

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

September 19, 1972

BULLETIN 2065

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1. APPELLATE DECISIONS - MARINACCIO v. ASBURY PARK - ORDER.

Joseph Marinaccio, t/a Marino's )  
Bar & Restaurant, )  
Appellant, )  
v. )  
City Council of the City of ) On Appeal  
Asbury Park, )  
Respondent. )  
----- )  
O R D E R

Thomas F. Shebell, Esq., Attorney for Appellant  
Norman H. Mesnikoff, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from the grant of his application for transfer of plenary retail consumption license C-68 (for the 1971-72 license period) from Francesco A. Marinaccio to him for premises 807-809-811 Main Street, Asbury Park, which transfer contained a special condition "that the premises be used for package store operation only." Appellant contends that this special condition was in effect a denial to appellant of the full privileges of the said license. He also appeals from respondent's denial of his application for renewal of the said license for the current license period.

After partial hearing of the appeal before this Division, the attorneys for the respective parties agreed to reapply to respondent for reconsideration of its action. Upon reconsideration respondent adopted a resolution transferring the said plenary retail consumption license heretofore issued to Francesco A. Marinaccio for the 1971-72 license period to the appellant for the above premises subject to the following special conditions:

- "1. The Licensee shall have the right to operate an alcoholic beverage package store pursuant to the 'broad package privilege' set forth in said License C-68.
- "2. The Licensee shall sell alcoholic beverages at a service bar for consumption at tables and not for consumption at said bar.
- "3. Licensee shall eliminate or physically wall off all but 8 feet of the bar presently on the premises and said 8 feet bar shall only be used as a service bar and licensee shall not have a bar with chairs or stools where patrons drink at such a bar.
- "4. The Licensee shall operate a bona fide restaurant on the said premises and such a restaurant shall be one for providing meals to the public, and shall have an adequate kitchen and dining room equipped for the preparing, cooking and serving of food to its customers."

At the same time, in the said resolution it further approved the application of appellant for renewal of the said license for the current license period subject to the special conditions set forth hereinabove, and further resolved that all prior resolutions adopted by respondent on June 27, 1972 and June 30, 1972 "be rescinded and set aside." Said resolution and special conditions were adopted "subject to the approval of the Director of the Division of Alcoholic Beverage Control" and to the consent by appellant and his attorney of the said special conditions. The resolution contains the executed consent of the appellant and his attorney thereto.

The resolution sets forth that the special conditions set forth therein are made subject to the approval of the Director and that appellant consents to the dismissal of the pending appeal.

I have considered the said special conditions and have determined that, since this license contains the "broad package privilege", the said special conditions are valid and will be approved; and I shall order dismissal of the said appeal.

Accordingly, it is, on this 10th day of August 1972,

ORDERED that the special conditions hereinabove set forth be and the same are hereby approved; and it is further

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

ROBERT E. BOWER  
DIRECTOR

2. APPELLATE DECISIONS - GREENSTEIN v. ELIZABETH.

Sydney Greenstein, t/a	)	
Star Lounge & Liquors,	)	
	)	
Appellant,	)	On Appeal
v.	)	
	)	CONCLUSIONS and ORDER
City Council of the City	)	
of Elizabeth,	)	
Respondent.	)	

-----  
Jacob M. Goldberg, Esq., Attorney for Appellant  
Frank P. Trocino, Esq., by Daniel J. O'Hara, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the unanimous action of respondent City Council of the City of Elizabeth (hereinafter Council) which on January 21, 1972, suspended appellant's plenary retail consumption license for premises 931 East Grand Street, Elizabeth, for sixty days commencing January 31, 1972, after finding appellant guilty in disciplinary proceedings of the following charge:

"On Thursday, September 16, 1971, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as 'number game' or 'policy' to be sold, and offered for sale

in and upon your licensed premises at 931 East Grand Street, known as Star Lounge & Liquors, License C-139; and further, on said date, September 16, 1971, you possessed and had custody of, and allowed and permitted such tickets and participation rights in and upon your licensed premises in violation of Rule 6 of State Regulation 20, and Section 21 of the City Alcoholic Beverage Ordinance."

Upon filing of the appeal an order was entered by the Director on January 28, 1972, staying Council's order of suspension until entry of a further order herein.

Appellant alleges that the action of the Council was erroneous because (a) its determination was not based on "any proof submitted to the respondent Department", (b) it was not based on competent proof that appellant was guilty of the said violation and (c) the determination was "the result of bias and prejudice."

The Council in its answer denies the substantive allegations of the petition and defends that its determination was reached after a full and complete hearing and after the Council unanimously determined that appellant was guilty of the said charge by competent evidence produced at the hearing and by "the admission by the [appellant] that he was not present at the time of the violation but was aware of his responsibility concerning the maintenance and activities conducted on the premises."

The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings before the Council was received in evidence and was supplemented by testimony by both parties pursuant to Rule 8 of the said regulation.

The Council's presentation was made by three local detectives (members of the Gambling and Confidential Squads), whose testimony may be summarized as follows: The subject premises were kept under surveillance for approximately three weeks prior to the date charged herein because of suspected gambling activities therein. On September 16, 1971, at approximately 8:55 a.m., Detectives Robert Mello, Terrence Brennan, James Winters and Michael Sinnott, fortified with a search warrant issued by the local municipal court judge, entered the premises. Mello served the warrant upon the barmaid Patricia Blanchard and conducted a search of the premises. The search revealed numbers slips found behind the bar in a cabinet and in a garbage can in the said premises. These numbers were written on coasters of the type usually found on bars. The barmaid was placed under arrest, advised of her legal rights and permitted to telephone the appellant who thereupon arrived at the premises at about 9:45 a.m. The detectives described the nature of the numbers slips and detailed the various combinations which they represented in betting. Detective Mello further stated that, upon questioning Mrs. Blanchard, she admitted that these were her slips and that she was "taking numbers lottery bets for money from people that would come in and bet with her while she tended bar in the tavern." He characterized this activity as a "typical numbers operation on a smaller scale ...." Detective Miller testified that, during the period of surveillance, he observed many people entering the tavern, staying a short time and leaving, "some of them not long enough to have a drink or anything, and on some occasions they would be waiting outside the door, several people, and Patricia would open up around 7 or 7:15 or 7:30 and they would go in and they would leave right away."

Mrs. Blanchard subsequently pleaded guilty to the charge of possession of lottery slips in the municipal court and was fined. The coasters containing the numbers bets were admitted into evidence.

Patricia Blanchard, testifying on behalf of appellant, gave the following account: She was employed as a barmaid on the date and time charged herein, but she denied that the numbers bets reflected on the coasters were in her handwriting. However, she admitted that she pleaded guilty to a charge of possession of numbers slips in the municipal court. She explained that she had been writing bets at these premises but that she did not actually take any bets on the morning of the date charged herein. She had been taking bets prior to that date, and she insisted that her plea of guilty was intended to refer to the taking of numbers bets prior to the date charged herein. Finally, she insisted that appellant was unaware of her activities and in fact had instructed her not to engage in any unlawful activity at these premises.

Sydney Greenstein (appellant) testified that he was unaware of the proscribed activity and that in fact he warned his employees that, if they engaged in any unlawful activity, they would be dismissed immediately.

On cross examination he insisted that, while Mrs. Blanchard admitted taking numbers prior to the investigation, she asserted that the numbers written on the coasters were not in her handwriting.

These proceedings are civil in nature and not criminal, and proof must be established by a mere preponderance of the credible evidence. Kravis v. Hock, 137 N.J.L. 252, 255 (Sup.Ct. 1948); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). I have not taken into consideration the fact that Mrs. Blanchard pleaded guilty to a criminal charge in the municipal court relating to this activity, and am solely concerned with the evidence adduced herein.

From my careful consideration of the entire record, I am persuaded that Mrs. Blanchard did in fact write numbers bets and had the said coasters in her possession at the licensed premises on the date herein charged. I find the testimony of the detectives to be forthright and credible and find that they fully describe the nature of the activities. On the other hand, I find unbelievable the testimony of Mrs. Blanchard that she did not engage in this activity or had possession of the number slips on the date charged herein. I find her testimony does violence to common experience and improbable under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

It is equally clear, however, that appellant did not personally know of such activities. Nevertheless, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of the incident as related herein which took place in the licensed premises. It is no defense that the licensee did not see or have knowledge of such gambling activities on the part of his employees. It is a well established and fundamental principle that a licensee is responsible for the misconduct of persons employed on licensed premises. In re Olympic, Inc., 49 N.J. Super. 299; Rule 33 of State Regulation No. 20. It has been held that a licensee is not relieved of responsibility even though his employees violated his express instructions. Greenbrier Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961); cf. Mazza v. Cavicchia, 28 N.J. Super. 280 (App.Div. 1953); aff'd 15 N.J. 498 (1954).

In sum, I conclude that the testimony presented in this matter is fully established by a fair preponderance of the credible evidence, indeed by substantial evidence, that appellant is guilty of the charge herein in that he suffered tickets and participation rights, commonly known as the "numbers game", to be sold or offered for sale on the licensed premises, and that he did on the date charged herein possess and had custody of, and allowed, permitted and suffered such tickets and participation rights in and upon the licensed premises, in violation of Rule 6 of State Regulation No. 20 and Section 21 of the City Alcoholic Beverage ordinance. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947).

Finally, appellant alleges that the Council's determination was the result of "bias and prejudice." There is not the slightest scintilla of evidence in the record to support or even suggest any prejudice on the part of the Council. I am convinced that the Council acted circumspectly and upon careful consideration of the evidence, which clearly preponderates in support of its determination. I am persuaded that the record on the whole supports the decision reached by the Council. Hornauer v. Div. of Alcoholic Beverage Control, 50 N.J. Super. 501, 504 (App.Div. 1956).

The burden of establishing that the Council acted erroneously and in an abuse of its discretion is upon appellant. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council. Cf. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502; cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App.Div. 1957); cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970).

Appellant has failed to sustain the burden of establishing that the Council's action was erroneous and should be reversed. Rule 6 of State Regulation No. 15. It is therefore recommended that an order be entered affirming the action of the Council, dismissing the appeal, and fixing the effective dates for the suspension imposed by the Council and stayed by the Director's order pending entry of a further order herein.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant pursuant to Rule 14 of State Regulation No. 15.

I find that the matters contained in the exceptions have either been considered and satisfactorily answered by the Hearer in his report or are without merit.

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

Accordingly, it is, on this 7th day of August 1972,

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

ORDERED that my order dated January 28, 1972, staying respondent's order of suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that plenary retail consumption license C-139, issued by the City Council of the City of Elizabeth to Sydney Greenstein, t/a Star Lounge & Liquors, for premises 931 East Grand Street, Elizabeth, be and the same is hereby suspended for sixty (60) days, commencing 2 a.m. Monday, August 21, 1972, and terminating at 2 a.m. Friday, October 20, 1972.

ROBERT E. BOWER  
DIRECTOR

- 3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN BUILDING - CLAIM FOR RETURN OF SUM DEPOSITED BY OWNER OF POOL TABLE AND JUKE BOX GRANTED TO INNOCENT OWNER - CLAIM FOR RETURN OF CANDY AND CIGARETTE MACHINES AND MONEY AND CONTENTS THEREOF DENIED - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure : Case No. 12,422  
on February 14, 1971 of a quantity :  
of alcoholic beverages, fixtures, :  
furnishings, equipment and \$201.10 : On Hearing  
in cash at 276-273 Academy Street, :  
in the City of Newark, County of : CONCLUSIONS and ORDER  
Essex and State of New Jersey. :

.....  
Mercury Music Company, by Daniel Marchese, Jr., claimant.  
Malkin-Illion Company, Garden State Vending Service  
Division, by Samuel M. Malkin, president, claimant  
Harry D. Gross, Esq., appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28, and further pursuant to two stipulations; one dated April 14, 1971, signed by Samuel M. Malkin on behalf of the Garden State Vending Co., Irvington, New Jersey, and the other dated April 14, 1971 signed by Daniel Marchese, President, on behalf of the Mercury Music Company, Caldwell, N.J. to determine whether 384 containers of alcoholic beverages, 60 containers of non-alcoholic beverages, miscellaneous personal property and \$201.10 in cash, as set forth in an inventory attached hereto, made a part hereof and marked Schedule "A" seized on February 14, 1971 at the unlicensed premises, 276-278 Academy Street, Newark, Essex County, N.J. constitute unlawful property and should be forfeited; and further to determine whether the sum of \$150.00 in cash representing the appraised retail value of a quantity of cigarettes and candy removed from a cigarette machine and candy machine, as more completely described in Schedule "A", attached hereto, deposited under protest, by Frank Resnick, Manager, on behalf of the Garden State Vending Co., under protest, which candy and cigarettes were returned to Garden State Vending Co. should be forfeited or returned to it; and further to determine whether the sum of \$550.00, representing the appraised retail value of one Fischer Pool Table, one Seeburg Juke Box and assorted pool table equipment, as set forth in the aforesaid Schedule "A", deposited under protest, by Dan Marchese, owner of Mercury Music Co., and which pool table, juke box and pool table equipment have been returned to Mercury Music Co., should be forfeited or returned to it.

The seizure was made by ABC agents in cooperation with officers of the Essex County Sheriff's Office because of alleged unlawful sales of alcoholic beverages at a speakeasy located at the said premises.

When the matter came on for hearing, Samuel M. Malkin appeared on behalf of the Garden State Vending Co., to seek return of one cigarette machine, one candy machine, \$84.00 in cash contained therein and \$150.00 deposited under protest, representing the value of the candy cigarettes removed from the said vending machines.

Daniel Marchese appeared in behalf of Mercury Music Co., to seek return of the \$550.00, deposited under protest, representing the retail value of one Fischer Pool Table and one Seeburg Juke Box and assorted pool table equipment, and of \$63.10, removed therefrom and retained by the Division.

Richard Thomas, proprietor of the unlicensed premises advised the attorney for the Division that a claim for return of his property made earlier, had now been abandoned.

Reports of ABC agents and other documents in the file, admitted in evidence with the consent of all parties present, disclosed the following: On Sunday, February 14, 1971, ABC Agents S, C, M and B met with members of the Essex County Sheriff's Office and formulated plans to enter and investigate the Wolverine Rod and Gun Club, 276 Academy Street, Newark. Agent B gained entrance to the said premises and observed approximately 50 patrons, most of whom were consuming alcoholic beverages and many of whom were engaged in numerous gambling activities. Agent B purchased a can of Rheingold beer from the apparent proprietor of the premises, one Richard Thomas. Agent B paid for the beer with a "marked" five-dollar bill and received \$4.25 change. Shortly thereafter, Agent B made a second such purchase.

At approximately 2:30 a.m., other ABC agents and officers of the Essex County Sheriff's Office entered, Thomas was placed under arrest and charged with the unlawful sale of alcoholic beverages and the unlawful possession of alcoholic beverages with intent to sell, contrary to N.J.S.A. 33:1-50(a & b). The unconsumed portion of the beverage purchased by Agent B was seized together with the cash and personal property, as set forth in Schedule "A", and the "marked" money was retained. 57 patrons were arrested under various charges by the Sheriff's deputies; \$1,073.00 in cash, numerous firearms and a quantity of narcotics were also seized and retained by the Essex County Sheriff's Office.

The file contained the Director's Certification that no alcoholic beverage license or special permit of any kind has ever been issued to Richard Thomas or to any other person at or for the premises in question; an inventory of the seized items; affidavits of mailing of notice of hearing and publication of hearing; and the Certificate of Chemical Analysis of the Division chemist that one six-ounce sample bottle containing four ounces of Rheingold beer seized herein is an alcoholic beverage fit for beverage purposes, with an alcoholic content of 4.71%, by volume.

Samuel Malkin appeared as a representative of the Malkin-Illion Co. of which Garden State Vending Service is a division and sought return of one cigarette machine, one candy machine and \$84.00 in cash removed therefrom, and the return of \$150.00 deposited with the Director representing the retail value of the contents of the said vending machines.

He testified that the machines in question were obtained through the acquisition of an existing vending machine route on January 13, 1969 and satisfactory proof of ownership was established.

With respect to the investigation of the premises he testified that while he has no personal knowledge of the particular location in question, he is aware that standard company procedure when a route is acquired, is to determine whether the acquired machines actually exist at the appropriate location, "...we simply verify the existence of the machine and the location." "...". I want to point out any investigation of a location under our operation is merely security, that there is responsibility there, rather than whether or not there is business they may be doing something illegally." He concluded that the premises were serviced weekly by one of its collectors since the date of acquisition on January 13, 1969.

Daniel Marchese testified for the Mercury Music Co., and sought return of \$550.00 deposited with the Director, representing the Director's appraised retail value of one juke box, one pool table and pool table equipment; and further, the \$63.10 in cash removed from the said machines.

Proof of ownership was satisfactorily established.

He testified that his company was approached by Richard Thomas, the apparent proprietor of the Wolverine Rod and Gun Club, with respect to placing a pool table and juke box at the proposed premises, 276-278 Academy Street, Newark. Thereafter, being skeptical about the location of a hunting and fishing club in this area, and the need for such equipment, he canvassed the neighborhood and found that such a location was, in fact, contemplated.

He visited the premises after it opened and was satisfied from the presence of animal skins, hunting dogs, etc., that the premises operated as a bona fide hunting and fishing club.

He learned further that Thomas was regularly away at "dog-obedience" tournaments and that, on the whole, the premises had the appearance of such a club. He checked the "membership charter" and the annual approval by the local police.

He serviced the club weekly at 9:00 a.m. at which hour it was unlikely that he would encounter any difficulty with the local citizenry or he would be subject to possible hold-up.

He concluded that he was satisfied that he had taken every reasonable precaution to insure that he was servicing a legitimate operation.

I find that 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). Such illicit alcoholic beverages and the personal property and cash seized, as set forth in Schedule "A" herein, constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-2, N.J.S.A. 33:1-66.

The Director has discretionary authority to return property subject to forfeiture to a party who establishes to the satisfaction of the Director that he has acted in good faith, and did not know or have any reason to suspect that his property would be used in violation of the Alcoholic Beverage Law. N.J.S.A. 33:1-66, Rule 3(c) of State Regulation No. 28.

In furtherance of the claims made by vending equipment operators the Director has recently promulgated a policy imposing on such claimants the obligation of making personal, periodic meaningful inspections of premises and setting forth that they will not be permitted to rely on the presumed investigation by

any other person or agency including law enforcement agencies. Personal inspection by claimants or their agents at reasonable hours will be required to support any claim for the return of seized property. See Seizure Case No. 12,252, Bulletin 1919, Item 5.

Malkin, on behalf of Garden State Vending Co., has by his own admission failed to carry out any investigation of the premises such as is required by the mandate of the Director. Indeed he candidly admitted that no investigation of any kind is conducted in such a situation except to determine the existence of the vending equipment. This claimant cannot now, in good faith, plead that he neither knew or should have known of the existence of the illegal alcoholic beverage activity.

Marchese, on behalf of the Mercury Music Co. has, on the other hand, indicated that he has done all that can reasonably be expected with respect to investigation of the premises. That he confined his servicing visits to the premises to the early morning hours is understandable, considering the conditions which surrounded the premises in question.

Considering all the circumstances, it is recommended that the claim of Mercury Music Co. be recognized and that the \$550.00 deposited under the aforementioned stipulation and \$63.10 cash removed from the pool table and juke box be returned to it.

It is further recommended that the claim of Garden State Vending Co., a Division of Malkin-Illion Corp., for the return of one cigarette machine, one candy machine, \$84.00 in cash contained therein and \$150.00 cash posted under protest as the retail value of candy and cigarettes contained in the aforesaid machines be denied and an Order be entered forfeiting same.

Lastly, it is recommended that an Order be entered forfeiting the balance of personal property, alcoholic beverages and cash listed in Schedule "A" herein.

#### Supplemental Hearer's Report

Exceptions to the Hearer's Report and request for a supplemental hearing, supported by affidavit, were submitted by claimant Malkin-Illion Co. The request for supplemental hearing was made on the grounds that claimant was not represented by counsel at the hearing, and that supplemental testimony adduced by claimant could change the result of the prior hearing. Accordingly, leave was granted claimant to present further testimony at a supplemental hearing held on October 27, 1971.

Dickie Lee Corbett testified that he has been employed by claimant for 10 years and for the immediate past of two and one-half years, has been a "route man".

He has serviced the equipment at 276-278 Academy Street twice a week, in the mornings at about 10:30 A.M., from August 1970 until the date of seizure herein.

The premises had all the appearances of a hunting club and although he saw pool tables and juke boxes in use, at no time did he observe any evidence of alcoholic beverages being sold or consumed.

Frank Resnick testified that he is operations manager for claimant. As such, he visited the unlicensed premises herein on two occasions. On neither occasion did he make any investigation of the premises, nor of the proprietors thereof.

I find that the evidence presented at the supplemental hearing has not been sufficient to alter the recommendations made at the earlier hearing. Indeed, the testimony tends to buttress the earlier finding that the claimant failed to conduct the required investigation of the premises as is required. See Seizure Case No. 12,252, Bulletin 1919, Item 5. Thus, I find this claim of Malkin-Illion Co. lacking in merit.

Accordingly, it is recommended that the claim of Mercury Music Co. be recognized, the claim of Malkin-Illion Co. be denied, and the balance of the personal property, alcoholic beverages and cash, as more particularly set forth in Schedule "A" herein, be forfeited, in accordance with the recommendations of the Hearer's Report filed herein.

#### Conclusions and Order

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

Having carefully considered the entire matter herein, including the transcripts of testimony, the exhibits, the Hearer's Report and the Supplemental Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 11th day of August, 1972

DETERMINED and ORDERED that the claim of Mercury Music Company is hereby recognized, and the sum of \$550.00, deposited under protest, by Mercury Music Company, plus the sum of \$63.10 removed from the property which was the subject of the aforesaid stipulation, shall be returned to it; and it is further

DETERMINED and ORDERED that the sum of \$150.00, representing the appraised retail value of certain personalty, listed in Schedule "A", attached hereto, deposited under protest by Garden State Vending Co., a division of Malkin-Illion Co. with the Director of the Division of Alcoholic Beverage Control, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of N.J.S.A. 33:1-66, to be disposed of in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the alcoholic beverages and \$138.00, as more fully set forth in Schedule "A", attached hereto, constitute unlawful property and is hereby 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"

- 384 - containers of alcoholic beverages
- 60 - bottles of soda
- 1 - pool table; 1 - juke box;
- 1 - Westinghouse refrigerator; 1 - typewriter;
- 1 - adding machine; 1 - freezer;
- Miscellaneous personal property
- \$54.00 - cash
- \$63.10 - cash
- \$84.00 - cash

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - SALE AT LESS THAN FILED PRICE - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against 100 Belmont Avenue Corporation t/a Belmont Tavern 100-02 Belmont Avenue Paterson, N. J., Holder of Plenary Retail Consumption License C-61, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS and ORDER

Joseph M. Keegan, Esq., Attorney for Licensee Walter H. Cleaver, Esq., 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:

- "1. On April 10, 1971, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Nashat ---, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
"2. On Saturday, April 10, 1971, at about 11:40 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., twelve 12-ounce cans of Rheingold beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
"3. On April 10, 1971, you sold and offered for sale at retail, at your licensed premises, directly or indirectly, twelve 12-ounce cans of Rheingold beer, an alcoholic beverage, at less than the price thereof filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30."

On behalf of the Division, Nashat --- testified that he was born on October 18, 1952, in Syria and that on April 10, 1971, he was eighteen years of age.

On that date, in the company of a friend (not further identified), he entered the licensed premises, ordered and was served something to eat and one glass of beer which he promptly consumed. At no time was he requested to show any proof of age. He added that he never was in the premises on any prior occasion.

On cross examination he testified that, while he had seen ABC agents G and S at the municipal court appearance, he had not spoken to the attorney for the Division prior to the date of hearing herein.

Agent G testified that, in the company of Agent S, he entered the licensed premises at 10:25 p.m. on April 10, pursuant to a specific assignment. They took seats at the bar and observed a bartender later identified as Raymond Koning.

At approximately 11:25 p.m. two males entered the premises and took seats at the bar. One was later identified as the minor Nashat; the other was not further identified. He observed the companion order a round of drinks (two glasses of beer -- one of which was partly consumed by Nashat) and shortly thereafter he observed Nashat purchase two glasses of beer.

At 11:40 p.m. Agent G asked Koning for two six-packs of beer. Koning removed the two six-packs from the refrigerator, put them in a brown paper bag, and placed the bag at the end of the bar on the floor. He then advised Agent G that the beer should be picked up when the agents were ready to leave and that they should leave by a particular exit. At Koning's request Agent G paid \$2.40 for the two six-packs. The minimum consumer resale price catalog effective April 1, 1971 shows the retail price for one six-pack of twelve-ounce cans of Rheingold beer to be \$1.33.

Shortly thereafter the agents picked up the bag, departed the premises by the designated exit, returned to the premises by another entrance, identified themselves to the bartender and advised him of the alleged violation. The bartender then identified himself and, at the request of the agents, placed his initials, the date and the price charged on the brown bag.

Thereafter the agents identified themselves to the minor and requested proof of age. Upon being shown a driver's permit by the minor, the agents determined that he was eighteen years of age. Thereupon a sample of the drink which had been partially consumed by Nashat was placed in a sample bottle by Agent S who retained possession of same. Agent G again saw the sample bottle on the following Monday morning. The agents summoned local police officers who arrested Koning and Nashat.

Agent S testified for the Division and it was stipulated that his direct testimony would be substantially corroborative of Agent G's recital.

Additionally he testified that, after Agent G had seized the partially consumed drink, he (Agent S) poured the contents of the seized drink into a sample bottle, placed an identifying label thereon, retained it in his possession and submitted it to his superior (Inspector R) on the following Monday, April 12, 1971.

Inspector R testified that on April 13, 1971 he was an Administrative Inspector of the ABC and that Agents G and S were assigned to his field office then located in East Paterson. The sample bottle and the two six-packs seized herein were submitted to him some time prior to April 13, 1971, whereupon he locked the items in a cabinet maintained expressly for that purpose and he thereafter transported them to the Division chemist at Division headquarters for analysis.

A brown bag containing two six-packs of sealed twelve-ounce cans of Rheingold beer were submitted in evidence. The bag had inscribed thereon the date April 10, 1971, the initials of the bartender, the initials of Agents G and S and, finally, the purchase price \$2.40 allegedly paid therefor.

There was admitted in evidence a copy of a chemical analysis certified by the Director establishing that one six-ounce bottle containing a portion of the beverage seized in the instant matter is an alcoholic beverage fit for beverage purposes with an alcoholic content of 4.79% by volume.

At the close of the Division's case the licensee rested without presenting defense testimony, and moved for dismissal on the grounds that the Division has (1) failed to establish proper continuity of possession of the sample of the alleged alcoholic beverage seized and consumed in part by the minor, (2) the Division has failed to establish that the licensee has suffered the removal of the alcoholic beverages from the licensed premises, (3) the Division has failed to establish consumption of the alcoholic beverages by the alleged minor, (4) the Division has failed to establish that the content of its twelve cans of Rheingold beer was in fact an alcoholic beverage, and (5) the incorrect price charged for the twelve cans was due to inexperience on the part of the licensee and was not an act such as should lead to the suspension of a license.

Preliminarily it should be observed that we are dealing in this matter with a purely disciplinary action and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

From the credible evidence presented and not refuted by the licensee; I find that Nashat --- was eighteen years of age on April 10, 1971; that he was served at least one glass of an alcoholic beverage by the employee of the licensee herein, and that he consumed at least a portion of that drink.

I further find that the licensee, through its employee Raymond Koning, sold twelve cans of Rheingold beer, each containing twelve ounces, at approximately 11:40 p.m. to Agents G and S and that they thereafter removed the twelve cans from the licensed premises.

With respect to the licensee's motion for dismissal, the testimony reveals that, after Agent G seized the drink, Agent S transferred it to a sample bottle which he retained in his possession until such time as he submitted it to his superior Inspector R. He in turn placed it in a locked cabinet and thereafter personally transferred it to the Division's chemist. There has been no evidence to even suggest that the sample of the seized beverage left the custody and control of the Division agents at any time from the moment of the seizure until it was analyzed by the Division chemist.

The argument that the Division failed to establish that the licensee suffered the removal of the alcoholic beverages from the licensed premises lacks merit. The uncontradicted testimony of the agents clearly established that the bartender employed by the licensee sold twelve sealed cans of beer to the agents, placed the cans in a brown bag and even suggested that the agents remove the same by a particular exit near the pool table. The licensee's employee apparently was fully aware of the unlawful character of the transaction; thus it cannot be validly maintained that the licensee did not "suffer" or "permit" the said removal as herein charged.

As to the consumption of the alcoholic beverage, the uncontroverted evidence clearly establishes that the minor drank one glass of beer and this was observed by the Division's witnesses.

With respect to the contents of the twelve cans, where a person is sold an original container of alcoholic beverage it is a permissible inference that a container bearing a label which represents that its contents are beer does in fact contain an alcoholic beverage. Paruta v. Paterson, Bulletin 1813, Item 2, and cases cited therein. The motion to dismiss lacks substance and should be denied.

I conclude that the Division has established the truth of the charges by a preponderance of the credible evidence, and recommend that the licensee be found guilty of the charges herein.

The licensee has no prior adjudicated record. It is further recommended that the license be suspended on the first charge for fifteen days (Re Farhat, Bulletin 2039, Item 9); on the second charge for fifteen days (Re Ryglicki, Bulletin 2046, Item 6, and on the third charge for ten days (Re Buikema, Bulletin 1590, Item 12), or a total of forty days.

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 transcript of the testimony, the exhibits and the Hearer's report, I concur in the conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 8th day of August 1972,

ORDERED that Plenary Retail Consumption License C-61, issued by the Board of Alcoholic Beverage Control for the City of Paterson to 100 Belmont Avenue Corporation, for premises 100-102 Belmont Avenue, Paterson, be and the same is hereby suspended for forty (40) days, commencing at 3 a.m. Wednesday, August 23, 1972, and terminating at 3 a.m. Monday, October 2, 1972.

ROBERT E. BOWER  
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN APPLICATION - TRUE BOOKS NOT KEPT - HINDERED INVESTIGATION - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 48 DAYS UPON CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against  
Augie Sirs, Inc.  
t/a Villa Rocco  
265 Washington Avenue  
Carteret, N. J.,  
Holder of Plenary Retail Consumption License C-29 (for 1971-72 license period), issued by the Borough Council of the Borough of Carteret.

CONCLUSIONS  
and  
ORDER

Venezia, Nolan & Rebeck, Esqs., by Richard S. Rebeck, Esq.,  
Attorneys for Licensee  
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

### Hearer's Report

Licensee entered a technical plea of not guilty, waiving both hearing and the opportunity to offer testimony or other evidence in connection with charges alleging that (1) it failed to disclose the true beneficial owners of the licensed business in its application for plenary retail consumption license of May 20, 1971, and (2) it failed to disclose that Charles Russo and Louis Tzatzos had such beneficial interest in the license, and (3) it agreed to permit the said Russo and Tzatzos to retain the profits and income from the licensed business, all in violation of N.J.S.A. 33:1-25; further that (4) from January 16, 1970 to date it aided and abetted the said Tzatzos to exercise the privilege of the license, in violation of N.J.S.A. 33:1-52, and (5) it employed the said Russo (a police officer), in violation of Rule 30 of State Regulation No. 30, and (6) it failed to keep true books of account, in violation of Rule 36 of State Regulation No. 20, and (7) on December 22, 1970 and divers days subsequent thereto it hindered an investigation of the licensed business by inspectors of this Division, in violation of Rule 35 of State Regulation No. 20.

Reports of extensive investigation of the licensed premises covering a period between February 6, 1970 and June 28, 1971 revealed that the premises were under the direct control of Charles Russo (son of Amelia Russo, one of the two stockholders of the corporate licensee). The bank account of the licensee carried as authorized signatories Charles Russo and Louis Tzatzos (husband of Joan Tzatzos, the other stockholder). Russo was the obligor on a loan used to purchase part of the items used in the licensed business. He paid bills, took care of money matters, managed the establishment and at times tended bar. His mother had no apparent investment whatever. During the long investigation management duties were undertaken by Louis Tzatzos who, his wife admitted, was the beneficial owner of a half-interest in the licensed business. Investigation reports further reveal that the investigatory efforts of the agents were hampered by the withholding of pertinent information by the nominal holders of the capital stock and as a result of a series of untruthful statements made in a blatant attempt to frustrate their inquiry, thus hindering the investigation.

From all of the reports and voluminous copies of the documents secured during the investigation, it is conclusively found that the two holders of all of the corporate stock were "fronts" for their son and husband respectively. Russo is a policeman attached to the police force of Carteret and Tzatzos obtained his interest in the licensed premises by way of his wife's acquisition of the stock, this having been done for undisclosed business reasons. The charges made against this licensee are found to be fully substantiated.

The very nature and characteristic of a "front" is concealment and subterfuge. Very rarely is such proof buttressed with confession and/or affirmative admissions. Thus the presentation of facts must be largely circumstantial. Sharp's Lodge Inc. v. Lakewood, Bulletin 1842, Item 1. It is therefore recommended that, absent prior adjudicated record, the license be suspended on charges 1, 2, 3 and 4 for thirty days (Re Reeves, Bulletin 1812, Item 9; Re Pine Tavern, Inc., Bulletin 1981, Item 2); for ten days on charge 5 (Re Kvilecz, Bulletin 1422, Item 7); for ten days on charge 6 (Re G.E.L.L. Inc., Bulletin 1958, Item 2); for ten days on charge 7 (Re Dziga, Bulletin 2046, Item 8), making a total of sixty days, with remission of twelve days for the plea entered, leaving a net suspension of forty-eight days.

However, as the unlawful situation has not to date been corrected, it is further recommended that the license be suspended for the balance of its term with leave to lift the suspension upon disclosure to the Director by verified petition that the unlawful situation has been corrected, but in no event sooner than forty-eight days from the date of the imposition of the suspension herein.

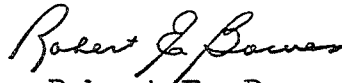
Conclusions and Order

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 reports of investigation by the Division's agents and exhibits attached thereto, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of August 1972,

ORDERED that Plenary Retail Consumption License C-29, issued by the Borough Council of the Borough of Carteret (for the 1972-73 license period) to Augie Sirs, Inc., The Zoo, for premises 265 Washington Avenue, Carteret, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1973, commencing at 2 a.m. Tuesday, August 22, 1972, with leave to the licensee or any bona fide transferee of the license to apply to the Director by verified petition for lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than forty-eight (48) days from the commencement of the suspension herein.

  
Robert E. Bower,  
Director.