

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2086

FEBRUARY 14, 1973

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1. DISCIPLINARY PROCEEDINGS - PROSTITUTION - FEMALE EMPLOYEES ACCEPTING DRINKS - FAILURE TO DISCLOSE PRIOR VIOLATION IN APPLICATION - PRIOR SIMILAR RECORD - AGGRAVATED SITUATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

Rose Jones)
t/a Pink Pussy Cat Lounge)
444 Van Houten Avenue)
Passaic, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License G-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.)
-----)

Morris Novick, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to three charges alleging that (1) on February 3 and 4, 1972, she permitted immoral activity upon the licensed premises, viz., the solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse, in violation of Rule 5 of State Regulation No. 20; (2) on the same dates permitted females employed by her to accept beverages at the expense of or as gifts from patrons, in violation of Rule 22 of State Regulation No. 20, and (3) in her short-form application for the current license she failed to disclose a suspension imposed for a prior violation in these licensed premises, such failure to disclose being a violation of N.J.S.A. 33:1-21.

On the date of hearing the attorney for the Division advised that the licensee had acknowledged receipt of notice of hearing, made no response thereto, nor had requested any adjournment. Further, a call was received on the morning of the hearing requesting advice and was informed as to the exact time of the hearing. Two hours beyond the hour set, no appearance by the licensee or any attorney on her behalf was noted, and the matter proceeded ex parte.

Agent DeR testified on behalf of the Division that about midnight of February 3, 1972, pursuant to a specific assignment, he entered the licensed premises in the company of Agent DeO, leaving Agents G and H outside at a point of control. The agents took seats at the bar and observed a go-go dancer performing and a bartender in attendance who was identified as "Cuz" (later identified as Constantino Gallucci).

Agent DeR observed the go-go dancer, subsequently identified as Mary ---, interrupt her performance from time to time to join patrons at the bar, some of whom bought her drinks. The agent too, at her request, brought her a drink. Thereafter the agent asked the bartender Cuz if Mary could be "moved", meaning by that slang expression if Mary would engage in sexual intercourse. Cuz did not reply but approached Mary and whispered to her. Shortly thereafter Mary joined Agents DeR and DeO and engaged in conversation with them resulting in an agreement to have sexual relations with one of the agents the following night at a price of \$20, and to provide a companion for the other agent, identifying a girl sitting at the bar, on the same terms.

Following the departure of Mary, the agents engaged in conversation with the bartender Cuz indicating that arrangements for prostitution had been made with Mary for the following night. Agent DeO asked Cuz "Is she good? Is she worth \$20?", to which the bartender responded, "She is clean, talk to a lot of patrons. I stake my life on her. I would give her \$20. Even her girlfriend. But I don't --- around with them."

On the following morning, about midnight, the agents returned to the vicinity of the licensed premises with currency, the serial numbers of which had been prerecorded for use in the investigation. Agents DeR and DeO entered the premises, observed Mary in go-go costume, seated at the bar. Eventually, after finishing her dancing and exchanging her costume for usual dress, Mary joined the agents, affirmed the previous arrangements made, and introduced the agents to her friend whom she called Ann (later identified as Edith ---). The agents had previously conversed with the bartender during the wait for Mary and asked him if another man, with whom Mary had been dancing, was going to pay her more money than the agents had agreed to pay. Cuz replied that he didn't know.

The agents and the two females departed from the licensed premises, entered the agent's car and drove away. Agent DeR gave Mary a marked \$20 bill and Agent DeO gave Ann two \$10 bills, also marked. Following prior arrangements the agents parked their car at a diner, were joined by Agents G and H who recovered the marked money paid. All agents and the females returned to the licensed premises where they were joined by the local police who took the females into custody. The premises being then closed, the agents departed.

On the following afternoon (February 4, 1972) the agents visited the home of the bartender Cuz where the licensee and her daughter were then present. The agents related the events hereinabove described.

Agent DeO corroborated the testimony of Agent DeR with the further additional testimony that, upon departing from the premises with the females, he had asked for a package of beer from the bartender who responded with "We don't have any but you won't need any anyway, she will take good care of you", to which the agent had responded, "Well, she had better for \$20."

Following the hearing and the receipt of transcript of testimony then taken, counsel for the licensee entered an appearance and promptly requested a new hearing. The matter was reopened as a continued hearing, with full opportunity afforded the licensee to cross-examine the agents and to introduce witnesses on her behalf. At the continued hearing, two months later, the Division agents were vigorously cross-examined based on the transcript of their direct testimony and, in addition, all witnesses were sequestered at the request of counsel for the licensee.

The cross examination of Agent DeR remained substantially unchanged despite some insignificant variations. Nor was there any substantial deviation in the testimony of Agents DeO and G. Additionally, Agents G and H corroborated the testimony of Agents DeO and DeR.

On behalf of the licensee, Daniel Keeler testified that he was in the licensed premises on the evenings of February 3 and 4, 1972. He observed Agents DeR and DeO enter. He was seated at the extreme end of the bar, furthest from the entrance. On the second evening he overheard the agents ask Mary if she would like a ride home but heard no mention of any immoral activity. He further heard Ouz refuse to sell the agents a bottle of scotch whiskey.

Constantino Galucci (hereinbefore referred to as Guz) testified that he was employed as a bartender at the licensed premises on the nights set forth in the charges herein, and was the sole bartender in attendance. He recalled that on February 3, 1972, the agents entered and sat at the far end of the bar. He vigorously denied engaging in any conversation with them regarding the go-go girl and her availability as a prostitute. When the agents raised the subject, he walked away without answer. The agent's attempt to purchase a bottle of whiskey from him was futile. He denied that any patron ever purchased drinks for the girls but, occasionally, when one of the female entertainers wished a drink, he would serve it and add its cost to a deduction from her salary.

The daughter of the licensee, Nancy Rivera, testified that on February 4, 1972, she was standing at the far end of the bar and saw no instances of any purchases of alcoholic beverages by patrons for consumption by the go-go girls. She corroborated the bartender's testimony with respect to the pay deduction in connection with drinks given to the go-go girls. She related that what she heard in a conversation between an agent and Mary related only to a proposed ride home, and that such conversation contained no reference to sex or improper conduct. She related that the agents attempted to purchase whiskey for off-premises consumption and the bartender's denial that he would make such sale.

Preliminarily, it should be observed that these disciplinary proceedings are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). Testimony, to be believed, must not only come from the mouths of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

Having had the opportunity to observe the demeanor of the witnesses, I find the testimony of the agents to be forthright and credible. On cross examination Agent DeR was questioned at length regarding his request to Mary to commit an illegal act. Implication arose that such persuasion was in itself an act of illegality. The short answer to that implication is that Mary need only have rejected the offer instead of openly welcoming the opportunity and setting a price for her services. It is noted further that Mary was not a patron of the establishment but was in fact an employee then engaged in the furtherance of the licensed activity.

I am fully satisfied that the bartender was aware of the purposes expressed by the agents in their preliminary statements inquiring of prostitution activities. The subsequent establishment of the marked money in the possession of the prostitute overcomes any doubt of her activities. Agent DeR testified that he bought Mary a drink, which affirmatively diminishes the general denial that patrons may buy alcoholic beverages for the female employees. It is therefore concluded that Charges 1 and 2 have been conclusively proven.

Copies of licensee's application and order of the Director entered November 23, 1970 were offered into evidence, and substantiate that Charge 3 herein has been established.

The prior record of suspension of license (Re Jones, Bulletin 1950, Item 8) indicates a then plea of non vult to a charge of permitting an immoral dance in the licensed premises on May 3, 1970.

Note is taken of Jones v. Passaic, Bulletin 1972, Item 2, by which the Director on March 24, 1971 directed the Board to renew appellant's license but adopted the Hearer's recommendation that "appellant be given one last opportunity to demonstrate her worthiness to hold a liquor license. If future conditions warrant, the Board should not hesitate to institute disciplinary proceedings or to deny appellant's application for renewal of her license for the succeeding licensing term."

It has long been established that solicitation for immoral purposes and the making of arrangements for illicit intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous practices. Re Monkey Club, Inc., Bulletin 1511, Item 1; In re 17 Club, Inc., 26 N.J. Super. 43 (1953), reprinted in Bulletin 970, Item 1.

Considering the facts and circumstances in this case, including the number and variety of these serious charges which were adequately proved by substantial evidence, and the further fact that the licensee clearly demonstrated by her actions her unworthiness to hold a license, I recommend that the only proper and justifiable penalty is revocation of her license.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

The said exceptions contend that the purpose of the agents being at the licensed premises was to "make a case" which they were required to do. There is not the slightest scintilla of evidence in the record to support such contention, or any inference thereof. Furthermore, the allegation deprecates the long established policy of this Division whose function is to assist licensees for the benefit of the public in the lawful operation of their establishments.

A further contention that the recommended penalty is too severe overlooks the admonition to the licensee in the previous reversal in this Division of the action of the municipal issuing authority denying renewal, requiring that she be given "one last opportunity" to demonstrate her worthiness to hold a license, followed by her contemptuous disregard of that admonition as reflected by her conduct in the instant matter.

Having carefully considered the entire record, including the transcripts of testimony, exhibits, the Hearer's report and the exceptions filed thereto which I find to be lacking in merit, I concur in the findings and recommendations of the Hearer and adopt his recommendations.

Accordingly, it is, on this 29th day of December 1972,

ORDERED that Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Rose Jones, t/a Pink Pussy Cat Lounge, for premises 444 Van Houten Avenue, Passaic, be and the same is hereby revoked, effective immediately.

ROBERT E. BOWER
DIRECTOR

- 2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN POOL ROOM - CLAIM FOR RETURN OF SUM DEPOSITED BY VENDING MACHINE OPERATORS RECOGNIZED - CLAIM FOR RETURN OF CIGARETTE MACHINE OF ANOTHER OWNER DENIED - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure : Case No. 12,632
 on December 11, 1971 of a quantity :
 of alcoholic beverages, various : On Hearing
 fixtures, furnishings, equipment :
 and \$118.50 in cash in a pool : CONCLUSIONS and ORDER
 room at 536 Perry Street, in the :
 City of Trenton, County of Mercer :
 and State of New Jersey. :

.....
 Brown's Novelty Company, by John Montis, Esq., claimant.
 Park Vending, Inc., claimant.
 Ralph Goldstein, t/a R & R Distributors, claimant.
 Unit Vending Corporation, claimant.
 Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 and, further, pursuant to three stipulations; one dated December 22, 1971 executed by Ralph Goldstein, trading as R & R Distributors, Morrisville, Pennsylvania; one dated December 11, 1971 executed by Raymond Bralnyski, trading as Brown's Novelty, Trenton, N.J.; and another, dated December 13, 1971 executed by Canard Rickeet, agent for and on behalf of Park Vending, Inc., Bordentown, N.J.; to determine whether 145 containers of alcoholic beverages, one bar, one record player and amplifier, one cash register, two candy vending machines, one ice cream vending machine, one cigarette vending machine, one refrigerator, fixtures, equipment, miscellaneous personal property and \$118.50 in cash, as more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on December 11, 1971 at the unlicensed premises at 536 Perry Street, Trenton, N.J. constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$250.00 in cash representing the appraised retail value of one ice cream vending machine as more completely described in Schedule "A", attached hereto, deposited under protest with the Director, which vending machine was returned to Ralph Goldstein, trading as R & R Distributors, should be forfeited or returned to him; and further, to determine whether the sum of \$1750.00, deposited, under protest, with the Director, representing the appraised retail value of five "Valley" pool tables, two Seeburg juke boxes and one Williams Rifle Game should be forfeited or returned to claimant Bralnyski; and further, to determine whether the sum of \$160.00, representing the appraised retail value of two candy vending machines, as set forth

in the aforesaid Schedule "A", deposited under protest, with the Director by Park Vending, Inc. which candy vending machines have been returned to Park Vending, Inc. should be forfeited or returned to it.

When the matter came on for hearing pursuant to the provisions of State Regulation No. 28, the above-named claimants appeared and sought recognition of their respective claims. Unit Vending Corporation also entered a claim for the return of its cigarette vending machine, seized herein.

Reports of ABC agents contained in the file admitted in evidence with the consent of the said claimants established the following:

At 11:00 P.M. on Friday, December 10, 1971, ABC Agents J, B and D met with local police officers and prepared a Division "marked" money list on which was recorded the serial numbers of currency to be used in the investigation.

At approximately 2:00 A.M. on December 11, 1971 Agents B & D entered the premises and Agent J followed shortly thereafter. Upon entering, they observed five pool tables, two candy machines, one soda machine, a cigarette machine and a juke box. They then proceeded to the rear of this room where they observed several people congregated about a closed door. There they observed a young woman (not further identified) selling tickets of admission to an adjacent room beyond the closed door. The agents purchased tickets of admission for \$1.00 each and entered the adjacent room wherein they observed some 75 patrons (male and female) and a bar in the rear of the room. The bar was being serviced by an adult male, later identified as Joseph Damico, and by an adult female, not further identified.

Agents D and B ordered and were served two "shots" of Chivas Regal Scotch Whiskey which Damico took from under the bar. They were also served two cans of Schaefer Beer from a nearby refrigerator. They, thereupon, gave Damico a "marked" five-dollar bill and received \$2.00 in change.

Agent J thereupon departed the premises, contacted members of the local police who had remained outside at a point of contact, and, in their company, returned to the premises. Damico and another male were arrested and charged with the sale and possession of alcoholic beverages without a license in violation of N.J.S.A. 33:1-50(a & b).

A seizure of the personalty on the premises were thereafter conducted and the "marked" five-dollar bill hereinabove referred to was retrieved from the cash register behind the bar.

The Division file also contained a report of chemical analysis by the Division chemist, certified by the Director, establishing that two sample bottles of alleged Schaefer beer seized herein contained alcoholic beverages, fit for beverage purposes, with alcoholic content of 4.35% by volume.

Additionally, the said report established that one 4/5 quart bottle of Chivas Regal Scotch, partially filled and one quart bottle of Ron Bacardi Rum, partially filled, seized herein, contained alcoholic beverages fit for beverage purposes, with alcoholic content of 43.3% by volume and 30.8% by volume, respectively.

The file contained the Director's certification that no alcoholic beverage license or special permit of any kind has ever been issued to Joseph P. Damico or Johnnie J. Porter or to any person at, or for the premises in question; an inventory of the seized items; affidavits of mailing of notice of hearing and publication of hearing.

John J. Porter, owner of the premises herein testified that he conducted a pool hall on the said premises on the date of the seizure. The alcoholic beverages had been on the premises for approximately two months prior to the seizure herein, and had been kept in a separate room behind a locked door, completely apart from the "pool room" enterprise. It is noted that there is no evidence that any of the vending equipment seized herein was found in this closed back room.

He concluded that all his paraphernalia and all alcoholic beverages were kept sequestered in the separate room behind closed doors and under the bar located therein.

Raymond Bralynski testified that he is owner of Brown's Novelty Co., claimant herein, and seeks the return of five pool tables, two juke boxes and one "rifle" machine, seized herein. He had placed these items on the premises about 2½ years earlier and considered the premises to be a "pool hall". He had personally visited the premises on approximately six occasions and further, his servicemen visited the premises weekly. During his visits, he was aware that there were other adjacent rooms, but since none of his equipment was placed in any of them, he was not particularly concerned with them.

At no time did he see any indication of alcoholic beverage activity in the main room and he had never been in any of the adjacent rooms. He was aware that the City of Trenton had licensed the premises herein and based on that he assumed that the proprietors were operating lawfully. He, therefore, made no further independent investigation.

He concluded that several days after the seizure and after he had removed his equipment, he contacted the office of the City Clerk of the City of Trenton who advised him that it would be permissible to return the equipment to the premises. He felt reasonably sure that no further illicit alcoholic beverage activity would be conducted after the events of December 10th and 11th.

I find that claimant had personally visited the premises on six occasions and that his agent visited the premises weekly. Additionally, I find that none of his equipment was located in the room in which the illicit activity occurred. I further find that more vigorous, frequent and complete investigation of the area in which Brown's equipment was placed would not necessarily alert him to the illicit activity taking place in the confines of the adjacent room.

Accordingly, I recommend that the claim of Raymond Bralynski, trading as Brown Novelty Co., for the return of the sum deposited with the Director, be recognized.

Isadore Kamer testified on behalf of Park Vending, Inc. which sought return of two candy machines. His company has received a request for the installation of equipment and he made one visit to the premises to discuss the arrangement. The equipment was placed approximately 1½ years prior to the seizure herein.

Apart from his observation on his one visit to the premises, he made no independent investigation of the premises or the proprietor but, rather, relied on the issuance of the license by the City of Trenton.

He concluded that the neighborhood is such that he insisted upon having a key to the premises so that his serviceman could service the equipment during early morning, daylight hours when he would be less susceptible to assault or robbery.

I find that while its inspections of the premises were not such as would appear to be required by the rule cited in Seizure Case No. 12,252, Bulletin 1919, Item 5. Such investigation would have been futile under the circumstances herein described. The fact that this claimant demanded a key to the premises to permit its agents to service during early morning daylight hours when they would be less susceptible to robbery or assault further supports the folly of too frequent visits to the establishment.

Accordingly, I recommend that the claim of Park Vending, Inc., for the return of the sum deposited with the Director, be recognized.

Ralph Goldstein testified that he is the owner of R & R Distributors and sought return of one ice cream vending machine which he had installed on the premises some 1½ years prior to the seizure. Apart from one visit to the premises he made no independent investigation of the premises or proprietor but relied solely, as did the other claimants herein, on the license issued by the City of Trenton.

With respect to the claim of Ralph Goldstein, trading as R & R Distributors, the testimony clearly establishes the absence of any investigation of the premises. Under the circumstances, as described herein, viz., the nature of the immediate neighborhood and the sequestration of the illicit activity, I questioned whether further more complete investigation should have served any useful purpose. The Rule set down in Seizure Case No. 12,252, supra pre-supposes that compliance with its demands would serve some constructive purpose. I seriously question whether more diligent investigation by the claimants herein would have brought the illicit condition to their attention.

Accordingly, I recommend that the claim of Ralph Goldstein, trading as R & R Distributors, for the return of the sum deposited by him with the Director, be recognized.

At an adjourned hearing date requested by claimant, Unit Vending Corporation, seeking return of one cigarette vending machine, William Hartpence testified on its behalf, that he is a part-time employee of the company and is semi-retired. He is called by the claimant herein at irregular, infrequent periods. He has no personal knowledge of the facts and circumstances surrounding the placement of this particular item. His only visit to the unlicensed premises herein came about as the result of a phone call from Unit Vending Corporation requesting that he investigate the seizure herein.

He emphatically concluded that he has no personal knowledge of any of the facts and circumstances surrounding the placement of this cigarette machine.

With respect to the claim of Unit Vending Corporation, it is noted that a claimant for the return of seized property must present evidence that he 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. The evidence indicates that the witness had never visited the premises prior to the date of seizure. Such testimony falls woefully short of any showing of good faith.

Accordingly, it is recommended that the claim of Unit Vending Corporation be denied.

The seized alcoholic beverages are illicit because they were intended for sale and sold without a license. N.J.S. 33:1-1(c). Such illicit alcoholic beverages, the personal property and cash seized as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-2, N.J.S.A. 33:1-66; Seizure Case No. 12,028, Bulletin 1828, Item 3; Seizure Case No. 10,985, Bulletin 1516, Item 6.

The Director has discretionary authority to return property subject to forfeiture to a claimant who established to his satisfaction that he had acted in good faith, and did not know or have any reason to believe that his property would be used in violation of the Alcoholic Beverage Law. N.J.S.A. 33:1-66 and Rule 3(c) of State Regulation No. 28.

It has been held that claims made by vending equipment operators would require a showing that such claimant made personal, periodic, meaningful inspections of the premises at reasonable hours. Further, claimant will not be permitted to rely on the presumed investigation by any other person or agency, including law enforcement agencies. See Seizure Case No. 12,252, supra.

Apart from the fact that an illicit operation existed herein, two points are particularly significant. The illicit operation took place in a separate room behind a closed and locked door in which no vending equipment claimed was located. Secondly, it stands uncontradicted that the illicit operation existed for only two months prior to the seizure.

Under these circumstances, I find that personal investigation of the premises in which the equipment was placed, namely the "pool room" would have served no useful purpose. Indeed, had the claimants visited the pool room on a daily basis, there is no indication that any illicit activity or evidence thereof could have been detected through the exercise of reasonable diligence.

It is further recommended that an Order be entered forfeiting the balance of the personal property, alcoholic beverages and cash listed in Schedule "A" herein.

Conclusions and Order

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

Having carefully considered the entire matter herein, including the transcripts of testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of December, 1972

DETERMINED and ORDERED that the claim of Ralph Goldstein, trading as R. & R. Distributors be and the same is hereby recognized; and the sum of \$250.00, deposited with the Director, under protest, by the said claimant under the aforementioned stipulation, shall be returned to him; and it is further

DETERMINED and ORDERED that the claim of Brown Novelty be and the same is hereby recognized; and the sum of \$1,750.00 deposited with the Director, under protest, by the said claimant, under the aforementioned stipulation, shall be returned to it; and it is further

DETERMINED and ORDERED that the claim of Park Vending, Inc. be and the same is hereby recognized; and the sum of \$160.00, deposited with the Director, under protest, under the aforementioned stipulation, shall be returned to it; and it is further

DETERMINED and ORDERED that the claim of Unit Vending Co. for the return of the cigarette machine owned by it, be and the same is hereby denied; and the said cigarette machine is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, to be disposed of in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the alcoholic beverages and \$118.50, as more fully set forth in Schedule "A", attached hereto constitutes unlawful property be and the same is hereby forfeited in accordance with law; and the said alcoholic beverages 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.

Robert E. Bower,
Director

SCHEDULE "A"

- 145 - containers of alcoholic beverages
- 29 - bottles of soda
- 1 - bar; 1 - record player and amplifier;
- 1 - cash register; 5 - pool tables; 2 - juke boxes;
- 1 - rifle game; 2 - candy vending machines;
- 1 - ice cream vending machine
- 1 - cigarette vending machine
- 1 - refrigerator
- Miscellaneous fixtures, furnishings and equipment
- \$118.50 - cash

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - CLAIM FOR RETURN OF ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY DENIED AND THE SAME FORFEITED.

In the Matter of the Seizure :
on June 19, 1971 of a quantity : Case No. 12,507
of alcoholic beverages, fixtures, :
furnishings, equipment and food- : On Hearing
stuffs, one television set, one :
stereo set, seven bar stools, : CONCLUSIONS and ORDER
three beer signs and \$123.24 in :
cash at a restaurant on Bay :
Avenue, East Point, Heislerville, :
in the Township of Maurice River, :
County of Cumberland and State of :
New Jersey. :

.....
Samuel Adler, Esq., by Michael Brooke Fisher, Esq., Appearing for claimant, Harry Badger.

Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 to determine whether 75 containers of alcoholic beverages, two refrigerators, one juke box, one cigarette machine, one pool table, one television set, one Magnavox stereo, miscellaneous personal property and \$123.24 cash, seized on June 19, 1971 in unlicensed premises at a restaurant in Bay Avenue, East Point, Heislerville, Maurice River Township, constitutes unlawful property and should be forfeited; and further to determine if a juke box, cigarette machine and pool table, seized as aforesaid, allegedly owned by J. Hamidy & Sons constitute unlawful property and should be forfeited.

The seizure was made by ABC agents in cooperation with New Jersey State Police officers.

At the hearing Harry Badger appeared and sought return of the alcoholic beverages, personalty other than that owned by J. Hamidy & Son, amusement machine operator, and cash.

No one appeared on behalf of J. Hamidy & Son, Amusements, alleged owners of a juke box, cigarette machine and pool table seized on the date and place aforesaid, to seek the return of the said seized property.

Reports of ABC agents and the Division file were admitted into evidence with the consent of the parties present. The Division file contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory and an analysis of the alcoholic content of the beverages seized, which established that it was in excess of $\frac{1}{2}$ of 1%. There was included a certification by the Director that no license or permit for the sale of alcoholic beverages was ever issued for said premises or to Harry Badger or Edward Harten.

The reports of the ABC agents disclosed the following: On June 19, 1971 ABC Agent W gained access to premises, joined numerous persons there drinking, ordered and was served several drinks for himself and other patrons, and made payment with "marked" money. Thereafter, other ABC agents, assisted by members of the New Jersey State Police conducted a raid on the premises and seized the alcoholic beverages and all of the furnishings and goods in the premises. Premises were managed by claimant, Harry Badger, who asserted his ownership of all items but the alcoholic beverages, which were served by Edward Harten.

Harry Badger, appearing in support of his claim, testified that: While he did not deny the presence and consumption of alcoholic beverages in the premises, the dispensing of them was by the East Point Sportsmen's Club, his tenant. He denied knowledge of any sales of beverages, but admitted that this seizure was his third such experience.

Lois Mary Goehle appeared on behalf of Harry Badger and testified that the gathering of persons in the premises on the night of the raid was of persons attempting to re-organize a sportsmen's club, but the club was not yet in being. She believed the group attempting to re-organize the club paid for all alcoholic beverages.

James W. Jackson testified on behalf of Badger and the Sportsmen's Club and corroborated Badger's statement concerning their club relationship. He alleged that he had purchased the alcoholic beverages for the club's use that evening. On cross-examination, Jackson admitted that this incident involving illicit sales of alcoholic beverages was his third such experience, within the past four years.

The seized alcoholic beverages are illicit because they were intended for sale without a license in violation of N.J.S.A. 33:1-1(i). Such illicit alcoholic beverages and the personal property with cash seized constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-2, 66.

Claimant Badger attempts to obtain return of his property seized on the patently contrived story that the illicit sales of alcoholic beverages were made by a "club", not him. His presence on the premises when such sales were made coupled with his two prior identical violations, render such claim ludicrous. The vagueness of his supporting witnesses as to such "club" adds no

credence to his claim.

Badger further asserted that far more money and furnishings were taken from his premises than were listed or accounted for in the inventory. This assertion is not borne out by the facts, which reveal that all of the cash was counted by the agents in Badger's presence and all of the personalty listed was removed. The seizure was mandated by N.J.S.A. 33:1-66.

Considering all of the evidence and the circumstances, it is recommended that the claim of Harry Badger be rejected, and that the alcoholic beverages, personal property and cash, listed in Schedule "A" be forfeited.

Conclusions and Order

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

Having carefully considered the entire matter herein, including the transcript of testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of December, 1972

DETERMINED and ORDERED that the claim of Harry Badger for the return of the personal property and the alcoholic beverages be and the same is hereby denied; and it is further

DETERMINED and ORDERED that all of the personal property set forth in Schedule "A", including the alcoholic beverages and the cash in the sum of \$123.24 constitute unlawful property, and the same be and are hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the said cash shall be accounted for in accordance with law; and the said personal property and the alcoholic beverages shall be retained for the use of hospitals and State, county or municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Robert E. Bower,
Director

SCHEDULE "A"

75 - containers of alcoholic beverages
 11 - containers of soda
 2 - refrigerators; 1 - juke box;
 1 - cigarette machine; 1 - pool table;
 1 - television set; 1 - Magnavox Stereo;
 7 - bar stools; 3 - beer signs;
 Miscellaneous furniture
 Assorted crackers and cookies
 \$123.24 - cash

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB - CLAIM FOR RETURN OF SUM DEPOSITED BY OWNER OF VENDING MACHINES DENIED - ABSENT GOOD FAITH - ALCOHOLIC BEVERAGES, CASH, VENDING MACHINES AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of Seizure on : Case No. 12,786
 June 17, 1972 of a quantity of :
 alcoholic beverages, fixtures, : On Hearing
 furnishings, equipment and \$7.00 in :
 cash at Pacesetters Motorcycle Club, : CONCLUSIONS and ORDER
 at 112 Park Street in the City of :
 Orange, County of Essex and State :
 of New Jersey. :
:
 Ernest Krauter, Appearing for Claimant, Acme Vending Co., Inc.
 Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 and further pursuant to a stipulation dated June 19, 1972 signed by Robert Ellington on behalf of Pacesetters Motorcycle Club to determine whether 91 containers of alcoholic beverages, miscellaneous property and \$7.00 cash as set forth in an inventory herein and marked Schedule "A", seized on June 17, 1972 at the unlicensed premises of the Pacesetters Motorcycle Club, 112 Park Street, Orange, constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$100 deposited with the Director, under protest, pursuant to a stipulation by Robert Ellington as agent for Pacesetters Motorcycle Club, representing the appraised retail value of the said miscellaneous property other than the pool table and juke box, which were returned to it, constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$300 deposited, under protest, with the Director pursuant to a stipulation by Ernest Krauter t/a Acme Vending Company, Inc. representing the appraised value of a pool table and juke box should be forfeited or returned to it.

The seizure was made by ABC agents in cooperation with the officers of the Orange Police Department.

At the hearing Ernest Krauter appeared on behalf of Acme Vending Co., Inc. and sought return of the \$300.00 cash deposit.

No one appeared on behalf of claimant, Pacesetters Motorcycle Club.

Reports of ABC agents and the Division file were admitted into evidence with the consent of the said claimant; the Division file contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory and analysis of the alcoholic content of the beverages seized which analysis showed an alcoholic content in excess of one-half of one percent. There was included a certification by the Director that no license or permit for the sale of alcoholic beverages was ever issued for said premises, to Pacesetters Motorcycle Club, Robert Ellington, or to any other person at said premises.

The reports of the ABC agents disclosed the following: ABC Agents entered the unlicensed premises on June 17, 1972 armed with "marked" money and proceeded to order and receive a can of ale for which he paid 50¢ and received change. Other agents entered, retrieved the "marked" money and seized the personal property therein.

In furtherance of the claim made by vending equipment operators the Director has recently promulgated a policy imposing on such claimants the obligation of making personal, periodic and meaningful inspections and they may not rely on the presumed inspection of other persons or agencies, including those of law enforcement. See Seizure Case No. 12,252, Bulletin 1919 Item 5.

It is apparent from the agents' report and the testimony of the claimant that the unlicensed premises contained a supply of alcoholic beverages readily available to members and public alike. There was sufficient evidence of bar activity on the premises as should have given to the claimant, Acme Vending Co., Inc. sufficient warning of illegal beverage traffic. Ordinary observation should have warned the claimant that its equipment was in danger of seizure. The claimant, however, took no such warning.

The seized alcoholic beverages are illicit because they were intended for sale without a license in violation of N.J.S.A. 33:1-1(i). Such illicit alcoholic beverages and the personal property with cash seized constitute unlawful property and are subject to forfeiture. N.J.S.A.33:1-2,66.

Ernest Krauter appearing on behalf of Acme Vending Co., Inc. testified that: An investigation was made of application for installation of a pool table to the local police department, which application, first denied, was later approved. Claimant visited premises on Saturday mornings only and never observed patrons drinking or alcoholic beverages present. He admitted a makeshift bar lay against the left wall with a sink behind it. The premises also contained a back room.

Considering all of the evidence and the circumstances, it is recommended that the claim of Ernest Krauter on behalf of Acme Vending Co., Inc. for return of \$300.00 deposited under the aforesaid stipulation be rejected and the said sum of \$300.00 as deposited be forfeited; and the sum of \$100.00 deposited by Pacesetters Motorcycle Club under the aforementioned stipulation be forfeited; and that the alcoholic beverages and cash seized herein be forfeited.

Conclusions and Order

Written exceptions to the Hearer's report were filed on behalf of claimant, Acme Vending Co., Inc. pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, including the transcript of the testimony, the exhibits, the Hearer's Report and the exceptions which I find lacking in merit, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 26th day of December, 1972

DETERMINED and ORDERED that the claim of the Acme Vending Co., Inc. be and the same is hereby denied and the sum of \$300.00 deposited on behalf of the said claimant pursuant to the aforesaid Stipulation, be and the same is hereby forfeited in accordance with N.J.S.A. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the sum of \$100.00 deposited on behalf of the Pace Setters Motorcycle Club pursuant to the aforesaid Stipulation be and the same is hereby forfeited in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the personal property, \$7.00 in cash and the alcoholic beverages, as set forth on Schedule "A", attached hereto, constitute unlawful property and the same be and are hereby forfeited in accordance with the provisions of N.J.S.A. 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.

Robert E. Bower
Director

SCHEDULE "A"

- 91 - containers of alcoholic beverages
- 1 - juke box; 1 - pool table; 2 - tables;
- 3 - chairs; 1 - bar; 1 - television set;
- 1 - trophy case; 1 - radio; 1 - fan.
- \$7.00 - cash

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against
 Tomlo, Inc.,
 t/a LBJ Bar
 617-619 South 11th Street
 Newark, N.J.,) SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-390, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

-----)
 Stern & Weiss, Esqs., by Morris J. Stern, Esq., Attorneys for Licensee

BY THE DIRECTOR:

On November 3, 1972 Conclusions and Order were entered herein suspending the subject license for forty days upon licensee's guilty plea to two charges as set forth therein. Re Tomlo, Inc., Bulletin 2074, Item 1(T). However, the effective dates of the said suspension were deferred until further order because the licensee was then under suspension for prior offenses under an order dated October 4, 1972. By said order the license was suspended for the balance of the current licensing period based on the finding of an undisclosed interest in the application of the subject licensee, but with leave to apply for the lifting of such suspension on correction of the unlawful situation after twenty-five days from the commencement of the said suspension. Re Tomlo, Inc., Bulletin Item .

By order dated December 27, 1972, the said suspension was terminated, effective immediately upon the submission by the licensee of a verified petition establishing that the unlawful situation had been corrected. Re Tomlo, Inc., Bulletin Item . Thus, the deferred suspension may now be imposed.

Accordingly, it is, on this 5th day of January 1973,

ORDERED that Plenary Retail Consumption License C-390, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Tomlo, Inc., t/a LBJ Bar, for premises 617-619 South 11th Street, Newark, be and the same is hereby suspended for forty (40) days, commencing 2:00 a.m. on Thursday, January 18, 1973 and terminating 2:00 a.m. on Tuesday, February 27, 1973.

ROBERT E. BOWER
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary Proceedings against)

Mayfair Wines & Liquor (Corp.))
1014 South Orange Avenue)
Newark, N.J.,)

O R D E R

Holder of Plenary Retail Distribution License D-35, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Licensee, Pro se

BY THE DIRECTOR:

On November 27, 1972, Conclusions and Order were entered by the local issuing authority suspending the subject license for ten days, commencing Monday, January 15, 1973 and terminating Thursday, January 25, 1973, after the licensee was found guilty in disciplinary proceedings of a charge alleging that it sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Licensee has now made application to the Director for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Accordingly, it is, on this 11th day of January 1973,

ORDERED that the suspension heretofore imposed by the local issuing authority upon Plenary Retail Distribution License D-35, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Mayfair Wines & Liquor (Corp.) for premises 1014 South Orange Avenue, Newark, commencing on Monday, January 15, 1973 and terminating on Thursday, January 25, 1973, be and the same is hereby stayed pending the consideration of an application for the imposition of a fine in lieu of suspension and until entry of a further order herein.

Robert E. Bower
Robert E. Bower
Director