

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

BULLETIN 1140

NOVEMBER 28, 1956.

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NOVEMBER 28, 1956.

1. APPELLATE DECISIONS - SCHAEFFER AND WYATT v. NEWARK.

F. WILLIAM & BABBETTE M. SCHAEFFER)
and H. NORMAN & SYLVIA R. WYATT,)
Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellants' license for fifteen days, effective July 2, 1956, after finding appellants guilty of the following charge:

"They did, on or about March 13, 1956, allow, permit and suffer in and upon the licensed premises, a brawl, act of violence, disturbance, and unnecessary noises, and allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulations #20."

Upon the filing of the appeal, an Order was entered on June 26, 1956 staying respondent's order of suspension until the entry of a further Order herein. R. S. 33:1-31.

At the hearing herein respondent's case was presented upon the transcript of the proceedings below in accordance with the provisions of Rule 8 of State Regulations No. 15. Additional evidence was presented on behalf of appellants.

At the hearing held below Louis Komski testified as follows: He entered defendants' licensed premises on March 13th at about 3:00 p.m. and remained there until 9:30 or 10:00 p.m., talking to friends, or playing shuffleboard during that period. He drank a total of over a dozen glasses of beer in the interval. "I was in there for quite a while, I was feeling pretty good, -- half high." Between 6:30 and 7:00 p.m. members of a boys' club started to dismantle and remove a shuffleboard given to them by the licensees. A male patron entered the tavern and Komski started a conversation with him, which led to a discussion concerning slot machines. The conversation lasted twenty to twenty-five minutes and was not a quarrel or carried on in loud tones. Finally Komski said that slot machines could be legally installed in the tavern, the other person contradicted him and offered to bet \$50.00 to \$5.00 that Komski was wrong. The money was placed on the bar. Komski reached for the \$5.00 intending to tell the other person that the bet was off. As he grabbed the money, the other person hit him in the face with his fist and knocked him down -- it happened fast. H. Norman Wyatt, one of the licensees, was tending bar. Komski picked himself up from the floor, observed that his ear had been cut and went to call the police

without saying anything to Wyatt. He thinks that John Sviet and Edward Herbert were there but he is not sure. He is pretty sure Wyatt could have surmised there was going to be an argument. The police arrived and took Kowski to City Hospital. Norman Wyatt caused Kowski's arrest for causing a disturbance, and he was found guilty and given a suspended sentence.

Edward Herbert testified as follows: He entered defendants' licensed premises at about 1:00 p.m. on the day in question and remained there for about six or seven hours, during which period he drank about fifteen glasses of beer. Louis Kowski was on the premises. Some time after the removal of the shuffleboard, Kowski started a conversation with the other person about slot machines. Everything was calm in the tavern, with quiet, normal conversation between Kowski and the other man, until the latter told Kowski to put up his money or keep quiet. Herbert walked over to them and told them that they were betting in a public place. Then Kowski and the other man struck each other, Kowski being the aggressor.

Wyatt went to the men's room before they started betting, and was emerging therefrom when the blows were quickly exchanged. Herbert was on the floor, accidentally pushed there by the other man as he was returning Kowski's blow. Sviet helped Herbert to his feet, and both broke up the fight by the time Wyatt reached the scene. The police arrived in fifteen or twenty minutes.

John Sviet testified as follows: He is employed as a porter and bartender at the tavern, and although off duty, was there on the afternoon of March 13th. Kowski and Herbert were present. Kowski remarked to Wyatt that removal of the shuffleboard might result in loss of trade. He overheard Kowski commence a quiet conversation about slot machines with the other patron. There was a betting attempt, with money shown, and he told the men "no betting". The other man replaced the money in his pocket. Kowski then became angry. He addressed the man in a loud voice and the first thing you know Kowski struck the man, who in turn struck Kowski. It was peaceful when Wyatt went to the men's room -- there was no betting conversation at the time and Wyatt was just emerging from the men's room when the blows were struck. It all came so sudden. Wyatt told Sviet to call the police. Sviet went upstairs and called the police from there. Although he described the situation as "brewing", he explained that it was nothing serious, that he would not call it an argument; that he and Herbert spoke to Kowski because he was annoying the other man.

H. Norman Wyatt testified substantially as follows: He came on duty as bartender at about 6:00 p.m. on March 13th. Kowski was there when he arrived. The incident occurred between 8:00 and 8:15 p.m. He served Kowski a beer, and none thereafter because Kowski did not appear to be in possession of his full faculties. However, rather than irritate a customer, he permitted him to remain and ramble and gabble about everything that came to his mind. On occasion Kowski would raise his voice, and Wyatt told him to lower it. He observed Kowski take money out of his pocket and tender it to the other man who stated, "I have plenty of money -- don't bother me", rejected the money and pushed Kowski back. Wyatt told Kowski to pick up his money and put it in his pocket. Wyatt then went to the men's room. He saw the blows exchanged as he came out of such room.

Upon the basis of the above recited evidence the respondent Board found appellants guilty of permitting, suffering and allowing a brawl.

At the hearing on appeal, a police officer testified that the police authorities received a call on March 13, 1956 at 8:52 p.m. to go to defendants' premises; and that the nature of the complaint was "See complaint, the manager". H. Norman Wyatt also testified, mainly on collateral aspects of the case, including his efforts to locate "the other man" and present him as a witness on his behalf.

One of the grounds of appeal was the refusal of the respondent after the hearing was completed to defer decision thereon in order to afford the defendants an opportunity to present this man as a witness.

At the conclusion of the hearing on appeal, application was made to continue the hearing until appellants had a further opportunity to locate this person. Aside from the obvious fact that a hearing cannot be continued indefinitely, it was represented and is, of course, clear that the witness could merely testify as to which of the two men was the aggressor, which is not a pertinent or controlling factor in the case. In any event, the hearing was closed, with leave given to appellants to submit within two weeks a statement of what this witness could testify to in affidavit form and if it appeared pertinent, such testimony would be taken. No such affidavit was presented within the time limited.

Without contrasting or resolving in specific detail the minor discrepancies which appear in the testimony, it is crystal clear that the brawl was a sudden flare-up, arising out of conventional barroom conversation between two patrons, previously unacquainted, with the blows struck in the absence of the licensee, and without any reasonable opportunity to prevent such disorderly conduct.

These circumstances in themselves are insufficient to sustain a finding of guilt. Iannello and Cassetta v. Hackensack, Bulletin 1008, Item 1.

The residual question to be resolved is whether Wyatt, by permitting Komski to remain on the premises, could reasonably foresee that Komski might cause a brawl or disturbance and hence, whether thereby the licensees are responsible for the brawl on that score. The essential basis upon which such responsibility would rest would be evidence that Komski was drunk or had been drinking to excess. Plikaytis v. Harrison, Bulletin 754, Item 1. In my opinion, there is no evidence in the record that the brawl was either the direct or indirect result of complete or partial intoxication of Komski. All agree that his conduct was completely orderly, without any argument or dispute, merely a natural conversation, until this sudden flare-up.

The Hearer in this matter filed a report wherein the above facts and pertinent principles were set forth and recommended reversal of the action of the respondent Board. There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

I have considered the entire record and conclude therefrom that it has not been established by a preponderance of the evidence that appellants or their employees allowed, permitted or suffered a brawl on their licensed premises. Hence, I must reverse the action of respondent. Ferdinand v. Newark, Bulletin 1084, Item 3; Kandell v. Newark, Bulletin 1091, Item 3.

Accordingly, it is, on this 17th day of October, 1956,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - LANGLEY v. JEFFERSON TOWNSHIP AND SUOMI HOVI CORP.

ROBERT C. LANGLEY,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF JEFFERSON and)
SUOMI HOVI CORPORATION, t/a)
SUOMI HOVI BAR,)
Respondents.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph M. Lepis, Attorney for Appellant,
Schenck, Smith & King, Esqs., by Alten W. Read, Esq., Attorneys
for Respondent Township Committee.
William H. H. Ely, Esq., Attorney for Respondent Suomi Hovi
Corporation.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it granted a new plenary retail consumption license to respondent Suomi Hovi Corporation (for the 1956-1957 licensing period) for premises located at the Suomi Hovi Hotel, Nolan's Point, Lake Hopatcong, N. J.

The appellant was the holder of a plenary retail consumption license which expired on June 30, 1956 and covered the bar and grill room located in the aforementioned hotel. Appellant did not apply for renewal of such license, apparently because his right of possession of the licensed premises had previously been terminated.

The petition of appeal alleges that the action of the Township Committee was erroneous in that, "since a license was already in existence from July 1, 1955 to June 30, 1956 effecting the said premises that the action of the Township of Jefferson in issuing a new license to the respondent, Suomi Hovi Corporation, was irregular and improper and also resulted in a hardship to the Appellant who, without notice, is in possession of a license which constitutes a hardship."

The gist of appellant's complaint, seemingly meant to be conveyed by the above language is that upon denial of further possession of the premises by the respondent corporation, the owner of such premises, for reasons which are purely personal to them, and appellant's unsuccessful attempt to salvage his interest in the license by securing a purchaser elsewhere, the respondent corporation should have purchased his interest in the license rather than proceed to obtain a new license.

The mere statement of appellant's contention is sufficient to denote that it has no merit. Under these circumstances it will serve no useful purpose to review in detail the evidence presented concerning the initial relationship between appellant and respondent corporation, the deterioration of such relationship and the mutual grievances which they voice regarding each

other's conduct. These are purely personal matters concerning which it is not my function to venture an opinion, and which are irrelevant in determining the propriety of the issuance of the license by the respondent township. The controlling facts are that appellant lost possession of the licensed premises and permitted his license to expire or was unable to prevent its expiration.

Accordingly, since it is stipulated that the respondent corporation operates a hotel containing at least 50 sleeping rooms, the respondent township had the discretionary authority under R. S. 33:1-12.20 to issue a new license for the premises as an exception to the statute (R. S. 33:1-12.14) limiting the issuance of new licenses. In view that a plenary retail consumption license has for many years been issued for the premises it is in my opinion obvious that its action was not an abuse of such discretion.

Two further contentions by appellant have been noted. One is to the effect that only one hotel license in exception to the limitation law can be issued to a hotel. Aside from the fact that this contention has been decided adversely to appellant (Haba Realty Corp. v. Long Branch and Pat Pace's, a Corporation, Bulletin 1033, Item 1; Samuelian v. Ocean Township, Bulletin 985, Item 2) counsel for appellant during the course of the hearing admitted that he had been misinformed in that the previous license or licenses for the premises had not been issued to the hotel, as such.

Appellant's final contention concerns the procedure followed by respondent municipality when acting upon the application for the license. On May 7, 1956 an application was filed by the respondent corporation for a new license for the period May 15th to June 30, 1956. A meeting to consider the application was held on May 15th. It developed that appellant's license was still in effect. Action was deferred until May 28, 1956. At such meeting the appellant appeared (having previously mailed a letter to the committee protesting the issuance of the license) and stated that he would like to transfer his license to persons who would be acceptable to the corporation. Apparently the corporation did not wish to accept this offer. Counsel for the municipality then rendered an opinion that no new license for the premises could be issued until after the expiration of appellant's license. The pending application was then denied. The respondent corporation thereafter filed a second application, which was considered by the Township Committee at a meeting held on June 18, 1956 at which meeting the application was granted and the township clerk authorized to issue the license effective July 1, 1956. Appellant was not notified of the meeting to consider the second application because the Township Committee had not received any letter of protest from him. In the words of the Clerk of the Township, "It was not necessary. He was there at the time. He knew what the situation was. There was no protest after that, so I didn't feel it was necessary to send it." The procedure followed by the municipality was legally correct. Rule 8 of State Regulations No. 2.

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

Under the facts and circumstances appearing in the case, the burden resting upon the appellant to establish that the

respondent acted in an unreasonable or arbitrary exercise of its discretionary authority has not been sustained. I shall therefore affirm the action of the Township Committee.

Accordingly, it is, on this 22nd day of October, 1956,

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

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - HECK v. HAMMONTON.

PETER J. HECK, SR. and PETER)
J. HECK, JR., trading as)
HAMMONTON HOTEL,)

Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWN COUNCIL OF THE TOWN OF)
HAMMONTON,)

Respondent.)

-----)
William T. Cahill, Esq., Attorney for Appellants.
Charles M. Phillips, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action on May 7, 1956, whereby it suspended appellants' license (for the 1955-56 licensing year) for thirty days, effective May 15, 1956, at 2:00 a.m., and also declared the premises ineligible to become the subject of any further license during the period from May 15, 1956, to May 14, 1957. Appellants' premises are located at 19-21 South Egg Harbor Road, Hammonton.

Upon the filing of the appeal an order was entered herein staying respondent's order of suspension and staying respondent's order disqualifying the premises for the period of one year.

On April 11, 1956, respondent instituted disciplinary proceedings against appellants alleging that appellants had committed eight violations on various dates specified therein. After a hearing had been held upon said charges, respondent dismissed Charges 1, 2 and 3; found appellants guilty of Charges 4, 5, 6, 7 and 8, and imposed the penalty hereinabove set forth. Charges 4 to 8 read as follows:

"4. On April 7, 1955 you did maintain a disorderly house, in that you did permit and allow fornication in your place of business.

"5. On July 16, 1955, you did maintain a disorderly house, in that you did permit fighting between various persons in your place of business.

"6. On August 20, 1955, you did maintain a disorderly house, in that you did permit and allow fornication in your place of business.

"7. On October 1, 1955, you did maintain a disorderly house, in that you did permit and allow fornication in your place of business.

"8. On October 1, 1955, you did maintain a disorderly house, in that you did permit fighting between various persons in your place of business.

"All in violation of Rule 5 of State Regulations No. 20."

At the hearing held herein appellants testified that the Hammonton Hotel has been conducted by members of their family for more than fifty years, and that their license for said premises has never been previously suspended or revoked. They testified that the hotel contains a barroom, restaurant and three sleeping-rooms on the first floor, and ten sleeping-rooms on the second floor; that the licensed premises consist only of the first floor and cellar; that, during the past six years, the rooms on the second floor have been rented out to various male migrant farm laborers who had been advised that they cannot bring women to their rooms. Appellants further testified that, while the legal closing hour is 2:00 a.m., they make it a practice of voluntarily closing their licensed premises before midnight.

As to Charges 4, 5 and 6: Joseph Rubba (a police officer of the Town of Hammonton) testified on behalf of respondent that on April 7, 1955, at about 3:40 a.m., he received a call from the Chief of Police and proceeded to the Hammonton Hotel where he found an unmarried couple sleeping in a bed in Room 5 located on the second floor of the hotel, and placed the couple under arrest. He further testified that on July 16, 1955, at about 9:35 p.m., he received another call from the Hammonton Hotel and, upon arriving in the vicinity, arrested three boys as they were running off the porch of the hotel; that he later ascertained that one of these boys had bitten Peter Heck, Jr., on the chest. Lieutenant Joseph Patton and Carmen DeMarco (also members of the Hammonton Police Department) testified that on August 20, 1955, at about 3:00 a.m., they observed a gang of fellows around an abandoned auto that had been parked for a number of weeks about seventy-five feet from the rear door of the Hammonton Hotel. Upon further investigation they found in the car a girl who was partly undressed, and placed her under arrest. As to the aforesaid incidents, Peter J. Heck, Sr. testified that, early on the morning of April 7, 1955, while the licensed premises were closed, he observed from his home located next to the hotel that a girl and a young man had entered the separate entrance to the second floor of the hotel; that he immediately telephoned to the police, and that Officer Rubba responded to said call. As to the incident on July 16, 1955, Peter Heck, Jr. testified that, while he was tending bar on the evening of that date, a fight had started without warning between two patrons; that he immediately stopped the fight, directed the bartender to telephone the police, and ejected one of the patrons who bit him as he was leaving the premises.

After considering the evidence and the briefs herein, I conclude that the finding of guilt as to Charges 4, 5 and 6 must be reversed. Without in any way passing upon the question as to whether the hotel was conducted in a proper manner, there is nothing in the evidence to support the charges that the licensees permitted and allowed fornication in their licensed premises or that the illegal actions committed on the second floor of the building and in the abandoned automobile were in any way connected with the operation of the licensed premises. The evidence indicates that the fight which took place on July 16, 1955 occurred without warning and that the licensees did all that was possible under the circumstances. Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3.

As to Charges 7 and 8: Lieutenant Patton and Officer Rubba testified that on October 1, 1955, at about 1:44 a.m., they responded to a 'phone call from the Hammonton Hotel and found a girl known as "Princess" and Carmelo Figuero in a room on the second floor of the hotel; that they arrested these two individuals and two other girls and a young man who were trying to get away from the hotel. Lieutenant Patton testified that a bartender employed in the licensed premises was at the top of the steps when the arrests were made. Officer DeMarco and Sergeant Cirillo of the Hammonton Police testified that on the same day, at about 4:15 p.m., they saw a crowd in the vicinity of the Hammonton Hotel and, upon investigation, found that said Carmelo Figuero had been cut by a knife wielded by another male patron in appellants' premises while Figuero was in the licensed premises with the girl known as "Princess." The cuts on the stomach and arms of Figuero were so serious as to require two hundred stitches. Neither of the licensees was in the barroom at the time this incident occurred. David Rivera, who was acting as bartender, testified that there had been no prior argument between the patrons involved, and that he tried to stop the fight. I conclude that the finding of guilt as to Charge 7 must be reversed for the same reason set forth above in reversing the finding of guilt as to Charge 4.

The Hearer recommended that the guilty finding as to Charge 8 be sustained. The appellants, by exception to this recommendation, argue that it is contrary to the weight of the evidence. I find, however, that there is ample evidence to support the finding of guilt as to this charge. The licensees and their agent contributed to the situation by permitting Figuero and "Princess" to return to the licensed premises after they had been placed under arrest on the same morning under the circumstances hereinabove described. Cf. Plikaytis v. Harrison, Bulletin 754, Item 1; Pribila v. Linden, Bulletin 1045, Item 4; Fessler v. Orange, Bulletin 1114, Item 6. The finding of guilt as to Charge 8 will, therefore, be affirmed.

The Hearer further recommended that the 30-day suspension be affirmed and that the one-year ineligibility of the premises, as aforesaid, be reversed. I concur in the latter recommendation since the statute permits a declaration of disqualification of licensed premises only in the event of an outright revocation of a license. See R. S. 33:1-31.

As to the quantum of the suspension, however, I shall remand the matter to respondent for reconsideration. In directing the disqualification of the premises, the respondent, in pragmatic effect, suspended the appellants' liquor privileges for a full year. This action undoubtedly influenced the formal suspension of the license for a 30-day period. In view of the invalidity of the disqualification of premises directive, and the affirmance as to Charge 8 only, any attempt on my part to evaluate the proper penalty herein would be tantamount to a displacement of the discretion lodged in the local authority, in the first instance, to determine the extent of punishment to be meted out in disciplinary proceedings instituted before it. Nothing herein contained, however, should be regarded as expressive of any opinion concerning the penalty to be imposed on Charge 8. As aforesaid, such determination is confided to respondent's sound discretion.

Accordingly, it is, on this 24th day of October, 1956,

ORDERED that the action of respondent, in declaring the premises ineligible to become the subject of any further license during the period from May 15, 1956 to May 14, 1957, be and the same is hereby reversed; and it is further

ORDERED that the action of respondent, in finding appellants guilty as to Charges 4, 5, 6 and 7, be and the same is hereby reversed; and it is further

ORDERED that the action of respondent, in finding appellants guilty as to Charge 8, be and the same is hereby affirmed; and it is further

ORDERED that the within proceeding be remanded to respondent for its reconsideration and reimposition of penalty as to Charge 8, in accordance with the decision herein.

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - STODDARD v. PAHAQUARRY TCWNSHIP.

RALPH STODDARD,)	
)	
Appellant,)	
)	CONSENT ORDER TO REMAND
-vs-)	
)	
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF PAHAQUARRY,)	
)	
Respondent.)	
-----)	

Application having been made to this Division; and the consent of Archie Roth, Esq., attorney for the Township of Pahaquarry being endorsed thereon; and good cause being shown;

It is, on this 15th day of October, 1956, O R D E R E D that the above entitled cause be, and the same is hereby transferred and remanded to the Township Committee of the Township of Pahaquarry, Warren County, New Jersey, for reconsideration and further consideration of the matter.

(signed) William Howe Davis
Director.

I do hereby consent to the making and filing of the above entitled Consent Order to Remand.

(signed) Archie Roth
Archie Roth, Esquire
Attorney for the Township
of Pahaquarry.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO OWNER WHO UNKNOWINGLY VIOLATED THE LAW.

In the Matter of the Seizure on)	Case No. 9227
July 8, 1956 of a quantity of)	
alcohol and a Pontiac sedan on)	
U. S. Route #130, in the vicinity)	ON HEARING
of Route #206, in Bordentown)	CONCLUSIONS AND ORDER
Township, County of Burlington and)	
State of New Jersey.)	

 Dominick J. Ferrelli, Esq., Attorney for Jessie D. Terrell.
 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 four jars and two bottles of alcoholic beverages, and a Pontiac sedan, described in a schedule attached hereto, seized on July 8, 1956 on U. S. Route #130, in the vicinity of Route #206, Bordentown Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Jessie D. Terrell, who sought return of the motor vehicle. No one opposed forfeiture of the alcoholic beverages.

Reports of ABC agents and other documents in the file, presented in evidence with consent of counsel for Jessie D. Terrell, disclose the following facts:

On the above date and location a New Jersey State Trooper halted the motor vehicle during the course of his routine patrol of traffic on the highway. The trooper ascertained that Bossie Lee Davis was operating the car, with Jessie Terrell, the registered owner, and James E. Hines passengers therein. The trooper discovered four jars of alcoholic beverages in the trunk of the car, and a pint bottle and a four-fifth quart bottle of alcoholic beverages elsewhere in the car. None of these jars or bottles bore a tax stamp indicating the payment of tax on alcoholic beverages. Thereupon the three persons in the motor vehicle were arrested by the trooper, who also took into custody the motor vehicle and alcoholic beverages. Later such motor vehicle and alcoholic beverages were turned over to ABC agents.

The contents of the two bottles, and a sample of the contents of one of the jars were analyzed by the Division chemist, who reports that they are alcoholic beverages containing alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 47 percent.

The alcoholic beverages are illicit because of the absence of a tax stamp on any of the jars or bottles. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcoholic beverages and the motor vehicle in which they were 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.

Jessie Terrell seeks return of her car on claim that she unwittingly violated the law. She and her two companions

gave the trooper signed statements at the time of the seizure, the substance of which is that the one pint of alcohol belonged to Mrs. Terrell, obtained by her a few days earlier while on a visit to Goldsboro, North Carolina; and her two companions obtained the other alcoholic beverages in the same location. Further details were developed at the hearing herein.

Mrs. Terrell testified that she is a widow, has been employed for fourteen years as a practical nurse in a Brooklyn hospital, and has never been convicted of any crime. When advised that an uncle was seriously ill in Goldsboro she and her brother, Bossie Lee Davis, and her cousin, James Hines, drove there to see him. When about to return, a friend presented her with the pint bottle of alcohol (corn whiskey). Other friends and relatives gave her watermelons, fresh meat, smoked meat and various plants. She used the car in connection with her work on the midnight shift at the hospital. She claims she did not know transportation of such alcohol was in violation of the law and would subject her car to forfeiture.

Bossie Lee Davis testified that he has been employed for the past twelve years by an industrial concern in New York City and that he has never been convicted of any crime. He had two jars of alcohol in his suitcase presented to him by friends in the Carolinas. He knew it was illegal to sell moonshine, but did not think that to carry a small quantity home for personal use was bootlegging. It is a practice of those residing in the south to present excessive quantities of foodstuffs and other items to northern relatives there on a visit.

James Hines testified that he has been employed for ten years by an industrial concern in Long Island, and that he has never been convicted of a crime. He was on a visit to Goldsboro when Mrs. Terrell arrived there, and arranged to come home with her. While fishing, he met a man who left some corn whiskey in a basket. Hines took the whiskey to his relatives' home, drank some, and placed what was left in his suitcase.

It is perfectly clear that the persons involved, all related, were visiting relatives in Carolina and in the course of their departure were presented with, or obtained other than by purchase, small amounts of corn whiskey, as well as fruits, meat and vegetables as gifts from their kin, or in Hines' case, by happenstance. While the transportation of moonshine corn whiskey, however obtained, is not to be encouraged, it does not have the same significance as instances where the transporter purchases bootleg whiskey. Purchase of bootleg whiskey creates a market for traffic in such beverages, and is not considered an unwitting violation of the law. In the instant case it is a misguided demonstration of family affection accepted in ignorance of the consequences that might follow if such gift is transported through this state. Under the circumstances, I am satisfied that it was an unwitting violation of the law, and the motor vehicle will therefore be returned to Jessie D. Terrell upon payment of the costs of its seizure and storage. R. S. 33:1-66(f). Cf. Seizure Case No. 9078, Bulletin 1117, Item 8.

It should be specifically noted that the above considerations do not control criminal proceedings for possessing and transporting illicit alcoholic beverages, since intent to violate the law is not an essential element therein.

Accordingly, it is DETERMINED and ORDERED that if on or before the 1st day of October, 1956, Jessie D. Terrell pays

the costs of seizure and storage of the Pontiac sedan described in Schedule "A" hereinafter set forth, such sedan will be returned to her; and it is further

DETERMINED and ORDERED that the four jars and two bottles of 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: September 20, 1956.

SCHEDULE "A"

- 4 - two-quart "Mason" jars of alcohol
- 1 - one-pint bottle of alcohol
- 1 - 4/5 quart bottle of alcohol
- 1 - Pontiac sedan, Serial and Engine No. L8XP1704, New York Registration Y39-33.

- 6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (SOLICITATION FOR PROSTITUTION AND MAKING ARRANGEMENTS FOR ILLICIT SEXUAL INTERCOURSE) - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - NUISANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 210 DAYS.

In the Matter of Disciplinary Proceedings against
 BERNARD & HERMAN STRAUSS
 339 Plane Street
 Newark 2, N. J.,
 Holders of Plenary Retail Consumption License C-534 (for the 1955-56 and 1956-57 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

 Saul C. Schutzman, Esq., Attorney for Defendant-licensees.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charges:

"1. On May 24, June 21 and 23, 1956, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On Saturday, June 23, 1956, at about 10:55 P. M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage at retail in its original container for consumption off your licensed premises, viz., a pint bottle of Lord Calvert Blended Whiskey; in violation of Rule 1 of State Regulations No. 38.

"3. On May 24 and June 21 and 23, 1956, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered unescorted females frequenting your licensed premises to solicit male patrons to purchase drinks of alcoholic beverages for consumption by them and others and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that ABC agents visited defendants' licensed premises on the evenings of May 24, 1956, June 21, 1956, and June 23, 1956.

When an ABC agent entered about 9:00 p.m. on May 24, two bartenders were on duty, and fourteen male and six female patrons were in the premises. An unidentified female approached the agent and asked him to buy her a drink. When the agent consented, the female asked the bartender for a drink of whiskey and he served the drink to her and took the price thereof from the agent's money on the bar. The female then asked the agent if he wanted to go to her room "just around the corner" and suggested a price for illicit intercourse, but the agent told her he had to go some other place and could not go out with her that evening.

When two other ABC agents entered the premises about 10:00 p.m. June 21, Herman Strauss (one of the licensees) and Sidney Strauss were tending bar and a number of male and female patrons were present. A female patron known as "Wilma" asked one of the agents to buy her a drink and, after he consented, one or the other of the bartenders served to "Wilma" a number of drinks which were paid for by the agent. "Wilma" asked said agent if he wanted to go to her room and suggested a price for illicit intercourse. The agent made a date with her "for Saturday night." While they were in the premises, both agents observed about a dozen female patrons leave the premises, after placing their purses behind the bar, with various male patrons and return about a half-hour later.

When the agent who had previously spoken to "Wilma" returned to the premises about 10:30 p.m. Saturday, June 23, Sidney Strauss and another male were tending bar and there were about fifty patrons in the premises. "Wilma" entered later, spoke to the agent and accepted a marked \$10.00 bill from him. At 10:55 p.m. this agent purchased a pint bottle of whiskey from Sidney Strauss and, shortly thereafter, left the premises with "Wilma." Other ABC agents and a member of the Newark Police Department stopped the agent and "Wilma" a short distance from the premises and, after the marked money was found in "Wilma's" possession, she was placed under arrest on a charge of soliciting for immoral purposes. It appears that the charge against her was subsequently dismissed in the Municipal Court, but the dismissal is immaterial in the present proceeding.

Defendants have a prior record. Effective October 27, 1947, their license was suspended by the local issuing authority for permitting prostitutes on their licensed premises. I have considered the letter submitted by defendants' attorney on September 27, 1956, wherein he sets forth alleged mitigating circumstances and states that, while his clients "strenuously deny that they did at any time deliberately lend themselves to any unlawful activity", they are satisfied that "there was something lacking in so far as the operation of their place of business was concerned." Under all the circumstances, including

the prior violation committed more than five years ago, and the plea entered herein, I shall suspend defendants' license for a period of two hundred ten days. Cf. Re Celentano, Bulletin 1123, Item 1.

Accordingly, it is, on this 9th day of October, 1956,

ORDERED that Plenary Retail Consumption License C-534 (for the 1956-57 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Bernard & Herman Strauss, for premises 339 Plane Street, Newark, be and the same is hereby suspended for two hundred ten (210) days, commencing at 2:00 a.m. October 15, 1956, and terminating at 2:00 a.m. May 13, 1957.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE
SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary)
Proceedings against)

KARL P. HAMMER)
T/a WAVERLY TAVERN)
28 Main Street)
Madison (Morris Co.), N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-1 for the 1955-56)
and 1956-57 licensing periods,)
issued by the Borough Council of)
the Borough of Madison.)

Karl P. Hammer, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against the defendant:

"1. On March 14, 16 and 28, 1956, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On March 10, 14, 16 and 17, 1956, you allowed, permitted and suffered lotteries, commonly known as 'horse-race pools' and 'prize-fight pools' to be conducted in and upon your licensed premises, and sold and offered for sale and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lotteries in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

Defendant has pleaded not guilty to Charge 1 and non vult to Charge 2.

It appears from the record in the instant case, with particular reference to Charge 1, that on March 14, 16 and 28,

1956, ABC agents placed bets on horses with the bartender employed by defendant. The defendant was in the establishment at the aforementioned times but did not participate in the gambling activities in so far as the accepting of bets on horses was concerned.

However, the file herein discloses that, with reference to Charge 2 to which defendant pleaded non vult, he not only permitted lotteries known as "horse race pools" and "prize fight pools" at the times set forth in the charge but participated therein.

Defendant did not present himself as a witness at the hearing in this matter but made a statement for the record to the effect that he knew the bartender "plays the horses" and "maybe he did take a bet from someone I don't know anything about, but regular horse betting in the place or bookmaking charges I mean that is out of the question altogether."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulations No. 16.

After careful examination of the within record, I concur with the finding of the Hearer that defendant allowed, permitted and suffered the making and accepting of horse race bets in and upon his licensed premises. I find defendant guilty of Charge 1. Defendant entered a plea of non vult to Charge 2.

Defendant has no prior adjudicated record. Until recently the usual penalty imposed for permitting commercialized gambling on licensed premises when the licensee or his employee participated was a suspension of the license for twenty days (Re Koch, Bulletin 1093, Item 6). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days (Re Increased Penalties, Bulletin 1095, Item 1). Since the violation in the instant case occurred after that announcement, I shall suspend defendant's license on both charges for twenty-five days (cf. Re Sparkle Bar, Inc., Bulletin 1119, Item 5).

Accordingly, it is, on this 8th day of October, 1956,

ORDERED that Plenary Retail Consumption License C-1 (for the 1956-57 licensing period), issued by the Borough Council of the Borough of Madison (Morris County) to Karl P. Hammer, t/a Waverly Tavern, for premises 28 Main Street, Madison, be and the same is hereby suspended for twenty-five (25) days, commencing at 1:00 a.m. October 15, 1956, and terminating at 1:00 a.m. November 9, 1956.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Himmel Distillery Products, Inc.
351 Comstock Street
New Brunswick, N. J.

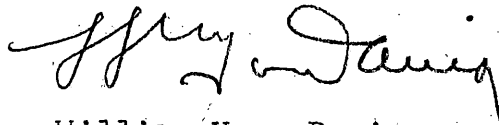
Application filed November 20, 1956 for place-to-place transfer of pending application for Rectifier and Blender License, from 607-09 Chestnut St., Beverly, N. J.

Chester Distributing Co., Inc.
18 and 20 Mellon St.
Trenton, N. J.

Application filed November 26, 1956 for place-to-place transfer to include additional space, on Limited Wholesale License WL-32.

Michael Honchar
t/a Elliott Home Beverages
326 Talmadge Avenue
Bound Brook, N. J.

Application filed November 26, 1956 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-154 from James E. Cambria and Pasquale A. Albanese, t/a Hedrick Distributing Company, 11 Gypsum Street, Kearny, N. J.



William Howe Davis
Director.