

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

BULLETIN 2070

November 17, 1972

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STATE OF NEW JERSEY  
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2070

November 17, 1972

1. APPELLATE DECISIONS - APPEAL WITHDRAWN - ORDER DISMISSING APPEAL.

Frank Alois, )  
Appellant, ) On Appeal  
v. ) O R D E R  
Board of Alcoholic Beverage )  
Control for the City of )  
Paterson, )  
Respondent. )

-----  
La Sala, Altshuler and De Marco, Esqs., by William J. DeMarco, Esq.,  
Attorneys for Appellant  
Joseph A. La Cava, Esq., by William A. Feldman, Esq., Attorney  
for Respondent

BY THE DIRECTOR:

Appellant appeals from the action of the respondent whereby on June 28, 1972, it denied the application of the appellant for renewal of his plenary retail consumption license for the 1972-73 licensing period for premises 179 20th Avenue, Paterson.

The attorney for the appellant, by letter dated August 25, 1972, requests that the said appeal be withdrawn and dismissed for the reason that the respondent "reconsidered and renewed the license in question." Good cause appearing, the above appeal will be dismissed.

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

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

Robert E. Bower,  
Director

2. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - CHARGE NOT SUPPORTED BY EVIDENCE - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against )

Conrad's Wines & Liquors, Inc. )  
7 State Street )  
Hackensack, N.J. )

Holder of Plenary Retail Consumption License C-47 (for the 1971-72 and 1972-73 license periods) issued by the City Council of the City of Hackensack )

CONCLUSIONS and ORDER

Michael C. Rudolph, Esq., Attorney for Licensee  
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

On Thursday, September 16, 1971, between 2:30 A.M. and 2:32 A.M., while Inspectors of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation and inspection of your licensed premises, you failed to facilitate, hindered, delayed, caused the hindrance and delay, and attempted to hinder, delay and cause the hindrance and delay of such investigation and inspection; in violation of Rule 35 of State Regulation No. 20.

On behalf of the Division, ABC Agent P testified that, accompanied by Agent C, he arrived in the area of the licensed premises on a specific assignment to investigate an allegation of sales after hours on September 16, 1971, at 2 A.M. The agents kept the front of the tavern under surveillance while seated in a motor vehicle parked across the street therefrom. The agent described the doorway as being set back from the front line of the building with glass "store front windows" on either side of the doorway.

At 2:10 A.M. he walked across the street to the front of the premises and observed approximately twelve persons in the tavern, some of whom had beverages in their hands. He returned to the car and at 2:15 A.M. he observed nine persons departing the tavern. At 2:20 A.M. Agent P again proceeded to the premises and, upon peering into the window, observed a female seated at the bar near the front entrance with a glass in front of her containing an amber-colored liquid. A male was seated near the middle of the bar. The male had in front of him a beer bottle, an empty beer glass and a whiskey glass containing an amber-colored liquid. He observed a male (later identified as the bartender Harold Powe) sweeping the floor. He also observed a male (later identified as Lawrence Tinsley) in the area of the pool table. Upon finding the door locked, he called out that he wanted a drink. Powe replied, "We are closed." Upon being denied admission, he returned across the street to the car.

Continuing, Agent P testified that at 2:30 A.M., accompanied by Agent C, he again crossed the street to the tavern, peered into the window, and observed Powe behind the bar and Tinsley at the window near the door. He also saw another male and a female in the premises.

Upon rattling the door, Tinsley said, "We are closed." Agent P then testified as follows:

"I took my credentials out of my pocket and I said, 'State ABC.' Mr. Tinsley waited a few moments and I again identified myself with my credentials in front of the window and at this time Mr. Tinsley called over to Mr. Powe and said, 'It is the ABC, get the glasses off the bar.' At this time again we were still trying to get into the door and he just was ignoring myself."

After a lapse of "two to three minutes" Powe called to Tinsley, "All right, let him in." Tinsley then permitted the agents to enter the tavern. Nothing was on the bar. Agent P informed Powe that he had observed drinks on the bar. Powe asserted, "we are closed, we are not doing anything wrong."

On cross examination, Agent P testified that he and Agent C synchronized their watches with radio time. The car in which they were seated was parked in the gasoline station across the street from the tavern with the front facing the tavern. At 2:30 A.M., he and Agent C got out of the car and walked hurriedly across the street to the front of the tavern. It took between ten and twenty seconds to cross the street. Looking in the window he observed a male and female at the bar. Powe was behind the bar and Tinsley not far from the door. This observation took "a few more seconds." Upon rattling the door someone shouted, "We are closed." At this time the agent took out his credentials, held them up at the window to Tinsley and said, "State ABC." He estimated that a minute elapsed from the time he left the car to the time that he rattled on the door. Tinsley looked at the agent, and the agent repeated "State ABC." In response thereto, Agent P then testified as follows:

"and then he (Tinsley) called over to Mr. Powe and he said, 'It is the ABC.' And I said, 'ABC, open this up, open the door up.' And he said, Mr. Tinsley said, 'Get the glasses off the bar.' And I stated again, 'State ABC, open up the door', and he would not open the door."

The agent had seen three glasses and a beer bottle on the bar. These were removed.

At this point, the questioning revealed the following:

"Q How long was it before the door was opened to let you in? A How long? It was approximately three minutes, two to three minutes.

Q And did you time that on your watch? A No, I didn't time it on my watch.

- Q How did you time it? A The length of time. And we finally entered, I looked at my watch, it was 2:35 at that particular point and I gave him the benefit of the doubt.
- Q What doubt did you have, Inspector? A The minute, the 2:30 we left our car, approximately as you stated a minute coming across, looking in the window, trying the door, the hesitation by Mr. Tinsley to open up the door, the demanding of the door to be opened and so forth and so on.
- Q And when you got inside, where were you when you looked at your watch? A Five, ten feet inside the premises."

Later the agent testified that at the time he glanced at his watch, it may have been 2:34 and not 2:35.

Further cross examination revealed the following:

- "Q What did you do then, Inspector? A I asked Mr. Powe why he didn't allow the door to be opened when we identified ourselves and he said, 'We are not doing anything here, we are closed.' And we said, 'We observed drinks on the bar.' He said, 'There is nothing on the bar.' This we could have seen because the bar was clean at this time. We asked Mr. Tinsley how come he didn't open the door and he stated, 'I don't open any doors until the bartender told me.'"

Agent C testified that he accompanied Agent P in the subject investigation and that he remained in the car until 2:30 a.m. At that time, he accompanied Agent P across the street to the front of the tavern. He peered in the front window and observed three males and one female therein. Upon being requested to state his next observation, Agent C testified as follows:

"Well, I observed, I overheard and observed Agent P identify himself several times to Mr. Tinsley who was closest to the door. Mr. Tinsley was looking out the window to the side of the door at Agent P who was showing him his identification through the window. Mr. Tinsley turned around, I heard him say to Mr. Powe, 'Clear the bar, it is the ABC, clear the bar,' The bartender stated, 'Wait a minute.' And as I was observing, he was clearing the bar, placing the glasses that were on the bar, a bottle behind the bar, fooling around underneath the bar which I could not determine what he was doing at the time. Then he come up, wiped the bar off and wiped his hands off and then told Mr. Tinsley it was all right to open the door."

He then testified that from the time he made his observation through the window until he gained entrance into the tavern a period of approximately three minutes elapsed.

On cross examination, Agent C testified that it was "roughly 2:33, 2:32, 2:33" when he was standing at the window observing the bar being cleared off. He and Agent P left the car at 2:30 a.m. in order to proceed to the tavern. He checked the time on his watch. It took him approximately fifteen or twenty seconds to proceed from the car to the front window of the tavern. Within a period of twenty seconds, Agent P identified himself to Tinsley at least three times and said, "State ABC, open the door." He heard Powe say to Tinsley, "Wait a minute" and observed Powe remove two beer glasses, a beer bottle and a whiskey glass from the bar and then wipe the bar.

In defense of the charge, Harold Powe testified that he was on duty as a bartender on September 16, 1971. Tinsley patronizes the tavern almost every day upon completion of his run as a bus driver. He came in between 12:30 and 1:00 a.m. in order to ride home with Powe. At approximately four or five minutes before 2:00 a.m., a number of patrons left the barroom. Tinsley, Jones and a female remained in the barroom. He served no drinks after 2:00 A.M.

Some time after 2:00 a.m., while sweeping the floor, Agent P came to the window and asked him to open up because he wanted a drink. Powe replied that the tavern was closed. Later he heard knocking on the window. Powe called out that he was closed. Tinsley was at the window and said, "ABC man." Powe replied, "Let him in." Powe then testified that from the time he told Tinsley to open the door until the time the door was opened, less than a minute elapsed. Both agents then walked in. At the time Agent P knocked on the window the last time, the bar had already been cleared off and the glasses washed.

John Jones testified that he entered the licensed premises on September 16, at 1:30 a.m., while on his way to work and ordered a "nip beer and one shot." He recalled a male coming to the window some time after 2:00 a.m. and calling out, "Open up. Open up. I want a drink." Powe replied that he was closed. Later, while Tinsley was standing near the door, he heard Tinsley call out to Powe that there was someone at the door who said, "ABC." Powe responded, "Open the door and let him in." Tinsley opened the door and let the agents in and, upon request, Powe showed his identification to the agents. Tinsley opened the door "seconds" after being directed to do so by Powe.

Lawrence Tinsley testified that he entered the licensed premises on September 16, at approximately 1:15 a.m., after finishing work, in order to help Powe close up the tavern and be driven home. At approximately 2:00 a.m., while there were still some patrons in the licensed premises and the door was locked, he heard a knock on the window and someone say, "Open up. Open up. I want a drink." Powe responded that the place was closed. After the patrons left, he heard a knock on the door and saw Agent P. When he saw Agent P hold up an ABC identification, he called out to Powe, "Harold, ABC man." Powe said, "Let him in." Tinsley testified that, within five seconds after Powe told him to let him in, he opened the door. Later, there was another knock on the door and Agent C walked in.

Preliminarily, I observe that the licensee is charged with violating Rule 35 of State Regulation No. 20. The pertinent part of the said Rule 35 with which we are concerned reads:

"... nor shall any licensee, directly or indirectly, fail to facilitate, or hinder, delay or cause the hindrance or delay, or attempt to hinder, delay or cause the hindrance or delay, of any investigation or inspection of the licensed premises...."

The charge in its pertinent part reads that:

"On Thursday, September 16, 1971, between 2:30 A.M. and 2:32 A.M., while Inspectors ...were conducting an investigation and inspection of your licensed premises, you ...attempted to hinder, delay and cause the hindrance and delay of such investigation and inspection ...."

Contrary to licensee's contention, it is my view that it is not necessary to prove that an investigation or inspection of the licensed premises may only be made in connection with an alleged violation of the Division rules and regulations. Division agents and other duly authorized officers may inspect the premises at any time that they observe anyone in the licensed premises. To hold otherwise, would run contra to the spirit and salutary intentment of the alcoholic beverage law.

It is basic that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern, Inc. v. Division of Alcoholic Beverage Control 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962, not officially reported, reprinted in Bulletin 1491, Item 1.)

I also note that the charge filed herein specifically delineates that the violation allegedly occurred between 2:30 A.M. and 2:32 A.M. I further observe that the adjudication of this matter presents a purely factual problem wherein the credibility of witnesses must be weighed.

I accept as factual Agent P's testimony that he estimated a minute elapsed from the time that he left the car at 2:30 A.M. to the time that he rattled the door. I further accept as factual the testimony of both agents to the effect that the door to the tavern was not opened promptly and that it was not opened until the bartender had an opportunity to clear off the bar. Despite a most intensive cross examination, the agents were steadfast in their version of the lapse of time between the identification given by Agent P and the opening of the door. However, I must also note that, under the cited charge, in fairness to the licensee, I cannot consider any hindering which may have occurred beyond 2:32 A.M. and I therefore find that the hindering was of no more than one minute's duration.

Despite the fact that the hindrance and delay of the investigation was of only a moments duration, nevertheless, it was violative of the spirit and intentment of the rule cited in the charge levelled against the licensee. That moment was used by the licensee to clear off the bar. Although that act may not have concealed a violation, a hindrance or a delay of an investigation for a moment, could be as great an evil and offend the rule as much as a hindrance of a much longer duration. To hinder is to impede or obstruct. (WEB.DICT.) Whether an act impedes or obstructs is determined not by the length of time which expires but rather with the events which take place during that period.

Additionally, it is basic that in disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by his agents, servants or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Upon considering the totality of the evidence, I conclude that the Division has established the truth of the charge by a preponderance of the credible evidence and I recommend that the licensee be found guilty of said charge but for a period of less than the time charged and more particularly for a period from 2:31 A.M. (approximately) to 2:32 A.M.

Licensee has a prior adjudicated record of suspension of license twice by the Director: (1) for ten days effective September 29, 1964, for gambling activity, and (2) for sixty days effective January 16, 1967, for lottery activity. The previous record of suspension of license for dissimilar violation, occurring more than five years ago disregarded for penalty purposes, it is further recommended that the license be suspended for ten days (Re Madonna Liquors, Bulletin 2007, Item 4), to which will be added five days by reason of the record of suspension in 1967 for dissimilar violation occurring within the past five years, making a total suspension of fifteen days.

#### Conclusions and Order

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

This case involves a very close question of fact which narrows down to whether the licensee intentionally hindered and delayed or attempted to hinder and delay the investigation by ABC agents. The alleged hindering took place during a period of less than two minutes; the Hearer noted that the alleged "hindering and delay" of the investigation was of "only a moment's duration."

It appears that, when the agents sought admittance to the premises, a patron went to the door in response to the demand by the agents that they be permitted to enter the premises. When the patron became aware that it was an ABC agent, he made known that fact to the bartender. The bartender then advised him to open the door. There is no allegation that there was any service made of any alcoholic beverages to patrons or that the bartender deliberately refused to admit the agents.

Although I feel that hindering an investigation is a serious charge, the charge should be established by clear and convincing evidence. The alleged hindrance and delay should be substantial and indicate an intentional action by the licensee's employee. I do not find that to be the fact in these circumstances. I am not satisfied that the charge herein was established by a fair preponderance of the credible evidence. I therefore disapprove the Hearer's report and find the licensee not guilty.

Accordingly, it is, on this 17th day of August 1972,

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

Robert E. Bower,  
Director.

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

In the Matter of the Seizure	:	Case No. 12,562
on August 21, 1971 of a quantity	:	
of alcoholic beverages, one juke	:	On Hearing
box, one pool table and \$6.00 in	:	
cash in a store located at 24	:	CONCLUSIONS and ORDER
Tichenor Street, in the City of	:	
Newark, County of Essex and State	:	
of New Jersey.	:	
.....	:	

Nathan L. Jacobson, Esq., appearing for Modern Music, Inc.,  
 claimant.  
 Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 and further, pursuant to a stipulation dated August 24, 1971, signed by Mario Santoro as agent for and on behalf of Modern Music, Inc., to determine whether seven containers of alcoholic beverages, one juke box, one pool table and \$6.00 in cash, as set forth in an inventory attached hereto, made a part hereof and marked Schedule "A", seized on August 21, 1971 at unlicensed store premises located at 24 Tichenor Street, Newark, Essex County, constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$200.00 deposited, under protest, with the Director pursuant to the above stipulation by Mario Santoro, as agent for and on behalf of Modern Music, Inc., representing the appraised value of one pool table and one juke box, which were retained by Modern Music, Inc. should be forfeited or returned to it.

The seizure was made by ABC agents in cooperation with detectives of the Newark Police force.

When the matter came on for hearing, Modern Music, Inc., represented by an attorney, sought the return of the \$200.00 deposited pursuant to the aforesaid stipulation. No one appeared to claim the alcoholic beverages or the cash.

Reports of ABC agents included in the Division file, admitted in evidence with the consent of the parties present, disclose that on August 13, 1971 Agents J, B and D entered the premises and purchased three cans of beer and one pint of Gypsy Rose Wine.

On August 21, 1971 the agents returned to the premises, accompanied by two detectives of the Newark Police Department. The agents had in their possession a "marked" five-dollar bill and three "marked" one-dollar bills, the serial numbers of which had been previously recorded. Upon entering the premises, Agent B ordered a pint of wine and three cans of Schaefer beer from a male in attendance, subsequently identified as David Atkinson, brother of Dannie Atkinson, proprietor of the premises herein. Agent B paid Atkinson with the three "marked" one-dollar bills which Atkinson placed in his pocket, returning fifty cents change.

The police officers entered shortly thereafter and arrested David Atkinson for the sale of alcoholic beverages without a license in violation of N.J.S.A. 33:1-50(a), and Dannie Atkinson for the possession of alcoholic beverages with intent to sell in violation of N.J.S.A. 33:1-50(b). The "marked" currency was thereafter found on the person of David Atkinson, along with an additional \$3.00.

The file also included the Certificate by the Director that no alcoholic beverage license or special permit of any kind has ever been issued to David Atkinson or Dannie Atkinson for the premises 24 Tichenor Street, Newark; an inventory of the seized items; proof of service of notice of hearing, an affidavit of publication of notice of hearing, and the certified report of chemical analysis by the Division chemist that three six-ounce bottles containing Schaefer Beer seized in the instant matter contained alcoholic beverages fit for beverage purposes, with alcoholic content by volume of 4.50%, 4.35% and 4.42% respectively. The report of chemical analysis further discloses that one full pint bottle of Gypsy Rose Wine seized herein contained an alcoholic beverage, fit for beverage purposes, with alcoholic content of 17.51% by volume.

The claimant moved for a dismissal of the hearing and return of the \$200.00, deposited pursuant to the stipulation on the ground that the Division has not sustained the burden of showing that Modern Music, Inc. knew or had reason to know that the premises in question were selling alcoholic beverages in violation of the law. Counsel for the claimant based his motion on the holding in Schifano v. Hock, 4 N.J. Super. 62 (App. Div. 1949) wherein the court returned a truck and a number of bags of sugar to the claimant which had been ordered forfeited by the then Commissioner, after finding that the Division had not proven by a preponderance of the evidence that the sugar and vehicle were intended for use in the manufacture of illicit alcoholic beverages. The truck had been stopped on the highway and the only evidence to support the forfeiture was the totally discredited testimony of the driver of the truck.

Schifano does not stand for the proposition that the Division must prove that the claimant either knew or had reason to know that an illegal alcoholic beverage activity was being conducted. It imposes this burden on the Division only to show alcoholic beverages were being sold or stored with intent to sell in violation of Chapter 33 of N.J.S.A.

Once this is established by a preponderance of the believable evidence then all alcoholic beverages, fixtures and personal property located in or upon the premises are declared unlawful property and subject to seizure and forfeiture. See N.J.S.A. 33:1-66(b). Thereafter, the Director, upon being satisfied that a person whose property has been seized, has acted in good faith and has unknowingly violated the law may (emphasis added) order that such property be returned upon payment of costs. See N.J.S.A. 33:1-66(e). See also Rule 3(b) of State Regulation 28 which provides that an application for the return of seized property on the ground that the claimant has acted in good faith and unknowingly violated the law may be made by a claimant by presenting evidence to that effect at the hearing.

It follows, therefore, that since the evidence clearly established the illicit sale of alcoholic beverages, the property was properly seized, and the burden is placed on the claimant to come forward to establish the elements set forth in the applicable rule.

I therefore recommend that the motion be denied.

Mario Santoro, general manager and route manager of the claimant, Modern Music, Inc., testified that at the request of Atkinson, he went to the premises to discuss placing a pool table and a juke box. Upon arrival, he observed that the premises had the appearance of a candy store. It was equipped with counters, ice cream coolers and soda coolers. Potato chips, candies, cracker jacks, etc. were visible for sale. He spoke to Atkinson, had him complete an application for permission to install a pool table and submitted this application to the police department of the City of Newark. Thereafter, the license was issued by the City and he placed the pool table and juke box on the premises.

The machines were serviced weekly by himself or his agent generally during the afternoon and at no time did he see any evidence of sales of alcoholic beverages. The approval by the police department of the City of Newark satisfied him that he could place the machines; he relied specifically on the presumed investigation made by the police department of the City of Newark and conducted no investigation of his own.

The seized alcoholic beverages are illicit because they were intended for sale and sold without a license N.J.S.A. 33:1-1(i); N.J.S.A. 33:1-2; N.J.S.A. 33:1-50(a & b). The alcoholic beverages, personal property and cash are subject to seizure and forfeiture. N.J.S.A. 33:1-66(b).

The Director has the discretionary authority to order the return of seized property upon showing by the claimant that he has acted in good faith and has unknowingly violated the law. Rule 3(b) of State Regulation No. 28.

Claimants for the return of the seized property such as vending machines installed at unlicensed premises will not be permitted to rely on any presumed investigation of such premises by any other person or agency including law enforcement agencies in order to show that they neither knew nor should have known of the illicit beverage activity taking place on the premises. Seizure Case No. 12,252, Bulletin 1919, Item 5.

It is admitted by the claimant that, apart from his reliance on a license issued by the local police, he pursued no further investigation of the premises or of the persons in charge.

Under all the circumstances herein, I am satisfied that the claimant did not act pursuant to the rule set down in Seizure Case No. 12,252, supra, and has not satisfied the requirements of the rule set forth therein.

Accordingly, it is recommended that the claim of the claimant be denied, and that an order be entered forfeiting the monies deposited under the stipulation herein.

It is, further, recommended that an order be entered forfeiting the alcoholic beverages and cash seized herein.

Conclusions and Order

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

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

Accordingly, it is on this 18th day of August, 1972

DETERMINED and ORDERED that the claim of Modern Music Corp. be and the same is hereby denied and that the sum of \$200.00, deposited under protest with the Director, under the aforementioned stipulation, 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 alcoholic beverages and cash, as set forth in Schedule "A", constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and shall be retained for the use of hospitals and State, county 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"

- 7 - containers of alcoholic beverages
- 1 - juke box
- 1 - pool table
- \$6.00 - cash

- 4. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES WHILE ON NON-DELIVERY LIST - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR LIFTING OF SUSPENSION AFTER 45 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )  
 )  
 Spindler's Cafe, Inc. )  
 1201 Summit Avenue )  
 Jersey City, N. J., )  
 )  
 Holder of Plenary Retail Consumption )  
 License C-88 (for 1971-72 license )  
 period), issued by the Municipal )  
 Board of Alcoholic Beverage Control )  
 of the City of Jersey City. )  
 ----- )

CONCLUSIONS  
 and  
 ORDER

No Appearance on behalf of Licensee  
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is a disciplinary proceeding against the licensee based on charges alleging that (1) on divers days between October 25, 1971 and February 29, 1972, the licensee, while on the non-delivery list, obtained alcoholic beverages from an unauthorized source, in violation of Rule 15 of State Regulation No. 20; (2) during the aforesaid period the licensee permitted the transportation of alcoholic beverages in a vehicle without a transit permit, in violation of Rule 1 of State Regulation No. 17, and (3) on October 14, 1971 it possessed two bottles of alcoholic beverages the labels of which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

The records of this Division reveal that the licensee was noticed by certified mail of the charges and the initial date of hearing. It responded thereto by telephone and advised that a plea of non vult would be entered to the charges. However, licensee failed to enter such plea and a date for hearing was fixed for July 12, 1972, at 10 a.m., of which licensee was noticed. Since no plea was received on or before the said hearing date, an automatic plea of not guilty was entered herein. At 11 a.m. on said date, upon licensee's failure to appear in defense of the charges, this Division presented the matter ex parte.

ABC Agent N testified that, upon a visit to the licensed premises on February 27, 1972, he ascertained that the quantity of alcoholic beverages then on the premises was of sufficient volume to indicate that the licensee, having been on the non-delivery list since November 1971, obtained such alcoholic beverages from unauthorized sources, a fact readily admitted by one Maxwell Dorn (president of licensee corporation) who further admitted transporting such beverages in his vehicle from licensed premises owned by others. The agent's inspection of the vehicle used for such transportation established that it did not carry a transit insignia as required by Rule 1 of State Regulation No. 17.

Report of investigation made by Agent M, together with the report of the chemist for this Division, was received into evidence. Such reports indicate that an analysis of the contents of two bottles of alcoholic beverages, i.e., one quart bottle of "Smirnoff Vodka" and one 4/5 quart bottle of "Walker's Deluxe Straight Bourbon Whiskey", labeled as 80 and 86 proof respectively, did not contain contents as described on the labels.

It would normally be recommended that the license be suspended for twenty days on the first charge, ten days on the second charge (Re McWill, Inc., Bulletin 2023, Item 5), and fifteen days on the third charge herein (Re Dana, Bulletin 2047, Item 6), making a total suspension of forty-five days.

However, since the unlawful situation has not to date been corrected, it is recommended that the license be suspended for the balance of its term, viz., until midnight June 30, 1973, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but such lifting not be granted in any event sooner than forty-five (45) days from the commencement of the suspension herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the 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, particularly viewing the violation to have been the indirect result of the licensee being on the non-delivery list and the maintenance on such list effectively precluding the licensee from lawfully conducting the licensed business.

Furthermore no effective suspension can presently be imposed until the licensee or any bona fide transferee of the license is restored to the delivery list and resumes the lawful operation of the licensed business.

Accordingly, it is, on this 25th day of August 1972,

ORDERED that Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Spindler's Cafe, Inc., for premises 1201 Summit Avenue, Jersey City, or any renewal thereof which may be granted to the said licensee or any bona fide transferee of the license, be and the same is hereby suspended for forty-five (45) days, the effective dates for said suspension to be set by further order of the Director if and when the said licensee or any bona fide transferee thereof shall be removed from the non-delivery list and restored to the delivery list, and shall thereupon resume the operation of the said licensed business.

Robert E. Bower  
Director

5. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary )  
Proceedings against )

Orleans Hotel Operating Company )  
t/a Ritz Carlton Hotel )  
2727 Boardwalk )  
Atlantic City, N. J., )

Holder of Plenary Retail Consumption )  
License C-185 (for 1971-72 license )  
period), issued by the Board of )  
Commissioners of the City of Atlantic )  
City; transferred to )

AMENDED ORDER

Jolajo, Inc. )  
t/a Gay Nineties )  
2727 Boardwalk )  
Atlantic City, N. J., )

Holder of Plenary Retail Consumption )  
License C-185 (for 1972-73 license )  
period), issued by the Board of )  
Commissioners of the City of Atlantic )  
City. )  
----- )

Edwin H. Helfant, Esq., Attorney for Licensee  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

On August 10, 1972, Conclusions and Order were entered in the above captioned matter, by which order the amount of the fine paid by the licensee in lieu of suspension was incorrectly stated as \$560 when in fact the amount should have been stated as \$1,120.

Accordingly, it is, on this 28th day of August 1972,

ORDERED that the Conclusions and Order entered August 10, 1972 in the captioned matter be amended to reflect an acceptance of the offer in compromise by the licensee to pay a fine of \$1,120; and it is further

ORDERED that in all other respects the said Conclusions and Order heretofore entered be and the same are hereby affirmed.

Robert E. Bower,  
Director.

6. ACTIVITY REPORT FOR SEPTEMBER 1972

<b>ARRESTS:</b>		
Total number of persons arrested	-----	8
Licensees and employees	3	
Bootleggers	2	
Minors	3	
<b>SEIZURES:</b>		
Alcohol - gallons	-----	0
Distilled alcoholic beverages - gallons	-----	0
Wine - gallons	-----	0
Brewed malt alcoholic beverages	-----	0
<b>COMPLAINTS AND INVESTIGATIONS:</b>		
Inspections & visits made on assigned investigations	-----	1,436
Complaints assigned for investigation	-----	332
Investigations completed	-----	319
Investigations pending	-----	372
Premises where alcoholic beverages were gauged	-----	493
Bottles gauged	-----	8,945
Premises where violations were found	-----	194
Number violations found	-----	271
License applications investigated	-----	7
Contacts made with other law enforcement agencies	-----	404
<b>LABORATORY:</b>		
Analyses made	-----	153
Refills from licensed premises - bottles	-----	141
Bottles from unlicensed premises	-----	0
<b>IDENTIFICATION:</b>		
Criminal fingerprint identifications made	-----	1
Persons fingerprinted for non-criminal purposes	-----	389
Identification contacts made with other enforcement agencies	-----	330
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases instituted at Division	-----	41
Violations involved	-----	48
Sale during prohibited hours	5	No. E-141-A Form - 1
Sale to minors	-18	False answers on license application - 1
Possession liquor not truly labeled	3	Sales to non-members - club - 4
Fraud and front	1	Lewdness - 3
Hostess activity	1	Immoral activity - 3
Employ person convicted of crime	1	Assault and battery - 1
Aid and abetting	1	Sales below filed price - 2
Permit Gambling (Numbers)	1	Unauthorized sale to licensee on Default - 1
Hindering	1	
Cases brought by municipalities on own initiative and reported to Division	-----	12
Violations involved	-----	13
Sale to minors	-10	Sale to non-members - club - 1
Sale during prohibited hours	-2	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held	-----	35
Appeals	8	
Disciplinary proceedings	-11	
Eligibility	-16	
<b>STATE LICENSES AND PERMITS:</b>		
Total number issued	-----	1,517
Licenses	9	Wine Permits - 31
Solicitors permits	89	Miscellaneous - 263
Employment permits	-334	Transit Insignia - 171
Disposal permits	-87	Transit certificates - 34
Social affair permits	-499	
<b>OFFICE OF AMUSEMENT GAMES CONTROL</b>		
Licenses issued	0	Number violations found - 3
Premises inspected	36	State Fair licenses issued - 12
Premises where violations found	1	Enforcement files established - 12

Dated October 13, 1972

ROBERT E. BOXER  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

## 7. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary )  
 Proceedings against )

Michael J. Donnelly )  
 972 Broadway )  
 Bayonne, N.J. )

AMENDED ORDER

Holder of Plenary Retail Consumption )  
 License C-50 (for the 1971-72 and )  
 1972-73 license periods) issued by )  
 the Municipal Council of the City of )  
 Bayonne. )

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 Licensee, Pro Se  
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

On July 26, 1972, Conclusions and Order were entered suspending the license herein for fifteen days, effective August 8, 1972, upon licensee's plea of guilty to a charge alleging that on November 15, 1971, he possessed three bottles of alcoholic beverages the labels of which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20. Re Donnelly, Bulletin 2068, Item 1A. Prior to the effectuation of the order of suspension, the operation of the suspension was stayed by me by reason of licensee's application for the imposition of a fine in lieu of suspension, in accordance with Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$600.00 in lieu of suspension. I shall therefore enter an amended order in accordance therewith.

Accordingly, it is, on this 25th day of August, 1972

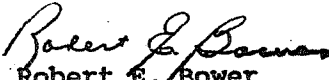
ORDERED that the payment of a fine in the amount of \$600.00 is hereby accepted in lieu of a suspension of license for fifteen days.

ROBERT E. BOWER  
 DIRECTOR

## 8. STATE LICENSES - NEW APPLICATIONS FILED.

B & B Vineyards Inc.  
 Kingwood-Locktown Road  
 Kingwood Township, N. J.  
 Application filed November 13, 1972  
 for a plenary winery license with  
 "retail privileges".

Karlin Beverage Distributors Corp.  
 1011 Edgewater Avenue  
 Ridgely, New Jersey  
 Application filed November 15, 1972  
 for place-to-place transfer of  
 State Beverage Distributor's License  
 SBD-79 from 1513 45th Street, North  
 Bergen, New Jersey.

  
 Robert E. Bower  
 Director