

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

BULLETIN 2071

NOVEMBER 29, 1972

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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2071

NOVEMBER 29, 1972

1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matter of Disciplinary Proceedings  
against

CONCLUSIONS  
AND ORDERS

A. Gay 90's of South Amboy, N.J., Inc.  
t/a Gay 90's  
267 First St.  
South Amboy

S-8933  
Lic: C-25

Charge: Gambling "numbers" - suspension of 72 days  
Order: August 31, 1972 - Suspension effective 9/6/72

B. All Purpose Investment Co.  
t/a Windsor Hotel  
308 Third Ave.  
Asbury Park

S-9270  
Lic: C-65

Charge: "Front" - false statements in application -  
hindering investigation - license revoked  
Order: September 1, 1972

C. Martha Mauriello  
t/a State Prize Liquors  
2191 Morris Avenue  
Union Township

S-9213  
Lic: D-7

Charge: Sale at less than filed price - fine of \$500  
in lieu of 5 days suspension  
Order: 9/1/72

D. The Old Tavern Corporation  
223 No. Washington Ave.  
Margate

S-9222  
Lic: C-3

Charge: Sale to three minors (age 19) - license suspended  
for 15 days  
Order: 9/5/72 - suspension effective 9/19/72

E. Casimir and Stella Kolczynski  
t/a Cass Tavern  
640 North Clinton Ave.  
Trenton

S-9283  
Lic: C-121

Charge: Sale for off-premises consumption in violation of  
Regulation No. 38 - license suspended for 10 days  
Order: 9/6/72 - suspension effective 9/11/72

F. RAS Tavern, Inc.  
7103 Park Ave.  
Guttenberg

S-9261  
Lic: C-10

Charge: Sale to minors (ages 18 and 19) - fine of \$400  
in lieu of 10 days suspension  
Order: September 7, 1972

G. Robert Porro & Betty Lou Porro  
7002 Park Avenue  
Guttenberg

S-9260  
Lic: C-3

Charge: Sale to minor (age 20) - license suspended 5 days  
Order: September 8, 1972 - suspension effective 9/18/72

H. Maurice D. Slansky  
t/a Sycamore Bar & Restaurant  
206 and rear of 208 Watchung Avenue  
Plainfield.

S-9267  
Lic: C-2

Charge: Gambling "numbers" - net suspension of 72 days  
Order: September 11, 1972 - suspension effective September 25, 1972

I. Lawrence Bednarz  
368 Main Avenue  
Wallington,

S-9271  
Lic: C-43

Charge: Sale to three minors (ages 18, 19 and 19) - net  
suspension of 15 days  
Order: September 11, 1972 - suspension effective September 25, 1972

J. John Tietjen, Jr. & David G. Tietjen  
315 Kearny Ave.  
Kearny,

S-9281  
Lic: D-6

Charge: Sale for off-premises consumption in violation  
of Rule 1 of State Regulation No. 38 - fine of \$500  
in lieu of ten days suspension  
Order: September 13, 1972

K. Liquor Mart, a New Jersey Corp.  
t/a Liquor Mart  
4116-18-20 New Jersey Avenue  
Wildwood

S-9282  
Lic: C-43

Charge: Sale to minor (age 20) - Fine of \$200 in lieu of  
suspension of 5 days  
Order: September 13, 1972

L. The Stovern Corporation  
t/a Stouffer's  
1206-1212 River Road  
Millburn

S-9292  
Lic: C-9

Charge: Mislabeling - 2 bottles - fine of \$200, in lieu of  
10 days suspension  
Order: September 13, 1972

M. National Park Memorial Post 6884 VFW  
618 Hessian Avenue  
National Park

S-9293  
Lic: CB-1

Charge: Sale to non-members - license suspended 10 days  
Order: September 14, 1972 - Suspension effective 9/20/72

N. South Amboy Liquor, Inc.  
t/a South Amboy Liquor Store  
111 North Broadway  
South Amboy

Mun.Rev. 5480  
Lic: D-2

Charge: Sale to minor (age 19) - fine of \$400 in lieu of 15  
days suspension  
Order: September 14, 1972

O. 3121 Westfield Avenue Corporation  
t/a Stockton Liquors  
3121 Westfield Ave.  
Camden

S-9268  
Lic: C-14

Charge: Sale to minor (age 18) - fine of \$400 in lieu of 10 days  
suspension  
Order: September 14, 1972

P. Town Hall Restaurant & Tavern, Inc.  
52 South Washington Avenue and portion  
of basement  
Bergenfield,

S-9152  
Lic: C-1

Charge: Mislabeled - 4 bottles - fine of \$1,200 in lieu of  
15 days suspension  
Order - September 14, 1972

Q. Dorothy Miles  
t/a Joey Miles  
33 First Ave.  
Atlantic Highlands

S-9269  
Lic: C-1

Charge: Sale to minor (age 19) - Suspension of 10 days  
Order: September 14, 1972 - suspension effective 9/25/72

R. El Refugio Inc.  
t/a Bolero Bar  
5519 Hudson Ave.  
West New York

S-9290  
Lic: C-25

Charge: "Hours" regulation - suspension of 10 days  
Order: September 15, 1972 - suspension effective 10/2/72

S. Mario's Wine & Liquor Store, Inc.  
243 High Street  
Burlington

S-9278  
Lic: D-1

Charge: Sale to minor (age 19) - license suspended for 10 days  
Order: September 15, 1972 - suspension effective 10/2/72

T. Hackensack Pub, Inc.  
t/a King Arthur  
455 Essex Street  
Hackensack

S-9205  
Lic: C-3

Charge: Mislabeled - 2 bottles - Fine of \$200 in lieu of  
10 days suspension  
Order: September 18, 1972

U. John Paul Selzam  
t/a Jack's Tavern  
20 North Avenue  
Garwood

S-9298  
Lic: C-3

Charge: Gambling (numbers game) - net suspension 72 days  
Order: September 19, 1972 - suspension effective 10/2/72

V. Tony Mart, Inc., t/a Tony Mart's  
939 Bay Avenue  
Somers Point

S-8905  
Lic: C-9

Charge: Sale to 2 minors (age 18 and 20) - prior similar offense  
within 10 years - Fine of \$3,375 in lieu of 15 days suspension  
Order: September 19, 1972

W. Anthony Giordano  
t/a Gig's  
110 Brunswick St.  
Jersey City, N. J.

S-9294  
Lic: C-23

Charge: "Hours" regulation - suspension of 10 days  
Order: September 19, 1972 - suspension effective 10/2/72

X. Palmer-Rold, Inc.  
t/a Parkview Bar  
3426 Atlantic Avenue  
Atlantic City

S-9289  
Lic: C-94

Charge: Mislabeled - 2 bottles - fine of \$200 in lieu of  
10 days suspension  
Order: September 20, 1972

Y. Smithmore Tavern, Inc.  
t/a Mark "7" Lounge  
819-821 East Jersey St.  
Elizabeth,

S-9228  
Lic: C-173

Charge: "Hours" regulation - fine of \$400 in lieu of 10 days  
suspension  
Order: September 20, 1972

Z. Lincoln Lounge, A Corporation  
t/a Lincoln Lounge  
8-10 Henry St.  
Passaic,

S-9277  
Lic: C-64

Charge: Mislabeled - 1 bottle - prior dissimilar record -  
fine of \$100 in lieu of 10 days suspension

ROBERT E. BOWER  
DIRECTOR

2. APPELLATE DECISIONS - POPOLA v. NEWARK.

Patsy B. Popola, t/a Paddy's )  
Cozy Corner, )  
Appellant, )  
v. )  
Municipal Board of Alcoholic )  
Beverage Control of the City )  
of Newark, )  
Respondent. )  
----- )

On Appeal

CONCLUSIONS and ORDER

Anthony J. Iuliani, Esq., Attorney for Appellant  
William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which on March 27, 1972 revoked the plenary retail consumption license of appellant Patsy Popola, t/a Paddy's Cozy Corner (hereinafter Popola), in consequence

of a guilty finding by the Board of a charge of permitting the sale of narcotics and allowing narcotic activity on the licensed premises in violation of Rule 4 of State Regulation No. 20.

Appellant contended that the action of the Board was erroneous in that its action was contrary to the weight of the evidence, the absence of factual testimony or legal evidence before the Board as would justify its conclusion, and that the Board's action was arbitrary, capricious and an abuse of its discretion. The Board in its answer denied these contentions and defends that its decision was based upon the "factual testimony" before it.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity accorded the parties to present testimony and to cross-examine witnesses. A transcript of the proceedings held before the Board was submitted into evidence in accordance with Rule 8 of said regulation.

The transcript of the testimony before the Board on March 20, 1972 revealed the testimony of William J. Segurin (a detective of the Newark Police Department). He stated that on March 3, 1971, while doing undercover investigations of narcotic activity, he entered the licensed premises about 9:40 p.m. He described his activity as follows:

"I entered the premises. I recognized a few junkies that knew me from the area. I knew they were junkies. I recognized some junkies here. I approached them; spoke with them and I asked them what was happening. I told them I wanted to purchase some drugs. They told me that the buy, the bartender, was selling drugs. All I would have to do--."

He added that the bartender came from around the bar, sat down, whereupon the witness stated to the bartender that he wanted to "cop some stuff", meaning thereby that he wished to purchase some drugs. The bartender informed the witness that he had five hundred bags (of heroin). The negotiations for the sale and purchase of the drugs being completed, the witness was advised by the bartender to meet him outside the premises, which was done. The bartender crossed the street and returned with the drugs, for which the witness paid \$20. No arrest was made by the detective because he did not wish to lose his undercover identity at that time. After confirming that the seller of the narcotics was a bartender and was serving customers, he identified the seller as Jose Colon. A preliminary field test made by this witness indicated that the contents of one of the glassine envelopes purchased was positive for heroin. This was confirmed by a laboratory test, the report of which established that it contained 3 to 3.0520 grams of heroin.

The transcript further revealed that Detective Alonzo Evans arrested the subject Jose Colon on the basis of Detective Segurin's description and had observed Colon as an employee of the licensed premises.

Testifying before the Board, Patsy B. Popola (the appellant) stated that on March 3, 1971 he was not then the owner of the licensed premises; that he never knew nor employed Colon; that he purchased the premises on June 28, 1971; that he asked the seller if Colon was an employee and received a negative response. He added that at the time of purchase he did not know of any pending charges against the licensee.

At the hearing in this Division appellant produced the testimony of Florence Cavanagh who, prior to the transfer of the license to appellant, had a one-half interest in the license; one Nathan Bernstein had the other half. She identified the employees working on March 3, 1971 as Ramon Nugent and Louis Perez. She had no knowledge of a Jose Colon nor knew of the visits of the detectives. She added that Bernstein would consult her on matters of hiring employees. Bernstein did not testify before the Board or before this Division.

Appellant challenges the sufficiency of the evidence to establish that appellant's predecessor in interest (Honky-tonk, Inc., t/a Traymore Bar) allowed, permitted or suffered the violation as described in the charge. The testimony of the police officers, which I am satisfied is true, who negotiated the sale of narcotics and who apprehended the seller, is uncontradicted. Their testimony describing the seller of the narcotic as having also served alcoholic beverages confirms the employment despite the former owner's testimony that the seller was not an employee or officially listed as such.

The privilege of selling alcoholic beverages at retail to the public -- one granted to the few and denied to the many -- (cf. Paul v. Gloucester County, 50 N.J.L. 585 (1888)) must be exercised in the public interest. Hence the then licensee had a duty to supervise the activities within the licensed premises with great care and caution. No testimony was offered that such care was exercised in the then management of the licensed premises. It is apparent by the manner in which the licensed premises had been conducted that appellant's predecessor demonstrated a distinct lack of appreciation for the need of proper supervision and observation. It has been repeatedly held that supervision is the cornerstone of a retail liquor outlet.

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support." In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953).

Appellant's predecessor in interest had obviously relinquished to the employees the responsibility of supervising the licensed premises, thus making possible the drug traffic described. That failure inures to the detriment of the appellant who must therefore suffer from the impediment to the license he acquired.

It is recommended that the finding of the Board that the premises were used, on the occasion charged, as the situs of a narcotic transaction and that it suffered illegal narcotic activity therein be affirmed.

However, appellant's contention that the Board's action was unreasonable, if addressed to the penalty imposed, raises an equal and collateral issue. It is uncontroverted that appellant acquired the license by a person-to-person transfer granted by the Board which, by custom, admonishes prospective transferees that their acceptance of the license is subject to any outstanding charges as may be leveled against the transferor. Beyond such

admonition the Board offered no information, if indeed it had any, that charges serious enough to warrant revocation of the license privilege were pending or in contemplation.

The sole charge preferred was that on March 3, 1971 a single narcotic transaction was made. No evidence was offered before the Board that the premises were the locus of general narcotic activity or that police surveillance over a protracted period would give rise to a normal caution by a prospective transferee. Some warning signal had to have been flashed to appellant for he was asked and responded before the Board thusly:

"Q Did you ask him whether or not there was a Mr. Colon as an employee of the Traymore Bar on March 3, 1971?

A Yes.

Q What did he respond to you?

A Never worked for him."

From this colloquy it is not clear and the record does not further reveal when this conversation took place, i.e., at or about the time of transfer or after the charges were pressed. In any event, appellant made no further inquiry as to possible charges against the license.

It is well settled that the quantum of penalty to be imposed in disciplinary proceedings rests in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify such penalty will be sparingly exercised and only with the greatest caution. Harrison Wine & Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Buckley v. Wallington, Bulletin 1772, Item 1; Mitchell v. Cavicchia, 29 N.J. Super. 11 (App.Div. 1953).

However, the Director has modified penalties when they have been manifestly unreasonable or duly excessive. Cf. Kovacs v. South River, Bulletin 1008, Item 2 (reduction from revocation to suspension for twenty days); Conklin v. Bridgewater, Bulletin 809, Item 7 (reduction from revocation to suspension for twenty days); Spann v. Newark, Bulletin 2048, Item 2 (reduction from revocation to suspension for sixty days on a narcotic charge).

The charge here was based upon proscribed activity of appellant's predecessor in interest without prior notice to appellant, according to his testimony; thus the severity of the penalty, i.e., outright revocation, creates the distinct impression of inequity. A penalty of outright revocation appears to be unduly excessive under the circumstances.

I am persuaded that appellant should be given an opportunity to demonstrate his worthiness to hold a liquor license. I therefore recommend that the Board's action herein be affirmed but that the penalty be reduced from the said revocation of appellant's license to a suspension of sixty days on the charge herein.

However, the records of this Division indicate that on March 9, 1972, appellant's license was suspended for the balance of its term, viz., June 30, 1972, with leave to licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation, as described in the charges against the licensee to which a non vult plea was entered, was corrected. Re Popola, Bulletin 2038, Item 4. To date such verified petition has not been received.

Accordingly, it is further recommended that appellant's license be suspended for the balance of its term, viz., until midnight June 30, 1973, with leave to 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 as encompassed in the charge against him as aforesaid has been corrected but in no event sooner than sixty days from the commencement of the suspension herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

According to the records of this Division, it appears that the appellant has failed to file an application for renewal of his license for the current licensing period and the time for such renewal has expired. Therefore, no effective penalty can be imposed at this time.

Accordingly, it is, on this 21st day of September 1972,

ORDERED that the action of the Board in revoking appellant's plenary retail consumption license for premises 1089 Broad Street, Newark, be and the same is hereby modified to a suspension of sixty (60) days, expressly subject to the correction of any unlawful situation as set forth hereinabove, the effective dates of which said suspension shall be and the same are hereby deferred until the entry of a further order herein.

Robert E. Bower  
Director

3. APPELLATE DECISIONS - MARTUCCI v. ATLANTIC CITY.

Mary Ann Martucci,	)	
Appellant,	)	
v.	)	On Appeal
Municipal Board of Alcoholic	)	CONCLUSIONS
Beverage Control of the City	)	and
of Newark,	)	ORDER
Respondent.	)	

-----)  
 Noonan and Flynn, Esqs., by John W. Noonan, Esq., Attorneys for Appellant  
 William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is addressed to the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which denied appellant's application for a person-to-person transfer of plenary retail consumption license held by Daniel Rinaldi, for premises 311 Chestnut Street, Newark.

Appellant alleges, in her petition of appeal, that she is qualified to hold the license and that the reasons stated by the Board in denying said transfer are insufficient to bar the transfer; thus the Board's action constitutes an abuse of its discretion.

The Board answered that its refusal to grant a transfer of the license was factually warranted and that it exercised "sound discretion."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted by the Board, and was supplemented by testimony of the appellant at this de novo hearing, pursuant to Rule 8 of State Regulation No. 15.

From the record, it can be concluded that the Board's action was dictated by the fact that appellant's husband, Frank Martucci, was criminally disqualified to become associated with the liquor business and that if the transfer were to be granted by the Board, it feared that appellant's husband would become involved therein. There is nothing in the record to suggest that the appellant is statutorily disqualified from engaging in the liquor industry or that she was in anywise unworthy or unfit to engage therein.

The crucial point of inquiry is whether or not the Board acted reasonably and in the public interest under the circumstances. "Reasonable" has been defined as "being in agreement with right thinking or right judgment; not absurd." Webster's (3rd Edition) New International Dictionary. "Reasonable" has (also) been defined as "governed by reason", "sensible"; also "fair", "equitable", "fairminded" and "suitable in the circum-

stances." 75 C.J.S. 634. What is "reasonable" must, of course, be determined according to the context and circumstances of each particular case.

As the court pointed out in Bivona v. Hock, 5 N.J. Super. 118 (App. Div. 1949) at p.120:

"It seems to us that the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940)."

The transfer of a liquor license, whether person-to-person or place-to-place, or both, is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was unreasonable, arbitrary or capricious, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Silver Sands Motel v. Point Pleasant Beach, Bulletin 1624, Item 1.

Although the care and attention given to the subject matter are laudable, I find that, upon the record presented, the Board's action in refusing to grant a transfer of the license is unreasonable. The appellant is at least entitled to prove that she will sincerely and conscientiously adhere to the rules and regulations, State and municipal, governing the operation of the licensed premises. See Marsillo v. Randolph, Bulletin 1367, Item 3; Walban, Inc. v. Deal, Bulletin 1894, Item 2; K.J.P. Corporation v. Passaic, Bulletin 1906, Item 2; Kademian v. Fort Lee, Bulletin 2027, Item 1.

Nothing herein contained should create an implication of lack of concern by this Division and shared by the Board as to the future management operation of the licensed premises; certainly any future involvement to the business by the appellant's disqualified husband may well result in the revocation of the license privilege. Nevertheless, it should not be the determinant against the application for the present transfer. Cf. Kademian v. Fort Lee, supra.

For the reasons above stated, I conclude that the appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15. It is, therefore, recommended that the respondent's action be reversed and that it be ordered to grant the transfer in accordance with the application filed therefor.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

Accordingly, it is, on this 20th day of September, 1972

ORDERED that the action of the respondent be and the same is hereby reversed, and the respondent be and is hereby ordered to grant appellant's application for a person-to-person transfer of the subject plenary retail consumption license held by Daniel Rinaldi to appellant for premises 311 Chestnut Street, Newark, in accordance with the application filed therefor.

Robert E. Bower  
Director

4. DISCIPLINARY PROCEEDINGS - HOLDER OF LICENSE DISQUALIFIED - PRIOR CRIME INVOLVING MORAL TURPITUDE - DISQUALIFICATION REMOVED.

In the Matter of Disciplinary Proceedings against  
Frank J. Capone  
t/a Capone's  
2200-2202 Arctic Avenue  
Atlantic City, N.J.

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-127 for 1970-71 license period and Plenary Retail Consumption License C-76 (for 1971-72 and 1972-73 license periods) issued by the Board of Commissioners of the City of Atlantic City.

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Morgan E. Thomas, 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

On August 18, 1971 a hearing was held at this Division wherein the licensee pleaded not guilty to the following charge:

"Said license was improvidently issued in violation of R.S. 33:1-25 in that you were disqualified from obtaining such license by reason of the fact you had been convicted on or about August 15, 1968, in the Atlantic County Criminal Court of the crime of maintaining a lottery (N.J.S. 2A:121-3) being a crime involving moral turpitude."

At the hearing aforesaid, the charge was amended so that, instead of licensee being charged with being convicted of the crime of "maintaining a lottery (N.J.S. 2A:121-3)", he was charged with being convicted of the crime of "maintaining a disorderly house (N.J.S. 2A:85-1)."

On November 23, 1971, the Hearer filed his report wherein he recommended a finding of guilty and further recommended that the subject license be suspended for the balance of its term, subject to the lifting of the suspension on application of the licensee or any bona fide transferee of the license.

Parenthetically, it should be stated that the licensee set forth the convictions in his license applications and it was not alleged that he concealed, nor did he attempt to conceal the conviction by any false statement therein.

Subsequent to the filing of the Hearer's report pursuant to the then Director's direction, the licensee was afforded an opportunity to apply for the removal of his disqualification, in accordance with the provisions of N.J.S.A. 2A:168-A. It was further directed that the hearing be re-opened for this purpose so that one order might be entered in adjudicating this matter.

Licensee's criminal record and his petition for the removal of his disqualification filed pursuant to the provisions of N.J.S.A. 2A:168-A reveal that he was convicted of the crime of maintaining a disorderly house (gambling) in the Atlantic County Court (a misdemeanor) and that on August 15, 1968 he was sentenced to serve a term of three hundred and sixty-four days in the Atlantic County jail (suspended), was placed on probation for one year and fined \$250.00.

Since the crime of which licensee was convicted involves the element of moral turpitude (Re Case No. 1859, Bulletin 1594, Item 5) he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. N.J.S.A. 33:1-25, 26. The petition herein is being considered within the applicable provisions of N.J.S.A. 2A:168-A based upon the recommendation of the parole authority for removal of the licensee's disqualification.

At the hearing held herein, licensee (age fifty-one) testified that he is married; that for the past twenty-three years he has lived at 40 North Missouri Avenue, Atlantic City, New Jersey.

Licensee further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction in 1968, he has not been convicted of any crime.

The Police Department of the municipality wherein the licensee resides reports that there are no complaints or investigations presently pending against petitioner.

Licensee produced three character witnesses (a registered pharmacist, a certified public accountant and a retired individual) who testified that they have known licensee for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

Considering all the aforesaid facts and circumstances, I am satisfied that licensee has conducted himself in a law-abiding manner since August 15, 1968, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Therefore, I recommend that licensee's statutory disqualification because of the conviction described herein be removed, in accordance with the provisions of N.J.S.A. 2A:168-A.

I further recommend that, in view of the recommended removal of the licensee's statutory disqualification, and the attendant facts and circumstances that the charge herein be dismissed.

#### CONCLUSIONS and ORDER

No exceptions to the Supplemental 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 findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of September 1972,

ORDERED that licensee's statutory disqualification because of the conviction described herein be and the same is hereby removed in accordance with the provisions of N.J.S.A. 2A:168-A; and it is further

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

ROBERT E. BOWER  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against	)	
	)	
Dorothy Miles	)	
t/a Joey Miles	)	SUPPLEMENTAL ORDER
33 First Ave.,	)	
Atlantic Highlands, N.J.,	)	
Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Borough Council of the Borough of Atlantic Highlands.	)	
-----)	)	
Licensee, Pro se.	)	
Walter H. Cleaver, Esq., Appearing for Division	)	

BY THE DIRECTOR:

On September 14, 1972 I entered Conclusions and Order suspending the subject license for ten days commencing September 25, 1972 upon licensee's plea of non vult to a charge alleging that on May 5, 1972 she sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Prior to the effectuation of the suspension herein, the licensee made application for the imposition of a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971. I shall defer the suspension herein pending my consideration of the said application and until entry of a further order herein.

Accordingly, it is, on this 19th day of September 1972,

ORDERED that the said order dated September 14, 1972 be and the same is hereby stayed until the entry of a further order herein.

Robert E. Bower  
Director

6. SEIZURE - FORFEITURE PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES IN UN-LICENSED CLUB - ALCOHOLIC BEVERAGES RETURNED TO INNOCENT OWNER FROM WHOM THEY WERE STOLEN.

In the Matter of the Seizure : Case No. 12,610  
on January 5, 1971 of 35 :  
cases of alcoholic beverages : On Hearing  
at the licensed premises of :  
Hall-Will, Inc., t/a Cadillac : CONCLUSIONS and ORDER  
Club, 32-34 William Street, :  
in the City of Newark, County :  
of Essex and State of New :  
Jersey. :

.....  
Sidney Berg, Esq., Appearing for Flagstaff Liquor Co., claimant.  
Harry D. Gross, Esq., Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 to determine whether 35 cases of assorted alcoholic beverages, more particularly described in a schedule attached hereto, made part hereof, and marked Schedule "A", seized on January 5, 1971 in the licensed premises of Hall-Will, Inc., 32-34 William Street, Newark, N.J. constitutes unlawful property and should be forfeited.

When the matter came on for hearing, Flagstaff Liquor Co., claimant, represented by counsel, appeared and sought return of the alcoholic beverages.

The Division's case was presented through the introduction of its file into evidence with the consent of the claimant. The file disclosed the following facts: On January 4, 1971, Agent B, accompanied by members of the Newark Police Department, acting on information that stolen alcoholic beverages were being stored at the licensed premises of Hall-Will, Inc., t/a Cadillac Club, 32 - 34 William Street, Newark, entered the licensed premises.

Upon entering and inspecting the premises, Agent B discovered the alcoholic beverages, as set forth in Schedule "A", attached hereto. The manager of the premises, upon being questioned, advised Agent B that proper invoices disclosing the legitimate purchase of the said alcoholic beverages were available. No such invoices were produced although the licensee was given a reasonable time to produce the invoices. The cases of alcoholic beverages were clearly marked with the letters "F.L.C.". Thereafter, the alcoholic beverages were seized by agents of this Division.

Significantly and relevant hereto, the said licensee entered a plea of non vult to charges that on January 5, 1971, it purchased or obtained alcoholic beverages from other than a wholesaler or manufacturer without special permit. Re Hall-Will, Inc., Bulletin 2001, Item 11; said alcoholic beverages were the same as are the subject hereof.

Rule 15 of State Regulation No. 20 provides that no retail licensee shall purchase or obtain any alcoholic beverages except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control.

Rule 6 of State Regulation No. 39 provides that retail licensees shall retain invoices, or similar documents indicating receipt of alcoholic beverages from an authorized source and shall make them available for inspection by agents of the Director.

Such alcoholic beverages, obtained as aforementioned, constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-66(c); N.J.S.A. 33:1-1(i and y); see Bulletin 1285, Item 7.

Flagstaff Liquor Co. entered its claim for the return of the alcoholic beverages seized herein, and presented the testimony of Joseph Mitrosky, Comptroller of Flagstaff Liquor Co., John F. Rickwood, credit manager and Sidney Penn, sales manager.

The evidence established that the serial numbers of the items seized corresponded to the serial numbers of cases received at the Flagstaff warehouse from authorized sources.

The testimony further established the knowledge on the part of Flagstaff that inventory was disappearing from the warehouse by methods which Flagstaff was unable to detect. Thereupon, Flagstaff hired undercover, private detectives in order to detect the method by which the alcoholic beverages were purloined.

It was finally developed that a former employee of the claimant, namely Alonzo Johnson, had concocted a plan whereby alcoholic beverages billed to legitimate licensees were never received by them.

The Director has the discretion to return property subject to forfeiture to a claimant who has established to the Director's satisfaction that he has acted in good faith and did not know or have any reason to believe that the property would be used unlawfully. Rule 3(b) of State Regulation No. 28.

I am satisfied that Flagstaff Liquor Co. is the owner of the seized alcoholic beverages; that said alcoholic beverages were stolen from its place of business; and that it was an innocent victim of larceny of its said property.

Accordingly, it is recommended that its claim be recognized and that an Order be entered directing the return of the said alcoholic beverages. N.J.S.A. 33:1-66(e) and State Regulation No. 28.

#### Conclusions and Order

No exceptions to the 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 exhibits, the transcript of testimony and the Hearer's Report, I concur in the findings of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of September, 1972

DETERMINED and ORDERED that the claim of Flagstaff Liquor Co., be recognized and that the alcoholic beverages, more specifically set forth in Schedule "A" be returned to it, upon payment of costs of seizure and storage.

Robert E. Bower,  
Director

#### SCHEDULE "A"

- 3 - full cases of half-gallons Scotch.
- 2 - full cases, tenth Scotch
- 30 - full cases, quarts assorted alcoholic beverages

7. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against )

Mario's Wine & Liquor Store, Inc. )  
243 High Street )  
Burlington, N.J., )

SUPPLEMENTAL ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Common Council of the City of Burlington. )  
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Richman, Berry, Ferren & Tyler, Esqs., by David E. Ferguson, Esq., Attorneys for Licensee  
Peter E. Rhatican, Appearing for Division

BY THE DIRECTOR:

On September 15, 1972 I entered Conclusions and Order suspending the subject license for ten days commencing October 2, 1972, upon the licensee's plea of non vult to a charge alleging that on June 24, 1972, it sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

Prior to the effectuation of the suspension herein, the licensee made application for the imposition of a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971. I shall defer the suspension herein pending my consideration of the said application and until the entry of a further order herein.

Accordingly, it is, on this 19th day of September 1972,

ORDERED that the said order dated September 15, 1972 be and the same is hereby stayed until the entry of a further order herein.

Robert E. Bower  
Director

8. STATE LICENSES - NEW APPLICATION FILED.

International Commerce Corporation  
t/a Europa Wine Import Company  
475 High Mountain Road  
North Haledon, New Jersey  
Application filed November 29, 1972 for wine wholesale license.

*Robert E. Bower*  
Robert E. Bower  
Director