

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

BULLETIN 1749

September 5, 1967

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

BULLETIN 1749

September 5, 1967

1. NEW LEGISLATION - MUNICIPALITIES EMPOWERED TO CONTRACT WITH
RETAIL LICENSEES FOR SURRENDER AND RETIREMENT OF LICENSES -
AMENDMENT OF P.L.1966, c.317.

On July 27, 1967 the Governor signed into law Assembly,
No. 738 which thereupon became Chapter 187 of the Laws of 1967,
effective immediately. The Act (new matter in Section 1 underscored)
reads as follows:

"BE IT ENACTED by the Senate and General Assembly of the
State of New Jersey:

1. Section 1 of the act of which this act is amendatory is
amended to read as follows:

1. In any case in which a municipality acquires by pur-
chase or condemnation any real estate within the municipality which
includes any licensed premises for the retail sale of alcoholic
beverages, or upon application of the holder of any such license
in a municipality in which the number of retail consumption licenses
exceeds the limitation thereon provided for in P.L. 1947, chapter 94
(N.J.S.A. 33:1-12.14), the governing body of the municipality,
whenever it finds that a transfer of the license to, and the retire-
ment of the license by, the municipality is in the public interest,
may contract with the licensee for such transfer upon such terms and
for such consideration as shall be mutually agreeable and as the
governing body shall deem to be reasonable. Upon the transfer of
any retail alcoholic beverage license as herein provided, such
license shall thereupon be retired by the municipality and shall
not thereafter be reissued to any applicant.

2. This act shall take effect immediately."

JOSEPH P. LORDI
DIRECTOR

August 17, 1967

2. NEW LEGISLATION - TWO HUNDRED FEET DISTANCE BETWEEN CHURCH OR SCHOOL AND LICENSED PREMISES (R.S. 33:1-76) - WAIVER BY CHURCH OR SCHOOL AUTHORITIES - NO FURTHER WAIVER REQUIRED AS TO A PLENARY OR LIMITED RETAIL DISTRIBUTION LICENSE AFTER A WAIVER HAS BEEN GRANTED FOR FIFTEEN OR MORE CONSECUTIVE YEARS.

On July 10, 1967 the Governor signed into law Assembly, No. 341 which thereupon became chapter 152 of the Laws of 1967, effective immediately. The Act reads as follows:

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Notwithstanding the provisions of Revised Statutes 33:1-76 if a plenary or limited retail distribution license has been or shall be granted on a waiver of its protection granted on authority of a church or school, and such license has been, or shall have been renewed on authority of annual waivers by the church or school for 15 or more consecutive years, the holder of such license shall thereafter be entitled to apply for renewal or reissuance thereof without further or renewed authority, or waiver, of the church or school; but the renewal or reissuance of such license after a revocation, shall not be permitted without a new waiver granted on authority of the church or school.

2. This act shall take effect immediately."

JOSEPH P. LORDI
DIRECTOR

August 17, 1967

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - ON TWO DATES - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Francis J. Malakauskas 234 Broadway and 7 Linnet Street Bayonne, N. J., Holder of Plenary Retail Consumption License C-63, issued by the Municipal Council of the City of Bayonne. -----)

CONCLUSIONS and ORDER

Licensee, Pro se Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on February 25, 1967 he possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, and (2) on March 4, 1967 he possessed alcoholic beverages in five bottles bearing labels which did not truly describe their contents, both in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for twenty days (Re Bohl and Ripp, Bulletin 1724, Item 7) and on the second charge (considered as a second similar violation within the past five years (cf. Re Sabar, Inc., Bulletin 1729, Item 3) for thirty-five days (Re Novelty Inn, Bulletin 1624, Item 4), to which will be added fifteen days by reason of the aggravating circumstance of the occurrence of the second violation after the first violation had been brought to the attention of the licensee although no charge with respect thereto had then been preferred (cf. Re McDermott, Bulletin 1692, Item 6, Re Butler Oak Tavern, Bulletin 1055, Item 1), or a total of seventy days, with remission of five days for the plea entered, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 21st day of June, 1967,

ORDERED that Plenary Retail Consumption License C-63, issued by the Municipal Council of the City of Bayonne to Francis J. Malakauskas, for premises 234 Broadway and 7 Linnet Street, Bayonne, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1967, commencing at 2 a.m. Wednesday, June 28, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Friday, September 1, 1967.

JOSEPH P. LORDI, DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 55 DAYS.

In the Matter of Disciplinary Proceedings against)

Club Ali-Baba, Inc.)
t/a Club Ali-Baba)
98 Straight Street)
Paterson, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-123, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
-----)

DeRose and Serratelli, Esqs., by Ralph C. DeRose, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Sunday, October 2, 1966, at about 1:05 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Seagram's Seven Crown American Blended Whiskey, at retail, in its original container for consumption off your licensed premises, and allowed, permitted and suffered the removal of such alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

The Division's case was presented through the testimony of three ABC agents specifically assigned to investigate alleged Sunday sales of alcoholic beverages in their original containers for consumption off the subject licensed premises. Their version of what occurred on October 2, 1966, upon which this charge was bottomed, may be summarized as follows:

Four ABC agents arrived in the vicinity of the licensed premises on Sunday, October 2, at 11:45 a.m. Three of the agents remained near their motor vehicle, which was parked about a block away from the premises, while Agent M approached the tavern and mingled with a group of approximately thirty males in front of the premises. Between 11:45 a.m. and 1 p.m. he observed several of these persons enter through the rear of the tavern building, disappear for two or three minutes and return with packages in their hand. He further observed that these packages contained various kinds of alcoholic beverages which were consumed by these males on the street and in their cars near the said licensed premises.

At 1 p.m. the front door of the premises was opened and, upon entering, Agent M observed the transactions of three sales of alcoholic beverages in original containers for off-premises consumption. He then approached the bartender (whom he recognized from prior visits to the tavern, later identified as Albert Price) and said, "Give me a pint of Seagram's Seven. I would like to get on home", whereupon Price handed a bottle to him. The agent placed the bottle in the waist-band of his trousers, buttoned his field jacket in the presence of Price, and then handed him a five-dollar bill. Price gave him change of \$1.50 and, at the conclusion of this transaction, said "So long. I'll see you." Price said, "Good-bye" and the agent left the premises.

The agent thereupon rejoined Agents R, Ma and B and shortly after that, joined by three local police officers, the agents entered the premises at 1:25 p.m. Agent M identified himself to Price and asked whether he recalled selling this bottle of whiskey and Price acknowledged that he did. Price immediately placed a telephone call to Peter Tabatneck (president of the corporate licensee) who had been at the premises at the time of the purchase but had left the tavern in the interim. When Tabatneck returned to the tavern he was informed of this alleged violation, but stated that he knew nothing about the transaction. Tabatneck refused to give any further information and particularly refused to surrender the cash register tape. He also stated that the license application was in the possession of his accountant.

Agent Ma testified that he had accompanied Agent M on this date as well as the two prior visits, and added the following: He remained with the other two agents near his parked motor vehicle but was in a position of observation from which he noted the group of males congregated on the outside of the premises. At 1 p.m. he observed Agent M enter the premises, and about five minutes later saw Agent M emerge therefrom and walk to the parked car. Agent M showed the other agents the bottle of Seagram's whiskey which he had just purchased, and this witness placed his initials upon that bottle.

The witness further testified that he compared the serial number of the bottle in the possession of Agent M with other bottles of Seagram's whiskey in stock and ascertained that it had a similar strip stamp number. This indicated to him that the bottle sold to Agent M came from the same stock because the numbers "were several numbers away."

Agent R corroborated the testimony of Agent Ma and added that, when he questioned Tabatneck as to whether he had seen Agent M in the premises at about 1 p.m. or had seen his bartender sell a bottle of liquor to the agent, Tabatneck stated that he did not remember Agent M and disclaimed any knowledge of the alleged sale.

Albert H. Price, testifying on behalf of the licensee, gave the following account: A large group of persons entered the tavern when it opened at 1 p.m. on October 2, among whom was Agent M. He remembers that he was very busy at that time, but remembers selling the agent a bottle of Seagram's whiskey and receiving \$3.50. Upon receiving the money he placed three glasses at the bar and went to get water. When he returned with the water, the agent had left. He denied selling him this whiskey for off-premises consumption and stated that he would not have sold it to him if he did not think that the sale was made for consumption on the premises.

On cross examination he insisted that he broke the seal of the bottle at the time of the sale because he does that as a matter of normal procedure. He admitted that between 1 and 1:15 p.m. he sold a large number of bottles, but could not remember the exact amount. He also could not recall whether in this specific transaction the seal was actually broken.

He was then asked why he served three glasses when the agent was alone, and he reasoned that this was the usual procedure when a bottle of whiskey was sold. Finally, he was asked the following:

- "Q When you noticed the bottle was gone and the man was gone did you inquire of any one either behind the bar or in front of the bar what happened to the man, that you just put a bottle there?
 A I had the money, I wasn't concerned, he left the money. I wouldn't send some one. I was busy. I didn't have a chance."

Further:

- "Q Did you tell Mr. Tabatneck to go outside and get that fellow that left with the '7'?
 A He was busy at the other end of the bar.
 * * * * *
 Q Did you do anything else? You knew it was a violation for a person to take a bottle of liquor from the premises on a Sunday whether the seal was broken or not, didn't you?
 A I knew it was a violation.
 Q Still you didn't do anything about it?
 A I couldn't
 Q Why not?
 A I was busy serving and money was laying on the bar.
 Q You were more concerned with getting the money than you were finding out whether any violation occurred?
 A Getting the crowd settled down."

Peter Tabatneck, called as a witness on behalf of the licensee, testified that he is the president and principal stockholder of the corporate licensee. He opened the premises at 1 p.m. and noted that there may have been approximately thirty patrons within the first fifteen minutes congregated at the bar. He denied that any canned beer is sold on these premises. In checking the tape (which, incidentally, had no date or other identifying insignia thereon) he counted ten bottles of liquor sold to the first twenty-five customers within the first fifteen or twenty minutes. He explained that he left the bar at about 1:15 p.m. and was not present at the time the agents returned. He further insisted that, when bottles of whiskey are sold, each purchaser is served three or four glasses. He was then asked the following questions:

- "Q You didn't see the transaction of the bottle passing from Mr. Price to Mr. M---?
 A Too much I didn't see, but I seen the glasses put up there. Definitely I seen the glasses put up there.
 * * * * *
 Q You said you saw three glasses on the bar?
 A They were in front of him. There were no other glasses there but them three. At that particular time there was no other glasses but them three."

Q Where was M---?

A M--- was standing right in front of those glasses."

This witness then described the confrontation during which he denied that his bartender sold any bottles of whiskey for off-premises consumption.

In evaluating the testimony produced herein and its legal impact, the following principles of law should be restated: We are dealing with a purely disciplinary measure and its alleged infraction. Such measures are civil in nature, and not criminal. Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956); Atkinson v. Parsekian, 37 N.J. 143 (1962).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty arising from a fair consideration of the evidence. The testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1.

The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508. No testimony need be believed but, rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

Using these principles in mind, and having an opportunity, in addition, to observe the demeanor of the witnesses as they testified herein and to evaluate their credibility, I am persuaded that the truth lies in the version given by the ABC agents. I feel that their account was a forthright and credible one and truly portrayed what actually occurred at the premises on the date in question.

On the other hand, I must candidly state that the licensee's witnesses appeared to "play fast and loose" with the truth and their testimony did violence to the realities of the situation.

A typical example of such testimony is the following: Price admits that he sold the bottle of whiskey to the agent. It is unarguable from the established fact that this bottle contains a strip number which is part of the series of strip numbers of the remaining stock of this brand at the licensed premises. Yet Price insists that he broke the seal, notwithstanding the empiric evidence of the unbroken seal on the bottle which was received in evidence. Price then states that he placed three glasses in front of the agent, although it is undisputed that the agent was unaccompanied by anyone. Thus it would be preposterous to provide this setup under the circumstances. By this I mean that, within the short period of time, at least ten bottles of whiskey were sold, and Price admits that he was extremely busy making sales of both drinks and full bottles of whiskey.

Tabatneck's testimony is even more unbelievable and self-contradictory. He states that, upon the initial confrontation with the agents, Agent M asked him whether he knew that he had bought a pint of Seagram's Seven at these premises. His answer: "If you did did you tell the bartender you were taking it out, leaving with it? He didn't answer me, didn't answer the question." (This would suggest that he was unaware of the alleged sale.) Yet, later in his testimony he asserts that he remembers this transaction and that in fact he saw Price actually place the glasses in front of this agent, adding: "They were in front of him. There were no other glasses there but them three. At that particular time there was no other glasses but them three." Still further, however, he testifies that with every bottle sold a person is served "three up to six" glasses so that there were within the ten or fifteen minutes between 1 and 1:15 p.m. around fifty glasses on the bar.

Another example: He was asked what happened when Agent M left the premises. His answer: "When M--- went out I went out after him, and I couldn't catch him." I then asked him the following:

"Q Did you say you went after M---?"

A Not really after him but watching out by the door a few minutes. I watched a few minutes. Not after him but anybody who might walk out with anything."

This testimony is specifically contradicted by the licensee's own witness Price who admitted that he did not say anything to Tabatneck about Agent M's activities, about this particular sale, because Tabatneck was very busy at the other end of the bar. It is clear that Tabatneck's account is about as phony as a \$3 bill.

It is relevant to the above observations to make this final note: Agent M, pressed on cross examination, established that this was not an isolated incident, and stated that he had made a prior purchase of alcoholic beverages in its original container for off-premises consumption on Sunday, September 18, from Price; that on this occasion (the date charged herein) he observed at least three similar sales made to other patrons.

I am convinced that the violation, as charged, took place on the date stated herein, and that such sales were in violation of Rule 1 of State Regulation No. 38.

It is well established that a licensee is responsible for the conduct of its employees and is fully accountable for their activity during their employment on licensed premises. Rule 33 of State Regulation No. 20. The responsibility of the bartender thus becomes the responsibility of the licensee. Essex Holding Corp. v. Hock, 136 N.J.L. 28.

I conclude that the Division has established the truth of the charge by a fair preponderance of the credible evidence, and I therefore recommend that the licensee be found guilty of the said charge.

Licensee has a previous record of suspension of license by the Director for fifteen days effective January 28, 1965, and for thirty days effective January 7, 1966, both for similar violation. Re Club Ali-Baba, Inc., Bulletin 1602,

Item 9; Bulletin 1654, Item 4. In addition, the license was suspended by the municipal issuing authority for twenty-five days effective December 13, 1965, for permitting brawls on the licensed premises and permitting an employee to work while intoxicated. Further, the license of Per-Mac Corp., t/a All Fair Tavern, for premises 13 Fair Street, Paterson (in which Peter Tabatneck, a 97% stockholder of the licensee corporation, was a 50% stockholder) was suspended by the Director for one hundred fifteen days effective December 2, 1963 for permitting homosexuals on the licensed premises and sale to minors. Re Per-Mac Corp., Bulletin 1546, Item 2.

The prior record of two suspensions of license for similar violation within the past five years considered, it is recommended that the license be suspended for forty-five days (Re Lou-Mac, Inc., Bulletin 1719, Item 5), to which should be added ten days by reason of the record of two suspensions for dissimilar violations within the past five years (Re Basralian, Bulletin 1712, Item 6; Re Sovat Corporation, Bulletin 1697, Item 7), or a total of fifty-five days.

Conclusions and Order

Exceptions to the Hearer's report and argument thereto were filed by the licensee's attorney pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions raise purely factual questions which had been considered in detail by the Hearer in his report and that they are without merit.

Consequently, having considered the entire record herein, including the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of June 1967,

ORDERED that Plenary Retail Consumption License C-123, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Club Ali-Baba, Inc., t/a Club Ali-Baba, for premises 98 Straight Street, Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1967, commencing at 3 a.m. Tuesday, June 27, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Monday, August 21, 1967.

JOSEPH P. LORDI
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE DWELLING - CLAIM OF OWNER REJECTED - PERSONAL PROPERTY, COMMINGLED CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)	
on February 19, 1967 of a quantity)	CASE NO. 11,860
of alcoholic beverages, various)	
furnishings, fixtures and equipment)	ON HEARING
and \$84.85 in cash at a dwelling)	CONCLUSIONS
located at 216 South 7th Street, in)	AND ORDER
the City of Newark, County of Essex and)	
State of New Jersey.)	

 Jesse Davis, Pro se.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 209 containers of alcoholic beverages, \$84.85 in cash and various furnishings, fixtures and equipment, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on February 19, 1967 at a dwelling located at 216 South 7th Street, in the City of Newark, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises. At the said hearing Jesse Davis appeared pro se and sought return of the seized property. The file of this Division was admitted into evidence by stipulation of the said claimant, and contained the affidavit of mailing, affidavit of publication, chemist's report certifying to the alcoholic content of the alcoholic beverages seized, the inventory, the recording of the "marked" money and the "marked" money.

The said file established the following facts: Pursuant to a continuing investigation of alleged unlawful sales of alcoholic beverages at the unlicensed premises hereinabove described, an ABC agent visited the said premises on February 19, 1967 at 2:00 a.m. The agent joined a group of persons, and knocked on the door, which was opened by Davis. Davis inquired whether the agent had been there before, in reply to which the agent said, "Yes". Davis then said, "Oh, yes, I remember you."

He, thereupon, admitted the agent and the group of patrons and they descended to the basement of this premises where they were told, "You can buy your tickets here". Each patron paid a \$1.00 admission fee. The agent, fortified with "marked" bills, paid his admission with a ten-dollar bill and was given \$9.00 in change.

Entering a large room which contained a bar, a juke box and other furniture, he seated himself at a bar and observed Charles Davis, a nephew of Jesse Davis, serve alcoholic beverages to numerous patrons at the bar and collect money therefor. The

agent ordered and was served a drink of scotch whiskey, in payment for which he gave Charles Davis one of the "marked" one-dollar bills. He observed approximately 20 males and females seated in and about the room who purchased and were served alcoholic beverages.

At about 2:50 a.m. this agent ordered and was served a bottle of beer, for which he gave Charles a "marked" one-dollar bill and received 40¢ in change. About 3:15 a.m. he ordered and was served another scotch and whiskey for which he paid 75¢ with a "marked" one-dollar bill. At about 3:30 a.m. another agent, in the company of local police officers, entered the premises; and after they identified themselves, Charles and Jesse Davis were placed under arrest and a search of the premises and seizure of the property was effected.

A cash box and its contents were seized, but the money found in Jesse Davis' pocket was not seized. A ten-dollar "marked" bill was found in the claimant's pocket.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Jesse Davis, Charles Davis or for the premises where the violations took place.

Report of the chemical analysis of one of the seized bottles of alcoholic beverages established that it was a quart bottle containing 22 ounces of alleged Canadian Club Blended Canadian Whiskey, 86.8 proof shows that it is an alcoholic beverage fit for beverage purposes with an alcoholic content of 43.65%. The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66. This applies similarly to the cash which was commingled with the monies obtained by the ABC agents. Seizure Case No. 11,182, Bulletin 1568, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Jesse Davis, testifying in support of his claim, admitted that alcoholic beverages were sold to the ABC agent and to other patrons; that he charged admission to the agent and his patrons; that a "marked" ten-dollar bill was given for such admission; that his nephew, Charles, was employed by him on the date charged herein, and served the said alcoholic beverages. He also admitted that he did not have a license or permit authorizing the sale of alcoholic beverages. His explanation: He was not familiar with the law and did not realize that a permit or license was required. He sold these alcoholic beverages because he found that while he wanted to accommodate his friends, many strangers sought admission to his premises. He felt that the only way that he could control traffic to his basement was by charging admission and for drinks served. Finally, he admitted that he now understands that such activities were in violation of the applicable law.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith, and did not know, or have any reason to believe that the property would be used in unlawful liquor activity. Since, under the facts established herein, there was no such showing, the Director

does not have the authority, under the compulsion of the statute and the applicable regulation, to return the said property. R.S. 33:1-66(e); Seizure Case No. 11,059, Bulletin 1533, Item 8.

It is accordingly, recommended that an order be entered directing the forfeiture of the seized personal property, including the alcoholic beverages and cash, as set forth in the schedule annexed hereto.

Conclusions and Order

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

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

Accordingly, it is on this 19th day of June, 1967

DETERMINED and ORDERED that the seized property, including the alcoholic beverages and \$84.85 in cash as set forth in Schedule "A" attached hereto, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI
DIRECTOR

SCHEDULE "A"

209 - containers of alcoholic beverages;
juke box; bar; tables; stools; movie projector;
refrigerator and miscellaneous property.
\$84.85 - cash

- 6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - MONEY DEPOSITED ON STIPULATION ORDERED RETURNED TO INNOCENT CLAIMANT - BALANCE OF PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)
January 27, 1967 of a quantity of) Case No. 11,850
alcoholic beverages, various fixtures,)
furnishings and equipment, and \$14.51) ON HEARING
in cash, in a restaurant located at) CONCLUSIONS
188 Mercer Street, in the City of Jersey) AND ORDER
City, County of Hudson and State of)
New Jersey.)

Pablo Romero Reyes, Pro se.
Edward F. Zampella, Esq., appearing for Yankee Vending Corporation.
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, and further, pursuant to a stipulation dated March 7, 1967, signed by Raymond E. Di Giovine, to determine whether 40 cans of beer,

\$14.51 in cash, various fixtures, furnishings and equipment set forth in an inventory annexed hereto, made part hereof and marked Schedule "A", seized on January 27, 1967 in a restaurant located at 188 Mercer Street, Jersey City, N.J. constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$500.00, representing the retail value of fixtures, furnishings and equipment, paid under protest by Raymond E. Di Giovine should be forfeited or returned to him.

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

When the matter came on for hearing pursuant to R.S. 33:1-66, Pablo Reyes, the owner and operator of the said restaurant, appeared pro se and admitted that he sold alcoholic beverages on the date charged at the said premises without a permit or license authorizing such sale. From preliminary questioning of this person, it was clear that he did not intend or desire to enter a claim for the return of any of the seized property.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, personal property and cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66. This applies similarly to the cash which was commingled with the money obtained by the agents. Seizure Case No. 11,182, Bulletin 1568, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

The Yankee Vending Corporation, represented by counsel, appeared and sought the return of the sum of \$500.00, deposited by it under the stipulation, as aforesaid.

Reports of ABC agents and other documents in the file, admitted into evidence with the consent of the attorney for the claimant, disclosed the following facts: ABC agents visited the premises in question on January 20th and 27, 1967. On their first visit the agents purchased five cans of beer at thirty cents per can, from Pablo Reyes, two of which were for on-premises consumption and three for off-premises consumption. On this visit the agents also observed two male patrons who purchased beer. On their visit of January 27, 1967, the agents, in possession of three "marked" one-dollar bills, entered the said premises; each agent was served two cans of beer by Reyes and in payment thereof, each agent gave Reyes a "marked" one-dollar bill, for which they received beer and change. Reyes placed each bill in a cash register. The agents also observed Reyes make other sales of beer to various male patrons.

Shortly thereafter, another ABC agent, accompanied by local police officers, entered the premises, at which time the agents identified themselves to Reyes and placed him under arrest, charged with the possession of certain alcoholic beverages without a license with intent to sell the same contrary to R.S. 33:1-2, in violation of R.S. 33:1-50(a).

A sample of one twelve-ounce can of Schaefer beer, seized herein, of which ten ounces were left, was analyzed by the Division's chemist who reports that it is an alcoholic beverage fit for beverage purposes, with an alcoholic content of 4.50%.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages having been issued to either Pablo Reyes or for the premises where the violations took place. There was also admitted into evidence the affidavit of mailing, the affidavit of publication, the certified chemist's report, the inventory, the stipulation, the cash receipt and two "marked" one-dollar bills.

Raymond E. Di Giovine, testifying on behalf of claimant, Yankee Vending Corporation, gave the following account: He is the president of the corporate claimant and its majority stockholder. He placed a pool table, juke box, rifle range and pinball machine, all coin operated machines, at these premises approximately two weeks before the date of seizure. Prior to placing his equipment therein, he conferred with Captain Patrick McGee, the commander of the First Precinct Station which has jurisdiction of the area in which these premises are located. Captain McGee advised him to "Wait until I investigate it"; three days later he notified this witness that he had investigated the premises, and presumably Reyes, and informed him that it was "all right to put the equipment in".

On the basis of the information and the assurance of the police captain, this claimant installed its equipment at the said premises. The witness further stated that he visited the premises on two occasions during the period in which the machines were installed, both times in the afternoon and on neither occasion did he see any evidence of either the consumption or selling or presence of alcoholic beverages on the said premises. The witness admitted frankly that he did not make any personal investigation to determine whether liquor was being sold at the said premises, but assumed that the investigation by the Police Department was adequate.

On the basis of the evidence presented, I am persuaded that the claimant relied upon the investigation presumably made of the premises by the Police Department. Thus, I conclude that the claimant acted in good faith and did not know or have any reason to believe that alcoholic beverages were being sold at these premises. Hence, the deposit of \$500.00 (which this claimant acknowledges was actually deposited by him on behalf of the corporation and not by him, individually) will be returned to the said claimant.

Submission of Hearer's report was expressly waived by the claimant herein.

Accordingly, it is DETERMINED and ORDERED that the said \$500.00, representing the appraised retail value of certain fixtures, furnishings and equipment, which were returned to the claimant, Yankee Vending Corporation, paid under protest pursuant to the stipulation signed on its behalf, shall be returned to it; and it is further

DETERMINED and ORDERED that the balance of the personal property, including the cash and the alcoholic beverages, shall be and the same is 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,

to Strand Bar, Inc. for premises 129 Albany Street, New Brunswick, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1967, commencing at 2:00 a.m. Tuesday, June 27, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, August 1, 1967.

JOSEPH P. LORDI
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Armen Maurillo
1288 Van Houten Avenue
Clifton, New Jersey

Application filed August 31, 1967 for person-to-person transfer of State Beverage Distributor's License SBD-4 from Harry Zax, Trustee in Bankruptcy of Van the Soda Man.



Joseph P. Lordi
Director