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

BULLETIN 1355

October 7, 1960.

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

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BULLETIN 1355

1. APPELLATE DECISONS - HILL v. PENNSAUKEN.

JOSEPH G. HILL, TRADING AS WHITE OWL INN,	)	
Appellant,	)	ON APPEAL ORDER
v.	)	
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PENNSAUKEN,	)	
Respondent.	)	

Robert T. Healey, Esq., Attorney for Appellant.
Thomas F. Salter, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial on June 27, 1960, of appellant's application for renewal of his plenary retail consumption license C-11, for premises at 7304 River Road, Pennsauken Township.

Upon the filing of the appeal I entered an order on June 29, 1960, extending the term of the 1959-60 license held by appellant until entry of further order herein. R.S. 33:1-22.

The answer filed herein sets forth that the application for renewal was denied because of the prior record of appellant as a licensee. See Bulletin 1334, Item 9.

At the hearing herein the attorney for respondent requested me to enter an order remanding the case to the Township Committee for further consideration. He stated that the members of the Township Committee now desire to adopt a resolution granting appellant's application for renewal, subject to the express condition that the license shall be duly transferred, within ninety days from date of the resolution, to a qualified person who is not related to appellant and subject to the express condition that appellant shall thereafter have no interest whatsoever in the license. The attorney for appellant agreed to the entry of such an order. No reason appearing to the contrary, I shall grant the request for the entry of the order. Chet & John's Inc. v. Little Falls, Bulletin 1258, Item 3.

Accordingly, it is, on this 11th day of August 1960,

ORDERED that the matter be and the same is hereby remanded to respondent for reconsideration in accordance with the opinion herein.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISQUALIFICATION REMOVAL PROCEEDINGS - FAILURE TO ESTABLISH THAT APPLICANT HAS BEEN LAW-ABIDING DURING PAST FIVE YEARS - APPLICATION DENIED.

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. 1561

BY THE DIRECTOR:

Applicant's criminal record discloses that on November 16, 1953, at the age of 18, he was given a suspended sentence in a local magistrate's court on a charge of being drunk, disorderly, creating a disturbance and being abusive to police officers; on October 21, 1955, following a conviction for robbery, he was given a suspended sentence to Annandale Reformatory and placed on probation for two years; on November 27, 1956 he was found not guilty in a local magistrate's court on a charge of being drunk and disorderly; on August 3, 1957 he was arrested under the Disorderly Person's Act (kicking in a glass door) and, after making restitution, the complaint was withdrawn; on October 31, 1957 he was arrested on complaint of his mother (who feared for her safety) and on November 18, 1957 the case was dismissed; on June 21, 1958 he was arrested on complaint of his sister (who feared for her safety) and on June 23, 1958 the complaint was withdrawn; on February 13, 1959 applicant was given a 90-day suspended sentence in a local magistrate's court on a charge of being drunk and abusive to police officers and on October 27, 1959 was sentenced to 30 days in jail in a local magistrate's court for being drunk and disorderly.

Since the crime of robbery, per se, involves the element of moral turpitude, applicant was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. Re Case No. 1436, Bulletin 1260, Item 5.

At the hearing held herein, applicant (25 years of age) testified that for the past 13 years he has resided at his present address; that for the past five years he has been irregularly employed as a trucker's helper; that he has received an undesirable discharge from the United States Army; that he was recently married; that his clashes with the law resulted from excessive drinking. Applicant further testified that his mother operates a tavern in which he has been performing odd jobs; that he did not know he was ineligible to work in a licensed premises and that he is asking for the removal of his disqualification to be free to work in licensed premises.

The police department of the municipality wherein applicant resides reports there are no complaints or investigations presently pending against the applicant.

The applicant produced three character witnesses (a truck driver and two laborers) who testified that they have known the applicant from 18 to 25 years and, in their opinion, he is now an honest, law-abiding citizen with a good reputation.

After careful examination of the petitioner's record, particularly with reference to the fact that during the past five years he was convicted of robbery (October 21, 1955) and recently (February 13, 1959 and October 27, 1959) twice found guilty of being

drunk, I am not satisfied that he has sufficiently rehabilitated himself so that his association with the alcoholic beverage industry would not be detrimental to the public interest.

To afford petitioner the relief requested, it is necessary that I find that he has been conducting himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R.S. 33:1-31.2.

Under the facts in this case, I cannot find that petitioner has been law-abiding for five years last past and, hence, I shall deny his petition.

Accordingly, it is, on this 10th day of August 1960,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - CONTRACEPTIVES - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
STEPHEN HORAK & SOPHIE HORAK t/a STEVE'S TAVERN 309 Johnston Avenue Jersey City, N. J.	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-503 (for the 1959-60 and 1960-61 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)	

Richman & Berry, Esqs., by Grover C. Richman, Jr., Esq., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

1. "On Sunday, May 15, 1960, at about 1:20 P.M., and again at about 1:42 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

2. "On May 20, 1960, and prior thereto, you possessed prophylactics against venereal disease and contraceptives and contraceptive devices, in and upon your licensed premises; in violation of Rule 9 of

State Regulation No. 20.

3. "On divers days between July 1, 1959 and May 20, 1960, you sold and distributed and allowed, permitted and suffered the sale and distribution and possessed for the purpose of sale and distribution prophylactics against venereal disease and contraceptives and contraceptive devices, in and upon your licensed premises; in violation of Rule 9 of State Regulation No. 20."

On Sunday, May 15, 1960, at about 1:20 p.m., an ABC agent, while in defendants' licensed premises, observed what appeared to be a sale of six cans of beer for off-premises consumption. At about 1:40 p.m. this agent witnessed the sale of a half-pint of Fleischmann's liqueur by the bartender to a patron who placed the bottle in his pocket and left the premises. The agent followed and apprehended this person, and was joined by a fellow agent who had been stationed outside the premises. The purchaser of the liqueur then ran back into the licensed premises, followed by the agents who disclosed their identity to the bartender. Thereupon such bartender verbally admitted the sale of the bottle of liqueur and the sale of six cans of beer delivered by him to the purchaser at the rear door of the premises.

On May 20, 1960, an ABC agent, investigating a complaint made after the May 15 incident, discovered six packages of contraceptives in a cigar box on the back bar shelf of the licensed premises. Stephen Horak (one of the licensees) admitted that he sold contraceptives to patrons as a convenience and without profit.

Although defendants as a partnership have no prior adjudicated record, when the license for the premises was held in the individual name of Stephen Horak it was suspended by the Director effective February 2, 1953, for fifteen days for sale of alcoholic beverages during prohibited hours in violation of a municipal ordinance (Re Horak, Bulletin 957, Item 4), and was again suspended by the Director for twenty-five days effective September 14, 1956, for sale of alcoholic beverages on Sunday in violation of Rule 1 of State Regulation No. 38 (Re Horak, Bulletin 1134, Item 4). Hence this is the second similar violation within a period of five years. I shall, therefore, double the minimum penalty of fifteen days for such violation and suspend defendants' license for thirty days on Charge 1 (Bulletin 1134, Item 4, supra), to which will be added five days for the similar violation within the past ten years (in 1953) (Re Ostrowski, Bulletin 1338, Item 10), and for an additional ten days on Charges 2 and 3 (Re Scavone, Bulletin 1316, Item 2), making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 11th day of August 1960,

ORDERED that Plenary Retail Consumption License C-503 (for the 1960-61 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Stephen Horak & Sophie Horak, t/a Steve's Tavern, for premises 309 Johnston Avenue, Jersey City, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Wednesday, August 24, 1960, and terminating at 2 a.m. Monday, October 3, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JAMES TUZZO 248 Pine Street Jersey City 4, N. J. Holder of Plenary Retail Consumption License C-324, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On June 23, July 13 and 15, 1960, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

"2. On June 23, July 13 and 15, 1960, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On each of the dates set forth in the charges, an ABC agent at defendant's licensed premises placed "numbers" bets with the licensee. On July 13 and 15, 1960, the agent observed other persons place similar bets with the licensee. On July 15, by prearrangement, other ABC agents and local police officers entered the premises and all of the officers revealed their identity. The agents found nineteen slips evidencing "numbers" bets, including those placed by the agent, and recovered three one-dollar bills, identified by serial numbers, which the agent had used to place his bets. The licensee verbally and in an unsigned statement admitted that he had engaged in the practice of accepting such bets.

Defendant has a prior adjudicated record. Effective October 1, 1951, the local issuing authority suspended defendant's license for five days for an "hours" violation. Since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Hill, Bulletin 1334, Item 9. I shall suspend defendant's license for the minimum period of twenty-five days. Re Horstmann, Bulletin 1338, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 15th day of August 1960,

ORDERED that Plenary Retail Consumption License C-324, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to James Tuzzo, for premises 248 Pine

Street, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, August 23, 1960, and terminating at 2 a.m. Monday, September 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

POINT INN, INC.
t/a THE INN
Shore Road and Egg Harbor Bay
Upper Township
Beesley's Point, N. J.

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of Upper Township.

CONCLUSIONS AND ORDER

Boswell and Boswell, Esqs., by John E. Boswell, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Friday night, July 8, 1960, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Phyllis ---, age 18 and Suzanne ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

On Friday, July 8, 1960 at about 11:25 p.m., two ABC agents arrived at defendant's licensed premises and as they approached the front entrance they observed a special officer there apparently checking the age of young persons desiring to enter the premises. The agents took seats at the bar and shortly thereafter observed two youthful couples enter and take seats at a table. One of the bartenders went to the table, spoke with these persons and was then observed to proceed to the front door. On his return to the bar he remarked to another bartender (subsequently identified as Harry Tracey, Jr., president of the corporate-licensee) that the officer had checked the two couples. Tracey then stated that he guessed it was all right. A waitress then went to the table, spoke with the persons seated there and then served a pitcher of beer and four glasses to the four persons seated at the table. One of the boys then proceeded to pour beer into the four glasses and the two boys and two girls commenced to drink the beer.

At this point the agents went to the table where these four persons were seated, disclosed their identity and asked the boys and girls to state their ages. The boys presented cards which indicated that they were over twenty-one years of age. One of the girls presented two driver's licenses belonging to a girl represented to be twenty-two years of age, but on being questioned further, this girl admitted that she had borrowed the licenses

from a friend and that her name was Suzanne --- and that she was nineteen years of age. The other girl stated that her name was Phyllis --- and that she was eighteen years of age.

These facts were called to the attention of Harry Tracey, Jr. and the agents proceeded to obtain signed, written statements from the two boys and two girls. These statements agree in their essential facts with what the agents had observed and, additionally, set forth with specific relation to what transpired when the group entered the premises, that the officer at the door asked them for identification whereupon Suzanne displayed driver's licenses heretofore referred to and Phyllis displayed a driver's license which had her correct age noted thereon, and the officer merely glanced at such documents; that when the group took seats at the table, the bartender came over and questioned them as to their ages and they told him that they had been checked by the officer. None of the four was asked to sign a written representation as to his or her age.

Counsel for the licensee in his letter which is accompanied by the affidavit of the police officer in question, refers to the above outlined precautions taken by the licensee's employees to prevent sales to the minors and specifically to the fact that the officer in question was appointed by the local issuing authority as a condition to its license, and urges therefore, that some reasonable limitation sounding in justice and fairness should be attached to the matter; that the officer's failure to obtain their written representation as to age should, in some measure, absolve the licensee because it had no power of selectivity or other jurisdiction over such officer.

Defendant has not established a complete defense under R.S. 33:1-77 because no written representation as to age was obtained from the minors. However, that is not to say that the mitigating circumstances will not be taken into account when imposing penalty.

It may be well to repeat what I said in Re Wedemeyer, Bulletin 1050, Item 8:

> "Experience in cases similar to this indicates that for some reason licensees or their agents are reluctant to 'embarrass' a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect. It would appear no more difficult for the licensee to follow the statutory requirement of having the patron sign a representation of his age than asking him to produce a draft card, driver's license or similar document for the licensee's purported examination. Where the licensee follows the statutory method, there is always the desirable and substantial possibility that the patron, if a minor, will refuse to commit himself to writing and will leave the establishment."

This language was quoted in Sportsman 300 v. Bd. of Com'rs. of Town of Nutley, 42 N.J. Super 488 (App. Div. 1956) wherein the court apparently approved of the view of the Division that it did not consider that "a false representation in writing by the minor" was intended to embrace such writings as a driver's license, a draft card, or a social security card.

Defendant has a prior adjudicated record. Effective December 1, 1952, the Director of this Division suspended its license for five days for sale of alcoholic beverages to a minor. Re Point Inn, Inc., Bulletin 950, Item 5. The minimum penalty imposed for an unaggravated sale of alcoholic beverages to an 18- and 19-year-old minor is fifteen days. Re Calia, Bulletin 1330, Item 6. In view of the mitigating circumstances in this case, I shall instead, suspend defendant's license for ten days (Re Hagen, Bulletin 1309, Item 10) to which will be added five days for the similar violation within the past ten years (1952) (Re Ostrowski, Bulletin 1338, Item 10), making a total suspension of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 15th day of August 1960,

ORDERED that Plenary Retail Consumption License C-7 issued by the Township Committee of Upper Township to Point Inn, Inc., t/a The Inn, for premises on Shore Road and Egg Harbor Bay, Upper Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m., Monday, August 22, 1960 and terminating at 3:00 a.m., Thursday, September 1, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE IN VIOLATION OF STATE REGULATION NO. 38 DISMISSED.

In the Matter of Disciplinary Proceedings against	)	
BARONE'S LOUNGE, INC. 217-219 Straight Street Paterson 1, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-105 (for the 1959-60 and 1960-61 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson.	)	

Irwin B. Schector, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On Friday, May 6, 1960, at about 10:45 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of Seagram's V.O.. whiskey, at retail, in its original container for consumption off your licensed premises, and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38.'

"Two ABC agents testified that at approximately 10:40 p.m. on Friday, May 6, 1960, while standing on a corner opposite to

where the defendant's licensed premises are located, they observed a station wagon occupied by two couples drive into and park in the driveway of a service station directly across the street from defendant's licensed premises; that a male (subsequently ascertained to be Ira Floyd) left the station wagon and walked to defendant's premises which he entered through the side door; that a short time thereafter the other male who had driven the station wagon also went to defendant's premises but returned to the car within a few minutes; that at 10:45 p.m. Floyd came out of the side entrance and there appeared to be a little bulge under his jacket as if he were carrying something; that he walked directly to the station wagon and as he entered and was in the process of closing the car door, the agents approached, identified themselves and questioned him; that the agents requested Floyd to get out of the car at which time the agents observed on the seat where Floyd sat, a paper bag which contained a pint of whiskey and a small bottle of soda; that when questioned where he had purchased the items, Floyd said he had just purchased them in Barone's premises; that one of the agents seized the package and both agents and Floyd entered the licensed premises, spoke to Louis Barone, the manager, who claimed that no one purchased any package goods during prohibited hours while he was on duty; that William Blackman, the bartender, was questioned about the matter and he stated that he did not remember selling anything to Floyd.

"Floyd testified that 'about 9:30, a quarter to ten' on the night in question, he purchased a bottle of whiskey and a bottle of '7 Up' at defendant's licensed premises; that he walked to the post office where his male friend was employed and that the two left in his friend's car; that shortly thereafter they met two girls, drove around until 10:30 p.m. when they parked the car near defendant's premises where he (Floyd) was to meet his brother; that after his friend parked the car, he (Floyd) went into the defendant's tavern, looked for his brother and when he could not find him, returned to the car; that a short time later the agents came over and questioned him; that he did not remember using the word 'just' while speaking to the agents; that when he went into defendant's tavern to find his brother, he left the bag containing the whiskey and soda on the seat of the car.

"William Blackman testified that on the evening of May 6, 1960, he was on duty tending bar in defendant's licensed premises and that he did not sell any alcoholic beverages to anyone during prohibited hours.

"An examination of the testimony given by the agents does not disclose any direct proof that Floyd actually purchased or carried a bottle of alcoholic beverages from defendant's licensed premises. After Floyd entered the car, the agents' testimony discloses that they came over to where the car was parked and asked him to alight therefrom and it was after he had complied with their request, that they noticed on the seat a paper bag which was found to contain a bottle of whiskey and one of soda. Floyd testified that he had purchased the items in question in defendant's establishment on his first visit, 9:30 - 10:00 p.m., and that on the second occasion he merely had gone into the tavern to find his brother whom he was to meet there. The Division's case is predicated solely on circumstantial evidence. Both agents testified that they had not felt the bottle of soda to ascertain whether or not it was cold. The fact that Floyd had gone into the tavern after 10:00 p.m. and, according to the agents, emerged therefrom in the darkness a short time later with a slight bulge in his jacket, would naturally arouse suspicion. However, suspicion in itself does not constitute proof. I am satisfied with the

explanation given by Floyd that he had purchased the items found in the paper bag some time prior that evening. Under the circumstances, I am of the opinion that the Division has not proven its case by a preponderance of the evidence and, therefore, the charge preferred herein should be dismissed. I recommend that defendant be found not guilty and that an order be entered dismissing the charge herein."

No exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

After carefully considering the evidence, I concur in the conclusions of the Hearer and shall adopt his recommendation. I find defendant not guilty of the charge herein.

Accordingly, it is, on this 18th day of August 1960,

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

WILLIAM HOWE DAVIS
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES IN MOTOR VEHICLE AND TRAILER - RETURN OF MOTOR VEHICLE DENIED FOR LACK OF EVIDENCE THE APPLICANT IS THE TRUE AND BENEFICIAL OWNER THEREOF - TRAILER RETURNED TO INNOCENT OWNER - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on January 16, 1960 of a quantity of alcohol, a Ford station wagon, and a trailer on the New Jersey Turnpike, at the 40 Mile Post, in the Township of Mount Laurel, County of Burlington and State of New Jersey.	)	Case No. 10,205 ON HEARING CONCLUSIONS AND ORDER

Minnie Jones, Pro se.
Emil Giantonio, t/a Brady Trailer Service, Pro se.
Dora Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether 65 two-quart 'Mason' jars of alcohol, a Ford station wagon, and a trailer, described in a schedule attached hereto, seized on January 16, 1960 on the New Jersey Turnpike, at the 40 Mile Post, Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

"Minnie Jones, the registered owner of the station wagon appeared at the hearing and sought its return. An appearance was also entered by Emil Giantonio, t/a Brady Trailer Service, who sought return of the trailer. No one opposed forfeiture of the alcohol.

"Reports of ABC agents and other documents in the file, presented in evidence with consent of the claimants, disclose the following facts.

"A New Jersey State Trooper halted the Ford station wagon and trailer on the above date and location during his routine

patrol of traffic on the highway. The trooper ascertained that Samuel David Jones was operating the motor vehicle, with Peter Govan Smith and Charles Albert Jones passengers therein. When the trooper discovered, in the trailer, 65 two-quart 'Mason' jars of alcohol, without any stamps thereon indicating the payment of tax on alcoholic beverages, he arrested the persons in the car, and took possession of the station wagon, trailer and alcoholic beverages. Later such property was turned over to ABC agents.

"A sample of the contents of one of the jars was analyzed by the Division chemist, who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 44.7 per cent.

"In a signed statement made by Samuel D. Jones at the time of the seizure he asserts that, while visiting his mother who resides in Bowman, South Carolina, two acquaintances requested that he transport some corn whiskey to their relatives in New York and helped him place the whiskey in the trailer, which trailer his brother, Josephus Jones, had brought to Bowman earlier that week.

"The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the Ford station wagon and trailer used in the transportation thereof constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"The substance of the evidence presented on behalf of Minnie Jones is as follows: She is 67 years of age, has been a widow for the last 18 years, has lived in South Carolina all her life, is the owner of the farm whereon she resides, and formerly her children and brothers and sisters helped her on the farm. She also worked as a seamstress from time to time. She has purchased motor vehicles in her own name from a local dealer since 1937. She does not operate a motor vehicle. She purchased the 1957 Ford station wagon as a used car for about $3,000.00, payable in installments to a finance company. Clarence Jones, another son, and one of her brothers, reside nearby. She has had no earned income for some time, depending upon contributions from her sons Samuel, Josephus, Charles and Clarence, her daughter, Thelma, and her brother. The monthly payments on the car were $83.00. She used the car, operated at times by her son, Clarence, and by others, for her personal use.

"Since October 1959 her son Samuel had the use of the car to go to New York, where he resides, and return to the farm, during which time he participated in attempts to adjust division of the family estate. She does not know what he does for a living.

"Samuel Jones, testifying on his mother's behalf, had his attention called to the fact that there could be an inference that his mother had no interest in the car; that for some reason or other she gave him the car or bought it for him. Samuel agrees that his mother is dependent upon her children for her support. However, she needed a car because she had been ill, and resides in the countryside and had to have some means of transportation to town for business reasons and to attend church services. Asked to explain how it came about that he had the car in New York from October to January if his mother needed the car, he answered that he was supposed to go back whenever convenient. He explained that his father died some years ago, leaving a tract of about 23 acres to be divided among his children, which has not as yet been divided. Josephus, who had been residing in New York, decided to build a home in South Carolina near his mother. Since October, Samuel has been making arrangements to have the land surveyed and divided into

six shares. Josephus drove down with a trailer which he had hired locally, to transport his household goods to South Carolina.

"Samuel states that he is a free lance embalmer since 1945; has never owned a car, is 39 years of age, and resides with his wife and seven children.

"Josephus Jones testified substantially as follows: He had been working in New Jersey for an industrial concern, has resided in New York seven years, and decided to return to South Carolina; that he hired the trailer in New Jersey to transport his furniture, and arranged for Samuel to bring the trailer back to New Jersey. Emil Giantonio produced a motor vehicle certificate of ownership for the trailer issued to Brady Trailer Service by the New Jersey Department of Motor Vehicles, dated October 10, 1956; and a document evidencing the rental of such trailer on January 9, 1960 to Josephus Jones.

"The explanation offered to convince the Director that Minnie Jones is the actual owner of the motor vehicle and to account for its possession by her son, Samuel Jones, in New York from October to January has many implausible aspects. She did not have any funds, at least for a year prior to the seizure, did not drive a car, and actually it was not available for her use from October to January, when it was in the possession of Samuel, although allegedly she needed a car for her own use. In my opinion, the evidence indicates that Minnie Jones was merely the nominal owner of the motor vehicle and that her son, Samuel Jones, actually was the beneficial owner.

"In any event, even the actual owner of the motor vehicle may not, as here, permit another person to use the car over a period of months, amounting virtually to an outright surrender of possession thereof, without retaining any substantial supervision or control thereof. Such conduct evinces a careless indifference to the purpose of its use and is inconsistent with good faith insofar as seizure proceedings are concerned. Absent good faith, the Director has no authority to return property subject to forfeiture. R.S. 33:1-66(e); Re Case No. 7467, Bulletin 857, Item 1; Re Case No. 8806, Bulletin 1066, Item 6.

"I therefore recommend that the request of Minnie Jones for return of the Ford station wagon be denied and that an order be entered forfeiting such motor vehicle. I further recommend that the trailer be returned to Emil Giantonio upon payment of the costs of its seizure and storage. Re Seizure Case No. 9978, Bulletin 1300, Item 7."

Pursuant to the provisions of Rule 4 of State Regulation No. 28, exceptions to the Hearer's Report and written argument thereto were filed with me by claimant Minnie Jones, contesting the forfeiture of the station wagon. The two points argued are (1) that said claimant's station wagon is not forfeitable under the provisions of the State Alcoholic Beverage Law since the illicit alcoholic beverages in question were carried in the trailer and not the station wagon and (2) that the good faith of said claimant has been established by the evidence adduced herein.

With respect to the first point, Minnie Jones argues that only the vehicle in which alcoholic beverages are contained may be forfeited and that in this case the trailer and station wagon were separate vehicles. Thus, only the trailer is forfeitable. To support this theory, a section of the State Alcoholic Beverage Law (R.S. 33:1-66 (a)) is cited, which provides in pertinent part that any officer shall "seize all property which he shall know, or have reasonable grounds to believe is unlawful property, including

in the case of illicit alcoholic beverages within any vehicle, the vehicle containing the same . . ."

However, this quoted section is not all-inclusive concerning the status of vehicles as unlawful property under the act. (Assuming, for the sake of argument, that it in fact declares certain vehicles to be unlawful property, rather than merely directing what property should be seized where reasonable cause exists that certain property is unlawful property.) To the contrary, this section does not define unlawful property. This is found in R.S. 33:1-1(y), the applicable part of which defines unlawful property as "All . . .vehicles . . . used in the transportation of illicit beverages . . ."

It will thus be seen that the quoted part of R.S. 33:1-66(a) dealing with vehicles is at the most additional or supplementary to the definition of unlawful property. It will also readily be seen that the station wagon in question undoubtedly was "used in the transportation of illicit beverages".

Furthermore, even granting claimant's agrument that only vehicles containing illicit alcoholic beverages may be forfeited, this Division has consistently considered motor vehicles and drawn trailers as one single vehicle in use. See Bulletin 383, Item 3. No separate transportation license or transit insignia is required for trailers in which alcoholic beverages are transported, but they are issued only for the motor vehicle drawing the trailer. The fact that the State Division of Motor Vehicles may require license plates and registration certificates for trailers is of no consequence with respect to the Alcoholic Beverage Law since other considerations of revenue and identification are involved. Nor is there any requirement that after a finding has been made that a motor vehicle and trailer are both unlawful property, both must be treated alike on the separate question of forfeiture. See R.S. 33:1-66(e).

Accordingly, I find that the station wagon in question constitutes unlawful property within the meaning of the act and may be forfeited in the absence of a showing of good faith and innocence upon the part of the owner thereof.

I have given careful consideration to the second point raised by the claimant Minnie Jones, including the precedents cited in her written argument. Nevertheless, from the evidence presented herein, I am not satisfied that Minnie Jones is actually the true and beneficial owner of the station wagon. The testimony in this respect is far from being clear, logical or straightforward. In this connection, the cases cited pertain to factual situations in which a finding was first made that the claimant was the actual owner of the vehicle, rather than, as here, merely the nominal owner thereof. Where claimant has not established that she is the true and beneficial owner of the vehicle, it may not be returned to her.

I therefore concur in the conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 8th day of August 1960,

DETERMINED and ORDERED that the seized property described in Schedule "A" appended hereto, except for the trailer listed therein, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and shall be sold at public sale for the use of the State, in accordance with State Regulation No. 29, or 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; and it is further

DETERMINED and ORDERED that if on or before the 18th day of August, 1960, Emil Giantonio pays the costs of seizure and storage of the trailer, it will be returned to him.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

65 - two quart "Mason" jars of alcohol
1 - Ford station wagon, Serial No. C7AK136362, South Carolina Registration 139764
1 - National trailer Nebraska Reg. X-1201

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRANK ANELLO
2 Prospect Place
Newark 3, N. J.

Holder of Plenary Retail Consumption License C-197, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that during prohibited hours he sold an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

At 1:55 p.m., Sunday, June 12, 1960, three ABC agents visited the vicinity of defendant's licensed premises. One of the agents entered the tavern and, after observing the bartender make a sale of a sealed bottle of wine and a second sale of six cans of beer for off-premises consumption, he ordered a pint of wine which the bartender gave him and accepted 55 cents, telling him to put the bottle in his pocket. The agent complied, left with his purchase and consulted with his fellow agents, one of whom entered the tavern immediately. Shortly thereafter, the other agents entered and identified themselves to the licensee and his bartender. The latter denied that he made the unlawful sale. However, when the two agents who had identified themselves departed, the bartender admitted to the unidentified agent who remained that he did make the sale.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days ane remit five days for the plea entered herein, leaving a net suspension of ten days. Re Janulis, Bulletin 1346, Item 10.

Accordingly, it is, on this 9th day of August 1960,

ORDERED that Plenary Retail Consumption License C-197 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank Anello, for premises 2 Prospect Place, Newark, be and the same is hereby suspended for ten (10) days, commencing

at 2:00 a.m., Tuesday, August 16, 1960 and terminating at 2:00 a.m., Friday, August 26, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

APPEAL CASES - JULY 1, 1959, THROUGH JUNE 30, 1960.

TO: William Howe Davis, Director August 2, 1960
FROM: Edward J. Dorton, Deputy Director

APPEAL CASES -- July 1, 1959, through June 30, 1960

Cases Undecided June 30, 1959	30	
Cases filed for period July 1, 1959 through June 30, 1960	77	
Total . . .		107

Disposition

Affirmed	53	
Reversed	13	
Modified	3	
Remanded	4	
Withdrawn.	5	
Undecided (16 cases heard) (13 " not ")	29	
Total . . .		107

Edward J. Dorton
Deputy Director.

10. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RICHARD JERNSTEDT
114 Charles Street
Jersey City, N. J.

Holder of Plenary Retail Consumption License C-530, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that he sold during prohibited hours alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Sunday, July 10, 1960 at about 2:35 p.m., an ABC agent while in defendant's licensed premises purchased six 12-ounce cans of beer from the defendant, who placed the beer in the hallway outside the barroom door. The agent left the licensed premises, picked up the bag containing the beer, joined his fellow agent who had remained outside the premises and both immediately entered the tavern. The agents identified themselves and apprised the defendant of the violation.

Defendant has a prior adjudicated record. Effective June 23, 1952 defendant's license was suspended by the local issuing authority for five days for an "hours" violation. The minimum suspension for an "hours" violation such as that committed herein is fifteen days. Re Janulis, Bulletin 1346, Item 10. However, in view of the fact that the similar violation occurred more than five years ago but within a ten-year period, five days will be added thereto, making a total suspension of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 24th day of August 1960,

ORDERED that Plenary Retail Consumption License C-530, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Richard Jernstedt, for premises 114 Charles Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Tuesday, September 6, 1960, and terminating at 2:00 a.m., Wednesday, September 21, 1960.

William Howe Davis
Director