

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

BULLETIN 1056

PROPERTY OF
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APRIL 5, 1955.

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

BULLETIN 1056

APRIL 5, 1955.

1. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

BERTHA BOLTON)
T/a BERTON'S LIQUOR)
220 Graham Avenue)
Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-)
bution License D-70, issued by the)
Board of Alcoholic Beverage Control)
for the City of Paterson.)

Nathan Robins, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that at 1:45 p.m., January 20, 1955, two ABC agents visited defendant's licensed premises and while one agent observed from the outside, the other entered and asked the clerk therein for a quart of Philadelphia Whiskey. "I don't stock Philadelphia, it doesn't move" said the clerk, "How about some Hunter's?" When the agent inquired as to the price of the suggested brand, the clerk replied "Five dollars and fifty-five cents", which was the then current minimum resale price and so tagged on the shelf. The agent hesitated and the clerk continued "But go ahead, you can have it for five and a quarter." The agent agreed and paid the reduced price with identifiable currency which was rung up on the cash register. Leaving the premises with his purchase, he beckoned his partner and both re-entered the premises, made known their identities, seized evidential material and obtained a signed sworn statement from the clerk, who identified himself as the husband of defendant-licensee, admitting the aforesaid transaction.

Defendant has a prior adjudicated record. Effective August 18, 1947, her license was suspended for fifteen days by the State Director for an "hours" violation. However, since the prior violation occurred more than five years ago and is dissimilar in nature to the instant infraction, it will not be considered in fixing the instant penalty. Re Dwyer, Bulletin 1036, Item 5. I shall suspend defendant's license for a period of ten days (the minimum suspension imposed for an unaggravated offense of the type hereinabove charged). Re Locust Inn, Inc., Bulletin 1050, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 11th day of March, 1955,

ORDERED that Plenary Retail Distribution License D-70, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Bertha Bolton, t/a Berton's Liquor, for premises 220 Graham Avenue, Paterson, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. March 21, 1955, and terminating at 9:00 a.m. March 26, 1955.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT PRINTED OR WRITTEN MATTER - INDECENT PICTURES) - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)
JOSEPH NOVEMBRE)
T/a MULBERRY CLUB)
523 Mulberry Street)
Trenton 8, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-196, issued by the Board of Commissioners of the City of Trenton.)

-----)
John Palaschak, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On January 5, 1955, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting printing, writing, pictures and representations; in violation of Rule 17 of State Regulations No. 20."

At the hearing herein an ABC agent testified that on January 5, 1955, while making a retail inspection of defendant's licensed premises, he seized a number of items, the character of which forms the basis of the above charge. The items were received in evidence without objection, and marked Exhibits S-1 to S-16 inclusive.

John Novembre, the licensee, testified on his own behalf admitting that the items were in and upon his licensed premises; contending, however, that (1) the exhibits are not of the character proscribed by Rule 17 of State Regulations No. 20; (2) there are no legal standards by which the items may be judged; and (3) the issue is legal rather than factual.

At the outset it should be recognized that:

"We are dealing here with a purely disciplinary measure and its alleged infraction." And "The object manifestly inherent in the rule with which we are concerned is primarily to discourage and prevent not only lewdness ***; but all forms of licentious practices and immoral indecency on the licensed premises." Re Schneider, 12 N. J. Super. 449.

I have scrutinized the exhibits and am guided by the principles enunciated by Justice Jacobs, then a Judge of the Appellate Division, in State v. Wederhausen, 11 N. J. Super. 487, at p. 491-2:

"Although the words obscene and indecent are commonly used and understood they are probably not susceptible of precise legal definition. Cf. Commonwealth v. New, 142 Pa. Super. 358, 16 A. 2d 437 (1940); United States v. Levine, 83 F. 2d 156 (2d Cir. 1936). In the Isenstadt case (Commonwealth v. Isenstadt, 318 Mass. 543, 62 N.E. 2d 840 (1945)), Justice Qua recently expressed principles which may be accepted as controlling. He stated that material may be deemed obscene and indecent within a statutory prohibition if it has a substantial tendency to deprave or corrupt its readers or viewers by 'inciting lascivious thoughts or arousing lustful desire;' the material is to be judged in the light of the customs and habits of thought of the time and place and where reasonable men may differ the question is one of fact ***."

Cf. McFadden's Lounge Inc. v. Division of Alcoholic Beverage Control, 33 N. J. Super. 61.

Applying the views above expressed, I have no hesitancy in concluding that the items, in the main, are, as a matter of fact, obscene and indecent and come within the purview of Rule 17, Regulations No. 20. I, therefore, find defendant guilty as charged.

Defendant has no prior record. The period of suspension ordinarily imposed in cases of this kind is ten days, with a remission of five days for the entry of a guilty plea or a plea of non vult. While defendant entered a not guilty plea herein, he admitted possession of the articles and said plea was entered merely to obtain a ruling as to the several points raised by defendant. Under the circumstances, I shall suspend defendant's license for a period of five days. Cf. Re Buzak, Bulletin 840, Item 8.

Accordingly, it is, on this 11th day of March, 1955,

ORDERED that Plenary Retail Consumption License C-196, issued by the Board of Commissioners of the City of Trenton to Joseph Novembre, t/a Mulberry Club, for premises 523 Mulberry Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. March 21, 1955, and terminating at 2:00 a.m. March 26, 1955.

WILLIAM HOWE DAVIS
Director.

3. RETAIL CONSUMPTION LICENSEES - EGG NOG - EASTER DISPENSATION.

A. H. Geltzeiler, President
United Licensed Beverage Association
Newark 2, N. J.

March 28, 1955.

Dear Mr. Geltzeiler:

This is in answer to your oral inquiry today concerning egg nog.

Traditionally, every year during the Easter season consumption licensees have been permitted to serve egg nog for a limited period of time.

I am glad to note that no abuse has developed from this privilege. The same privilege will therefore be permitted this year beginning Thursday, April 7, 1955, and ending Monday, April 11, 1955, at midnight, on the understanding, of course, that the privilege will be used with reason and moderation.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - RETURN OF VENDING MACHINE DENIED FOR FAILURE TO MAKE ADEQUATE INVESTIGATION - STOCK OF ALCOHOLIC BEVERAGES, FURNISHINGS AND EQUIPMENT OF RESTAURANT ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. 8634
 June 13, 1954 of a certain)
 quantity of alcoholic beverages)
 and certain goods and chattels)
 and restaurant equipment at Bessie)
 Brooks' restaurant, known as "Blue)
 Spruce", located on Stanger Avenue,)
 in Elk Township, County of Gloucester)
 and State of New Jersey.)

ON HEARING
 CONCLUSIONS AND ORDER

 William C. Gotshalk, Esq., attorney for Unit Vending Corporation.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$51.96 in cash, and various fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on June 13, 1954 at a restaurant known as "Blue Spruce", owned by Bessie Brooks, located on Stanger Avenue, Elk Township, New Jersey, constitute unlawful property and should be forfeited.

Forfeiture of the property was not opposed by any person except the Unit Vending Corporation, which sought return of a cigarette vending machine.

After hearing pursuant to R. S. 33:1-66, the Hearer submitted his suggested Conclusions and Order (Hearer's report) to the attorney for the Unit Vending Corporation. Exceptions to such report were filed on behalf of such vending concern and oral argument on such exceptions were heard by me.

After due consideration of the complete record in the case including such exceptions and oral argument, I adopt and approve the Hearer's finding of facts and law, which reads as follows:

"The seizure was made by ABC agents by reason of alleged unlicensed sales of alcoholic beverages in such restaurant.

"Reports of ABC agents and other documents in the file were presented in evidence, wherefrom it appears that on June 13, 1954 ABC agents entered the premises to investigate a complaint that alcoholic beverages were being sold there without a license. The agents observed a number of persons drinking what appeared to be beer. Gloria Brown was behind the counter serving food and beverages. The agents observed various sales of beer by Gloria Brown to patrons. The agents purchased from Gloria Brown drinks of beer and whiskey for themselves and others.

"Thereafter the agents disclosed their identity. There was no license issued to Gloria Brown or Bessie Brooks authorizing either of them to sell alcoholic beverages, and the premises were not licensed for that purpose.

"The agents seized seven cans and 12 bottles of beer, a bottle of whiskey, two bottles of wine, \$51.96 which was in the cash register, and the fixtures, furnishings, and equipment in the restaurant.

"Gloria Brown gave the agents a signed statement wherein it appears that she admits the aforementioned sales of alcoholic beverages to them; that she has been serving alcoholic beverages at the restaurant during weekends for the past year, and that the restaurant is owned and operated by her mother, Bessie Brooks.

"The records of the Division of Alcoholic Beverage Control disclose that on May 26, 1946 a similar seizure was made at the premises because of the unlicensed sale of alcoholic beverages therein; that Bessie Brooks was arrested for violating the Alcoholic Beverage Law, and was fined \$250.00 on November 21, 1946; and that the property seized on that occasion was ordered forfeited by the then Deputy Commissioner of Alcoholic Beverage Control. Seizure Case No. 6989, Bulletin 734, Item 2. The Deputy Commissioner's Order recites that this establishment has a long and notorious reputation as a speakeasy. On February 2, 1952 New Jersey State Troopers seized a quantity of alcoholic beverages at the premises by reason of unlicensed sales of alcoholic beverages therein, and arrested Bessie Brooks, who was fined \$150.00, and sentenced to serve 60 days in the County jail. The alcoholic beverages were ordered forfeited by the Director of the Division of Alcoholic Beverage Control. Seizure Case No. 8006.

"Subsequent to the hearing the attorney for the Unit Vending Corporation advised that it sought return of a cigarette vending machine. Previous thereto the Director did not know or have any reason to believe that such corporation had an interest in the seized property. Since such property had not as yet been forfeited, the vending concern was afforded a supplemental hearing to present its claim. At such hearing the attorney for Unit Vending Corporation stated on the record that he had nothing to contradict the witnesses that Bessie Brooks or some employee of hers sold liquor on the day in question.

"William W. Head, sales representative of the vending concern, testified on its behalf. He stated that the vending concern placed a cigarette machine in the premises on January 11, 1952. The account was carried as the 'Blue Spruce Inn', then in the name of Rose Kelly, who later advised that she had sold the business and thereafter the location was carried on its books in the name of Floria Brown until March 12, 1954, when the account was changed to the name of Bessie Brooks. The original machine was replaced by another. This witness did not arrange to place, or place the machine in the premises, or supervise the replacement of cigarettes or collection of receipts in the machine.

"Joseph Kordich, who services cigarette machines for the vending concern, testified on its behalf. He states that he was instrumental in placing the machine in the restaurant, after he was advised by another customer in the vicinity that the party across the street would like to have a cigarette machine. He interviewed a woman in the restaurant, and recommended placement of the machine. The first person he dealt with was Rose Kelly, then with Gloria (whose last name was unknown to him), who told him in March, 1954 to change the account to Bessie Brooks.

"No one on behalf of the vending concern investigated the character or background of either Rose Kelly, Gloria Brown,

or Bessie Brooks, or the reputation of the restaurant. Kordich recommended the placement merely on the basis that it appeared to be a luncheonette or restaurant. In the course of his employment for six years by the vending concern, during which he obtained new locations, he was not instructed to, and did not check the background or character of the persons or establishment before he recommended placement of a machine in such establishment; that it was none of his business.

"Where the establishment has a past record, or reputation, as the scene of speakeasy activities, a claimant seeking the benefits of the Director's discretionary authority must present convincing evidence that he made an earnest effort to ascertain the background and activities of the person with whom he left his property, and did not discover such record, or reputation, or the likelihood that unlicensed sales of alcoholic beverages would be carried on at the premises. Seizure Case No. 8668, Bulletin 1042, Item 10.

"As stated by former Commissioner Driscoll in Seizure Case No. 6898, Bulletin 687, Item 1:

"Thus, those who lease music, bagatelle, or other devices on a profit-sharing basis without an adequate or independent investigation to insure against their use in an illegal business should not be surprised by the seizure and subsequent forfeiture of their equipment. Their equipment has been part and parcel of an illegal enterprise which is not only contrary to law, but places in jeopardy the State's law enforcement program.

"To return such equipment to persons who have failed to make a reasonable effort to prevent its improper use would be to defeat the very purpose of the statute'.

"It should be noted that in the 1946 seizure at the premises, a claimant who placed three machines therein under like circumstances as in the instant case was denied return of its equipment. Seizure Case No. 6989, supra.

"Counsel for the vending concern advances the contention that in any event, there is no authority to seize goods which obviously are not part of an alcoholic beverage set-up and which have nothing to do with the sale of alcoholic beverages; that there must be a direct connection between the offense charged and the seizure made. This contention has been consistently rejected. Seizure Case No. 7480, Bulletin 857, Item 3.

"The cases cited by counsel are not authority for any contrary construction of the provisions of the Alcoholic Beverage Law. Ben Ali v. Towe, 30 N. J. Super. 19, involves a statute which expressly provides that a vehicle shall be subject to forfeiture if it is 'used in, for, or in connection with the violation'. Pratico v. Rhodes, 32 N.J. Super. 178, concerns money, which may or may not be subject to seizure as a gambling device under general law, depending upon the particular facts in the case. It needs no extended discussion to demonstrate that these decisions have no pertinent application."

I am satisfied from the evidence presented that the seized alcoholic beverages were obviously intended for sale without a license and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages, the cash, and the fixtures, furnishings, and equipment seized therewith in the restaurant constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

My authority to return property subject to forfeiture is limited by law to those cases where a person has established to my satisfaction that he has acted in good faith, and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f).

I am compelled to deny the request of Unit Vending Corporation for return of the cigarette vending machine because of its failure to make an adequate investigation of a notorious speakeasy before placing its equipment therein.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: March 9, 1955.

SCHEDULE "A"

- 1 - 4/5 quart bottle with whiskey
- 7 - 12-oz. cans of beer
- 12 - one-quart bottles of beer
- 2 - one-pint bottles of wine
- 30 - 12-oz. bottles of assorted soda
- 5 - chrome stools
- 1 - wooden table
- 4 - wooden chairs
- 3 - booths with seats
- 1 - Wurlitzer Music Box and currency therein
- 1 - Rowe cigarette machine and currency therein
- 1 - Coca Cola box
- 1 - cash register and \$51.96 therein
- 35 - drinking glasses

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - SALE OF BEER ALLEGEDLY AS ACCOMMODATION NOT A DEFENSE - STOCK OF ALCOHOLIC BEVERAGES, FOODSTUFFS, AND EQUIPMENT OF ESTABLISHMENT ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. 8719
 October 2, 1954 of a quantity of)
 alcoholic beverages, certain fix-)
 tures, furniture and equipment)
 and \$53.54 in cash on premises) ON HEARING
 located at 46 Troy Avenue, in) CONCLUSIONS AND ORDER
 Ewing Township, County of Mercer)
 and State of New Jersey.)

-----)
 Bertram Lefkowitz, Esq., Attorney for Mary Washington.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$53.54 in cash, and various fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on October 2, 1954 at 46 Troy Avenue, Ewing Township, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlicensed sales of alcoholic beverages by Mary Washington in a small store operated by her at the above address.

When the matter came on for hearing pursuant to R.S. 33:1-66, Mary Washington appeared and sought return of the seized property.

An ABC agent testified as follows: On September 24, 1954 he and a fellow agent visited Mary Washington's store to investigate a complaint that alcoholic beverages were being sold there without a license. The agents ordered food and in the course of their conversation, one of the agents asked Mary Washington for beer. When she replied that she had none, the agents pointed out to her that two cans of beer were visible in a cooler. Thereupon, although she stated the beer was for her personal use, she handed the agent a can of beer and accepted payment therefor.

These agents left the store without disclosing their identity. They returned on September 26, 1954. On this occasion the agents again purchased food, observed a number of cans of beer in a cooler, and purchased from Mary Washington a can of beer for each agent. The agents left the premises without disclosing their identity. They returned for the third time on October 2, 1954 and they again purchased food and two cans of beer from Mary Washington. Other ABC agents then entered the store and all of the agents identified themselves.

Mary Washington did not hold any license authorizing her to sell alcoholic beverages and the premises were not licensed for that purpose. The agents seized 57 cans of beer (Blatz, Valley Forge, and Ram's Head), some of which were in the store, and some in a bedroom closet, a bottle of wine, 19 one-gallon jugs of wine, \$53.54 in cash, and the fixtures, furnishings, equipment, and stock of merchandise in the store.

The wine in one of the gallon jugs was analyzed by the Division's chemist, who reports that it is wine fit for beverage purposes with an alcoholic content by volume of 11 per cent.

The defense presented to forfeiture is that the agents on their various visits pretended that they were organizing fishing parties at which Mary Washington would be able to sell beer, and that, in effect, having gained her confidence, she sold the agents food, and served them with beer. In payment therefor she took varying amounts from the change on the counter, given by her to the agents when they purchased the food. In each instance she informed the agents that the beer was for her own consumption and not for sale. She claims that all of the beer sold or seized belonged to a boarder, who drove a truck for the Schaefer Brewing Company, and brought home about a case a week from his employer, for personal consumption. How it came about that a "Schaefer" employee obtained Blatz, Valley Forge and Ram's Head brands of beer from his employer is not explained.

The undisputed fact is that on three separate occasions, Mary Washington accepted money for the beer in the course of her business, although she had no license. That such came about after the agents gained her confidence is no defense.

Speakeasy activities are always more or less surreptitious. Evidence of such activities often can be developed only by the slow process of becoming a familiar figure in the place. The operator of a speakeasy cannot complain on that account when he is finally caught. Seizure Case No. 7385, Bulletin 845, Item 3.

It is reasonable to assume that an operator of a speakeasy devises his own method in seeking to avoid detection. An effective liquor law enforcement agent must adapt himself to the particular circumstances and cultivate a speakeasy operator's friendly attitude. Obviously few, if any, speakeasies are so openly and notoriously conducted that all that is required is to enter and purchase a drink. Seizure Case No. 7404, Bulletin 846, Item 1.

The agents obtained the evidence of sale in the normal manner. Seizure Case No. 7441, citing State v. Contarno, 91 N.J.L. 103.

The complaint that Mary Washington was selling alcoholic beverages without a license seemingly is confirmed by the sales of beer to the agents. The repeated presence of beer in the store where she conducted her business is of some significance. Unlicensed sales of alcoholic beverages as an accommodation, rather than for substantial profit, is not accepted as an excuse. Seizure Case No. 7322, Bulletin 829, Item 7; Seizure Case No. 8073. The sale of alcoholic beverages without a license, for whatever reason, cannot be tolerated. In forfeiture proceedings no distinction can be made between a major and a minor speakeasy. Seizure Case No. 7002, Bulletin 731, Item 2.

The evidence presented supports the inference that the seized beer was intended for unlawful sale and hence is illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages, all other alcoholic beverages seized therewith, and the furniture, fixtures, equipment, and merchandise seized in the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

The evidence submitted on behalf of Mary Washington does not present any basis under the law to warrant remission of such forfeiture. Hence, I am compelled to deny the application of Mary Washington for return of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitute unlawful property, and the same be and hereby is forfeited

in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: March 2, 1955.

SCHEDULE "A"

- 57 - 12-oz. cans of beer
 - 19 - one-gallon jugs of wines, brandy and cider
 - 1 - pint bottle of wine
 - 14 - cases of soda
 - 1 - Dry Hill showcase freezer
 - 2 - showcases
 - 1 - Kelvinator Refrigerator
 - 1 - Super Cold deep freezer
 - 1 - pinball machine with currency therein
 - 1 - counter
 - 1 - National meat slicer
 - 1 - Dayton meat grinder
 - 1 - chopping block
 - 2 - scales
 - 2 - gum ball dispensers with currency therein
 - 1 - glass peanut container
- stock of grocery store merchandise more specifically itemized in the seizure inventory in the case and herein referred to as if set forth at length.
\$53.54 in cash.

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS DISMISSED.

In the Matter of Disciplinary Proceedings against)

STAR BAR, INC.)
T/a STAR BAR)
24 Main Street)
Asbury Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-55, issued by the City Council of the City of Asbury Park.)

Sidney Simandi, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge alleging that it sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the hearing herein the Division produced as witnesses Wilbur --- and Thomas ---, each of whom testified that he is twenty years of age and a member of the U. S. Armed Forces; that on Sunday, December 5, 1954, they entered defendant's licensed premises at 4:00 p.m. and remained, except for a short period when they visited another tavern, until a late hour that night; that they consumed a considerable number of alcoholic drinks,

"mostly beer", served by a day and a night bartender, neither of whom inquired as to their ages. An ABC agent then testified that on December 9, 1954, he, accompanied by the minors, visited defendant's licensed premises which they pointed out as the place wherein they had been served drinks on December 5, 1954; and that Wilbur and Thomas identified a bartender therein as the person who had served them.

On defendant's behalf, a police officer testified that he and a fellow officer were detailed to locate the tavern wherein the minors had been served; that on the morning of December 6, 1954, they accompanied the minors to four taverns including the defendant's, none of which was identified by the minors; and that, after looking inside of defendant's tavern, the minors said "We don't remember this place; we were too drunk."

Defendant's night bartender and three patrons testified that they were in the defendant's licensed premises on the Sunday in question during the hours testified to by the minors, and that they did not see Wilbur or Thomas in the premises. One patron corroborated the police officer respecting the minors' failure to identify defendant's licensed premises, and all the patrons corroborated one another as to their presence in the tavern on December 5, 1954.

A witness, whom Wilbur positively identified from the witness stand as the bartender who served them, testified that he is a bartender employed by a licensee in the vicinity of defendant's tavern; that he was off duty on the day alleged and never served the minors; that he never worked for defendant but, at the request of one of its owners, he, on December 7, 1954, visited the Freehold jail where the minors were confined and was there positively identified by Wilbur as the person who had served them alcoholic beverages on the previous Sunday.

Since this case presents a clear conflict of evidence, the question of credibility is of paramount importance. The testimony of the minors that they had consumed a considerable amount of alcoholic drinks; their admissions on cross-examination that they had imbibed similar drinks before leaving their Army base; the uncertainty as to where they went and what they did in the intervening time between leaving the Army base and the time they state they entered defendant's tavern; the uncontradicted testimony of the police officer as to the minors' declaration that they were drunk; the positive identification, by one minor, of a person not employed by the defendant as the bartender who had served them drinks; the lack of identification of the night bartender by both minors; the unimpeached testimony of all of the witnesses who testified for defendant -- these facts must be considered in evaluating the evidence.

After carefully considering the testimony herein, I conclude that defendant's guilt has not been established by the necessary preponderance of evidence. I, therefore, find defendant not guilty as charged.

Accordingly, it is, on this 14th day of March, 1955,

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

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING AIDING AND ABETTING UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES DISMISSED - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

CHARLES BRODSKY)
T/a CENTRAL LIQUOR CO.)
601 Market Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribu-)
tion License D-21, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"1. On December 10, 1954, you sold at retail five cases (twelve 4/5 quart bottles to each case) of Canadian Club Blended Canadian Whisky at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

Defendant pleaded not guilty to the following charge:

"2. On December 10, 1954, you knowingly aided and abetted the transportation of alcoholic beverages, viz., five cases (twelve 4/5 quart bottles to each case) of Canadian Club Blended Whisky in and about the City of Camden, N. J. by Charles P. Myers without requisite license or special permit so to do, contrary to R. S. 33:1-2; in violation of R.S. 33:1-52."

At the hearing held to determine the guilt or innocence of defendant as to charge 2, two enforcement officers employed by the Pennsylvania Liquor Control Board testified on behalf of the Division. They testified that at about 2:00 p.m. on December 10, 1954, they observed two men dressed in overcoats and another man dressed "in just a suit coat" coming out of defendant's licensed premises. They later learned that the first two men were Charles P. Myers and Edward Culbertson. At the hearing they identified the other man as Sidney Joseph Brodsky, a son of defendant-licensee. They testified that "the man without the overcoat" was wheeling a hand-truck containing five cases of whiskey, two of which cases he placed in the trunk of Mr. Myers' car and three of which cases "the two men with the overcoats" placed in the same car. The enforcement officers further testified that thereafter Mr. Myers drove his car (which bore no transportation insignia) to a parking lot in another section of Camden. The car was later seized in Philadelphia by the enforcement officers and is the subject matter of separate seizure proceedings.

On behalf of defendant, Sidney Joseph Brodsky testified that he is an optometrist. He admitted that he may have been in his father's store on the morning of December 10, but testified that on the afternoon of that day he was at his office in Blackwood, N. J. He denied that he transported any liquor to Mr. Myers' automobile. Defendant testified that on December 10 he sold the five cases in question; that, because he has "a bad heart",

Mr. Myers and Mr. Culbertson carried the cases from the basement to the first floor and placed them on a hand-truck and "took it outside." Defendant denied that his son was on the premises at the time or that he took the cases from the store or saw any automobile outside.

In Re Silverstein, Bulletin 530, Item 4, the then Director said:

"As a general rule, the licensee is not called upon to question his customers concerning transportation of the liquor where the customers take their purchases with them. The licensee has a right to assume that his customers will comply with the law. Of course, as a matter of service and good business, the licensee shall apprise those customers who apparently intend to transport their large purchases of liquor in their own cars as to the law governing such transportation."

I have carefully examined the evidence and conclude that the Division has not sustained the burden of proof as to charge 2. I, therefore, find defendant not guilty as to said charge.

As to charge 1: Defendant sold five cases of Canadian Club Blended Canadian Whisky for the sum of \$332.10. The minimum consumer resale price then in effect for said five cases was \$350.55. Defendant has no prior adjudicated record. The minimum penalty for a violation of this kind is ten days. However, because of the large amount of alcoholic beverages sold, I shall suspend defendant's license for fifteen days. Cf. Re Friedbauer & Veronick, Bulletin 836, Item 7. Five days will be remitted for the plea herein, leaving a net suspension of ten days.

Accordingly, it is, on this 14th day of March, 1955,

ORDERED that Plenary Retail Distribution License D-21, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Charles Brodsky, t/a Central Liquor Co., for premises 601 Market Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. March 21, 1955, and terminating at 9:00 a.m. March 31, 1955.

WILLIAM HOWE DAVIS
Director.

8. STATE REGULATIONS - REGULATIONS NO. 34 - INTERPRETATION OF RULE 8 - GUARANTEE OF RETAILER'S LOAN BY MANUFACTURER OR WHOLESALER DEEMED PROHIBITED INDUCEMENT.

TIED HOUSE - LOAN TO RETAILER BY MANUFACTURER OR WHOLESALER PROHIBITED - BULLETIN ITEM SUPERSEDED BY SUBSEQUENT LEGISLATION AND REGULATION.

TO ALL MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES:

Reports of recent investigation and information otherwise obtained indicate that a substantial number of wholesalers have in the past guaranteed bank or other loans obtained by retailers, many of which guarantees are presently in effect.

It is claimed that these guarantees were executed in reliance on legal or other advice that such guarantees are not unlawful in view of the ruling in Re Lewis and Kelsey, Bulletin 55, Item 12, dated December 11, 1934. However, that ruling was not only expressly narrowly restricted to the factual situation recited, but was superseded, so far as breweries were concerned, almost immediately by the enactment of P.L. 1935, c. 254, now R. S. 33:1-43.1. As to manufacturers and wholesalers of alcoholic beverages other than malt alcoholic beverages, the ruling was superseded in 1939 by the enactment of P. L. 1939, c. 87, now R. S. 33:1-89 through 93, and the promulgation in 1940 of State Regulations No. 34.

The law provided that it would be unlawful for any manufacturer or wholesaler to grant to any retailer, among other things, "any inducement" (to purchase alcoholic beverages from the manufacturer or wholesaler) not available to all other retailers (R. S. 33:1-90). It conferred power on the Commissioner (now Director) of alcoholic beverage control to promulgate rules and regulations governing, among other things, "inducements to retailers" by manufacturers and wholesalers (R. S. 33:1-93).

Pursuant to the law, State Regulations No. 34 from their inception and through all their revisions, in language substantially similar to that of now existing Rule 8, have prohibited the furnishing, directly or indirectly, by any manufacturer or wholesaler to any retailer of any "gift...allowance of money... thing of value...loan...or other inducement", among other things.

It is obvious that the guaranteeing of a retailer's loan obtained from a third person lender is an "inducement" within the contemplation of the applicable law and regulations since it is only one step removed from a loan, and two from an outright gift or allowance of money. Its automatic and inevitable effect is to induce the retailer to favor the guaranteeing wholesaler over others, and may well prove a hold so strong as to create a tied-house situation interdicted by R. S. 33:1-43 and generally recognized as one of the principal causes of the enactment of Prohibition.

With enlightened self-interest so cogent a reason for voluntarily refraining from imposing financial trammels on retailers, it is incomprehensible that manufacturers and wholesalers do not eagerly utilize the broad language of Rule 8 as a path to their own salvation.

It is hoped that it is now crystal clear to all concerned that the guarantee of a retailer's loan is an inducement prohibited by Rule 8 of State Regulations No. 34. Accordingly, all manufacturers and wholesalers who may have outstanding guarantees (or endorsements) of retailers' loans are directed to cancel such guarantees (or endorsements) and withdraw as guarantors or endorsers as such loans mature, but in no event later than June 15, 1955. Thereafter, participation in a retailer's financial transactions, whether by direct loan to the retailer, guarantee or endorsement of his loan, or any other involvement directly or indirectly, personally or through the instrumentality of intermediaries, will be deemed cause for the institution of disciplinary proceedings directed to suspension or revocation of license.

WILLIAM HOWE DAVIS
Director.

Dated: March 15, 1955.

9. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACT (NON-RESIDENCE) - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO APPLY TO LIFT SAID SUSPENSION 10 DAYS AFTER CORRECTION OF ILLEGAL SITUATION AND RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against STEWART-ALLEN, INC. T/a SEA BRIGHT YACHT CLUB 958 Ocean Avenue Sea Bright, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Sea Bright.

No appearances on behalf of Defendant. Edelstein & Edelstein, Esqs., by E. Alexander Edelstein, Esq., Attorneys for Vincent P. Keuper, Receiver. Edward F. Juska, Esq., by Edward C. Stokes, Esq., Attorney for Sea Bright Investment Company, Inc. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charge was preferred against the defendant herein:

"In your application dated June 10, 1954, filed with the Sea Bright Borough Council, upon which you obtained your current plenary retail consumption license, you falsely stated the residence of Allen Herman (your secretary-treasurer, director and 49% stockholder) in answer to Questions 20, 21 and 22 as 237 Third Avenue, Long Branch, N. J. and you falsely stated 'Yes' in answer to Question 27(a) (which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time?') and you falsely stated 'No' in answer to Question 27(c) (which asks 'whether you or any person mentioned in this application now maintains a home elsewhere than in New Jersey'), whereas in truth and fact Allen Herman then resided and maintained a home at 118 W. 57th Street, New York, N. Y.; said false statements being in violation of R.S. 33:1-25."

No one appeared on behalf of defendant on the date scheduled for the hearing in this matter. An attorney appeared on behalf of the landlord of the licensed premises and an attorney also appeared on behalf of the Receiver for the defendant-corporation. The license had not been extended to the Receiver by the local issuing authority. It is apparent that neither the landlord nor the Receiver has any interest in defendant's license and therefore are not necessary or proper parties to the proceeding now under consideration. Ambirn Realty Corporation et al. v. Hock, 137 N.J.L. 329.

There is no evidence in the instant case to indicate that Allen Herman (secretary-treasurer, director and owner of 49% of defendant's capital stock) resided in this State on June 10, 1954 when defendant's application for its current liquor license was filed with the local issuing authority. It appears that at the time and prior thereto said Allen Herman was a resident of New York. This fact is admitted by him in a sworn statement made to ABC agents during the course of an

investigation to determine his residential status. Furthermore, a sworn statement was also given to the ABC agents by Jacob Herman (a director and holder of one share of defendant's capital stock) wherein he stated that his brother, Allen Herman, has been a resident of New York City for more than ten years.

I am satisfied that Allen Herman did not meet the necessary residential requirements and that the statement made in defendant's application aforementioned was false. Therefore, I find defendant guilty of the charge preferred herein.

Defendant has no prior adjudicated record. Under the circumstances the license would normally be suspended for ten days, the minimum suspension in a matter of this character. Cf. Re C.M. Family Liquor Store, Inc., Bulletin 956, Item 11. I am mindful of the fact that the licensed premises wherein defendant operated were destroyed by fire and so far as I know defendant is not doing business under the license at the present time. Since the unlawful situation continues to exist, I shall suspend defendant's license for the balance of its term. However, if the unlawful situation is corrected defendant may file a petition with me for the lifting of the suspension ten days from the date I am satisfied that the present premises or other premises to which the license might be transferred are ready to open for business. Re Budd Lake Amusement Corp., Bulletin 1050, Item 2.

Accordingly, it is, on this 21st day of March, 1955,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Sea Bright to Stewart-Allen, Inc., t/a Sea Bright Yacht Club, for premises 958 Ocean Avenue, Sea Bright, be and the same is hereby suspended for the balance of its term, effective immediately, with leave to file, as aforesaid, a petition to lift said suspension.

WILLIAM HOWE DAVIS
Director.

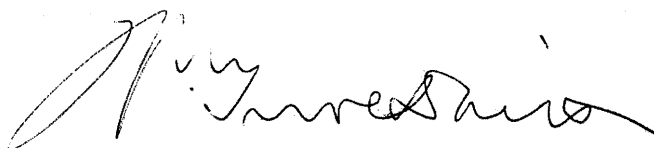
10. STATE LICENSES - NEW APPLICATIONS FILED.

Vincent Morreale, Frank Lombardo and Frank Cutrone
T/a South Bergen Trucking Co.
25 Route 17
East Rutherford, N. J.

Application filed March 31, 1955 for Transportation License.

The James Hanley Company
35 Jackson Street
Providence, Rhode Island.

Application filed April 1, 1955 for Limited Wholesale License.



William Howe Davis
Director.