

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

Bulletin 1419

November 8, 1961

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

BULLETIN 1419

November 8, 1961

1. APPELLATE DECISIONS - CLEMENCICH v. MANALAPAN AND GENTILE.

Julius Clemencich,)
Appellant,) ON APPEAL
v.) CONCLUSIONS
Township Committee of the) AND
Township of Manalapan and)
Eugene Gentile,) ORDER
Respondents.)

Harry Sagotsky, Esq., Attorney for Appellant.

Samuel S. Sagotsky, Esq., Attorney for Respondent Township
Committee.

Charles Frankel, Esq., Attorney for Respondent Eugene Gentile.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Committee in approving the application of respondent Eugene Gentile for a plenary retail distribution license for premises to be erected on Freehold-Englishtown Road and from respondent Committee's denial of appellant's application for plenary retail distribution license for premises on Highway 9, Township of Manalapan.

"The petition of appeal filed herein urges reversal of respondent Committee's action on various grounds, the most salient of which are that respondent Gentile neglected to file with his application proper plans and specifications for the proposed premises in the Township Clerk's office and that James Sobechko, who, as a member of the respondent Committee had cast the deciding vote to approve respondent Gentile's application for the license in question, should have disqualified himself from participating in the matter because he was an officer and holder of capital stock of a corporation holding a plenary retail consumption license in Manalapan'.

"It appears from the evidence adduced herein that the respondent Committee is composed of three members, all of whom were present at the meeting of March 30, 1961 when the matter of the application for the plenary retail distribution license was discussed and voted upon. Committeeman Cycak voted to approve appellant's application and Committeeman Sobechko and Kerwin voted to approve respondent Gentile's application.

"Township Clerk Thomas Higgins testified that the advertisement in the newspaper of the notice of intention of respondent Gentile to apply for the license did not refer to any plans or specifications with reference to the proposed licensed premises.

"Committeeman Sobechko testified that although plans for respondent Gentile's proposed premises were not 'presented' with

his application for the license at the time of the meeting of March 30th, he saw them 'on the table' and as he 'glanced' at them there 'appeared to be a building'.

"Committeeman Kerwin testified that on the March 30th meeting, 'the plans I saw were apparently drawn by Mr. Gentile or someone that may have drawn them for him, they were not certified plans'.

"Committeeman Sobechko admits that on March 30, 1961, and prior thereto, he was the president and holder of 24.8 per cent of the issued and outstanding stock of Mainbrook Tavern Inc., a liquor licensee in Manalapan. Thus, one of the questions to be resolved is whether his interest in said liquor license disqualified him from participating in any manner whatsoever in the proceeding involving the issuance of the liquor license.

"On numerous occasions since the establishment of the Department (now Division) of Alcoholic Beverage Control, the Commissioner (now Director) has been called upon to determine the propriety of a member of a municipal issuing authority who holds a financial interest in a liquor license to participate in and to vote upon matters concerning liquor licensees. The rulings with reference thereto have consistently held against such practice.

"In Re Siracusa, Bulletin 89, Item 9, Commissioner Burnett ruled that where members of the City Commission own stock in a corporation holding a retail liquor license, such members are disqualified from participating in matters pertaining to the alcoholic beverage administration. He stated:

'The Commissioner has, on numerous occasions, ruled that a member of an issuing authority who is in anywise interested in the alcoholic beverage business may not participate in matters arising before that body pertaining to the administration of the Control Act. See Bulletin #53, Item #5. The fact that the members in question are not interested directly as licensees is immaterial. Their interests as stockholders in the profits of corporations holding retail licenses in Atlantic City disqualify them. Bulletin #39, Item #3.

'The policy involved clearly necessitates the conclusion that the disqualification is not limited to the passing upon applications for licenses. On the contrary, it extends to all proceedings pertaining to alcoholic beverages, including applications for transfers, ordinances and regulations governing the sale and distribution of alcoholic beverages, etc. Nor may the disqualified members satisfy the requirements merely by refraining from voting on the issue presented. They must withdraw entirely from the proceeding for otherwise the purpose of the disqualification will in large part be nullified. See Bulletin #80, Item #7, where the Commissioner quoted the following language by the court in Stevens vs. Haussermann, 172 Atl. 738 (Sup. Ct. 1934) in support of its decision that the concurrence of an interested member in the action taken by the body taints it with illegality, and that it is immaterial that the result reached was not produced by the vote of the disqualified member:

"It is supported by a twofold reason, viz.: First the participation of the disqualified member in the discussion may have influenced the opinion of the other members; and, secondly, such participation may cast suspicion on the impartiality of the decision. It being impossible to determine whether the virus of self-interest affected the result, it must needs be assumed that it dominated the body's deliberations and that the judgment was its product."

'It is the ruling of the Commissioner that Mayor Charles D. White and Commissioner Frank B. Off, being stockholders of corporations holding retail licenses in Atlantic City may not participate in any proceedings arising before the Board of Commissioners and pertaining to alcoholic beverage administration.'

"This policy has been followed in all cases whether the member of the issuing authority had a financial interest in any type of liquor license or if employed by a licensee or one seeking a liquor license. Re Highland Tavern Owners Association et als. v. Highlands et al., Bulletin 868, Item 11. When Committeeman Sobechko was employed by Steve Sobechko, t/a Steve's Mainbrook Inn, from whom the license was transferred to the corporate-licensee, in which Committeeman Sobechko is an officer and stockholder, a letter dated April 17, 1958 was written by the Director to Steve Sobechko as a result of an investigation made by representatives of this Division. It was plainly set forth in said letter (a copy of which was mailed to Committeeman Sobechko) that Committeeman Sobechko was prohibited from participating in any way whatsoever in alcoholic beverage license matters coming before the local issuing authority of Manalapan. Regardless of this ruling, Committeeman Sobechko failed to desist from participating in the matter of the issuance of the license in question. Thus, by his participation, the action taken by the respondent Committee has been tainted with illegality and, thus, has no binding effect whatsoever.

"In view of the illegality of the proceedings at which the matter of the applications for the license in question was considered, the approval of any application would have been improper.

"Although the advertisement of the notice of intention published by respondent Gentile was defective, it is not necessary in view of the illegality of the proceedings to make an official ruling upon such question.

"Under the circumstances, it is recommended that the action of the respondent Committee in approving the application of respondent Gentile for the plenary retail distribution license be reversed. It is further recommended that the action of the respondent Committee in not issuing the license to the appellant be affirmed."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the evidence, exhibits and Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of September, 1961,

ORDERED that the action of the respondent Township Committee in approving the application of respondent Eugene Gentile, for premises to be erected on Freehold-Englishtown Road, Manalapan, be and the same is hereby reversed, and that the action of respondent Township Committee in denying the application of appellant Julius Clemencich for premises on Highway 9, Manalapan, be and the same is hereby affirmed.

WILLIAM HOWE DAVIS
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - CLAIM OF ALLEGED LIENOR REJECTED - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure)
on May 19, 1961 of a quantity)
of alcoholic beverages and a)
Ford sedan in a parking lot)
in the rear of 6 Kings Highway,)
in the Borough of Swedesboro,)
County of Gloucester and State)
of New Jersey.)

Case No. 10,584

On Hearing

CONCLUSIONS AND ORDER

Kenneth Presnell, Pro Se.

I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66, to determine whether two one-gallon glass jugs of alcohol, one two-quart 'Mason' jar of alcohol, and a Ford sedan, described in a schedule attached hereto and made part hereof, seized on May 19, 1961 on 6 Kings Highway, Swedesboro, New Jersey, constitute unlawful property and should be forfeited.

"Kenneth Presnell appeared on behalf of his wife, Geneva Presnell, the registered owner of the motor vehicle, who sought its return.

"Gene Costa, a creditor by virtue of having endorsed the finance company note at the time of the sale of the said motor vehicle to Geneva Presnell, sought recognition of his alleged lien.

"No one appeared to oppose forfeiture of the whiskey.

"The facts as they appear from the reports of ABC agents and other documents in the file, presented in evidence with the consent of claimants herein, are as follows: on Friday, May 19, 1961 at approximately 9:05 P.M. local police officers observed Kenneth Presnell emerging from a building at 6 Kings Highway, aforesaid, carrying two one-gallon glass jugs of alcohol. The officers also noted that the motor vehicle in question was parked in a parking lot in the rear of the said premises. Upon investigation, the officers ascertained that this motor vehicle was registered in the name of Geneva Presnell, wife of Presnell, of Mullica Hill, New Jersey. An examination of the motor vehicle revealed one two-quart 'Mason' jar of alcohol in the trunk of the

automobile. None of the jars had affixed to them any stamps indicating payment of tax on alcoholic beverages. The police officers thereupon took custody of the alcohol and motor vehicle, all of which were later turned over to agents of this Division.

"When taken into custody, Presnell admitted to the local police that he was selling the aforesaid alcohol at \$6.00 a gallon. He was thereupon charged with possession of alleged untaxed whiskey under R.S. 33:1-50, arraigned on May 20, 1961 in the Municipal Court of Swedesboro, and held in bail for action by the Gloucester County Grand Jury.

"A sample of the contents of said glass jugs 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 48.0 per cent. The seized alcohol is illicit because of the absence of a tax stamp on the said glass jug. R.S. 33:1-1(1), R.S. 33:1-88. Such illicit alcohol and the Ford sedan in which it 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.

"At the hearing herein, Presnell appeared on behalf of his wife, Geneva Presnell, to give an explanation of his possession of the said untaxed alcohol, and in support of his wife's claim to the motor vehicle. He testified he appeared on behalf of his wife because she was in the seventh month of pregnancy and was unable, because of her physical condition and indeed, had been directed by her doctor, not to travel the distance required, in order to testify at this hearing. He stated that he had been employed as a carpenter until the latter part of November 1960 and earned approximately \$75.00 a week; that he was involved in an accident and a fractured leg prevented him from engaging in gainful employment; that he thereupon started to sell moonshine whiskey at \$6.00 per gallon without his wife's knowledge, and that he told her that the money that he contributed toward the expenses was earned on part-time jobs.

"He testified that his wife worked as an inspector at the Anchor-Hocking Co. in Salem, New Jersey, and earned \$60.00 a week until she was required to leave her employment because of her physical condition.

"He further testified that the motor vehicle was purchased by his wife from the Costa Auto Sales Co. and was financed by a local finance company. The purchase price was \$895.00 and a Ford truck which was registered in his wife's name but was actually his property was given in trade. He explained that the reason that the truck was placed in his wife's name was that he had had his license revoked as a result of an accident and was unable to place this car in his name. However, he states that the payments on the car were made by his wife in the sum of \$47.50 per month and that he made only four payments from his own funds.

"Upon cross examination he stated that his wife used the motor vehicle for travelling to and from work, and that it would be impossible for her to resume any employment without the use of a motor vehicle. He states that he had the use of the automobile several times a week, and at no time did he ever reveal to his wife, nor did she ever know of his illicit alcoholic beverage activity.

"Gene Costa appeared on his own behalf and stated that he is the owner of the Costa Motor Sales, Glassboro, New Jersey, and sold the motor vehicle to Geneva Presnell. This transaction was financed through the Clayton National Bank. Costa, in order to induce the Clayton National Bank to finance this transaction endorsed the note which was executed by Mr. and Mrs. Presnell. Thus, his interest would arise only if there should be a default in payment, and a judgment is obtained.

"Since he does not have a valid lien at this time upon this automobile, being no more than a general creditor, in the event as indicated, I recommend that his claim be denied. Seizure Case No. 7544, Bulletin 873, Item 9; Seizure Case No. 7471, Bulletin 855, Item 2; R.S. 33:1-66(f).

"There is some evidence in this case that would lead one to suspect that Presnell is the beneficial owner of this automobile, and used his wife as an accommodation because of the legal restrictions upon his right to drive a motor vehicle. However, as a practical matter, in view of the facts and circumstances herein, I believe that it would be desirable to give the claimant the benefit of every possible doubt, and resolve the same in her favor.

"The Director is authorized to return property subject to forfeiture to the owner thereof if such person establishes to his satisfaction that he acted in good faith. I am satisfied that Geneva Presnell acted in good faith and did not know or have any reason to suspect that her husband would use the car to transport and sell alcoholic beverages in violation of the law. I therefore recommend that upon payment of costs of seizure and storage that her request for return to her of the motor vehicle be granted, Seizure Case No. 10,157, Bulletin 1336, Item 6; Seizure Case No. 8638, Bulletin 1038, Item 3. I further recommend that the alcoholic beverages seized herein be forfeited."

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 I adopt them as my conclusions herein.

Accordingly, it is on this 19th day of September, 1961,

DETERMINED and ORDERED that if on before the 2nd day of October, 1961 Geneva Presnell pays the cost of seizure and storage of the Ford sedan, such motor vehicle will be returned to her; and it is further

DETERMINED and ORDERED that the seized alcoholic beverages, 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 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

SCHEDULE "A"

- 2 - 1 gallon glass jugs of alleged whiskey
- 1 - two-quart "Mason" jar of alleged whiskey
- 1 - Ford sedan, Engine Number M6CT 108475, New Jersey Registration GCR-905.

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - ILLICIT ALCOHOL, EQUIPMENT AND CASH ORDERED FORFEITED - MUSIC MACHINE AND CASH REGISTER ORDERED RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure)	
on April 14, 1961 of a quantity)	Case No. 10,557
of alcoholic beverages, various)	
furnishings, fixtures, equipment)	On Hearing
and \$13.91 in cash at 638 Com-)	
municapaw Avenue, in the City of)	CONCLUSIONS AND ORDER
Jersey City, County of Hudson and)	
State of New Jersey.)	

Joseph Liebman, Esq., Attorney for the claimant, David Bell.
 Schapira & Farkas, Esqs., by Gary Skoloff, Esq., Attorneys for
 Marks Magic Music, Inc.
 National Cash Register Co., by Edward B. Clancy, Sales
 Representative.
 David S. Piltzer, Esq., appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey to determine whether a quantity of alcoholic beverages, a music machine (known as a juke box), a cash register, a coca-cola machine, and \$13.91 in cash described in a schedule attached hereto and made a part hereof, seized on April 14, 1961 at 638 Communipaw Avenue, in the City of Jersey City, County of Hudson, and State of New Jersey, constitute unlawful property and should be forfeited.

"When the matter came on for hearing, pursuant to R.S. 33: 1-66, an appearance was entered on behalf of David Bell, the proprietor of the premises in question, who sought the return of a coca-cola machine and the cash.

"Marks Magic Music, Inc. made an appearance, through its counsel, in support of its claim, for the return of the music machine (juke box). At a continued hearing in this matter which was incorporated as part of the primary hearing held herein, the National Cash Register Co., through its representative, entered an appearance in support of its claim for the return of the cash register, on which it alleged that it had a lien.

"No one appeared to oppose forfeiture of the alcoholic beverages.

"The facts, as they appear from reports of ABC agents and other documents in the file, presented in evidence with the consent of the claimants herein, reflect the following: at about 10:00 P.M. on April 14, 1961, ABC agents entered the premises, which were being operated ostensibly as a restaurant, known as the 'Southern Inn Restaurant'. These premises consisted of a large dining room, kitchen and two adjacent rooms. They observed a male, (later identified as David Bell) in charge thereof, serving several customers present with alcoholic beverages. The agent ordered and was served, by Bell, a can of Rheingold beer, which Bell took from the refrigerator in the kitchen; the agent paid for the same with a one-dollar bill, the serial number of which had been previously recorded. A patron was then seen to order a double shot of whiskey, which was also served him by the said Bell. The agent then ordered a drink of VO whiskey, which was served to him, and for which he paid with another one-dollar bill, the serial number of which had been previously recorded. This was repeated once again upon payment of a

third 'marked' one-dollar bill. During this time a number of patrons were observed walking from the dining room to the kitchen, and upon their return they had cans of beer or whiskey in their hands. The agent ordered a chicken sandwich from one Sudie Smith; this, apparently, was the only food purchased and consumed during this period of time.

"Upon pre-arrangement, at 10:30 P.M., local police officers, accompanied by additional ABC agents, entered the said premises and arrested Bell for violation of R.S. 33:1-2 and R.S. 33:1-50(a) and for possession of alcoholic beverages with intent to sell the same without a license, contrary to R.S. 33:1-2 and R.S. 33:1-50(b).

"A search of the premises was thereupon made; however, only one of the 'marked' bills were recovered.

"Samples of the alcoholic beverages were taken by the agents, who thereafter delivered them to the Division chemist for analysis. His report shows the following: one six-ounce bottle of the alleged whiskey was a blended whiskey fit for beverage purposes with alcohol by volume of 43.5 percent; analysis of another six-ounce bottle of the alleged beer purchased by the agent, indicated that it was malt alcoholic beverage, fit for beverage purposes, with an alcoholic content of 4.2 percent; a 4/5 quart of VO Canadian whiskey was analyzed and indicated it was blended whiskey fit for beverage purposes, with an alcoholic content, by volume, of 43.5 percent; an analysis of a twelve-ounce can of Rheingold, which was opened in the laboratory, showed that it was a malt alcoholic beverage, fit for beverage purposes, with an alcoholic content, by volume, of 4.2 percent. The seized alcoholic beverages were illicit because they were intended for sale without a license. Such illicit alcoholic beverages, the sum of \$13.91 in cash and all personal property seized in the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-12; R.S. 33:1-66.

"Bell signed a voluntary statement after his arrest, in which he admitted that he had been selling alcoholic beverages without a liquor license for at least two weeks prior to the date of the arrest. He was arraigned in the Municipal Court of the City of Jersey City, and was held in bail for action by the Hudson County Grand Jury.

"Counsel for Bell makes a claim for the return of the personal property seized herein on the ground that, as stipulated by counsel for the Division, no search warrant was obtained in advance of the search and seizure; and he offers in support the Revised Statute 33:1-66.

"The pertinent part of 33:1-66(a) reads as follows:

'Any officers knowing, or having reasonable cause to believe, that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate under prior search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know or have reasonable ground to believe is unlawful property, and to arrest all persons whom he shall know, or have reasonable ground to believe are committing or have committed, a misdemeanor under this chapter....'

The underlined words, 'when necessary', delineate the situation that presented itself in this case. The illegal sales, made in the presence of ABC agents, thus invested authority for action under the above cited section.

"It is a well-established principle that no search warrant is necessary where the violation of the liquor laws is committed in the presence of the officer. The Atlantic (CCA N.Y.) 68 Fed. 2nd 8; Leininbach v. U.S. (CCA Pa.) 38 Fed. 2nd 442, Certiorari denied 50 Sup. Ct., 446, 281, U. S. 767, 74 Lawyers Ed. 1175; People v. Mushlock, 207 Northwestern 834, 233, Michigan 559, State v. Connor, 300, Southwestern 685, 318 Miss. 592, Hurless v. Dept. of Liquor Control, App. 136 Northeastern 2nd 736, App. dismiss. 132 Northeastern 2nd, 107, 164 Ohio St. 492; Griffin v. State, 210 Pacific 2nd 671, 90 Okl. Cr. 90; at least this is so where the officer is in a place where he had a lawful right to be when he witnesses the commission of the offense, Carvalho v. U.S., (CCA R.I. 54), Fed 2nd 232, U.S. v. 146, 147 Gallons of Alcohol, (D.C. N.J.) 3 Fed. Supplement 450; State v. Turner 259 Southwestern 427, 302 Mo. 660.

"In the instant case, the premises were clearly used as a public restaurant and sale of the alcoholic beverages was open and notorious. Where an officer is not a trespasser, and the possession or sale of intoxicating liquor is so open and obvious that anyone with a reasonable distance can readily and plainly see it, no such warrant is required. Kelly v. U.S., CCA Florida, 192 Fed. 2nd 162, Sagonias v. State, 89 Southern 2nd 252, State v. Peterson, 340 Pacific 2nd 444, 81 Idaho 233, Clasby v. State, 143 Pacific 2nd 430, 78 Okl. CR. 45, State v. Kanellos, 117 Southeastern 640, 124 So. Carolina 514.

"Therefore, it is quite clear that forfeiture does not depend upon seizure of property pursuant to a search warrant. Seizure Case No. 10,009, Bulletin 1391, Item 4. Re Tricoli, Bulletin 164, Item 9, citing cases from the Federal Jurisdiction, Strong v. United States, 46 F. (2d) 257 (CCA 1st, 1931); United States v. Various Items of Personal Property, 40 F. (2d) 422 (CCA 2nd, 1930) affirmed 282 U.S. 577 (1930); Dodge v. United States, 272 U.S. 530 (1926). Seizure Case No. 7480, Bulletin 857, Item 3, Seizure Case No. 5450, Bulletin 364, Item 14 and Seizure Case No. 7939, Bulletin 927, Item 9; Seizure Case No. 5644, Bulletin 378, Item 5; Re Amato, Bulletin 726, Item 8; Seizure Case No. 9280, Bulletin 1166, Item 8.

"Therefore, I recommend that the personal property including the cash, exclusive of the two items in the claims to be discussed hereinafter, be forfeited. Since no one has opposed forfeiture, I likewise recommend that the seized alcoholic beverages, obviously intended for unlawful sale, be likewise forfeited. R.S. 33:1-1(1).

"Leroy Fritts, route manager and salesman, of the Marks Magic Music, Inc., testifying on its behalf, stated that this claimant was the owner of the Seeburg 100 G Automatic Phonograph (juke box) which it installed on these premises under a leasing agreement. He further stated that he visited the above described premises approximately once every two weeks, always in the morning, and he never saw any alcoholic beverages being dispensed or consumed on those premises. His testimony was, in substance, corroborated with respect to this claim by David Bell, the proprietor of these premises.

"Upon cross examination, it was ascertained that within a week after April 14, 1961 this claimant installed a new music machine in these premises. The explanation given was that he had consulted with a representative of the Music Guild, and with his attorney, and was left with the impression that, since these premises were permitted to continue in operation as a restaurant,

such installation, (of another machine), was lawful and proper.

"The testimony further indicates that at no time was any effort made to investigate the character and background of this business in order to determine the desirability of installing these machines. The installation of the second machine might reflect upon the question of good faith upon the part of the claimant, with respect to the installation of the seized machine. However, I believe that the claimant acted imprudently rather than in bad faith.

"On the basis of the evidence submitted, I have decided to resolve doubts with respect to its good faith in favor of this claim. It is a well-known fact that in the music machine rental business competition is extremely keen, and this claimant was undoubtedly concerned with his own operations. Under the circumstances, I am convinced that the claimant acted in good faith and did not know, or have any reason to believe that alcoholic beverages were being sold in the restaurant in question. I therefore recommend that its claim be recognized. R.S. 33:1-66(f); Seizure Case No. 10,416, Bulletin 1384, Item 4.

"The National Cash Register Co. was given permission to prove its claim at a continued hearing, because it represented that it had not received notice of the original hearing. Edward B. Clancy, a sales representative for the said claimant, testifying on its behalf, stated that it had sold a National Cash Register to David Bell under a conditional sales contract, which was duly filed with the County Clerk, and that there is now due thereon a balance of approximately \$200.00 on the machine. On further examination, Mr. Clancy stated that it is not the policy of this company to make any investigations in sales of cash registers, but that if he knew that Bell was engaged in illicit alcoholic beverage activity this claimant would not have sold this cash register to him. He states that this cash register might be purchased on open market for approximately \$75.00. Under the circumstances I am convinced that this claimant acted in good faith, and did not know, or have any reason to believe that alcoholic beverages were being sold in the restaurant in question.

"I therefore recommend that his claim under R.S. 33:1-66(f) be recognized. Seizure Case No. 10,095, Bulletin 1321, Item 7; and Seizure Case No. 10,416, Bulletin 1384, Item 4."

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 I adopt them as my conclusions herein.

Accordingly, it is on this 19th day of September, 1961,

DETERMINED and ORDERED that if on or before the 2nd day of October, 1961, the Marks Magic Music, Inc. pays the costs of seizure and storage of its Seeburg 100 G Automatic Phonograph (juke box) said juke box will be returned to it; and it is further

DETERMINED and ORDERED that if on or before the 2nd day of October, 1961 the National Cash Register Co. pays the costs of seizure and storage of its cash register, said cash register will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the \$13.91 in cash, 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 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

SCHEDULE "A"

1 - bottle of whiskey
55 - cans of beer
3 - cases of soda
1 - cash register
1 - juke box
1 - coca cola machine
\$13.91 in cash

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

In the Matter of the Seizure)	Case No. 10,579
on May 12, 1961 of a quantity)	
of alcoholic beverages and a)	On Hearing
Nash sedan, on the public)	
highway, at Mercer and Howard)	CONCLUSIONS AND ORDER
Streets, in the City of Newark,)	
County of Essex and State of)	
New Jersey.)	

Bernard Shurkin, Esq., appearing for Liberal Finance Service.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether three five-gallon jugs of alcohol, two one-half pint bottles of alcohol and one Nash sedan described in a schedule attached hereto seized on May 12, 1961 at Mercer and Howard Streets in the City of Newark, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66 no one opposed forfeiture of the said alcohol and motor vehicle. However, before an Order was prepared herein, a request was made by Liberal Finance Service for a supplemental hearing in order to establish its alleged lien on the said automobile. This request was grounded on the fact that it had mistaken the date of the original hearing and failed to appear on that date. Pursuant to its request, a supplemental hearing was set for July 17, 1961, at which time an appearance was entered on its behalf.

Reports of ABC agents and other documents in the file presented in evidence disclose the following facts: on May 12, 1961 at approximately 9:50 P.M. local police officers questioned the driver of a Nash Ambassador which was parked at the above mentioned location during their routine tour of duty. They ascertained that the above alcoholic beverages were being transported in the said

motor vehicle and that there was not affixed thereto tax stamps indicating the payment of tax on alcoholic beverages. The driver identified himself as George Lyons and stated that the automobile was owned by his brother, John Lyons of Bloomfield, N. J. He was thereupon arrested, charged with possession of illicit alcohol in violation of R.S. 33:1-50, and arraigned in the Municipal Court in the City of Newark on May 15, 1961.

The officers seized the Nash Ambassador and the alcoholic beverages and thereafter turned over such articles to ABC agents.

A sample of the contents of the five-gallon jug of 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 42.0 percent.

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

The Liberal Finance Service has presented in evidence a chattel mortgage dated February 10, 1961, signed by John Lyons and his wife, Irene Lyons, evidencing a loan made by the said John Lyons for the purchase of the Nash Ambassador in question. The said chattel mortgage was not recorded in the County but was noted on the bill of sale. The present balance due thereon is \$451.21 plus the charges that would be due from July 6th to July 17th, the date of the hearing. Albert George Zimmerman, vice-president and manager of the Montclair office of the finance company, testified that he supervised the said loan and that a credit clearance was made of the applicant in the usual course of events through a credit bureau. It was ascertained that Lyons was married, had a four room apartment, paying a rental of \$125.00 a month, and that he was then employed and had been steadily employed for the past five years at the Allen Feid Plumbing Company. When this information was confirmed, his application was approved. Mr. Zimmerman further testified that there was no information made available to him that the applicant had been involved in any illegal activities and he stated that had such information been made available to him the finance company would not have granted this loan.

He further estimates that the present retail value of this motor vehicle is \$275.00.

I am satisfied from the evidence presented that the finance company acted in good faith, and did not know or have any reason to suspect that Lyons would transport or authorize the transportation of illicit alcohol in the Nash Ambassador. I shall therefore recognize its lien in the sum of \$451.21.

It appears that the approximate retail value of the Nash Ambassador does not exceed the amount of the lien claim and the costs of the seizure and storage of the motor vehicle. Such motor vehicle will therefore be returned to Liberal Finance Service upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 2nd day of October, 1961, the Liberal Finance Service pays the costs of seizure and storage of the Nash Ambassador, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized 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 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: September 19, 1961

SCHEDULE "A"

- 3 - 5 gallon glass jugs of alcohol
- 2 - 1/2 pint bottles of alcohol
- 1 - Nash sedan, Serial No. R745766, N. J. Registration FLT-296.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Willow Tavern, Inc.
 t/a Willow Tavern, Inc.
 140-142 No. Willow Street
 Trenton 8, New Jersey
 Holder of Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS
AND
ORDER

 Defendant-licensee, by Charles Harper, President.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On August 10 and 15, 1961, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.
- "2. On August 10 and 15, 1961, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

At 11:30 a.m., Thursday, August 10, 1961, ABC Agent J entered defendant's licensed premises wherein five patrons were being served by a bartender called "Eggy". At 11:45 a.m., a man known as Pete arrived and Agent J saw "Eggy" hand him a roll of bills. The agent also observed one of the patrons give Pete a one-dollar bill and a piece of paper with numbers thereon. Agent J asked for and received

from "Eggy" a pencil and a piece of paper after telling him that he had a couple of numbers that he wanted to play with Pete. He then recorded two numbers bets and handed the slip of paper together with 50¢ to Pete, who pocketed them and left the premises. The agent departed shortly thereafter.

On August 15, 1961, Agent J returned to the licensed premises at 11:40 a.m. and seated himself at the bar. Shortly thereafter, Agent C entered and took a seat at the bar apart from Agent J. When "Eggy", who was tending bar, served Agent J a glass of beer, the agent placed on the bar a marked one-dollar bill and a slip of paper on which four numbers bets had been previously recorded saying, "Eggy, here are some numbers I want you to give to Pete when he comes in." "Eggy" remarked, "Man, we don't have that in here. Go down to the poolroom down the street where Pete is, because he may not come in here today." At 12:20 p.m., a woman known as Mrs. Dolly Johnson, entered the premises and both agents observed several patrons confer briefly with her and hand her something. Agent J accosted her and said, "I have some numbers I want to place, Dolly", and when she responded, "OK", Agent J handed her the aforesaid marked bill and bet slip and Mrs. Johnson recorded the bets on a master sheet. As pre-arranged, three other ABC agents and two police officers then entered the premises. Upon request, Mrs. Johnson emptied her purse and among the contents were found \$34.82 including the agent's marked bill, his bet slip and the master sheet. Mrs. Johnson admitted taking numbers bets stating that she arrives at the licensed premises at different times each day. She further stated that the bartender does not get a percentage of her "take". The bartender, who identified himself as Alphonso Tucker, denied knowledge of gambling on the premises, but admitted that he was aware of the fact that Mrs. Johnson had been previously arrested for taking numbers bets, but didn't know she was continuing that activity. However, the agents' reports indicate that the betting was conducted openly. Mrs. Johnson was placed under arrest.

Defendant has no prior adjudicated record. I shall suspend its license for twenty-five days, the minimum suspension imposed in commercialized gambling cases when a licensee or an employee of the licensee is involved. Re Johnson, Bulletin 1407, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 26th day of September 1961,

ORDERED that Plenary Retail Consumption License C-28, issued by the Board of Commissioners of the City of Trenton to Willow Tavern, Inc., t/a Willow Tavern, Inc., for premises 140-142 No. Willow Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, October 3, 1961 and terminating at 2:00 a.m., Monday, October 23, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Michael J. Strohaber)
t/a Cliffside Tavern)
630 Dewey Avenue)
Alpha, N. J.,)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Common Council of the Borough of Alpha.)

Joseph V. DeMasi, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold, served and delivered and premitted the sale, service and delivery of alcoholic beverages to a minor, and permitted the consumption of such beverages by said minor in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

During an investigation of a motor vehicle accident which occurred on the morning of August 17, 1961, New Jersey State Troopers obtained signed statements from James ---, Edward ---, Michael J. Strohaber (the licensee) and Dorothy Strohaber (wife of the licensee).

In his statement James --- says that he is 19 years of age; that he was in defendant's licensed premises on August 17, 1961, from about 1:30 a.m. until 4 a.m.; that during this visit he drank about ten glasses of beer and four shots of whiskey which were served by a female bartender named "Dot;" that, after he left the premises, he slept in his car until about 7:30 a.m. and that the accident occurred shortly after he drove away from the vicinity of the licensed premises.

In his statement Edward --- (an adult) says that he met James --- in defendant's premises on August 17, 1961, at about 2 a.m.; that the licensee was then tending bar but was relieved shortly thereafter by his wife; that, before he left at 4 a.m., he saw James --- drinking beer but had "no idea how many."

In his statement Michael J. Strohaber says that James --- entered on August 16, 1961, at 11 p.m., and admits that he served him about ten glasses of beer between that time and 1 a.m. on the following morning. He further states that he did not know James --- was a minor, but believes that his wife or somebody asked James before and that he then "pulled out a card saying that he was 21 years of age."

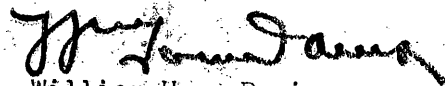
In her statement Dorothy Strohaber says that she relieved her husband about 2:30 a.m. on August 17, 1961; that she served one glass of beer to James --- prior to 3:45 a.m., when she left the premises, and that, about two months previously, James --- had shown her a Selective Service card indicating that he was 22 years of age.

Defendant has no prior record. In attempted mitigation defendant's attorney has advised me by letter that defendant's wife served a beer to the minor in the belief that he was of full age because on a previous visit he had exhibited an identification card indicating he was over 21 years of age. However, even if this be true, no written representation of age was obtained from the minor, as required by R.S. 33:1-77. Moreover, defendant admits that he had

previously served ten glasses of beer to the minor. Hence, at least eleven glasses of beer were sold to and consumed by the minor. I find no mitigating circumstances in this case. The minimum penalty for an unaggravated sale to a 19-year-old minor is fifteen days. Re Vance's Bar, Inc., Bulletin 1396, Item 5. Because of the large amount of alcoholic beverages sold to the minor, I shall suspend defendant's license in this case for an additional five days, making a total suspension of twenty days. Re Jennings, Bulletin 1244, Item 3. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 27th day of September 1961,

ORDERED that plenary retail consumption license C-4, issued by the Mayor and Common Council of the Borough of Alpha to Michael J. Strohaber, t/a Cliffside Tavern, for premises 630 Dewey Avenue, Alpha, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Monday, October 9, 1961, and terminating at 3 a.m. Tuesday, October 24, 1961.



William Howe Davis
Director