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

BULLETIN 1006 MARCH 24, 1954.

TABLE OF CONTENTS

ITEM

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

BULLETIN 1006 MARCH 24, 1954.

1. SPECIAL PERMITS - FEES FOR SOCIAL AFFAIR PERMITS INCREASED EFFECTIVE MAY 1, 1954.

TO: ALL CHIEFS OF POLICE AND MUNICIPAL CLERKS

IMPORTANT NOTICE REGARDING INCREASE IN FEES FOR SOCIAL AFFAIR PERMITS EFFECTIVE MAY 1, 1954:

Pursuant to the authority conferred by Revised Statutes 33:1-74, this Division (formerly Department) has issued and presently issues special permits authorizing the sale of alcoholic beverages at social affairs conducted by bona fide organizations which operate for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain.

Social affair permits were conceived more than twenty years ago. The fee, originally established at $10.00 for these permits, has not been increased during the years despite economic changes and tremendous increases in the costs incident to the processing and issuance of the permits.

A careful study of the matter has led me to the determination that this Division cannot continue to process these permit applications; to answer the voluminous correspondence in connection therewith; to hold hearings and investigations as required on occasions and continue to charge the same fees established so many years ago without incurring a substantial loss to the State and without sacrificing the quality of service traditionally rendered by this Division.

Accordingly, I have determined that a fair fee for permits of this nature shall be $20.00 instead of $10.00 as heretofore except in the cases of police, fire, letter carrier and first aid organizations, where the fee shall be $10.00 instead of $5.00 as heretofore.

The increased fee shall be chargeable for any permits issued to authorize the sale and service of alcoholic beverages at affairs occurring on and after May 1, 1954 and such increased fees must accompany applications for affairs scheduled on or after that date irrespective of whether or not the applications are filed prior to such date.

Your cooperation in effecting an orderly transition with respect to the increased fee effective May 1, 1954 will be greatly appreciated. It is extremely important that you advise applicants for social affair permits of the change of fees when presenting their applications for your endorsement. Pending the printing of new application forms with which, upon request, you will be supplied at a later date, it is requested that you cross out the $10.00 fee as indicated on present application forms and insert in ink the new fee of $20.00 which becomes effective May 1, 1954.

WILLIAM HOWE DAVIS
Director.

Dated: March 15, 1954.

2. SPECIAL PERMITS - FEES FOR PERMITS COVERING TRANSFER OF ALCOHOLIC BEVERAGES UPON TRANSFER OF LICENSE INCREASED EFFECTIVE MAY 1, 1954.

IMPORTANT NOTICE REGARDING INCREASE IN FEES FOR SPECIAL PERMITS TO TRANSFER TITLE IN STOCKS OF ALCOHOLIC BEVERAGES UPON SALE OF LICENSED PREMISES AND TRANSFER OF LICENSE, EFFECTIVE MAY 1, 1954:

When a retail licensee transfers his license in connection with the sale of his licensed business and the quantity of alcoholic beverages remaining on hand is turned over to his successor in business, such transfer in title of the stock of alcoholic beverages constitutes a sale at wholesale within the contemplation of the Alcoholic Beverage Law and such sale is prohibited except pursuant to Special Permit. See Rule 15 of State Regulations No. 20.

The fee for this permit was originally established at $10.00 many years ago at a time when economic conditions and other factors did not warrant a greater charge. Since then, however, there have been tremendous increases in the operating costs incident to the processing of these permits with the consequent result that this Division cannot continue to charge the same fee established years ago without continuing loss to the State or without sacrificing the quality of the services rendered by this Division.

Accordingly, after having given careful study to the matter, I have determined that a fair fee for permits of this type shall be $20.00 instead of $10.00 as heretofore.

The increased fee shall be chargeable for permits issued to transfer title in stocks of alcoholic beverages in all instances where the license transfers are effected on or after May 1, 1954.

WILLIAM HOWE DAVIS
Director.

Dated: March 18, 1954.

3. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY (RESTAURANT) ORDERED FORFEITED - VARIOUS ARTICLES RETURNED TO INNOCENT CLAIMANTS - RETURN OF OTHER ARTICLES DENIED BECAUSE OF FAILURE TO ESTABLISH OWNERSHIP.

In the Matter of the Seizure on September 10, 1953 of a quantity of alcoholic beverages and various fixtures, furnishings, equipment and merchandise at 401 First Avenue, in the Borough of Spring Lake, County of Monmouth and State of New Jersey.	Case No. 8410 On Hearing CONCLUSIONS AND ORDER

Carl Klein, Esq., Attorney for Magda Young.
Julius J. Golden, Esq., Attorney for King Amusement Device Company, Inc.
Richman Ice Cream Company, by Albert A. Johnson, Branch Manager.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages and various fixtures, furnishings, equipment and merchandise, described in a schedule attached hereto, seized on September 10, 1953 at 401 First Avenue, Spring Lake, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of the alleged unlicensed sale of alcoholic beverages by Joseph Tupalski in a small restaurant at the above address.

When the Matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of King Amusement Device Company, Inc., which sought return of a music machine and a cigarette vending machine; an appearance was entered by Magda Young, who sought return of a Fada television set, a Norge refrigerator and an electric toaster; and an appearance was entered on behalf of Richman Ice Cream Company, which sought return of an ice cream cabinet and compressor.

It appears from testimony of ABC agents that two ABC agents visited the premises on September 4, 1953, to investigate a complaint that alcoholic beverages were being sold there without a license. Joseph Tupalski and a waitress were in the establishment. The agents ordered sandwiches and drinks of Coca Cola. One of the agents pushed two glasses of Coca Cola towards Tupalski and said to him, "put something in this". Tupalski brought an amber colored liquid from the kitchen and poured a portion of it in a glass of Coca Cola. Its taste was that of whiskey. The agents paid the normal charges for the sandwiches and Coca Cola to the waitress. One of the agents then asked Tupalski for a pint of whiskey. Tupalski went to the kitchen, returned and told the agents that John Carayianis (the owner of the establishment) had taken the last pint.

These agents returned to the restaurant on September 5th. A waitress was behind the counter. The agents ordered sandwiches and drinks of Coca Cola. They observed Tupalski take from a compartment behind the counter a quart bottle of what appeared to be wine and pour a portion of it into a glass placed in front of a customer. Later the agents observed a number of men seated around a table located in the patio immediately outside the restaurant pouring drinks from a quart bottle of whiskey.

Another ABC agent visited the restaurant September 10th. Joseph Tupalski was behind the counter. The agent was served a cup of coffee in which a portion of whiskey had been poured. Another customer had a similar drink. The whiskey was poured into the coffee after the agent had asked Tupalski to do so. The bottle of whiskey from which it was poured was in the ice cream cabinet. Tupalski also had a drink of whiskey at the agent's suggestion. The agent paid Tupalski $1.25 for these three drinks. The agent had several other drinks of whiskey. Finally, the bottle from which the whiskey was poured became empty. Tupalski said "I can get another pint". Tupalski gave the other customer money, told him to get a pint of whiskey. The customer went out and returned with a pint of whiskey. Carayianis was in and out of the place at times helping to serve customers. Tupalski opened the fresh bottle of whiskey. The agent had another cup of coffee into which Tupalski poured some of the whiskey freshly obtained. Carayianis later obtained this bottle of whiskey from the ice cream cabinet and poured a drink thereof for another customer. Another agent then entered the restaurant. This agent received a cup of coffee with whiskey therein from Tupalski. The first agent again paid Tupalski $1.25 for the drinks. This money included a $1.00 bill identified by serial number which was later recovered from Tupalski. Another agent then entered the restaurant and all of the agents identified themselves.

Neither Joseph Tupalski nor John Carayianis hold any license authorizing either of them to sell alcoholic beverages and the premises were not licensed for that purpose.

The agents then seized the pint bottle containing a small quantity of whiskey and the fixtures, furnishings, equipment and merchandise in the restaurant.

Joseph Tupalski did not testify at the Hearing. The testimony of the ABC agents as to the presence of alcoholic beverages in and about the establishment and the sale of whiskey in cups of coffee ("coffee royals") on September 10th is not contradicted. It therefore appears that the seized whiskey is illicit because it was intended for sale without a license. R. S. 33:1-1(i). The fact that only a small quantity was seized is immaterial. Seizure Case #7044, Bulletin 760, Item 8. The illicit whiskey and all personal property seized therewith in the restaurant, constitutes unlawful property and is subject to forfeiture. R. S. 33:1-1(y); R. S. 33:1-2, R.S. 33:1-66.

I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he has acted in good faith and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use. R. S. 33:1-66(f).

King Amusement Device Company, Inc. placed the cigarette and music machines in Carayianis' restaurant on April 25, 1953. The establishment does a seasonal business. The vending concern had placed its machines there for the past five years, at the beginning of each summer season. The concern was acquainted with Carayianis because he had operated another luncheonette in Bradley Beach. The person who serviced the machines in the Spring Lake restaurant did not observe any alcoholic beverages on display there nor was he otherwise aware that alcoholic beverages were being sold there. The establishment was to all outward appearances a legitimate restaurant.

I am satisfied that the vending concern acted in good faith and with reasonable prudence. The music machine and cigarette vending machine will therefore be returned to it upon payment of the costs of their seizure and storage.

Richman Ice Cream Company has presented two receipts evidencing its loan to John Carayianis on April 11, 1953 of a six hole Frigid Freeze ice cream cabinet and a one quarter horse power Copelamatic compressor, placed in the restaurant in question. The salesman who delivered ice cream for the company testified that on his weekly visits to the restaurant during the summer of 1953 he did not observe any alcoholic beverages on display, nor have any reason to suspect that alcoholic beverages were being sold there. The above described equipment will be returned to the ice cream company upon payment of the costs of their seizure and storage.

Magda Young seeks to recover a Norge refrigerator, Fada television set and an electric toaster seized in the case. She has presented a conditional sale contract dated December 12, 1951 covering a Fada television set and a note dated January 10, 1950. Neither of these documents in themselves establishes that she is the owner of the specific refrigerator and television set seized.

Mrs. Young did not at any time see her refrigerator and television set in the restaurant in question. She claims that her television set and refrigerator were in her apartment when she went on a visit to Europe sometime in May, 1953. She arranged to store the items with Carayianis, with whom she was acquainted with about five or six years. She agreed that he could use the articles.

Mrs. Young left her daughter, a high school student, in the apartment after she had left for Europe. When she returned her daughter told her that, about June 1st, Carayianis picked up in his truck the refrigerator, television set and toaster in the apartment but the daughter did not go along in the truck. Mrs. Young said that thereafter her daughter resided here and there with friends but that Mrs. Young made no arrangements to provide living quarters for her daughter.

Carol Stube, Mrs. Young's daughter, testified as follows:

Their friend, Mr. Carayianis, came to her apartment and removed her refrigerator, television set and toaster in his truck and she rode in the truck to his Spring Lake establishment to see that the articles "got there safe"; and that Carayianis placed the articles in his store. Thereafter her visits to the restaurant were merely to say "hello". She took up her residence at premises on Asbury Avenue with her girl friend. She was not at the restaurant on the day of the seizure.

Confronted by Inspector Beck of this Division and asked whether she did not descend from an upper floor of the building on the day of the seizure and tell Mr. Beck that she was Mr. Carayianis' daughter, she said that she did not remember making such a statement; that Mr. Carayianis had a daughter 12 years of age; that she (Carol Stube) had just driven up to the place and saw everything in front of the place with the television set on the truck. In the next breath she admitted that on the morning of the seizure she came down to the restaurant with the 12 year old girl for breakfast -- that she was not living upstairs, but had some of her clothes there in Catherine's (Carayianis' daughter) and her room -- that she slept there occasionally. Pressed to explain these discrepancies in her testimony especially concerning her conflicting statements that she came to the restaurant only occasionally and on the other hand that she had her clothes there and slept there, she said that at one time Carayianis and her mother intended to marry and that she regarded Carayianis more or less like her father.

John Carayianis testified on Magda Young's behalf. Her counsel stated that he offered such testimony solely to corroborate Mrs. Young's claim. Carayianis did not present any defense to forfeiture of the other property seized. He stated that he had no need for either the refrigerator or television set in the conduct of his restaurant business although such articles were placed in the restaurant. Asked why under those circumstances he did not place the television set upstairs (where the girls slept) he said: "Well, we had a lot of room upstairs to put it in but we put it downstairs. It's better to put it in a place where nothing will hurt it".

Inspector Beck testified that when he was in the restaurant about 8 or 8:30 in the morning, Magda Young's daughter made her appearance from a stairway landing leading to the second floor and exclaimed, "Where is my television". Beck asked her where she lived and she said "upstairs". Asked what connection she had with the television set she said "It's my father down here". She did not make any reference to the Norge refrigerator or toaster.

The normal presumption is that equipment in a commercial business establishment used in furtherance of the business is owned by the proprietor of such establishment. Consequently, clear and convincing evidence must be presented to overcome that presumption, and to establish that such equipment is actually the property of another person stored in the establishment merely for convenience. It is abundantly clear that in the instant case not only is there a lack of evidence that the refrigerator, television set and toaster seized are actually those owned by Mrs. Young but there is also such a close friendship between the persons involved and the many contradictions in the testimony of Mrs. Young and her daughter on vital aspects of the case indicate a strong likelihood that Mrs. Young is endeavoring to salvage these articles for Carayianis.

Under these circumstances, I am compelled to deny Magda Young's request for return of the Norge refrigerator, Fada television set and electric toaster. See Seizure Case #8424.

Accordingly, it is DETERMINED and ORDERED that if on or before the 15th day of March, 1954, King Amusement Device Company, Inc. pays the costs incurred in the seizure and storage of the music machine and

cigarette vending machine, described in Schedule "A" attached hereto, such machines will be turned over to such concern; and it is further

DETERMINED and ORDERED that if on or before the 15th day of March, 1954, Richman Ice Cream Company pays the costs incurred in the seizure and storage of the Frigid Freeze ice cream cabinet and compressor described in the aforesaid Schedule "A", such articles will be turned over to such company; and it is further

DETERMINED and ORDERED that the balance of the seized property described in the aforesaid Schedule "A" constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66 and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the $1.00 bill surrendered by Joseph Tupalski constitutes "fruits of the crime" and is to be turned over to the State Treasurer.

WILLIAM HOWE DAVIS
Director.

Dated: March 3, 1954.

SCHEDULE "A"

1 - bottle of whiskey
1 - cigarette vending machine & currency therein
1 - music machine & currency therein
1 - soda counter
10 - chrome stools
1 - television set
50 - chairs
15 - tables
3 - booth benches
2 - electric fans
1 - cash register
2 -refrigerators
3 - back bars
1 - show case
1 - Frigid Freeze
1 - meat slicer
1 - grill and stove
1 - Corby coffee brewer
1 - gas stove
1 - electric juicer
3 - electric toasters
2 - umbrellas
1 - Refrigerator Motor Unit
Miscellaneous restaurant equipment, candies, gum and soda
$1.00 bill.

4. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY (RESTAURANT) ORDERED FORFEITED - VARIOUS ARTICLES RETURNED TO INNOCENT CLAIMANT - RETURN OF OTHER ARTICLES DENIED BECAUSE OF FAILURE TO ESTABLISH PRESENT INTEREST THEREIN AND BECAUSE OF UNRESTRICTED USE OF ARTICLES IN RESTAURANT BUSINESS OVER LONG PERIOD OF TIME.

In the Matter of the Seizure on October 2, 1953 of a quantity of alcoholic beverages and various fixtures, furnishings and equipment at 927 Communipaw Avenue, in the City of Jersey City, County of Hudson and State of New Jersey.	Case No. 8424 ON HEARING CONCLUSIONS AND ORDER

Samuel E. Barison, Esq., Attorney for Arthur Mallett and Edyth Carter.
H. Betti & Sons, Inc., by Humbert S. Betti, Jr.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, $14.00 in cash, and various fixtures, furnishings and equipment, described in a schedule attached hereto, seized on October 2, 1953, at 927 Communipaw Avenue, Jersey City, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlicensed sales of alcoholic beverages by Margaret King in a small restaurant at the above address.

When the matter came on for hearing, pursuant to R. S. 33:1-66, an appearance was entered on behalf of Arthur Mallett, who sought return of all the seized property except the beer, Philco refrigerator, two oil stoves, a music machine and a cigarette vending machine; an appearance was entered on behalf of Edyth Carter, who sought the return of the refrigerator and the two oil stoves; and an appearance was entered on behalf of H. Betti & Sons, Inc., which sought return of the music and cigarette machines.

It appears from the testimony of ABC agents that one of such agents visited the restaurant on October 1, 1953 to ascertain whether alcoholic beverages were being sold there without a license. Margaret King was in charge of the establishment. The agent purchased from her a sandwich and a glass of beer.

This agent returned to the restaurant on October 2nd and ordered a dinner from Margaret King and also purchased a glass of beer from her. Another agent then entered the restaurant and purchased two glasses of beer from Margaret King, one for himself and one for the other agent. The first agent paid Margaret King for his dinner and all the beer which had been served to the two agents with two $1.00 bills identified by serial numbers. Thereafter another agent entered the restaurant and all of the agents disclosed their identity.

Margaret King did not hold any license authorizing her to sell alcoholic beverages, and the premises were not licensed for that purpose.

The agents seized a number of cans of beer which were in a refrigerator in the restaurant, $14.00 in cash which was in the cash register including one of the marked dollar bills, and the fixtures, furnishings and equipment in the restaurant.

The seized beer is illicit because it was intended for unlawful sale. R. S. 33:1-1(i). Such illicit beer and all personal property

seized therewith in the restaurant including the $14.00 in cash constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

I am authorized, in my discretion, to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which his property was put or of such facts as would have led a person of ordinary prudence to discover such use. R. S. 33:1-66(f).

According to the agents, Arthur Mallett entered the restaurant shortly after the seizure and stated that he was the owner of such restaurant; that Margaret King was his employee; and that although he knew that Margaret King sold beer, claimed that the beer in the restaurant that day was for Margaret King's birthday party.

Arthur Mallett testified on his own behalf. He denied that he was aware that Margaret King sold beer in the restaurant. He admitted that Margaret King operated his restaurant. Margaret King did not testify on Mallett's behalf and the agent's testimony that she sold beer to one of the agents on October 1st and to both of the agents on October 2nd is not controverted. Since Margaret King was Mallett's employee and sold beer in his restaurant, he is therefore responsible in forfeiture proceedings, regardless of whether he did or did not have knowledge thereof. Seizure Case No. 7319, Bulletin 831, Item 7; Seizure Case No. 7438, Bulletin 862, Item 1; Seizure Case No. 8317. Arthur Mallett's request for return of the personal property claimed by him is therefore denied.

Edyth Carter testified on her own behalf. She stated that she has resided for the past year in two rooms above the restaurant, such rooms forming part of a rooming house operated by Mallett. She formerly resided in larger quarters elsewhere, where she had two oil stoves and a Philco refrigerator. She produced a conditional sales contract evidencing the sale of such refrigerator to her husband. They separated and she kept the refrigerator. She had the two oil burners at these premises when she moved to Mallett's premises. She had no place to keep these items and loaned them to Mallett to avoid storage charges.

It is possible that Mrs. Carter's explanation of the presence of the refrigerator and oil stoves in the restaurant may be true. On the other hand, she is employed by Mallett in a car laundry immediately to the rear of the restaurant, resides above the restaurant and has her meals there occasionally. She may have actually sold the articles to Mallett rather than have kept them for future use in a different home since it appears that her two minor children have been living elsewhere for some length of time. At least she permitted him to use the articles over a long period of time as if they were his own. They were used in furtherance of the activities of the restaurant even if she claims she was unaware that there was a practice there of unlawful selling of alcoholic beverages.

It would seemingly hamper enforcement of the penalty provided for by law of forfeiture of the equipment of a speakeasy if a claim of this nature was recognized where no convincing evidence of what are the actual facts have been presented. The instant case is in many respects similar to the supplemental decision in Seizure Case No. 8349 where such a claim was denied. For the reasons expressed Edyth Carter's request for return of the Philco refrigerator and two oil stoves is denied.

H. Betti and Sons placed a music machine and cigarette vending machine in Mallett's restaurant when he opened the establishment about

a year previous to the seizure. Mallett arranged for the placement thereof by telephoning to the vending concern. The seized machines were replacements of the original machines.

The establishment was a small restaurant to all outward appearances. There were no alcoholic beverages on display. Neither Arthur Mallett nor Margaret King had any previous record for violating any liquor laws. I am satisfied that the vending concern acted in good faith and in a reasonably prudent manner when placing these machines in the restaurant. Accordingly, the music machine and cigarette vending machine will be returned to H. Betti & Sons upon payment of the cost of their seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 15th day of March, 1954, H. Betti & Sons pay the costs incurred in the seizure and storage of the music machine and cigarette vending machine, described in Schedule "A" attached hereto, such articles will be turned over to such concern; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the $14.00 in cash, described in the aforesaid Schedule "A", constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66 and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: March 3, 1954.

SCHEDULE "A"

7 - cans of beer
6 - cases of soda
7 - tables
37 - chairs
1 - music box and currency therein
1 - cigarette vending machine and currency therein
1 - showcase
1 - cash register
1 - coffee urn
2 - refrigerators
29 - glasses
1 - oil stove
1 - oil heater
1 - toaster
1 - fan
7 - venetian blinds
1 - hot plate
1 - electric sign
Miscellaneous cutlery, dishes, pots and pans and other personal property.
$14.00 in cash

5. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE NOTICE OF CHANGES IN FACTS SET FORTH IN APPLICATION IN VIOLATION OF R. S. 33:1-34 - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - UNLAWFUL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against JOHN R. MARPLE T/a ASBURY AMBASSADOR HOTEL 217 Third Avenue Asbury Park, N. J., Holder of Plenary Retail Consumption License C-66, issued by the City Council of the City of Asbury Park.	CONCLUSIONS AND ORDER

John R. Marple, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. You failed to file with the Asbury Park City Council, within 10 days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions 30 and 31 of your license application dated June 5, 1953, upon which you obtained your current plenary retail consumption license, such changes being that in or about September 1953 you entered into an agreement with Anthony Venerose and Joseph DiPierri whereby they acquired an interest in your licensed business as the real and beneficial owners thereof and by which you agreed to permit them to retain all the profits from the business after payment to you of a fixed monthly fee; your failure to file such notice being in violation of R. S. 33:1-34.

"2. From on or about September 19, 1953 until the present time, you knowingly aided and abetted Anthony Venerose and Joseph DiPierri to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R. S. 33:1-52."

The file herein discloses that, early in September 1953, defendant entered into a verbal arrangement (later to be reduced to writing) whereby Anthony Venerose and Joseph DiPierri were to conduct the restaurant and alcoholic beverage business at defendant's above named hotel, commencing September 19, 1953. Under this agreement Venerose and DiPierri were to pay defendant the sum of $100.00 a month for the first five months and $200.00 a month thereafter. Venerose and DiPierri were to purchase and sell all alcoholic beverages used in the conduct of the licensed business and were to retain all proceeds from such sales.

Pursuant to that agreement Venerose and DiPierri purchased from defendant the small stock of alcoholic beverages then on hand and made further purchases from wholesalers. On September 19, 1953 they commenced the conduct of the licensed business. They paid defendant $100.00 for the first month and, in addition, deposited with him $500.00 as security for performance of the agreement. They continued to conduct said licensed business, taking all of the proceeds therefrom until November 1953, when the Division's investigation was instituted.

Defendant failed to notify the local issuing authority (the Asbury Park City Council) of the changes in the conduct of his licensed business within ten days after they occurred as required by R. S. 33:1-34. Furthermore the arrangement hereinabove described amounted to a "farming out" of his license, a serious violation of the licensing laws, which, in effect, circumvented the control of the license by the legally constituted authority. Re Elmwood House, Bulletin 877, Item 3.

The agreement between the licensee and Venerose and DiPierri has been terminated and the licensed business is being conducted by the licensee through his own employees. Thus the unlawful situation has been corrected.

Defendant has no prior adjudicated record. Under the circumstances, I shall suspend the license for twenty days, the minimum penalty in cases of this kind. Re Elmwood House, supra.

Accordingly, it is, on this 12th day of March, 1954,

ORDERED that Plenary Retail Consumption License C-66, issued by the City Council of the City of Asbury Park to John R. Marple, t/a Asbury Ambassador Hotel, 217 Third Avenue, Asbury Park, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. March 23, 1954, and terminating at 2:00 a.m. April 12, 1954.

WILLIAM HOWE DAVIS
Director.

6. APPELLATE DECISIONS - RUTGERS HOUSE CORP. v. NEW BRUNSWICK.

RUTGERS HOUSE CORP., (a corp.),)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF THE CITY OF NEW BRUNSWICK,) CONCLUSIONS AND ORDER
Respondent.)

William K. Miller, Esq., Attorney for Appellant.
Paul W. Ewing, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The appellant's application for a place-to-place transfer of its plenary retail consumption license from premises at 18 Albany Street to premises at 1 Railroad Plaza, New Brunswick, was denied by the respondent. Hence this appeal.

The application was denied at a meeting of respondent Board on October 20, 1953 at which time the five members of the Board of Commissioners voted unanimously to deny the transfer of appellant's license. The reason given for the denial of the transfer was that, "there are sufficient plenary retail consumption licenses in existence to serve the public in the immediate vicinity to which appellant desired a transfer of its license."

It has been stipulated by the parties hereto that appellant's proposed premises are located, "At least a quarter of a mile" from the site of which the license was originally issued.

Frank L. Stepko testified that he is the president of the appellant corporation which has for the past twenty-six months been the holder of the liquor license in question; that prior to the institution of condemnation proceedings by the State an agreement was made on behalf of

the appellant to sell to the State of New Jersey the property in which appellant's premises are now located and that pursuant to said agreement appellant agreed to vacate the premises on January 1, 1954.

Mayor John A. Lynch testified that his reason for voting against the transfer application was as follows:

"The application was discussed fully by the entire Board of Commissioners, consisting of five men, and it was viewed from many different aspects. The location where this applicant seeks to transfer his license is perhaps in the heart of the City of New Brunswick. It is adjacent to the Pennsylvania Railroad Station and approximately on one of our main streets of the City, Albany Street. In that area all people coming to and from New Brunswick by way of railroad transportation must pass. In that particular area there is a tavern--well, I will withdraw that--there are many taverns. To illustrate, around the corner on Albany Street there is the Strand Bar. Across the street on Albany Street is the Albany Distributors, and I dare say that tavern is less than 300 feet from the address this applicant seeks to transfer to.

"Going up the street there is a tavern known as the Raritan Bar and Grill and, in my judgment, that tavern is somewhere between 250 and 260 feet away from the present address. Within another 50 feet there is another tavern, the Penn Bar and Grill. Going up to the next corner there is another tavern, Lucky's Bar. Turning the corner and going up Easton Avenue, right off Easton Avenue on Little Albany Street, there is a tavern known as Fox's.

"Going up Easton Avenue hill, still within a distance of a block, there is a tavern known as the Canteen. At the top of the hill, one block distant or thereabouts, there is a tavern known as the Corner Tap Room, and across the street from that there is a tavern known as Smoochie's Bar and Grill.

"On the other entrance and exit from the Pennsylvania Railroad Station on George Street, which is still within a block of this existing address, there is a tavern known as Tumulty's Bar and Grill, and within 200 feet of that is another tavern operated by Rudy Seaker.

"The Board of Commissioners felt that there were entirely too many taverns in that neighborhood and that there is no need or necessity for another tavern. That area of the town is brought down because of the existence today of the great number of taverns in a small area.

"The Commissioners further felt that our town being a residential town, industrial town and a college town, with hundreds of people coming in and out of our town every day for business purposes, that the psychological factor of our entire town would be bad because of another tavern at that given point, and for those reasons we turned it down."

Commissioners Herbert D. Dailey, Luke J. Horvath and Joseph T. Shine testified that they believed there were at the present time too many taverns in the area in question. Commissioner Chester W. Paulus, who also voted against the transfer in question at the hearing aforementioned did not testify at the instant hearing.

There was no testimony whatsoever presented by the appellant to indicate that there was a public need or necessity for a liquor license at the proposed site. The fact that, more than three years ago, there were in the same area two additional taverns does not

indicate the need for an additional license in this area.

"A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik v. Milltown, Bulletin 283, Item 10; Biscamp Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949)." Bramberger v. Clifton, Bulletin 971, Item 1, quoted in Thompson v. Mount Olive, Bulletin 986, Item 1.

Furthermore, "'The question of whether or not a place-to-place transfer is to be granted is within the sound discretion of the Board in the first instance and, on appeal, the burden is on appellant to show that the Board abused its discretion. Rule 6 of State Regulations No. 15. Bock Tavern Inc. v. Newark, Bulletin 952, Item 1; Segal et al. v. Clifton et al., Bulletin 732, Item 5; Christian v. Passaic, Bulletin 928, Item 2.' Bramberger v. Clifton, Bulletin 971, Item 7." Thompson v. Mount Olive, supra.

My careful review of the evidence presented in the instant case, reveals no indication that respondent's denial was arbitrary or unreasonable so as to warrant a reversal of its action. I find, therefore, that appellant has failed to carry the required burden of proof. The denial of appellant's application for transfer will be affirmed.

Accordingly, it is, on this 5th day of March, 1954,

ORDERED that the action of the respondent Board of Commissioners be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

7. DISQUALIFICATION - PRIOR APPLICATION DENIED - FIVE YEARS' GOOD CONDUCT - APPLICATION TO LIFT GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 1050.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

Petitioner renews his application for relief, pursuant to the terms of an Order, dated June 5, 1953, denying a prior petition with leave to file a new petition after December 5, 1953. Case No. 1050, Bulletin 976, Item 6.

Petitioner testified that since April 16, 1953, the date of the hearing in the prior proceeding, he has been employed as a steel worker and that his record has been clear during that time.

At the hearing herein, three witnesses (a truck driver, a laborer and a retired spool maker) testified that they have known petitioner for ten or more years and that he bears a reputation for being a law-abiding citizen in the community in which he lives.

The Police Department of the municipality wherein petitioner resides has advised that no complaint or investigation is presently pending involving the petitioner.

From the evidence, I conclude that petitioner has conducted himself in a law-abiding manner during the five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 12th day of March, 1954,

ORDERED that petitioner's statutory disqualification because of his convictions of crime be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE AND SONGS) - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THE BELL CLUB, INC. 1200 Palisade Avenue, Palisade Fort Lee, N. J., Holder of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Fort Lee.	CONCLUSIONS AND ORDER

Herman E. Hillenbach, Esq., Attorney for Defendant.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it allowed, permitted and suffered lewdness and immoral activity (indecent performances by female entertainers and the singing of songs and use of words which were indecent, filthy and disgusting by a male entertainer) on its licensed premises, in violation of Rule 5 of State Regulations No. 20.

On December 30, 1953, at about 11:30 p.m., three ABC agents were in defendant's licensed premises. A master of ceremonies announced that the floor show would consist of acts by six female entertainers. During the course of one of the acts, a female entertainer came out wearing a skirt and jacket, both of which she subsequently removed, disclosing a net bra and white tights. Thus attired, she executed "bumps and grinds" and, approaching a post on the stage, simulated acts of sexual intercourse. The master of ceremonies, during the course of this show, sang a song which was indecent, filthy and disgusting.

On January 8, 1954, at about 11:00 p.m., two ABC agents were in defendant's licensed premises when the first floor show of the evening began. During this show, another female entertainer sang a song while walking up and down the stage in a sexy, suggestive manner and moving her torso from side to side in a grinding motion. She then turned her back to the audience, rotating her torso in a clockwise manner and running her hands up and down her thighs. The audience became very excited and one man attempted to climb on the stage but was restrained by his female companion. Such "shows" have no place on licensed premises. Re Bajewicz, Bulletin 902, Item 4.

Defendant has no prior adjudicated record. While the license for the premises in question was held by Bell Club Corporation, said license

was suspended in 1946 and again in 1948 for dissimilar violations. However, it does not appear that the officers and directors of defendant corporation were connected with Bell Club Corporation and hence I shall not consider the record of that corporation in fixing the period of suspension herein. Re Schwarz Druggists, Inc., Bulletin 380, Item 4. I shall suspend defendant's license for a period of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days. Re Primiceri, Bulletin 916, Item 3.

Accordingly, it is, on this 11th day of March, 1954,

ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Fort Lee to The Bell Club, Inc., for premises 1200 Palisade Avenue, Palisade, Fort Lee, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. March 15, 1954, and terminating at 3:00 a.m. April 9, 1954.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FRANK ZAWISHA T/a ZAWISHA'S TAVERN 257 Lakeview Avenue Clifton, N. J., Holder of Plenary Retail Consumption License C-131, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.	CONCLUSIONS AND ORDER

Frank Zawisha, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to charges alleging that he (1) sold at retail an alcoholic beverage at less than the price thereof listed in the currently effective Minimum Consumer Resale Price List, in violation of Rule 5 of State Regulations No. 30; (2) sold, on Sunday, alcoholic beverages at retail in original containers for off-premises consumption, in violation of State Regulations No. 38; (3) sold and permitted the consumption of alcoholic beverages upon his licensed premises between 3:00 a.m. and 1:00 p.m. on Sunday, in violation of a local regulation and (4) failed to have his licensed premises closed between 3:00 a.m. and 1:00 p.m. on Sunday, in violation of a local regulation.

The file herein discloses that, shortly after 11:00 a.m. on Sunday, February 7, 1954, two ABC agents observed patrons entering defendant's premises by a side door and a rear door. At 11:15 a.m., the agents entered by the side door and found four or five patrons drinking at the bar. The agents purchased drinks from defendant who was tending bar.

While the agents were in the barroom, defendant sold to a patron 12 cans of beer which the patron took from the premises. One of the agents purchased for off-premises consumption from defendant a pint bottle of Seagram's Seven Crown Blended Whiskey for $2.75. The minimum consumer resale price (effective January 1, 1954) of said item was $2.83.

Defendant has no prior record. I shall suspend defendant's license for the minimum period of ten days because of the violation set forth in charge 1 (Re Johnson, Bulletin 997, Item 12) and for an additional period of thirty days, which is the minimum suspension imposed for the violations set forth in charges 2, 3 and 4 (Re Lukas, Bulletin 963, Item 4). Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 11th day of March, 1954,

ORDERED that Plenary Retail Consumption License C-131, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Frank Zawisha, t/a Zawisha's Tavern, 257 Lakeview Avenue, Clifton, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. March 22, 1954, and terminating at 3:00 a.m. April 26, 1954.

WILLIAM HOWE DAVIS
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Spatola Wines Inc.
1900 S. Delaware Avenue, Philadelphia 48, Pa.
Application filed March 15, 1954 for Wine Wholesale License.

Italian Swiss Colony
1 Broad Avenue, Fairview, N. J.
Application filed March 17, 1954 for Plenary Wholesale License.

Eastern Freight Line, Inc.
Connellsville Road, P. O. Box 346, Uniontown, Pa.
Application filed March 17, 1954 for Transportation License.

Camden County Beverage Company
Fillmore & Bulson Streets, Camden 4, N. J.
Application filed March 17,1954 for Limited Brewery License.

William Howe Davis
Director.