

BULLETIN 927

MARCH 3, 1952.

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

BULLETIN 927

MARCH 3, 1952.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES -
SUSPENSION FOR 180 DAYS REIMPOSED UPON AFFIRMANCE OF DIRECTOR'S
DECISION BY SUPERIOR COURT, APPELLATE DIVISION.

In the Matter of Disciplinary)
Proceedings against)

VIRGINIA P. LARSEN)
T/a OLE'S RANCH)
Dutchtown Road, Kresson)
Voorhees Township)
P.O. Marlton RFD, N. J.,)

O R D E R

Holder of Plenary Retail Consump-)
tion License C-2 for the 1950-51)
and 1951-52 licensing years,)
issued by the Township Committee)
of Voorhees Township.)
- - - - -)

On October 22, 1951, the defendant's license was suspended for a period of 180 days, effective November 1, 1951. See Bulletin 919, Item 12. Pending the defendant's appeal to the Superior Court, Appellate Division, the suspension was held in abeyance. The Court has recently affirmed the decision, and the penalty may now be reimposed.

Accordingly, it is, on this 11th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Voorhees Township to Virginia P. Larsen, t/a Ole's Ranch, for premises at Dutchtown Road, Kresson, Voorhees Township, P.O. Marlton RFD, be and the same is hereby suspended for the balance of its term, effective February 18, 1952 at 3:00 a.m.; and it is further

ORDERED that any license issued to the defendant for this or any other premises for the licensing year 1952-53, by the Township Committee of Voorhees Township, or to any other person to whom such license may be transferred, shall be and remain under suspension until August 16, 1952, at 3:00 a.m.

EDWARD J. DORTON
Acting Director.

2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL ORDINANCE - FAILURE TO CLOSE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH BADER)
59 North Main Street)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-52, issued by the)
Board of Alcoholic Beverage)
Control of the City of Paterson.)
- - - - -)

Joseph Bader, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded non vult to charges alleging that (1) he sold a pint bottle of whiskey in original container for off-premises consumption at about 12:20 a.m. on Sunday, December 16, 1951, in violation of State Regulations No. 38; (2) he sold, served and delivered and allowed the consumption of alcoholic beverages on his licensed premises between 3:00 a.m. and 1:00 p.m. on the same day, in violation of local regulation, and (3) he failed to have his entire licensed premises closed between 3:00 a.m. and 1:00 p.m. on the same day, also in violation of local regulation.

The file disclosed that two ABC agents entered the licensed premises at approximately 10:30 p.m. on the night of Saturday, December 15, 1951. At about 11:45 p.m. one of the agents asked the bartender for a pint of "Wilson's" to take out, to which the latter replied, "All right, when you are ready." Pursuant thereto, at 12:20 a.m. Sunday, December 16, the bartender obtained from the package department of the premises a pint bottle of "Wilson That's All Blended Whiskey" which he handed to the agent who paid him \$2.50 therefor. The agents then left the premises without revealing their identities.

At approximately 11:00 a.m. on Sunday, December 16, the same agents returned to the vicinity of the licensed premises which they watched from a nearby point of vantage. During the next forty-five minutes they observed people entering and leaving the licensed premises. Accordingly, at 11:45 a.m. they approached the premises, knocked on the side door which was locked, and were admitted by the licensee who directed them to sit in a booth in the rear room. Several other patrons were seated in another booth in this rear room. The licensee, at the agents' request, served them with bottled beer and glasses, and accepted payment therefor. Shortly thereafter the licensee admitted another patron through the side door to the rear room. The agents consumed a portion of their beer and identified themselves to the licensee, at which time there were six other patrons in the rear room all consuming drinks of beer, and one patron in the barroom with an empty beer-glass and an empty "shot-glass" on the bar in front of him.

Defendant has no prior adjudicated record. There are two separate offenses involved, i.e., the sale of the original container in violation of State Regulations (Charge 1), and the local "hours" violation (Charges 2 and 3), Re Trombley, Bulletin 784, Item 9, and each carries a minimum suspension of fifteen days, making a total suspension of defendant's license for a period of thirty days. Five days will be remitted for the plea, leaving a net suspension of twenty-five Days. Re Trombley, supra.

Accordingly, it is, on this 11th day of February, 1952,...

ORDERED that Plenary Retail Consumption License C-52, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joseph Bader, for premises 59 North Main Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. February 18, 1952, and terminating at 3:00 a.m. March 14, 1952.

EDWARD J. DORTON
Acting Director.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL ORDINANCE - FALSE STATEMENT IN APPLICATION - CONCEALING CRIMINAL CONVICTION - FAILURE TO ANSWER QUESTIONS IN APPLICATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

OLD SPOT CLAMBROTH TAVERN, INC.)
352 First Street)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-475, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Jersey City.)

Harold J. Ruvoldt, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

Defendant has pleaded non vult to the following charges:

- "1. On Sunday, July 15, 1951, between 11:00 a.m. and 12:00 noon, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., four quart bottles of Ballantine beer and one pint bottle of Cattani Sherry wine, at retail in their original containers for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38, which prohibits any such sale or delivery on Sunday.
- "2. On the occasion aforesaid, you conducted your licensed business in violation of Section 4 of an Ordinance regulating the sale and distribution of alcoholic beverages by all those holding plenary retail consumption licenses in the City of Jersey City, adopted by the Board of Commissioners of Jersey City on June 20, 1950, which prohibits such activity between the hours of 2:00 a.m. and 1:00 p.m. on Sunday.
- "3. In your application dated May 29, 1951, filed with the Municipal Board of Alcoholic Beverage Control of Jersey City, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 33, which asks: 'Have you or has any person mentioned in this application, ever been convicted of any crime?', whereas in truth and fact Ralph Faccone, mentioned in the application as your treasurer and 50% stockholder, had been convicted in the Special Sessions Court (now County Court) of Hudson County, New Jersey on or about January 27, 1938 of the crime of grand larceny; sale false statement being in violation of R.S. 33:1-25.

- "4. In your aforesaid application, you failed to answer Questions 21, 23, 24 and 25, thereby evading and suppressing material facts; such evasion and suppression being in violation of R. S. 33:1-25."

As to Charges 1 and 2: On Sunday, July 15, 1951, at about 11:30 a.m., ABC agents observed Ralph Faccone, Treasurer of defendant corporation, as he was leaving the licensed premises with two paper bags, one of which he handed to his brother who was standing outside the premises and the other of which he handed to another man who was also outside the premises. After these two men had started to leave in different directions, the agents stopped them and found one sealed quart bottle of beer and one sealed pint of wine in one bag, and one sealed quart of beer in the other bag. Shortly thereafter Ralph Faccone, who had returned to the licensed premises, again came out carrying a bag containing two sealed quarts of beer. The agents apprehended him as he was leaving the premises. In attempted mitigation it is alleged that none of the alcoholic beverages was sold, and that all was intended to be taken to Ralph Faccone's home for his personal consumption. The facts do not support the latter contention and, even if the alcoholic beverages were given to the two men, nevertheless the gift by the licensee constituted a sale. R.S. 33:1-1(w). Defendant is clearly guilty as to Charges 1 and 2.

As to Charges 3 and 4: Admittedly the application, which was signed by Viola DeFelice, Vice-President of defendant corporation, falsely stated that no person mentioned in the application had been convicted of a crime. In fact Ralph Faccone (her brother) who was and is Treasurer of the corporation and the holder of one-third of its stock (not 50% as stated in the charge) had been convicted of the crime of grand larceny which I have ruled involves moral turpitude (see separate proceedings decided herewith). Thus he was ineligible to be such officer or stockholder. However, in the aforementioned separate proceeding the statutory disqualification of Ralph Faccone has been removed. No explanation is given as to the reason why the questions referred to in Charge 4 were not answered.

Defendant has no prior adjudicated record. Under all the circumstances, I shall suspend defendant's license for a period of twenty-five (25) days because of the violations set forth herein. Cf. Re Musumeci, Bulletin 866, Item 6. Five days will be remitted because of the plea, leaving a net suspension of twenty (20) days.

Accordingly, it is, on this 5th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-475, issued by the Municipal Board of Alcoholic Beverage Control of Jersey City to Old Spot Clambroth Tavern, Inc., for premises 352 First Street, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. February 13, 1952, and terminating at 2:00 a.m. March 4, 1952.

EDWARD J. DORTON
Acting Director.

4. MORAL TURPITUDE - GRAND LARCENY.

DISQUALIFICATION - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
 to Remove Disqualification)
 because of a Conviction, Pursuant)
 to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 934.
 - - - - -)

On August 19, 1937, when petitioner was nineteen years old, he and two other individuals were arrested on a charge of grand larceny. On January 27, 1938, they pleaded guilty in a County Court to said charge and were placed on probation for one year. Petitioner has no other criminal record.

Investigation discloses that the above charge resulted from the theft of a watch and the sum of five dollars. At the hearing herein petitioner testified that he and his companions had visited a shop for the purpose of having a car radio repaired, and that one of his companions had taken the watch and the money from a counter in the shop. He further testified that, after their arrest, the watch and money were returned to the owner of the shop. Petitioner's attorney has argued that, under the circumstances, the crime did not involve moral turpitude so far as petitioner is concerned. However, in view of the guilty plea, the question of petitioner's guilt cannot be redetermined in this proceeding. I find that petitioner was convicted in 1938 of a crime involving moral turpitude.

At the hearing, a baker and two butchers (each of whom has known petitioner for more than twenty years) testified that, with the exception noted above, petitioner has always been a law-abiding person. Petitioner resides with his wife and five children.

From 1941 to 1945 petitioner worked in a shipyard. On December 1, 1945, he applied to a local issuing authority for a bartender's license and the record shows he was fingerprinted by the local issuing authority at that time. Despite the conviction aforesaid, a bartender's license was issued to him by the local issuing authority and renewed yearly thereafter. From 1945 to 1948 petitioner was employed as a bartender. Since 1948 he has held one-third of the stock of a licensed corporation and is Treasurer of the corporation. See Re Old Spot Clambroth Tavern, Inc., decided herewith.

I would have no hesitation in granting relief except that petitioner has been engaged in the alcoholic beverage business since 1945 and the application filed by the corporation failed to disclose his conviction. In his favor it is noted that he was fingerprinted when he first obtained his bartender's license and that the applications filed by the corporation were signed and sworn to by another officer of the corporation. Petitioner testified that he never intended to deceive the local issuing authority; that he disclosed his conviction to the accountant who prepared the application for the corporation, and that he believed he was not disqualified because he had served no time in jail. I shall accept petitioner's sworn testimony and grant him relief in this proceeding. Cf. Re Case No. 811, Bulletin 862, Item 5.

Accordingly, it is, on this 5th day of February, 1952,

ORDERED that petitioner's statutory disqualification, because of the conviction of crime described herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

EDWARD J. DORTON
 Acting Director.

5. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - SALES TO MINORS -
PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR
PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
WILLIAM & ALBERTA FAUBLE)	
T/a JUICY'S TIP TOP TAVERN)	CONCLUSIONS
130 South Broadway)	AND ORDER
South Amboy, N. J.,)	
)	
Holders of Plenary Retail Consump-)	
tion License C-27, issued by the)	
Common Council of the City of)	
South Amboy.)	

Francis N. Reps, Esq., Attorney for Defendant-licensee.		
Edward F. Ambrose, Esq., appearing for Division of Alcoholic		
Beverage Control.		

The defendants have pleaded non vult to charges alleging that (1) they possessed a mislabeled beer tap on their licensed premises, in violation of Rule 26 of State Regulations No. 20; and (2) they sold, served and delivered alcoholic beverages to two minors and permitted the consumption of said alcoholic beverages by the two minors, in violation of Rule 1 of State Regulations No. 20.

An examination of the file in the within case discloses that on November 30, 1951, an ABC agent, while on routine inspection of the defendants' licensed premises, found beer being drawn from a barrel marked "Krueger" through a spigot labeled "Pabst".

The file further discloses that on December 14, 1951 an employee of defendants sold, served and permitted the consumption of approximately ten glasses of beer by each of the two minors in question. The youths were sixteen and twenty years old, respectively.

Defendants have a prior adjudicated record. Effective August 14, 1944 when the license was held by Alberta Fauble, one of the partners herein, said license was suspended by the local issuing authority for five days for an "hour" violation. Effective December 11, 1950 defendants' license was suspended for two days because of a mislabeled beer tap. (Bulletin 891, Item 12.) Inasmuch as eight years have elapsed since the 1944 violation occurred and it is dissimilar in character to the subsequent violations, I will not consider it in fixing the within penalty. Under all the circumstances, I shall suspend defendants' license for a period of twenty-five days, less five days' remission for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 11th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-27, issued by the Common Council of the City of South Amboy to William & Alberta Fauble, t/a Juicy's Tip Top Tavern, 130 South Broadway, South Amboy, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. February 19, 1952, and terminating at 2:00 a.m. March 10, 1952.

EDWARD J. DORTON
Acting Director.

6. DISCIPLINARY PROCEEDINGS - CONCEALING INTEREST OF OTHER PERSONS IN LICENSE - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE PRIVILEGES OF A LICENSE - FAILURE TO DISCLOSE ACTUAL RESIDENCE - SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary
Proceedings against

SAM K. TASHJY
201 - 70th Street
Guttenberg, N. J.,

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consump-
tion License C-21, issued by the
Mayor and Council of the Town of
Guttenberg, and transferred during
the pendency of these proceedings
to

PAUL McGOWAN and JAMES HENRY,
for the same premises.

Aro G. Gabriel, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

Defendant has pleaded not guilty to charges alleging that:
(1) he failed to notify the Mayor and Council of the Town of Guttenberg that on or about April 19, 1951 one Joseph Boselli acquired an interest in his license and (2) he failed to notify the Mayor and Council of the Town of Guttenberg that on or about October 20, 1951 one Joseph Carolan acquired an interest in his license, each in violation of R. S. 33:1-34; (3) from on or about May 1, 1951 until on or about June 25, 1951 he aided and abetted Joseph Boselli to exercise the rights of his license, and from on or about October 20, 1951 to on or about November 6, 1951 he aided and abetted Joseph Carolan to exercise the rights of his license, in violation of R. S. 33:1-52.

Defendant has pleaded guilty to charge (4) which alleges that he falsified his license application for the current plenary retail consumption license by failing to disclose his actual residence, in violation of R. S. 33:1-25.

It appears from the evidence presented on behalf of the Division of Alcoholic Beverage Control in the instant case that on April 19, 1951 defendant, who was notified that he was to be recalled to duty as a member of the armed forces, and one Joseph Boselli entered into two written agreements relative to the licensed business. Pursuant to the terms of the said agreements Joseph Boselli by payment of a stipulated sum of money acquired a one-half interest in the licensed business, entitling him to operate the licensed business and to receive 50% of the net profits derived from said business. The foregoing arrangement became effective on or about April 19, 1951 and continued in effect until about June 25, 1951. It further appears that on October 20, 1951 defendant entered into an agreement with one Joseph Carolan whereby the latter paid a stipulated sum of money for which he acquired a one-half interest in the licensed business. This arrangement continued in effect until about November 6, 1951. Defendant did not notify the local issuing authority on either occasion of the interest acquired in the license by Joseph Boselli and Joseph Carolan, respectively.

Defendant failed to produce any evidence at the hearing to refute the charges (1), (2) or (3). I find defendant guilty as to said charges.

As to charge (4): In his application for the present licensing year, defendant stated that he resided at 149 Grand Avenue, Palisades Park. He had formerly resided at that address and it so appeared in his application filed for the previous year. However, before filing his application for the present licensing year he had moved to 201 - 70th Street, Guttenberg. There appears to have been no intent to deceive the local issuing authority.

Following the institution of these proceedings, the license in question was transferred by the local issuing authority to Paul McGowan and James Henry. The unlawful situation heretofore existing with reference to the current license appears to be fully corrected. A penalty is nonetheless in order. In view of all the circumstances I shall suspend the license for the minimum period of twenty days. Cf. Re Maione, Bulletin 806, Item 1.

Accordingly, it is, on this 7th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Town of Guttenberg to Sam K. Tashjy, for premises 201 - 70th Street, Guttenberg, and transferred during the pendency of these proceedings to Paul McGowan and James Henry, for the same premises, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. February 13, 1952, and terminating at 3:00 a.m. March 4, 1952.

EDWARD J. DORTON
Acting Director.

7. DISCIPLINARY PROCEEDINGS - CHARGES OF PERMITTING IMMORAL ACTIVITY ON LICENSED PREMISES AND PERMITTING FEMALE EMPLOYEES TO ACCEPT DRINKS AT EXPENSE OF PATRONS DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH PERAINO)
T/a HEIGHTS INN)
N.E. side of Baldwin Avenue)
Lodi, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-33, issued by the)
Mayor and Council of the Borough)
of Lodi.)

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

Defendant has pleaded not guilty to charges as follows:

"1. On June 9, 10, 12, 13, 15, 16 and 21, 1951, and on divers other dates, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution, maintenance of a place for the making of arrangements for illicit sexual intercourse and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On all the occasions aforesaid, you allowed, permitted and suffered Angie ---, a female employed on your licensed premises, to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

As to Charge 1: The testimony of two ABC agents discloses that they visited defendant's premises on five occasions, namely, on June 9, June 12, June 13, June 15 and June 21, and that on the first and fourth visits they remained at the licensed premises during the early morning hours of the following day.

Defendant's licensed premises are located on the first floor of a two-story block and stucco building which is owned by defendant and his wife. The building has eight furnished and two unfurnished rooms on the second floor. These rooms are not part of the licensed premises. There is no direct connection between the licensed premises and the rooms above, there being separate entrances to the barroom and to the upper floor. On the front of the building there is a neon sign with the words "Heights Inn" on top and "Furnished Rooms" on the bottom.

There is considerable evidence as to conversations between the two ABC agents and one Angie -- and one Carol -- on the first four visits to defendant's premises. Some of this conversation concerned the possibility of making arrangements between Carol -- and one of the agents to have illicit sexual relations in one of the rooms on the upper floor of the building. (Carol -- had occupied one of these rooms for eight weeks prior to the investigation.) There is, however, no evidence proving that defendant or his bartender took part in or overheard these conversations. Thus, the only possible evidence to sustain the first charge concerns the events which occurred on the evening of June 21, when one of the agents, having met Carol at another licensed premises, proceeded with her to the defendant's tavern where defendant was tending bar.

After they entered the barroom, the agent, admittedly, paid the defendant \$3.50 as rent for one of the upstairs rooms. However, there is a sharp conflict in the testimony as to the conversation which accompanied this transaction. No specific room was assigned to the agent nor was he issued any key. Instead, he thereafter obtained from Carol the key to her room, left the licensed premises (followed shortly by Carol) and proceeded to Carol's room where they were subsequently found (fully clad) by the police. At that time Carol had in her possession marked money which had been paid to her by the agent. Defendant denied then and at the hearing that he had any knowledge of any arrangements which had been made between the agent and Carol, or that he knew or had any reason to suspect that the agent hired the room for immoral purposes. Defendant further testified that he had known Carol for four years and that "she was always a quiet girl as far as I knew her".

This is a serious charge. While there are suspicious circumstances in the case, suspicion is not a substitute for proof. Re Doyle, Bulletin 469, Item 2. I find that the evidence falls short of proof sufficient to warrant a finding of guilt on Charge 1.

As to Charge 2: This charge is based upon the alleged employment by defendant of one Angie ---, for whom the agents purchased drinks. The testimony discloses that Angie went to the kitchen and brought out a sandwich for one of the agents. This action, together with her unsupported statement on their first visit that she owned a "piece" of the licensed business (a statement which on a subsequent visit she said was untrue), warranted the institution of the charge against defendant. The defendant at the trial denied that she is or was employed by him. At the trial she testified under oath that she is not and never was employed by the defendant. Considering the denials, together with evidence indicating that other patrons, including one of the agents, also carried sandwiches from the kitchen, I conclude that the proof is insufficient to establish guilt as to Charge 2.

Thus, upon the evidence produced herein, I find defendant not guilty as to both charges.

Accordingly, it is, on this 11th day of February, 1952,

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

EDWARD J. DORTON
Acting Director.

8. DISCIPLINARY PROCEEDINGS - BAGATELLE OR PIN BALL MACHINE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EDWARD J. & ALICE V. HULSE,
MARION S. & DAVID POND WILLIS
T/a THE CARLTON HOUSE
Main & Green Streets
Tuckerton, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Tuckerton.

Edward J. & Alice V. Hulse, Marion S. & David Pond Willis, Defendant-licensees, by Edward J. Hulse, Partner.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendants pleaded non vult to the following charge:

"On January 11, 1952, and theretofore, you allowed, permitted and suffered in and upon your licensed premises, a machine or device commonly known as a bagatelle or pin ball machine, named 'Mermaid', in violation of Rule 7 of State Regulations No. 20."

On January 11, 1952 an ABC agent on routine inspection observed a device known as a "Mermaid" bagatelle or pin ball machine in that part of the hotel building which is known as the luncheonette. The agent played the machine which was of the bumper type and found it to be in working order. Although claim is made that the luncheonette room has been "leased" to another the license application shows that the entire building is licensed and it is admitted that the room occupied by the luncheonette had not been excluded from the licensed premises. Under the circumstances it clearly appears that the machine was in fact located upon the licensed premises and, hence, defendants are guilty as charged. Cf. Bolo Club, Inc., Bulletin 917, Item 7; and bulletins there cited.

Defendants have no prior record. Under the circumstances, their license will be suspended for the minimum period of ten days, less five days for the plea, making a net suspension of five days.
Re Bolo Club, Inc., supra.

Accordingly, it is, on this 4th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Tuckerton to Edward J. & Alice V. Hulse, Marion S. & David Pond Willis, t/a The Carlton House, Main & Green Streets, Tuckerton, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. February 11, 1952, and terminating at 2:00 a.m. February 16, 1952.

EDWARD J. DORTON
Acting Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - CASH DEPOSIT FOR UNLAWFUL PROPERTY FORFEITED BECAUSE OF UNLICENSED SALES OF ALCOHOLIC BEVERAGES - CLAIM OF UNPROTECTED CREDITOR DENIED - OTHER PROPERTY RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on)
October 25, 1951, of a quantity)
of alcoholic beverages, and)
various fixtures, furnishings and)
equipment, at 86 Pulaski Street,)
in the City of Newark, County of)
Essex and State of New Jersey.)

Case No. 7939

ON HEARING
CONCLUSIONS AND ORDER

Joseph Lordi, Esq., Attorney for Stanley Sadowski.
Sauer & Wojcik, Esqs., by Walter J. McNally, Esq., Attorney for
John A. Farbisz.

Globe Slicing Machine Co., Inc., by Isadore A. Ellner.

Arnold Strassberg, Pro Se.

Atlantic Service Company, by Ellsworth W. Martin, Secretary.

Harry Castelbaum, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and further pursuant to a stipulation dated November 15, 1951, entered into by Joseph Lordi, attorney for Stanley Sadowski, to determine whether a quantity of alcoholic beverages and various fixtures, furnishings and stock in trade, described in the schedule attached hereto, seized on October 25, 1951, at Stanley Sadowski's meat market located at 86 Pulaski Street, Newark, N. J., constitute unlawful property and should be forfeited.

It appears that ABC agents made the seizure because of an alleged unlicensed sale of alcoholic beverages on the day in question by Sadowski to one of the agents. Pending hearing in the case, Stanley Sadowski paid to the Director of the Division of Alcoholic Beverage Control the sum of \$1,300.00 under protest pursuant to R.S. 33:1-66, representing the appraised retail value of a number of specific articles seized as listed in a certificate evidencing such payment, and thereupon obtained return of such articles. Sadowski, by his attorney, entered into a written stipulation that the Director should determine in this proceeding whether this sum should be returned to Sadowski or be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66 and the aforementioned stipulation, Stanley Sadowski appeared and sought return of the sum of \$1,300.00 and the balance of the property which was seized, and the other claimants hereinbefore set forth appeared and sought return of various specific articles hereinafter described.

According to the testimony of an ABC agent, he visited Sadowski's meat market on October 12 to investigate a complaint that alcoholic beverages were being sold there without a license. He informed Sadowski that he wished to purchase whiskey and was told by Sadowski to return a week later because Sadowski did not have any available at the time.

The agent made two more visits to the establishment but did not discuss the purchase of whiskey. On October 18 he again visited the place. On this occasion Sadowski told the agent that he had not as yet received a supply of whiskey. The agent told Sadowski he would require six bottles of whiskey. Sadowski replied that it usually runs \$38.00 a case and that six bottles would cost the agent \$19.00;

that it was a very good quality and compared favorably with "Canadian Club" whiskey. The agent then stated he would return the following week.

The ABC agent returned on October 25 and discussed with Sadowski the purchase of whiskey and bologna. Ultimately, Sadowski handed the agent a paper bag with six quart-bottles labeled "Imported Dunbar's Blended Canadian Whisky" (hereinafter referred to as "Dunbar's"), and another bag with bologna, for which the agent paid a total of \$24.95 -- \$19.00 for the whiskey and \$5.95 for the bologna. The bills used by the agent had previously been identified by serial numbers and, with other money, were later seized from the cash register.

The agent left the store momentarily, contacted other agents who were waiting outside the store, and all of the agents immediately entered the store. The agents questioned Sadowski and obtained a signed statement from him wherein he admitted that he sold the six bottles of whiskey to the ABC agent. His statement further sets forth that he purchased a total of five cases of whiskey on three different occasions from a person known to him only as "Val", who refused to tell Sadowski where he could get in touch with him; that "Val" delivered the whiskey to Sadowski's place of business, and that Sadowski sold some of the whiskey to a driver formerly in his employ, to a cousin whose last name is Figel, and to another former employee known to him only as "Baldy".

At the conclusion of this agent's testimony, the attorney for Stanley Sadowski moved to expunge such testimony, claiming that the evidence established that Sadowski had been entrapped by the agent into making the unlawful sale of alcoholic beverages and that it was an isolated transaction. I am in full accord with, and affirm, the Hearer's ruling denying the motion. It was not entrapment. See State v. Contarno, 91 N.J.L. 103. As I said in Seizure Case No. 7404, Bulletin 846, Item 1:

"It is reasonable to assume that an operator of a speakeasy devises his own method on seeking to avoid detection. An efficient liquor law enforcement agent must adapt himself to the particular circumstances and cultivate a speakeasy operator's friendly attitude. Obviously, few, if any, speakeasies are so openly and notoriously conducted that all that is required is to enter and purchase a drink."

As above indicated, Stanley Sadowski did not hold any license authorizing him to sell or serve alcoholic beverages and the establishment was not licensed for that purpose.

The ABC agents seized 28 quart-bottles and two pint-bottles of "Dunbar's", a few bottles of other alcoholic beverages, and the fixtures, equipment and foodstuffs in Sadowski's meat market.

The Division chemist testified that he analyzed the contents of one of the six bottles purchased by the agent and that it was not genuine "Dunbar's", a Canadian product, but was artificial whiskey consisting of water, color and flavor fit for beverage purposes, with an alcoholic content by volume of 40%; that it was a bootleg product -- an alcohol and water "shakeup" -- and not the product of commercial manufacture; that the label, and what purported to be an "Export Canadian" stamp on the bottle, were counterfeit, and that the bottle did not bear a United States Government tax stamp indicating the payment of the tax on alcoholic beverages. It further appears that there were no such Federal tax stamps on any of the bottles of "Dunbar's".

It would thus appear to be an aggravated violation of the Alcoholic Beverage Law in that a merchant, not licensed to deal in alcoholic beverages, repeatedly purchased bootleg whiskey, counterfeited to imitate a standard brand, from an illegal source, and resold this bootleg whiskey in his establishment. Nevertheless, Sadowski claims that he acted in good faith and did not consider that he engaged in the sale of the whiskey.

However, the facts presented are to the contrary. By Sadowski's own account, he purchased "Dunbar's" on at least three, and possibly five, occasions, in quantities in excess of his normal requirements, from a person known to him only as "Val", otherwise unidentified, who refused to give his address or telephone number to Sadowski; that it was "Val's" practice to call upon Sadowski at his store, ask him whether he needed any whiskey, and, upon Sadowski's affirmative reply, immediately deliver the whiskey to Sadowski from his supply in his car parked outside the store, at a "bargain" price. Any reasonably prudent person would, or should have known, or at least suspected, that it was an illegitimate transaction. I believe that Sadowski at all times was aware that he was purchasing the whiskey from an illegal source. The fact that he may not have known that it was actually a bootleg product is immaterial.

Sadowski actually sold six bottles of this whiskey to the ABC agent and admits previous sales to at least three other persons. He claims that these latter sales were at cost, as an accommodation to a relative and to former employees. The account of his dealings with the other persons is not corroborated, and it is equally probable that he sold whiskey to persons who patronized his meat market. The circumstances under which he sold the whiskey to the agent strongly suggests that it was Sadowski's practice to sell whiskey in conjunction with his other business activities either for a profit or as an accommodation to induce patronage of his meat business. In any event, he sold alcoholic beverages without a license.

All of the "Dunbar's" whiskey is an illicit alcoholic beverage because of the absence of any Federal tax stamp thereon and the evidence that it is a bootleg product. R. S. 33:1-88. The "Dunbar's" whiskey is likewise illicit because it was sold without a license or intended for such sale. R.S. 33:1-1(i). Such illicit alcoholic beverages and all other alcoholic beverages and personal property seized therewith in Sadowski's premises constitute unlawful property and are subject to seizure and forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66. Forfeiture does not depend upon seizure of the property pursuant to search warrant. Nor is it limited to only the property that was used in connection with the unlawful alcoholic beverage activities. Seizure Case No. 7480, Bulletin 857, Item 3.

Since Sadowski personally violated the Alcoholic Beverage Law by purchasing, possessing and selling illicit alcoholic beverages, he cannot obtain any relief from forfeiture. Accordingly, his request for return of the \$1,300.00 on deposit, and the balance of the seized property in possession of this Division, is denied.

The other claimants have a different status. Sadowski's meat market had the outward appearance of a legitimate enterprise. Sadowski does not appear to have any previous criminal record. The claimants dealt with him in the normal course of their business. None of the claimants, according to their testimony, had any knowledge of or reason to suspect that Sadowski was engaged in the sale of alcoholic beverages and there were no alcoholic beverages visible when they were at his store. Under these circumstances, I have the discretionary authority to recognize their claims. R.S. 33:1-66(f).

Globe Slicing Machine Co., Inc. has established that it is the holder of a conditional sales contract covering a meat slicer seized by the Division on which there is a balance due of \$100.00. Arnold Strassberg has established that he is the owner of the seized Kelvinator ice cream cabinet, which he loaned to Sadowski. Atlantic Service Company has established that it is the owner of four articles of butcher shop equipment, identified by the trade name "Hook Eye", which it loaned to Sadowski. These claims will be recognized.

John A. Farbisz, a wholesale meat dealer who supplied Sadowski with meats, presented unpaid bills amounting to \$263.40. He sold meat to Sadowski on credit and is merely a general creditor. He has no specific lien upon or interest in any of the seized property such as I can recognize under the provisions of R. S. 33:1-66(f). I must deny recognition of his claim.

I am advised that it is desirable that the slicing machine be retained for the use of a State agency, conditioned upon the payment of the lien of \$100.00. The Kelvinator ice cream cabinet will be returned to Arnold Strassberg, and the four "Hook Eye" items will be returned to Atlantic Service Company upon payment by each of the costs of seizure and storage of their respective articles.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 18th day of February, 1952, Arnold Strassberg and Atlantic Service Company pay their proportionate share of the costs of seizure and storage, the Kelvinator ice cream cabinet and "Hook Eye" equipment will be returned to them respectively; and it is further

DETERMINED and ORDERED that the slicing machine, described in Schedule "A", constitutes unlawful property and that it be retained for the use of the State of New Jersey, conditioned upon payment to Globe Slicing Machine Co., Inc. of its lien claim, in the amount of \$100.00; and it is further

DETERMINED and ORDERED that the various items of seized property returned to Stanley Sadowski constitute unlawful property, and that the sum of \$1,300.00, representing the appraised retail value thereof, paid under protest to the Director of the Division of Alcoholic Beverage Control by Stanley Sadowski, be and hereby is forfeited in accordance with the provisions of R. S. 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 cash seized, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals, and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

EDWARD J. DORTON
Acting Director.

Dated: February 7, 1952.

SCHEDULE "A"

- 36 - quart bottles of alcoholic beverages
- 2 - pint bottles of alcoholic beverages
- 2 - bottles of beer
- 1 - meat slicer
- 2 - Toledo Scales
- 2 - Fleetwood Ice Box Display Cases
- 1 - National Cash Register
- 1 - Monarch Adding Machine

SCHEDULE "A" (Cont'd)

1 - meat grinder
 1 - Royal Crown Electric Clock
 1 - exhaust fan
 1 - Jordan Deep Freeze
 1 - Kelvinator Deep Freeze
 1 - Steel desk & shelving
 1 - band saw
 3 - Refrigerator Compressors
 1 - wooden top butcher bench
 1 - display counter
 1 - Hunter fan
 2 - tables
 2 - butcher blocks
 1 - radio
 1 - lamp
 1 - grinder
 Stock of grocery, kitchen and vegetable
 merchandise, as itemized in the inventory
 in the case.
 \$71.78 in cash

10. APPELLATE DECISIONS - MORRISTOWN COLONY RESTAURANT, INC. v.
MORRISTOWN.

MORRISTOWN COLONY RESTAURANT, INC.,)

Appellant,)

-vs-

MAYOR AND BOARD OF ALDERMEN OF THE)
TOWN OF MORRISTOWN,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Paul N. Belmont, Esq., Attorney for Appellant.
John D. Collins, Esq., Attorney for Respondent.

This is an appeal from the action of respondent whereby it suspended appellant's License C-2 for a period of twenty days after it had found appellant guilty of charges alleging that it sold alcoholic beverages to four minors and permitted said minors to consume alcoholic beverages on its licensed premises, in violation of Rule 1 of State Regulations No. 20 and the terms of an ordinance of the Town of Morristown. The premises in question are located at 175 South Street, Morristown.

Upon the filing of the appeal an order was entered herein on November 21, 1951, staying the effect of respondent's order of suspension until the entry of a further order herein.

At the hearing of the appeal the attorneys for the respective parties submitted a stipulation whereby it was agreed that neither party would produce the witnesses who testified at the hearing below, but in lieu thereof would offer the transcript of the testimony of said witnesses at the hearing below. See Rule 8 of State Regulations No. 15.

At the hearing of the appeal, in addition to the aforesaid transcript, respondent produced Nancy ---, one of the minors mentioned in the charges who had not testified at the hearing below.

From the transcript introduced into evidence it appears that Eric --- (twenty years of age) testified at the hearing below that on June 19, 1951, he and three other minors entered appellant's premises at about 11:00 p.m. This witness further testified that, on the evening in question, both he and John --- (also twenty years of age) were served with six or seven bottles of beer, which they

consumed; Nancy --- (eighteen years of age) was served with two drinks of rye-and-soda, which she consumed, and Patricia --- (fifteen years of age) consumed two "Tom Collins" drinks which had been placed on a table apparently in front of one of the two other minors; that all of these drinks were served by Raymond Konchak, Manager of appellant's premises. Patricia --- substantially corroborated the testimony given by Eric --- and said that the two "Tom Collins" drinks which she consumed had been ordered at the bar by one of the young men. At the hearing of the appeal Nancy --- testified that, on the evening in question, she drank two rye highballs which had been served to her on appellant's premises, and that she saw Patricia "drink one 'Tom Collins'". It was impossible to produce John --- at either the hearing below or at the hearing of this appeal because he had entered military service and was out of the State of New Jersey.

At the hearing below Raymond Konchak denied that Patricia had consumed a "Tom Collins". He testified that he had sold all the drinks of alcoholic beverages mentioned above to the two young men and that he had sold to them a glass of ginger ale, which, he understood, was intended for Patricia ---. The evidence indicates that the first round of drinks purchased included a glass of ginger ale, consumed by Patricia. Nevertheless, I believe that she later consumed a "Tom Collins" purchased by the young men. In any event, it clearly appears that alcoholic beverages were sold to and consumed by three of the minors on appellant's premises.

The gist of appellant's argument is that it has a complete defense under the provisions of R. S. 33:1-77. Mr. Konchak (whose testimony was corroborated by a former detective) testified that he questioned Eric, John and Nancy as to their respective ages; that both young men exhibited to him drivers' licenses showing that each was twenty-two years of age, and that Nancy showed him a card indicating that she was over twenty-one years of age. Neither the drivers' licenses nor the card was introduced into evidence. Admittedly none of the three signed any paper representing in writing that he or she was twenty-one (21) years of age or over. See R.S. 33:1-77(a). Under the facts of this case, no defense has been established under the provisions of R. S. 33:1-77. Re Roey, Bulletin 747, Item 3; Roey v. Hock, Bulletin 758, Item 2; Re Vassos & Murphy, Bulletin 793, Item 7; Re Ferrone, Bulletin 799, Item 6.

Considering the number of minors involved, the period of suspension was not excessive.

The action of respondent will be affirmed.

Accordingly, it is, on this 15th day of February, 1952,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the Order dated November 21, 1951, shall be vacated, effective at 2:00 a.m. February 26, 1952, and that Plenary Retail Consumption License C-2, issued by the Mayor and Board of Aldermen of the Town of Morristown to Morristown Colony Restaurant, Inc., for premises 175 South Street, Morristown, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. February 26, 1952, and terminating at 2:00 a.m. March 17, 1952.

EDWARD J. DORTON
Acting Director.

11. STATE LICENSES - NEW APPLICATION FILED.

Diamond State Brewery Inc.
903 West Fifth St., Wilmington, Delaware.

Application filed February 28, 1952 for Limited Wholesale License.

Edward J. Dorton.
Acting Director.

New Jersey State Library