

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

J. Ambrose
Ambrose

BULLETIN 1781

February 29, 1968

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - DE LUCCIA v. PATERSON.
2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - CLAIMS OF OWNER OF CERTAIN EQUIPMENT DENIED IN ABSENCE OF GOOD FAITH - PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.
3. ACTIVITY REPORT FOR JANUARY 1968.
4. DISCIPLINARY PROCEEDINGS (Trenton) - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
5. STATE LICENSES - NEW APPLICATIONS FILED.

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1. APPELLATE DECISIONS - DE LUCCIA v. PATERSON.

#3284)
MICHAEL DE LUCCIA)
t/a Club 25,)
Appellant,)

v.)

BOARD OF ALCOHOLIC BEVERAGE)
CONTROL FOR THE CITY OF)
PATERSON,)
Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

-----)
#3290)
MICHAEL DE LUCCIA)
t/a Club 25,)
Appellant,)

v.)

BOARD OF ALCOHOLIC BEVERAGE)
CONTROL FOR THE CITY OF)
PATERSON,)
Respondent.)

-----)
Goodman & Rothenberg, Esqs., by Robert I. Goodman, Esq.,)
Attorneys for Appellant.)
A. Michael Rubin, Esq., Attorney for Respondent.)

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Two separate appeals were instituted by appellant against the Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) from convictions and consecutive revocations of his license.

In Case #3284 appellant challenges his conviction of a charge that on June 25, 1967 he sold alcoholic beverages to a minor, age eighteen, as a result of which his license was revoked effective October 4, 1967.

In Case #3290 appellant challenges his conviction of a charge that on September 23, 1967, while the above matter was pending and prior to the date of hearing thereon before the Board, he served to and permitted the consumption of alcoholic beverages by a sixteen-year-old minor. The Board, after hearing this matter on October 25, 1967, entered a consecutive revocation of appellant's license effective October 27, 1967.

By orders dated October 2 and October 27, 1967, the Board's orders of revocation were stayed pending the determination of these appeals and until the further order of the Director.

Since these matters involve the same parties and similar charges, they were consolidated for trial at one hearing, although they will be considered separately, but will be the subject of a single Hearer's report.

In his petition of appeal in Case #3284 appellant alleges that the finding was against the weight of the credible evidence because it was based "upon the testimony of a witness who admitted perjuring himself" and that the penalty was excessive under the circumstances. In its answer thereto the Board admits the jurisdictional allegations and denies the substantive allegations of the petition.

With respect to Case #3290, the appellant alleges that the findings were not based upon the credible evidence but upon the testimony of a witness "who admitted that she did not order, purchase or consume any alcoholic beverage on the premises" and, further, that the penalty was excessive. In its answer to this petition the Board denies the substantive allegations and sets forth in separate defenses that (a) its action was not arbitrary or capricious but was based upon the testimony of all the witnesses, (b) its findings were made after an impartial hearing and due deliberation, and (c) the evidence clearly showed the service by the appellant and consumption by a minor in violation of the applicable statutes and regulations.

These were appeals de novo, with full opportunity for counsel to be heard, to present evidence under oath and cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15.

I

I shall first consider the testimony and the matters presented in Case #3284. In support of its charge that the appellant served alcoholic beverages to one Samuel ---, a minor, on June 25, 1967, in violation of Rule 1 of State Regulation No. 20, it produced Officer Dominic J. Trifari (a local police officer) who gave the following account: While on regular patrol duty on June 25, 1967, he observed two "youthful looking" boys approaching the licensed premises. Shortly after they entered, he left his patrol car, entered the said premises and observed Samuel --- seated at the bar and consuming a bottle of Schaefer beer. Approaching this minor he asked him to show him his identification and proof of age, whereupon Samuel produced a driver's license which reflected his birth date as September 1948. Upon questioning, the minor admitted that he had been required by the bartender to produce identification and he displayed his driver's license. The bartender (one Sanders) was then questioned by this officer and admitted that he had examined the driver's license, after which he served the beer to this minor. Thereupon the minor and the bartender were arrested and taken to police headquarters. On cross examination this officer elaborated upon his direct testimony and stated that the minor picked the bottle from the counter, poured some of its contents into a glass and consumed it, and then poured the balance of its contents into the glass. He also noted that the stool to the right of the minor was not occupied at the time of the confrontation. Finally he added that he thinks that the minor admitted representing himself

to the bartender as being twenty-two years of age. Also, the minor did not have a draft card on him and the only identification possessed by the minor was his driver's license.

Samuel --- testified that he was born on September 13, 1948 and was, therefore, nineteen years of age on the date herein alleged. He gave the following account: He entered these premises on June 25, 1967, with a few friends and seated himself at the bar. He then ordered a drink from John Sanders (the bartender on duty) who asked him for identification. He showed him his driver's license; Sanders held it to the light and returned it to him. Sanders thereupon brought a bottle of beer and accepted payment therefor from the minor. While he was drinking the beer, Officer Trifari approached and questioned him as aforesaid. He further testified that, when the officer questioned the bartender, the bartender denied serving him the beer. On cross examination he admitted representing to the bartender that he was twenty-three years of age but insisted that he showed him his driver's license and not a draft card; in fact he emphatically denied having any draft card in his possession. He did admit, however, testifying in municipal court that he presented a draft card. He was questioned closely about the actual service of the beer by the bartender and insisted that the bartender delivered a bottle of beer to him, accepted payment from him, and that he consumed the beer. Finally he denied that any patron accused him of taking beer intended for the said patron.

Frank Jefferson, testifying on behalf of the appellant, stated that he was employed as a door checker by the appellant on the night in question and remembers specifically examining a draft card produced by the aforesaid minor which satisfied him that this minor was twenty-three years of age. He observed the minor at the bar producing some form of identification, and the bartender apparently was not satisfied that he was of age and refused to serve him. On cross examination this witness insisted that, although he examined the identifications of many minors and that Samuel came in with a group of persons, he particularly remembers his draft card. He also recalls that the bartender refused to serve this minor although he permitted him to remain seated at the bar. At no time did this witness or the bartender ever request the minor to leave the premises. He was further questioned with respect to service of the beer, and he explained that the bottle of beer was placed to the right of the minor and the minor then pulled the bottle of beer over to him. When he did this he saw Sanders "pick the money off the bar", but this witness was not certain whose money it was.

Willy Hornes (a patron of the licensed premises on the night in question) testified that he arrived there at about 12:30 a.m., seated himself next to the minor, purchased and consumed a bottle of beer. He then ordered another bottle but, before it was served to him, left his position at the bar and went to the men's room. When he returned he noted that the police officer was standing next to the minor and that there was no bottle of beer in front of the stool which he had vacated. He added that he had placed fifty cents on the bar before he left. On cross examination he insisted that the bartender refused to serve the minor after the bartender examined what apparently was a draft card.

Jerome Thompson (another patron) testified that the minor showed the door checker a draft card upon entering. However, he did not observe any of the activities after he entered the premises.

The proceedings herein are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252. Thus the establishment of guilt in these proceedings requires proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373.

The dispositive issue in this matter, as framed by the pleadings and argued by the attorney for appellant in his memorandum, is whether this minor (whose statutory ineligibility to purchase alcoholic beverages has been clearly established) was sold alcoholic beverages and consumed the same, in violation of the applicable statute and rules and regulations of this Division.

I have carefully examined and assessed the testimony herein and incline to the conviction that the version of what occurred as given by the minor and the police officer stands in a better light than that of the appellant's witnesses. I believe that the minor did not have a draft card in his possession, and the police officer testified that he did not find any such draft card on his person.

It is abundantly clear that, even on the basis of the door checker's testimony, both he and the bartender believed the minor to be below the age of statutory maturity. It is my feeling from the evidence that the bartender cursorily examined the driver's license of the minor and, because of the rush of business, he did not carefully examine the age on the minor's registration certificate. I further find that he did serve a bottle of Schaefer's beer and received payment therefor. The minor asserts that he handed him money in payment for this alcoholic beverage, and Jefferson (the door checker) admitted that the bartender picked up money from the bar for such purchase. However, he believed that that money was left there by another patron. I completely discount and disbelieve that part of his testimony.

Since there is a denial that there was any sale or service to this minor, it is unnecessary to discuss the requirements of R.S. 33:1-77 with respect to sale and service of alcoholic beverages to a minor. See also special note to Rule 1 of State Regulation No. 20 of the Rules and Regulations of this Division.

Unfortunately the bartender was not produced so we do not have the benefit of his testimony. However, it is clear from the evidence herein that neither the bartender nor the door checker requested the minor to leave the premises if in fact the bartender refused to serve this minor because he was under age. It would have been natural to request the minor to leave the premises if he was satisfied that this person was under age. Nothing of the kind took place, and I am satisfied that the bartender did serve this alcoholic beverage to the minor who consumed it immediately prior to the confrontation by the police officer. The testimony of the appellant's witnesses lacks candor and I must frankly comment that in my opinion they are inconsistent with both the facts and the realities of the situation. I therefore find that the guilt of the appellant on this charge has been established by a fair preponderance of the credible evidence -- indeed by substantial evidence. I therefore conclude that the appellant has not met the burden of establishing that the action of the Board in finding him guilty of this charge was erroneous. Rule 6 of State Regulation No. 15.

Appellant further argues that the penalty of revocation imposed herein was excessive and unreasonable. In considering the matter of penalty it should be emphasized that a liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585; Mazza v. Cavicchia, 15 N.J. 498 (1954). The prevention of the sale of alcoholic beverages to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502; In re Schneider, 12 N.J. Super. 449. Under the Alcoholic Beverage Law local issuing authorities are vested with the authority to suspend or revoke liquor licenses, after hearing, for certain enumerated violations, including that charged herein. R.S. 33:1-31. The penalty to be imposed in disciplinary proceedings instituted by a municipal issuing authority rests within its sound discretion in the first instance, and the power of the Director to reduce the penalty on appeal must be sparingly exercised and only with the greatest caution. Harrison Wine and Liquor Company, Inc. v. Harrison, Bulletin 1296, Item 2; Benedetti v. Trenton, Bulletin 1040, Item 1, aff'd 35 N.J. Super 30. Penalties may vary in different municipalities and according to the circumstances surrounding the offenses. Pawelek v. Sayreville, Bulletin 456, Item 10. The fact that a penalty may be considered relatively severe does not of itself justify reduction on appeal. The Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1.

In considering the penalty to be imposed, the Board took into consideration the prior record of this appellant, which shows the following:

- (1) Effective February 9, 1956, the appellant's license was suspended for 25 days by the Director for sale in violation of a local hours regulation and of Rule 1 of State Regulation No. 38 (Re DeLuccia, Bulletin 1102, Item 2);
- (2) Effective April 1, 1957, his license was suspended by the Director for 25 days for sale during prohibited hours, in violation of Rule 1 of State Regulation No. 38 (Re DeLuccia, Bulletin 1166, Item 1);
- (3) Effective April 26, 1957, his license was suspended by the Director for 15 days for sale to minors (Re DeLuccia, Bulletin 1166, Item 2);
- (4) Effective March 17, 1958, his license was suspended by the municipal issuing authority for 10 days for permitting a brawl on the licensed premises;
- (5) Effective April 21, 1958, his licensè was suspended by the municipal issuing authority for 10 days for violating a special condition in his license, and said suspension was sustained on appeal to this Division, effective July 28, 1958 (Re DeLuccia v. Paterson, Bulletin 1240, Item 1). An appeal of that suspension was taken to the Appellate Division which sustained the Director and the penalty was reimposed effective April 6, 1959 (Re DeLuccia v. Paterson, Bulletin 1275, Item 11);
- (6) Effective November 9, 1958, his license was suspended by the Municipal issuing authority for 45 days for sale to minors;

(7) Effective July 16, 1962, his license was suspended by the Director for 25 days for mislabeling bottles (Re DeLuccia, Bulletin 1470, Item 4);

(8) Effective April 17, 1967, his license was suspended by the municipal issuing authority for 30 days for sale to minors;

(9) Effective June 19, 1967, his license was suspended by the municipal issuing authority for 5 days on a charge of hindering an investigation.

It seems clear to me that the Board took a very serious view of the appellant's past record and felt that, on the basis thereof and in view that its finding on this charge that this appellant was in the wrong business, the Board quite properly was concerned with the problem of teenage drinking and the sale and service of alcoholic beverages to minors on licensed premises.

The entire record considered, especially in view of the adjudicated record of appellant of convictions of similar offenses, it cannot be convincingly maintained that, as a matter of substantial justice, appellant has been prejudiced in the circumstances presented. Benedetti v. Trenton, 35 N.J. Super. 30, 35; cf. Oak Inn, Inc. v. State etc. (App.Div. 1963), not officially reported, reprinted in Bulletin 1523, Item 2. As the court stated in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953):

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

In the light of the broad discretion vested in the Board, I conclude that the action of the Board was not the result of intentional discrimination or other arbitrary action. Accordingly it is my conviction that the said penalty was not so severe as to form a basis for modification on appeal. It is therefore recommended that an order be entered affirming the Board's action on this charge, dismissing the appeal and re-imposing the revocation imposed by the Board and stayed pending the entry of the order herein.

II

In Appeal #3290 the appellant was charged with permitting the sale and delivery of alcoholic beverages and the consumption thereof by a sixteen-year-old minor on September 23, 1967. As a result of the said finding, the appellant's license was revoked effective October 27, 1967.

In support of this charge the Board produced as its witness Melvin Jenkins (a member of the vice squad of the Paterson Police Department) who gave the following account: On September 22, 1967, at 10 p.m., he entered the licensed premises made an observation of the patrons. He then returned at 1:30 a.m. to the said premises and observed a female minor sitting at the bar and drinking what appeared to him to be an alcoholic beverage. Upon questioning her he ascertained that she was sixteen years of age, and she told him that she was

drinking orange juice. However, in smelling the drink he believed that it actually contained vodka and was a drink known as a screwdriver. He did not question the bartender but immediately took the girl into custody and took her to police headquarters. On cross examination he admitted that he did not submit the contents of her glass for chemical analysis and that, at the time of this hearing, he could not produce the alleged alcoholic beverage because it had "evaporated" and "we threw it out." He could not explain why he did not question the bartender or arrest him for service to a minor. He finally explained that he was able to detect the odor of vodka because he had formerly been employed as a bartender before joining the local police force.

Douglas Robb (a local police officer) testified that he observed an alleged alcoholic beverage in front of the minor who was seated at the bar at the time of confrontation.

Melvin Jenkins resumed the stand and sought to correct his testimony heretofore given. He stated that he had re-examined his notes and now recalled that the minor admitted that the drink that she was consuming contained vodka and orange juice.

Diana --- testified that she is sixteen years of age and was born on October 2, 1951. She gave the following account: She entered the premises for the purpose of buying cigarettes; she then proceeded to the bar and ordered orange juice. She specifically denied that there was any vodka or any other alcohol in the drink. She further asserted that no charges were brought against her with respect to her activities at the premises. On cross examination she insisted that she told the police officers that she was consuming only orange juice and that she was not served any alcoholic beverage at that time.

Frank Jefferson, testifying on behalf of the appellant, stated that he had known this minor for the past ten or eleven years and knew that she was sixteen years of age. He was acting as bartender on the date alleged herein, and is positive that he never served her any alcoholic beverages. On cross-examination he specifically denied being informed by the police officers that the subject drink contained vodka or any other alcoholic beverage.

In evaluating the testimony in this matter I feel that the Board has failed to establish its proofs by a preponderance of the evidence, particularly in view of the direct testimony of the minor that she was not served an alcoholic beverage. Although the entire episode has created a suspicion as to the actual facts, suspicion is never a substitute for proof properly presented. To be in doubt is to be resolved. Re Keansburg Steamboat Company, Bulletin 1287, Item 2.

Under the circumstances I conclude that the proofs fall short of establishing the truth of this charge by a fair preponderance of the credible evidence. I therefore recommend that an order be entered reversing the Board's action and setting aside the order of revocation entered upon this charge.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the attorney for appellant and written answers to the said exceptions, together with supportive argument, were filed by the attorney for respondent, pursuant to Rule 14 of State Regulation No. 15.

In considering and analyzing the said exceptions, it is well to point out that the Hearer had the benefit of observing the demeanor of the witnesses as they testified at the hearing herein and assessing their credibility. It is a fundamental legal principle that the finding must be based on competent evidence and "grounded on a reasonable certainty as to probabilities arising from a fair consideration of the evidence." 32A C.J.S. sec. 1042. "The trier of the facts may reject in toto the testimony of a witness who has given inconsistent or contradictory testimony, or may accept his testimony and reconcile the apparent contradictions, or may accept the testimony in part and reject it in part." 98 C.J.S. p. 342.

The exceptions challenge the credibility of respondent's witnesses, particularly that of Officer Trifari. It is asserted that the officer observed two youthful looking boys approaching the licensed premises and, when he entered the premises, he saw the minor Samuel "seated at the bar and consuming a glass of beer, and then pouring another glass for himself." It is contended that in the time it took the police officer to traverse a public sidewalk and enter the tavern, the minor would have had little opportunity to display identification at the door and to the bartender and to order a drink and consume the same.

The testimonial complex, however, does not bear out this contention. Officer Trifari never testified that this minor was one of the "youthful looking" boys whom he saw enter the tavern. The burden of his testimony was that when he entered the tavern, the minor Samuel was not one of the boys entering the tavern but attracted the officer's attention because of his youthful appearance while he was consuming beer at the bar.

Appellant further alleges that the bottle of beer was not placed in front of Samuel but was, in fact, placed in front of the empty stool alongside the minor. The Hearer properly found from the evidence that the bottle of beer was placed slightly to the side of the minor; that he paid for the said beer and did consume it. The Hearer also found from the credible evidence presented that the minor produced a driver's license which was examined by the bartender and, according to the police officer's testimony, the bartender admitted serving the minor after examining his identification. The bartender, it is noted, was not produced at the hearing to contradict the testimony of respondent's witnesses.

Appellant further excepts to the Hearer's report on the ground of alleged contradiction in the testimony of the two police officers when they testified before respondent at the initial hearing. At the hearing herein, counsel for respondent represented that Officer Virone was on sick leave and was unable to be present. If appellant felt that Virone's testimony was critical, he had the opportunity, upon compliance with Rule 8 of State Regulation No. 15, to submit at this hearing the transcript of the testimony taken before respondent. Furthermore, he could have subpoenaed the absent witness in accordance

with Rule 9 of State Regulation No. 15. Appellant did not take advantage of the recourse made available by these rules.

Other matters raised in the exceptions relate to questions of fact which have been fully considered by the Hearer and are not meritorious.

Finally, appellant urges that the penalty of revocation is excessive and unreasonable because (1) there is no evidence that respondent took appellant's prior record into consideration in imposing the penalty and (2) it is difficult to "control and curb" minors in licensed premises, a situation "greatly magnified by the fact that they can lawfully consume alcoholic beverages within ten miles of the tavern in question, in New York City."

These contentions are without merit. The law specifically provides by R.S. 33:1-77 that the only complete defense to sale and service of alcoholic beverages to a minor is that the minor falsely represented himself in writing to be of age; that his appearance was such that an ordinary prudent person would believe him to be of age; and that the sale was made in reliance on such written representation and appearance and the reasonable belief that the minor was of age. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of the sale or service. See Special Note to Rule 1 of State Regulation No. 20.

Furthermore, the licensee is the master of his tavern and is fully obligated to control his patronage. His professed inability to curb teenage drinking in his premises is a persuasive reason for disassociating himself from the liquor industry.

With respect to the penalty imposed, it is logical to assume that respondent did take cognizance of the past record of the licensee. Respondent's attorney, in answer to the exceptions, represents that when the decision was rendered, "the member of the local Board who made the motion prefaced his remarks by making reference to the licensee's past record." Additionally, the prior record was included in appellant's application for renewal of its license, which was also fully examined by the members of the respondent Board, so that they were well aware of appellant's record.

As the Hearer pointed out, the record fully justified the action taken. A local issuing authority is not inalterably bound by any doctrine of stare decisis in the imposition of penalties. As the court stated in Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373, 382:

"The liquor control laws and regulations must be administered in the light of changing conditions. Prior measures of enforcement may have failed their mark. Recurrent instances of particular violations must be dealt with accordingly. The penalty imposed upon appellant may reflect an administrative attitude that more stringent enforcement is necessary..."

Having carefully considered the entire record, including the transcript of the testimony, the exhibits, the Hearer's report, the exceptions filed by appellant and the answers to

the exceptions filed by respondent, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of January, 1968,

ORDERED that as to appeal #3284, 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 as to appeal #3290, the action of respondent be and the same is hereby reversed; and it is further

ORDERED that my order entered on October 2, 1967, staying respondent's order of revocation pending the determination of the said appeal #3284, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-162, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Michael DeLuccia, t/a Club 25, for premises 47 Bridge Street, Paterson, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI
DIRECTOR

- 2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - CLAIMS OF OWNER OF CERTAIN EQUIPMENT DENIED IN ABSENCE OF GOOD FAITH - PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)
on May 21, 1967 of a quantity) Case No. 11,911
of alcoholic beverages, various) ON HEARING
furnishings, fixtures, equipment) CONCLUSIONS
and \$9.70 in cash in a restaurant) AND ORDER
located at 133 Church Street,)
Swedesboro, in the County of)
Gloucester and State of New Jersey.)

Kavesh & Basile, Esqs., by Frank G. Basile, Esq., appearing
for Dominick Maggio.
Ralph DeMatteo, 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:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether a quantity of alcoholic beverages, \$9.70 in cash and various fixtures, furnishings and equipment, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on May 21, 1967 in a restaurant located at 133 Church Street, Swedesboro, should be forfeited.

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

At the said hearing Dominick Maggio, trading as Frank Brezzo and Company, represented by counsel, appeared and sought the return of a cigarette machine. At an adjourned hearing of this matter, Ralph De Matteo, appearing pro se, sought the return of a pool table, juke box and a pinball machine. No one else appeared to enter a claim or seek the return of any of the balance of the seized personal property, alcoholic beverages or the cash.

The file of this Division was admitted into evidence by stipulation of the said claimants, and contained the affidavit of mailing, affidavit of publication, chemist's report certifying to the alcoholic content of the alcoholic beverages seized, the inventory referred to, and the two "marked" one-dollar bills.

The Division established its case through the introduction of the file, as follows: Pursuant to an investigation of the above-described premises, an ABC agent, in possession of five "marked" one-dollar bills and one "marked" ten-dollar bill, entered the subject premises at about 2:00 a.m. on Sunday, May 21, 1967. The premises are located on the first floor rear of a two-story frame building with a store front, and which contained a front or game room and adjoining room. The game room contains a makeshift bar, behind which was a refrigerator stocked with beer; to the left of the bar was a pool table; along the rear wall was a juke box and a pinball machine; alongside its entrance was a cigarette machine, and the adjoining room contained cases of beer and soda.

Upon entering the front or game room, the agent observed 15 male and female patrons being served alcoholic beverages by Mrs. Mary Holmes, a barmaid, and Calvin Butcher. The agent purchased the bottle of beer from Mrs. Holmes, paying therefor with one of the "marked" one-dollar bills for which she returned 60¢ in change. Shortly after the initial purchase, the agent made other purchases of alcoholic beverages for some of the other patrons and for himself, in payment for which he gave Mrs. Holmes several of the other "marked" bills. She placed the "marked" bills in her pocket.

At about 2:50 a.m. other ABC agents, accompanied by local and state police entered the premises and identified themselves. Mrs. Holmes, upon request, emptied her apron pocket containing \$9.70, which included two "marked" one-dollar bills.

Mrs. Holmes was thereupon arrested, charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50. On May 24, 1957 Butcher was arrested on a warrant charging him with possession of alcoholic beverages with intent to sell the same without a license, in violation of R.S. 33:1-50 and a sale of alcoholic beverages without a license, in violation of R.S. 33:1-2.

A sample of the beer sold to the agent was analyzed by the Division chemist on June 8, 1967 and his report shows that it is an alcoholic beverage fit for beverage purposes with an alcoholic content by volume of 4.50%.

The records of this Division do not disclose any license or permit for the sale of alcoholic beverages to Mary Holmes, Calvin Butcher or for the premises where the violation took place.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the commingled cash, as set forth in Schedule "A" herein, constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Dominick Maggio, testifying in support of his claim for the return of a cigarette machine, seized herein, gave the following account: He is a tobacco salesman and also engages in the leasing of cigarette vending machines under the trade name of Frank Brezzo and Company. He produced an invoice establishing his ownership of the said machine. About three or four years ago, he placed this machine at these premises which he described as being a luncheonette in front and a game room in the rear. The machine was installed in the rear room. He never saw anyone in the game room, nor did he notice any alcoholic beverages being served on the said premises.

On cross-examination, he admitted that he had not made any kind of investigation of Butcher or of the premises to determine whether the premises were being lawfully operated. He installed the machine and, as was his usual procedure, made no inquiry of the operator of the premises. His only concern was whether "there is enough traffic around there or business to warrant it". Although he asserted that he never saw any evidence of a restaurant operation in the game room of these premises, he did not inquire as to the reason why the machines were placed in the said game room rather than in the restaurant proper; nor did that arrangement arouse his suspicions.

In evaluating the testimony of the claimant herein, it is quite apparent that the sole motivation for placing these machines in the rear game room of these premises was that it appeared to be a profitable location. Neither at the initial installation nor at any time during the past three or four years did this claimant make any inquiries to determine whether or not illicit liquor activity was taking place although the file clearly establishes, and the testimony at this hearing of ABC Agent B clearly indicates that a speakeasy operation was openly carried on, and there were numerous cases of beer stored in the adjoining room. The makeshift bar in the game room has manifested its obvious use.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he had acted in good faith, and did not know, or have any reason to believe, that the property would be used in unlawful liquor activity. R.S. 33:1-66(f).

I am persuaded that in view of the long period of service of this machine by the claimant and the unusual circumstances that it was placed in a special room equipped with a bar, that this claimant did not act reasonably in the full discharge of his statutory responsibility in the control and operation of his property on the said premises. Since the claimant has thus demonstrated a careless indifference to the use to which his property was being put, I recommend that the application of Dominick Maggio for return of his cigarette machine be denied, and that an order be entered forfeiting the same. Seizure Case No. 11,597, Bulletin 1679, Item 7.

Ralph DeMatteo sought the return of a pool table, a juke box and a pinball machine. He introduced invoices supporting his ownership of a pool table and a pinball machine. However, he did not have any evidence of ownership of the juke box.

At the hearing he testified that the juke box was purchased about 18 months ago but he did not have any indicia of ownership with him. He was given a week after the date of the hearing within which to forward any further proof of ownership, however, he has failed to produce the same. Accordingly, this essential element is lacking and must defeat his claim for the return thereof.

He gave the following account: About eight months ago he received a telephone call from Butcher requesting the installation of these machines at these premises. His mechanic, Joe Loshovno (who was not produced as a witness) installed the machines in the game room as hereinabove described. He visited the premises once or twice a month for the purpose of collections and the machines were serviced by his mechanic. His mechanic did service the machines hereinabove that were in disrepair but this claimant never questioned him with respect to the activities at the said premises.

On cross-examination, he admitted that he never made any background investigation of Butcher or of the premises where the illegal liquor activity took place. His whole criterion apparently was "The machines do good, we leave them there and if they don't, we take them out." And further: "It was pretty good there." He further admitted that he noticed a counter in the game room equipped with stools but "I wouldn't call it a bar."

With respect to this claimant who is the individual trading as Logan Amusement Co., it is similarly apparent as in the claim hereinabove discussed that this claimant was concerned solely with whether or not this was a profitable location. The fact that the machine was placed in a special game room with a bar and stools, separated from the restaurant proper, should have alerted him to make some inquiry as to the use to which his property was being put. His failure to do so demonstrates a careless indifference to his statutory obligation, and consequently he did not act reasonably in the full discharge of his responsibility with reference to his property in the said premises.

I, therefore, find that this claimant did not establish that he acted in good faith, and did not know or have any reason to believe that the property would be used in unlawful activity. R.S. 33:1-66(f). Under these circumstances, I am constrained to recommend that his claim for the return of his property be rejected, and that an order be entered forfeiting the same. Seizure Case No. 11,597, supra; Seizure Case No. 11,715, Bulletin 1706, Item 3.

It is further recommended that an order be entered forfeiting the balance of the seized personal property, including the cash and the alcoholic beverages.

Conclusions and Order

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

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

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

DETERMINED and ORDERED that the claim of Dominick Maggio, trading as Frank Brezzo and Company for the return of the cigarette machine and the same is hereby denied; and it is further

DETERMINED and ORDERED that the claim of Ralph DeMatteo for the return of a pool table, juke box and pinball machine be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the seized property, including the \$9.70 in cash as set forth in Schedule "A" attached hereto, constitutes unlawful property, and the same be and is hereby forfeited pursuant to the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages be and the same are hereby forfeited, 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.

EMERSON A. TSCHUPP
ACTING DIRECTOR

SCHEDULE "A"

181 - bottles of alcoholic beverages; soda;
refrigerator; pool table; pinball machine;
cigarette machine; juke box; \$9.70 - cash.

3.

ACTIVITY REPORT FOR JANUARY 1968

ARRESTS:		
Total number of persons arrested	-----	11
Licensees and employees	7	
Bootleggers	4	
SEIZURES:		
Distilled alcoholic beverages - gallons	-----	7.41
Wine - gallons	-----	5.07
Brewed malt alcoholic beverages - gallons	-----	17.06
RETAIL LICENSEES:		
Premises inspected	-----	868
Premises where alcoholic beverages were gauged	-----	686
Bottles gauged	-----	10,140
Premises where violations were found	-----	170
Violations found	-----	241
No Form E-141-A on premises	98	Disposal Permit necessary 4
Unqualified employees	61	Prohibited sign & practice 2
Other mercantile business	22	Other violations 37
Application copy not available	17	
STATE LICENSEES:		
Premises inspected	-----	14
License applications investigated	-----	11
COMPLAINTS:		
Complaints assigned for investigations	-----	380
Investigations completed	-----	470
Investigations pending	-----	246
LABORATORY:		
Analyses made	-----	188
Refills from licensed premises - bottles	-----	128
Bottles from unlicensed premises	-----	8
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	5
Persons fingerprinted for non-criminal purposes	-----	281
Identification contacts made with other enforcement agencies	-----	192
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	5
Violations involved	-----	6
Sale during prohibited hours	3	Failure to close premises during prohibited hours 1
Sale to minors	1	
Cases instituted at Division	-----	29
Violations involved	-----	35
Possessing liquor not truly labeled	12	Fraud and front 2
Beverage Tax Law non-compliance	6	Sale below filed price 2
Fraud in application	3	Sale to minors 1
Permitting immoral act. on premises	3	Permitting bookmaking on premises 1
Unqualified employees	2	Permitting hostesses on premises 1
Sale during prohibited hours	2	
Cases brought by municipalities on own initiative and reported to Division	-----	15
Violations involved	-----	18
Sale to minors	10	Permitting minors to congregate on premises (local reg.) 1
Sale during prohibited hours	2	Permitting gambling on premises 1
Employment w/o Ident. card (local reg.)	2	
Permitting brawl on premises	2	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	38
Appeals	6	Eligibility 10
Disciplinary proceedings	21	Seizures 1
STATE LICENSES AND PERMITS:		
Total number issued	-----	1,191
Licenses	2	Wine permits 7
Solicitors' permits	53	Miscellaneous permits 234
Employment permits	278	Transit insignia 216
Disposal permits	64	Transit certificates 40
Social affair permits	297	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued	37	
Premises inspected	2	
Premises where violations were found	0	

JOSEPH M. KEEGAN
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: February 7, 1968

4. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 T & N TAVERN, INC.
 t/a T & N Tavern
 302 Perry Street
 Trenton, New Jersey
 Holder of Plenary Retail Consumption License C-231, issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

 Licensee, by Norberto Gutierrez, President, Pro se.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 11, 1967 it sold a case of 12-ounce cans of beer below filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Ridgewood Wine & Liquor Co., Bulletin 1751, Item 10.

Accordingly, it is, on this 22nd day of January 1968,

ORDERED that Plenary Retail Consumption License C-231, issued by the City Council of the City of Trenton to T & N Tavern, Inc., t/a T & N Tavern, for premises 302 Perry Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, January 29, 1968, and terminating at 2 a.m. Saturday, February 3, 1968.

JOSEPH M. KEEGAN
 DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

The F. & M. Schaefer Brewing Co., 56 Park Place, Newark, N. J. Application filed February 20, 1968 for additional warehouse and salesroom license, in connection with Limited Wholesale License WL-6, for premises located at Chimney Rock Road, Bridgewater Township, N. J.

Frank G. Mauro Sr., Rose Marie Mauro & Frank G. Mauro, Jr. t/a North Hudson Beverage & Distributing Company, 132-134 - 68th St., Guttenberg, N. J. Application filed February 23, 1968 for person-to-person transfer of State Beverage Distributor's License SBD-102 from Nicholas Mauro and Frank Mauro, t/a North Hudson Beverage & Distributing Company.

Ark Beverages, Inc., 121 Meadow Street, Hackensack, N. J. Application filed February 28, 1968 for place-to-place transfer of State Beverage Distributor's License SBD-204 from 191 Paris Avenue, Northvale, N. J.

Joseph M. Keegan
 Joseph M. Keegan
 Director