STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

Mr. Gossweiler DP

BULLETIN 1318 JANUARY 20, 1960

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STATE OF NEW JERSEY
Department of Law and Public Safety
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1100 Raymond Blvd. Newark 2, N. J.

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1. APPELLATE DECISIONS - MORRIS COUNTY TAVERN OWNERS ASSN. ET AL. v. PARSIPPANY-TROY HILLS, EVERLY AND FILADELFIA

APPELLATE DECISIONS - MORRIS COUNTY TAVERN OWNERS ASSN. ET AL. v. PARSIPPANY-TROY HILLS AND DI LAVORE

APPELLATE DECISIONS - FALDUTO v. PARSIPPANY-TROY HILLS

Morris County Tavern Owners Association, Beverage Licensees of Parsippany-Troy Hills, Elmer Schneider, Nicholas Drugach, and North Central Counties Retail Liquor Stores Assn.,

Appellants,

v.

Township Council of the Township of Parsippany-Troy Hills, and Arthur F. Everly and Agnes Filadelfia,

Respondents.

Morris County Tavern Owners Association, Beverage Licensees of Parsippany-Troy Hills, Elmer Schneider, Nicholas Drugach, and North Central Counties Retail Liquor Stores Assn.,

Appellants,

v.

Township Council of the Township of Parsippany-Troy Hills, and Salvatore DiLavore and Lucille DiLavore, t/a DiLavore's

Respondents.

James J. Falduto,

Appellant,

v.

Township Council of the Township of Parsippany-Troy Hills,

Respondent.

CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq., Attorney for the Appellant North Central Counties Retail Liquor Stores Assn.
Egan, O'Donnell & Hanley, Esqs., by John J. O'Donnell, Esq., Attorneys for the Appellant James J. Falduto.
Frank C. Scerbo, Esq., Attorney for the Respondent Township Council of the Township of Parsippany-Troy Hills.

Aloysius J. Castellano, Esq., Attorney for the Respondents Arthur F. Everly and Agnes Filadelfia.
Simandl, Leff and Greenberg, Esqs., by Robert H. Simandl, Esq., Attorneys for the Respondents Salvatore DiLavore and Lucille DiLavore.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The first two appeals are from the action of respondent Township Council (hereinafter Council) whereby on April 22, 1959 the members thereof, by unanimous vote, adopted resolutions granting applications for two new plenary retail distribution licenses(commonly known as package store licenses), one to respondents Salvatore and Lucille DiLavore (hereinafter DiLavore), for premises 137 Parsippany Road in the Parsippany Lake section comprising Election Districts No. 7 and 10, and the other to Arthur F. Everly and Agnes Filadelfia (hereinafter Everly), for premises located on the south side of Route #46, 500 feet east of Cherry Hill Road in Election District No. 1, both premises being in Parsippany-Troy Hills Township. The third appeal is from the action of the Council in denying on the same date appellant's application for a license of the same class.

"The appeals were prosecuted by appellants North Central Counties Retail Liquor Stores Assn. (hereinafter Association) and James J. Falduto (hereinafter Falduto). The other appellants withdrew their appeals prior to the hearing herein.

"The Association attacks the grant of the aforesaid applications on the grounds that (1) such action was prohibited by R.S. 33:1-12.14 (Numerical Limitation Law) and (2) it was arbitrary and unreasonable for Council to conclude that there was any need or necessity for the issuance of the two additional licenses. Falduto alleges that the reason the Council denied his application was because of prejudice and that he was not given a fair hearing.

"At the outset, it is deemed pertinent to allude to the cases of Schneider et al. v. Parsippany-Troy Hills and DiLavore and Nuzzi and Schneider et al. v. Parsippany-Troy Hills and Packard Bamberger Co., Inc., Bulletin 1209, Item 2 (hereinafter Re Schneider) which were appeals from the action of respondent Council in granting applications for two new package store licenses, one to respondents DiLavore and Nuzzi and the other to respondent Packard-Bamberger Co., Inc.

"In those cases appellants alleged the same two grounds why the Council's action should be reversed as those alleged by the Association herein and contended, as does the Association, that since the population of the Township of Parsippany-Troy Hills, according to the 1950 Federal census, was 15,290, including 7,799 patients and resident staff of Greystone Park Hospital, an institution within the Township, the population of the hospital should be excluded in enumerating the population of the Township for the purposes of the Alcoholic Beverage Law, R.S. 33:1-12.14, the pertinent section of which provides that:

> 'no new plenary retail distribution 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 three thousand of its population as shown by the last then preceding Federal census.'

"The Director in Re Schneider, which was decided on January 27, 1958, reversed the action of the Township Council, but held:

> 'For the purpose of determining whether the licenses in question are issued in violation of the State Numerical Limitation Law, the patients and staff of Greystone Park Hospital may not be excluded from the official enumeration of the population of the respondent municipality as certified by the last preceding Federal census.'

"The issuance of the two licenses in question increased the number of plenary retail distribution licenses from three to five and five such licenses are permitted in the municipality under the provisions of R.S. 33:1-12.14.

"As to ground 2 alleged by the Association, the long-established principle governing the Director's function on appeals from an issuing authority's opinion that there is need and necessity for a liquor outlet at a particular location in a municipality was reasserted by the incumbent Director in the recent case of Lykosh v. Perth Amboy et al., Bulletin 1295, Item 1, wherein he stated:

> 'The question whether or not there is a need or necessity for a liquor outlet at a particular location is within the sound discretion of the issuing authority. In cases of the kind now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et als v. Maplewood et al, Bulletin 658, Item 4; Krough's Restaurant, Inc. et als v. Sparta et al., Bulletin 1258, Item 1.'

"To ascertain if reasonable cause exists, the criteria must be the facts upon which the issuing authority predicates its action. The facts established on the appeal herein, as evidenced by exhibits and the testimony of Mayor Frayler, Councilmen Sutton and Downey, the Township Clerk Spitzer (who were called as witnesses for the Association), the Deputy Township Manager and Finance Director Cherkin and the Township Building Inspector Lee (called by the Council) show that the Township of Parsippany-Troy Hills is approximately 25 square miles in area and is divided into ten election districts; that at the time the new applications were granted there were existing in the Township twenty-one plenary retail consumption licenses, five limited retail distribution licenses and three plenary retail distribution licenses; that the Parsippany Lake section of the Township, comprising Election Districts No. 7 and 10, the Hiawatha section, comprising Election Districts No. 4 and 6, and Election District No. 1 are the most heavily populated areas of the Township; that the Parsippany Lake section has six taverns, four warm beer outlets and one package store license, the Hiawatha section has three taverns and one package store license, Election District No. 1 has six taverns and one warm beer outlet; Election District No. 3 has one tavern; Election District No. 5 has three taverns and one package store license and Election District No. 9 has two taverns; that 2,441 building permits were issued for residential dwellings since 1950; that the population of the Township in 1958, as estimated by the New Jersey Department of Conservation and Economic Development was 21,133; that 550 residents of the Lake Parsippany area signed a petition favoring the granting of the DiLavore application; that the Chamber of Commerce in the Township presented to the Council a resolution favoring the granting of the Everly application; that there are 927 homes in Election District No. 1; that the locations of the DiLavore and Everly premises are in conformity with the requirements of the Township Distance Ordinance and that no objectors appeared before the Council when it considered the applications for the licenses in question.

"The aforesaid Township Officials, respondents DiLavore and Everly, appellant Falduto and six residents of the area for which the applications were granted testified that public necessity and convenience warranted the granting of the additional plenary retail distribution licenses in those sections of the Township.

"Two retail distribution licensees whose establishments are in communities adjacent to Parsippany-Troy Hills Township appeared at the hearing herein as objectors. They testified that they serve numerous patrons in Parsippany-Troy Hills Township, from which it may be reasonably inferred that the existing distribution licensed premises in Parsippany-Troy Hills Township are inadequate to serve the needs of the residents therein. In any event, the objectors are licensees who are concerned mainly with lessening competition.

"Considering the evidence adduced herein respecting the second ground alleged by the Association, which evidence is substantially different from that adduced in Re Schneider, I find that the Council, before granting the applications in question, gave proper consideration to the need and necessity for plenary retail distribution licenses in the heavily populated sections of the Township for which the applications in question were granted and that local sentiment favored the Council's action. Under the circumstances, it cannot be said that the action of the Council was an unreasonable exercise of its discretionary powers. Cf. Franco and Swick v. Phillipsburg et als., Bulletin 452, Item 1, and Bulletin 452, Item 2; Lubliner v. Paterson et al., Bulletin 1289, Item 3.

"As to Falduto's claim, it is evident from the transcript of the proceedings before the Council respecting his application (Exhibit O-1) that he was given a fair hearing and there is nothing in the record to indicate that the members of the Council were prejudiced or improperly motivated. As reported in the minutes of the meeting of April 22, 1959, Mayor Frayler stated that the granting of the two applications 'takes care of the five licenses permitted in this Township and the application filed by Mr. Falduto cannot be acted on since we are up to the statutory limitation'. Cf. Matweishyn v. Hillside et al., Bulletin 783, Item 1.

"In view of all the facts and circumstances appearing herein, I conclude that the Association and Falduto have failed to establish by the necessary preponderance of the evidence that the action of respondent Council was erroneous. I therefore recommend that the Council's action be affirmed and that the appeals herein be dismissed."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for the North Central Counties Retail Liquor Stores Association.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's Report and the exceptions and written argument filed herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 23rd day of November, 1959,

ORDERED that the action of the Township Council of the Township of Parsippany-Troy Hills be and the same is hereby affirmed and that the appeals herein be and the same are hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - BON-HOOD, INC. v. ATLANTIC CITY

Bon-Hood, Inc., a corporation of New Jersey, t/a Beach Comber Bar	)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS
Board of Commissioners of the City of Atlantic City,	)	AND
Respondent.	)	ORDER

Clarence Blitz, Esq., Attorney for Appellant.
Chaim H. Sandler, Esq., Attorney for Respondent.
Brown and Frank, Esqs., by William E. Brown, Jr., Esq., Attorney for Kent's Restaurant, et al, Objectors
Louis Kravis, Esq., Attorney for McGee's Corporation, et al, Objectors

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

This is an appeal from an alleged denial of an application filed by appellant on August 7, 1959 for a place-to-place transfer of its plenary retail consumption license from premises 2035-2037 Atlantic Avenue to premises located at the southeast corner of Pacific and Illinois Avenues, Atlantic City.

"On the same date that the application was filed, a letter was sent to counsel for appellant which acknowledged receipt of the application, and further stated:

> 'No action can be taken by the Board of Commissioners because the application is illegal on its face in that the proposed premises is within three (300) hundred feet of three (3) licensed premises and therefore a transfer would be in violation of the applicable City Ordinance.'

"This letter was on the letterhead of the Department of Revenue and Finance, Liquor Licensing Bureau, Atlantic City, John O'Donnell, Commissioner, Bernard F. Murphy, Supervisor, and was signed by such supervisor. On August 11, 1959, the instant appeal was filed, although the respondent Board, as such, had not then and has not since acted upon the application.

"The application does not disclose on its face that the proposed location is within 300 feet of three other licensed premises. Determination of such fact is not a purely ministerial function and, hence, cannot be delegated by respondent to such supervisor. Caruso v. Jersey City, Bulletin 694, Item 1. Thus, there was no formal municipal action to grant or deny appellant's application for transfer of its license and, hence, there was no action from which appellant may appeal. Gelber v. Freehold et al., Bulletin 957, Item 2. Under such circumstances, there is no alternative except to remand the case to respondent for action upon the application. Ridgefield Delicatessen v. Ridgefield, Bulletin 908, Item 4.

"An appeal may be taken from formal action by a local issuing authority, or from its unwarranted failure to take action within a reasonable time after a request so to do. (No such request was made

in the instance case.) If what transpired does not represent either formal action, or failure to act, the appeal is remanded for formal action by the issuing authority. Higgins v. Elizabeth, Bulletin 1081, Item 5.

"However, for the guidance of respondent when considering the application, it must be pointed out, insofar as its local ordinance is concerned, that since such ordinance has been presented in evidence, and the facts applicable thereto fully developed, if there is no change in the facts, the grant of the transfer would be prohibited and in direct contravention of the applicable ordinance.

"It is urged by appellant that the Director should adjudge such ordinance invalid. It would appear that it is not the function of the Director to declare an administrative invalidation of an ordinance--that the sound course is one confining the administrative decision to the specific issues and parties, and where the question of applicability and reasonableness of an ordinance is raised on appeal, to confine the administrative determination on the point to the reasonableness or the unreasonableness of the local regulation as applied in the particular case. Finbar et al. v. Jersey City and Commuters Bar, Inc., Bulletin 917, Item 1.

"The ordinance here involved, referred to herein as Ordinance No. 8 of 1956, is of the type known as a distance-between-premises ordinance. Its legitimate public purpose is to prevent or guard against undue concentration of licensed places in particular localities. Finbar et al. v. Jersey City and Commuters Bar, Inc., supra. Its result is to limit the number of licenses, since the greater the intervening distance that must separate one licensed premises from another, the fewer the number of licenses that may exist within the municipality. Petrangeli v. Barrett, 33 N. J. Super. 378 (App. Div. 1954).

"The ordinance in question, in pertinent part, prohibits the transfer of a license to premises within 300 feet of other licensed premises, with specific exceptions to such prohibition. One such exception provides that where, as here, the premises covered by a license are so damaged or destroyed by fire so as to render said premises untenantable, and said premises are not repaired or made tenantable within a period of five (5) months from said fire, a transfer may be granted to the same licensee to other premises within 300 feet of the premises so damaged or destroyed, even though the said other premises be within 300 feet of the premises for which a license is outstanding. The ordinance further provides that notwithstanding anything hereinbefore contained, that a license may be transferred to any premises within 300 feet of premises for which a license of the type to be transferred is outstanding if the holder or holders of all outstanding licenses of such type within 300 feet of the premises to which transfer is sought, shall, prior to the transfer thereof, file with the Director of Revenue and Finance of Atlantic City a consent or consents in writing to said transfer.

"The evidence presented establishes the appellant's premises were destroyed by fire on June 17, 1959, that the proposed new premises are not within 300 feet of the present licensed premises, but within 300 feet of three other licensed premises of a type similar to appellant's, and that it has not obtained consent to such transfer from such licensees.

"The appellant's contention, in short, is that the exception requiring consent of such licensees is unreasonable, and, hence, the entire distance-between-premises ordinance is unreasonable. The statement of the contention supplies its own answer--that it is not sound. In the Commuters Bar case, a somewhat similar provision was held unreasonable without affecting the other provisions of the distance ordinance. Indeed, on appeal to the Appellate Division (Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351 (1952)) the grant of the

transfer was set aside because of the failure to comply with other provisions of such ordinance. In the zoning case, Levy v. Mraviag, 96 N.J.L. 67 (Sup. Ct. 1921) cited by appellant, the application for permit was fully in accordance with the local building code, except for the consent of adjoining owners required by the ordinance. Holding that the requirement for such consents rendered such ordinance invalid left the applicant fully qualified to obtain the permit. Even if the consents required by the ordinance here involved be held unreasonable, it would, nevertheless, leave the appellant faced with the other provisions of the ordinance prohibiting such transfer.

"It has long been established that a local governing body has no jurisdiction to grant or transfer a license in violation of the terms of a local ordinance. Petrangeli v. Barrett, supra.

"I recommend that an order be entered directing that the matter be remanded to the respondent with instructions to grant or deny appellant's pending application for transfer of its license, in the exercise of its reasonable discretion and in accordance with the opinion herein."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 7th day of December 1959,

ORDERED that the matter be and the same is hereby remanded to respondent Board of Commissioners of the City of Atlantic City to consider the merits of the application for transfer of the license filed by appellant on August 7, 1959 in accordance with the opinions herein.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Lillian Weinblatt t/a Metropolitan Hotel 305-315 Asbury Avenue Asbury Park, N. J.	)	CONCLUSIONS AND
Holder of Plenary Retail Consumption License C-72, issued by the City Council of the City of Asbury Park.	)	ORDER

Seymour S. Weinblatt, Esq., Attorney for Defendant-licensee.
William S. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has entered a plea of non vult to a charge alleging that she possessed in and upon her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents, in violation of Rule 27 of State Regulation No. 20.

On August 4, 1959 as ABC agent tested defendant's open stock of assorted brands of liquor and seized a number of bottles for further tests by the Division's chemist. The chemist's report discloses that the contents of four bottles were from 9 to 23 proof short, low in acids and solids and diluted. The comparisons were made with samples of genuine products of the labeled brands.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty days, the minimum period imposed in a "refill" case involving four bottles. Re Grower, Bulletin 1263, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Investigation discloses that defendant's business is not being conducted at present. Thus, no effective penalty can be imposed at this time. The effective time and date of the suspension, therefore, will be fixed by further order which will be entered by me after the licensed premises shall have reopened for business.

Accordingly, it is, on this 24th day of November 1959,

ORDERED that Plenary Retail Consumption License C-72, issued by the City Council of the City of Asbury Park to Lillian Weinblatt, t/a Metropolitan Hotel, for premises 305-315 Asbury Avenue, Asbury Park, be and the same is hereby suspended for fifteen (15) days, the effective time and date to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN BASEMENT OF PRIVATE RESIDENCE - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES, FURNISHINGS AND EQUIPMENT IN BASEMENT ORDERED FORFEITED - VARIOUS ARTICLES RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on August 8, 1959 of a quantity of alcoholic beverages, fixtures, furnishings and equipment at 41 Cumberland Avenue, in the Borough of Penns Grove, County of Salem and State of New Jersey.	Case No. 10,065 On Hearing CONCLUSIONS and ORDER

South Jersey Gas Company, by Albert Gerner, Supervisor of Credit Sales.
Horace Macconi, t/a Melody Music Company, Pro Se.
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 fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on August 8, 1959 in premises occupied by Edward Southerland, located at 41 Cumberland Avenue, Penns Grove, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of South Jersey Gas Company, which sought return of a hot water heater. An appearance was also entered by Horace Macconi, who sought return of a music machine. No one opposed forfeiture of the balance of the property seized.

ABC agents testified to the following effect: The premises have the outward appearance of a dwelling, the basement of which was equipped with a bar, tables, chairs, a music machine and a pool table. A hot water heater, washer, and steam boiler were in the rear of the basement. On August 7, 1959, at about 11:15 P.M., one of the agents and two companions entered the basement. The agent observed Edward Southerland behind the bar, and a number of persons drinking what appeared to be alcoholic beverages. The agent purchased from Southerland a number of drinks of beer and whiskey for himself and his companions. About midnight other ABC agents and local police officers entered the basement, and disclosed their identity, and questioned Southerland, who acknowledged that he had been selling alcoholic beverages in the premises.

Edward Southerland did not hold any license authorizing him to sell alcoholic beverages, and the premises were not licensed for that purpose. The agents seized his stock of alcoholic beverages, and the furniture, fixtures, and equipment in the basement.

The seized alcoholic beverages were intended for sale without a license, and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and all other personal property seized therewith in the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

It appears that the hot water heater was purchased on a conditional sales contract by Edward Southerland on July 31, 1959 from the South Jersey Gas Company, delivered to the premises on August 3rd, and was still crated when seized. The purchase price was $90.00, to be paid in 90 days. The information on the sales contract is that

Southerland operates a rooming house at the premises, and has a number of gas accounts with the concern. The purchase of the heater on a credit basis was influenced by his past satisfactory account with the gas company, in that in any sales of less than $200.00, it relies entirely on its own credit experience with its customers. The heater was delivered on its behalf by a local plumbing supply dealer.

From evidence presented by Horace Macconi it appears that in May 1955 he purchased the music machine which was seized; that he received a telephone call from Edward Southerland requesting the loan of the music machine for use at a party on Friday, August 7th, and perhaps for the weekend, and placed the machine at the premises; that such a loan is a normal practice in his business, and when he delivered the machine in the basement, he assumed that it was a recreation room such as is frequently found in a private residence. Edward Southerland does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that both South Jersey Gas Company and Horace Macconi acted in good faith and did not know or have any reason to believe that alcoholic beverages were being sold by Southerland in his basement. I shall therefore return the hot water heater and music machine to the respective claimants, upon payment by each of the costs of the seizure and storage of the articles returned to them.

Accordingly, it is DETERMINED and ORDERED that if on or before the 10th day of December, 1959, South Jersey Gas Company pays the costs of the seizure and storage of the hot water heater, and Horace Macconi pays the costs of the seizure and storage of the music machine, such articles will be returned to each respectively and it is further

DETERMINED and ORDERED that the balance of the seized property, listed in Schedule "A" attached hereto, constitutes unlawful property and that 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: November 30, 1959

SCHEDULE "A"

7 - bottles of whiskey
96 - bottles of beer
28 - drinking glasses
1 - bar
1 - hot water heater
1 - Westinghouse Laundromat Washing Machine
1 - Kaiser dishwasher
1 - electric fan
1 - Norge Washing Machine
1 - Kenmore Washing Machine
1 - booth
1 - Bally pool table
1 - Seeburg music machine and currency therein
2 - tables
1 - Philco refrigerator
1 - radio clock
2 - chairs
4 - stools
1 - television set
1 - electric fan

5. SEIZURE-FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES - PERMITS TO IMPORT ALCOHOLIC BEVERAGES INTO STATE OF DESTINATION OBTAINED SUBSEQUENT TO SEIZURE - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES RETURNED.

In the Matter of the Seizure on May 27, 1959 of a quantity of whiskey and a Buick sedan, on the New Jersey Turnpike at the 35 Mile Post in the Township of Mount Laurel, County of Burlington and State of New Jersey.	:	Case No. 9986 On Hearing CONCLUSIONS and ORDER

James E. Abrams, Esq., Attorney for Benjamin Barrow.
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 taxpaid alcoholic beverages and a Buick sedan, described in a schedule attached hereto, seized on May 27, 1959 on the New Jersey Turnpike at the 35 Mile Post, Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing, an appearance was entered on behalf of Benjamin Barrow, who sought return of the alcoholic beverages and motor vehicle.

It appears that on the above date and location a New Jersey State Trooper halted the Buick sedan during his routine patrol of traffic on the highway. The trooper ascertained that Benjamin Barrow is the registered owner of the car, and that Barrow and two other men were passengers therein. When the trooper discovered the alcoholic beverages in the car and that none of the persons in the car had a New Jersey license or permit to transport alcoholic beverages in this state, the trooper took possession of the alcoholic beverages and motor vehicle pending determination of the source and destination of such alcoholic beverages. Thereafter such property was turned over to ABC agents.

Barrow, a resident of New York City, told the agents that he had purchased the alcoholic beverages from a retail licensee located in Washington, D.C. for his personal use and presented invoices from such retailer. However, he did not have a permit to import the alcoholic beverages into New York, in accordance with the requirements of that state. Bulletin 1204, Item 8. Rule 2, State Regulation No. 18 governing the transportation of alcoholic beverages through New Jersey for delivery to another state requires the transporter to establish that such alcoholic beverages may lawfully be delivered at their destination. The transportation of alcoholic beverages, absent such proof, is unlawful, and subjects the transporter to criminal prosecution.

There has now been presented two permits issued by the New York State Liquor Authority to Benjamin Barrow authorizing the importation into that state of 30 gallons of alcoholic beverages, described by size of containers, and two receipts for New York State tax on such alcoholic beverages, referred to as arriving from Washington, D.C., issued by the Commodities Tax Bureau of the New York State Liquor Authority. Hence, the transportation and delivery of the alcoholic beverages in question is now in full compliance with the law of that state and that of New Jersey insofar as seizure proceedings are con-

cerned. No opinion is expressed as to whether these permits obtained after the event affect the criminal proceedings, which are within the sole jurisdiction of the Prosecutor of the County.

Accordingly, it is DETERMINED and ORDERED that if on or before the 10th day of December, 1959, Benjamin Barrow pays the costs incurred in the seizure and storage of the motor vehicle and alcoholic beverages as listed in the aforesaid Schedule "A" such motor vehicle and alcoholic beverages will be returned to him.

WILLIAM HOWE DAVIS
Dated: November 30, 1959 DIRECTOR

SCHEDULE "A"

20-4/5 quart bottles of various brands of whiskey
129-pint bottles of various brands of whiskey
144-1/2 pint bottles of various brands of whiskey
1-Buick sedan, serial No. 4A3029019, Engine No. U4896344, New York Registration 3638CQ.

6. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES WITHOUT NEW JERSEY PERMIT OR LICENSE - EVIDENCE PRESENTED THAT THE SOURCE AND DESTINATION OF SUCH BEVERAGES ARE LEGITIMATE - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE RETURNED.

Case No. 10,123	
In the Matter of the Seizure on October 26, 1959 of a quantity of alcoholic beverages and a Chevrolet truck on Route 130 in the Township of Greenwich, County of Gloucester and State of New Jersey.	ON APPLICATION FOR RETURN OF SEIZED PROPERTY PRIOR TO STATUTORY HEARING
	ORDER

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys for Seven Up Bottling Company of Maryland.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On October 26, 1959 New Jersey State Troopers seized 108 four-fifth quart bottles of various brands of taxpaid alcoholic beverages and a Chevrolet truck owned by claimant, on Route 130, Greenwich, New Jersey, because Andrew A. Callens, the driver of the truck, did not have in his possession any license, or permit authorizing transportation of alcoholic beverages in New Jersey. Later the truck and alcoholic beverages were turned over to ABC agents.

Application has been made pursuant to Rule 1 of State Regulation No. 28 by the claimant for the immediate return of the truck and whiskey on the ground that the truck is specially equipped for use by its mechanic in the servicing of repairs to machinery in its various affiliated branches, and it is therefore handicapped in its business. This fact has been amply established by the evidence presented.

While the whiskey and truck are technically subject to forfeiture by reason of the unlicensed transportation of alcoholic beverages in this state, R.S. 33:1-2, R.S. 33:1-1(i) and (y), R.S. 33:1-66, nevertheless, if it is clearly established that the source and destination of the alcoholic beverages is legitimate, I am authorized to remit

forfeiture and return such property. R.S. 33:1-66(e) (f).

The bottling company has presented an invoice dated October 14, 1959 from a retail liquor dealer in Baltimore, Maryland, evidencing the purchase of alcoholic beverages there by such company, which invoice includes the brands of whiskey seized. Witnesses on behalf of the company stated that it is its practice to purchase alcoholic beverages for distribution to its customers as tokens of good will and holiday gifts; that the whiskey it purchased was stored in its plant, and the seized whiskey was intended for delivery to its affiliate Salisbury, Maryland plant; that Andrew Callens, its supervisory mechanic loaded the whiskey on its truck on Friday, October 23rd. While at the plant late on that day Callens received a telephone message from its affiliate Gloucester, New Jersey plant that it was necessary to replace a vital piece of machinery; that such plant is normally closed on Saturday, hence Callens drove the truck to his home with the machinery part and whiskey, there parked the truck over the weekend, and on Monday, October 26th, was enroute to the Gloucester plant with the machinery part, and from there intended to proceed to Salisbury. The witnesses further testified that it was company practice to have each plant purchase alcoholic beverages in its own state, for the aforesaid purposes and that the Baltimore company supplied the Salisbury plant.

On the possibility that perhaps the seized whiskey was intended for distribution by the Gloucester plant, a check was made of the retail liquor dealers in the vicinity of such plant, named by the company as the place where such plant purchased alcoholic beverages for company use, which investigation discloses that the Gloucester plant did purchase alcoholic beverages from time to time from such sources. Even if the seized whiskey was intended for distribution by the Gloucester plant, it could legally do so on obtaining the necessary permits from the Division. However, on the basis of the evidence presented, I shall accept the sworn testimony that the seized whiskey was not so intended.

Accordingly, I shall return the whiskey and motor vehicle to the claimant upon payment of the costs of the seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 11th day of December, 1959, the Seven Up Bottling Company of Maryland pays the costs incurred in the seizure and storage of the motor vehicle and alcoholic beverages as described in Schedule "A" such motor vehicle and alcoholic beverages will be returned to it.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: December 1, 1959.

SCHEDULE "A"

108 - 4/5 quart bottles of various brands of taxpaid alcoholic beverages
1 - Chevrolet truck, Serial No. 115648, Maryland Registration 37-50-EL

7. AUTOMATIC SUSPENSION - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #176)
In the Matter of a Petition to Lift the Automatic Suspension of License)
C-82, issued by the Board of Commissioners of the City of Passaic to) On Petition

ORDER

Joseph Lonisin)
t/a Lonisin's Tavern
125 Third Street)
Passaic, N. J.
-)

Joseph M. Harrison, Esq., Attorney for petitioner.

BY THE DIRECTOR:

The petition herein discloses that on November 18, 1959, Joseph Lonisin was fined the sum of $75 and costs after being adjudged guilty in the Municipal Court of the City of Passaic of a charge alleging that he sold alcoholic beverages to a minor, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by Joseph Lonisin. R.S. 33:1-31.1. Because the Division was informed that the licensee intended to apply for a stay of said suspension, the license has not yet been picked up.

Disciplinary proceedings have not yet been instituted against the licensee because of the said sale of alcoholic beverages to a minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been decided. In fairness to petitioner I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Kirchmayer, Bulletin 1291, Item 14.

Accordingly, it is, on this 24th day of November 1959,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - RECORD OF PREDECESSOR IN INTEREST NOT CONSIDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Maude Eisenhardt, Inc.
t/a Colonial Cottage
N/W Cor. Jobstown Rd. and
Smithville-Jacksonville Rd.,
Eastampton Township
PO Mt. Holly, N. J.,

Holder of Plenary Retail Consumption License C-2 for the 1958-59 licensing year, issued by the Eastampton Township Committee, as since renewed for the 1959-60 licensing year to

Colonial Cottage, Inc.

(the present changed name of Maude Eisenhardt, Inc.), for the same premises

CONCLUSIONS and ORDER

David Novack, Esq., Attorney for Defendant-licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on September 23, 1959, it sold alcoholic beverages to two minors and permitted the consumption of such alcoholic beverages by said minors on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

On the above date ABC agents at defendant's licensed premises observed Robert --- (age 20) consume a bottle of beer purchased by him from James Mee (the bartender) and also observed Glenda --- (age 19) purchase and consume a bottle of beer sold to her by Joseph Moore (another bartender). The agents disclosed their identity, seized the unconsumed portion of the beer from Glenda and advised Maude Eisenhardt (president and holder of 98% of the stock of the corporate licensee) of the violations.

Counsel for the present stockholders of the corporate licensee has presented a letter setting forth that on September 21, 1959, he advised the Township Clerk of a change of officers and stockholders of defendant corporation; that Maude Eisenhardt now has no interest in the corporation and that the name of the corporation has been changed to Colonial Cottage, Inc. In alleged mitigation the letter further sets forth that the violations apparently occurred on the date when the new manager of the business employed by the present stockholders took over the operation of the business and did not have an opportunity to dismiss former employees amidst the confusion attendant upon the change of ownership. Insofar as any effect of this statement on the penalty for the instant violations, it presents no reason for the imposition of less than the minimum penalty.

Defendant corporate licensee has no prior adjudicated record. However, Maude Eisenhardt, as an individual, has a past record while the holder of a license at other premises. I conclude that the penalty to be imposed therein should not be increased because of such prior record

(Re Keller's Tavern and Grove, Inc., Bulletin 1245, Item 4; cf. Re Holiday Beverages, Inc., Bulletin 1208, Item 6) since it appears that the present stockholders' acquisition of the corporate stock resulted from the economic distress of Maude Eisenhardt, Inc. and not from an improper motive or desire to escape the effect of the prior record of Maude Eisenhardt as an individual.

I shall suspend defendant's license for fifteen days (the minimum penalty for an unaggravated sale of alcoholic beverages to a 19- and 20-year-old minor. Re Charles F. Harney, Jr., Bulletin 1285, Item 13. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 9th day of December, 1959,

ORDERED that plenary retail consumption license C-2, issued by the Eastampton Township Committee to Colonial Cottage, Inc. (the present changed name of Maude Eisenhardt, Inc.), t/a Colonial Cottage, for premises N.W. Cor. Jobstown Rd. and Smithville-Jacksonville Rd., Eastampton Township, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Friday, December 18, 1959, and terminating at 2 a. m. Monday, December 28, 1959

WILLIAM HOWE DAVIS
DIRECTOR

STATE LICENSES - NEW APPLICATION FILED.

Theo. Hamm Brewing Co.
t/a Gunther Brewing Company and Imperial Brewing Co.
1101 South Conkling Street
Baltimore 24, Maryland

Application filed January 14, 1960 for person-to-person transfer of Limited Wholesale License WL-17 from Gunther Brewing Company.

William Howe Davis
Director