indeed, on the four or five prior visits made to this speakeasy, there were on an average of 150 patrons. He had a conversation on this occasion with Withers, who informed him that he had rented these premises from Williams; and that all of the fixtures, alcoholic beverages and personal property were his own. There was no mention made of a so-called Sackett Social Club.

ABC Inspector S corroborated the testimony of Agent M to the effect that Withers claimed ownership of the alcoholic beverages and the fixtures and furniture which were in the seizure.

My examination of the testimony leads me to the inevitable conclusion that this claimant was engaged in the unlawful sale of alcoholic beverages. Since this claimant did not have any license authorizing him to sell the alcoholic beverages, the alcoholic beverages were illicit and constitute unlawful property, and are subject to forfeiture. R.S. 33:1-1(1); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,156, Bulletin 1557, Item 5.

I disbelieve this claimant's testimony to the effect that the property belonged to the Sackett Social Club, nor is there a scintilla of evidence proving title to any of the seized property. The witness could not identify any of the seized property either by brand name or serial number. Since proof of ownership is an essential element in order to establish a valid claim for the return of property, the failure of this claimant to do so defeats his claim. I, therefore, recommend that this claimant's claim be rejected, and that an order be entered forfeiting the claimed property, alcoholic beverages and cash, as set forth in the annexed Schedule "A".

Anthony Ferraro, president of Ferraro Vending Co., Inc. trading as the Park Vending Co. testifying in support of its claim gave the following account: On behalf of this claimant, Ferraro entered into an agreement, dated October 12, 1966 with James Withers for the installation of a cigarette vending machine and a pool table at the above described premises. He also acted as agent for the Mid-State Vending, Inc. in the installation at these premises of a AQ 160 Seeburg juke box. Because of his experience with this Division in a similar proceeding, wherein a cigarette machine owned by this claimant was ordered forfeited (Seizure Case No. 11,597, Bulletin 1679, Item 7), he inquired of Withers and Williams whether they were "doing anything illegal, which they said they weren't." He then had Williams execute the following statement "'I hereby state that any liquor served by the club is owned by the members and used for their own consumption and not being sold over the counter.'" During his visits to these premises he denied seeing any liquor being sold.

On cross examination, he admitted that he made no inquiry of any law enforcement agency or of this Division, nor did he make any background investigation of Withers, Williams or the Sackett Social Club to determine whether either of these individuals or the club had been engaged in any liquor violations; nor did he inquire as to whether or not any liquor permit had been issued to these individuals or for the premises in question.

Further questioning revealed that he was aware of the "peephole" in the front door. He could not remember whether there were two bars and back bars as testified to by the Division witnesses because "I don't have any time to be looking. In and out."

Finally, the witness insisted that he did not feel obligated to make inquiry of any law enforcement agency or of this Division to inquire whether or not these premises had a license or permit authorizing them to serve alcoholic beverages.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith, and has no knowledge of the unlawful use to which its property was put, or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f).

Here we have empiric evidence which, in my judgment, establishes beyond a peradventure of doubt, that this claimant did not act in good faith, and had reason to believe that this property would be used in unlawful liquor activity. This speak-easy operation at these premises had recently been raided by this Division (Seizure Case No. 11,771, Bulletin 1723, Item 2), and the personal property was ordered forfeited. Nevertheless, the present operator continued the same operation and, according to the testimony of the Division's agents who visited these premises on at least five occasions prior to the date of the seizure herein, carried on its operation on a full scale openly entertaining as many as 150 patrons on each of these occasions.

The premises are located in a large building which apparently was camouflaged with a sign on the outside stating "Community Body and Fender Shop." No sign or legend was present to suggest that this was, in fact, a social club. The front door was barred and contained a peephole in the tradition of the old-time speakeasy. Upon being admitted, one came into a well-appointed barroom containing back bars fully stocked with alcoholic beverages. There is no evidence to suggest that this room could be used for a meeting room or club rooms; indeed, all the evidence points to a speakeasy containing all the trappings and accoutrements of this operation.

All of these specifics, together with the fact that the claimant was informed by Withers that the liquor was being served, should have put it on notice that reasonable inquiry (other than the self-serving statement of Withers) was required. The claimant who had recent experience with a speakeasy operation, as detailed above, and whose property was forfeited, should have been particularly cautious with respect to the proposed use to which its property was being put. Tested by the crucible of the applicable statute and regulations of this Division, I am persuaded that this claimant did not act reasonably and in the full exercise of its statutory responsibility with reference to its property at the said premises. Its failure to make such reasonable investigation demonstrates a careless indifference to the use to which its property was being put. Since I find that there is an absence of good faith as aforesaid, the Director is not authorized to return said property. R.S. 33:1-66; Seizure Case No. 11,597, Bulletin 1679, Item 7; Seizure Case No. 11,771, supra.

I, therefore, recommend that the claim of the claimant, Ferraro Vending Co. trading as Park Vending be rejected, and that an order be entered forfeiting the sum of \$500.00 paid under protest under the aforesaid stipulation.

Edward Silverstein, secretary of Mid-State Vending, Inc. testified in support of its claim for the return of the sum deposited under protest, covering the retail value of a juke box. He presented evidence establishing that this claimant owned the said juke box which, as mentioned hereinabove, was placed at these premises by Ferraro, as its agent. Silverstein stated that he was in charge of servicing, repairing and collections on the said machine. He visited these premises on Saturday evenings between 5:00 and 7:00 P.M., and on no occasion did he observe any patrons at the premises, or any liquor being served. He admits that he did not make any investigation of these premises or of the operators thereof with any enforcement agencies or with this Division.

On cross examination, he insisted that the fact that there was no sign or other evidence on the outside of these

premises that a social club was being operated, did not arouse any suspicion in his mind. He also asserted that he did not even see any stools in the premises, notwithstanding the fact the agents testified to the fact that there were over 40 stools surrounding the two bars.

With respect to the nature of the operation, he was asked the following:

"Q Did you ask about the operation of the business?"

A None of my business."

He then added the following:

"In my business, if I was to be aroused by suspicion, I wouldn't have any stops. That's the type of business I'm in."

and further:

"If I was to investigate, possibly the safety of the location, the character of the person as an individual and as a person, in my type of business, I maybe wouldn't have one stop, but I certainly wouldn't have much of a business."

It is quite apparent that this claimant did not understand its obligations and responsibilities with reference to the use to which its property was to be put. Contrary to this witness' expressed feelings, it is clearly very much his "business" and statutory obligation to determine whether or not the premises were involved in illicit liquor activity.

The claimant knew, or should have known, by reasonable and diligent inquiry, that this was a speakeasy operation carried on over a long period of time. The claimant is also bound by the testimony of its agent, Ferraro Vending Co., who placed the machine in these premises and who, as was pointed out, had prior experience with a similar speakeasy operation. I am, therefore, compelled to conclude that this claimant demonstrated a careless indifference to the use to which its property was being put. Since I find that there is an absence of good faith, the Director similarly is not authorized to return the property. R.S. 33:1-66; Seizure Case No. 11,597, supra.

I, therefore, recommend that the application of the claimant, Mid-State Vending, Inc. be denied, and that an order be entered forfeiting the sum of \$250.00 paid under protest under the aforesaid stipulation.

Conclusions and Order

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

In these exceptions it is argued that since Ferraro Vending Co. paid a licensing fee to the Licensing Department of the City of Jersey City, authorizing it to install and rent "pool tables and the like" it was not required to "investigate any alleged liquor violations."

The argument proceeds further that claimants "are not

bound by the rules and regulations of your Department, other than not to violate them themselves, and should not have their property forfeited because of an arbitrary ruling that seeks to set standards for businesses over which it has no jurisdiction in fact."

The short answer to the first contention is that a license issued by a municipality authorizing the installation and renting of equipment invests no legal immunity to one who permits the operation or use of his equipment in connection with illegal liquor activity. This postulate is so fundamental as not to require further discussion.

Where property has been seized under R.S. 33:1-66 it becomes the affirmative obligation of the claimants to establish their right to the return of such seized property.

R.S. 33:1-66(f) provides in its applicable part as follows:

"The Director, upon being satisfied that a person having a bona fide and valid lien upon or interest in property seized or forfeited pursuant to the provisions of this section has acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use, may, in his discretion and subject to rules and regulations, recognize the validity and priority of such claim or interest."

Rule 3(c) of State Regulation No. 28 implements the Statute hereinabove cited and adds that where the validity and priority of such lien or interest has been recognized and the appellant's good faith and lack of knowledge of the unlawful use of such facts as would have led a person of ordinary prudence to discover such use has been established to the satisfaction of the Director, he may order the return of the property upon payment of reasonable costs. It is obvious from the clear language of the Statute and the applicable Rule that the Director does not seek to set any standards for businesses, but is merely authorized to determine whether there has been good faith manifested by the claimants as defined therein.

The Hearer's report sets forth in detail the circumstances in which the claimant's properties were installed and were being used. It is unnecessary to repeat those facts except to observe that the unlicensed premises in which the claimants' property was being used were carried on openly and notoriously as a speakeasy operation.

Ferraro Vending Co. had had recent experience with such illegal liquor activity; its agents knew that liquor was being served at the premises; yet it did not make even the most cursory investigation or inquiry to determine whether or not these premises were licensed for the sale of alcoholic beverages.

Silverstein, testifying on behalf of Mid-State Vending, Inc. frankly admitted that he was not interested in investigating the background of the operator of these premises because, in his language, "In my business, if I was to be aroused by suspicion, I wouldn't have any stops."

The Hearer therefore properly concluded that the claimants did not act in good faith, and had knowledge of facts that

would have led a person of ordinary prudence to discover the use to which their property would be put. It was clearly the obligation of the claimants to make reasonable inquiry as required by the Act. In the absence thereof, the law empowers the Director, in his discretion, to order a forfeiture thereof.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the written exceptions, which I find to be without substantial merit, I concur with the recommended conclusions in the Hearer's report and adopt them as my conclusions herein.

It is on this 28th day of December, 1967,

DETERMINED and ORDERED that the seized property as set forth in Schedule "A", attached hereto, constitutes unlawful property; the sum of \$250.00 representing the retail value of a juke box owned by Mid-State Vending, Inc., claimant herein (which was returned to Mid-State Vending, Inc.) paid under protest to the Director of the Division of Alcoholic Beverage Control by Mid-State Vending, Inc. be and the same is hereby forfeited in accordance with law; and the sum of \$500.00 representing the retail value of a cigarette vending machine and a pool table, owned by Ferraro Vending Co. herein (which were returned to the said Ferraro Vending Co.) paid under protest to the Director of the Division of Alcoholic Beverage Control by Ferraro Vending Co. be and the same is hereby forfeited in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the personal property, including the cash in the sum of \$113.55 and 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 Alcoholic Beverage Control.

JOSEPH P. LORDI
DIRECTOR

SCHEDULE "A"

- 47 - containers of alcoholic beverages
- 187 - cans of beer
- Miscellaneous fixtures, furnishings and equipment
- \$113.55 - cash

- 5. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE AND NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS - NO REMISSION FOR PLEA ENTERED AFTER PARTIAL HEARING.

In the Matter of Disciplinary Proceedings against
 HUYLEY INN, INC.
 t/a Huyler Inn
 310 Huyler Street
 South Hackensack, New Jersey
 Holder of Plenary Retail Consumption License C-10 issued by the Township Committee of the Township of South Hackensack

CONCLUSIONS
AND ORDER

Ronald J. Picinich, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

After partial hearing, licensee pleaded non vult to charges (1) and (2) alleging that on November 5, 7 and 10, 1966, it variously permitted acceptance of horse race and numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days (Re Galamb, Bulletin 1755, Item 3) without remission for the plea entered after partial hearing (Re Callahan, Bulletin 1751, Item 2).

Accordingly, it is, on this 11th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-10 issued by the Township Committee of the Township of South Hackensack to Huyler Inn, Inc., t/a Huyler Inn, for premises 310 Huyler Street, South Hackensack, be and the same is hereby suspended for sixty (60) days, commencing* at 2 a. m. Monday, December 18, 1967, and terminating at 2 a. m. Friday, February 16, 1968.

JOSEPH P. LORDI
DIRECTOR

*By order dated December 15, 1967, the suspension was deferred to commence at 2 a. m. Saturday, December 30, 1967, and to terminate at 2 a. m. Wednesday, February 28, 1968.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Visidor Corporation)
t/a DeCarlo's Inferno Bar)
781-783 Palisade Avenue)
Cliffside Park, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 issued by the Mayor and Borough Council of the Borough of Cliffside Park)

Licensee, by Dominick DeCarlo, Secretary-Treasurer, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that in notice of amendment of its 1966-67 application for license, it falsely stated that William Deegan and Eugene Distelhurst, each 33-1/3 per cent. stockholders, were residents of New Jersey, whereas in fact they were residents of New York.

The unlawful situation has now been corrected by transfer of the stock ownership of William Deegan and Eugene Distelhurst to Dominick DeCarlo, apparently qualified.

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 Riddle Bar, Inc., Bulletin 1647, Item 6.

Accordingly, it is, on this 14th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Borough Council of the Borough of Cliffside Park to Visidor Corporation, t/a DeCarlo's Inferno Bar, for premises 781-783 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for five (5) days, commencing at 3:00 a. m. Monday, December 18, 1967, and terminating at 3:00 a. m. Saturday, December 23, 1967.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ORDER IMPOSING DEFERRED SUSPENSION.

In the Matter of Disciplinary Proceedings against
Jon Ray Company, Inc.
t/a Stefano's Restaurant
167 River Road
Nutley, New Jersey

Holder of Plenary Retail Consumption License C-12 issued by the Board of Commissioners of the Town of Nutley, extended during the pendency of these proceedings to

SUPPLEMENTAL

Myron S. Lehman, Esq., Assignee for the benefit of creditors,

ORDER

for the same premises and transferred during the pendency of these proceedings to

Carmen Anthony Orechio
t/a Park Pub
431 Kingsland Street
Nutley, New Jersey

Licensee Carmen Anthony Orechio, Pro se
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On August 31, 1966, I entered an order herein deferring the license suspension of fifteen days (for possession by Jon Ray Company, Inc. of alcoholic beverages not truly labeled) because it appeared that the licensed business was not then being conducted. Re Jon Ray Company, Inc.-Lehman, Bulletin 1696, Item 7.

Report of recent inspection discloses that the licensed business has now been resumed by the transferee, Carmen Anthony Orechio, at premises 431 Kingsland Street, Nutley. Consequently, I am satisfied that the deferred suspension may now be imposed.

Accordingly, it is, on this 28th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the Town of Nutley to Carmen Anthony Orechio, t/a Park Pub, for premises 431 Kingsland

Street, Nutley, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a. m. Wednesday, January 3, 1968, and terminating at 2:00 a. m. Thursday, January 18, 1968.

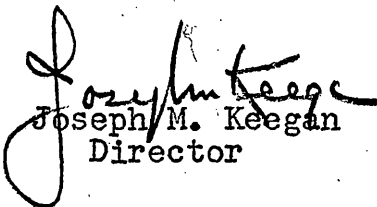
JOSEPH P. LORDI
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Kasser Distillers Products Corp.
t/a Kasser Liquor Company and
Oxford Liquor Company

Heller Road, Interstate Industrial Park
Bellmawr, New Jersey

Application filed January 31, 1968 for place-to-place
transfer of Plenary Wholesale License W-3 from 1835
Burnet Avenue, Union, New Jersey


Joseph M. Keegan
Director