

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 743

DECEMBER 31, 1946.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - NERI v. BRICK TOWNSHIP.
2. DISCIPLINARY PROCEEDINGS (Hoboken) - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.
3. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS AND APPURTENANT EQUIPMENT ORDERED FORFEITED - BUILDINGS IN WHICH STILL PARTS WERE FOUND ORDERED PADLOCKED.
4. DISCIPLINARY PROCEEDINGS (Seaside Heights) - PURCHASE OF ALCOHOLIC BEVERAGES FROM UNLAWFUL SOURCES - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS.
5. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND APPURTENANT EQUIPMENT ORDERED FORFEITED - BUILDING IN WHICH STILL WAS FOUND ORDERED PADLOCKED.
6. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE USED TO TRANSPORT STOLEN LIQUOR IN VIOLATION OF ALCOHOLIC BEVERAGE LAW ORDERED FORFEITED - FINANCE COMPANY HAVING ESTABLISHED THAT IT ACTED IN GOOD FAITH, CLAIM FOR AMOUNT OF ITS LIEN ALLOWED - ALCOHOLIC BEVERAGES AND DENATURED ALCOHOL ORDERED FORFEITED.
7. DISCIPLINARY PROCEEDINGS (Madison Township) - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.
8. DISCIPLINARY PROCEEDINGS (Jersey City) - ORDER POSTPONING EFFECTIVE DATE OF SUSPENSION (SEE BULLETIN 741, ITEM 10).
9. DISCIPLINARY PROCEEDINGS (Egg Harbor City) - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.
10. DISCIPLINARY PROCEEDINGS (Dover Township) - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS, LESS 5 FOR PLEA.
11. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 743

DECEMBER 31, 1946.

1. APPELLATE DECISIONS - NERI v. BRICK TOWNSHIP.

FRANK D. NERI,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF BRICK,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Jacob S. Glickenhous, Esq., Attorney for Appellant.
Harry E. Newman, Esq., by Edward W. Haines, Esq., Attorney for Respondent.

This is an appeal from the denial by respondent of an application for a plenary retail consumption license for the 1945-46 fiscal year filed by appellant for premises located at 34-39 Ocean Boulevard in that section of Brick Township known as Ocean Heights.

The license was denied for the stated reason that "there are enough in the Township at the present time."

Appellant seeks a reversal of the findings of the local issuing authority on the grounds that (1) there is a vacancy in the "quota" fixed by the local ordinance; (2) respondent was arbitrary and unreasonable in denying the license; and (3) there existed a public need for the license as applied for.

The appellant filed his application on March 26, 1946. The building specified as licensed premises in the said application was then in the course of construction and was not in fact sufficiently completed for use and occupancy as a licensed premises when the licensing period expired on June 30, 1946, or even at the time of the hearing herein. Appellant did not file with his application any plans and specifications as provided in "Instructions" issued by the Commissioner of Alcoholic Beverage Control, "Issuance of Municipal Licenses." See Rules and Regulations, Pamphlet Edition 1945, page 69. Nor did the advertisement contain a notice of the filing of such plans and specifications, Rules and Regulations, supra, page 12.

Under the Regulations, licenses may be granted for premises under construction only on a condition substantially as follows:

"...provided, however, that the license shall not be actually issued unless and until the premises as described in the plans and specifications prepared, submitted and found acceptable by this issuing authority, shall first be completed."

Re Harris, Bulletin 183, Item 11; Re Murphy, Bulletin 389, Item 11.

The neglect to follow a requirement that is definitely essential could well be a sufficient cause to dismiss this appeal. However, in view of the fact that the denial was founded on substantive issues rather than upon procedural defects, I shall review the facts established at the hearing herein.

The first ground set forth for reversal in the petition of appeal is without merit. It is well established that an applicant is not entitled to a license merely because there is a vacancy in the quota fixed by the local ordinance. In Levitt v. Liberty, Bulletin 169, Item 4, the Commissioner said:

"The fact that the full number of licenses authorized by respondent's ordinance has not been issued and that a vacancy now exists does not thereby entitle appellant to a license. I have already determined that a limitation in mere numbers must give way to a municipality's determination to restrict the number of licenses in a particular area."

The Supreme Court has recognized this principle in the case of Bumball v. Burnett, 115 N. J. L. 254, wherein Justice Parker says:

"If the ordinance had fixed one hundred as a limit, still the Council, in its discretionary power to license, or not to license, could stop short of that number at any point, or could license A and refuse B."

The question to be decided, therefore, is whether or not the appellant has sustained the burden of proof in showing that the action of respondent was arbitrary or unreasonable under the circumstances of this case. In deciding that question, the evidence as to alleged public need must be considered, together with all the other evidence in the case.

The section of Brick Township involved in this appeal consists of a two-mile portion of a peninsula, with the Atlantic Ocean on its east and Barnegat Bay on its west. The "Ocean Heights" section, where appellant's premises are located, has not been developed to any great extent and contains only ten buildings. About four-tenths of a mile south from appellant's premises is a summer colony known as "Sea Bay Park" and a short distance beyond is a summer colony known as "Camp Osborne". There are very few permanent residents of either of these summer developments, but there are apparently between 100 and 150 homes in these developments which are used by summer residents. It has been estimated that the daily population of these two developments during the summer season varies between 2,000 and 5,000, including summer residents and visitors.

Appellant testified that he intended to operate a restaurant and cocktail lounge if granted a liquor license. However, the evidence shows that this area is now served by one plenary retail consumption licensee who operates a rather large "tavern" where, in addition to alcoholic beverages, he also sells sandwiches. The existing licensed place is located approximately one mile south of appellant's premises and is also approximately one-half mile from "Sea Bay Park" and "Camp Osborne, which are located about midway between appellant's premises and the present existing licensed place. At the hearing held herein, Committeemen Harris and Miller, who had voted to deny appellant's application, testified that in their opinion the existing licensed place would sufficiently take care of the needs of those persons who resided in or visited this section of the Township. Whether the proposed establishment of a municipal beach near appellant's premises would alter decision upon the question of need is, of course, a matter for future determination. On the evidence submitted, appellant has not sustained the burden of proof in establishing that respondent acted in an arbitrary or unreasonable manner.

At the hearing herein appellant alleged that, in January 1946, Committeeman Miller had promised him that he, the appellant, could obtain a liquor license as soon as his building was completed and that he proceeded to erect the building in reliance upon this promise. Committeeman Miller testified that he had advised appellant that there was a vacancy in the local ordinance, but that he had made no promise that a license would be issued when the building was completed. It is, however, unnecessary to consider whether any such promise had been made because it is well established that a local

issuing authority acts only in formal meeting and is not bound by any prior informal remarks made by any of its members. Stein v. West New York, Bulletin 101, Item 7; Held v. Deptford, Bulletin 269, Item 4; Hobbs v. Lower Penns Neck, Bulletin 372, Item 6.

For the reasons aforesaid, the action of respondent is affirmed.

Accordingly, it is, on this 23rd day of December, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ACME WINES & LIQUOR, INC.
1200 Washington Street
Hoboken, N. J.,

Holder of Plenary Retail Distribution License D-1 issued by the Board of Commissioners of the City of Hoboken.

CONCLUSIONS
AND ORDER

Samuel Moskowitz, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant, through its attorney, pleads non vult to a charge of selling alcoholic beverages below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On November 14, 1946, an ABC agent purchased at defendant's premises a 4/5 quart bottle of Carstairs "1788" Blended Whiskey for \$4.25. The minimum retail price of said item as established in Bulletin 723, effective August 19, 1946, was \$4.42.

Defendant has no previous adjudicated record. Where a licensee has no previous adjudicated record, and the violation does not appear to be an aggravated one, a minimum suspension of the license for a period of ten days is imposed. Re Metropolitan Liquor Corp., Bulletin 554, Item 5. I shall suspend defendant's license for a period of ten days, less five days for the plea, or a net suspension of five days. Re Mack Drug Co., Inc., Bulletin 695, Item 9.

Accordingly, it is, on this 20th day of December, 1946,

ORDERED that Plenary Retail Distribution License D-1, issued by the Board of Commissioners of the City of Hoboken to Acme Wines & Liquor, Inc., for premises 1200 Washington Street, Hoboken, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. January 6, 1947, and terminating at 9:00 a.m. January 11, 1947.

ERWIN B. HOCK
Deputy Commissioner.

3. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS AND APPURTENANT EQUIPMENT ORDERED FORFEITED - BUILDINGS IN WHICH STILL PARTS WERE FOUND ORDERED PADLOCKED.

In the Matter of the Seizure)	Case No. 6987
on May 22, 1946 of a still and)	
appurtenant equipment at)	
14 Milton Avenue, in Verga, in the)	ON HEARING
Township of West Deptford, County)	CONCLUSIONS AND ORDER
of Gloucester and State of New)	
Jersey.)	

Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a still and appurtenant equipment, described in a schedule attached hereto, seized on May 22, 1946 at 14 Milton Avenue, Verga, West Deptford Township, New Jersey, constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

The State Department of Alcoholic Beverage Control received a specific complaint that there was an illicit still at the above premises. Accordingly, on May 22, 1946, ABC agents obtained and executed a search warrant for such premises. During the course of their search, the agents discovered and seized a small still and about 160 gallons of fermenting mash in an outbuilding in the rear of a dwelling owned and occupied by Edward Williams. The key to the outbuilding was in the dwelling. A quantity of sugar and some minor still parts were seized in another small outbuilding.

Edward Williams came to the premises while the agents were there. He told the agents that J. C. Williams of Camden brought the still to the premises in December, 1945; that from time to time he received a few dollars for use of the building; that, at first he did not know, but during the last few months discovered that J. C. Williams was operating a still; and that he did not participate in its operation, and actually had asked J. C. Williams to remove the still for fear of trouble, but this man allayed his fears.

Edward Williams was arrested. Later he cooperated with the ABC agents by appearing as a witness against J. C. Williams when the latter was also arrested as one of the owners and operators of the still.

The still was not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1, and hence, together with the other personal property seized therewith, constitutes unlawful property and is subject to forfeiture. In addition, the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing pursuant to R. S. 33:2-4, no one appeared to contest forfeiture or padlocking.

Edward Williams does not appear to have any previous record for violating any liquor laws. He contributed to some extent in the arrest of the alleged major figure in the case. Under these conditions, padlocking of the two buildings in which the still and still parts were found seemingly will serve as a sufficient penalty.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited, in accordance

with the provisions of R. S. 33:2-5, 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 State Commissioner of Alcoholic Beverage Control; and it is further

ORDERED, that the two outbuildings on premises known and described as 14 Milton Avenue, Verga, West Deptford Township, in the County of Gloucester and State of New Jersey, being the buildings in which the still and still parts were seized, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the 20th of January, 1947.

ERWIN B. HOCK
Deputy Commissioner.

Dated: December 20, 1946.

SCHEDULE "A"

- 2 - sets of copper coils
- 2 - copper goosenecks
- 1 - copper preheater
- 1 - funnel
- 4 - 50-gallon barrels of mash
- 217 - pounds of sugar
- 1 - cooker and cooler
- 1 - stove and hood
- miscellaneous personal property

4. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM UNLAWFUL SOURCES - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS.

In the Matter of Disciplinary)
Proceedings against)

THOMAS GIANATOS)
T/a LEGGS & MATHIS)
410-12 Boulevard)
Seaside Heights, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-17 issued by the)
Mayor and Borough Council of the)
Borough of Seaside Heights.)
- - - - -)

Edward F. Beers, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee pleads non vult to charges alleging (1) that he purchased alcoholic beverages from a non-licensee and also from two plenary retail consumption licensees, in violation of Rule 15 of State Regulations No. 20; (2) that he transported alcoholic beverages for use in his licensed premises in a vehicle which did not bear the transit insignia provided by R. S. 33:1-28 and State Regulations No. 17; and (3) that he possessed seven bottles of illicit alcoholic beverages at his licensed premises, which bottles contained alcoholic beverages not genuine as labeled and upon which bottles of alcoholic beverages the Federal tax had not been paid and which bottles had affixed thereto counterfeit Federal tax stamps, such possession being in violation of R. S. 33:1-50.

The investigation in the instant case discloses that during July 1946 defendant purchased twelve bottles of simulated Scotch whiskey from a non-licensee. Five of the bottles of simulated Scotch had

counterfeit Federal strip stamps. On August 12, 1946 defendant purchased six bottles of whiskey from a retail liquor licensee and on August 13, 1946 defendant purchased twelve bottles of whiskey from another retail liquor licensee. Defendant transported these 18 bottles of whiskey in an automobile which did not bear the transit insignia provided by law. The chemical analysis of seven bottles of the "Scotch" found in possession of defendant on his licensed premises disclosed that the contents of said bottles were not genuine as labeled.

Defendant has no previous adjudicated record. In alleged mitigation of the charges concerning the purchase and possession of the "Scotch", defendant states that he purchased these bottles from a friend and that he had no knowledge that the "Scotch" was not genuine as labeled or that several of the bottles had affixed thereto counterfeit Federal strip stamps. Nevertheless these violations are of a very serious character. A licensee who purchases any alcoholic beverages from a non-licensee runs the grave risk of suffering revocation of his license. I am disposed, however, to consider the defendant's past good conduct and his cooperation with both Federal authorities and this Department in their efforts to find the source of the illicit "Scotch".

Under all of the circumstances, I shall suspend defendant's license for a period of ninety days.

Accordingly, it is, on this 23rd day of December, 1946,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Borough Council of the Borough of Seaside Heights to Thomas Gianatos, t/a Leggs & Mathis, for premises 410-12 Boulevard, Seaside Heights, be and the same is hereby suspended for ninety (90) days, commencing at 7:00 a.m. January 7, 1947, and terminating at 7:00 a.m. April 7, 1947.

ERWIN B. HOCK
Deputy Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND APPURTENANT EQUIPMENT ORDERED FORFEITED - BUILDING IN WHICH STILL WAS FOUND ORDERED PADLOCKED.

In the Matter of the Seizure)
on May 6, 1946 of a still and)
appurtenant equipment at 230)
Douglas Avenue, in the Borough)
of Lawnside, County of Camden)
and State of New Jersey.)
-----)

Case No. 6979

ON HEARING
CONCLUSIONS AND ORDER

Yakoob Ali, Pro Se.
Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a small still and appurtenant equipment, described in a schedule attached hereto, seized on May 6, 1946 at 230 Douglas Avenue, Lawnside, New Jersey, constitutes unlawful property and should be forfeited, and, further, to determine whether the premises should be padlocked.

The State Department of Alcoholic Beverage Control received a specific complaint that unlawful alcoholic beverage activities were being carried on at the above premises, which are owned and occupied

by Yakoob Ali. Accordingly, on May 6, 1946, ABC agents obtained and executed a search warrant for such premises.

The agents discovered and seized a small still, in operation in an outbuilding. Ali, who was present, admitted that he was the owner of the still. He was arrested on charge of possessing and operating an unregistered still.

Ali told the agents that he was unemployed, did not have any funds, and resorted to the operation of the illicit still to earn money to pay for the care of his sick wife. A similar small still was seized from Ali at the same address in September, 1944, and he was given a suspended sentence of imprisonment for six months in the County jail and placed on probation for two years in criminal proceedings resulting from such seizure.

The still was not registered with the State Commissioner of Alcoholic Beverage Control, as required by R. S. 33:2-1, and hence, together with the other property seized therewith, constitutes unlawful property and is subject to forfeiture. In addition, the premises are subject to padlock. R. S. 33:2-5.

When the matter came on for hearing pursuant to R. S. 33:2-4, Ali appeared and sought to avoid padlocking of the premises. He did not oppose forfeiture of the seized property.

Under R. S. 33:2-5, I may exercise my discretion as to whether or not premises should be padlocked.

In the previous case, padlocking was waived at Ali's written request because he represented that he would not have a home for his eight children if he were evicted from the premises; that he was employed seven days a week for \$35.00; that it was his first offense; and that his employment would be jeopardized if he were required to appear at the hearing at this Department in Newark.

In the instant case, Ali, by letter, made similar representations with the addition that he was now the father of ten children. Inasmuch as it was his second offense, he was notified that it would be necessary for him to appear in person at the Department if he sought to avoid padlocking.

Accordingly, he presented himself at the Department and testified that he had an investment of about \$500.00 in the premises; and that the shack where the still was found was constructed by him of old lumber and had originally been used as a pig sty. He further testified that his oldest child is twelve years old.

Ali was asked how it came about that his previous criminal conviction did not deter him from again operating an illicit still. His reply was that he was "broke", out of work, and in desperate circumstances. However, he said that he had given his wife the promise that he would not again operate a still and, at the hearing, gave his assurance that he would not violate the liquor laws in the future. He further said that he had borrowed some money to buy a small truck and was earning a living doing odd jobs.

Ali has since been fined \$150.00, given suspended jail sentence of six months and placed on probation for two years in criminal proceedings resulting from the instant seizure.

If it were not for the fact that it would seemingly be an enormous task for Ali to obtain other quarters for his large family, I would unhesitatingly padlock the entire premises. However, under the circumstances, it would be harsh indeed to thrust the penalty of their father's misdeeds upon the innocent children. Consequently,

padlocking will be limited to the outbuilding where the still was found. I trust that this will be a sufficient penalty to bring Ali sharply to the realization that he must refrain from any similar violation in the future.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, 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 State Commissioner of Alcoholic Beverage Control; and it is further

ORDERED that the outbuilding located in the rear of premises known and designated as 230 Douglas Avenue, in the Borough of Lawnside, County of Camden and State of New Jersey, being the building in which the still was seized, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 20th day of January, 1947.

ERWIN B. HOCK
Deputy Commissioner.

Dated: December 23, 1946.

SCHEDULE "A"

- 1 - copper cooker
- 1 - copper dephlegmator
- 1 - set of copper coils
- 1 - copper gooseneck
- 4 - 1-gallon glass jugs with alcoholic beverages
- 1 - agate pot
- 50 - gallons of mash
- 2 - 50-gallon wooden barrels
- 1 - 3-burner oil stove
- 1 - piece garden hose
- 1 - 50-gallon iron cooler

6. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE USED TO TRANSPORT STOLEN LIQUOR IN VIOLATION OF ALCOHOLIC BEVERAGE LAW ORDERED FORFEITED - FINANCE COMPANY HAVING ESTABLISHED THAT IT ACTED IN GOOD FAITH, CLAIM FOR AMOUNT OF ITS LIEN ALLOWED - ALCOHOLIC BEVERAGES AND DENATURED ALCOHOL ORDERED FORFEITED.

In the Matter of the Seizure on) Case Nos. 7012 and 7015
 July 12, 1946 of a quantity of)
 alcoholic and other beverages,)
 and on July 15, 1946 of a G.M.C.) ON HEARING
 truck at 33 Railroad Avenue, in) CONCLUSIONS AND ORDER
 the Borough of Manville, County of)
 Somerset and State of New Jersey.)

Green and Yanoff, Esqs., by Leo Yanoff, Esq., Attorney for
 Universal CIT Credit Corporation.
 Leonard Blumberg, Esq., Attorney for James Gerato
 Harry Castelbaum, Esq., appearing for the State Department of
 Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages and a G.M.C. truck, described in a schedule attached hereto, seized at 33 Railroad Avenue, Manville, N. J., constitute unlawful property and should be forfeited.

On July 12, 1946, while questioning James Gerato concerning the disposal of beer allegedly stolen in Atlantic City, which led to his arrest, Manville police officers searched Gerato's home at the above address and seized eight cans of what later turned out to be denatured alcohol and 28 bottles of various brands of alcoholic beverages. The police seized the alcohol and alcoholic beverages because they suspected that they had not been legitimately acquired and that Gerato intended to sell the alcoholic beverages unlawfully inasmuch as he had previously been convicted for violating the liquor laws.

On July 15, 1946, ABC agents, in conjunction with local police officers, while further investigating the case, were told by Gerato, the owner of the truck, that he had used such truck to transport 300 cases of the stolen beer to a retail licensee in a neighboring municipality. The ABC agents thereupon seized the truck. The alcoholic beverages seized by the police were also turned over to them.

Gerato did not hold any license authorizing him to transport alcoholic beverages and the truck did not have any insignia issued by the Department of Alcoholic Beverage Control, as provided for by State Regulations No. 17, authorizing its use in the transportation of alcoholic beverages. Hence, the truck in which the alcoholic beverages were unlawfully transported is subject to forfeiture. R. S. 33:1-2, R. S. 33:1-1(y), R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, counsel entered an appearance for James Gerato, who sought return of the truck. Gerato abandoned any claim to the alcohol and other beverages. An appearance was also entered by counsel for Universal CIT Credit Corporation, which sought recognition of an alleged lien on the truck.

The alcoholic beverages are subject to forfeiture as illicit alcoholic beverages if such alcoholic beverages were possessed for the purpose of being sold unlawfully. Gerato, by abandoning all of such beverages, tacitly admits that the suspicion to that effect is well founded. The denatured alcohol stored with such illicit alcoholic beverages is likewise subject to forfeiture. Hence, all of such beverages will be forfeited.

Gerato seeks return of the motor vehicle on the claim that he has little, if any, funds, and will be handicapped in earning a living if he is deprived of his truck. Gerato has a long, unsavory criminal record and there is very little evidence that he is presently engaged in any legitimate enterprise. In any event, he used the truck to transport stolen beer, which he sold to a retail licensee. For his part in the transaction, the retailer's license was suspended for 60 days. Re Tomaro, Bulletin 732, Item 9. Gerato's loss of his truck for his part in the transaction is the natural consequence of his misdeed. It does not represent an undue hardship, as he claims, and does not warrant relieving him from forfeiture of the truck. See Seizure Case No. 7021, Bulletin 733, Item 7.

Universal CIT Credit Corporation, on or about March 6, 1946, financed Gerato's purchase of the truck, and seeks recognition of its alleged lien thereon.

Under R. S. 33:1-66(f), I have the discretionary authority, subject to rules and regulations, to recognize such lien if it is established to my satisfaction that the finance company has a bona fide and valid lien upon the truck, 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.

In applying this provision of the law, it has been uniformly ruled that it is incumbent upon a finance company seeking recognition

of its lien to establish that it made an adequate investigation of the person to whom the finance company advanced money upon the security of such lien. See Seizure Case No. 6898, Bulletin 687, Item 1.

The finance company relies upon what it considered a satisfactory report, dated February 20, 1946, of an investigation made by the Hooper-Holmes Bureau, Inc. This is represented to be a reliable mercantile agency.

According to this report, Gerato did not handle liquor; was of good habits and morals; was divorced while still in prison on a homicide conviction, having served eight years of a ten-year sentence; was a model parolee and lived quietly without criticism, since his release, and was engaged in sales of notions of all kinds.

The actual facts are quite to the contrary. In addition to Gerato's conviction of homicide (in 1929), he was convicted of atrocious assault and battery in 1937, shortly after his release from prison, sentenced to serve from six to seven years, and again released from prison in November, 1943. In December, 1945, he was arrested on charge of violating the Alcoholic Beverage Law, pleaded guilty to this charge on March 29, 1946, and was sentenced to pay a fine of \$500.00 and placed on probation for two years.

The person who made the investigation for the Hooper-Holmes agency was not present at the hearing and it has not been explained how it came about that he overlooked these facts. Seemingly they would have been readily discoverable upon inquiry of any of the residents or officials of the community where Gerato resided.

The question is whether the finance company is to be held responsible for the inadequacy of the credit agency's investigation.

The requirement that a finance company make an adequate investigation is not a contractual or statutory obligation. It is a requirement adopted under my power to make rules and regulations on this subject. It differs in this respect from the principal illustrated by Merola v. Howard Savings Institution, 109 N. J. L. 37, and Rosenquist v. Brookdale Homes, Inc., 135 N. J. L. 305, which stand for the principle that an absolute contractual or statutory obligation cannot be discharged by delegating performance thereof to an independent contractor.

All that the Alcoholic Beverage Law requires is that the finance company establish that it acted as a reasonably prudent person under all of the circumstances. Hence, when selecting an independent mercantile investigating agency to make an investigation, whose report of its investigation proves inaccurate, the fair test seemingly should be whether a reasonably prudent person would have selected such agency and relied upon its report.

It is difficult to perceive wherein the Universal CIT Credit Corporation was derelict. It retained a reliable agency, perhaps better equipped than its own personnel, to make a complete investigation of Gerato. There is nothing to indicate that the credit agency had actual knowledge of Gerato's full criminal record or reputation. The most that appears is that its operatives made a perfunctory investigation.

The credit agency's report that Gerato had been convicted of a crime, albeit not involving violation of the liquor law, was neutralized by its report of Gerato's good conduct thereafter. It is entirely possible that a reasonably prudent person would not necessarily have called upon the agency for further details of Gerato's criminal record.

I conclude that the finance company was justified in relying upon this investigation, even though inaccurate, because it was made by a reliable mercantile agency under instructions to cover the full field of investigation. It should be expressly noted, however, that this is the first case of this nature, and whether this principle will be followed depends upon future developments. In the event that a practice develops whereby claimants seek to evade the requirement of an adequate investigation by employing independent investigating agencies which turn in inaccurate or perfunctory reports, an opposite conclusion will be reached and such claimants will be held strictly accountable for their failure to make an adequate investigation no matter who actually makes such investigation.

After careful consideration of all of the circumstances, I am satisfied that the Universal CIT Credit Corporation acted in good faith and had no knowledge of the unlawful use to which the truck was put or of such facts as would have led a person of ordinary prudence to discover such use.

It has been established that Gerato is presently indebted to the Universal CIT Credit Corporation in the sum of \$502.26, secured by a conditional sales contract covering the motor vehicle. I will recognize its claim against the motor vehicle to that amount.

It appears that the appraised value of the motor vehicle exceeds the amount of the lien, and the Director of Purchases and Property of the Department of Taxation and Finance advises that it is interested in retaining the vehicle for the use of the State. Hence, an order will be entered retaining the G.M.C. truck for the use of the State, conditioned upon the payment of the lien claim of \$502.26.

Accordingly, it is DETERMINED and ORDERED that the G.M.C. truck referred to in Schedule "A" annexed hereto constitutes unlawful property and the same be retained for the use of the State of New Jersey, conditioned upon payment to Universal CIT Credit Corporation of its lien claim in the amount of \$502.26; and it is further

DETERMINED and ORDERED that the alcoholic and other beverages, described in the aforesaid Schedule "A", constitute unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that such beverages be sold, in whole or in part, at public sale, for the use of the State, subject to rules and regulations covering such sale, or be destroyed or retained for the use of hospitals and State, county and municipal institutions, whichever the State Commissioner of Alcoholic Beverage Control may hereafter determine to be for the best interest of the State.

ERWIN B. HOCK
Deputy Commissioner.

Dated: December 23, 1946.

SCHEDULE "A"

- 8 - 5-gallon cans of alcohol
- 1 - quart glycerine
- 28 - 4/5 quart bottles of various brands of alcoholic beverages
- 1 - G.M.C. truck, 1946 N. J. registration XS-5387

7. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

PETER KNOZ)
 T/a CIRCLE INN)
 Matawan Road)
 Madison Township)
 P.O. R.F.D. Old Bridge, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-31, issued by the Township Committee of the Township of Madison, and transferred during the pendency of these proceedings to)

PETER KNOZ and ALEF ZARECH)
 T/a CIRCLE INN,)

for the same premises.)

Herman H. Anekstein, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging that (1) in violation of R. S. 33:1-25, he falsely stated in his application for his license that no person other than himself was interested in the license, thus concealing the interest of Alef Zarech in the license and the business conducted thereunder; (2) in violation of R. S. 33:1-52, he knowingly aided and abetted the said Alef Zarech to exercise the rights and privileges of his successive licenses between April 24, 1936 and the date upon which the charges were filed; and (3) in violation of R. S. 33:1-25, he falsely denied in his application that his license had ever been suspended, whereas in fact his license had been suspended by the Commissioner of Alcoholic Beverage Control for five days, effective July 13, 1942, for possession of a bagatelle machine.

In statements signed by both defendant-licensee and Mrs. Zarech, they admitted that, since 1936, the licensed business had been operated by them as a joint enterprise although the license was in the name of the defendant. Mrs. Zarech, a national of Poland, appears to have been fully qualified at all times to hold a liquor license.

As to charge (3): Defendant-licensee alleges that he misunderstood the question and believed that he was required to answer in the affirmative only if he had been "locked up". The question is not ambiguous and it is well established that all questions must be answered frankly and fully.

Since the institution of these proceedings the license has been transferred to Peter Knoz and Alef Zarech, t/a Circle Inn. Hence the illegal situation appears to have been corrected.

In view of the fact that defendant-licensee has a prior record, I shall suspend the license for a period of twenty-five days because of the violations set forth in charges (1) and (2). Re Russo, Bulletin 741, Item 4. The license will be suspended for an additional period of five days because of the violation set forth in charge (3), Re Grimes, Bulletin 727, Item 4, thus making a total suspension of thirty days.

Accordingly, it is, on this 26th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-31, issued by the Township Committee of the Township of Madison to Peter Knoz, t/a Circle Inn, for premises on Matawan Road, Madison Township, and transferred during the pendency of these proceedings to Peter Knoz and Alef Zarech, t/a Circle Inn, for the same premises, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. January 7, 1947, and terminating at 2:00 a.m. February 6, 1947.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATE OF SUSPENSION (SEE BULLETIN 741, ITEM 10).

In the Matter of Disciplinary Proceedings against)

RUSSIAN AMERICAN REG. DEMOCRATIC CLUB, INC.)
264 Warren Street)
Jersey City 2, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consumption License C-539 for the 1945-46 and 1946-47 fiscal years, issued by the Board of Commissioners of the City of Jersey City.)
-----)

Joseph Tarby, Esq., Attorney for Petitioner.

An order having been entered herein on the 17th day of December, 1946, suspending the license now held by defendant herein for a period of twenty days, commencing at 2:00 a.m. January 7, 1947, and terminating at 2:00 a.m. January 27, 1947, and

It appearing, from a petition filed herein for the postponement of the effective dates of said suspension, that a majority of the members of defendant club are communicants of the Russian Orthodox Greek Catholic Church which, according to the Julian calendar, celebrates Christmas on January 7th and New Year's on January 14th, and

It appearing that defendant club had previously scheduled many social gatherings in the clubrooms during said holiday season, and

It further appearing that numerous innocent persons would be inconvenienced by suspension of defendant's license for the period beginning January 7, 1947;

It is, on this 26th day of December, 1946,

ORDERED that the suspension of twenty days imposed in this proceeding, instead of being effective commencing at 2:00 a.m. January 7, 1947, shall, in lieu thereof, commence at 2:00 a.m. January 21, 1947, and terminate at 2:00 a.m. February 10, 1947.

ERWIN B. HOCK
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

ERNST BOERNER)
T/a BUNGALOW INN)
Philadelphia Ave. and Naegele St.)
Egg Harbor City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8 issued by the Common Council of the City of Egg Harbor City.)

Richard S. Mischlich, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to the following charges:

"1. In your application filed with the Common Council of the City of Egg Harbor City and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individualother than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Herman Sensmeyer had such interest in the license and in the business; such false statement being in violation of R. S. 33:1-25.

"2. From on or about September 21, 1945 and until the present time, you knowingly aided and abetted Herman Sensmeyer to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52."

The departmental file in the instant case discloses that on July 1, 1945, defendant and Otto Schatz, operating as a partnership, obtained a liquor license for the 1945-46 licensing term. On or about September 21, 1945, Schatz sold his interest in the partnership to one Herman Sensmeyer. On September 24, 1945, an account was opened in a local bank in the name of Sensmeyer upon which checks representing business operating expenses were drawn. Sensmeyer admitted purchase of a one-half interest in the business and admitted that he became a partner of defendant-licensee in September 1945. In December 1945 the name of Otto Schatz was removed from the license and thereafter defendant obtained a renewal for the present fiscal year in his name individually.

After the present proceedings were instituted, the license for the current fiscal year was transferred by the local issuing authority to defendant and Sensmeyer, as partners. Subsequently, however, defendant acquired all the right, title and interest that Sensmeyer had in the business and, on November 27, 1946, the name of Herman Sensmeyer was removed from the license which is now held by defendant, individually. Hence it appears that the proper correction of the illegal situation has been made. Nevertheless, the nature of the violation heretofore committed warrants a suspension of the license.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of twenty days. Re Russo, Bulletin 741, Item 4.

Accordingly, it is, on this 26th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-8, issued by the Common Council of the City of Egg Harbor City to Ernst Boerner, t/a Bungalow Inn, for premises on Philadelphia Avenue and Naegele Street, Egg Harbor City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 a.m. January 8, 1947, and terminating at 12:01 a.m. January 28, 1947.

ERWIN B. HOCK
Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
WILLIAM B. WOERNER)
T/a GUN CLUB TAVERN)
Intersection Routes 4-9 and 40)
Dover Township, Ocean County)
P. O. Toms River, N. J.,)
Holder of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Dover.)
-----)

CONCLUSIONS
AND ORDER

Charles J. Berkowitz, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On August 21, 1946, during the course of a regular inspection of defendant's licensed premises, two agents of the Alcohol Tax Unit, Internal Revenue Service, seized two quart bottles of liquid which appeared to them to be alcohol. The bottles contained labels indicating the contents were a brand of "soda" and bore no indicia of internal revenue tax payment. Upon subsequent analysis, each of said bottles was found to contain potable distilled spirits with a proof of 187.8 and 188.5, respectively -- in other words, high-proof beverage alcohol.

The seized alcohol is, within the definition of R. S. 33:1-1, an alcoholic beverage, and since the containers of said alcohol bore no evidence or indicia that the Federal tax on distilled spirits had been paid on the contents thereof, said alcoholic beverage is, prima facie, an "illicit beverage". R. S. 33:1-1(i).

Defendant's explanation of the violation is that the two bottles containing the alcohol were left at his licensed premises some two years or more ago by a customer and were merely kept by him for the customer without any knowledge as to the contents thereof. An affidavit signed by the alleged owner of said illicit alcoholic beverages states therein that the owner's failure to return for his property was due to the fact that he was transferred to the west coast shortly after he left the alcohol with Woerner.

I cannot, however, overlook the serious implications in this violation. Since Repeal the manufacture, sale and distribution of

alcohol has been subject to the strictest supervision. The sale or even the possession of alcohol of legal origin by a retail licensee is prohibited except pursuant to special permit. R. S. 33:1-85; State Regulations No. 36. Hence, if there were any evidence whatsoever that the alcohol seized in the instant case had been used or intended to be used by the defendant, I would be impelled to revoke the license outright. However, in the absence of such evidence, the license will be suspended as indicated herein.

Defendant's license was previously suspended for a net period of fifty-five days after a conviction of sales to minors. Bulletin 610, Item 9.

Under all of the circumstances, and considering the previous record of the defendant, I shall suspend the license for a period of forty days, less five days for the plea of non vult, making a net suspension of thirty-five days.

Accordingly, it is, on this 27th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Dover to William B. Woerner, t/a Gun Club Tavern, for premises intersection Routes 4-9 and 40, Dover Township, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 a.m. January 7, 1947, and terminating at 2:00 a.m. February 11, 1947.

ERWIN B. HOCK
Deputy Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

John Thomas O'Horo
6 Kling St.
West Orange, N. J.

Application for State Beverage Distributor's License filed
December 30, 1946.

Sam W. Gordon and Frieda G. Brown
T/a Brown Trucking Co.
365 East Ferry St.
Newark, N. J.

Application filed December 30, 1946 for transfer of Transportation License T-148 from John Giordano, t/a Emmett Trucking Co., 269 Emmett St., Newark, N. J.

Erwin B. Hock

Deputy Commissioner.