

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 988

OCTOBER 26, 1953.

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1060 Broad Street Newark 2, N. J.

BULLETIN 988

OCTOBER 26, 1953.

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD -
LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary)
Proceedings against)
MABEL M. KELLNER)
T/a THE TIDES)
State Highway #35, Shark River)
Island)
Neptune Township)
P.O. Box 6, Avon, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-14, issued by the)
Township Committee of the Township)
of Neptune.)

Sidney Simandl, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On Sunday, June 21, 1953, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Edward ---, Joseph --- and Lewis ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

Edward ---, 17 years of age, testified that he, Joseph --- and Lewis ---, visited defendant's licensed premises at approximately 1:00 a.m. on June 21, 1953; that they went to the far end of the bar from the entrance and remained there for about an hour; that the bar-room was "pretty dark"; that during the time spent in defendant's licensed premises a male bartender served him four bottles of beer which he consumed on the premises and that each of his companions were served and consumed two bottles of beer and four highballs; that he was not asked his age by anyone and that in addition to the male bartender a blond woman was working on the licensed premises at the time of their visit.

Lewis ---, 19 years of age, and Joseph ---, 18 years of age, testified that they entered defendant's premises at 1:00 a.m. on the morning in question; that each was served and consumed two bottles of beer and four highballs respectively, whereas Edward --- was served and consumed four bottles of beer; that service of the drinks was made by a male bartender and that at the time a blond woman was working in the premises. They further testified that the whiskey used in the preparation of the highballs was poured from a bottle marked "Schenley"; that no one questioned them concerning their age; and that the woman who worked in the premises on the morning of June 21, 1953 was younger than the licensee.

Defendant testified that although during the morning of June 21, 1953 she acted in a supervisory capacity on the licensed premises,

which were crowded at the time, she never saw the youths prior to June 27, 1953 when they came into her licensed premises with an ABC agent. The defendant further testified that on June 27, 1953 when the agent and the three youths were in her premises, her daughter and Charles W. De Roche were also present. The youths, according to the testimony of the defendant, were not certain when asked regarding the identity of Charles W. De Roche and defendant's daughter as the persons working on the premises on the morning of June 21, 1953.

Charles W. De Roche testified that he was tending bar assisted by the defendant's daughter on the morning of June 21, 1953; that he neither saw nor served alcoholic beverages to the three minors; that there was a capacity crowd at the time consisting of persons of various ages, some of whom he might not be able to recognize in the event he again saw them; that when the ABC agent and the three youths visited defendant's licensed premises on June 27, 1953 the youths stated that although they were served alcoholic beverages they could not identify the person who served them because "the place was not well-enough lighted."

It was stipulated that defendant's daughter, who was ill at home at the time of the instant hearing, if called as a witness would testify to the effect that she neither saw nor served the three minors on June 21, 1953, and that the minors, when in the premises with an ABC agent on June 27, 1953, could not identify the person who served them.

I am satisfied after careful consideration of all the evidence presented herein that the three minors have given a truthful version of what happened in the licensed premises on the early morning of June 21, 1953. No reason appears why the three minors should deliberately give false testimony. It is true that the minors could not identify De Roche as the male bartender who served them. However, it is well established that mere failure to identify the specific person is not fatal in proceedings of this nature. Re Roesch, Bulletin 966, Item 4; Re Dante, Bulletin 771, Item 9. The defendant and Charles W. De Roche, the bartender, testified that they did not see the three minors in the licensed premises on the morning in question. They both agreed that the establishment was crowded, the bartender remarking that there was "a capacity crowd." Furthermore, two of the minors testified that a younger woman than defendant was working in the licensed premises on the morning the alleged violation took place. Both defendant and the aforesaid bartender testified that defendant's daughter was working on the premises at the time. I conclude that defendant's guilt has been established by a preponderance of the evidence; I therefore find defendant guilty of the charges preferred herein.

Defendant has a prior adjudicated record. Her license was suspended by the local issuing authority for ten days, effective November 29, 1951, for sale of alcoholic beverages during prohibited hours. The minimum suspension for sale to three minors, one of whom was 17 years of age, is twenty days. Re Minchin, Bulletin 979, Item 6. However, in view of defendant's record of a prior dissimilar violation occurring within the past five years, I shall suspend her license for a period of twenty-five (25) days. Cf. Re Primiceri, Bulletin 948, Item 5.

Accordingly, it is, on this 6th day of October, 1953,

ORDERED that Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Neptune to Mabel M. Kellner, t/a The Tides, for premises State Highway #35, Shark River Island, Neptune Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. October 13, 1953, and terminating at 3:00 a.m. November 7, 1953.

DOMINIC A. CAVICCHIA
Director.

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD OF PREDECESSOR IN INTEREST NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MOLINARI CAFE, INC. 501 Paterson Plank Rd. Union City, N. J., Holder of Plenary Retail Consumption License C-96, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

Goldstein & Goldstein, Esqs., Attorneys for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages at its licensed premises to three minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on September 6, 1953, three minors, one 17 years of age, and two 19 years of age, respectively, visited defendant's licensed premises. During the time they spent in defendant's premises, each consumed three bottles of beer which were served to them by an employee of defendant.

Defendant has a prior adjudicated record. Effective August 6, 1942 a license in the individual name of David Molinari, secretary-treasurer of defendant corporate licensee and holder of one-third of its outstanding capital stock, was suspended for sixty days by the local issuing authority for sale of alcoholic beverages to minors. Because more than ten years have elapsed since the prior similar violation, it will not be taken into consideration in fixing the present penalty. Cf. Re Wally's Inc., Bulletin 931, Item 9. Where, as here, three minors were involved and one of the three was only 17 years of age, the minimum penalty is twenty days. Re Primiceri, Bulletin 948, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 13th day of October, 1953,

ORDERED that Plenary Retail Consumption License C-96, issued by the Board of Commissioners of the City of Union City to Molinari Cafe, Inc., 501 Paterson Plank Rd., Union City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. October 20, 1953, and terminating at 3:00 a.m. November 4, 1953.

DOMINIC A. CAVICCHIA Director.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against WILLIAM FEOLA 253 - 20th Avenue Paterson 3, N. J., Holder of Plenary Retail Consumption License C-347, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

William Feola, Defendant-licensee, Pro Se. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he (1) sold, served and delivered alcoholic beverages and permitted the consumption thereof on his licensed premises during prohibited hours, in violation of a local ordinance and () failed to have his licensed premises closed during said prohibited hours, in violation of a local ordinance.

An ordinance of the City of Paterson prohibits the sale of alcoholic beverages on Sundays between the hours of 3:00 a.m. and 1:00 p.m. and requires that licensed premises shall be closed between said hours.

The file herein discloses that at 11:45 a.m. on Sunday, September 13, 1953, two ABC agents arrived in the vicinity of defendant's licensed premises and stationed themselves at vantage points to keep the premises under surveillance. Shortly before 12:00 noon the agents observed a man enter the yard through a small wooden gate and proceed to the rear of the premises. A short time later, the agents observed another man who carried an "extension cord" enter the yard leading to the rear of the premises. At 12:20 p.m., the man who had previously entered the yard carrying the "extension cord" came out of the yard carrying some tools and walked up the avenue. At 12:30 p.m. two men entered the side gate and walked to the rear of the premises and became lost from view. The agents waited until 12:35 p.m., then approached the rear of the premises through the yard and continued to the other side of the building where they observed a doorway. They entered the building through this door which led to a rear room containing a bed, refrigerator, mirror and boxes. They observed a man seated on the bed drinking beer from a bottle and another man seated on a box drinking beer from a bottle. The agents recognized these two men to be the persons who had preceded them into the yard at the rear of the licensed premises. The agents proceeded through a hallway into a barroom and observed defendant in the act of going from behind the bar with a bottle of beer in one hand and a glass, which appeared to contain a highball, in the other. In the rear of the barroom a man and woman were seated at a table. The agents asked for a bottle of beer but the defendant said he wasn't open on Sundays but because the cellar was flooded he had a plumber fixing the leak and an electrician working in the basement. The defendant then walked to the table where the couple aforementioned were seated, placed the bottle of beer in front of the man and the highball in front of the woman, put some money on the table and returned behind the bar. He engaged the agents in conversation and at 12:40 p.m. served each of the agents a bottle of beer. After the agents made known their identity, the defendant verbally admitted the violation but refused to make a written statement.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of fifteen days. Re Slomienski, Bulletin 980, Item 8. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 6th day of October, 1953,

ORDERED that Plenary Retail Consumption License C-347, issued by the Board of Alcoholic Beverage Control of the City of Paterson to William Feola, 253 - 20th Avenue, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m., October 13, 1953, and terminating at 3:00 a.m., October 23, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ELEANOR KREIDER & HARRY KREIDER
T/a STILL VALLEY GRILL
Rte. #22, State H'wy
Greenwich Township (Warren County)
P.O. Stewartsville R.D., N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Greenwich, County of Warren.

Eleanor Kreider and Harry Kreider, Defendant-licensees, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages at their licensed premises to four minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on June 4, 1953, five youths, four of whom were minors, one 18 years of age and three 20 years of age, respectively, visited defendants' licensed premises. During the time spent in defendants' premises each minor was served divers glasses of beer.

Defendants have no prior adjudicated record. Because of the number of minors involved, I shall suspend defendants' license for a period of fifteen days. Re Boyle, Bulletin 985, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 6th day of October, 1953,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Greenwich, County of Warren, to Eleanor Kreider & Harry Kreider, t/a Still Valley Grill, Rte. #22, State H'wy, Greenwich Township (Warren County), be and the same is hereby suspended for a period of ten (10) days, commencing at 7:00 a.m. October 13, 1953, and terminating at 7:00 a.m. October 23, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RUTGERS HOUSE CORP. (A corp.) T/a RUTGERS HOUSE CORP. 18 Albany Street New Brunswick, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-85, issued by the Board of Commissioners of the City of New Brunswick.

Rutgers House Corp. (A corp.), defendant-licensee, by Frank L. Stepko, President. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

From various statements hereinafter referred to, the following facts appear: At approximately 10:30 p.m., on August 4, 1953, Pvt. Joseph W. ---, 19 years of age, entered defendant's licensed premises with some adult soldiers. They were immediately interrogated as to their ages by Peter Stepko, secretary-treasurer of defendant corporation. All showed some type of identification card and were permitted to go to the bar where the minor consumed a number of glasses of beer, some of which he paid for and some of which were bought for him by others. The minor and his companions had an altercation with some civilians as they were leaving shortly after 1:00 a.m. on August 5, 1953, as a result of which they were arrested.

When it was learned after the arrests that Pvt. Joseph W. --- was a minor, statements were obtained from him and one of his adult companions and, after they had identified the licensed premises, the bartender and the aforementioned Peter Stepko, signed and sworn statements were taken from all of them.

The bartender and Peter Stepko admitted that the minor was sold and served glasses of beer and consumed the same on the licensed premises as hereinabove related. However, Peter Stepko claims that the minor showed him a card (an overseas pass) indicating that he was over 21 years of age. The minor claims that he showed his ID card which indicates his true age and added "I guess he did not look at it too good as he OK'd me." Neither version constitutes a defense since Peter Stepko admitted that he did not ask the minor to sign a statement as to his age, saying that he "was satisfied with the card he showed me." Re Cedar Bar of Bergen County Inc., Bulletin 942, Item 5.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days, the minimum period in cases of this kind involving a 19-year-old minor. Re Pine Lake Park Taxpayers Improvement Association, Inc., Bulletin 949, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 18th day of September, 1953,

ORDERED that Plenary Retail Consumption License C-85, issued by the Board of Commissioners of the City of New Brunswick to Rutgers

House Corp. (A corp.), t/a Rutgers House Corp., 18 Albany Street, New Brunswick, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m., September 28, 1953, and terminating at 2:00 a.m. October 3, 1953.

DOMINIC A. CAVICCHIA
Director.

6. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL ON FARM - HEARING HELD DESPITE PENDING CRIMINAL PROCEEDINGS - STILL AND EQUIPMENT ORDERED FORFEITED - BUILDINGS ORDERED PADLOCKED.

In the Matter of the Seizure on) Case No. 8374
July 28, 1953 of a still and appur-)
tenant equipment at premises owned)
and occupied by John D'Agostino) ON HEARING
located on Baleville-Branchville) CONCLUSIONS AND ORDER
Road, in the Township of Hampton,)
County of Sussex and State of New)
Jersey.)

Harry Castelbaum, 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 2, Revised Statutes of New Jersey, to determine whether a still and appurtenant equipment, described in a schedule attached hereto, seized on July 28, 1953 at premises owned and occupied by John D'Agostino located on Baleville-Branchville Road, Hampton Township, New Jersey, constitutes unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

When the matter came on for hearing, pursuant to R. S. 33:2-4, no formal appearance was entered on behalf of John D'Agostino and he did not participate in such hearing. However, counsel for John D'Agostino appeared at the Division and advised that he desired to state for the record D'Agostino's objection to padlocking, but deemed it inadvisable to present D'Agostino to testify, inasmuch as his criminal case arising out of the seizure had not as yet been presented to the Sussex County Grand Jury. Counsel was advised that the matter would not be held in abeyance on that score, but that D'Agostino could apply for lifting on any padlocking penalty that might be imposed. Counsel stated that D'Agostino did not oppose forfeiture of the seized property. No other person appeared to oppose such forfeiture.

Reports of ABC agents and other documents in the file presented in evidence disclose the following facts:

ABC agents, New Jersey State Troopers, and the Sheriff of Sussex County entered D'Agostino's farm at the above location while tracing the source of pollution of a local stream, suspected to be caused by the operation of an illicit still.

As the officers neared a barn they detected a strong odor of alcoholic mash, and observed pipe lines leading from the structure. Their attention was attracted to what appeared to be an addition to the barn, in which they discovered a very large still. This still was not registered with the Director of the Division of Alcoholic Beverage Control, as required by R. S. 33:2-1.

The still was ready for operation; there were 49 hundred-pound bags of sugar; 267 empty five-gallon cans; and approximately 20,000 gallons of mash in the structure, attached to the barn, where the still was erected. The ABC agents seized the still and all equipment appurtenant thereto.

The illicit still and other property seized therewith constitutes unlawful property, and is subject to forfeiture. R. S. 33:2-2, R. S. 33:2-5.

The still was about 300 feet distant from the farmhouse occupied by D'Agostino. D'Agostino claims that he leased the addition to a concern for the manufacture of chemicals. This is an explanation frequently presented in cases of this nature. The magnitude of the still activities seemingly were sufficient to apprise the occupants of the farmhouse of the presence of the still. Under such circumstances, padlocking of all of the buildings must follow as of course, with leave to D'Agostino hereafter to present evidence which will warrant lifting of such padlocking.

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 Director of the Division of Alcoholic Beverage Control; and it is further

ORDERED that all of the buildings on premises owned and occupied by John D'Agostino located on Baleville-Branchville Road, in the Township of Hampton, Sussex County, New Jersey, being the premises on 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 October, 1953.

DOMINIC A. CAVICCHIA
Director.

Dated: September 16, 1953.

SCHEDULE "A"

- 1 - copper cooker
- 1 - copper column
- 1 - copper condenser
- 1 - copper dephlegmator
- 6 - wooden vats with about 20,000 gallons of mash
- 267 - empty 5-gallon cans
- 49 - 100 lb. bags of sugar
- 1 - steam boiler
- 1 - oil burner
- 3 - tanks
- 1 - filter & motor
- 11 - electric motors and pumps
- 3 - electric motors
- 3 - pumps
- Miscellaneous pipe, hose and valves, and other personal property.

7. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN DWELLING - CLAIMS NOT PRESENTED PRIOR TO ENTRY OF ORDER OF FORFEITURE - FORFEITED PROPERTY STILL IN DIRECTOR'S CONTROL - SUPPLEMENTAL HEARING GRANTED CLAIMANTS - CLAIM OF OCCUPANT OF PREMISES DENIED FOR FAILURE TO ESTABLISH GOOD FAITH AND ABSENCE OF KNOWLEDGE OF SPEAK-EASY ACTIVITIES - CLAIM OF INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure on June 21, 1953, of a quantity of alcoholic beverages and various fixtures, furnishings, and equipment, at 22 South 14th Street, in the City of Newark, County of Essex and State of New Jersey.

Case No. 8349

ON SUPPLEMENTAL HEARING CONCLUSIONS AND ORDER

Mervin G. Wiener, Esq., Attorney for W. Wilderotter & Co., and Lucy Sarvers. Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On Sunday, June 21, 1953 ABC agents seized a quantity of alcoholic beverages and various fixtures and furnishings in the second floor apartment of Morris Garrett located at 22 South 14th Street, Newark, New Jersey, because of the unlicensed sale of alcoholic beverages therein by Morris Garrett.

The seizure was made during the course of an investigation by the agents of a complaint that alcoholic beverages were being sold without a license in the apartment. A group of men and women, some drinking beer, were in the apartment at the time of the seizure. Garrett told the agents that he had been selling alcoholic beverages there for about six months. The apartment was furnished with articles normally used in a home.

On July 24, 1953, after a hearing held pursuant to R. S. 33:1-66, of which Morris Garrett was notified but at which he did not appear, the Director of the Division of Alcoholic Beverage Control entered his Conclusions and Order directing the forfeiture of the seized property.

Thereafter, on August 3, 1953, counsel for W. Wilderotter & Co. and Lucy Sarvers advised that they sought return of various of the articles forfeited. The Director of the Division was previously unaware that these persons claimed an interest in the seized property. Since such property still remained in the actual possession of the Division, the Director granted the request for a supplemental hearing to afford these persons an opportunity to present evidence of their claims.

At such hearing Lucy Sarvers claimed, in substance, that she had rented a room on the third floor, and kitchen privileges on the second floor, from Morris Garrett and had placed a couch and sofa, a television set, dishes, a kitchen set, a gas range, and a refrigerator, in the second floor rooms for her own convenience while she was seeking an apartment for herself and a minor son.

The pertinent provisions of the Alcoholic Beverage Law are designed to penalize the proprietor of a speakeasy by the forfeiture of all personal property seized therein. R. S. 33:1-1(y), R.S. 33:1-2, R. S. 33:1-66. Hence the furnishings of the second floor rooms where Morris Garrett sold alcoholic beverages without a license are subject to forfeiture.

Return of property subject to forfeiture is governed by R. S. 33:1-66(e) and (f). The Director is thereby afforded discretionary

authority to order such return to a person who has established to the Director's satisfaction that such person 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.

An essential element of good faith is that the person seeking remission of the forfeiture must not conceal or obscure what occurred. He must make a full and frank disclosure of the pertinent facts, otherwise his claim will be denied. See Seizure Case No. 6544, Bulletin 657, Item 6. Consequently Lucy Sarvers must give an honest, full and frank explanation to account for the presence of her property in Garrett's speakeasy. If she appears to be untruthful on that score, her statement that she was unaware of the unlawful sale of alcoholic beverages in the apartment similarly may not be true.

Normally a person who is merely a roomer does not place newly acquired furniture the cost of which exceeds \$1200.00, in that part of the premises not occupied by her, where it is exposed for a year or more to use by other persons. The more logical inference is that such person is occupying the entire premises as her home, and is not merely a roomer. Lucy Sarvers' explanation is to be evaluated in the light of these considerations.

She testified that she is employed as a domestic six days a week, from about 9:00 a.m. to 5:00 p.m., earning about \$50.00 a week; that she had resided in Garrett's premises for the past two years, and roomed at another address in Newark for a year previous thereto; that during the three-year period her son, now about 17 years of age, resided with an aunt; that she purchased the television set, dishes, and kitchen set when she first occupied the room in Garrett's premises, and purchased the refrigerator and gas range a year later; and that although she sought an apartment during the entire two years, she did not find accommodations. Further, that Garrett, and his two other roomers, had the use of her furniture.

It appears improbable that if it was her actual intention to have her own home elsewhere for herself and her young son that she was unable to locate an apartment for three, or at least two, years. It also appears contrary to natural instincts of ownership of valuable articles for a roomer to purchase and place such articles in a location where they are available for use by strangers. Lucy Sarvers' explanation does not sound truthful and is not convincing.

Moreover, irrespective of the reason her furniture was in the speakeasy, it appears doubtful that with free, almost daily, access to the second floor rooms, that "she does not know anything about what goes on on the second floor", as she claimed. On the contrary, it appears more likely that Garrett's unlawful activities over a six-month period could not have escaped her notice. Lucy Sarvers' request for return of the property in question is therefore denied on both scores.

The claim of W. Wilderotter & Co. is that in the normal course of business, it sold a refrigerator and gas range to Lucy Sarvers on conditional sales contract upon which there is a balance due of \$350.36. It presented a conditional sales contract dated August 4, 1952 signed by Lucy Sarvers evidencing such sale, and that such articles were delivered to 22 South 14th St., Newark. These items have been identified by serial numbers as identical with the refrigerator and gas range seized by the ABC agents.

Lucy Sarvers' application for credit presented to Wilderotter sets forth that she is a widow, residing at the 14th Street address for three years; had previously resided with her mother at 71 Orchard Street, Newark; and was employed as a domestic.

Wilderotter's personnel checked this information, verified that her residence and employment were as stated, contacted her credit references, and therefrom concluded to extend credit to her. I am satisfied that the concern acted with reasonable prudence and shall therefore recognize its claim to the extent of \$300.36, representing the unpaid balance less the rebate for prepayment.

I am advised that it is not desirable to retain the refrigerator and gas range for the use of the State conditioned upon the payment of such lien, and that the value of such articles do not exceed \$300.00 and the costs of their seizure and storage. Such articles will therefore be turned over to W. Wilderotter & Co. upon payment of the costs of the seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 16th day of October, 1953, W. Wilderotter & Co. pays the costs of the seizure and storage of the refrigerator and gas range more fully described in Schedule "A" of the Order of July 24, 1953, such articles will be turned over to that concern; and it is further

DETERMINED and ORDERED that except as above modified such previous Order dated July 24, 1953 stands in all other respects ratified and confirmed.

DOMINIC A. CAVICCHIA
Director.

Dated: October 6, 1953.

8. DISQUALIFICATION - PRIOR APPLICATION DENIED - PRESENT APPLICATION DENIED BECAUSE PETITIONER WAS EMPLOYED ON LICENSED PREMISES DURING PENDENCY OF PRESENT PROCEEDINGS.

In the Matter of an Application to)
Remove Disqualification because of)
a Conviction, Pursuant to R. S.)
33:1-31.2.)
Case No. 1043.)
-----)

CONCLUSIONS
AND ORDER

BY THE DIRECTOR:

Petitioner, a national of Poland, filed with me an application for an employment permit wherein he disclosed that he had been convicted of a crime described in said application as "Receiving Stolen Goods. 1932." It appearing from the application that petitioner was ineligible to hold a permit because of the fact that he had been convicted of a crime involving moral turpitude, issuance of the permit was withheld. Thereafter petitioner filed an application to remove his statutory disqualification and disclosed the aforesaid conviction in his application.

It appears from the records of the Division of Alcoholic Beverage Control that on February 10, 1939, Commissioner Burnett denied a prior application to remove disqualification filed by petitioner herein. Re Case No. 43, Bulletin 300, Item 3. In said Conclusions and Order petitioner was given leave to reapply in May 1943. On June 16, 1943, he filed a second application to remove disqualification, but said application was subsequently dismissed without prejudice.

As appears from the Conclusions and Order in Re Case No. 43, supra, petitioner pleaded non vult in 1926 (the date being erroneously

set forth in petitioner's application for an employment permit as 1932) to an indictment for larceny and receiving stolen goods, at which time he was placed on probation for two years. Between 1926 and May 1938 petitioner was convicted of a number of crimes which did not involve moral turpitude, and convicted of violating a city ordinance. These convictions are set forth fully in Re Case No. 43, supra, and need not be repeated herein.

At the hearing held herein petitioner testified that he has not been arrested or convicted of any crime since May 1938, and a letter received from the Chief of Police of the municipality in which he resides discloses that he has no criminal record subsequent to May 1938. His fingerprint returns also fail to disclose any criminal record subsequent to May 1938.

At the hearing herein on April 7, 1953, petitioner, who is 64 years of age, testified that for many years subsequent to 1938 he was continuously engaged in the gardening business but that during the past two years he has been unable to do much work of this character because of poor health. He denied that he has an interest in the retail licensed business which has been conducted by his wife for nearly fifteen years, and denied that he has been employed in any capacity whatsoever on her licensed premises since July 1938.

However, it appears that, while petitioner's wife did not list him as an employee during an inspection of her premises made by an ABC agent on October 24, 1951, she did list him as a "bartender" during a similar inspection made on May 4, 1953. Moreover, when another ABC agent visited her licensed premises on August 7, 1953, petitioner went behind the bar and sold a glass of beer to the agent. The licensee, who was then absent, told the agent when she returned that she did not want her husband on the licensed premises and that she had not told the other agent on May 4 that she employed her husband as a bartender.

I do not believe petitioner's testimony that he was not employed on the licensed premises between 1938 and the date of the hearing on April 7, 1953. In any event, the fact that petitioner acted as bartender on August 7, 1953, while this proceeding was pending, is a sufficient reason for denying relief herein.

Accordingly, it is, on this 17th day of September, 1953,

ORDERED that the petition for relief herein be and the same is hereby denied.

DOMINIC A. CAVICCHIA
Director.

9. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1953 THROUGH SEPTEMBER 30, 1953

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
ARRESTS:				
Total number of persons arrested	29	32	17	78
Licenses and employees	7	7	6	20
Bootleggers	22	25	11	58
SEIZURES:				
Motor vehicles - cars	3	3	1	7
- trucks	0	2	0	2
Stills - over 50 gallons	2	2	0	4
- 50 gallons or under	4	2	1	7
Alcohol - gallons	1.00	3.67	0	4.67
Mash - gallons	24,500.00	650.00	100.00	25,250.00
Distilled alcoholic beverages - gallons	62.90	100.73	17.37	181.00
Wine - gallons	.85	196.29	5.65	202.79
Brewed malt alcoholic beverages - gallons	23.61	37.98	19.51	81.10
RETAIL LICENSEES:				
Premises inspected	1,127	1,065	1,114	3,306
Premises where alcoholic beverages were gauged	694	491	645	1,830
Bottles gauged	12,809	10,898	12,603	36,310
Premises where violations were found	101	98	96	295
Violations found	168	151	122	441
Type of violations found:				
Unqualified employees	104	85	48	237
Reg. #38 sign not posted	10	2	7	19
Disposal permit necessary	5	6	4	15
Other mercantile business	2	3	10	15
Prohibited signs	1	6	2	9
Gambling devices	0	3	0	3
Improper beer taps	0	1	1	2
Probable fronts	0	1	0	1
Other violations	46	44	50	140
STATE LICENSEES:				
Premises inspected	4	12	13	29
License applications investigated	15	12	23	50
COMPLAINTS:				
Complaints assigned for investigation	502	356	466	1,324
Investigations completed	403	360	429	1,192
Investigations pending	(196)	(160)	167	167
LABORATORY:				
Analyses made	90	96	125	311
Refills (from licensed premises) - bottles	2	0	1	3
Bottles from unlicensed premises	16	26	30	72
IDENTIFICATION BUREAU:				
Criminal fingerprint identifications made	16	28	22	66
Persons fingerprinted for non-criminal purposes	372	204	189	765
Identification contacts made w/other enforcement agencies	326	191	184	701
Motor vehicle identifications via N.J.State Police teletype	8	2	2	12
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	9	14	10	33
Violations involved:				
Sale to minors	2	7	4	13
Sale during prohibited hours	3	6	3	12
Permitting hostesses on premises	3	2	0	5
Permitting bookmaking on premises	1	0	1	2
Sale to intoxicated persons	0	2	0	2
Possessing chilled beer (DL licensee)	0	1	0	1
Storage off licensed premises	0	1	0	1
Failure to afford view into premises during prohibited hours	0	1	0	1
Sale to non-members by club	0	0	1	1
Permitting females at bar (local reg.)	0	0	1	1
Cases instituted at Division	13	18	17	48
Violations involved:				
Sale to minors	3	6	7	16
Sale during prohibited hours	2	5	2	9
Fraud and front	1	4	0	5
Possessing illicit liquor	3	0	1	4
Permitting immoral activity on premises	1	1	2	4
Permitting foul language on premises	1	1	1	3
Permitting hostesses on premises	0	2	1	3
Permitting females at bar (local reg.)	0	0	3	3
Sale below minimum resale price	2	0	0	2
Mislabeling beer taps	1	0	1	2
Sale to intoxicated persons	1	0	1	2
Permitting gambling (cards) on premises	0	2	0	2
Sale outside scope of license	0	1	1	2
Act or happening	1	0	0	1
Permitting prostitutes on premises	1	0	0	1
Permitting brawls on premises	1	0	0	1
Permitting slot machines on premises	1	0	0	1
Hindering investigation	1	0	0	1

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (Continued):				
Cases instituted at division (Continued):				
Violations involved:				
Sale to non-members by club	0	1	0	1
Permitting bookmaking on premises	0	1	0	1
Employing unqualified persons	0	1	0	1
Unauthorized transportation	0	0	1	1
Permitting lottery activity (numbers)	0	0	1	1
Cases brought by municipalities on own initiative and reported to Division	8	9	8	25
Violations involved:				
Sale to minors	2	7	3	12
Sale during prohibited hours	2	1	3	6
Permitting brawls on premises	4	1	0	5
Permitting lottery activity on premises	1	1	1	3
Conducting business as a nuisance	2	0	0	2
Permitting bookmaking on premises	0	0	1	1
CANCELLATION PROCEEDINGS instituted at Division	0	0	2	2
Violations involved:				
Licensee non-resident	0	0	1	1
License issued in excess of DL limitation	0	0	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	37	29	30	96
Appeals	7	3	6	16
Disciplinary proceedings	15	14	14	43
Eligibility	7	9	3	19
Seizures	7	2	4	13
Tax revocations	0	1	2	3
Order to show cause	1	0	0	1
Application for license	0	0	1	1
PERMITS ISSUED:				
Total number of permits issued	3,868	813	1,109	5,790
Employment	385	187	162	734
Solicitors	2,807	82	72	2,961
Disposal of alcoholic beverages	156	64	156	376
Social affairs	328	295	446	1,069
Special wine	0	0	116	116
Miscellaneous	192	185	157	534

DOMINIC A. CAVICCHIA
Director.

Dated: October 8, 1953.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Anthony Sapio
T/a Trade Winds III
Main Street
P. O. Box 63, Forked River, N. J.
Application filed October 19, 1953 for Plenary Retail Transit License.

Landis Beverage Co.
South Delsea Drive & Garrison Rd.
Vineland, N. J.
Application filed October 19, 1953 for transfer of State Beverage Distributor's License SBD-30 from Boyd L. Hickman, t/a Landis Beverage Co.

Michael Meffe
915-917 West Street
Union City, New Jersey
Application filed October 21, 1953 for transfer of Limited Wholesale License WL-44 from Oscar C. Kumble.

Dominic A. Cavicchia
Director.

11. DISCIPLINARY PROCEEDINGS - UNLABELED BEER TAP - PRIOR RECORD OF PREDECESSOR IN INTEREST NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against PIONEER TAVERN, INC. 42 Marconi Avenue Woodbridge Township P. O. Iselin, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-38, issued by the Township Committee of the Township of Woodbridge.

Pioneer Tavern, Inc., by Elizabeth O. Moscarelli, President. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it allowed an unlabelled beer tap on its licensed premises, in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that on September 10, 1953, during the course of a routine inspection of defendant's licensed premises, an ABC agent found a barrel of Schaefer's beer connected to a tap which bore no name of the brand of beer to be dispensed therefrom. Rule 26 of State Regulations No. 20 provides, in effect, that no tap shall be connected with any container of malt alcoholic beverages unless such tap bears a marker "which truly indicates the name or brand of the manufacturer of such malt alcoholic beverage."

The minimum penalty imposed for a violation of this character is a suspension of the license for three days. The records of this Division show that the Commissioner suspended a license then held for the premises in question by Frank Moscarelli, t/a Pioneer Tavern, for ten days, effective January 23, 1945, for sale to a minor, and again for a period of fifteen days, effective February 24, 1947, for possession of illicit liquor. See Bulletin 648, Item 3, and Bulletin 749, Item 2. Frank Moscarelli is now manager of defendant's licensed premises. However, since the aforesaid violations are dissimilar in character and occurred more than five years ago, they will not be considered in fixing the penalty herein. Re Goldberg, Bulletin 962, Item 4. I shall suspend defendant's license for three days. One day will be remitted for the plea entered herein, leaving a net suspension of two days. Re Carnegie Tavern, Inc., Bulletin 968, Item 7.

Accordingly, it is, on this 7th day of October, 1953,

ORDERED that Plenary Retail Consumption License C-38, issued by the Township Committee of the Township of Woodbridge to Pioneer Tavern, Inc., for premises 42 Marconi Avenue, Woodbridge Township, be and the same is hereby suspended for two (2) days, commencing at 2:00 a.m. October 13, 1953, and terminating at 2:00 a.m. October 15, 1953.

DOMINIC A. CAVICCHIA Director.

12. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1952, CH. 284 SUSTAINED - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against VINCENT GENTILE T/a "VINNIES & PATTIES GROCERY" Cor. Old Tennent & Wooley Roads Marlboro Township P. O. Morganville, N. J.,

CONCLUSIONS AND ORDER

Holder of Limited Retail Distribution License DL-1, issued by the Township Committee of the Township of Marlboro.

No appearance for Vincent Gentile, Licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The licensee was ordered to show cause why his limited retail distribution license should not be suspended, revoked or cancelled and declared null and void because:

"Said license was improvidently issued in violation of P. L. 1952, ch. 284 (R. S. 33:1-12.26 et seq.) prohibiting the issue of new limited retail distribution licenses, in that it is a new limited retail distribution license issued after May 23, 1952, the effective date of said Act."

The evidence herein discloses that the Township Committee of the Township of Marlboro issued a new limited retail distribution license to Vincent Gentile, effective July 1, 1953. However, section 2 of P. L. 1952, ch. 284 (R. S. 33:1-12.27), provides:

"No new limited retail distribution license shall be issued in any municipality after this act becomes effective [May 23, 1952], except as provided in section four [R. S. 33:1-12.29] of this act."

There is nothing in section four (R. S. 33:1-12.29) of the Act which would apply to the facts of this case and, hence, it appears that the license was issued in violation of the provisions of P. L. 1952, ch. 284.

Under the facts of the instant case, I have no alternative other than to cancel the within license. Cf. Re Ohberg, Bulletin 940, Item 6.

Accordingly, it is, on this 6th day of October, 1953,

ORDERED that Limited Retail Distribution License DL-1, issued by the Township Committee of the Township of Marlboro to Vincent Gentile, t/a "Vinnies & Patties Grocery", for premises Cor. Old Tennent & Wooley Roads, Marlboro Township, be and the same is hereby cancelled and declared null and void, effective at 9:00 a.m. on October 9, 1953.

New Jersey State Library

Dominic A. Cavicchia Director.