

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

BULLETIN 1665

March 24, 1966

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

BULLETIN 1665

March 24, 1966

COURT DECISIONS - JEANNE'S ENTERPRISES, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-766-64

JEANNE'S ENTERPRISES, INC.,
T/A LE BISTRO,

Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL, and
JOSEPH P. LORDI, DIRECTOR OF THE
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Defendants-Respondents.

Argued January 25, 1966 -- Decided February 3, 1966

Before Judges Conford, Kilkenny and Leonard.

Mr. Morris Brown argued the cause for appellant
(Messrs. Wilentz, Goldman & Spitzer, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued
the cause for respondents (Mr. Arthur J. Sills, Attorney
General of New Jersey, attorney; Mr. Avrom J. Gold,
Deputy Attorney General, of counsel).

PER CURIAM

Appeal from Director's decision in Re Jeanne's Enterprises, Inc., Bulletin 1621, Item 1. Director affirmed. Opinion not approved for publication by the Court committee on opinions. Notice of appeal to New Jersey Supreme Court filed February 23, 1966.

affirmed
Sept 4-2
17
9319 Sep 230
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affirmed - see 1714-
examined by 90 N.J. 2 J 1 1/73
JLH

2. COURT DECISIONS - SILVER DOLLAR CAFE v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL and NEWARK - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-780-64

SILVER DOLLAR CAFE, a corporation,
appellant,

vs.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
and NEWARK BOARD OF ALCOHOLIC BEVERAGE
CONTROL,

respondents.

Argued January 19, 1966 -- Decided January 24, 1966.

Before Judges Goldmann, Foley and Collester.

Mr. Louis M. Turco argued the cause for appellant.

Mr. Arthur J. Sills, Attorney General, attorney
(Mr. Avrom J. Gold, Deputy Attorney General, on the
brief).

PER CURIAM

Appeal from Director's decision in Silver Dollar Cafe v. Newark, Bulletin 1623, Item 2. Director affirmed. Opinion not approved for publication by the Court Committee on opinions.

3. APPELLATE DECISIONS - SILVER DOLLAR CAFE v. NEWARK.

Silver Dollar Cafe (a corp.),)

Appellant,)

v.)

On Appeal

Municipal Board of Alcoholic Beverage Control of the City of Newark,)

SUPPLEMENTAL ORDER

Respondent.)

Louis M. Turco, Esq., Attorney for Appellant
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for Respondent

BY THE DIRECTOR:

On May 14, 1965 I entered Conclusions and Order herein affirming respondent's denial of renewal for 1964-65 of appellant's plenary retail consumption license for premises 264 Mulberry Street, Newark, and vacating my order extending the term of appellant's 1963-64 license until the determination of appellant's appeal from such denial. Silver Dollar Cafe v. Newark, Bulletin 1623, Item 2.

On appeal from my order to the Appellate Division, my order was stayed pending determination of that appeal. Thus the appellant has continued to operate its licensed business under its 1963-64 license, by virtue of my extension of the license, during the pendency of the appeal to the Appellate Division.

On January 24, 1966 my order was affirmed by the Appellate Division (Silver Dollar Cafe v. Division of Alcoholic Beverage Control and Newark, Docket A-780-64, not officially reported, recorded in Bulletin 1665, Item 2) and mandate on affirmance was received on February 7, 1966. Hence my previous order of May 14, 1965 may now be reinstated.

Accordingly, it is, on this 8th day of February, 1966,

ORDERED that the action of the respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed. It is further

ORDERED that my order entered on November 23, 1964, extending the term of appellant's 1963-64 license pending determination of the appeal herein, be and the same is hereby vacated, effective immediately.

JOSEPH P. LORDI,
DIRECTOR

4. APPELLATE DECISIONS - ROCKLEIGH FIELD CLUB, INC. v. ROCKLEIGH.

Rockleigh Field Club, Inc.,)	
)	
Appellant,	)	On Appeal
v.)	
	)	CONCLUSIONS
Mayor and Council of the	)	and
Borough of Rockleigh,	)	ORDER
)	
Respondent.)	
-----)	

Losche & Losche, Esqs., by Kent A. Losche, Esq., Attorneys for Appellant.
 Logan and Logan, Esqs., by William E. Logan, Esq., Attorneys for Respondent.
 BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of respondent in imposing special conditions on its plenary retail consumption license for the 1964-65 licensing year prior to the issuance thereof to appellant for premises described as "Portion of owned premises at Paris Avenue, Rockleigh, New Jersey", and also from the action of respondent in imposing the identical conditions on the renewal of appellant's license for the 1965-66 licensing year.

The resolution, passed May 24, 1965, granting the said license reads as follows:

"WHEREAS, the Mayor and Council of the Borough of Rockleigh, Bergen County, New Jersey, acting as the Borough Municipal Licensing Authority for the purpose of considering applications for a plenary retail consumption license under Borough Ordinance I-65-1, has decided, (Councilman LoCarni not participating and having absented himself from all meetings wherein said applications have been considered), to grant conditionally the application of the Rockleigh Field Club, Inc., for said license for the period ending June 30, 1965;

"WHEREAS, the Rockleigh Field Club, Inc., and its predecessor, Rockleigh Field Club, a partnership, has been operating recreation facilities at its premises consisting of approximately five acres of land at Paris Avenue, Rockleigh, since 1957, and on an additional approximately four-and-one-half acres of land since 1961;

"WHEREAS, it is the desire of the Mayor and Council to insure that activities hereafter to be conducted upon said premises shall comply with the applicable zoning ordinances of the Borough of Rockleigh;

"WHEREAS, it is the opinion of the Mayor and Council that the permitted uses of the said premises under the said zoning ordinances and the Laws of the State of New Jersey applicable thereto do not include, inter alia, the use, leasing or rental of all or a portion of the facilities thereon to other than bona fide members of the Rockleigh Field Club and bona fide guest of such members.

"NOW, BE IT RESOLVED, BY THE MAYOR AND COUNCIL OF THE BOROUGH OF ROCKLEIGH, THAT:

"1. The application of the Rockleigh Field Club, Inc., for a plenary retail consumption license MOC-1 under Ordinance 1-65-1 for the balance of the year July 1, 1964 to June 30, 1965, be granted; and

"2. The following conditions shall be attached to and made a part of said license, compliance therewith being a continued condition of its being retained by the licensee:

"A. The licensee shall at no time directly or by implication advertise in any media of advertising that all or a portion of its facilities or services are available for use, lease, rent or hire on an occasional basis, or are available to others than bona fide members of the licensee or bona fide guests of such bona fide members.

"B. The licensee shall at no time lease rent or hire or permit the use of all or a portion of its facilities or services to or by others than bona fide members of the licensee or bona fide guests of such bona fide members.

"C. During such times as the licensee shall sell, serve or permit the consumption of alcoholic beverages upon the licensed premises, the licensee shall maintain a daily list of all persons upon the licensed premises, identifying as to each such person whether the same is a bona fide member of the licensee or a bona fide guest of such bona fide members, and if the latter, the name of such member, each of which lists shall be retained by the licensee for a period of six months after the date thereof, and copies of which shall be made available to and given to the Mayor and Council upon request therefor.

"D. During the first ten days of each month hereafter, of the term of this license, the licensee shall mail to the Mayor and Council a list of the members of the licensee as of the last day of the next preceding month, and if there shall be more than one class of membership, a description of such class of membership and an identification of the class of membership of each such member."

Appellant admits acceptance of the said conditional license under protest, but contends that the conditions inserted by respondent in the license are invalid.

The only question to be resolved is whether the respondent was justified in imposing the special conditions in appellant's plenary retail consumption license.

The record herein discloses that on December 30, 1957 appellant was incorporated under and by virtue of Title 14 of the General Corporation Act of New Jersey and, among other things, listed various objects. The one which is pertinent to the matter now under consideration is as follows:

"To build, lease, rent or otherwise occupy or possess a club, country club, association, swimming pool or otherwise, and all matters or activities necessary or incidental thereto, for the purpose of selling, leasing, renting or permitting the use thereof and its facilities by persons, associations or otherwise, as a private club, public club or otherwise, or in any other manner, and on such terms and conditions as may be laid down by this corporation, together with any other matter or business necessary or incidental thereto."

R.S. 33:1-12(1) provides that the holder of a plenary retail consumption license "shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises...."

In Re Smith, Bulletin 131, Item 4 (where a plenary retail consumption license was issued by the East Brunswick Township Committee to Lawrence Brook Country Club), former Commissioner Burnett ruled that "The Township Committee does not have the authority to restrict sales under plenary retail consumption licenses to club members and their friends." Furthermore, he ruled that the local issuing authority "may not issue licenses in a manner which would curtail the statutory privileges."

In 48 C.J.S. 114, p. 232, it is stated:

"The licensing authority has no power to insert in a license any restriction, limitation, or condition which would be repugnant to the existing statutes, or in excess of the conditions which they impose."

Cited therein is Commonwealth v. Spence, 79 A. 775, 230 Pa. 571, 31 L.R.A., N.S., 376.

It is apparent that the respondent attempted by inserting the special conditions in appellant's plenary retail consumption license to limit the privileges thereof to those of a club license in derogation of the statute.

Respondent contends that the 1960 zoning ordinance of the Borough limits the licensee's use of its premises and buildings to "Private swimming club limited to seasonal members and their personal guests" A licensee cannot operate without complying with the law. However, the obtaining of relief from a zoning restriction is not a condition precedent to the issuing of a liquor license. See Lubliner v. Bd. of Alcoholic Bev. Con. v. Paterson et als., 59 N. J. Super. 419 (App.Div. 1960), reprinted in Bulletin 1325, Item 1; aff'd id. nom. 33 N.J. 428, reprinted in Bulletin 1365, Item 1.

In view of the fact that respondent lacked authority to impose the special conditions in the appellant's license, it is recommended that said conditions be disapproved.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report were filed by the attorneys for the respondent, and argument in answer to the exceptions was filed by the attorneys for appellant. The exceptions contend that "the report fails to come to grips with the principal issue." The exceptions continue:

"That issue is whether the Borough acted within the lawful discretion authorized it under R.S. 33:1-32. We think it is significant that the report does not mention this section of the statute. In fact, the report phrases the issue thus:

'The only question to be resolved is whether the respondent was justified in imposing the special conditions ...' (P. 2)."

The Hearer might well have cited the section but he was not constrained to do so. R.S. 33:1-32 is the only section of our State Alcoholic Beverage Law concerning special conditions.

The exceptions continue:

"The report then went on to conclude that:

A. One of the objects ('public club or otherwise') set forth in the licensee's corporate charter appears to conflict with the conditions. (P. 3).

B. A municipal licensing authority has no power to restrict a plenary retail consumption license to the limited uses permitted club licensees. (Pp. 3-4).

C. Relief from a zoning restriction cannot be a condition precedent to the granting of a license. (P. 4)."

The exceptions then submit that the appellant's corporate charter has absolutely no connection with this proceedings:

"The charter is a contract between the corporation and its stockholders, intersese, and if there is a conflict between the charter and any applicable law, the charter must yield. Furman v. Jefferson Lake Sulphur Co., 36 N.J. 577 (1962)."

On this point I agree that the corporate charter has no bearing here.

Then, pointing out that the Borough's zoning ordinance limits the general use of the premises in question "to activities which in the field of liquor regulation are more closely associated with club licenses than with plenary retail consumption licenses", the exceptions continue:

"When the Borough, therefore, in its discretion decided to grant the application ... it was not by any means attempting through the conditions 'to limit the privileges (of the plenary retail consumption license) to those of a club license in derogation of the statute.' ... If, for example, the Borough had received a plenary retail consumption license application for premises in an area of the town zoned solely for residential use, could it have refused the application solely on the ground that there was no lawful way to conduct a business in that zone? We think the answer to that question has to be 'yes'. Under these circumstances, when the application was for premises in the particular zone in question, the Borough concluded that the applicant was qualified for the license provided its use of the premises was consistent with the zoning ordinance."

The exceptions continue:

"Furthermore, as we have pointed out in our earlier briefs, even if these conditions were not attached to the license, it would still be incumbent upon the applicant to comply with the zoning ordinances of the Borough or suffer possible suspension or revocation under R.S. 33:1-31 (h.). As is well known, this part of the Alcoholic Beverage Law lists 'any violation of any ordinance ... of any ... governing body.' as a basis for suspension or revocation. If the

Borough were to proceed under this section of the statute, the matter might once again be squarely before the Director on an appeal. What could be fairer to the applicant in restricted premises than for it to know initially that the Borough, while granting the license, intends to enforce its other laws to which the applicant is also subject. There is nothing unusual about our activity being subject to two or more sets of laws at the same time.

"Finally, we think the Lubliner case is not at all applicable to this proceeding.. There, there was an unconditional transfer to a place which may or may not have been zoned against tavern use. The objectors to that exercise of municipal discretion were told by the Appellate Division that a variance or other relief was not necessary as a condition precedent to the granting of the transfer. In the instant proceeding the application has been granted. Petitioner has not been told that it must first seek a variance before using the license. The only issue is whether the Borough has acted reasonably and within its discretion in advising the applicant that it will require compliance with all applicable law as a condition of the granting of the license."

We have not construed R.S. 33:1-31(h) as contemplating ordinance violations other than alcoholic beverage ordinance violations; and I am not aware of a New Jersey municipality's having attempted to suspend or revoke an alcoholic beverage license for violation of a zoning ordinance or of any other ordinance other than one directly concerning alcoholic beverages. In that connection I quote from the Opinion of the Supreme Court, delivered by Justice Jacobs, in Lubliner v. Board of Alcoholic Beverage Control, Paterson, 33 N.J. 428, at p. 435:

"... the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available. See Garrou v. Teaneck Tryon Co., 11 N.J. 294 (1953)."

In Garrou, the relief indicated was by obtaining an injunction against violation of a zoning ordinance.

Lubliner is not directly in point on the facts. It is, however, firm on the legal point that a license or license transfer may lawfully be granted without conditions imposed in the grant, albeit the zoning ordinance may prohibit operation under the license at the particular location. If appellant had refused to accept the license with the conditions attached, respondent might have adopted a resolution rescinding the conditional grant and denying the application, whereupon appellant might have taken an appeal from the denial within thirty days following notification of such denial. In that posture the issue on appeal would have been the reasonableness or unreasonableness of the denial. In the present posture appellant has accepted the license under protest, the issue on the appeal being the validity or invalidity of the conditions. In practical effect the appeal is taken as from denial of application for a plenary retail consumption license, the grant having been of a plenary retail consumption license in name only -- grant of a license to permit operation strictly and solely as a club licensee with the conditions to that effect imposed by respondent as special conditions under R.S. 33:1-32, pursuant to which section the conditions have no binding and enforceable effect (under R.S. 33:1-32) unless and until approved by the State Commissioner (now State Director).

I have carefully considered the record herein, including the transcript of the testimony, the exhibits, the briefs on behalf of appellant and respondent, the reply brief for appellant, the answering brief for respondent, and the exceptions to the Hearer's Report and the answer thereto.

The single matter here in issue is the validity or invalidity of the special conditions. I endorse the recommendation of the Hearer. I find and conclude that the special conditions are in derogation of law and they are, therefore, hereby disapproved. Such disapproval standing, the special conditions are unenforceable under R.S. 33:1-32; but my decision herein in no way purports to authorize or permit operation by appellant in contravention of the Borough's zoning ordinance. Lacqua v. Englewood, Bulletin 1657, Item 1.

Accordingly, it is, on this 7th day of February, 1966,

ORDERED, the special conditions imposed by respondent Mayor and Council being disapproved, that respondent's action purporting to impose the conditions be and the same is hereby reversed.

JOSEPH P. LORDI,
DIRECTOR

5 NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1965 TO DECEMBER 31, 1965 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 57 ISSUED BY THE DIRECTOR PURSUANT TO R.S.33:1-20)

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club	Limited Retail Distribution		Seasonal Retail Consumption		Licenses Expired	Licenses Surrendered	Licenses in Effect	Total Fees Paid	
	No. Issued	Fees Paid	No. Issued	Fees Paid		No. Issued	Fees Paid	No. Issued	Fees Paid					No. Issued	Fees Paid
Atlantic	485	\$ 200,310.00	75	\$ 28,225.00	29	\$ 2,470.00						589	\$ 231,005.00	
Bergen	814	326,876.85	301	91,322.00	147	13,580.00	50	\$ 2,419.50	5	\$ 1,398.75	5	1312	435,597.10	
Burlington	199	92,169.00	43	14,410.00	51	7,025.00	1	50.00				294	113,654.00	
Camden	457	225,569.19	85	35,335.00	80	7,930.00			1	450.00	1	622	269,234.19	
Cape May	138	77,000.00	13	4,700.00	17	2,200.00						168	83,900.00	
Cumberland	80	41,100.00	15	4,200.00	32	4,250.00						127	49,550.00	
Essex	1291	737,320.82	348	210,805.48	94	13,025.00	26	1,300.00	2	1,500.00	1	1760	963,951.30	
Gloucester	109	39,460.00	15	3,845.00	22	2,020.00						146	45,325.00	
Hudson	1464	663,781.24	298	122,400.00	80	9,532.28	60	2,550.00				1902	798,263.52	
Hunterdon	78	28,880.00	14	8,168.00	14	1,500.00						106	38,548.00	
Mercer	421	262,500.00	51	22,510.00	62	8,850.00			1	111.78	1	534	293,971.78	
Middlesex	632	319,605.34	88	30,155.00	123	10,409.11	4	200.00			1	846	360,369.45	
Monmouth	547	265,375.00	125	44,400.00	63	6,741.03	10	492.00	25	12,390.53	25	745	329,398.56	
Morris	361	150,494.95	105	43,359.00	73	6,685.65	12	600.00	4	1,290.00	4	551	202,429.60	
Ocean	192	105,411.46	50	22,147.00	38	4,400.00						280	131,958.46	
Passaic	849	352,412.98	170	52,685.00	50	5,775.00	7	350.00				1076	411,222.98	
Salem	50	22,430.00	8	1,640.00	19	1,625.00						77	25,695.00	
Somerset	190	89,433.75	41	12,975.00	36	4,200.00						267	106,608.75	
Sussex	162	45,765.00	20	3,995.00	14	815.00	1	50.00	1	225.00	1	197	50,850.00	
Union	551	319,146.00	144	74,176.00	88	9,435.00	26	1,280.00				809	404,037.00	
Warren	146	42,860.00	20	4,435.00	29	2,950.00			2	338.40	2	195	50,583.40	
Total	9216	4,407,901.58	2029	835,887.48	1161	125,418.07	197	9,291.50	41	17,704.46	40	1	12603	5,396,203.09

PAGE 10 Middlesex Co. 1 CB Cancelled

Joseph P. Lordi
Director

February 14, 1966

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

In the Matter of the Seizure	)	Case No. 11,587
of a quantity of alcoholic)	
beverages and a 1960 Buick con-	)	On Hearing
vertible on October 21, 1965 at)	
a parking lot at the Municipal	)	Conclusions
Building, Westfield Avenue and	)	and
Wilson Drive, in Clark Town-	)	Order
ship, County of Union and State)	
of New Jersey.)	

Walter S. Pryga, Esq., appearing for Robert Lowell Crawford.
 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 the provisions of R.S. 33:1-66 and State Regulation No. 28 to determine whether a quantity of alcoholic beverage and a 1960 Buick convertible, more particularly described in an inventory hereinafter referred to, made part hereof, and marked Schedule "A", seized on October 21, 1965 at a parking lot at the Municipal Building, Westfield Avenue and Wilson Drive, Clark Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Robert L. Crawford, represented by counsel, appeared and sought return of the motor vehicle.

No one opposed forfeiture of the alcoholic beverage.

The Division's file, which was admitted into evidence with the consent of counsel for the claimant, discloses the following facts: On October 20, 1965 at 7:50 p.m., Robert L. Crawford was apprehended by local police officers in front of the Municipal Building on Westfield Avenue and Wilson Drive, Clark Township, on a charge of driving under the influence of liquor. A search of his motor vehicle made on October 21, 1965, with the consent of Crawford, disclosed a half-gallon of "moonshine" whiskey therein.

Crawford readily admitted to the local police and ABC agents on October 21, 1965 that this "moonshine" was one of several purchases which he had made from an individual, later identified as John Cox, at a diner in Clark Township and that the "moonshine" whiskey then in the car represented part of the last purchase made by him.

Crawford executed a voluntary, signed statement in which he admitted the purchase and possession of the said whiskey and stated that he purchased the same for his own personal use. The seizure of the whiskey and the car was thereupon adopted by agents of this Division on October 21 and Crawford was arrested, charged with the transportation and possession of illicit (untaxed) alcohol in violation of R.S. 33:1-50(a) and (e), contrary to R.S. 33:1-2.

He was arraigned in the Clark Township Municipal Court on the said charges.

On October 26, 1965 an analysis by the Division chemist of the contents of the jar established that it was an alcoholic beverage fit for beverage purposes with an alcoholic content by volume of 46.6%.

The records of this Division disclose that no license or special permit of any kind whatsoever had ever been issued to Crawford authorizing the possession or transportation of alcoholic beverages.

Reports of the ABC agents and other documents in the file, which include the affidavit of mailing, the affidavit of publication, the chemist's report and the voluntary signed statement of Crawford setting forth the said facts, were also admitted into evidence.

The seized whiskey is illicit because it contained no tax stamp and was admittedly "moonshine" whiskey. R.S. 33:1-1(i); R.S. 33:1-88. Such illicit whiskey and the motor vehicle in which the said whiskey was 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; Seizure Case No. 11,516, Bulletin 1645, Item 4; Seizure Case No. 10,759, Bulletin 1469, Item 5.

Crawford, the registered owner of the seized motor vehicle, testifying in support of his claim for the return of the motor vehicle, readily admitted the above facts; that he purchased this "moonshine" whiskey on October 19, 1965; and the same was placed by the seller in the trunk of his motor vehicle. He further admitted transporting the "moonshine" whiskey and stated that his motor vehicle broke down in front of police headquarters on October 20th at which time he was apprehended by the police. He added that this "moonshine" whiskey was purchased for his own personal consumption and had no tax stamps.

Counsel for the claimant argues that since the claimant purchased the "bootleg" whiskey for his own personal use and was fully cooperative with the authorities, that the motor vehicle should be returned to him.

The Director has discretionary authority to return property subject to forfeiture to a person who establishes to his satisfaction that he acted in good faith and has unknowingly violated the provisions of Section R.S. 33:1-66(e). However, when a person purchases "bootleg" whiskey, the element of good faith is absent, regardless of the fact that the same was purchased for the purpose expressed and irrespective of the measure of claimant's cooperation. Since it is obvious from the testimony and admission of the claimant that he possessed illicit liquor, knew that the said motor vehicle was used and intended to be used in unlawful liquor activity, the Director is without discretionary authority to return the said property subject to forfeiture. Seizure Case No. 10,646, Bulletin 1435, Item 5; Seizure Case No. 8858, Bulletin 1080, Item 10; Seizure Case No. 8742, Bulletin 1060, Item 11; Seizure Case No. 11,557, Bulletin 1663, Item 7.

It is therefore recommended that claimant's application for return of the motor vehicle be denied, and that an order be entered forfeiting the said motor vehicle and the alcoholic beverages. R.S. 33:1-1(x & y); R.S. 33:1-2; R.S. 33:1-66.

Conclusions and Order

No exceptions were taken to the Hearer's Report pursuant to Rule 4 of State Regulation No. 28.

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

Accordingly, it is, on this 8th day of February, 1966,

DETERMINED and ORDERED that the said 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 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

SCHEDULE "A"

- 1 - 1/2 gallon jar of illicit alcoholic beverages
- 1 - 1960 Buick convertible, Serial No. G-3021853; N.J. Registration JHH-315.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 The Garden House, Inc.,)
 768 Stuyvesant Avenue)
 Lyndhurst, New Jersey,)
)
 Holder of Plenary Retail Consumption License C-17, issued by the Board of Commissioners of the Township of Lyndhurst.)

CONCLUSIONS
and
ORDER

 Frank Piscatella, 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 October 29, 1965, it sold mixed drinks of alcoholic beverages to five minors, one age 18 and four age 19, in violation of Rule 1 of State Regulation No. 20, and (2) in its current application for license it failed to disclose its record of prior license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective August 25, 1963, for sale to minors, the subject of the second charge.

The license will be suspended on the first charge for twenty-five days (cf. Re Morris, Bulletin 1447, Item 8; Re Poodle Club, Inc., Bulletin 1525, Item 5) and on the second charge for ten days (Re Turner, Condon and Brophy, Bulletin 1650, Item 3), to which will be added ten days by reason of the record of suspension of license for similar violation (sale to minors) occurring within the past five years (Re Jervic, Inc., Bulletin 1603, Item 6) or a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 9th day of February, 1966,

ORDERED that Plenary Retail Consumption License C-17, issued by the Board of Commissioners of the Township of Lyndhurst to The Garden House, Inc., for premises 768 Stuyvesant Avenue, Lyndhurst, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Wednesday, February 16, 1966, and terminating at 2 a.m. Monday, March 28, 1966.

JOSEPH P. LORDI,
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Meyer's Tavern (A Corp.))
t/a Meyer's Tavern)
294 Belmont Avenue)
Newark, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-445, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)
-----)

Licensee, by Meyer Porbin, President, Pro se.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, November 7, 1965, it permitted removal of an opened half-pint bottle of liqueur from its licensed premises, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for twenty-five days effective August 15, 1957, for similar violation and permitting foul language on the licensed premises (Re Meyer's Tavern, Bulletin 1188, Item 4) and by the municipal issuing authority for sixty days effective November 2, 1959 for similar violation (Meyer's Tavern v. Newark, Bulletin 1271, Item 2; Bulletin 1304, Item 1; Bulletin 1312, Item 4). In addition, the license then held by Meyer and Mollie Porbin (Meyer Porbin being president and 50% stockholder of the present corporate licensee) for the same premises was suspended by the municipal issuing authority for fifteen days effective June 23, 1947, for sale to minors and immoral activity, and for ten days effective March 22, 1954, for sale during prohibited hours in violation of State Regulation No. 38.

The prior record of suspension of license for dissimilar violation in 1947 occurring more than five years ago and the suspension for similar violation in 1954 occurring more than ten years ago disregarded, but the prior record of two suspensions of license for similar violation in 1957 and 1959 occurring more than five but less than ten years ago considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Willow Cafe & Restaurant, Inc., Bulletin 1631, Item 10; Re Pawlowski's Tavern, Inc., Bulletin 1617, Item 7.

Accordingly, it is, on this 8th day of February, 1966,

ORDERED that Plenary Retail Consumption License C-445, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Meyer's Tavern (A Corp.), t/a Meyer's Tavern, for premises 294 Belmont Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, February 15, 1966, and terminating at 2:00 a.m. Monday, March 7, 1966.

JOSEPH P. LORDI,
DIRECTOR

9. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #273)	
In the Matter of a Petition to Lift)	
the Automatic Suspension of Plenary)	
Retail Distribution License D-1,	)	On Petition
issued by the Borough Council of)	
the Borough of Penns Grove to	)	O R D E R
)	
Zeb V. Mauney (and Lois Pauline Leonard)	
t/a Mauney's Liquor Store)	
49-51 South Broad St.)	
Penns Grove, N. J.)	

Adamo & Pagliughi, Esqs., Attorneys for Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on October 11, 1965, Zeb V. Mauney, one of the licensees-petitioners, was fined \$200 and \$10 costs in the Penns Grove Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on October 2, 1965 in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the municipal issuing authority has suspended the license for ten days effective January 3, 1966, after the licensees' confessional plea to a charge in disciplinary proceedings alleging the same sale to the minor. It appearing that the suspension has been served, I shall lift the automatic suspension. Re Shevitz, Bulletin 1603, Item 14.

Accordingly, it is on this 10th day of February, 1966,

ORDERED that the statutory automatic suspension of said license D-1 be and the same is hereby lifted, effective immediately.

JOSEPH P. LORDI,
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - FURNISHING CASH REBATE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 L. D. R. Corporation
 t/a Boulevard Bar & Grill
 293 Plane Street
 Newark, N. J.
 Holder of Plenary Retail Consumption License C-871, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

CONCLUSIONS and ORDER

Nicholas Scalera, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

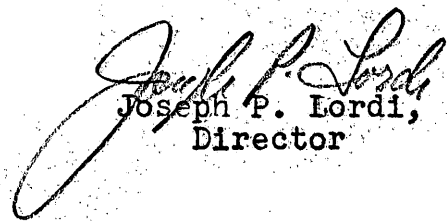
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 23, 1965, it furnished a cash rebate in connection with the sale of a case of whiskey, in violation of Rule 20 of State Regulation No. 20.

Absent prior record and considering the violation as equivalent to a sale below filed price (Re Cherlin, Bulletin 1549, Item 4), the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Cf. Re City Hall Wines & Liquors, Inc., Bulletin 1615, Item 7.

Accordingly, it is, on this 14th day of February, 1966,

ORDERED that Plenary Retail Consumption License C-871, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to L. D. R. Corporation, t/a Boulevard Bar & Grill, for premises 293 Plane Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, February 21, 1966, and terminating at 2:00 a.m. Saturday, February 26, 1966.


 Joseph P. Lordi,
 Director