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

January 17, 1969

BULLETIN 1834

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1. APPELLATE DECISIONS - YARDARM, INC. v. WEST ORANGE.

Yardarm, Inc., t/a Admiral Benbow Inn, Appellant, v. Board of Alcoholic Beverage Control of the Town of West Orange, Respondent.	)	On Appeal CONCLUSIONS AND ORDER

Doherty & Grossman, Esqs., by Robert H. Doherty, Jr., Esq., Attorneys for Appellant
Louis Lando, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is from the action of respondent (hereinafter Board) which, by unanimous resolution dated June 18, 1968, denied the application of appellant (hereinafter Yardarm) for renewal of its plenary retail consumption license for premises 244-252 Main Street, West Orange. The said resolution reads as follows:

"WHEREAS, the Alcoholic Beverage Control Board of the Town of West Orange, in the County of Essex and State of New Jersey, in accordance with the rules and regulations of the Division of Alcoholic Beverage Control of the State of New Jersey, did, on June 18, 1968, conduct a hearing on the renewal of Plenary Retail Consumption License C-43 of the Town of West Orange, issued to Yardarm, Inc., t/a Admiral Benbow Inn and also trading as Scotty's Carnaby Street, notice of which hearing was sent to the licensee and to all citizens who did in writing object to said renewal; and

"WHEREAS, at said hearing the licensee was present and represented by counsel and there were also present 62 objectors to renewal of said license; and

"WHEREAS, the said Alcoholic Beverage Control Board of the Town of West Orange did hear the statements of the various objectors and did also hear the attorney for the licensee; and

"WHEREAS, as a result of said hearing the Alcoholic Beverage Control Board of the Town of West Orange has made the following findings:

(1) That said licensee has permitted its patrons on many occasions to use loud, profane and obscene language in the immediate vicinity of the licensed establishment.

(2) That the said licensee has on December 12, 1967 and April 16, 1968 been found guilty of selling alcoholic beverages to minors and has received suspensions of 10 days and 90 days respectively.

(3) That the licensee has failed and refused to co-operate with the Fire Department of the Town of West Orange, the Building Department of the Town of West Orange, the Health Department of the Town of West Orange, and has caused undue difficulty to the Police Department of the Town of West Orange.

(4) That the licensed premises presently are unfit for the uses intended as a result of violations of which the licensee has been notified and has failed to correct.

(5) That the licensee has caused and/or permitted loud music to emanate from the licensed premises, thereby disturbing the peace of the neighbors, and has refused to remedy the situation upon request, thus constituting a nuisance.

(6) That the licensee has and continues to attract persons to his establishment that are disrespectful for property and values thereof in and about the licensed premises.

(7) That the licensee has totally inadequate parking to accommodate the patrons which it attracts.

(8) That the licensee has permitted its patrons to urinate upon and to throw debris around and upon the premises of surrounding neighbors, constituting a threat to the peaceful possession of their properties, and also constituting a nuisance.

(9) That the licensee has compelled the Town of West Orange to bring suit against it and obtain injunction against it in order to compel compliance with its ordinances.

(10) That the operation of the licensed premises by the licensee has and continues to disturb the peace of the neighborhood, constitutes a nuisance and is not in the best interests of the Town of West Orange.

"NOW, THEREFORE, BE IT RESOLVED, by the Alcoholic Beverage Control Board of the Town of West Orange that Plenary Retail Consumption License No. C-43 of the Town of West Orange issued to Yardarm, Inc., t/a Admiral Benbow Inn and also trading as Scotty's Carnaby Street, which expires June 30, 1968, shall not be renewed for any further period of time, and shall expire on June 30, 1968 at 11:59 p.m., for the reasons set forth hereinabove."

In its petition of appeal Yardarm alleges that the Board's action was erroneous because "it was arbitrary, based on improper and inappropriate testimony and was taken for improper reasons."

The Board's answer admits the jurisdictional allegations of the petition but denies the aforesaid allegations in the petition of appeal.

At the time of filing this appeal the Director entered an order dated June 27, 1968, extending the term of the appellant's license pending the determination of the appeal.

This appeal was heard _de novo_ pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the

attorneys for the respective parties to present testimony and cross-examine witnesses.

Nine persons residing in the immediate area of appellant's premises voiced objections to the manner in which the appellant's premises were operated. A summary of the complaints made by the neighbors included excessive noise outside the premises by patrons of appellant; loud music emanating from inside the premises; patrons leaving the premises urinating on lawns and grounds; throwing of empty beer, whiskey and wine bottles in front of homes, and also contraceptives and female undergarments were found on the front lawns; fighting in the parking area; obscene and loud language in the evening and early morning; racing of automobiles and blowing of horns when patrons left the premises at the time of closing and, furthermore, committing immoral acts in cars outside the premises.

Thurman Williams, Town Clerk, testified that appellant's previous record consisted of a suspension of its license for ten days effective January 15, 1968, as a result of its plea of non vult to sale of alcoholic beverages and permitting the consumption thereof by two persons under the age of twenty-one, in violation of Rule 1 of State Regulation No. 20. Furthermore, there was a ninety-day suspension imposed against the appellant's license for sale of alcoholic beverages to a minor twenty years of age on March 31, 1968, and permitting the consumption of said alcoholic beverages by said minor, in violation of Rule 1 of State Regulation No. 20. The latter suspension was appealed by appellant to the State Division of Alcoholic Beverage Control and said appeal has not been determined to date.

Walter H. Smith testified that he is the Fire Chief of West Orange and on October 11, 1967, inspected the appellant's premises at about 10:30 in the evening when he estimated there were approximately seven hundred or eight hundred people therein. He stated that he noticed that a girl was sitting on a stool blocking the exit and he directed her to move. Chief Smith said he then told Theodore Wiesing (the manager of appellant's establishment) that he should not let any more people into the place excepting when one left he could allow one to enter. He further testified that he and Captain Peppe went across the street and watched the entrance to the premises. He observed Mr. Wiesing come out, look up and down the street and then admit forty-two people into the establishment.

James J. Cohrs (Fire Captain) testified that he is in command of the fire prevention bureau and on one occasion he found that the doors in the lobby during business hours had been locked and he informed Mr. Wiesing that every exit door must be kept unlocked; that on another occasion Captain Cohrs testified that he investigated concerning a complaint that sixty women had been locked in the private dining room where the illumination was provided by candles; thereafter he spoke to Mr. Wiesing who denied that the doors had been locked and said that he knew of the matter but had merely closed the doors which were hard for anyone to open; that there were several fires in the establishment -- one on July 17, 1966 (a fire which required the services of three or four engines) on the second floor offices of the building. Thereafter, on July 19, 1966, there was another fire in the kitchen area; that Assistant Chief Menzel submitted a report to the Chief's office that conditions were getting progressively worse from a fire standpoint in the establishment. Thereafter, on January 16, 1967, he (Captain Cohrs) was called to the appellant's premises when there was trouble with an electric wire which

was run through the water from a deteriorated boat which was on display in the middle of the establishment. After speaking to Mr. Wiesing concerning the danger, the matter was remedied. Inspection on February 8, 1967 disclosed that there were eleven violations. There was no floor plan on display in public view; the vestibule and exit-ways had been obstructed and, in order to control the crowd, there were installed various decorations and there was no emergency lighting in the building. The last inspection was on April 19, 1968, and on July 2, 1968 a notice was sent by registered mail that the extension for time to remedy the violations would not be given. Also, Captain Cohrs said that there were not enough fire extinguishers in the establishment and that the area used for storage for the boiler room was not marked so that it could be mistaken for an exitway; furthermore, that, as a result of a fire on February 18, 1968, when the ceiling was ruptured, a request by Mr. Wiesing for an extension of time to fix the ceiling was granted by Chief Smith. However, the inspection on April 19, 1968 revealed that such repair to ruptured ceiling had not been made. Thereafter, on May 21 there was a second request made by the appellant for an extension of time in order to make the repairs. However, on June 7 the Fire Chief removed the occupancy permit for the building theretofore given as it was his opinion that there was a violation of the fire prevention code. On June 10, 1968 Fire Chief Smith had a notice served upon Mr. Wiesing at the licensed premises informing him that his request for an extension of time had been denied. Captain Cohrs also said that, as of July 2, 1968, ninety per cent. of the violations had not been rectified.

At the hearing before the local Board, according to the testimony of Captain Cohrs the fire code had not been complied with and there had been a deterioration of the property due to the past fires resulting in conditions which were not corrected, making the building hazardous for its occupants. When asked if full cooperation by Mr. Wiesing was given him, Captain Cohrs stated that he did not receive such cooperation.

Frank R. Intelisano testified that he is Director of Health and Welfare and that he was on appellant's premises at least four times concerning a monkey and a macaw which had the run of the area where a boat was stationed; that, after quite a bit of wrangling, Mr. Wiesing finally had the monkey removed from the premises because it was found that the water wherein the boat was placed was contaminated by animal excretion. Thereafter, on October 15, 1967, he inspected the premises and found the absence of hot water for washing of kitchen utensils. He spoke to Mr. Wiesing concerning this condition and was told that the boiler had broken down on September 13. On October 16 Intelisano stated he found thirty violations of the health code and, although some of the violations had been corrected, the kitchen still had miscellaneous material which made it improper for preparation of food for service to the public. Mr. Intelisano said that an inspection on March 4, 1968 disclosed glass broken at the front entrance, also broken glass on the second floor in the front of the premises; the kitchen and storage area were in poor condition because of the necessity to replace glass and repair doors; a door was needed in the garage storage area and also it was necessary to remove loose paint and plaster, clean the floors and remove debris from the storage area.

Intelisano further testified that another inspection of the premises was made on March 12, 1968, but that the violations aforementioned had not been corrected; that, as a result of complaint of noise made by one of the nearby residents of appellant's

premises, a reading was taken on September 14, 1967, to ascertain whether or not noise from the premises constituted a nuisance. It was found from this reading that the instrument used for this purpose registered fifteen decibels above the standard forty-five decibel reading and thus created a nuisance in the area.

John R. Cunningham testified that he is the Chief Building Inspector and on September 29, 1967 he directed Mr. Wiesing to comply with the fire underwriters' code within ten days but, before it was finally completed, it had taken several months. Mr. Cunningham said that at the time he served Mr. Wiesing with a notice that an injunction was being sought in court in the matter, Mr. Wiesing berated him and directed very obscene language toward him.

Harry A. Margolis, Assistant Town Attorney, testified that, as a result of his conversation with the Building Inspector on January 30, 1968, he assisted in the preparation of a letter with Mr. Cunningham to be served on Mr. Wiesing, wherein he notified Mr. Wiesing to disconnect all electrical service in the premises because of a direct violation of the ordinance. The reasons given in said letter were Mr. Wiesing's failure on behalf of the appellant to correct violations contained in reports received from the Middle Department Assocation of fire underwriters. A notice of these violations had been served on Mr. Wiesing September 29, 1967 and, when there was no compliance with the closing order, he prepared a complaint in the matter and a restraint order was issued by Judge Herbert of the Superior Court of New Jersey enjoining and restraining the continued use of the electrical system in the premises and discontinuing the operation of the business and until there was complete conformity with the National Electrical Code and ordinance of the Town of West Orange, or until further order of the court. Some time thereafter Mr. Margolis testified appellant retained the attorney who represents him in this appeal and, when there was an agreement that an extension of time be granted to satisfy the underwriters, the Town consented to a voluntary dismissal of its suit. On cross examination Mr. Margolis stated that the violations still continued uncorrected.

Captain Cohrs, called as a witness by the appellant's attorney, testified he directed that plans be submitted to him for providing another exit but up to the present time no such plan had ever been submitted. Captain Cohrs also testified that, although he requested that emergency lighting be installed, this had never been done.

William Van Stratton, testifying on behalf of appellant, stated that he is a general contractor and was hired by Mr. Wiesing on behalf of appellant to build new bars in the former dining rooms to cooperate with Captain Cohrs of the Fire Department, and also Mr. Cunningham, Building Inspector, and to meet the various requirements requested by public officials; that, on direction of the Fire Department, he checked all the doors to determine whether or not they were in proper working order. This necessitated that two doors leading into the area next to the community house be rebuilt; also three sets of fire doors to be installed. Furthermore, in addition to the main entrance of the premises, there were two additional front entrances installed. When it was suggested that emergency lighting be installed, Van Stratton testified that Captain Cohrs stated that he was fully aware that this would be an expensive operation and would give appellant time to do this work and, as long as the basic things were done, the establishment could again be re-opened. On cross examination Van Stratton testified that he

was hired in August 1967 to do the work but, before completion thereof, he met with an accident which prevented him from continuing the matter. He further stated that he had no knowledge whatsoever of a notice being served upon appellant because of any violations.

Jack Fisher testified that he is a theatrical agent and provided music for the appellant; that the music consisted of "rock-'n-roll bands" and the volume of said music depended on the equipment for which it was geared; that he visited the place over a period of time at least once a week, and that the type of entertainment provided by appellant was "definitely geared for the college crowd, finer people;" that, during his visits there, he never saw immoral activities on the licensed premises. Moreover, Mr. Fisher stated that in his opinion Mr. Wiesing is an honorable person and operates a very fine establishment. In answer to a question concerning noise, Mr. Fisher said that "I can't say about the noise. I have never noticed, really, the sound effect on the outside of the building. It's difficult to say. I don't believe that it's that loud or noisy" and, moreover, he didn't believe that it could be any noisier than that emanating from other establishments.

Margaret Rosa testified that she lives approximately three-quarters of a block away from the appellant's premises and is employed by a diner just a few doors up the street; that she has never heard any excessive noise coming from the appellant's place of business or observed any rowdyism on the part of its patrons.

John Shahan Altuounian testified that he is an assistant principal of a vocational school in another municipality and frequents appellant's premises every other week; that he has never seen any narcotic users nor has he observed any immoral conduct on the part of the patrons thereof.

Marilyn Gray testified that she lives a half-block up the street from appellant's place of business during the past five years and that she was never annoyed with excessive noise from the establishment, and that she had never seen any immoral activities on the part of the persons who patronized the place.

Freddie Thompson, employed by the appellant, testified that he cleans up the parking lot which is used by appellant's patrons and has never found any ladies' garments but there are mostly "coke bottles and beer cans and stuff like that, you know, broken bottles."

George M. Durr testified that he was employed by appellant to check the patrons entering the establishment, especially for minors, and he has never seen any offensive or loud conduct either inside or outside the premises. On cross examination he stated that there were quite a few fights outside the place of business; that the greatest number of people he observed in the premises on one occasion was "eleven hundred, twelve hundred people."

James J. Thatcher, who lives five blocks away from the premises, testified that he is employed by another municipality; that on his visits he has never observed any disorderly conduct in the appellant's premises.

Domenick Lombardo testified that he did electrical work in the appellant's establishment, adding some additional lights for the bars and coolers, and after he completed his work he requested that the wiring be inspected by the fire underwriters.

After hearing that Mr. Wiesing had received a notice from the municipality concerning the conditions, he went up to the fire underwriters to have them explain to him what, if anything, they required and made an appointment with the fire underwriters inspector to meet at the premises. As a result thereof, he made a list of requests made by the underwriters and received a final inspection by employees of the latter who stated that everything had been done according to their requests.

Theodore Robert Wiesing testified that he is general manager of the appellant's business, which premises are located in a theater building; that he employed rock-and-roll kind of amplified music which is currently used in the country today; that he employed checkers at the doors for the purpose of preventing minors from entering the establishment, and that he also on occasions made checks with reference thereto; that it employed police officers to maintain order both inside and outside the licensed premises and in his opinion the establishment was operated very orderly. He further stated that he knows of no occasions of narcotics being sold in the premises or that an arrest was ever made by the police because of said offense. However, he did remember one incident where Officer Kelly apprehended a drummer in one of the bands employed at the licensed premises for alleged use of narcotics and took him down to police headquarters where he (Wiesing) said he "bailed him out." He stated further that he has no further information as to the disposition of the case. Wiesing also said that he never refused to cooperate with the fire, building or health departments of the municipality; that, after the fire in the early part of 1968, there were some matters called to his attention to be corrected and he had everything corrected with the exception of two matters, and the only reason that he did not have the same corrected was that he was facing a ninety-day suspension of the license. Wiesing said that, in so far as the alleged electrical violations were concerned, he was of the opinion that, since he had obtained a person to remedy the conditions, it was the electrician's responsibility and that he (Wiesing) never refused to remedy the situation. Moreover, he stated that, in so far as the police were concerned, Captain Ehlers was very cooperative and gave suggestions to him which might be very useful in the operation of the licensed premises. Furthermore, when a letter was received from the Board of Health that there were complaints concerning the loud music emanating from the appellant's premises, he had the music toned down and thereafter never heard anything concerning same. He said that he had everything done to keep the noise from the band or patrons from reaching the outside so as to annoy people living in the area. During cross examination, when asked to be specific in an answer to a question by the attorney for the respondent, Wiesing stated, "If you would like me to talk. If you want to be the whole show, you be the whole show; tell me all about it." Furthermore, on cross examination, without going into too great detail, the substance of Wiesing's testimony was that he had done everything that he could when apprized of violations to remedy same.

Appellant also produced two witnesses who visited the licensed premises on occasions and their testimony was that they had not seen any immoral or disorderly conduct or heard any indecent or obscene language by patrons of the establishment.

Richard E. Kelly (a police officer) testified that on September 27, 1967, outside the premises he arrested the drummer in the band playing at appellant's place of business for possession of marihuana. He also cited other instances where he had

apprehended other individuals on the street in the vicinity of appellant's establishment and, further, that they too were in possession of marihuana. Officer Kelly further stated that he spoke to Mr. Wiesing and asked him whether he was aware that there was a big narcotics business at his place, and he answered that he was not.

Francis J. Kernan, Jr. (also a local police officer) testified that, while acting as under-cover investigator on September 21, 1967, he engaged in conversation at the bar with a patron concerning marihuana; that the patron asked him if he used marihuana and they became quite friendly, having a few drinks together. The person in question said that they expected a shipment from Florida at 4 p.m. in the afternoon; that he intended to stop at the appellant's premises "to give some stuff, marihuana, to members of the band." The following day Officer Kernan stated that he and a fellow officer staked out the place and about 4:20 in the afternoon, after they had left the licensed premises and had gone up to Erwin Place, they engaged in conversation with the man whom he had previously met; that, as a result of the conversation, his partner got into the car with the person in question and another individual and he (Kernan) followed him in his private car. They pulled into a deserted parking lot where an ounce of marihuana was offered to them for sale. However, when the officers exhibited a large amount of cash, the man produced a large quantity of marihuana, as a result of which he and his companion were arrested and charged with possession of the narcotic.

On November 9, 1967 Officer Kernan said that two men were pointed out to him on the dance floor as allegedly having possession of marihuana and, when he took them out on the sidewalk, one threw a vial on the street; that he retrieved the vial and found it contained hasheesh and placed both of these persons under arrest.

I have recited somewhat in detail the testimony of the witnesses of the respective parties to this appeal and, to clear up any misunderstanding, its purpose at this juncture is to reiterate the principle established by this Division since its inception that a licensee is accountable for conditions both in and outside the licensed premises which result from actions of its patrons. Conte v. Princeton, Bulletin 139, Item 8. This principle has been consistently applied to date. Cf. Kaplan et als. v. Englewood, Bulletin 1745, Item 1, aff'd id.nom App. Div. (1968), not officially reported, recorded in Bulletin 1790, Item 1, certif. den. 51 N.J. 464.

It is apparent from the testimony of Wiesing (manager of appellant's establishment) that he was aware of the conditions in the area of the licensed premises and also the incidents taking place inside the premises itself. From my observation of Mr. Wiesing as a witness, he appeared to be evasive in his testimony as far as the operation of the premises was concerned. From time to time public officials directed him to remedy existing violations and, although he rectified some of these violations, he neglected to remedy many others. The police and fire authorities experienced great difficulty with the way the establishment had been operated. The building inspector, when giving a notice to Wiesing, was subjected to foul and indecent language being directed at him. According to the testimony of various neighbors, it was quite obvious that conditions were becoming progressively worse.

The issue to be resolved in the instant case is whether the evidence presented justifies the action of the Board in refusing to renew appellant's license. Nordco, Inc. v. Newark, Bulle-

tin 1148, Item 2. It must be kept in mind that in all cases which involve discretionary matters, such as the application for renewal of a liquor license, the burden of proof falls upon the appellant to show manifest error or an abuse of discretion by the issuing authority. As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

See Freddie's Blue Room, Inc. v. Elizabeth, Bulletin 1422, Item 1.

When considering the public interest with reference to renewal of a liquor license, I realize that a licensee is entitled to fair play. Thus, failure to renew a license should not result from arbitrary action on the part of the licensing authority. However, when a licensed premises is operated without consideration for the rights of other persons residing in the area of the premises and the effect that such improper operation has on the lives of other persons, it appears sufficient proof that the licensee is unworthy to hold a liquor license. Moreover, from the voluminous testimony given by the public officials it would appear that the place in itself was not only unsanitary but was a hazard to all persons who patronized the establishment. There was some testimony of narcotic traffic in the establishment. Furthermore, a series of fires took place in the building which in itself endangered the immediate area. One occasion points out specifically the attitude of Mr. Wiesing, according to the testimony of Fire Chief Smith, that, when the place was overcrowded and the Captain had given directions to allow no more persons in the establishment excepting to replace any that may leave, Mr. Wiesing, apparently after he believed the Captain had left the neighborhood, opened up the doors and allowed over forty-two persons to enter; this is adequate proof of lack of cooperation with a public authority.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its determination and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4.

After careful consideration of all of the evidence presented, I am satisfied that the Board exercised its discretion properly, reasonably and in the best interest of the community in refusing to renew appellant's license for the current licensing year. I am satisfied that appellant has failed to sustain the burden of proof as required by Rule 6 of State Regulation No. 15. Thus it is recommended that the Board's action in denying appellant's application for renewal be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report and argument in substantiation thereof were filed by appellant's attorneys and answering argument to the exceptions was filed by the attorney for respondent, pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the transcripts of the proceedings, the exhibits, the Hearer's report and exceptions thereto. I concur in the findings and conclusions of the Hearer and adopt his recommendation.

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

ORDERED that the action of respondent Board of Alcoholic Beverage Control be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on June 27, 1968, extending the term of appellant's license pending determination of the appeal, be and the same is hereby vacated effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION AND SALE OF ALCOHOLIC BEVERAGES IN PARK AREA - SUM DEPOSITED UNDER STIPULATION ORDERED FORFEITED - ALCOHOLIC BEVERAGES, PERSONAL PROPERTY AND CASH ORDERED FORFEITED.

In the Matter of the Seizure on May 5, 1968 of a quantity of alcoholic beverages, a 1959 Ford sedan, $109.35 in cash and miscellaneous personal property at Riverbank Park, on Market Street, in the City of Newark, County of Essex and State of New Jersey.	Case No. 12,040 On Hearing CONCLUSIONS and ORDER

Roberto Gonzales, claimant, 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 the provisions of R.S. 33:1-66 and State Regulation No. 28 to determine whether a quantity of alcoholic beverages, $109.35 in cash, a 1959 four-door sedan and miscellaneous personal property, as set forth in the inventory attached hereto, made part hereof and marked Schedule "A", seized on May 5, 1968 at Riverbank Park on Market Street, Newark, New Jersey, constitute unlawful property and should be forfeited; and further, to determine whether the sum of $50.00 deposited under protest under stipulation signed by Roberto Gonzales, representing the retail value of the said 1959 Ford sedan, should be forfeited, or returned to him.

At the said hearing, Roberto Gonzales appeared and sought the return of the deposit posted by him under the aforesaid stipulation, as well as the cash and the alcoholic beverages.

ABC Agent M, testifying on behalf of the Division, gave the following account: Accompanied by another ABC Agent (Ma) he visited the Riverbank Park pursuant to a specific assignment to investigate an allegation that alcoholic beverages were being unlawfully sold thereat from a car or truck. Arriving at the park at 12:45 P.M., he noted that a baseball game was in progress, and that Gonzales was entering the park, carrying a polyethelene cooler. After setting the cooler down, Gonzales made numerous sales of cans of beer which he took from the said cooler.

Gonzales was joined, shortly thereafter, by an individual (later identified as Marcos Tremble) who participated in the sales of the said beer. After making numerous sales, Tremble took the cooler, left the park, and was followed by ABC agents to a 1959 blue and white Ford described in Schedule "A". When Tremble opened the trunk of the vehicle, the agents observed that the rear seat was removed, two large garbage cans were in the rear part of the vehicle and Tremble was taking cans of Schaefer beer from those receptacles.

Tremble returned to the park with the new supply of beer and both he and Gonzales continued to sell these cans of beer to patrons. Agent M approached Gonzales, and in the presence of Agent Ma purchased a can of beer from Gonzales with a "marked" one-dollar bill. Within a few minutes thereafter, Agent M approached Tremble and purchased another can of beer with a "marked" five-dollar bill for which Tremble returned change to him.

In addition to the beer, it should be noted that both men were also selling soda and sandwiches to the patrons at the ball game. Local police were summoned and Gonzales and Tremble were thereupon arrested; they were charged with the sale and possession of alcoholic beverages with intent to sell the same without a license or lawful permit, in violation of R.S. 33:1-50 (a & b).

The records of this Division disclose that there was no license authorizing Gonzales or Tremble to sell alcoholic beverages nor was there a permit or license authorizing the sale of alcoholic beverages at these premises.

There was admitted into evidence the affidavit of mailing, affidavit of publication, listing of "marked" money, chemist's report certifying to the alcoholic content of the seized cans of beer and the inventory.

The Division chemist analyzed samples of the seized beer and his report certifies that they are alcoholic beverages with an alcohol by content of 4.57%.

The seized beer is illicit because it was intended for unlawful sale. R.S. 33:1-1(i). Such illicit beer, the commingled cash and the motor vehicle in which the said beer was transported and found, constitute unlawful property, and are subject to forfeiture. R.S. 33:1-50; R.S. 33:1-66; Seizure Case No. 10,759, Bulletin 1469, Item 5; Seizure Case No. 11,164, Bulletin 1565, Item 5.

Roberto Gonzales, testifying in support of his claim for the return of the seized property, gave the following account: He was selling sandwiches, soda and beer. He admits that the chilled beer was taken from the motor vehicle in question by Tremble. Although he sold the sandwiches and soda he gave the beer without charge to the patrons at the park who had previously given him money to purchase beer. He denies selling any beer "because I know I can't sell beer, only can sell soda and sandwiches".

He admits accepting the money from the agent for the can of beer but insists that the agent helped himself to the can of beer. He further explained that about ten people in Newark gave him money on the day before this occurrence to buy beer for them; that he was only authorized to sell soda and sandwiches, and the beer actually belonged to these people.

On cross-examination, he insisted that he told Tremble not to sell any beer and he doesn't believe that Tremble actually sold any beer. He explained that the 96 cans of beer were owned by the nine or ten persons who had previously given him money for the purchase thereof, and that each of them probably consumed three or four cans during the course of the game.

Finally, he admitted charging Agent M 40¢ for the said beer.

At a continued hearing in this matter, Marcos Tremble testified that he transported the beer in this motor vehicle to these premises. He insisted that he was merely selling soda and sandwiches and was not actually selling beer. The money that he collected was turned over to Gonzales. Asked to explain the sales of beer to the agents, he asserted that the beer had been paid for by members of his club on the day before this occurrence and they were being distributed to these members as a matter of convenience. In other words, while they sold sandwiches and soda, the beer was distributed without charge on that date. Finally, he admitted that he had transported beer in the vehicle three times on that date prior to being arrested.

After carefully evaluating and assessing the testimony of the claimant, Gonzales and of Tremble (who did not enter a claim herein), I am persuaded that their version of what occurred is incredible and unbelievable. It seems absurd to believe that anyone could come up to the cooler and take a can of beer without being charged but that they would have to pay for the soda and sandwiches. While they deny that they actually sold the cans of beer to the agent, they admitted receiving money from the agent. I conclude, therefore, that unlawful sales of alcoholic beverages were made on the date herein, and that the said beer was transported in the seized motor vehicle.

Under these circumstances, it is recommended that the claim of Gonzales be denied and that an Order be entered forfeiting the money deposited on the aforesaid stipulation. It is further recommended that the cash which was found commingled with the "marked" money as well as the alcoholic beverages and the miscellaneous personal property be similarly ordered forfeited. Seizure Case No. 11,765, Bulletin 1715, Item 7; Seizure Case No. 10,975, Bulletin 1507, Item 3.

Conclusions and Order

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

After carefully considering all the facts and circumstances herein, I concur in the recommended Conclusions in the Report and adopt them as my conclusions herein.

Accordingly, it is on this 5th day of December, 1968,

DETERMINED and ORDERED that the seized property, including $109.35 in cash, more fully described in Schedule "A", attached hereto, constitute unlawful property; and that the sum of $50.00, representing the appraised retail value of the 1959 Ford sedan, which was returned to Robert Gonzales, together with the cash in the sum of $109.35 be and the same are hereby forfeited in accordance with 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 and the miscellaneous personal property 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.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

84 - containers of alcoholic beverages
1 - 1959 Ford sedan, New Jersey registration NRD-688
Miscellaneous personal property
$109.35 - cash

3. DISCIPLINARY PROCEEDINGS - ORDER TERMINATING SUSPENSION FOR BALANCE OF TERM UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against

Hi-De-Ho Corp.
602 Paterson Plank Road
Union City, N. J.

Holder of Plenary Retail Consumption License C-26, issued by the Board of Commissioners of the City of Union City.

SUPPLEMENTAL ORDER

Licensee, by Dorothy Bosinski, Secretary, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On November 14, 1968, I entered Conclusions and Order herein suspending the license for the balance of its term effective November 21, 1968, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation (undisclosed stockholding interest) for lifting of the suspension of the license on or after December 31, 1968, after the license had been suspended for forty days. Re Hi-De-Ho Corp., Bulletin 1832, Item 7.

It appearing from verified petition submitted by the licensee that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension.

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

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective 3:00 a.m. Tuesday, December 31, 1968.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING PENDENCY OF APPEAL.

In the Matter of Disciplinary Proceedings against Frank DiGiuseppe t/a M & D Tavern 507-509-511 S. Clinton Avenue Trenton, N. J. Holder of Plenary Retail Consumption License C-71 issued by the City Council of the City of Trenton	SUPPLEMENTAL ORDER

Henry F. Gill, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On October 21, 1968, I entered Conclusions and Order herein suspending the license for one hundred thirty days commencing October 28, 1968, for permitting acceptance of numbers and horse race bets on the licensed premises. Re DiGiuseppe, Bulletin 1829, Item 4.

Prior to effectuation of the order of suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the termination of the appeal.

On November 27, 1968, motion to dissolve the stay was granted. The suspension may now be reimposed.

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

ORDERED that the 130-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-71, issued by the City Council of the City of Trenton to Frank DiGiuseppe, t/a M & D Tavern, for premises 507-509-511 S. Clinton Avenue, Trenton, commencing at 2:00 a.m. Monday, December 16, 1968, and terminating at 2:00 a.m. Friday, April 25, 1969.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Reflection Lakes Inn, Inc.
t/a Reflection Lakes Inn
Union Valley Road
West Milford Township
Box 327, PO Newfoundland, N. J.

Holder of Plenary Retail Consumption License C-9 issued by the Township Committee of the Township of West Milford

CONCLUSIONS AND ORDER

Licensee, by J. Marion Leonberger, President, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 4, 1968, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re McCoy, Bulletin 1817, Item 6.

Accordingly, it is, on this 3d day of December, 1968,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of West Milford to Reflection Lakes Inn, Inc., t/a Reflection Lakes Inn, for premises on Union Valley Road, West Milford, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, December 9, 1968, and terminating at 2:00 a.m. Thursday, December 19, 1968.

Joseph M. Keegan
Director

New Jersey State Library