

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

BULLETIN 1200

December 17, 1957

TABLE OF CONTENTSITEM

1. APPELLATE DECISIONS - KLEIN AND TUCKER v. FAIR LAWN AND VAN DE WALLE AND SCOURIS; KLEIN AND TUCKER v. FAIR LAWN AND SCHWEDER.
2. DISCIPLINARY PROCEEDINGS (Parsippany-Troy Hills Township) - SALE IN OTHER THAN ORIGINAL CONTAINER FOR OFF-PREMISES CONSUMPTION - BOTTLING - UNLAWFUL TRANSPORTATION - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Jackson Township) - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Edison Township) - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Paterson) - LEWDNESS AND IMMORAL ACTIVITY (INDECENT PRINTED MATTER AND STATUETTE) - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES WITHOUT COMPLIANCE WITH STATE REGULATION NO. 18 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE RECOGNIZED AND TO BE SATISFIED FROM PROCEEDS OF SALE OF MOTOR VEHICLE.
7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.
8. DISCIPLINARY PROCEEDINGS (Trenton) - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
9. STATE LICENSES - NEW APPLICATIONS FILED

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

BULLETIN 1200

December 17, 1957

1. APPELLATE DECISIONS - KLEIN AND TUCKER v. FAIR LAWN AND
VAN DE WALLE AND SCOURIS.
KLEIN AND TUCKER v. FAIR LAWN AND
SCHWEDER.

HENRY KLEIN and LEONARD TUCKER,)
Appellants,)

-vs-)

MAYOR AND COUNCIL OF THE BOROUGH)
OF FAIR LAWN, and THEODORE VAN DE)
WALLE and DEAN SCOURIS, trading as)
DORIE & DEAN,)

Respondents.)

ON APPEAL

HENRY KLEIN and LEONARD TUCKER,)
Appellants,)

CONCLUSIONS AND ORDER

-vs-)

MAYOR AND COUNCIL OF THE BOROUGH)
OF FAIR LAWN, and HAROLD M.)
SCHWEDER,)

Respondents.)

Peter Cammelleri, Esq., by Stanley J. Mann, Esq., Attorney
for Appellants.

Arthur Minuskin, Esq., Attorney for Respondent Mayor and
Council of the Borough of Fair Lawn.

Morris Dobrin, Esq., Attorney for Respondent-licensees.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"These appeals are filed from the action of respondent Mayor and Council on June 11, 1957, whereby it issued a plenary retail distribution license to respondents Theodore Van De Walle and Dean Scouris, trading as Dorie & Dean, for premises 12-74 River Road, and from the action of respondent Mayor and Council on June 25, 1957, whereby it issued a plenary retail distribution license to Harold M. Schweder for premises 11-14A Saddle River Road, Borough of Fair Lawn.

"In each of the appeals appellants allege that the issuance of the license was not granted in view of the public necessity, need and good, and that respondent Mayor and Council had no legal authority to issue the license.

"At the hearing held herein neither appellant was present when the case was called. The attorney who appeared for appellants then requested a lengthy adjournment because the attorney of record was out of the State. The attorneys who appeared for respondents objected. The Hearer denied the request for a lengthy adjournment but adjourned the hearing for one hour. Neither appellant appeared when the hearing was resumed. The denial of the request for adjournment was not unreasonable under the circumstances. Heinz v. Atlantic Stages Inc., 113 N.J.L. 321 (Ct. of E. & A. 1934).

The only evidence presented on behalf of appellants was the testimony of Mrs. Hoeffner (a clerk employed in the office of the Borough Clerk and who stated that her duties included reviewing the applications for liquor licenses in the Borough of Fair Lawn). This witness testified as to the existence of certain ordinances in the Borough and as to the action taken by the Mayor and Council upon the applications filed by the respondent-licensees herein. No testimony was presented by any of the respondents.

"The licenses considered herein were the subject of prior appeals between the same parties (see Bulletin 1175, Item 3). In the prior appeals the licenses granted to Theodore Van De Walle and Dean Scouris and Harold M. Schweder were cancelled solely because the applications for said licenses had been improperly advertised. Because of all the circumstances appearing in said cases, the order provided that the respondent-licensees were granted leave to apply to the Director for special permits authorizing them to continue business pending consideration and determination by the issuing authority of new applications. Each of the licensees obtained and operated under a special permit until the licenses considered herein became effective. From the evidence given at the hearing held herein it appears that the applications for the licenses considered in this case have been properly advertised.

"The issue as to public necessity and need and good was fully considered in the prior appeals between the same parties, and it was therein decided that appellants had not sustained the burden of showing that the municipal issuing authority abused its discretion. Since no new evidence has been presented, the conclusion as to said issue must be the same in this case as in the previous case.

"As to the legal authority to issue the licenses in question: In the prior appeals it was determined that the ordinance adopted by the Mayor and Council on December 27, 1955 (whereby the permissible number of plenary retail distribution licenses was increased from five to seven and the issuance of such a license prohibited within 1,000 feet of premises similarly licensed) is valid on its face. In appellants' brief filed herein it is contended that said ordinance is void because it was not approved by the Director prior to its enactment (R. S. 33:1-40). In so far as the ordinance increased the number of licenses, it did not require prior approval by the Director. Holland v. Bridgeton et al., Bulletin 659, Item 9. Even if the provision establishing a minimum distance between licensed premises is viewed as a regulation of the conduct of licensed premises, the failure to obtain the prior approval of the Director does not render the ordinance void. See Peck v. West Orange, Bulletin 147, Item 1; Great Atlantic & Pacific v. Dover, Bulletin 251, Item 5; Re Neiden, Bulletin 329, Item 6, in which cases it was determined that, in an appeal filed by an aggrieved person, such a regulation would be considered on its merits, nunc pro tunc. In Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940) the Court expressed serious doubt as to the power of the Commissioner (now Director) to repeal an ordinance. In Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351 (App. Div. 1952) the Court did not find it necessary to pass upon the power of the Director to disregard conditions imposed by an ordinance. In Shenise v. Jefferson, Bulletin 1155, Item 2, the Director ruled that a minimum-distance ordinance was

unreasonable as applied to appellant but did not declare the ordinance void. However, aside from any question as to the power of the Director to declare an ordinance void, the ordinance considered herein is reasonable and, if necessary, should be approved nunc pro tunc. Respondent Mayor and Council had legal authority to adopt the ordinance. R. S. 33:1-40. Since it has been decided in the prior appeals that the premises of the respondent-licensees are not within 1,000 feet of premises similarly licensed, respondent Mayor and Council had legal authority to issue the licenses pursuant to the ordinance.

"It is recommended, therefore, that an order be entered herein affirming the action of respondent Mayor and Council, and dismissing the appeals."

Written exceptions to the Hearer's Report and written argument thereon were filed with me by the attorney for appellants, pursuant to Rule 14 of State Regulation No. 15. The attorneys for the respective respondents advised me that they rested upon their memoranda submitted prior to the preparation of the Hearer's Report.

After carefully considering the entire record herein, including the transcript of testimony, the exceptions and written argument submitted by the attorney for appellants and the memoranda submitted by the attorneys for the respective respondents, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein. Hence, I shall affirm the action of respondent Mayor and Council in both cases.

Accordingly, it is, on this 18th day of November, 1957,

ORDERED that the action of respondent Mayor and Council of the Borough of Fair Lawn in both of the above cases be and the same is hereby affirmed, and the appeals herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
Director.

- 2. DISCIPLINARY PROCEEDINGS - SALE IN OTHER THAN ORIGINAL CONTAINER FOR OFF-PREMISES CONSUMPTION - BOTTLING - UNLAWFUL TRANSPORTATION - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
WALLY'S, INC.
T/a WALLY'S
Parsippany Blvd.
Parsippany-Troy Hills Township
PO RFD Boonton, N. J.,
Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Parsippany-Troy Hills.

CONCLUSIONS
AND ORDER

Robert H. Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On July 22 and August 13, 1957 and on divers days prior thereto, you sold alcoholic beverages, not pursuant to and within the terms of your license as defined by R. S. 33:1-12(1), in that you made sales of alcoholic beverages for consumption off your licensed premises in other than the original containers; in violation of R. S. 33:1-2.

"2. On July 22 and August 13, 1957 and on divers days prior thereto, you, not being the holder of any license so to do, bottled alcoholic beverages for the purposes of sale, viz., whiskey in 7 ounce '7 Up', 'Coca Cola' and 'Squirt' soft drink bottles; in violation of R. S. 33:1-78.

"3. On July 22 and August 13, 1957 and on divers days prior thereto, you transported alcoholic beverages in vehicles having no transit insignia affixed thereto or inscription painted thereon as provided in Rule 12 of State Regulation No. 17; in violation of Rule 2 of State Regulation No. 17."

An examination of the file herein discloses that at least on two separate occasions on July 22, 1957 and on one occasion on August 13, 1957, delivery of alcoholic beverages in other than their original containers was made to a customer pursuant to orders received by telephone. It appears each time that the bartender would fill a seven-ounce bottle (which formerly contained a soft drink) with Vodka and request a patron who happened to be on defendant's licensed premises to make the delivery thereof. The delivery on each occasion was made to the customer in a motor vehicle which did not have affixed thereto a transit insignia.

It further appears from the file herein that the various deliveries of alcoholic beverages were made in the containers aforementioned as a subterfuge in a premeditated attempt to prevent the wife of the customer (an alcoholic) from ascertaining that the bottles contained alcoholic beverages. Such conduct can only be described as reprehensible.

Defendant has a prior adjudicated record. Effective June 15, 1936 and again on February 23, 1942, a license in the individual name of Wallace Bentley, the president and major stockholder of the defendant corporation, was suspended by the local issuing authority for two and five days, respectively, for sale of alcoholic beverages to minors. Again, effective September 29, 1944, defendant's license was suspended by the local issuing authority for fifteen days for permitting a brawl on its licensed premises. Again, effective April 7, 1952, defendant's license was suspended by the Acting Director for five days for sale of alcoholic beverages to minors. Re Wally's, Inc., Bulletin 931, Item 9. Again, effective March 12, 1956, defendant's license was suspended by the Director for sixty days after dismissal of an appeal filed by defendant from the action of the local issuing authority in imposing the original penalty therein. Wally's, Inc. v. Parsippany-Troy Hills, Bulletin 1103, Item 4.

The seriousness of the violations now under consideration in addition to the prior record of operation of the licensed premises which has been outlined above, would ordinarily warrant a revocation of defendant's license. However, in the defendant's favor is the fact that all of the violations were

dissimilar in nature to the violation herein and with the exception of the sixty-day penalty effective March 12, 1956, occurred more than five years ago. Under the circumstances, I shall suspend defendant's license for a period of forty days, less a remission of five days for the plea entered herein, leaving a net suspension of thirty-five days. It is my considered opinion that it might be advisable for the defendant herein to seek a bona fide purchaser for the licensed business without delay.

Accordingly, it is, on this 12th day of November, 1957,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Parsippany-Troy Hills to Wally's, Inc., t/a Wally's, for premises at Parsippany Blvd., Parsippany-Troy Hills, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 a.m. November 18, 1957 and terminating at 3:00 a.m. December 23, 1957.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
RICHARD VANDER HENNE and
SOPHIE VANDER HENNE
T/a FIVE ACRES TAVERN
Ridgeway & Cassville Road, Legler
Jackson Township
PO Star Route, Lakehurst, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Jackson.)

Novins and Novins, Esqs., by Robert J. Novins, Esq.,
Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On Friday night, September 20, 1957 and Saturday night, September 21, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Donald R. ---, age 18; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that ABC agents, acting on information received from the Lakehurst Naval Air Station, obtained a sworn, written statement dated September 23, 1957 from Donald R. --- (age 18) wherein he states that on Friday night, September 20, and Saturday night, September 21, 1957,

he and William H. --- (age 20) drove to defendants' licensed premises; that on each occasion he alone entered the premises and without being questioned or required to produce any written proof as to his age, purchased from the bartender then on duty, twelve 12-oz. cans of Schaefer beer which he took with him from the premises. William H. likewise gave a sworn, written statement setting forth that he saw Donald R. enter the premises empty-handed and emerge therefrom with aforementioned quantities of beer on each trip. Later, both minors directed the ABC agents to the licensed premises where Donald R. identified Theodore Vaughan and Bernard Potkay as the bartenders who respectively sold him aforesaid beer on September 20 and September 21, 1957.

By way of mitigation, the attorneys for defendants have submitted a statement the contents of which I have carefully read together with the file in the case and the statements of the minors involved. I, however, do not find any extenuating circumstances in this case which would impel me to impose less than the established penalties in cases of this kind.

Defendants have a prior adjudicated record. Effective November 3, 1952, the defendants' license was suspended for five days by the local issuing authority for an "hours" violation. The penalty for the sale of alcoholic beverages to an 18-year-old minor is fifteen days. Re Olshaker, Bulletin 1164, Item 10. However, since the aforesaid prior dissimilar violation occurred within a five-year period, an additional five-day penalty will be added, making a total suspension of twenty days. Re Gorgo, Bulletin 1151, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 7th day of November, 1957,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Jackson to Richard Vander Henne and Sophie Vander Henne, t/a Five Acres Tavern, for premises Ridgeway & Cassville Road, Legler, Jackson Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. November 18, 1957 and terminating at 2:00 a.m. December 3, 1957.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 FRANK S. MIKLOSEY)
 T/a EDISON LIQUORS & SUPERETTE)
 Highway #27 & Sutton Lane)
 Edison Township)
 PO Rt. 37 Highland Park, N.J.,)
)
 Holder of Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the Township of Edison.)
)

CONCLUSIONS AND ORDER

 Melko, Goldsmith & Pollack, Esqs., Attorneys for Defendant-licensee.
 David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold an alcoholic beverage at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that at about 8:20 p.m. Wednesday, July 17, 1957, an ABC agent visited defendant's licensed premises and ordered from Frank S. Miklosey (the licensee herein) a 4/5-quart bottle of Paul Jones Blended Whiskey. Miklosey quoted \$4.30 (the correct price of the article requested) and, when the agent remarked "You did better than that the last time", Miklosey replied "That's what the sign says, but that's not what you will pay. Give me \$4.00 even." The agent complied and Miklosey rang up the sale. After leaving the premises with his purchase, the agent was joined by another agent who had remained outside and both returned, identified themselves to the licensee and informed him of the violation. Miklosey denied the sale below the minimum resale price, stating "You guys can't prove anything. He (the purchaser) was alone in here and it's my word against his." In the meantime a customer had made a purchase from the licensee's son who, the agents noted, rang up the sale and dropped the register receipt on the floor. The agents retrieved the receipt, noted its serial number and thereafter located in a trash-box under the counter a \$4.00 receipt bearing the next preceding number.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of ten days and remit five days for the plea entered herein, leaving a net suspension of five days (Re Pat Caridi, Inc., Bulletin 1186, Item 7).

Accordingly, it is, on this 30th day of October, 1957,

ORDERED that Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the Township of Edison to Frank S. Miklosey, t/a Edison Liquors & Superette, Highway #27 & Sutton Lane, Edison Township, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. November 11, 1957, and terminating at 9:00 a.m. November 16, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT PRINTED MATTER AND STATUETTE) - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN LISOWSKI)
T/a DOVER HOUSE)
620 Main Street)
Paterson 3, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-307, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

John Lisowski, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On September 11 and 16, 1957, you allowed, permitted and suffered in and upon your licensed premises and had in your possession obscene, indecent, filthy, lewd, lascivious and disgusting matter in form of statues, statuettes, printings, pictures, placards, photographs and representations; in violation of Rule 17 of State Regulation No. 20."

On September 11, 1957 while two ABC agents were seated at the bar in defendant's licensed premises, the defendant, for the "entertainment" of a female and three male patrons, displayed two figurines (one representing a nude man and the other a nude woman); called to the agents to watch the manipulations of the figurines and at the conclusion thereof, put the items in a small container and placed it on the top of the cash register.

On September 16, 1957 an ABC agent made a routine inspection of the defendant's licensed premises which resulted in the seizure of the figurines aforementioned, two plywood plaques bearing double entendre quotations, a calendar with the picture of a woman exposing her breasts, a framed picture of a woman with the upper part of her torso exposed and a comparatively large statuette of a female in the nude. The defendant was not present at the time of the inspection and the bartender denied that he had knowledge of any of the items being on the premises with the exception of the two plywood plaques containing the double-meaning quotations. Novelties of the type in question have no place on licensed premises. Re Deaver, Bulletin 1096, Item 5.

Defendant has a prior adjudicated record. Effective May 31, 1955, his license was suspended by the local issuing authority for a period of fifteen days for sales of alcoholic beverages to minors. The minimum suspension for a violation of the type now being considered is ten days. Re Mayo, Bulletin 1104, Item 9. However, since the prior dissimilar violation occurred during the past five years, the penalty herein will be fifteen days. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 6th day of November, 1957,

ORDERED that Plenary Retail Consumption License C-307, issued by the Board of Alcoholic Beverage Control for the City of Paterson to John Lisowski, t/a Dover House, for premises 620 Main Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. November 12, 1957 and terminating at 3:00 a.m. November 22, 1957.

WILLIAM HOWE DAVIS
Director.

6. SEIZURE - FORFEITURE PROCEEDINGS, - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES WITHOUT COMPLIANCE WITH STATE REGULATION NO. 18 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE RECOGNIZED AND TO BE SATISFIED FROM PROCEEDS OF SALE OF MOTOR VEHICLE.

In the Matter of the Seizure on) Case No. 9500
May 28, 1957 of a quantity of)
whiskey and a Ford coupe on the)
northbound lane of the New Jersey)
Turnpike, at the 38 Mile Post, in) ON HEARING
the Township of Mount Laurel,) CONCLUSIONS AND ORDER
County of Burlington and State of)
New Jersey.)
-----)

Ray Wright, Pro se.
Green & Yanoff, Esqs., by George J. Lasky, Esq., Attorneys
for Commercial Credit Corporation.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66 to determine whether 275 bottles of various brands of taxpaid alcoholic beverages and a Ford coupe, described in a schedule attached hereto, seized on May 28, 1957 on the northbound lane of the New Jersey Turnpike, at the 38 Mile Post, in Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

"Ray Wright, the registered owner of the motor vehicle, appeared and sought return of the car and the alcoholic beverages. An appearance was also entered on behalf of Commercial Credit Corporation, which sought recognition of its alleged lien on the Ford coupe.

"Reports of ABC agents and other documents in the file, presented in evidence with consent of Wright and the finance company, disclose the following facts:

"A New Jersey State Trooper halted the Ford coupe on the above date and location during his routine patrol of traffic on the highway. He ascertained that the motor vehicle was being operated by Ray Wright, who resides in New York City. In the absence of satisfactory proof that Wright was lawfully transporting the alcoholic beverages, stored in the trunk of the car, the trooper detained Wright, the motor vehicle, and the alcoholic beverages pending investigation by ABC agents of the source and destination of such alcoholic beverages and the motor vehicle and alcoholic beverages were delivered to such agents.

"In considering whether Wright was engaged in a lawful enterprise, it may be noted that on November 14, 1956 he was apprehended in Palisades Park, New Jersey, while transporting in an unlicensed truck, 1320 pint bottles of legitimate wine obtained at the licensed premises of a New Jersey retailer; that such wine and the cash deposited in place of the truck were forfeited because the Director did not believe Ray's testimony that he was transporting the wine to New York to be used by him as Christmas gifts; and that, on the contrary, the Director concluded that it seemed likely that Wright or some other person or persons, intended to dispose of the wine through other than legal channels. Seizure Case No. 9356, Bulletin 1172, Item 7.

"In the present instance evidence was presented which tends to establish that Wright purchased all of the alcoholic beverages in Washington, D. C. from a local retailer, and was transporting such alcoholic beverages through this state for delivery in New York City. This type of transportation is governed by Rule 2, State Regulation No. 18, which authorizes transportation of alcoholic beverages either pursuant to a transporter's license or permit issued by this Division, or else requires the transporter to have in his possession a waybill or other document containing the bona fide name of the consignor and consignee and a specific description of the alcoholic beverages, and further, requires the transporter to establish that the alcoholic beverages may be lawfully delivered to their destination.

"Wright did not have any such license or permit to transport the alcoholic beverages and the bills in his possession, representing the purchase of alcoholic beverages to the amount of \$585.26 on billheads of a Washington retailer are defective in that the ostensible consignee named therein is R. Merritt, of a Washington, D. C. address (obviously not the bona fide consignee).

"Absent a license, permit, or valid waybill, the alcoholic beverages were transported unlawfully and consequently the alcoholic beverages and motor vehicle in which they were transported and found are subject to forfeiture. R.S. 33:1-1 (i & y), R.S. 33:1-2, R.S. 33:1-66. Such forfeiture may be waived by the Director pursuant to R. S. 33:1-66(e) if he is satisfied that the transporter acted in good faith and unknowingly violated the law. As applied to transportation of tax-paid alcoholic beverages through this state, the transporter must establish to the satisfaction of the Director that the alcoholic beverages were intended for legitimate use, otherwise the transporter is denied relief from forfeiture.

"Wright asserted that he was in the trucking business and conducted a small grocery store in New York City; that his net income was about \$8000.00 in 1956 although from the same sources he reported a taxable income of \$2500.00 for the year 1955 (he professed to have books of account available, but failed to produce them, despite an opportunity afforded him to do so); that currently, from time to time he negotiated personal loans from various money lending institutions; and that he had no credit with two concerns from which he purchased merchandise for his grocery store. He claims that he happened to have had about \$600.00 on his person when purchasing alcoholic beverages on May 27th. On May 21, 1957 he purchased alcoholic beverages from the same retailer in the amount of \$565.10. There was also found in his possession another bill,

undated, representing the purchase of alcoholic beverages from the same retailer in the amount of \$589.58. He further claims that all of such alcoholic beverages were for his personal use and use at a party or parties held in his four-room apartment.

"An ABC agent testified that he held a conversation with Wright concerning a document which was found in Wright's possession which purported to be an eviction notice from the landlord of his grocery store setting forth that the reason for such notice was that Wright had been in trouble with the law enforcement authorities for selling alcoholic beverages; and that Wright denied that he was in trouble with such authorities and stated that he was unaware of any liquor violations.

"Considering Wright's economic circumstances, his purchase of alcoholic beverages in the amount of over \$1600.00, his previous illegal transportation of alcoholic beverages, and the eviction notice, it is obvious that he did not purchase the alcoholic beverages presently involved for use at a party or for personal use, but instead, as in the previous instance, was not engaged in any legitimate enterprise but instead intended to dispose of the alcoholic beverages in other than legal channels.

"I therefore recommend that Ray Wright's request for return of the Ford coupe and alcoholic beverages be denied.

"Commercial Credit Corporation presented in evidence a conditional sales contract dated August 20, 1956 (before Wright was apprehended in Palisades Park) signed by Ray Wright and Louise Wright, his wife, covering the purchase of the Ford coupe in question. The present balance due on such contract, which the finance company holds by assignment, after rebate for prepayment, is the sum of \$1522.80.

"Before extending credit to Ray Wright and Louise Wright and accepting such conditional sales contract the finance company received information that Wright conducted a grocery store at an address in New York City and was also engaged in the trucking business; that he was 38 years of age, married, resided at an address in New York City; had an income of \$100.00 a week, and that his wife was employed at a salary of \$50.00 a week. The finance company was also furnished with various business references.

"The finance company made an independent investigation of the information submitted to it, found it to be accurate and did not develop any derogatory information concerning Ray Wright's background, but concluded that his financial reputation was not of the highest rating, and therefore obtained the signature of his wife to the sales contract. Ray Wright had no previous criminal record for violating any liquor laws at the time of the execution of the sales contract.

"It is my opinion that the Commercial Credit Corporation acted in good faith, made a reasonable independent investigation of Ray Wright's character and background, and did not know, or have any reason to suspect that he was engaged in unlawful liquor activities.

"Accordingly, I recommend that the lien claim of the Commercial Credit Corporation upon the Ford coupe to the extent of \$1522.80 should be recognized.

"It appears likely that the amount realized at public sale of the motor vehicle will exceed the costs of seizure and amount of the lien. I further recommend that the motor vehicle be ordered sold.

"Finally, I recommend that the alcoholic beverages be forfeited and disposed of in accordance with law."

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

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

I am therefore satisfied that the bank acted in good faith and did not know or have any reason to suspect that Ray Wright would use his Ford coupe in unlawful alcoholic beverage activity. Consequently, I shall recognize the lien of the bank to the extent of \$1,522.80. R. S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that the Ford coupe, described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it shall be ordered for sale at public sale, pursuant to terms to be announced hereafter, and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained, otherwise the motor vehicle will be returned to the Commercial Credit Corporation upon payment of the costs of its seizure, storage, and sale; and it is further

ORDERED that if the Ford coupe is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second, out of the balance, if any, there shall be paid to the Commercial Credit Corporation its lien claim, recognized to the extent of \$1,522.80; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

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

WILLIAM HOWE DAVIS

Dated: October 21, 1957.

Director.

SCHEDULE "A"

- 203 - pint bottles of various brands of whiskey
- 12 - 4/5 quart bottles of various brands of whiskey
- 54 - 1/2 pint bottles of various brands of whiskey
- 6 - 4/5 pints of brandy
- 1 - Ford coupe - Serial and Engine No. M6EV102281,
New York Registration 1476WE.

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

In the Matter of the Seizure on)
May 17, 1957 of a quantity of)
alcohol and a Ford sedan on the)
northbound lane of the New Jersey)
Turnpike, at the 12 Mile Post, in)
the Township of Woolwich, County)
of Gloucester and State of New)
Jersey.)
-----)

Case No. 9489

ON HEARING
CONCLUSIONS AND ORDER

Hannold and Hannold, Esqs., by Harold W. Hannold, Esq.,
Attorneys for Auto Finance Company of N. C., Inc.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 32 - two-quart "Mason" jars of alcohol and a Ford sedan, described in a schedule attached hereto, seized on May 17, 1957 on the northbound lane at the 12 Mile Post of the New Jersey Turnpike, in the Township of Woolwich, New Jersey constitutes unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, no one appeared to oppose such forfeiture. Subsequent thereto an application was made by and granted to Auto Finance Company of N. C., Inc. to present evidence in support of its alleged lien on the motor vehicle. Forfeiture of the alcohol is not contested.

It appears from the evidence presented at the hearing that on the above date and location a New Jersey State Trooper halted the motor vehicle in the course of his routine patrol of traffic. He ascertained that the motor vehicle was registered in the name of Elois Evans at an address in North Carolina, and that Elois Evans and other persons were passengers in the vehicle. When the trooper discovered the jars of alcohol, without any stamps affixed thereto indicating payment of tax on alcoholic beverages, in various parts of the car he took such car and alcohol into custody and arrested the occupants of the car. The motor vehicle and alcohol were later turned over to ABC agents.

Thereafter a sample of the contents of one of the jars was analyzed by the Division chemist who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 37 per cent.

Evans, in a signed statement, declares that he purchased the alcohol on the highway near Raleigh, North Carolina from a person unknown to him.

The alcohol is illicit because of the absence of a tax stamp on any of the jars. R. S. 33:1-1(i), R.S. 33:1-88. It is obviously bootleg liquor. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Auto Finance Company of N.C., Inc., located in Durham, presented in evidence a conditional sales contract dated December 8, 1956 signed Elois Evans, covering his purchase of the Ford sedan in question. The present balance due on such contract, which the finance company holds by assignment, after rebate for prepayment, is the sum of \$1,015.70.

Before extending credit to Elois Evans and accepting such contract the finance company received information that Evans was employed by a local tobacco concern, at a salary of \$50.00 a week, resided in Creedmor, North Carolina and was 21 years of age and married. The finance company was also furnished with various business references.

The finance company made an independent investigation of the information including inquiry of the sheriff of the county in which Creedmor is located, the presiding judge of the local court and the local police authorities and did not develop any derogatory information concerning the background or character of Elois Evans. The finance company has also submitted its explanation which tends to establish that Evans' financial status was regarded sufficient to meet his payments in accordance with its experience with other law-abiding persons in the community similarly situated. Elois Evans does not appear to have had any previous criminal record.

I am satisfied that the finance company acted in good faith and did not know or have any reason to suspect that Elois Evans would unlawfully transport alcoholic beverages in the motor vehicle. I shall therefore recognize the lien of Auto Finance Company of N.C., Inc. to the extent of \$1,015.70.

It appears that the appraised retail value of the Ford sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. Such motor vehicle will therefore be returned to Auto Finance Company of N.C., Inc. upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 8th day of November, 1957 Auto Finance Company of N.C., Inc. pays the costs incurred in the seizure and storage of the Ford sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

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

WILLIAM HOWE DAVIS
Director.

Dated: October 29, 1957.

SCHEDULE "A"

- 32 - two-quart "Mason" jars of alcohol
- 1 - Ford sedan, Serial No. 3636796C,
Engine No. U5NG141563, North Carolina
Registration HZ8297.

8. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DAVID ARONISS)
T/a DAVE'S BAR)
601 S. Warren Street)
Trenton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Trenton.)

Levy, Levy and Albert, Esqs., by I. Herbert Levy, Esq., Attorneys for Defendant-licensee.

David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On August 7, 9, 12 and 14, 1957, you engaged in and allowed, permitted and suffered gambling, commonly known as 'numbers writing', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

"2. On August 7, 9, 12 and 14, 1957, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises, and you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The file herein discloses that on the dates set forth in the charges the bartender either accepted number bets from ABC agents and turned them over to a man frequenting the licensed premises or the agents placed number bets directly with the man aforementioned. On August 14, 1957, through prearrangement with the local police authorities, police officers came into the premises and searched the man accepting the bets, as a result of which four one-dollar bills (the serial numbers of which had previously been recorded by the agents and given to the man by the agents in payment of bets) were found on his person.

Defendant contends in mitigation of penalty herein that he was not present at the times the violations took place and that he did not have any knowledge that gambling was taking place on his licensed premises. However, a licensee is strictly responsible for any violation occurring on his licensed premises whether or not he had any knowledge thereof. Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Defendant has a prior adjudicated record. Effective July 9, 1950, defendant's license was suspended for ten days for an "hours" violation; again, effective September 8, 1953, for thirty days for an "hours" violation and, furthermore,

effective September 6, 1955, for thirty-five days for sale of alcoholic beverages to minors. All of the aforesaid suspensions were imposed by the local issuing authority. In view of the fact that the first "hours" violation happened more than five years ago, it will not be considered in fixing the penalty herein. The minimum suspension for gambling (numbers writing) when an employee of the licensee is involved is twenty-five days (Re Collins, Bulletin 1153, Item 3). In view of the dissimilar previous record of defendant occurring in 1953 and 1955, I shall suspend defendant's license for a period of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 12th day of November, 1957,

ORDERED that Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Trenton to David Aroniss, t/a Dave's Bar, for premises 601 S. Warren Street, Trenton, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. November 19, 1957, and terminating at 2:00 a.m. December 19, 1957.

9. STATE LICENSES - NEW APPLICATIONS FILED

Garden State Liquor Wholesalers, Inc.
1080 Garden State Road
Union, New Jersey
Application filed December 11, 1957 for
additional warehouse and salesroom at
6730 Westfield Avenue, Pennsauken, New
Jersey, on Plenary Wholesale License W-78.

Michael G. Wachter, Edward Wachter and
Amelia Blasi, t/a George Wachter
91 Garrison Street
Newark, New Jersey
Application filed December 11, 1957 for
person-to-person transfer of State Beverage
Distributor's License SBD-26 from George Wachter


William Howe Davis
Director