

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

BULLETIN 1821

October 22, 1968

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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 1821

October 22, 1968

1. APPELLATE DECISIONS - SUSSMAN v. PATERSON.

Ida Sussman, t/a Ike's Tavern,)	
)	
Appellant,)	On Appeal
v.)	
)	O R D E R
Board of Alcoholic Beverage Control for the City of Paterson,)	
Respondent.)	

Richard E. Gruen, Esq., Attorney for Appellant		
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent		

BY THE DIRECTOR:

Appellant appeals from denial on June 26, 1968 by respondent of her application for renewal of plenary retail consumption license for premises 581 Main Street, Paterson, for the license year 1968-69.

Prior to hearing, appellant's attorney advised me that the appeal was withdrawn.

Accordingly, it is, on this 11th day of September 1968,

ORDERED that the appeal herein be and the same is hereby dismissed and the order entered herein extending the 1967-68 license pending determination of the appeal be and the same is hereby vacated.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - HYMAN v. HOWELL and B.P.I., INC.

Aaron Hyman, t/a Hyman's Liquor Store,)
)
 Appellant,)
)
 v.)
)
 Township Committee of the) On Appeal
 Township of Howell, and B.P.I.,)
 Inc.,) O R D E R
)
 Respondents.)

 Novins and Novins, Esqs., by Michael E. Levin, Esq., Attorneys
 for Appellant
 Giordano, Giordano & Halleran, Esqs., by Robert V. Paschon, Esq.,
 Attorneys for Respondent

BY THE DIRECTOR:

Appellant appeals from the grant on July 8, 1968
 by respondent Township Committee of transfer of a plenary retail
 distribution license to respondent B.P.I., Inc. and to premises
 2323 Highway Number 9, Howell Township.

Prior to hearing, appellant's attorneys advised me that
 the appeal was withdrawn.

Accordingly, it is, on this 13th day of September
 1968,

ORDERED that the appeal herein be and the same is
 hereby dismissed.

JOSEPH M. KEEGAN
 DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE
 SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)
)
 Bernard Flaherty & Evelyn Flaherty)
 t/a Flaherty's) CONCLUSIONS
 130 West Side Avenue) AND
 Jersey City, New Jersey) ORDER
)
 Holders of Plenary Retail Consumption)
 License C-8, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Jersey City.)
 -----)
 Licensees, by Bernard Flaherty, Pro se
 Louis F. Treole, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges (1) and (2) alleging that on May 22 and June 20, 1968 they permitted the acceptance of 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, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Rispoli, Bulletin 1809, Item 4.

Accordingly, it is, on this 12th day of September 1968,

ORDERED that Plenary Retail Consumption License C-8, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Bernard Flaherty & Evelyn Flaherty, t/a Flaherty's, for premises 130 West Side Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Thursday, September 19, 1968, and terminating at 2 a.m. Wednesday, November 13, 1968.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Wilfred Keenan
3523 Kennedy Blvd.
Jersey City, New Jersey
Holder of Plenary Retail Consumption License C-93 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City

)
)
) CONCLUSIONS
) and
) ORDER

Edward J. Lynch, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on August 17, 1968, he (1) sold alcoholic beverages to six minors, one age 17, four age 18 and one age 19 (two six-packs of beer to one of the 18-year-olds and drinks of beer to the other five minors), in violation of Rule 1 of State Regulation No. 20, and (2) sold the six-packs of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license for premises 7 Bleecker Street, Jersey City, by the Director for five days effective October 10, 1960, for permitting gambling at cards. Re Keenan, Bulletin 1362, Item 4.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended on the first charge for thirty days (cf. Re Robinson, Bulletin 1630, Item 10) and on the second charge for fifteen days (Re Lipka, Bulletin 1809, 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 11th day of September, 1968,

ORDERED that Plenary Retail Consumption License C-93, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Wilfred Keenan for premises 3523 Kennedy Boulevard, Jersey City, be and the same is hereby suspended for forty (40) days, commencing* at 2:00 a.m. Wednesday, September 18, 1968, and terminating at 2:00 a.m. Monday, October 28, 1968.

JOSEPH M. KEEGAN
DIRECTOR

*By order dated September 12, 1968, the suspension was deferred to commence at 2:00 a.m. Monday, September 16, 1968 and terminating at 2:00 a.m. Saturday, October 26, 1968.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN UNLICENSED VEHICLE - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED - CLAIM OF OWNER FOR RETURN OF MOTOR VEHICLE REJECTED ABSENT GOOD FAITH.

In the Matter of the Seizure :
on February 7, 1968 of a quantity :
of alcoholic beverages and a 1964 : On Hearing
Chrysler sedan at the 39 Mile Post :
(northbound), New Jersey Turnpike, : CONCLUSIONS
in Mount Laurel Township, County : and
of Burlington and State of New : ORDER
Jersey. :

.....
Royal Smithson, claimant, Pro se
Royal Five Country Club, Inc. and Sportsman Social Club, Inc.,
by Charles Wallace, president.
I. Edward Amada, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 806 containers of alcoholic beverages and a Chrysler sedan, described in a schedule attached hereto, made part hereof and marked Schedule "A", seized on February 7, 1968 at the 39 Mile Post (northbound), New Jersey Turnpike, Mount Laurel Township, New Jersey constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, the registered owner of the automobile, Marion Smithson, failed to appear, although duly served with a Notice of Hearing.

However, Royal Smithson, her uncle, who was the driver of the said vehicle, appeared and entered a claim on her behalf for the return of the said vehicle.

Charles Wallace, appearing on behalf of the Royal Five Country Club, Inc., entered a claim in its behalf for the return of the alcoholic beverages.

The Division's file, which was submitted into evidence with the consent of the claimants herein, established the following facts: On February 7, 1968 at about 2:30 P.M. a New Jersey State trooper stopped the motor vehicle in question on the New Jersey Turnpike at Mount Laurel Township for the purpose of making a routine credentials check. The vehicle was being operated by Royal Smithson and bore license plates 6690-JH registered in the name of Marion Smithson of Bronx, New York. Upon questioning, Smithson stated that he was transporting tax-paid whiskey and voluntarily displayed the same in the trunk of the said vehicle. He produced an invoice for 18 cases of whiskey. The invoice was in the name of "Taylor" but had no first name, or address, nor did it contain the destination to which the said whiskey was alleged to be delivered. The trooper thereupon took custody of the motor vehicle and the whiskey.

At the Moorestown Barracks, Smithson stated that he had gone to Washington to purchase the alcoholic beverages and was delivering the same to two clubs in New York, namely, the Royal Five Country Club, Inc. and the Walla-Haji Social Club. Thereupon, the motor vehicle and the whiskey, consisting of 806 one-half pint containers was turned over and adopted by agents of this Division.

The records of this Division do not disclose any license or permit issued to Smithson, Taylor, the Royal Five Country Club, Inc., the Walla-Haji Social Club, or to Marion Smithson, authorizing the transportation of the said alcoholic beverages in the said automobile, nor did the motor vehicle contain any transit insignia affixed thereto or inscription in lieu of such insignia painted thereon as required by Rule 2 of State Regulation No. 18.

Smithson was thereupon arrested, charged with the transportation of alcoholic beverages in excess of the legal amount in violation of R.S. 33:1-2 and possession of alcoholic beverages without a license, contrary to R.S. 33:1-50. He was released in bail pending arraignment in the Mount Laurel Township Municipal Court.

The report of chemical analysis of one of the seized bottles of Seagram's Seven Crown Whiskey by the Division chemist establishes that it is an alcoholic beverage, fit for beverage purposes, with alcohol by volume of 43.5%.

The file of this Division includes the affidavit of mailing, the affidavit of publication, the inventory and the chemist's report.

Royal Smithson, testifying in support of the claim of Marion Smithson for the return of the motor vehicle gave the following account: Although Marion Smithson was duly notified to appear at this hearing, she did not consider it necessary to come to this hearing. Marion Smithson is his niece and lives in the same

building. She is the owner of the motor vehicle and he believes that there is a lien on the said vehicle but he does not know the name of the finance company which may have such lien. He was directed to supply the name within a reasonable time after the date of the hearing, but up to the time of this report, has failed to communicate with this Division with respect thereto, or supply said information.

Miss Smithson does not have a driver's license; Smithson uses the car at least two or three times a week, driving her to work and thereafter using the car all day. He asserts that she did not know that he was transporting whiskey and further, she never inquired as to what use he made of the car.

On the date of the seizure, he drove the car to Washington and purchased alcoholic beverages from a retail licensee. The licensee didn't inquire as to his true name, but merely put down the name, "Taylor", and no address. He explained that he purchased this whiskey for a club in New York and he was to be re-imbursed when the delivery was made. He admitted that he had no transportation permit authorizing the transportation of this liquor through New Jersey nor did his vehicle have any transit insignia affixed thereto or the necessary inscription painted thereon. He also admitted that he did not have a permit from New York which authorized the transportation of this liquor into that State. Finally, he admitted that he was convicted on September 9, 1957 on the charge of unlawful transportation of alcoholic beverages in New Jersey and was fined \$250.00

Charles Wallace, testifying in support of the claim for the return of alcoholic beverages on behalf of the Royal Five Country Club, Inc. gave the following account: He is the president of this social club located in the Bronx, New York and he owns 175 of the 200 shares of stock issued and outstanding. He is also the president of the Sportsman's Social Club, Inc. Smithson called and offered to deliver these $\frac{1}{2}$ pint bottles of alcoholic beverages. He accepted the offer to "bring as much as he could", and the club would re-imburse him. He admitted that he did not have any authorization from New York to purchase such whiskey from out of state but was advised by an unidentified agent of the New York Liquor Authority that 'If you tell us you bring it we will give you a permit to bring it in.'

No permit was obtained by him nor has such document ever been produced up to the date of this report. He explained that this liquor is distributed by the case to club members who deposit money in the club treasury and the transactions are charged to their account. Thus, he reasons, no actual sales are made to the members. The members are charged for his actual cost plus expenses, including transportation charges.

In order for a claimant to obtain the return of the property, she must establish her ownership of the said vehicle and that she did not know nor have any reason to believe that the said vehicle would be used in unlawful liquor activity. Rule 3 (b) of State Regulation No. 28; R.S. 33:166(e). The testimony in this case in the absence of Marion Smithson was clearly hearsay and did not, or could not, establish that she acted in good faith and had no knowledge of the unlawful use to which this vehicle was put. Under these circumstances, her claim for return of the motor vehicle must be rejected. Seizure Case No. 10,933, Bulletin 1507, Item 2; Seizure Case No. 11,156, Bulletin 1557, Item 5.

With respect to the transportation of the alcoholic beverages, it is abundantly clear that they were being transported in a motor vehicle which did not have a transportation insignia issued by the Director of this Division; the driver did not have a special permit issued by the Director authorizing such transportation; nor did the driver have in his possession an authentic document stating the bona fide names and addresses of the consignor and the consignee and the place of destination, all of which constitutes violations of the Alcoholic Beverage Law and Rule 2 of State Regulation No. 18. Thus, the transportation of such alcoholic beverages was in violation of the applicable Rule; the said whiskey and the vehicle containing the same are unlawful property and subject to seizure and forfeiture by the Director. Rule 8 of State Regulation No. 18, and R.S. 33:1-66.

I am convinced that the testimony of Smithson was entirely false. I am also not satisfied with the credibility of Wallace's testimony since it is quite apparent that he was operating a "bottle Club" without any demonstrable legal authorization. Nothing has been produced here to manifest the alleged authority from the New York State Liquor Authority permitting such importation into New York.

Accordingly, I recommend that the claims herein be denied and that an order be entered directing the forfeiture of the said Chrysler automobile and the alcoholic beverages.

Conclusions and Order

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

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

Accordingly, it is on this 13th day of September, 1968

DETERMINED and ORDERED that the claim of Marion Smithson for the return of the seized motor vehicle be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the alcoholic beverages and the 1964 Chrysler sedan, set forth in Schedule "A", attached hereto, constitute unlawful property and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66 and shall 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.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 806 - containers of alcoholic beverages
- 1 - 1964 Chrysler sedan, Serial No. 07080034,
N.Y. Registration 6690-JH.

6. STATE LICENSES - TRANSPORTATION LICENSE - APPLICATION DENIED.

In the Matter of an Application)
for Transportation License by)

Specialized Trucking Corp.)
775 Chamberlain Avenue)
Perth Amboy, New Jersey)

CONCLUSIONS

-----)
Harrison & Jacobs, Esqs., by Joseph M. Jacobs, Esq., Attorneys
for Applicant
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Applicant has filed an application for a transportation license under the provisions of R.S. 33:1-13.

In a voluntary statement given to this Division in support of the application, Mrs. Jennie Bertoline (its president) stated that the applicant intends to deliver alcoholic beverages "for American Travelers Club, Valley Stream, 88 Rockaway Ave., Long Island, N.J. The deliveries would be made to people who travel abroad and order liquor which is shipped to American Travelers, at this time the liquor is being delivered by Railroad Express. As soon as we are granted the liquor license we will get a contract from American Travelers."

Investigation by Division agents disclosed that the American Travelers Club was delivering alcoholic beverages to New Jersey residents for The House of York and York Ltd., firms which were soliciting these residents through brochures sent through the mail from outside the State. In this connection it should be pointed out that on March 18, 1968, the Director issued a notice entitled "Unlawful Solicitation of Alcoholic Beverage Orders by Out-of-State Mail Order Firms", in which he stated in part (Bulletin 1785, Item 1):

"Information received by this Division discloses that in the past few months several out-of-state mail order firms have been mailing to New Jersey residents brochures which are in effect order blanks for the purchase of alcoholic beverages to be delivered from abroad to such residents. Persons placing such order must accompany the order with advance payment. The firms soliciting these orders do not hold any license to sell alcoholic beverages in this State.

"Under the New Jersey Alcoholic Beverage Law (R.S. 33:1-1(w)), the above described activity constitutes the prohibited 'sale' of alcoholic beverages without a license. Any person who engaged in such sale is guilty of a criminal misdemeanor (R.S. 33:1-50) punishable by a fine of not less than \$100.00 and not more than \$1,000.00, or imprisonment for not less than thirty days and not more than three years, or both, and any alcoholic beverages so sold, as well as any vehicle transporting such alcoholic beverages in New Jersey, are unlawful

property subject to seizure and forfeiture
(R.S. 33:1-66).

* * * * *

"The Division has in the past warned several of these out-of-state firms of the unlawfulness of their activities. Notwithstanding these warnings, within the last three months two trucks containing large quantities of alcoholic beverages brought into New Jersey as a result of activities by these firms have been seized by this Division.

"Under the circumstances, I am hereby alerting the public to the possibility that they may be the recipients of these unlawful solicitations of orders for the purchase of alcoholic beverages and that any alcoholic beverages so ordered may be seized and forfeited, notwithstanding that they may have been paid for in advance by the purchaser. It is accordingly requested that persons receiving these brochures do not place orders for the alcoholic beverages. This will assist in stamping out this unlawful activity and will also avoid any disappointment over the loss of paid-for merchandise."

In view of the statement made by the corporate applicant's president, hearings were held on its application before this Division on March 26, 1968 and June 19, 1968, to determine whether or not such application should be approved and a license issued. Significantly, prior thereto, on December 15, 1967, a quantity of alcoholic beverages was seized by the New Jersey State Police while it was being transported from New York for delivery to New Jersey residents. A hearing under the provisions of R.S. 33:1-66 was scheduled for the same time and place as the hearing on this application in order to determine whether or not the seized alcoholic beverages and the vehicle in which they were transported were unlawful property and should be forfeited. A separate Hearer's report was prepared with respect thereto, recommending forfeiture of the said alcoholic beverages, and an order entered forfeiting the same. Re Seizure Case #11,989, Bulletin 1805, Item 6.

At the March 26 hearing it was established that William Kispert (a stockholder and member of the board of trustees of the corporate applicant) was a driver employed by the American Travelers Club and was delivering the seized alcoholic beverages to various residents in the Trenton area. Kispert did not have a New Jersey license or permit authorizing the transportation of alcoholic beverages in or through this State, nor was there any transit insignia affixed to or inscription painted on the motor vehicle in which the alcoholic beverages were being transported, as required by the Alcoholic Beverage Law.

John Bertoline, who will be administratively associated with the corporate applicant, testified that he was employed on the date of seizure as a traffic manager for American Travelers Club. He explained that American Travelers made deliveries of alcoholic beverages from New York to New Jersey on behalf of House of York and York, Ltd. He was aware that the truck did not have a transportation license or permit, but he decided to take a chance with this delivery although he knew that such deliveries were in violation of the New Jersey Law.

Several patrons of American Travelers Club who reside in the Trenton area testified, on behalf of the Division, that they had been solicited by mail by York, Ltd. or House of York and that, as a result and in response thereto, they ordered alcoholic beverages from this out-of-state company to be delivered to them.

Jennie Bertoline testified that she was the sole stockholder of this applicant and that the applicant's present intention was to deliver liquor in New Jersey for Poole's, Ltd., a Delaware corporation, but did not intend to deliver for American Travelers. She described Poole's as a Liquor importer, primarily from Antwerp, Belgium, to New York. The applicant would pick up the liquor at a New York pier for delivery to residents of New York and New Jersey. The applicant had a New York transportation license and made deliveries to New York residents.

On cross examination Mrs. Bertoline denied knowing anything about the American Travelers Club or its operation and stated that the applicant's contract was solely with Poole's. Pressed to explain her statement to the Division at the time of the filing of this application that the applicant intended to make deliveries on behalf of American Travelers Club, she asserted that American Travelers has been taken over by new operators and she has no connection at all with them. She further denied knowledge of the method of solicitation or operation of Poole's, and was unaware of the fact that it was soliciting by brochures sent through the mail the sale of alcoholic beverages to New Jersey residents. She further testified that her husband, John Bertoline, was presently employed by the applicant and that he had previously been employed as a traffic manager by the American Travelers Club. Finally, she asserted that, although she knew that Poole's shipped alcoholic beverages to residents of New Jersey, it was her belief that these transactions were lawful. She denied any knowledge of correspondence between this Division and Poole's or between this Division and her attorney questioning the lawfulness of the operation of Poole's, Ltd.

John Bertoline testified with respect to his association with the American Travelers Club and acknowledged that he authorized the deliveries of alcoholic beverages to customers in New Jersey in violation of the New Jersey law for "business reasons." He said, however, that he was unaware that House of York had no New Jersey alcoholic beverage license. He made an agreement with Poole's on behalf of the applicant for deliveries of alcoholic beverages. He assumed that the deliveries made to residents of New Jersey were legal and stated that Poole's' representative never discussed with him its method of obtaining orders from residents of New Jersey.

In view of the revised version given by Mrs. Bertoline with reference to the applicant's intended operation, namely, that it intended to operate solely as a carrier for Poole's, a continued hearing was held on June 19 pursuant to the request of the Division's attorney that a further investigation of Poole's' activities was dictated by the surprise testimony.

ABC agents testified that on March 8, 1968 a quantity of alcoholic beverages being transported in New Jersey for intended delivery to New Jersey residents was seized by township police in Franklin Township, Somerset County. The truck bore no transit insignia authorizing the transportation of alcoholic beverages in this State. It was established that the driver of the seized motor vehicle was Stanley Brecher, an employee of Essensfeld Bros., Inc., of New York City. The ABC agents seized one hundred ten

delivery slips which reflected the names of the purchasers (all New Jersey residents), some of whom had received delivery of these alcoholic beverages and some of whom delivery was about to be made, relating to the fifty-eight packages (consisting of two hundred ninety bottles of assorted liquor) found in the truck. Thus the evidence established that these were sales of alcoholic beverages made to New Jersey residents through mail solicitations carried on by unlicensed out-of-state mail order firms. More particularly, the seizure included alcoholic beverages being delivered as a result of solicitation by Poole's, Ltd. through the mail of New Jersey residents.

Witnesses called by the Division testified that they were solicited by mail by Poole's and that they ordered alcoholic beverages from Poole's. Typical of the testimony of these witnesses was that offered by Edna Schwartz who testified that she ordered alcoholic beverages upon receiving a brochure from Poole's, Ltd. by mail and identified delivery receipts to corroborate her testimony with respect to her receipt of the liquor order. When she received the brochure in the mail she filled out the order blank attached thereto and mailed the same with the requisite money order to Poole's, Ltd., Delaware Trust Building, Wilmington, Delaware. The witness added that she had received brochures and similar mail solicitation from other companies from time to time. Testimony to the same effect was given by other witnesses who received shipments from without the State to their residences in New Jersey.

No one representing Poole's, Ltd. was produced at the hearing held at the Division offices on March 26, or at the subsequent hearings on June 19 and July 2, 1968, to explain its method of operation; to deny, if it could, the out-of-state solicitation of mail orders for alcoholic beverages from New Jersey residents or the sale and delivery of the said alcoholic beverages pursuant to such solicitation. Division files show that the Director advised Poole's that such practice was considered to be unlawful and that it should cease and desist from solicitation by mail of its products to New Jersey residents. Correspondence in the file indicates that the applicant's attorney was aware of the correspondence with Poole's, Ltd.

My evaluation of the totality of the evidence in this case persuades me that the activities of Poole's, Ltd. in soliciting New Jersey residents to purchase alcoholic beverages through brochures mailed to them, and the subsequent sale of alcoholic beverages constituted unlawful alcoholic beverage activity. See R.S. 33:1-1(x). In R.S. 33:1-1(w) a "sale" of alcoholic beverages is defined in pertinent part to include "the solicitation or acceptance of an order for an alcoholic beverage." Any person who sells any alcoholic beverages without a license is guilty of a misdemeanor. R.S. 33:1-50. The records of this Division do not disclose that Poole's, Ltd. holds any license or permit to sell alcoholic beverages in New Jersey. Since I find such activity to be in violation of the Alcoholic Beverage Law, and the applicant intends to transport and deliver alcoholic beverages sold to New Jersey residents by Poole's, Ltd., the applicant would be engaging in unlawful activity.

In considering this application, as in applications for liquor licenses of all kinds, the basic operative principle applicable hereto is that no one has the automatic or inherent right to the issuance of a license either to sell or transport alcoholic beverages. Cf. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div.

1949). The decision as to whether or not such transportation license should be issued rests within the sound discretion of the Director. In determining whether or not to grant the license, the applicant's method of operation as expressed through its statements and testimony, both in the application and at the hearing herein, must be assessed. Since it is my view that the stated intention of the applicant is to deliver alcoholic beverages for Poole's, Ltd., which according to the testimony is unlawfully soliciting mail orders for alcoholic beverages from residents of New Jersey and is therefore unlawfully selling the same, such delivery by this applicant would be unlawful. It would be absurd, even ludicrous, to suggest, in view of this determination, that a license should be granted to the applicant to undertake such unlawful activity. Further, a very serious question has arisen with respect to the fitness of this applicant to hold a license in view of the testimony relating to Bertoline who will be employed as the person with the actual experience in this company.

We bear in mind the strong language of R.S. 33:1-73 that the basic philosophy and intent of the Alcoholic Beverage Law is "intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed" and of R.S. 33:1-23 that the Director shall "do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of the Alcoholic Beverage Law. Blanck v. Magnolia, 38 N.J. 484.

It must be inevitably concluded that, under the facts and circumstances herein, the applicant should not be licensed to engage in any unlawful activity. Accordingly, I recommend that its application for transportation license be denied.

Conclusions

Exceptions to the Hearer's report have been filed by the applicant challenging the finding that the activities of Poole's Ltd. are contrary to the Alcoholic Beverage Law and contending that applications for transportation licenses in this State must be granted "as a matter of course... So long as the application sets forth the information required to be disclosed therein the applicant is entitled to such a license..."

I do not agree with the applicant with respect to either of its contentions. The claim that Mrs. Schwartz was not sure how she received Poole's brochure is not borne out by the evidence. Her testimony "Maybe that was sent to somebody else" appears to refer to either another similar brochure or the further transmission of her brochure to another person, particularly since she immediately thereafter reaffirmed her prior testimony that the brochure had been mailed to her home.

In any event, it is admitted that Poole's did, in fact, mail these brochures to New Jersey residents who requested them. Although I have found that Mrs. Schwartz received an unsolicited brochure from Poole's, I also find that the solicited mailing of these brochures likewise constitutes a prohibited unlicensed sale of alcoholic beverages in this State. R.S. 33:1-2; R.S. 33:1-1(w).

Further, I find that the operation of Poole's as described by the Hearer, regardless of its lawfulness, is inimical to the public welfare. The brochures in question stress and feature a pecuniary appeal in a blatant manner calculated to induce purchases of alcoholic beverages at "bargain" prices, contrary to the philosophy of moderation and temperance adopted by the Legislature

(R.S. 33:13) and implemented by state regulation (Rule 6 of State Regulation No. 21). As a non-licensee, Poole's is not within the disciplinary control of this agency or any other issuing authority. Its brochures may find their way into the hands of minors, who need only complete the form therein to place an order for the purchase of alcoholic beverages. Poole's business should not be facilitated through the issuance to appellant of a transportation license. I shall, in the exercise of my discretion, deny the application.

Having carefully considered the entire record herein, I concur in the Hearer's findings and conclusions and adopt his recommendation. Accordingly, the application for transportation license by Specialized Trucking Corp. is hereby denied.

JOSEPH M. KEEGAN
DIRECTOR

Dated: September 12, 1968

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Rendezvous Bar, Inc.
t/a Rendezvous Bar
Southeast cor. of Beach Drive and Browning Road, Lower Township
PO Cape May, New Jersey
Holder of Plenary Retail Consumption License C-12 issued by the Township Committee of the Township of Lower

CONCLUSIONS
and
ORDER

-----)
Marvin D. Perskie, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 18, 1968, it possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Huryk & Tofil, Bulletin 1806, Item 10.

Accordingly, it is, on this 10th day of September, 1968,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Lower to Rendezvous Bar, Inc., t/a Rendezvous Bar, for premises southeast corner of Beach Drive and Browning Road, Lower Township, be and

the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. Tuesday, September 17, 1968, and terminating at 7:00 a.m. Wednesday, October 2, 1968.

JOSEPH M. KEEGAN
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - FRONT - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Forked River House, Inc.)
East Side Route 9)
Lacey Township)
PO Forked River, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-102, issued by the Township Committee of the Township of Lacey.)

Haines, Schuman & Butz, Esqs., by Harold A. Schuman, Esq.,
Attorneys for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1), (2) and (3) alleging that since May 7, 1967, George Mackres and Theodore Gussis were the undisclosed real and beneficial owners of the licensed business and the corporate stock of the licensee corporation, in violation of R.S. 33:1-25 and 52.

During the pendency of this proceeding the unlawful situation was corrected by transfer of all of the corporate stock to Mackres and Gussis.

Absent prior record, the license will be suspended for twenty days (Re Lloyd Corporation, Bulletin 1756, Item 16), with remission of five days for the plea entered (Re 111 Park St. Corporation, Bulletin 1786, Item 4), leaving a net suspension of fifteen days.

Accordingly, it is, on this 16th day of September 1968,

ORDERED that Plenary Retail Consumption License C-102, issued by the Township Committee of the Township of Lacey to Forked River House, Inc. for premises East Side Route 9, Lacey Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday September 23, 1968, and terminating at 2 a.m. Tuesday, October 8, 1968.

JOSEPH M. KEEGAN
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 O'Hara's Bar, Inc.)
 t/a O'Hara's Mustang Lounge)
 Route #9)
 Sayreville)
 P.O. South Amboy, New Jersey)
)
 Holder of Plenary Retail Consumption License C-28, issued by the Mayor and Borough Council of the Borough of Sayreville)
)

CONCLUSIONS and ORDER

 Licensee, by Joseph Swiderski, President, Pro se
 Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 17-18, 1968 it sold drinks of alcoholic beverages to four minors, all age 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective November 5, 1967, for similar violation.

The license will be suspended for fifteen days (Re Marinello, Bulletin 1643, Item 4), to which will be added ten days by reason of the record of suspension of license for similar violation occurring within the past five years (Re Ray Russo, Inc., Bulletin 1808, Item 5), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 10th day of September 1968,

ORDERED that Plenary Retail Consumption License C-28, issued by the Mayor and Borough Council of the Borough of Sayreville to O'Hara's Bar, Inc., t/a O'Hara's Mustang Lounge, for premises on Route #9, Sayreville, be and the same is hereby suspended for twenty (20) days, commencing*at 3 a.m. Tuesday, September 17, 1968, and terminating at 3 a.m. Monday, October 7, 1968.

JOSEPH M. KEEGAN
DIRECTOR

*By order dated September 16, 1968, the suspension was deferred to commence at 3:00 a.m. Saturday, October 12, 1968, and to terminate at 3:00 a.m. Friday, November 1, 1968.

10. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Henry Harris and Henry Goodrum
232 Pine Street
Jersey City, New Jersey

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-470, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensees, by Henry Goodrum, Pro se
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on August 2 and 13, 1968 they sold, respectively, three and four cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Wisniewski, Bulletin 1812, Item 8.

Accordingly, it is, on this 17th day of September 1968,

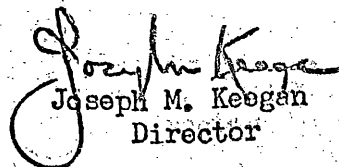
ORDERED that Plenary Retail Consumption License C-470, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Henry Harris and Henry Goodrum, for premises 232 Pine Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, September 24, 1968, and terminating at 2 a.m. Friday, October 4, 1968.

JOSEPH M. KEEGAN
DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

L. A. Piccirillo, Inc.
19-41 Chapel St. (a/k/a 31-33 Chapel St.)
Newark, N. J.

Application filed October 18, 1968 for place-to-place transfer of State Beverage Distributor's License SBD-11 from 71-77 Nichols Street, Newark, N. J.


Joseph M. Keegan
Director