

September 30, 1954

BULLETIN 1033

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(1) The first part of the document is a list of names and addresses of the members of the committee.

1. Mr. J. H. Smith, 123 Main St., New York, N. Y.

2. Mr. A. B. Jones, 456 Broadway, New York, N. Y.

3. Mr. C. D. Brown, 789 Park Ave., New York, N. Y.

4. Mr. E. F. Green, 1010 Fifth Ave., New York, N. Y.

5. Mr. G. H. White, 1212 Madison Ave., New York, N. Y.

6. Mr. I. J. Black, 1414 E. 86th St., New York, N. Y.

7. Mr. K. L. Gray, 1616 E. 86th St., New York, N. Y.

8. Mr. M. N. Blue, 1818 E. 86th St., New York, N. Y.

9. Mr. O. P. Red, 2020 E. 86th St., New York, N. Y.

10. Mr. Q. R. Purple, 2222 E. 86th St., New York, N. Y.

11. Mr. S. T. Yellow, 2424 E. 86th St., New York, N. Y.

12. Mr. U. V. Green, 2626 E. 86th St., New York, N. Y.

13. Mr. W. X. Blue, 2828 E. 86th St., New York, N. Y.

14. Mr. Y. Z. Red, 3030 E. 86th St., New York, N. Y.

15. Mr. A. B. Purple, 3232 E. 86th St., New York, N. Y.

16. Mr. C. D. Yellow, 3434 E. 86th St., New York, N. Y.

17. Mr. E. F. Green, 3636 E. 86th St., New York, N. Y.

18. Mr. G. H. Blue, 3838 E. 86th St., New York, N. Y.

19. Mr. I. J. Red, 4040 E. 86th St., New York, N. Y.

20. Mr. K. L. Purple, 4242 E. 86th St., New York, N. Y.

21. Mr. M. N. Yellow, 4444 E. 86th St., New York, N. Y.

22. Mr. O. P. Green, 4646 E. 86th St., New York, N. Y.

23. Mr. Q. R. Blue, 4848 E. 86th St., New York, N. Y.

24. Mr. S. T. Red, 5050 E. 86th St., New York, N. Y.

25. Mr. U. V. Purple, 5252 E. 86th St., New York, N. Y.

26. Mr. W. X. Yellow, 5454 E. 86th St., New York, N. Y.

27. Mr. Y. Z. Green, 5656 E. 86th St., New York, N. Y.

28. Mr. A. B. Blue, 5858 E. 86th St., New York, N. Y.

29. Mr. C. D. Red, 6060 E. 86th St., New York, N. Y.

30. Mr. E. F. Purple, 6262 E. 86th St., New York, N. Y.

31. Mr. G. H. Yellow, 6464 E. 86th St., New York, N. Y.

32. Mr. I. J. Green, 6666 E. 86th St., New York, N. Y.

33. Mr. K. L. Blue, 6868 E. 86th St., New York, N. Y.

34. Mr. M. N. Red, 7070 E. 86th St., New York, N. Y.

35. Mr. O. P. Purple, 7272 E. 86th St., New York, N. Y.

36. Mr. Q. R. Yellow, 7474 E. 86th St., New York, N. Y.

37. Mr. S. T. Green, 7676 E. 86th St., New York, N. Y.

38. Mr. U. V. Blue, 7878 E. 86th St., New York, N. Y.

39. Mr. W. X. Red, 8080 E. 86th St., New York, N. Y.

40. Mr. Y. Z. Purple, 8282 E. 86th St., New York, N. Y.

41. Mr. A. B. Yellow, 8484 E. 86th St., New York, N. Y.

42. Mr. C. D. Green, 8686 E. 86th St., New York, N. Y.

43. Mr. E. F. Blue, 8888 E. 86th St., New York, N. Y.

44. Mr. G. H. Red, 9090 E. 86th St., New York, N. Y.

45. Mr. I. J. Purple, 9292 E. 86th St., New York, N. Y.

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

BULLETIN 1033

SEPTEMBER 30, 1954.

1. APPELLATE DECISIONS - HABA REALTY CORP. v. LONG BRANCH AND
PAT PACE'S, A CORPORATION.

HABA REALTY CORP.,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF)	
THE CITY OF LONG BRANCH, and)	
PAT PACE'S, a Corporation,)	
t/a PAT PACE'S,)	
Respondents.)	

Sidney Alpern, Esq., Attorney for Appellant.
Edward F. Juska, Esq., by Clarkson S. Fisher, Esq., Attorney for
Respondent-Municipality.
James F. McGovern, Jr., Esq., Attorney for Respondent-Licensee.

BY THE DIRECTOR:

This appeal is from respondent Board's failure to comply with appellant's request to proceed to revocation of respondent licensee's plenary retail consumption license. Appellant alleges that the license should be revoked for the reason that a place-to-place transfer of the 1952-1953 license (then held by Pat Pace, individually) and subsequent person-to-person transfer to respondent corporation are invalid as granted by respondent Board in circumvention of the State Limitation Law (P. L. 1947, c. 94; R. S. 33:1-12.13, et seq.) and of the numerical limitation ordinance of the City of Long Branch.

The pertinent provisions of the State Limitation Law (which law became effective May 15, 1947) are these:

R. S. 33:1-12.14. "Except as otherwise provided in this act, no new plenary retail consumption...license shall be issued in a municipality unless and until the...number of such licenses existing in the municipality is fewer than one for each one thousand of its population as shown by the last then preceding Federal census...."

R. S. 33:1-12.20. "Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms...."

The pertinent provisions of the City's ordinance (adopted May 16, 1940) read:

"Section 1(a). No Plenary Retail Consumption License shall be granted hereafter unless and until the number of such licenses issued and outstanding shall be less than fifty (50) except as hereinafter set forth...."

"Section 5. The provisions of this ordinance shall not apply to bona fide hotels having fifty rooms or more, nor shall it apply to applicants for licenses on...premises fronting on Ocean Avenue, throughout the entire length of said Avenue from the north to the south boundary line of the City...."

On July 1, 1947 respondent Board issued a new plenary retail consumption license to West End Plaza, Inc., for premises at 126 Brighton Avenue -- a hotel with 53 sleeping rooms. The license was issued pursuant to the "hotel" exception in R. S. 33:1-12.20 and in Section 5 of the 1940 ordinance. In view of the number of plenary retail consumption licenses existing in Long Branch (and the City's 1940 Federal census population) the new license was lawfully issuable only under the "hotel" exception in the statute and in the ordinance.

The license, after 1948-1949 renewal to West End Plaza, Inc., was transferred on September 22, 1948 to Pat Pace.

After renewal to Pat Pace for 1949-1950, 1950-1951, 1951-1952 and 1952-1953, the license was transferred, effective September 4, 1952, from the hotel premises at 126 Brighton Avenue to non-hotel premises at 611 Ocean Avenue. No appeal (R. S. 33:1-26) was taken from the granting of this transfer. (If the new premises fronted on Ocean Avenue, it would seem clear that the transfer came within the purview of the "Ocean Avenue" exception in Section 5 of the 1940 ordinance.)

On January 2, 1953 the license was transferred from Pat Pace, individually, to Pat Pace's, a Corporation.

In addition to denying that the place-to-place transfer of the 1952-1953 license was in contravention of the statute or ordinance, respondents contend that the appeal herein is out of time under the "thirty days" provision in R. S. 33:1-26 and, further, that no jurisdiction or authorization for this appeal can be found in R. S. 33:1-31. It would seem clear that R. S. 33:1-31 does not support the instant proceedings, and, as hereinabove noted, no appeal was taken (R. S. 33:1-26) from the place-to-place transfer of the 1952-1953 license. However, appellant's attorney stated in oral argument: "...this is not an attack on the actual transfer of the license. This is purely an application to have the court rule on the effect or the circumvention of the statute, limiting statute, which was enacted by the legislature and is Limiting Statute of 1947... The mere fact that no appeal was taken from the transfer would not validate or vitalize an absolutely illegal transfer, and it was incumbent upon the issuing authority to determine whether or not it could properly and legally recognize the application. That is the basis for it." Respondent's attorney stated, further: "...prior to the institution of these proceedings, action was instituted in the Superior Court of New Jersey for the purpose of revoking this license and at that time the respondent here joined with the Attorney General's Office in urging that the Director of this Department be the one to pass upon this issue because it was novel, and for that reason the court, without prejudice, dismissed that action so that these very proceedings could be inaugurated and a determination on the merits be had before this body."

Under the circumstances the appropriate course was for the State Director to accept jurisdiction of the appeal seeking cancellation of the license and to consider and determine the case on the legal merits.

The single question for determination is whether or not the transfer to non-hotel premises of a license issued pursuant to the State Limitation Law's "hotel" exception was in violation of the State Limitation Law.

A Memorandum of Law on behalf of appellant cites numerous court decisions enunciating well-established principles of statutory construction to the effect that when such construction is in order the purpose is to give effect, if possible, to the legislative intent

with consideration not to the language alone but also to the evil to be remedied and the object to be attained. Equally well established, however, is the principle that neither the courts nor administrative officers may supply omissions or enlarge the scope of a statute. A statute's doubtful or obscure phrases may be interpreted so as to give effect, so far as the meaning of the words fairly permits, to the presumed intention of the legislature and to carry out the apparent general policy expressed; but neither administrative officers nor courts may by construction cure an omission however desirable the supplying of the omitted provision may be, and it is immaterial that the omission may have been an oversight on the part of the legislature and that the statute would doubtless have been drawn differently if, the particular development having been foreseen, the legislature's attention had been called to the oversight.

I believe that the place-to-place transfer here in question should not have been granted but I believe, also, that its granting was not prohibited by the State Limitation Law which by its terms is restrictive not of transfers but of new licenses (R.S. 33:1-12.13; R.S. 33:1-12.14) and which in its "hotel" exception (R.S. 33:1-12.20) fails to prohibit transfer to non-hotel premises of a new license issued pursuant to that "hotel" exception. I am convinced that, on the face of the entire Act, I am without authority to cure the omission and, thus, I am constrained to find that the transfer was not in violation of the Act. Prompt steps will now be taken toward introduction of appropriate amendatory legislation to prevent a further taking advantage of this loophole in our present limiting statute.

The cases of Passarella v. Board of Commissioners of Atlantic City, 1 N. J. Super. 313, and Brush v. Hock, 137 N. J. L. 257 (cited on behalf of appellant) are not applicable to the facts and issue in the instant appeal.

(Query: Even assuming there had been lack of jurisdiction and legal impropriety in the granting of the 1952-1953 transfer, would the license properly and fairly be cancellable, under all the circumstances, at this late date? Cf. Re Board of Commissioners of West New York, Bulletin 166, Item 9.)

Accordingly, it is, on this 16th day of September, 1954,

ORDERED that the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against)

CHARITY POWERS)
T/a ESSEX CAFE)
19 South Essex Street)
Dover, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Board of Aldermen of the Town of Dover.)

Hilda H. Less, Attorney 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 she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at her licensed premises to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Saturday, June 5, 1954, at about 11:30 p.m., Robert ---, age 19, left six other youths in a car parked near defendant's tavern and alone entered the licensed premises, where he purchased two containers of beer, which he thereafter shared with his waiting companions. Later Robert escorted the police to defendant's tavern which he identified as the place where he had been served and identified therein the bartender as the person who had served him.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days (the minimum penalty for a violation of this kind involving a 19-year-old minor). Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Highlander Hotel, Inc., Bulletin 985, Item 10.

Accordingly, it is, on this 10th day of September, 1954,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Aldermen of the Town of Dover to Charity Powers, t/a Essex Cafe, for premises 19 South Essex Street, Dover, be and the same is hereby suspended for five (5) days, commencing at 1:00 a.m. September 20, 1954, and terminating at 1:00 a.m. September 25, 1954.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against)

GEORGE FANOK)
T/a GEORGE'S TAVERN)
Westerly corner of S/H Route #10 &)
So. Jefferson Rd.)
Hanover Township)
P. O. Whippany R.D., N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Hanover.)

-----))

George Fanok, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at his licensed premises to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on June 5, 1954, William ---, age 20, with four youthful companions drove to the vicinity of defendant's licensed premises and parked his car near the entrance to the tavern. William then entered the premises alone and ordered a case of beer. The female tending bar inquired as to his age and when William --- showed her a Selective Service Registration Certificate, the property of an adult, she gave him the case of beer (24 cans), for which she accepted \$4.20. William --- returned to his companions and drove them to a more secluded spot where all consumed the beverage. Later William --- pointed out to ABC agents the tavern wherein he had been served and identified therein Mrs. Fanok, wife of the licensee, as the person who had served him.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Kelly, Bulletin 981, Item 5.

Accordingly, it is, on this 10th day of September, 1954,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Hanover to George Fanok, t/a George's Tavern, for premises on Westerly corner of S/H Route #10 & So. Jefferson Rd., Hanover Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. September 20, 1954, and terminating at 2:00 a.m. September 25, 1954.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE IN SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against)

PHILLIP C. SCHNEIDER, MAXWELL SCHNEIDER & ISADORE SCHNEIDER T/a GOLD RAY DRUGS 342 Jackson Avenue Jersey City 4, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Distribution License D-106 (for the 1953-54 and 1954-55 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Jessie Murphy, Attorney for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to the following amended charge:

"On February 6, 1954 you sold at retail four quart bottles of Golden Wedding Blended Whiskey, an alcoholic beverage, at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

The evidence herein discloses that an ABC agent entered defendants' licensed premises on the evening of February 5, 1954, and spoke to Phillip C. Schneider about various brands of rye whiskey. At the hearing this agent testified that, as he was about to leave, he told Mr. Schneider that "I might need about four bottles, but not tonight" and that Mr. Schneider replied, "If you buy four bottles I would give you a good break." At the hearing Phillip C. Schneider testified that on the evening of February 5, 1954, this agent told him that "he is running something and he would like a quantity of liquor at a break" and that he told the agent "to look me up when he is ready to run in."

The evidence further discloses that the same agent returned to defendants' licensed premises on the evening of February 6, 1954, and that Albert Papawitz, a clerk, waited on him. The agent testified that he asked the clerk for "four quarts of Golden Wedding;" that the clerk asked Mr. Schneider how much he should charge; that Mr. Schneider replied "\$4.75 a bottle;" that the clerk took three quart bottles of Golden Wedding Whiskey from a shelf on which "the price was 4.99;" that the clerk obtained a similar bottle elsewhere on the premises, put the four bottles in a bag and accepted from the agent \$19.00, which amount he rang up on the cash register. The agent testified that he started walking out of the store but that, when he reached the door, he returned to the counter when he and another ABC agent, who had been standing near the cash register, identified themselves to the licensee and the clerk. The other agent testified that he had seen the clerk place the bottles in the bag and ring up \$19.00 on the cash register.

On behalf of defendants Mr. Schneider denied that he had told the clerk to charge \$4.75 a bottle. However, he stated that he had observed in the list of New Jersey Minimum Consumer Resale Prices that the price of two 1/2 gallons would be \$17.96 and testified that "on that terms, we gave him a gallon of whiskey for \$19, which we thought was legal -- which I thought was legal at that time."

In the list of New Jersey Minimum Consumer Resale Prices then in effect the minimum prices of the item in question are listed as follows:

"1/2 gallons - 8.98
Quarts - 4.99"

As early as August 7, 1939, it was ruled by Commissioner Burnett that "it is not permissible to sell two pints for the price of a quart under any circumstances, if it brings the unit price of a pint below the minimum established by Fair Trade." Re Schwartz, Bulletin 341, Item 7. It has also been held that a licensee may not sell two 1/2 gallon containers for the price fixed for a one-gallon container. Re Caldwell Inc., Bulletin 515, Item 4. In the present case the minimum price of four quarts of the item in question was \$19.96 and, hence, the sale of the items for \$19.00 constituted a violation of Rule 5 of State Regulations No. 30. I find defendants guilty as charged.

The license of defendants, who were then trading as Sindors Drug Store at 344-1/2 Jackson Avenue, Jersey City, was suspended by the Commissioner for five days, effective January 19, 1948, after they had pleaded non vult to a similar charge. See Bulletin 790, Item 13. The minimum suspension imposed for a violation of this kind is ten days. Ordinarily the suspension is doubled for a second similar violation. However, since the prior similar violation occurred more than five years ago, I shall suspend defendants' license for fifteen days. Re Mack Drug Co., Inc., Bulletin 1020, Item 8.

Accordingly, it is, on this 10th day of September, 1954,

ORDERED that Plenary Retail Distribution License D-106 for the 1954-55 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Phillip C. Schneider, Maxwell Schneider & Isadore Schneider, t/a Gold Ray Drugs, for premises 342 Jackson Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. September 20, 1954, and terminating at 9:00 a.m. October 5, 1954.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - ALLEGED SALE TO MINORS - ALLEGED HOSTESS - ALLEGED UNQUALIFIED EMPLOYEE - ALLEGED NUISANCE - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)

NEW GLASS BAR, INC.)
197 Paterson Street)
Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-176 for the 1953-54 and 1954-55 licensing years, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

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

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On divers days between December 16, 1953 and January 12, 1954, you allowed, permitted and suffered Janet Lois ---, Anne --- and Louise ---, females employed on your licensed premises to accept beverages at the expense of and as gifts from customers and patrons; in violation of Rule 22 of State Regulations No. 20.

"2. On December 16, 24, and 31, 1953, January 1, 6 and 12, 1954 and on divers other days between December 16, 1953 and January 12, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to Janet Lois ---, Louise --- and Lorraine B. C. ---, 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.

"3. On divers days between December 16, 1953 and January 12, 1954, you knowingly employed on your licensed premises Janet Lois --- and Louise ---, persons under the age of twenty-one (21) years who had not obtained any requisite employment permits from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 3 of State Regulations No. 13.

"4. From about December 16, 1953 to about January 12, 1954, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in that you induced and permitted unescorted females to frequent and loiter in your licensed premises and there consume numerous drinks at the expense of various male patrons; in violation of Rule 5 of State Regulations No. 20."

At the hearing herein, one of the minors, Janet ---, 19 years of age, testified that, during November 1953, she and two other females, Louise ---, who was then 17 years of age, and her adult sister Anne met Frank Brigliadora, one of the principal stockholders in defendant-licensee corporation who transported them in his automobile to defendant's licensed premises; that, despite the fact that Brigliadora saw her automobile driver's license, which indicated her to be a minor, he served all three of them alcoholic beverages; that they returned to the licensed premises several weeks later (December 16 or 17, 1953) at which time Brigliadora offered to pay each of them \$20.00 to \$25.00 a week, if they would frequent the licensed premises and sit and drink with male patrons; that, when she expressed concern lest she feel the effects of the alcoholic beverages she might consume, he showed her a bottle labeled Harwood's Blended Canadian Whisky the contents of which tasted like water; that, when she asked if it was water, he said, "Don't worry"; that, when she told him she was under 21 years of age, he said it was all right if she was 18 years of age; that she and the other two females discussed Brigliadora's offer and ultimately went to the licensed premises each night for three or four weeks, until January 14, 1954; that they would sit and drink with men; that she was served by Brigliadora and by Sam Moskowitz, another of the principal stockholders of defendant-licensee corporation; that she was paid \$25.00 by Brigliadora for the first week and \$20.00 for the second week; that she saw the other two females there drinking and that she also saw the other minor Lorraine --- consume drinks of alcoholic beverages in the licensed premises.

The other minors denied that they were ever served or that they ever consumed alcoholic beverages at defendant's licensed premises and the minor Louise and her sister Anne denied all of the rest

of the matters and things related by Janet in her testimony, as hereinabove set forth. Lorraine and Anne, who previously had given written, sworn statements generally corroborative of the testimony given by Janet, repudiated those statements. Having been called as witnesses for the prosecution their statements were received in evidence to neutralize their testimony. Louise and Anne testified that Janet's testimony was false.

The agent who had taken the sworn statements testified that they represented the voluntary statements of the witnesses as given by them.

Both Brigliadora and Moskowitz denied the allegations contained in the charges and specifically denied having served alcoholic beverages to the minors or having employed or paid any of the females to sit and drink with men.

These are serious charges which, if proved, would demand a most severe penalty. I have carefully considered all of the evidence and am much impressed with the testimony of Janet, particularly in view of the fact that many of the matters and things related by her are also related in the previous sworn statements of two of the other witnesses, which they now repudiate. Their present denials and attempted explanations, i.e., that they signed the statements so that they could be released or because they did not think they were then under oath, have a hollow ring. Nevertheless, I must take into account the fact that these witnesses were produced on behalf of the prosecution which, incidentally, undoubtedly expected (and reasonably so) that their testimony under oath would be similar to the contents of their sworn statements. In view of the fact that they have told diametrically opposite stories, both under oath, it would appear that the matter should be called to the attention of the proper authorities for further investigation and appropriate action.

However, since the prosecution's own witnesses flatly contradict the testimony of the prosecution's principal witness and since defendant's witnesses also vigorously deny that the alleged incidents ever occurred I feel that I must find, however reluctantly, that defendant's guilt has not been established by the requisite preponderance of the evidence.

I find defendant not guilty on all charges.

Accordingly, it is, on this 10th day of September, 1954,

ORDERED that the charges herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
Director.

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - STOCK OF ALCOHOLIC BEVERAGES ORDERED FORFEITED - BALANCE OF SEIZED PROPERTY RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on May 21, 1954 of a quantity of alcoholic beverages and various goods and chattels and restaurant equipment, at the "Ramona Restaurant", located at 81 Broad Street, in the City of Perth Amboy, County of Middlesex and State of New Jersey.

Case No. 8614

ON HEARING CONCLUSIONS AND ORDER

Henry Golenbock, Esq., Attorney for Francisco Perez. Plainfield Trust Company, by Thomas J. Bader, Assistant Collection Manager.

G. M. Amusement Co., by Herbert A. Ruetsch.

Samuel S. Cohen, Esq., Attorney for Edward Pinto.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, and various furnishings, fixtures, and equipment, described in a schedule attached hereto, seized on May 21, 1954 at the "Ramona Restaurant" located at 81 Broad Street, Perth Amboy, N. J. constitute unlawful property and should be forfeited.

ABC agents were at the above restaurant on May 19, 1954 to investigate a complaint that alcoholic beverages were being sold there without a license. One of the agents entered the restaurant, ordered food, and thereafter purchased cans of beer for himself and other persons present in the restaurant. The agent also observed other persons purchasing cans of beer. Another agent was present part of the time, and observed sales of cans of beer.

The agents left the restaurant without disclosing their identity, and returned on May 21, 1954. On that occasion the agents again purchased cans of beer, and observed similar sales to other persons present. Other agents then entered the restaurant, and disclosed their identity.

Ramona Perez and her husband, Hipolito F. Perez, were the proprietors of the restaurant and Francis Perez was one of the persons who sold the beer there. None of these persons held a license authorizing any of them to sell alcoholic beverages, and the restaurant was not licensed for the purpose.

The agents seized a number of cans of beer which were in a Coca Cola cooler in the restaurant, as well as the fixtures, furnishings, and equipment of the restaurant, and \$3.02 in cash. They observed a garbage can containing a large number of empty beer cans in the rear of the counter.

When the matter came on for hearing pursuant to R. S. 33:1-66, the following appearances were entered: Henry Golenbock, attorney for Hipolito F. (apparently also known as Francisco) Perez, merely as a formality and without any specific claim; Thomas J. Bader for the Plainfield Trust Company, which sought return of a Fada television set; Herbert A. Ruetsch for G. M. Amusement Co. which sought return of a music machine; and Samuel S. Cohen, attorney for Edward Pinto, who sought return of all of the seized property, except the beer, soda, and \$3.02, allegedly as the purchaser thereof at an execution sale under a judgment obtained in a District Court.

None of the aforementioned persons disputed the accuracy of the above mentioned facts as disclosed by reports of ABC agents and other documents in the file.

The evidence presented justifies the conclusion that the seized beer was intended for unlawful sale and hence is illicit. R. S. 33:1-1(i). Such illicit beer and all personal property seized therewith in the restaurant, including the cash, constitutes unlawful property and is subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

I am authorized to return property subject to forfeiture to a person who has established to my satisfaction that he 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. R. S. 33:1-66(f).

Plainfield Trust Company has presented a conditional sales contract assigned to the bank covering the sale on March 3, 1953 to Francisco Perez of the Fada television set, identified by model and serial number as the set seized by the Division. The present balance due thereon is \$153.48.

Prior to extending credit to Perez, the bank received information from him that he resided at an address in Carteret, N. J. and was about to engage in the restaurant business there. He furnished the name of his previous employer, and those of two credit references. The bank communicated with a New Brunswick credit bureau, and was informed that the records of the bureau were clear of any derogatory information against Perez. The bank also checked with two trade references with whom Perez had accounts, who reported that they considered Perez a good account.

An adjuster employed by the bank testified that he visited the Perth Amboy restaurant in March 1954 at which time he conversed with Mr. and Mrs. Perez, the owners of the restaurant, concerning the default in payments on the contract. In all, he made about six visits, but did not observe the sale of alcoholic beverages on any occasion. Hipolito F. Perez does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that the bank acted with reasonable prudence, and therefore shall recognize its claim.

G. M. Amusement Co. has presented a document dated April 15, 1952 evidencing the sale to it of the music machine, identified by serial number, which was seized by the Division. The amusement company placed a different music machine in Hipolito F. Perez's restaurant in Carteret in March 1953, after it had received a telephone request for such placement. When Perez moved his restaurant to Perth Amboy, the company in November 1953 placed the machine in question there. The concern's service man visited the Perth Amboy restaurant once a week, and testified that he did not observe any sale or consumption of alcoholic beverages there, or any alcoholic beverages on display. I am satisfied that the amusement company has acted in good faith, and did not know or suspect that its machine was in a speakeasy. I shall therefore likewise recognize its claim.

Edward Pinto, t/a Middlesex Moving and Storage, has presented a certified copy of the docket of the Middlesex County District Court evidencing a judgment against Frank Percy (Perez) entered on February 5, 1954 in the amount of a total of \$229.18. Pinto has also presented a Bill of Sale dated March 2, 1954 executed by Louis Daitz, Sergeant-at-Arms of such Court, to Edward Pinto, reciting that it is given pursuant to an execution issued out of such Court on the basis of the aforementioned judgment, whereby a sale was held on March 2, 1954, and the bill of sale covers an inventory of equipment and fixtures at 81 Broad Street, Perth Amboy.

Mr. Pinto testified that Perez became indebted to him in the aforementioned amount for moving the restaurant equipment from Carteret to Perth Amboy in October 1953, for carpenter and plumbing work, and for the purchase price of a gas range. Pinto likewise states that on his visits to the restaurant in his attempt to collect the balance due him he did not observe any person purchasing or consuming alcoholic beverages, nor observe any such beverages on display.

Pinto did not remove the restaurant equipment after obtaining the Bill of Sale, but entered into an arrangement whereby Perez retained the property upon making weekly payments on his indebtedness. Pinto received \$40.00 on account thereof. Pinto's counsel stated that his claim was limited to the balance due on the judgment and costs, which amounts to \$215.90. Pinto has an interest in the seized property within the meaning of R. S. 33:1-66(f). See Seizure Case No. 5450, Bulletin 364, Item 14. I shall recognize his claim to the extent of \$215.90 for the reasons expressed in allowing the other claims.

I am advised that it will not be of any advantage to the State to pay the lien claims and retain the seized property, excluding the music machine, and the retail value thereof does not exceed the amount of such liens and the costs of seizure and storage. Accordingly, the television set will be returned to Plainfield Trust Co. and the music machine will be returned to G. M. Amusement Co., and the balance of the seized equipment, excepting the beer, soda and \$3.02, will be returned to Edward Pinto, upon payment of the costs of the seizure and storage of the respective items, as allocated by the Director. It is not the function of the Division to resolve the priorities between the claimants or the legal effect of Pinto's Bill of Sale, as it relates to the right of possession of Plainfield Trust Co. to the television set, or that of G. M. Amusement Co. to the music machine. As the costs are paid, each of the parties will be advised of the actual time and place of the delivery of the respective items, well in advance of such delivery, so that the persons concerned may take any legal action they desire to resolve any disputes.

Accordingly, it is DETERMINED and ORDERED that if on or before the 21st day of September, 1954, the Plainfield Trust Co. pays the costs of seizure and storage of the television set; the G. M. Amusement Co. pays the costs of the seizure and storage of the music machine; and Edward Pinto pays the costs of the seizure and storage of the balance of the seized property, the television set, music machine, and balance of the seized property, except the beer, soda and \$3.02, will be returned to the respective claimants; and it is further

DETERMINED and ORDERED that the \$3.02, beer and soda, listed in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, 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.

WILLIAM HOWE DAVIS
Director.

Dated: September 10, 1954.

SCHEDULE "A"

- 19 - cans of beer
- 177 - bottles of soda
- 1 - music machine and currency therein
- 11 - chairs
- 4 - tables
- 8 - stools
- 1 - National cash register
- 1 - Fada television set
- 1 - Coca Cola cooler
- 2 - electric fans

- 1 - Philco refrigerator
- 1 - glass pie case
- 1 - electric clock
- 1 - scale
- 1 - coffee urn and table
- 2 - steel cabinets
- 2 - gas stoves
- 1 - steel steam table
- 1 - steel sink
- 1 - steel hood and back wall
- \$3.02 in cash

7. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN GAS STATION - STOCK OF ALCOHOLIC BEVERAGES FORFEITED - CASH DEPOSIT UNDER PROTEST UPON RETURN OF AUTOMOTIVE EQUIPMENT ORDERED FORFEITED.

In the Matter of the Seizure on)
 March 15, 1954 of a quantity of)
 alcoholic beverages, various fix-)
 tures, furnishings and equipment,)
 and \$64.10 in cash, at 134 South)
 Main Street, Cedarville, Lawrence)
 Township, County of Cumberland and)
 State of New Jersey.)

Case No. 8553

ON HEARING
 CONCLUSIONS AND ORDER

-----)
 Isaac I. Serata, Esq., Attorney for William F. Davis
 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 1, Revised Statutes of New Jersey, and further pursuant to a stipulation dated March 25, 1954 signed by counsel for William F. Davis, to determine whether a quantity of alcoholic beverages, \$64.10 in cash, and various fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on March 15, 1954 at 134 South Main Street, Cedarville, Lawrence Township, New Jersey, constitute unlawful property and should be forfeited.

Pending seizure hearing in the case, all of the seized property, except the alcoholic beverages and \$64.10 in cash, were returned to William F. Davis upon payment of the sum of \$546.90, its appraised retail value, to the Director of the Division of Alcoholic Beverage Control under protest, pursuant to R. S. 33:1-66. Counsel for William F. Davis has stipulated that such Director shall determine in this proceeding whether this sum shall be returned to him, or be forfeited.

When the matter came on for hearing, pursuant to R. S. 33:1-66, and the aforesaid stipulation, William F. Davis appeared and sought return of such sum of \$546.90.

It appears from the testimony of ABC agents that William F. Davis operated a gas station at the above location. On March 12, 1954 ABC agents visited the premises to investigate a complaint that alcoholic beverages were being sold there without a license. After purchasing gas, they asked Davis for something to drink, and Davis sold them 6 cans of beer in the office of the station.

These agents left without divulging their identity, and returned on March 15th to execute a search warrant obtained upon the basis of the unlicensed sale of beer on March 12th. The agents again purchased gas and oil. Then one of the agents asked Davis for a pint of wine. Davis obtained a pint bottle of wine stored in the office among other equipment, handed it to the agent, and received payment therefor.

Shortly thereafter other agents and local police officers entered the office, identified themselves, and seized 17 pints of wine stored in various crevices in the office, other bottles of wine and 40 cans of beer in a closet adjacent to the service area, \$64.10 from the cash register, and the equipment and fixtures in the office.

William F. Davis did not hold a license authorizing him to sell alcoholic beverages, and the premises were not licensed for that purpose. Davis signed a written statement where it appears that he had been selling alcoholic beverages in the gas station for about two months, and wherein he admits the aforementioned sale of alcoholic beverages to the ABC agents on March 12, and 15, 1954.

It is obvious that the seized alcoholic beverages were intended for unlawful sale and are therefore illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and all other personal property seized therewith, including the \$64.10 taken from the cash register, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

William F. Davis' defense to such forfeiture is that he made a practice of giving the alcoholic beverages stored in his gas station to his customers; that "I got rid of it. I would not say I sold it". However, he acknowledges that his signed statement that he sold alcoholic beverages to the ABC agents and to other persons is correct.

The truth of the matter is that Davis' gas station is located in what is known as a "dry area" where no licenses are issued for the sale of alcoholic beverages, and Davis sought to attract and maintain patronage by having available there alcoholic beverages for sale to his customers.

I have the discretionary authority to relieve a person from forfeiture of his property if he establishes to my satisfaction that he has acted in good faith and unknowingly violated the law. R. S. 33:1-66(e). Davis' misguided resort to the unlicensed sale of alcoholic beverages as a means of improving his business, even if only for accommodation, cannot be accepted as a substitute for the above requirements. The motives, good or bad, which impel a person to operate a speakeasy are not factors to be considered in forfeiture proceedings. See Seizure Case 7002, Bulletin 731, Item 2.

A further contention is that the seized automotive supplies do not constitute regular merchandise in connection with the sale of alcoholic beverages. Such connection need not be established to justify forfeiture. R. S. 33:1-1(y), Seizure Case No. 7480, Bulletin 857, Item 3. All that need be established is that the personal property was on the premises or in the building where the illicit alcoholic beverages were seized.

The last contention is that the value of \$546.90 placed on the property seized and returned is excessive. It appears that the appraisal was made item by item, carefully, and with figures suggested by Davis. He now hazards the guess that the items would only bring \$350.00 at auction. What an article sells for at an auction is a doubtful standard to measure retail value. Mr. Davis' "guess" cannot override the evidence that actually the sum of \$546.90 was arrived at after a careful appraisal of the retail value. See Seizure Case No. 7480, supra.

Hence, under the evidence presented, I have no other course but to deny return of any part of the money deposited by William F. Davis.

Accordingly, it is DETERMINED and ORDERED that the alcoholic beverages, and the sum of \$64.10 seized from the cash register, described in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the

provisions of R. S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the balance of the seized property, consisting of various items of furniture, fixtures, and equipment, listed in the aforesaid Schedule "A", constitutes unlawful property and that the sum of \$546.90, representing the appraised retail value of such articles, paid under protest to the Director of the Division of Alcoholic Beverage Control by William F. Davis to obtain return of these articles, be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with the law.

WILLIAM HOWE DAVIS
Director.

Dated: September 15, 1954.

SCHEDULE "A"

- 46 - pint bottles of wine
- 40 - cans of beer
- 1 - cash register
- 1 - glass showcase
- 1 - desk
- 1 - radio
- 1 - Coca Cola cooler
- 1 - ice cream freezer
- Stock of lubricating oil, miscellaneous motor vehicle supplies, parts and equipment and stock of cigars and cigarettes as listed in the inventory in the case.
- \$64.10 in cash

3. DISCIPLINARY PROCEEDINGS - ALLEGED SALE TO MINORS - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

FREDDIE'S TAVERN, INC.)
T/a FREDDIE'S)
17-19 South Broadway)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-61 for the 1953-54 and 1954-55 licensing years, issued by the Board of Commissioners of the City of Long Branch.)
-----)

Edward F. Juska, Esq., by Clarkson S. Fisher, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On March 17, 1954, and on divers days prior thereto, 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 Pvt. John A. ---,

Pvt. Douglas A. ---, Pvt. Cecil B. --- and Pvt. Orman S. ---, U. S. Army, 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 the licensed premises; in violation of Rule 1 of State Regulations No. 20."

The minors in question, who were allegedly sold alcoholic beverages at defendant's licensed premises on March 17, 1954, are all members of the Armed Forces of the United States and on the date of the hearing in the instant case three of them had been transferred to the "Far East Command." The remaining minor, Pvt. John A. ---, 20 years of age, testified that he and his companions visited defendant's licensed premises on March 17, 1954, at which time he was sold a pitcher of beer and that, although the bartender had questioned him concerning the ages of the others in the party, the bartender had not asked him anything concerning his age. Some of his testimony was contradictory and all of his testimony was uncorroborated.

Arthur J. Monaco, manager of defendant's licensed premises, testified that he checked the ages of the soldiers and because four of them were minors refused to permit them to consume beer. His testimony is substantially corroborated by that of the bartender and by other patrons who testified that they were in defendant's premises at the time.

The charge herein is serious and the evidence in support thereof must be clear and convincing. While there is much in the record which gives rise to a grave suspicion that the employees of the defendant-licensee did commit the violation charged, such suspicion is not a proper substitute for proof. The testimony of the one minor falls short of establishing that preponderance of the proof requisite to sustain the finding of guilt and, accordingly, the charge must be dismissed.

It is not without some misgiving that I reach this determination in this case. The defendant has escaped a penalty herein by the smallest of margins.

Accordingly, it is, on this 13th day of September, 1954,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

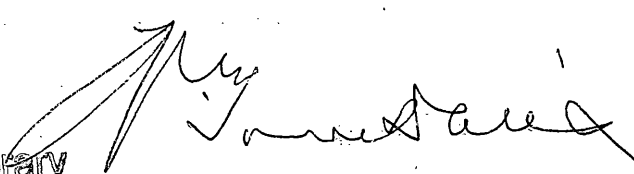
Brookhattan Trucking Co., Inc.
57 Front Street
New York 4, N. Y.

Application filed September 22, 1954 for Transportation License.

Albert Korobow, Jack Lazar & Jack Korobow
t/a Keansburg Beverage Co.
158-162 Main Street
Keansburg, N. J.

Application filed September 20, 1954 for transfer of State Beverage Distributor's License from Edward G. Weiss, Receiver in Bankruptcy of Quinlan Beverage Company, Inc., 647 River Street, Paterson, N. J.

New Jersey State Library


William Howe Davis
Director