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

BULLETIN 2099 May 10, 1973

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ITEM

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1. APPELLATE DECISIONS - TWO NICKS CORP. v. JERSEY CITY.

Two Nicks Corp., t/a Neptune Seafood Restaurant, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Jersey City, and John M. Sullivan, Respondents.	On Appeal CONCLUSIONS and ORDER

Louis Serterides, Esq., Attorney for Appellant
Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which on September 29, 1972 approved a place-to-place transfer of a plenary retail consumption license held by respondent John M. Sullivan (hereinafter Sullivan) from premises 390 Summit Avenue to 426 Summit Avenue, Jersey City.

The petition of appeal alleges that the Board approved the transfer on the premise that Sullivan was the victim of hardship resulting from an eviction from his licensed premises when in fact the hardship described was the result of Sullivan's own action upon which a "hardship" situation could not be predicated. The Board in its answer denied this contention and added that the area is not overcrowded with licensed premises and that there is a need and necessity for another license in the area.

The transfer of the license was granted under an exception set forth in Section 4 of local Ordinance No. K-1299 as follows:

"Section 4. From and after the passage of this ordinance no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance to which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption license, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this

Ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said license may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated."

By stipulation it was agreed that the said transfer was to premises which are within an area of a circle having a radius of five hundred feet from other plenary retail consumption licenses.

The subject resolution of the Board contained the following phraseology:

"After hearing arguments by both subject licensee and objectors, the Board, after taking into consideration that the distance of place to place is in order, hardship shown by applicant, that the area is not overcrowded and there is a need and necessary for another license in the area, with all other rules and regulations in order, the Board reserved decision, and thereafter, upon discussion of note data, Approved Transfer of same."

The facts surrounding Sullivan's application for the transfer can be capsulated from his testimony at the hearing in this Division as follows: About six years ago he purchased the licensed premises and the building in which it was located. He assumed or executed two mortgages for most of the purchase price and was able to pay but six monthly payments on the second mortgage before he became in default. Some time later, while still in default to the second mortgagee, he sold the business to another licensee who after three months returned the premises to him in that the buyer could not keep up the payments. Eventually the second mortgagee began foreclosure which was resolved by the execution of a deed from Sullivan accompanied by the closure of the tavern and departure from the premises.

At some point, either prior or subsequent to removal from the premises, one Saul Farber proposed a solution to Sullivan's lack of a licensed situs. Farber proposed to lease a vacant lot to Sullivan, on which lot he, Farber, would erect a building in which to house the license. A copy of such lease, originally filed with the Board, was offered into evidence. The lease disclosed that Sullivan, who denied ever executing such lease, would erect a one-story building on the premises constructed of masonry and be twenty by thirty-four foot ground area. The lease further indicated the ground area of the plot on which the building was to be constructed was twenty-five feet by fifty feet.

Walter J. McDermott, Secretary to the Board, testified that he believed the Board, in arriving at its determination, was of the opinion that there was enough business in the area for all of the licensed premises and, with the completion of a Port of New York Authority building now under construction nearby, the present licensee would not cause overcrowding of licensed premises. He admitted that within five hundred feet of the proposed licensed premises there presently exist two other taverns as well as appellant's premises.

A photograph of the site of the proposed license was introduced into evidence. That photograph depicts a wall of an apparent factory building running perpendicular to the street, alongside of which is an elongated rectangular lot with about thirty-five feet frontage, separating the aforementioned wall from a building containing a car-wash. From this lot Farber, the presumed owner, would cut out a space necessary to erect the proposed building mentioned in the lease, leaving sufficient room for ingress to the car-wash. No site plan or elevation sketch of the proposed premises were either offered into evidence or indicated to exist.

I

While not noted previously herein, an additional contention was raised by appellant in its petition of appeal alleging that the new location of the transfer would adversely affect appellant's business in its licensed premises located diagonally across the street. Such contention is without merit in that the "test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual." Kelley v. Manalapan et al., Bulletin 531, Item 3. Cf. Forbes Liquors, Inc. v. Brick Twp. et al., Bulletin 1641, Item 1.

II

Although appellant did not challenge the impropriety of Sullivan's application on the ground that the application was defective on its face in that Rule 9 of State Regulation No. 4 and Rule 1 of State Regulation No. 2 were not complied with, the glaring disregard of the requirement of such regulations cannot be overlooked here. Rule 1 of State Regulation No. 2 mandates that plans for a new building shall accompany the application and the notice of application to be published in conjunction with such application shall state where such plans may be examined. No reference to such plans being made in the resolution, it is concluded that the above rule was not adhered to. The obvious purpose of the rule is to provide the public an opportunity (as well as the Board) to examine the proposals so that objections or accord might be expressed before the Board. Certainly in the instant matter the character, size, shape or design of the proposed building should register some sentiment in the area. Both respondents were derelict in failing to adhere to the regulation. The application was therefore fatally defective.

III

Turning to the Board's approval of the transfer as a "hardship" situation within the terms of Section 4 of the ordinance supra, it must be noted firstly that the Board cannot act in violation of its own controlling ordinance. Dal Roth, Inc. v. Div. of Alcoholic Beverage Control, 28 N.J. Super. 246 (1953). In short, the Board's approval must be within the constraints of the ordinance. The applicable words in the ordinance relating to hardship and to the present situation are embraced in the following: "... if any licensee ... shall be compelled to vacate the licensed premises for any reason in the opinion of the Board ... was not caused by any action on the part of the licensee ...."

From Sullivan's own factual account, it was he who became in default to his mortgagee for more than a year and it was he who conveyed the premises to the mortgagee in lieu of a

judgment of foreclosure, and it was he who closed the licensed premises. By no elongation of logic can Sullivan be considered to have been a licensee compelled to vacate for any reason not caused by action on the part of the licensee. If, as Secretary McDermott testified, there exists sufficient business for each of the licensees in the area, the only conclusion that can be reached by Sullivan's testimony is that his plight resulted from his own inept management. The Board's application of the "hardship" provision of its ordinance was misplaced. Cf. Yurchak v. Jersey City, Bulletin 1974, Item 1.

IV

It has been noted above that the premises to which transfer of license was approved consists of a vacant lot; that no design or plans of the proposed structure were furnished the Board. Yet, despite such absence, blanket approval for the transfer was given by the Board which obviously disregarded its requisite statutory duty to investigate and ascertain the full background and facts involved before issuance of the license. Such failure indicates that its ultimate action was unreasonable. Cf. Passarella v. Atlantic City, 1 N.J. 313 (App.Div. 1949). That the license may have been held by the Board but without conditions attached to its delivery would give rise to the same conclusion.

While it is true that the issuing authority's discretionary powers are very broad and that on an appeal the burden of proof is on the appellant, the presumption in favor of the validity of the issuing authority's action is not conclusive. The reasons assigned for its action must be reasonably supported by the evidence in order for such action to be sustained. Wrege v. Elizabeth, Bulletin 1930, Item 3; O'Bertz v. Perth Amboy, Bulletin 1011, Item 1.

For the reasons contained herein, I find that appellant has sustained the burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that an order be entered reversing the action of the Board in granting the said transfer.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City in approving place-to-place transfer of the plenary retail consumption license held by respondent John M. Sullivan be and the same is hereby reversed.

Robert E. Bower,
Director.

2. APPELLATE DECISIONS - CARMAZINO v. NEWARK.

Bettye Carmazino, t/a New Uncle Joe's, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Mayer and Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys for Appellant
William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which on June 28, 1972 denied renewal of appellant's Plenary Retail Consumption License C-14, for premises 199 Halsey Street, Newark for the 1972-73 licensing period.

Appellant contends that she duly filed an application for renewal of the license and, thereafter, was noticed on June 26, 1972 that the Police Department of the City of Newark recommended to the Board that the application for renewal be disapproved. The licensee was invited to appear before the Board on June 28, 1972, but she contends that she was not advised that a hearing would be held on that date and, thus, appeared without counsel. She further alleges that the Board denied renewal at that time without indicating the reasons for its action.

The Board answered with a denial that appellant was not advised that a hearing on the renewal would take place on June 28, 1972, and further denied that appellant did not know why the renewal of the license was refused. The Board contends that a written resolution denying renewal is presently in preparation.

Appellant urges that the Board be required to renew the license pending the appeal of a finding by the Director of this Division that the appellant was guilty of permitting 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, and suspending the license for ninety days, effective April 25, 1972. Re Carmazino, Bulletin 2044, Item 2.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to produce testimony and cross-examine witnesses. The transcript of testimony of the proceedings before the Board supplied to the Division in accordance with Rule 8 of State Regulation No. 15, together with a copy of the purported resolution adopted by the Board on June 28, 1972, albeit unsigned, were offered into evidence by counsel for the Board. Appellant introduced the original notice she received from the Board advising of a hearing on the renewal of license to be held on that date.

The dispositive issue in this matter is: Did the Board act reasonably and in the best interests of the municipality in denying renewal of appellant's license, and, if so, did it afford due process to appellant in developing its determination?

No testimony was advanced by the Board at this de novo hearing; the Board relied on the transcript of the proceedings before it. Only appellant testified in her own behalf, which testimony can be capsulated as follows: She has held the license for the past seven years and operates the licensed premises with her husband, who assists her. She has never received any complaints made against her by the local police nor were there any arrests made in her tavern other than the one for which she received a ninety-days suspension, hereinabove referred to.

Her place of business is located in a "high crime" area and she is visited periodically by members of the police department, about thrice weekly, which visits are assumed to be routine. She further explained that her understanding of the notice to her by the Board respecting the hearing on June 28th, was for the purpose of reviewing the police report; hence, her attendance without counsel and her inability to adequately defend herself at that time.

Initially it should be noted that the decision whether or not a license should be issued rests within the sound discretion of the local issuing authority in the first instance. Blanck v. Magnolia, 38 N.J. 484 (1962); Fiory v. Ridgewood, Bulletin 1932, Item 1.

On the other hand an owner of a license or privilege acquires by reason of its investment therein an interest which is entitled to some measure of protection. Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462 (App. Div. 1955); Re To-Jon, Inc. v. Watchung, Bulletin 1946, Item 1.

The crucial issue on this appeal is whether the record substantiated and justified the Board's action in refusing to renew appellant's license. The burden of proof in all these cases which involve discretionary matters, where renewal of a license is sought, falls upon appellants to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957; Zicherman v. Driscoll, 133 N.J.L. 586 (1946).

From an examination of the transcript of the proceedings before the Board, testimony was received of Captain Tenpenny of the Newark Police Department. His testimony, reproduced in full, was as follows:

> "There are 6 referrals pertaining to this tavern which are still pending before the local Board. Charges were brought by the State A.B.C. Board for immoral activities. That is, solicitation and prostitution, in making overtures and advancements for acts of illicit sexual intercourse in violation of Rule No. 5, State Regulation No. 20, occurring on April 15, 1971. The licensee pleaded not guilty, and at a hearing before the State Board on April 10th, 1972 the licensee was found guilty and the license suspended effective April 25, 1972, with a balance of it being termed until midnight June 30th, 1972. In other words if any renewal is granted it shall be suspended until July 24, 1972.
>
> The licensee immediately filed an appeal with the Appellate Division, Superior Court, and the licensee is allowed to remain open until the decision is reached by the Appellate Division.

> From the incidents report it is very evident that the operator of this tavern cannot control its operation in a proper and lawful manner, and in the best interests of the public we will recommend that this renewal application be dissaproved."

It is to be noted that although the preceding testimony was the only evidence offered by the Board, it represented a capsulated version of the repeated difficulties the licensee faced. It noted with significance the existing charges respecting prostitution as well as other situations with which the licensee was presumably familiar. The recommendation of denial by the Police Department was weighed, together with the other factors, on the scale of public good.

After receipt of the above testimony and upon a brief interrogation of the licensee, in which she indicated that her tavern closes early and that she and her husband manage the business, the hearing was concluded. The Board adopted the following resolution:

> "WHEREAS, this Board, after due consideration, and a full and complete hearing on the Renewal of Plenary Retail Consumption License No. C-14, issued to Bettye Carmazino, t/a New Uncle Joe's and for premises located at 199 Halsey Street, Newark, New Jersey, has determined in the exercise of its firm discretion that the Renewal of the license referred to, and for premises as indicated, shall be denied; and;
>
> WHEREAS, this Board deems such Renewal not to be in the best interest of the public good and welfare, and more particularly for the reasons as expressed in the Board's records, and also the Board's acceptance of the Police recommendations of denial, and the transcript of the hearing on the application for Renewal, does therefore, unanimously deny the same.
>
> ADOPTED: June 28, 1972"

In adopting its resolution, the Board acted in a quasi-judicial capacity and although not confined to the strict procedures of common law precedent, its determination must be arrived at by the solemn evaluation of the evidence before it. As the court commented in Murphy v. Division of Pensions, 117 N.J. Super. 206, 217 (App. Div. 1971):

> "We take this opportunity to suggest that while the formality of procedure is less demanding and the rules of evidence are less compelling, as we have pointed out above, in the administrative agency, there is a point at which confidence in the determination of the truth should not be subordinated to practicalities of the forum. For reasons which appear frequently in reported cases in determinations in the administrative agency such as that agency here concerned and the Division of Workmen's Compensation, the procedural rigor of the common law trial before a jury is neither necessary nor practical. But recognition of this fact should not be mistaken for a condonation of laxity of proofs in the procedure, at best, and carelessness at worst." (underscore added)

While the only testimony before it upon which denial of renewal could be predicated was the testimony of Captain Tenpenny who indicated that six matters concerning the licensed premises were then pending, it is apparent that the Board arrived at its conclusion as a primary result of the Conclusions and Order of the Director, entered April 10, 1972 (Re Carmazino, Bulletin 2044, Item 2) which recounted sordid activities taking place in the licensed premises. The record of suspension in that matter, coupled with the reputation of the premises imputed from the testimony of Captain Tenpenny would have provided sufficient basis for the Board's findings.

However, as the major offense, i.e., solicitation for prostitution on the licensed premises, was at the time of hearing in this Division, subject to an appeal before the Appellate Division of the Superior Court, it was considered prudent to await the outcome of that appeal before developing findings in the matter.

The Appellate Division having affirmed the action of the Director insofar as the major charge is concerned, Bettye Carmazino v. Robert E. Bower, Director, Superior Ct. App. Div. A 2047-71, decided February 27, 1973, not officially reported, recorded in Bulletin , Item , the matter sub judice may now be considered on the basis of the totality of the record. The Board relied on the prior record as a basis for its action; the action taken in respect to the prior record now being affirmed, the action of the Board itself may now be reviewed in that light.

Accordingly, I find that the appellant has failed to sustain her burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule No. 6 of State Regulation No. 15.

I recommend that the action of the Board be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the order dated June 30, 1972, extending the term of appellant's 1971-72 license pending determination of the said appeal, be and the same is hereby vacated, effective immediately.

Robert E. Bower,
Director.

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN UNLICENSED CLUB - CLAIMS FOR RETURN OF SUMS POSTED BY VENDING MACHINE OPERATOR AND UNLICENSED CLUB OWNERS REJECTED - SUMS DEPOSITED, ALCOHOLIC BEVERAGES, CASH AND MISCELLANEOUS PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure on August 5, 1972 of a quantity of alcoholic beverages, fixtures, furnishings, equipment and miscellaneious personalty and $95.90 in cash at the unlicensed premises of United Gents Social Club, 388-15th Avenue in the City of Newark, County of Essex and State of New Jersey.	Case No. 12,801 On Hearing CONCLUSIONS and ORDER

Raymond J. Keyes, Appearing for Claimant, Dierickx Vending Co., Inc.
Fred Bond, Appearing for Claimant, United Gents Social Club
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 stipulation dated August 8, 1972, signed by Anthony Memoli on behalf of Dierickx Vending Co., Inc. to determine whether a phonograph and a cigarette machine as set forth in inventory attached hereto and marked Schedule "A" seized on August 5, 1972 at the unlicensed premises, 388-15th Avenue, Newark, N.J., constitute unlawful property and should be forfeited; and further to determine whether the sum of $250.00 deposited with the Director, pursuant to said stipulation under protest by Anthony Memoli on behalf of Dierickx Vending Co., Inc., representing the appraised value of a phonograph and a cigarette machine which said property was returned to him, as set forth in the aforesaid Schedule "A", should be forfeited or returned to it; and further to determine whether the sum of $700.00 deposited with the Director pursuant to a stipulation dated August 5, 1972, under protest, by Fred Bond on behalf of United Gents Social Club representing the appraised value of fixtures, equipment and miscellaneous personalty which said property was returned to it as set forth in the aforesaid Schedule "A", should be forfeited or returned to it.

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

At the hearing, Raymond J. Keyes appeared on behalf of Dierickx Vending Co., Inc. and sought return of the $250.00 cash deposited under the aforementioned stipulation and Fred Bond appeared on behalf of the United Gents Social Club and sought return of the sum of $700.00 deposited under the said stipulation, representing the appraised value of articles hereinabove described as claimed.

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 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 Fred Bond or the United Gents Social Club.

The reports of the ABC agents disclosed the following: Agent V entered the premises on August 5, 1972 with "marked" money, ordered and received two drinks, for which he paid $1.40. Other agents and local police entered, seized the contents of the drinks, othe alcoholic beverages, the "marked" money and the furnishings and equipment in the unlicensed premises, which consisted of a room in which a bar, tables, usual barroom equipment were located.

Fred Bond, appearing on behalf of United Gents Social Club testified that: He is the business agent of a club which has about 60 members, some of whom act as bartenders. From his description, the club dispenses alcoholic beverages at the bar in a similar manner as do clubs with club licenses.

George H. Jones, appearing on behalf of the United Gents Social Club, corroborated the testimony of Bond but denied a sale to the agent.

Raymond J. Keyes, appearing on behalf of Dierickx Vending Co., Inc., testified that he is its sales manager; the equipment placed in the premises was done so in response to a telephone request about December 1971. Upon his initial visit of inspection, prior to the installation, he found a raised store front, a store in which construction was in progress. He did not return to the premises after it was opened and his employees, who "usually do not pay too much attention to what goes on", did not provide him with any information relative to the existence of a barroom-lounge.

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.

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.

The vending machine operator, through its employees, displayed a marked indifference to what use was made of these premises and its property because any usually prudent servicemen could readily have observed the existence of the barroom where the machines were kept. It would then have been claimant's obligation to make an investigation to verify the non-issuance of a license to dispense alcoholic beverages. There was no reliance whatever placed upon anyone's inspections of the premises.

The Director has discretionary authority to return property subject to forfeiture to a claimant who establishes to his satisfaction that it has acted in good faith, and did not know or have any reason to suspect that its property would be used in unlawful liquor activity. N.J.S.A. 33:1-66 (e); Rule 3(b) of State Regulation No. 28. Absent such good faith, which I find to be present here, forfeiture is mandated.

The unlicensed premises were used as a "speakeasy", and the contention of Bond that alcoholic beverages were available to members only is an inadequate defense when the sale was so readily made to an agent of this Division.

Considering all of the evidence and the circumstances herein, it is recommended that the claim of Dierickx Vending Co., Inc. for return of $250.00 deposited under the aforesaid stipulation be rejected and the said sum of $250.00 deposited by it be forfeited.

It is further recommended that the claim of Fred Bond on behalf of United Gents Social Club for return of $700.00 deposited under the aforesaid stipulation be rejected; and that the alcoholic beverages and cash, in the sum of $95.90 as set forth in Schedule "A", be forfeited.

Conclusions and Order

Written exceptions to the Hearer's Report were filed by claimant Dierickx Vending Co., Inc. within the time permitted by Rule 4 of State Regulation No. 28.

The exceptions filed on behalf of the owner of the vending machine equipment contended that the claimant, corporate owner of the vending machines acted in good faith; that the visits of its servicemen occurred during daytime hours, and therefore, they could not have observed the consumption of alcoholic beverages which occurred in the evening hours.

After carefully considering the entire matter herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I find that the unlicensed premises contained a full bar-room, with bar stools and tables evidencing the apparent sale of alcoholic beverages, all of which should have alerted the servicemen, who in turn should have noticed the claimant. Its failure to make such observation and to act in accordance therewith manifests a careless indifference to the use to which its property was put, and negates claimant's argument of good faith. I therefore concur with the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of April 1973,

DETERMINED and ORDERED that the claim of Dierickx Vending Co. Inc. for the return of the sum of $250.00 posted under stipulation signed by it,is hereby rejected and the said sum of $250.00 be and the same is hereby forfeited, in accordance with the provisions of N.J.S.A. 33:1-66 to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the claim of the United Gents Social Club for the return of the sum of $700.00 deposited by it under stipulation as aforesaid is hereby rejected and the said sum of $700.00 be and the same is hereby forfeited, in accordance with the provisions of N.J.S.A. 33:1-66 to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property including the alcoholic beverages and cash, as more fully set forth in Schedule "A" attached hereto, constitutes unlawful property and the same be and 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 the said alcoholic beverages be and the same shall be retained for the use of hospitals, 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"

283 - containers of alcoholic beverages
1 - refrigerator; 1- air conditioner
1 - bar; 2 - signs; 1 - wall clock;
18 - tables; 11 - stools; 72 - chairs;
1 - desk; 1 - television set; 1 - cash register; 1 - grill; 1 - sink;
1 - ice chest; various food snacks; assorted glasses; 1 - phonograph;
1 - cigarette machine
$95.90 - cash

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN SHOE SHINE PARLOR - CLAIM OF VENDING MACHINE OPERATOR RECOGNIZED - CLAIM FOR RETURN OF SUM POSTED BY OWNER OF PERSONALTY REJECTED - SUM DEPOSITED - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure on June 21, 1972 of a quantity of alcoholic beverages, fixtures, furnishings, equipment and $11.29 in cash at Progressive Shoe Shine Parlor, 1814 South Wood Avenue, in the City of Linden, County of Union and State of New Jersey.	Case No. 12,790 On Hearing CONCLUSIONS and ORDER

Raymond F. Ruppert, General Manager, Appearing for claimant, Crystal Vending Company.
Ruben H. Armstead, Pro Se.
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 stipulations dated June 21, 1972 to determine whether 32 containers of alcoholic beverages, miscellaneous personal property and $11.29 in cash as set forth in inventory attached hereto and marked Schedule "A" seized on June 21, 1972 at the unlicensed premises of the Progressive Shoe Shine Parlor, located

at 1814 South Wood Avenue, Linden constitute unlawful property and should be forfeited; and further to determine whether the sum of $550.00 deposited with the Director, pursuant to said stipulation under protest by Stephen Wozniak on behalf of Crystal Vending Company representing the appraised value of a pool table, juke box, pinball machine and cigarette machine as set forth in the aforesaid Schedule "A" should be forfeited or returned to it; and further to determine whether the sum of $75.00 deposited with the Director pursuant to said stipulation under protest by Rubin H. Armstead, representing the appraised value of two old refrigerators, coffee maker, table, chairs, floor fan and two portable television sets, owned by him, as set forth in the aforesaid Schedule "A" should be forfeited or returned to him.

The seizure was made by ABC agents in cooperation with the officers of the Prosecutor of Union County. At the hearing Rubin H. Armstead sought return of the sum of $75.00 deposited, representing the appraised value of articles hereinabove described as claimed, as well as the seized cash in the sum of $11.29. Raymond F. Ruppert appeared on behalf of Crystal Vending Company and sought the return of the $550.00 deposited, representing the appraised value of the articles hereinabove described, which were returned to it.

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 showed a content above ½ 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 Rubin H. Armstead.

The reports of the ABC agents disclosed the following: On June 21, 1972, ABC Agent V entered the premises fortified with "marked" money, ordered and received beer. He paid for the beer with "marked" money which was later recovered from James Newcombe, a custodian. A seizure followed revealing the remaining alcoholic beverages and other items listed in the Schedule "A" attached.

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. Seizure Case No. 11,182, Bulletin 1568, Item 5.

Rubin H. Armstead testified that: He is a postal employee, and owns the Progressive Shoe Shine Parlor at above location. He placed James Newcombe, an elderly man, in charge thereof during the day. Beer and liquor were contained on the premises for his personal consumption as well as beer brought in by neighbors and friends. He denied any selling of alcoholic beverages, but admitted some visitors made contributions for beer given them should they have come in empty-handed. The beer was stored in a refrigerator which was, in turn, placed in a closet. Other alcoholic beverages were kept in a locked cabinet. There was no bar or counter upon which service could be made.

James R. Newcombe appearing on behalf of Armstead, testified that he "cleans the place" but sells no beer. He denied making any sale to the agent.

Raymond F. Ruppert, the general manager of the Crystal Vending Company testified that the location was one purchased from another vending machine company. No prior investigation was made but the servicing of the machines occurred at 9:00 A.M. on Monday mornings when no one but Newcombe was in the premises. His servicemen are under specific instructions to report any unlawful activity that they observe, and during the course of the servicing no observation was made of any illicit activity by its employees.

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.

From the testimony offered, I find that the alcoholic beverages were not in sight, but in a hidden refrigerator and in a closed cabinet. No one being present, other than the custodian, during the time of servicing, the service operator for the vending machine company could not normally have known of any illicit beverage sales in later hours. Furthermore, there apparently was no bar or counter which usually are part of a speakeasy operation, and upon which service of alcoholic beverages would normally be made. I, therefore, conclude that the claimant has acted in good faith, and had no knowledge of the unlawful use to which its property was put or of such facts as would have led a person of ordinary prudence to discover such use. Rule 3(c) of State Regulation No. 28. Seizure Case No. 11,821, Bulletin 1742, Item 5.

Considering all of the evidence and the circumstances, it is recommended that the claim of Crystal Vending Company for return of $550.00 deposited under the aforesaid stipulation be recognized and the said sum of $550.00 be returned to it.

It is further recommended that the claim of Rubin H. Armstead for the return of $75.00 deposited under the aforesaid stipulation be rejected, and the said sum of $75.00, representing the appraised retail value of certain personalty listed in Schedule "A" attached hereto, paid under protest, be forfeited.

It is further recommended that the seized alcoholic beverages, and cash in the sum of $11.29, and the balance of the miscellaneous personal property be forfeited.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time permitted by Rule 4 of State Regulation No. 28.

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

Accordingly, it is, on this 4th day of April 1973,

DETERMINED and ORDERED that the claim of Crystal Vending Company, be and the same is hereby recognized, and the sum of $550.00 deposited by said Crystal Vending Company, under the aforesaid stipulation, shall be returned to it; and it is further

DETERMINED and ORDERED that the sum of $75.00 deposited by Rubin H. Armstead under the remaining stipulation, be and the same is forfeited in accordance with the provisions of N.J.S.A. 33:1-66 to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property including the alcoholic beverages and cash, as more fully set forth in Schedule "A" attached hereto, constitutesunlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the said alcoholic beverages be and the same shall be retained for the use of hospitals, 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"

32 - containers of alcoholic beverages
Miscellaneous personal property
$11.29 - cash

5. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against)

Sweebrink, Inc.)
713 Jersey Avenue) AMENDED
Jersey City, N.J.,) ORDER

Holder of Plenary Retail Consumption License C-376, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensee, by Madeline Osterbrink, President, Pro se

BY THE DIRECTOR:

On March 19, 1973 I entered Conclusions and Order in the above matter suspending the subject license for seventy-six days, commencing at 2:00 a.m. on Wednesday, March 28, 1973 and terminating at 2:00 a.m. on Tuesday, June 12, 1973, after licensee pleaded non vult to a charge alleging that on November 19, 1972 it permitted gambling on the licensed premises, i.e., betting on sports events, and possessed bet slips pertaining to gambling activity, in violation of Rule 7 of State Regulation No. 20. Re Sweebrink, Inc., Bulletin 2097, Item 1(b).

Licensee has now requested that the commencement of the suspension be deferred until May 1, 1973 because it alleges that the present closing would cause it irreparable hardship due to its straitened financial circumstances. Good cause appearing I shall grant the request.

Accordingly, it is, on this 27th day of March 1973,

ORDERED that my order dated March 19, 1973 be and the same is hereby amended as follows:

That Plenary Retail Consumption License C-376 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Sweebrink, Inc., for premises 713 Jersey Avenue, Jersey City be and the same is hereby suspended for the balance of its term, i.e., until 12:00 p.m. June 30, 1973, commencing at 2:00 a.m. Tuesday, May 1, 1973; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Monday, July 16, 1973.

Robert E. Bower
Director

6. STATE LICENSES - NEW APPLICATION FILED.

Fred Ramm and Martha Dechert
t/a M/R Distributors
501-539 Route #17
Carlstadt, New Jersey
Application filed May 3, 1973 for person-to-person transfer of State Beverage Distributor's License SBD-152 from Fred C. Ramm, Jr., t/a M/R Distributors.

Robert E. Bower
Director