

26 Rose Avenue,
Madison,
Morris County, New Jersey.
STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1015

MAY 17, 1954

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1015

May 17, 1954.

1. APPELLATE DECISIONS - PARK CENTRAL v. NEWARK.

PARK CENTRAL, A CORPORATION OF)
NEW JERSEY)

Appellant)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK)

RESPONDENT)

ON APPEAL
CONCLUSIONS AND ORDER

William Osterweil, Esq., Attorney for Appellant.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from a ten-day suspension of appellant's plenary retail consumption license issued for premises at 384-388 West Market Street, Newark. Respondent imposed said suspension after it had found appellant guilty of the following charges:

"In that you sold, served and delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon the licensed premises on or about July 8th, 1953, in violation of Rule 1 of the State Regulations No. 20."

The petition of appeal alleges in substance that there was no evidence whatever to sustain the finding of guilt, and that the finding of guilt was contrary to the weight of the evidence.

Upon the filing of the appeal an order, dated January 15, 1954, was entered by the then Director staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

At the hearing held herein the appeal was submitted upon the transcript of the testimony taken, and exhibits submitted, at three hearings held by respondent on October 20, 1953, November 24, 1953, and December 1, 1953.

At the hearings held below Robert ---, 19 years of age, testified that he and William --- and John --- went to a tavern operated by one McQuaid on the evening of Wednesday, July 8, 1953, that they arrived there about 10 p.m. and remained there about two hours; that they then went to appellant's premises where the witness was served about six glasses of beer by Harry Brooks, who was tending bar; that William had about the same number of beers, and that they then left appellant's premises and visited a tavern operated by one Warner.

At the hearing below William ---, 19 years of age, testified that on the evening of July 8, 1953, he and Robert --- and John --- entered appellant's premises before going to the tavern

operated by Warner; that he had six or seven beers in appellant's premises; that all the drinks were served by Harry Brooks, and that the witness paid for some of the drinks and John --- paid for some of the drinks.

At the hearing below John ---, of full age, testified that on the evening of July 8, 1953, he and Robert --- and William --- visited the tavern operated by McQuaid; that they then went to appellant's premises, arriving there at about midnight; that he had six or seven beers and that "they had the same as I did;" that he doesn't know if the drinks were served by "Mr. Brooks or the other man" and that he and William --- paid for the drinks.

At the hearing below Harry Brooks, President of appellant corporation, testified that from Monday to Thursday of each week he works days until about 6:15 p.m., at which time he is relieved by Charles Hummel, and that he was not in the licensed premises on the evening of July 8, 1953. Mrs. Brooks testified that her husband was at home on that evening. Two patrons also testified that Harry Brooks was not in the licensed premises on the evening of July 8, 1953. Charles Hummel testified that he was the only person tending bar on the evening of July 8, 1953, and that he did not see any of the three young men in the premises on that evening. Upon being recalled, William --- testified that both bartenders were present on the evening of July 8, although he stated again on cross-examination that he had been served by Harry Brooks.

I have examined carefully the statements given by the three young men, all of which statements were admitted at the hearing below. The statements given by John --- on July 11, 1953, and by Robert --- on July 16, 1953, to members of the Newark Police Department contain nothing inconsistent with their testimony at the hearing below. The statement given by William --- on July 16, 1953, is not inconsistent with his testimony except that he states therein that they visited Warner's tavern before they entered appellant's premises. Moreover, I do not believe that the three young men threatened to "get even" with Brooks because of some trouble he had with John --- on July 11, 1953. It is unbelievable that, prior to July 16, John could have concocted a story with the other two young men because, as he testified, "I was in jail. I did not even see them."

The members of respondent Board apparently believed the testimony of the three young men that beer was served to them in appellant's premises on the evening of July 8, 1953. The failure to identify the specific person or persons who served the beer is not fatal in disciplinary proceedings. Re Bell, Bulletin 999, Item 5, and cases therein cited. The testimony given in the Warner disciplinary proceedings (which was heard at the same time and resulted in a dismissal of the charge) was substantially different from the evidence given in this case.

After carefully considering all the evidence I conclude that appellant has not sustained the burden of proof in establishing that the action of respondent was erroneous. Rule 6 of State Regulations No. 15. Hence the action of respondent will be affirmed.

Accordingly, it is, on this 3rd day of May, 1954,

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

ORDERED that the ten-day suspension by respondent of appellant's plenary retail consumption license for premises at 384-388 West Market Street, Newark, be and the same is hereby restored to commence at 2 a.m. May 10, 1954, and to terminate at 2 a.m. May 20, 1954.

WILLIAM HOWE DAVIS
Director

2. APPELLATE DECISIONS - APPOLITO v. NEWARK.

PETER APPOLITO, JR. AND C. LARRY)
APPOLITO)

Appellants)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph L. Magrino, Esq., Attorney for Appellants.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from a fifteen-day suspension of appellants' plenary retail consumption license C-189 for premises at 776 South Orange Avenue, Newark. Respondent imposed said suspension after it found appellants guilty of a charge alleging that on October 9, 1953, they sold, served and delivered an alcoholic beverage to a minor, in violation of Rule 1 of State Regulations No. 20.

Upon the filing of the appeal an order, dated February 23, 1954, was entered by me staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

The petition of appeal alleges that the finding of guilt was contrary to the weight of the evidence; that it was an abuse of discretion, and that it was arbitrary and unreasonable.

The appeal was submitted upon the transcript of the testimony taken at a hearing before respondent on February 2, 1954, and additional evidence was taken at the hearing of the appeal pursuant to Rule 8 of State Regulations No. 15.

A review of all the testimony discloses that one Edward ---, then 16 years of age, came home in an intoxicated condition on the evening of October 9, 1953, and that his step-father reported the matter to the Newark Police Department. Disciplinary proceedings were thereafter started against appellants and another licensee as a result of statements obtained from the minor by members of the Police Department.

Edward --- testified at the hearing below that on October 9, 1953, at which time he was 16 years of age, he entered appellants' licensed premises alone between 7 p.m. and 8 p.m., while two other minors (Frank --- and Jerry ---) remained outside. He further testified that, when he entered the store, there was only one man in the store; that he purchased "a bottle of Schenley's" for \$4.49 from this man; that he then left the store with the bottle (which had been placed in a paper bag by the man); that he met the

other two minors who were across the street, and that the three minors left the vicinity and later drank the contents of the bottle. The evidence at the hearing below further shows that Edward --- was taken to appellants' premises by members of the Newark Police Department on October 12, 1953. At that time Peter Appolito, Jr. was present and Edward --- told the police officers that Peter was not "the fellow who sold to him." Later, when C. Larry Appolito entered the premises, Edward --- told the police officers that "I don't believe that is him" and, when Charles Remondelli (the only person employed by appellants) entered the premises, Edward definitely stated that Remondelli did not make the sale.

Frank --- testified at the hearing below and at the hearing of the appeal. His testimony may be summarized as follows: On the evening of October 9, 1953, he and Jerry --- had given some money to Edward --- to buy liquor; that they were "across the street in front of the bakery" when Edward --- entered appellants' premises without any packages in his hand and that, after he came out, he had a paper bag with a bottle inside; that Edward --- joined them, and that they later drank the contents of the bottle, which the witness described as whiskey.

Jerry --- was not available to testify at either hearing because he was then in Pennsylvania.

On behalf of appellants, Peter Appolito, Jr., testified that he worked in the licensed premises from 9 a.m. to 6:30 p.m. on October 9, 1953. C. Larry Appolito testified at the hearing below that he worked in the licensed premises from about 6:30 p.m. until closing time on said date. Both of these witnesses testified that Edward --- did not enter the premises while either of these witnesses was present. At the hearing below Charles Remondelli was sworn as a witness on behalf of the appellants herein, and it was then stipulated that he came to the store when the detectives had Edward there, and that the detectives asked Edward "if he was the man who had sold him liquor and he was not."

Appellants allege that the action of respondent was arbitrary and unreasonable because they were found guilty upon the aforesaid testimony, whereas the charge against the other licensee, which was also instituted as a result of Edward's statement, was dismissed by respondent in a separate proceeding.

I have carefully considered the transcript of the testimony in the case instituted against the other licensee. In that case the testimony of Edward --- (that he purchased a container of beer in defendants' premises on Sunday, October 4, 1953) was entirely uncorroborated. Moreover, the witness was uncertain whether he had been in the defendants' premises on Saturday, October 3, or Sunday, October 4, and five witnesses testified that the bartender, who had allegedly made the sale, was not in the licensed premises on October 4, 1953.

In the instant case the evidence given by Edward, that he entered appellants' premises empty-handed and left with a paper bag containing a bottle of whiskey, is substantially corroborated by the minor who remained across the street. It further appears that appellants' premises are the only licensed premises on that side of South Orange Avenue between Isabella and Columbia Avenues. It further appears that \$4.49 was the minimum consumer resale price for 4/5 quart bottles of Schenley Reserve and Schenley 7 Crown whiskey. It further appears that Edward returned to his home in an intoxicated condition on the evening of October 9, 1953. The failure to identify the specific person or persons who sold the alcoholic beverage is not fatal in disciplinary proceedings. Re Bell, Bulletin 999, Item 5, and cases therein cited.

After carefully considering all the evidence I conclude that appellants have not sustained the burden of proof in establishing that the action of respondent was erroneous. Rule 6 of State Regulations No. 15. Hence the action of respondent will be affirmed.

Accordingly, it is, on this 3rd day of May, 1954,

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

ORDERED that the fifteen-day suspension by respondent of appellants' plenary retail consumption license C-189, for premises at 776 South Orange Avenue, Newark, be and the same is hereby restored to commence at 2 a.m. May 10, 1954, and to terminate at 2 a.m. May 25, 1954.

WILLIAM HOWE DAVIS
Director

3. APPELLATE DECISIONS - SPINDEL v. GARFIELD AND HOFFMAN AND PETILLO.

SARAH SPINDEL, INDIVIDUALLY AND AS)
ADMINISTRATRIX OF THE ESTATE OF)
OWADJE SPINDEL AND MORRIS M. SPINDEL)

Appellants)

v.)

MAYOR AND COUNCIL OF THE CITY OF)
GARFIELD, AND GEORGE M. HOFFMAN, ROSE)
HOFFMAN AND WILLIAM PETILLO)

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

Morris M. Spindel, Pro Se.
Theodore R. Ciesla, Esq., Attorney for Respondent Mayor and Council
of the City of Garfield.
Harry Nadell, Esq., Attorney for Respondents George M. Hoffman,
Rose Hoffman and William Petillo.

BY THE DIRECTOR:

This appeal is from the person-to-person transfer by respondent Mayor and Council of the plenary retail consumption license of George M. Hoffman and Rose Hoffman to the said George M. Hoffman, Rose Hoffman and William Petillo for premises 179 Outwater Lane, Garfield.

Appellants allege, in substance, in the petition of appeal that (a) the action of the respondent issuing authority was erroneous because the said William Petillo, who became one of the licensees, had no right to possession of the licensed premises, (b) that Rose Hoffman is not a bona fide licensee, and (c) that the proceedings at which the transfer in question was granted were irregular in that "persons without authority were permitted to be present when the deliberations took place."

At the hearing, the petition of appeal, with the consent of the attorneys for the respondents, was amended to permit Morris M. Spindel, an heir-at-law and next of kin of Owadje Spindel, to be a party appellant in the case.

The evidence discloses that Sarah Spindel leased "the corner store and that part of the cellar underneath the store" of 179 Outwater Lane, wherein the business is now conducted, to George M. Hoffman and Rose Hoffman for a period of five years from December 1, 1952. One of the provisions in the said lease prohibited the lessees from transferring, assigning or subletting the demised premises or any part thereof without the written consent of the lessor.

On October 15, 1953, George M. Hoffman, Rose Hoffman and William Petillo filed an application with the respondent Mayor and Council for a transfer to them of the license originally held by George M. Hoffman and Rose Hoffman for the same premises. On December 10, 1953, the application to transfer was approved by respondent Mayor and Council, to become effective December 11, 1953.

Appellants contend that because no written consent was given by the lessor to permit the licensees to occupy the premises under the new partnership arrangement, the respondent issuing authority erred in approving the transfer of the license.

The statute (R.S. 33:1-1 et seq.) does not contain any provision covering the question of title.

It has been held that a local issuing authority is not the proper forum to try technical title or definitive right to possession of property. The reason for this is obvious. In many instances the local issuing authorities are composed of laymen with neither the training nor the time to hear and determine intricate questions involving title or the right to possession of property. Cf. Brown v. Morris Canal & Banking Co., (E. & A.) 27 N.J.L. 648, 652. In the exercise of its sound judgment, the local issuing authority may issue a license where it finds that the applicant has a colorable right to possession and complete control of the premises. Re Rittenger v. Bordentown, Bulletin 547, Item 10. However, far more important than the question of title and the interest of the applicant therein, is the question of the applicant's authority over and his ability to control the premises whereon the licensed privileges are to be exercised. Re Rittenger, supra.

Where, as in the instant case, there appears to be a colorable right to possession by reason of the existing lease to George M. Hoffman and Rose Hoffman and the actual occupancy of the licensed premises by them and William Petillo, it cannot be said that the respondent issuing authority acted improperly or abused its discretion in approving the transfer of the license. The question of title to property and the right to possession thereof must be decided by a court of competent jurisdiction in an appropriate proceeding.

The grounds of appeal designated (b) and (c), which were advanced by the appellants herein, have not been established by the testimony presented in this case.

The action of respondent Mayor and Council is, therefore, affirmed.

Accordingly, it is, on this 3rd day of May 1954,

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

WILLIAM HOWE DAVIS
Director

4.

ACTIVITY REPORT FOR APRIL 1954

ARRESTS:		
Total number of persons arrested	-----	27
Licensees and employees	----- 13	
Bootleggers	----- 14	
SEIZURES:		
Motor vehicles - cars	-----	1
Stills - over 50 gallons	-----	3
- 50 gallons or under	-----	1
Alcohol - gallons	-----	1,185.00
Mash - gallons	-----	45,675.00
Distilled alcoholic beverages - gallons	-----	11.83
Wine - gallons	-----	254.05
Brewed malt alcoholic beverages - gallons	-----	10.72
RETAIL LICENSEES:		
Premises inspected	-----	1,247
Premises where alcoholic beverages were gauged	-----	772
Bottles gauged	-----	14,843
Premises where violations were found	-----	84
Violations found	-----	118
Type of violations found:		
Unqualified employees	----- 47	Other mercantile business
Reg. #38 sign not posted	----- 9	Prohibited signs
Gambling devices	----- 3	Improper beer taps
Disposal permit necessary	----- 3	Other violations
		----- 52
STATE LICENSEES:		
Premises inspected	-----	17
License applications investigated	-----	15
COMPLAINTS:		
Complaints assigned for investigation	-----	446
Investigations completed	-----	395
Investigations pending	-----	176
LABORATORY:		
Analyses made	-----	150
Refills from licensed premises - bottles	-----	1
Bottles from unlicensed premises	-----	40
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	12
Persons fingerprinted for non-criminal purposes	-----	219
Identification contacts made with other enforcement agencies	-----	234
Motor vehicle identifications via N. J. State Police teletype	-----	3
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	17
Violations involved:		
Sale during prohibited hours	----- 11	Sale to non-members by club
Sale to minors	----- 5	Permitting lottery activity (raffle)
Failure to afford view into premises	-----	Failure to close premises during
during prohibited hours	----- 2	prohibited hours (local reg.)
		----- 1
Cases instituted at Division	-----	20
Violations involved:		
Sale to minors	----- 5	Permitting lottery activity (raffle
Sale during prohibited hours	----- 5	and "50-50" club)
Unauthorized transportation	----- 3	Permitting immoral activity on prem.
Hindering investigation	----- 2	Act or happening
Storage off licensed premises	----- 2	Mislabeled beer tap
Sale outside scope of license	----- 1	Sale below minimum resale price
Fraud and front	----- 1	Failure to afford view into premises
		during prohibited hours
		----- 1
Cases brought by municipalities on own initiative and reported to Division	-----	15
Violations involved:		
Sale to minors	----- 10	
Sale during prohibited hours	----- 3	
Unqualified employee	----- 1	
Permitting brawl on premises	----- 1	
Possessing slot machines on premises	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	59
Appeals	----- 7	Seizures
Disciplinary proceedings	----- 28	Applications for license
Eligibility	----- 10	----- 2
PERMITS ISSUED:		
Total number of permits issued	-----	2,537
Employment	----- 1,784	Social affairs
Solicitors	----- 91	Miscellaneous
Disposal of alcoholic beverages	----- 73	----- 324

Dated: May 3, 1954.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - WHOLESALE LICENSEE - SALE TO CONSUMER - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VEHICLE NOT BEARING TRANSPORTATION INSIGNIA - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against CESTO CHIESA T/a CHIESA CALIFORNIA WINES 1114-1116 - 21st Street North Bergen, N. J.

CONCLUSIONS AND ORDER

Holder of Wine Wholesale License WW-14; issued by the Director of the Division of Alcoholic Beverage Control.

Cesto Chiesa, Defendant-licensee, Pro Se. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charges:

"1. On March 30, 1954 you sold alcoholic beverages, not pursuant to and within the terms of your wine wholesale license, as defined by R.S. 33:1-11(2)b, in that you sold 9 cases of assorted wines to Nicholas L. Micchelli, not the holder of any New Jersey retail or wholesale alcoholic beverage license; in violation of R.S. 33:1-2.

"2. On March 30, 1954 you transported alcoholic beverages in a vehicle without having a transportation insignia affixed thereto in accordance with Rule 11 of State Regulations No. 17; in violation of Rule 2 of State Regulations No. 17.

"3. On March 30, 1954, while inspectors of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety were conducting an investigation of your licensed business you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation; in violation of R.S. 33:1-35."

The file herein discloses that two ABC agents observed defendant (who holds a wine wholesale license) deliver 9 cases of assorted wines to the home of the aforementioned Nicholas L. Micchelli who holds no New Jersey retail or wholesale alcoholic beverage license.

Defendant and Micchelli at first claimed, under oath, that the wine was actually ordered from a New Jersey retail liquor licensee who is a customer of defendant and was delivered by defendant as a "favor." When the retail licensee denied the alleged arrangement, defendant admitted that he had made up this story and had told Micchelli to repeat it in order to save himself because he knew that, as the holder of a wine wholesale license, he had no right to sell wine to a consumer. R.S. 33:1-11(2)b permits the holder of a wine wholesale license to sell only to retailers and wholesalers in New Jersey.

Defendant also admitted that he failed to have a transportation insignia affixed to the left side of the vehicle in which the wine was transported, as required by Rule 11 of State Regulations No. 17, in violation of Rule 2 of State Regulations No. 17.

Defendant's fabrication of the "story" and his false answers under oath constituted a failure to facilitate and, in fact, hindered and delayed the investigation conducted by agents of this Division, in violation of R.S. 33:1-35.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days for the violations set forth in Charges (1) and (2) (Cf. Re Kelly Beverages, Bulletin 864, Item 1 and Re Colonna Park Inc., Bulletin 875, Item 4) and for an additional ten days on Charge (3) (Cf. Re Romano, Bulletin 964, Item 3). This makes a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 3rd day of May 1954,

ORDERED that Wine Wholesale License WW-14, issued by the Director of the Division of Alcoholic Beverage Control to Cesto Chiesa; t/a Chiesa California Wines, 1114-1116 - 21st Street, North Bergen, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 a.m., May 12, 1954, and terminating at 12:01 a.m., June 1, 1954.

WILLIAM HOWE DAVIS
Director

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE RESIDENCE - PART OF PROPERTY RETURNED TO INNOCENT LIENOR - BALANCE OF PROPERTY AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)
December 22, 1953, of a quantity of)
alcoholic beverages and various)
articles of furniture and ten dollars)
in cash at 429-1/2 Washington Street,)
in the City of Newark, County of)
Essex, State of New Jersey.)

Case No. 8483

ON HEARING
CONCLUSIONS AND ORDER

General Electric Credit Corporation, by Cedric A. Reynolds.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, ten dollars in cash, and various articles of furniture, described in a schedule attached hereto, seized on December 22, 1953, at 429 1/2 Washington Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by A.B.C. agents because of the alleged unlicensed sale of alcoholic beverages by Lillian Gibbs and Pearl Lamberth in a second floor apartment at the above address.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered in behalf of General Electric Credit Corporation, which sought recognition of its alleged lien on a refrigerator. Forfeiture of the balance of the property seized was not opposed by any person.

Reports of A.B.C. agents and other documents in the file, presented in evidence, disclose the following facts:

On December 22, 1953 two A.B.C. agents investigating another alleged violation of the Alcoholic Beverage Law accompanied Pearl Lamberth to the second floor apartment in question. Lillian Gibbs

was in the apartment. One of the agents purchased four drinks of whiskey and a can of beer from Lillian Gibbs. Other persons entered the apartment and were observed purchasing drinks of alcoholic beverages. The agent purchased another round of drinks of whiskey from Lillian Gibbs for himself and three other persons, and purchased a can of beer for which he paid Pearl Lamberth.

These agents left the premises and returned within a few hours. One of the agents had in his possession four one dollar bills identified by serial numbers. This agent again purchased drinks of whiskey and beer from Lillian Gibbs, for which he paid with the marked dollar bills.

Other agents then entered the premises, and all of the agents disclosed their identity. Lillian Gibbs surrendered ten one dollar bills, which included the four marked bills.

Neither Lillian Gibbs nor Pearl Lamberth held any license authorizing either of them to sell alcoholic beverages, and the premises were not licensed for that purpose.

The agents seized eleven cans of beer, two bottles of other alcoholic beverages, and the furnishings of the apartment. The alcoholic beverages are illicit because they were intended for unlawful sale. R.S. 33:1-1(i). Such illicit alcoholic beverages and the other personal property seized therewith in the apartment constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

The General Electric Credit Corporation has presented in evidence a conditional sales contract evidencing the sale of a Philco refrigerator, identified by serial number as the refrigerator seized from the above apartment, to Russell Gibbs with an unpaid balance due thereon of \$219.80. This contract was assigned to the General Electric Credit Corporation.

The information on the reverse side of the above contract is that Lillian Gibbs is the wife of Russell Gibbs; his residence is given as 429 1/2 Washington Street, Newark, N. J.; and that Russell Gibbs was employed as a stevedore by the Jarka Corporation. This information was apparently checked by the credit corporation and found to be accurate. Russell Gibbs testified that he has no criminal record for violating any liquor laws.

I am satisfied that the General Electric Credit Corporation acted in good faith and did not know or have any reason to suspect that the refrigerator was located in premises where alcoholic beverages were being unlawfully sold. I shall therefore recognize its lien in the amount of \$219.80.

I am advised that it is not desirable to retain the Philco refrigerator for the use of the State, conditioned upon the payment of the lien of \$219.80, and that the retail value thereof does not exceed the amount of such lien and the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 3rd day of May, 1954, General Electric Credit Corporation pays the costs incurred in the seizure and storage of the Philco refrigerator, described in Schedule "A" attached hereto, such refrigerator will be turned over to such corporation; and it is further

DETERMINED and ORDERED that the balance of the seized property listed in the aforesaid Schedule "A" constitutes unlawful property, and the same be and hereby is forfeited in accordance with

the provisions of R.S. 33:1-66, and that it 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.

WILLIAM HOWE DAVIS
Director

Dated: April 22, 1954.

SCHEDULE "A"

- 1 - 4/5 qt. bottle of whiskey
- 1 - pint of gin
- 11 - cans of beer
- 1 - refrigerator
- 8 - chairs
- 1 - table
- 1 - radio
- \$10.00 in cash

7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on)	Case 8531
February 20, 1954 of 96 - two quart)	
jars of alcohol and a Ford sedan, on)	
the north-bound lane of the New)	ON HEARING
Jersey Turnpike located in Washington)	CONCLUSIONS AND ORDER
Township, County of Mercer and State)	
of New Jersey.)	

Wachovia Bank and Trust Company, by Howard C. Dean, Vice-President.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 96 two-quart jars of alcohol and a Ford sedan, described in a schedule attached hereto, seized on February 20, 1954 on the north-bound lane of the New Jersey Turnpike, in Washington Township, New Jersey, constitute unlawful property and should be forfeited.

The motor vehicle and alcohol were seized by a New Jersey State Trooper when he discovered the alcohol in the car during the course of the patrol of traffic on the turnpike. Thereafter the motor vehicle and alcohol were turned over to the Division of Alcoholic Beverage Control.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of Wachovia Bank and Trust Company which sought recognition of its alleged lien on the motor vehicle. Forfeiture of the alcoholic beverages was not opposed by any person.

Reports of A.B.C. agents and other documents in the file, presented in evidence, disclose the following facts:

Woodrow Blair, in whose name the motor vehicle is registered in South Carolina, was operating the car. Brooks D. Quick and John William Green were passengers therein.

A.B.C. agents obtained a signed statement from Blair wherein it appears that he had operated a small still in South Carolina; that he placed the 96 jars of alcohol in the trunk of his car, intending to

sell such beverages in New York City, and to use the proceeds to purchase a farm in South Carolina.

The jars with alcohol did not bear any labels or stamps indicating the payment of tax on alcoholic beverages. A sample of the alcohol was analyzed by the Division chemist who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 44.9 per cent.

The alcoholic beverages are illicit because of the absence of any labels or tax stamps on the jars. R.S. 33:1-88, R.S. 33:1-1(i). In actuality, it is moonshine liquor. Such illicit alcoholic beverages and the motor vehicle in which they were transported constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

The Wachovia Bank and Trust Company made a series of loans to Woodrow Blair, originally secured by an assignment to the bank of a conditional sales contract covering the motor vehicle in question, and thereafter in the form of two chattel mortgages on the car, the first dated Oct. 30, 1953, to secure the sum of \$962.14, and the second dated Nov. 14, 1953, to secure the sum of \$85.02. The present amount due on both mortgages after allowance for prepayment of the debt is \$805.65.

Prior to initially advancing any money to Blair, in 1952 the bank was informed that Blair had been in the U. S. Navy, and was a self-employed farmer. It also received the names of various business references. Although the bank accepted this information at face value relying upon the stability of the automobile dealer who submitted Blair's application for credit, the bank did, however, make inquiry of local law enforcement officials as to whether Blair had a reputation for violating any liquor laws and received a negative answer. Blair's fingerprint record does not disclose any previous criminal record.

I am satisfied that the bank acted in good faith and did not know that the Ford sedan would be used to transport bootleg alcohol or have knowledge of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f). I shall therefore recognize the lien of the Wachovia Bank and Trust Company to the extent of \$805.65.

I am advised that it is not desirable to retain the Ford sedan for the use of the State, conditioned upon the payment of the lien of \$805.65, and that the retail value of such vehicle does not exceed the amount of such lien and the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 6th day of May, 1954, Wachovia Bank and Trust Company pays the costs incurred in the seizure and storage of the Ford sedan, described in Schedule "A" attached hereto, such motor vehicle will be turned over to such bank; and it is further

DETERMINED and ORDERED that the 96 two-quart jars of alcoholic beverages constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director

Dated: April 27, 1954.

SCHEDULE "A"

960 - two quart jars of alcohol
1 - Ford sedan, Serial No. B2NR - 134675
1953 So. Carolina Registration D-28898

8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure) Case No. 8486
on December 30, 1953, of 9 -)
two-quart jars of alcohol and a) ON HEARING
Ford sedan, on Van Liew Avenue,) CONCLUSIONS AND ORDER
in the Borough of Milltown,)
County of Middlesex and State of)
New Jersey.)

Wachovia Bank and Trust Company, by Howard C. Dean, Vice President
Harry Castelbaum, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter came on for hearing before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 9 two-quart jars of alcohol and a Ford sedan, described in a schedule attached hereto, seized on December 30, 1953, on Van Liew Avenue, Milltown, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made in the first instance by a local police officer who sought to apprehend James Curtis Smith at his place of employment, the Borram Lumber Company, located in Milltown. Unable to locate Smith at the time, his employer pointed out where Smith's car was parked on Van Liew Avenue. When the officer inspected the car on information that a pistol might be there, he discovered nine jars of alcohol. The jars did not bear any labels or stamps indicating the payment of tax on alcoholic beverages. The car and alcohol ultimately were turned over to the Division of Alcoholic Beverage Control.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of Wachovia Bank and Trust Company, which sought recognition of its alleged lien on the Ford sedan. Forfeiture of the alcoholic beverages was not opposed by any person.

It appears that the alcohol in one of the jars was analyzed by the Division's chemist who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 46.5%.

The alcohol is illicit because of the absence of any labels or tax stamps on the jars. R.S. 33:1-88, R.S. 33:1-1(i). Such illicit alcohol and the motor vehicle in which it was transported or 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.

The Ford sedan bore North Carolina license plates issued to Robert West Spikes. Smith, when discussing the matter with the police officer and A.B.C. agents, told them that he had purchased the vehicle from Spikes. The police officer had observed Smith in the locality for a considerable length of time, mainly while driving a truck for the lumber concern. The A.B.C. agents also ascertained that Smith had resided at an address in Nixon, New Jersey, for about a year or more prior to the seizure and had been employed by the lumber concern since October, 1953.

Smith told the officers that he obtained the alcohol in North Carolina a few days previous to the seizure, while on a visit there.

The above described background of Smith appears to be inconsistent with the bank's claim that the motor vehicle was sold to him two days prior to the seizure by an automobile dealer located in Greenville, North Carolina, at which time Smith purportedly was a resident of Ayden, North Carolina and employed in that vicinity.

It appears from the evidence submitted by the bank that its practice in financing the purchase of motor vehicles is as follows:

The dealer submits the conditional sales contract, information concerning the proposed purchaser's background, and a draft for the amount to be financed. The bank immediately pays the draft. Thereafter it investigates the background and financial resources of the purchaser. If the bank is not satisfied with the results of such investigation, it rejects the loan and requires the dealer to repay the amount advanced.

While this may not be the practice normally followed by other finance companies or banking institutions, it is not of itself significant, since the bank at all times, of necessity, assumes the risk and is chargeable with any derogatory information disclosed by its investigation, whether such investigation is made before or after it advances any money on the security of the motor vehicle.

The Smith account, from the bank's viewpoint, followed a normal course. It received the pertinent documents, advanced the money, and a few days thereafter arranged with an independent investigating agency to check its information that Smith was a resident of North Carolina and employed at given address there. In response, it received a report dated January 14, 1954 from such agency stating that the information was accurate and that the car was being kept at Smith's purported North Carolina residence. (This was of course a gross misstatement, since the car was then in the possession of the New Jersey Division of Alcoholic Beverage Control.)

What actually occurred can only be a matter of conjecture. The investigating agency either made no investigation whatsoever and submitted a false report or was misled by the persons whom it interviewed. Possibly the dealer participated in the matter. However, what was concealed was that Smith actually resided and was employed in New Jersey. Smith appears actually to have been employed regularly and does not appear to have any criminal record.

There is no evidence that the bank had any reason to suspect that the facts were other than those reported. The bank's representative testified that the investigating agency is a national organization, in business for many years, whose reports in the past were found reliable.

In the absence of the development of any widespread practice by car dealers or investigating agencies to aid bootleggers, through negligence or misconduct, to purchase cars to transport alcoholic beverages and have such purchases financed by innocent finance companies, it would not be fair to hold a finance company accountable for an isolated instance of neglect or misconduct by a hitherto reputable dealer or agency. See Seizure Case No. 5815, Bulletin 463, Item 4, Seizure Case No. 7589, Bulletin 874, Item 10, Seizure Case No. 8508, Bulletin 1013, Item 3, and Seizure Cases Nos. 7012-7015, Bulletin 743, Item 6.

It appears that on November 21, 1953 Spikes signed an assignment on the formal Certificate of Title to the car, issued by the Department of Motor Vehicles of North Carolina, transferring title to the car to the automobile dealer. On December 28, 1953 the dealer signed an assignment on the same document transferring title to the car to James C. Smith. On the same date Smith signed an application on the same document applying for a new Certificate of Title to be issued to him with the notation of the lien of the Wachovia Bank and Trust Company. This document was not filed and a new Certificate of Title was not issued until February 5, 1954.

The bank presented a conditional sales contract dated December 28, 1953 between Smith and the dealer, assigned to the bank, covering the sale of the Ford sedan in question, securing an unpaid balance of \$536.16. The present balance due thereon after allowance for prepayment of the debt is \$417.50.

I have been referred to the provisions of the North Carolina Law and to The North Carolina Discount Corporation vs Landis Motor Co. 190 N.C. 157, 129. S.E. 414 (1925), as evidencing the law of that state that failure to transfer a Certificate of Title does not invalidate a contemporaneous conditional sale of a motor vehicle.

I am satisfied that the bank acted in good faith and did not know that the Ford sedan would be used to transport bootleg alcohol or have knowledge of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f). I shall therefore recognize the lien of the Wachovia Bank and Trust Company to the extent of \$417.50.

I am advised that it is not desirable to retain the Ford sedan for the use of the State, conditioned upon the payment of the lien of \$417.50, and that the retail value of such vehicle does not exceed the amount of such lien and the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 6th day of May, 1954, Wachovia Bank and Trust Company pays the costs incurred in the seizure and storage of the Ford sedan, described in Schedule "A" attached hereto, such motor vehicle will be turned over to such bank; and it is further

DETERMINED and ORDERED that the 9 two-quart jars of alcohol listed in the aforesaid Schedule "A" constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director

Dated: April 27, 1954

SCHEDULE "A"

- 9 - two quart jars of alcohol
- 1 - Ford sedan, Serial No. CBF 1186044
1953 North Carolina Registration 740-443

9. DISCIPLINARY PROCEEDINGS - LOTTERY (50-50 CLUB) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRANCIS W. ROBBINS POST NO. 194,)
AMERICAN LEGION.)
Southwest corner Sixth & Broad Streets)
Florence, New Jersey)

CONCLUSIONS AND ORDER

Holder of Club License CB-178, issued by the Director of the Division of Alcoholic Beverage Control.)

Defendant-licensee, by Richard Sweeney, Commander. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On January 7 and 21, 1954 and February 4 and 18, 1954, you allowed, permitted and suffered a lottery known as '50-50 club' to be conducted in and upon your licensed premises and sold and offered for sale and possessed, had custody of, and allowed, permitted and suffered tickets and participation rights in such aforementioned lottery, in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

On March 19, 1954, an ABC agent, during the course of a routine investigation, obtained from the Finance Officer of defendant Post a statement wherein he admitted that on each of the dates mentioned in the charge the Post had held a "50-50" drawing on its licensed premises. It appears that the tickets were sold for fifty cents each, and that the net profits were turned over to the Post treasury.

Defendant has no prior adjudicated record. Since no aggravating circumstances appear, I shall suspend defendant's license for fifteen days (the minimum penalty in such cases). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Kline McAnney Post, Bulletin 969, Item 8.

Accordingly, it is, on this 30th day of April, 1954,

ORDERED that Club License CB-178, issued by the Director of the Division of Alcoholic Beverage Control to Francis W. Robbins Post No. 194, American Legion, for premises at Southwest corner Sixth & Broad Streets, Florence, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. May 10, 1954, and terminating at 2 a.m. May 20, 1954.

WILLIAM HOWE DAVIS
Director