

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

BULLETIN 1151

February 19, 1957

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - NORDCO, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND NEWARK.
2. COURT DECISIONS - BOOTS 'N SADDLE v. NEWARK, DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND DAVIS.
3. COURT DECISIONS - MOSKOWITZ v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND NEWARK.
4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.
5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE RESIDENCE - STOCK OF ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE USED TO TRANSPORT ALCOHOLIC BEVERAGES RETURNED TO INNOCENT LIENOR.
6. DISCIPLINARY PROCEEDINGS (Gloucester County) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1151

February 19, 1957

1. COURT DECISIONS - NORDCO, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND NEWARK.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-139-56

NORDCO, INC.,)
)
Plaintiff-Appellant,)
)
-vs-)
)
STATE OF NEW JERSEY, DEPARTMENT OF)
LAW AND PUBLIC SAFETY, DIVISION OF)
ALCOHOLIC BEVERAGE CONTROL, THE)
BOARD OF ALCOHOLIC BEVERAGE CONTROL)
OF THE CITY OF NEWARK, NEW JERSEY,)
)
Defendants-Respondents.)
-----)

Argued December 21, 1956. Decided January 10, 1957.

Before Judges Clapp, Jayne and Francis

Mr. George B. Astley argued the cause for Nordco, Inc.

Mr. Samuel B. Helfand argued the cause for the Division of Alcoholic Beverage Control (Mr. Grover C. Richman, Jr., Attorney General)

Mr. Jacob M. Goldberg argued the cause for the Board of Alcoholic Beverage Control of the City of Newark (Mr. Vincent P. Torppey, Corporation Counsel; Mr. James E. Abrams, on the Brief)

The opinion of the Court was delivered by

CLAPP, S.J.A.D.

Nordco, Inc. appeals from an order of the Division of Alcoholic Beverage Control, affirming a determination of the Board of Alcoholic Beverage Control of the City of Newark, which refused to renew Nordco's plenary retail liquor consumption license for the licensing year July 1, 1956 to June 30, 1957. The Newark Board had also refused to renew the license for the preceding year, but it had been reversed by the Division with respect to that year. Bulletin 1114, Item 5.

Nordco had been operating a tavern at 213 Court Street, Newark, for some years. On January 3, 1955 its license was suspended 20 days for allowing or suffering a brawl to take place on the premises, and on May 8, 1956 it was suspended another 20 days (reduced to 15 days by reason of a plea of non vult) for selling liquor on Sunday, July 10, 1955. On July 3, 1955 and on April 29, May 11 and July 2, 1956 disturbances or assaults occurred in the tavern, leading to investigations by the police. Indeed it appears that within the licensing year ending June 30, 1956, Nordco called the police for help 59 times, primarily through the medium of a Newark District Telegraph buzzer installed in the tavern.

Nordco contends that these 59 calls for police assistance, including the disturbances and brawls above mentioned, should not figure in the case since no claim is made that Nordco was in any way to blame for these incidents. Indeed the Division, when dealing with Nordco's application to renew its license for the year ending June 30, 1956, had said that licensees should be encouraged to summon the police when trouble appears in the offing. However when the Division came to consider Nordco's present application, it pointed out that the frequency of the calls upon the police demonstrated of itself that the tavern had become a "trouble-spot". Confirmation of this is to be found in the testimony of one detective before the Division, and a stipulation as to the testimony of another detective -- both of whom were assigned to the area in which Nordco is located -- that Nordco had more trouble than any other tavern in that difficult area. We think these to be significant matters. It seems to us entirely proper for both the local and the state agencies, when passing on such applications, to take into account not only the conduct of the licensee, but also conditions, not attributable to its conduct, which render a continuance of a tavern in a particular location against the public interest.

Whether or not a license should be renewed rests in the sound discretion of the local issuing authorities and of the Division on appeal. Zicherman v. Driscoll, 133 N. J. L. 586, 588 (Sup. Ct. 1946); N.J.S.A. 33:1-38. The courts will interfere in the exercise of that discretion only in case of manifest error, clearly unreasonable action or some more untoward impropriety. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N. J. Super. 598, 600 (App. Div. 1955). We cannot say that the reliance put by the Division on the 59 calls, and on the fact that this tavern was a trouble spot, constitutes manifest error or an abuse of discretion.

The Division's determination is challenged on the further ground that the very inconsistency between that determination and the one made by it with respect to the preceding year is evidence of its own arbitrariness. But we do not think the point to be well taken. As above noted, there was in the licensing year July 1, 1955 to June 30, 1956, 59 calls upon the police for help, whereas the Division's decision for the preceding year observed merely that the police were called "on occasions" during that year. More significant than that, perhaps, is the fact that in the year ending June 30, 1956 another offense was committed, namely, the above mentioned sale of liquor on a Sunday, a sale made by Ben F. Norden, Vice President of Nordco. This resulted in suspensions of the license for a period in two successive years.

One of Nordco's principal contentions is that it was not afforded either the hearing before the Newark Board, or the notice of that hearing, to which it claims to have been entitled. It might be noted preliminarily that the parties do not raise any question as to due process, except that they cite Adams Theatre Co. v. Keenan, 12 N. J. 267, 278, 279 (1953) for the proposition that a hearing before an agency may not be essential to due process in connection with a license proceeding, provided an opportunity for judicial review is afforded. See State Board of Milk Control v. Newark Milk Co., 118 N. J. Eq. 504, 523 (E. & A. 1935); Metropolitan Motors v. State, 39 N. J. Super. 208, 212 (App. Div. 1955); Bourjois v. Chapman, 301 U. S. 183, 189, 81 L. ed. 1027, 1032 (Brandeis, J. 1937); cf. Pennsylvania Railroad Co. v. Dept. of Public Utilities, 14 N. J. 411, 426 (1954). However the parties do not deal with Fifth Street Pier Corp. v. City of Hoboken,

22 N. J. 326, 336-339 (1956). See further Davis, Requirement of a Trial-Type Hearing, 70 Harv. L. Rev. 193, 262-274 (1956); Schwartz, Administrative Law, 31 N. Y. Univ. L. Rev. 1370, 1372, 1373 (1956); Davis, Administrative Law 269 (1951).

Nordco does however rely on N.J.S.A. 33:1-24, which requires a local board "to conduct public hearings on applications and revocations." Cf. Florence Meth. Church v. Tp. Committee, Florence Tp., 38 N. J. Super. 85, 90 (App. Div. 1955); Byse, Opportunity to be Heard in License Issuance, 101 U. Pa. L. Rev. 57 (1952) (the article deals with retail sales of alcoholic beverages); State Regulation No. 2, Rules 6-8.

But we need not stop to inquire as to the extent of the duty imposed by that statute; for there is a Newark ordinance, specifically applicable here, which requires a hearing, in these terms:

"In the event any application for the renewal of license shall be questioned by the local issuing authority for any reason * * * then the applicant for renewal of such license shall be given notice of the reasons of the local issuing authority * * * and a day shall be set for hearing before the local issuing authority upon due notice to the applicant of the day of hearing in order that the applicant may be afforded an opportunity to show cause why the application should be granted.

"If, after hearing, the local issuing authority is of the opinion that application for the renewal of license shall not be granted, it shall refuse to grant renewal, setting forth reasons for refusal in the minutes of its meeting." Revised Ordinances of the City of Newark (as revised, effective Oct. 27, 1952) §3.35.

Pursuant to the ordinance, the Newark Board did give notice to Nordco of a purported hearing. However Nordco complains that the notice, which in general terms charged Nordco with conducting "the premises * * * improperly", made particular reference merely to the sale of liquor on Sunday, July 10, 1955, without mentioning either the brawl that led to the suspension in the preceding licensing year, or the conditions that made this a trouble spot.

Moreover at the hearing, the Board refused to take testimony, saying through its chairman:

"I want to say, for all the lawyers here and the parties who have been called in * * *, that they have been asked to come here today to show cause, to the A.B.C., as to why their licenses should be renewed for the new term.

"There is not going to be any testimony taken here today. We are going to listen to the respective police captains who have rendered disapprovals in their own estimation to each one of these matters. No testimony [is] to be taken, it will be on motion and argument of counsel. There will be no testimony taken today."

Apparently no objections were taken to this statement. In any event in pursuance of it, plaintiff was not permitted to produce witnesses. Facts were brought out only through the examination and a fairly full cross-examination of a police captain who was in charge of the local precinct. However his knowledge

of the circumstances was in a number of respects hearsay, and more than that, he was not put under oath.

But the significant matter here, which plainly shows up after the parties were afforded an ample opportunity to adduce proofs in the Division, is that the facts of the case are not in dispute, and, more than that, a sufficient picture of all their essential aspects was in substance brought out by the police captain before the Newark Board. It is true that he made no mention of the 59 calls, but he did refer to the two suspensions and the four assaults or disturbances above stated, as well as to some 16 other incidents in the six or seven years preceding; and we think he said quite enough to indicate that this tavern was a "trouble spot". Moreover, after the captain had been examined, Nordco's counsel was given an adequate opportunity to argue the question whether in view of these undisputed facts the license should issue.

We need not decide what definition is to be put upon the word "hearing", as used in the Newark ordinance -- that is, whether in a case where the facts are informally brought before the agency and are not in dispute, the requirement of a hearing is satisfied by merely affording the litigant an opportunity to present oral argument thereon. Indeed Davis doubts whether even an opportunity for argument need be afforded in such a case. See Davis, The Requirement of a Trial-Type Hearing, 70 Harv. L. Rev. 193, 214-222, 271 (1956); Davis, Administrative Law §§67, 68 (1951); cf. Handlon v. Town of Belleville, 4 N. J. 99, 105 (1950).

The parties have given no attention to these important questions, and we therefore skirt them and rest our decision on the doctrine of harmless error. As particularly stated in our present rules and, before them, in the Practice Act of 1912, the appellate courts of this state will not reverse or grant a new trial in order to correct some erroneous action below, unless the error "appears * * * to be inconsistent with substantial justice" (R. R. 1:5-3 (b)) or "appears" to have "injuriously affected" the substantial rights of the parties (Practice Act, L. 1912 c. 231 § 27) or probably had a substantial influence on those rights (Maccia v. Tynes, 39 N. J. Super. 1, 11, 12 (App. Div. 1956)). See Sunderland, The Problems of Appellate Review, 5 Tex. L. Rev. 126, 146-148 (1927). The error here consists of a failure to comply with the directions of an ordinance, and possibly those of a statute, both relating to administrative procedure. But the fact that such directions emanate from a municipal governing body or even the Legislature, does not affect the rule, except in the unusual situation where because of some policy involved, it may be said that the ordinance or statute is concerned with something more than the matter of justice in the particular case or where the court itself, endeavoring to lay down a guide for the tribunal below in the future or to satisfy some fundamental policy, is induced to look beyond the case. Compare Kotteakos v. United States, 328 U. S. 750, 764, 765, 90 L. ed. 1557, 1566 (1945); Simmons v. United States, 348 U. S. 397, 405, 406, 99 L. ed. 453, 459 (1955). We cannot be persuaded that the ordinance or statute or the court's own concerns reach to that length under the particular circumstances presented here.

Nor need we in this case deal with the appearances and probabilities referred to in R.R. 1:5-3 (b) and Maccia; for it seems to us to be plain that the appellant has not been prejudiced here. In a situation such as that, it was settled long

before the Practice Act, that an appellate court will not interfere. Smith v. Ruecastle, 7 N. J. L. 357, 361 (Sup. Ct. 1800); Graham v. Whitely, 26 N. J. L. 254, 260 (Sup. Ct. 1857); Ruckman v. Bergholz, 37 N. J. L. 437, 441 (E. & A. 1874); cf. L. 1855 c. 226 §2; L. 1898 p. 915 §136.

Accordingly, if we assume that the Board's denial of an opportunity to present testimony and its failure to give a more adequate notice created infirmities in the proceeding before it, nevertheless Nordco cannot as a matter of substantial justice claim to have been prejudiced in the circumstances presented. Benzoni v. Dept. of Civil Service, 10 N. J. Super. 103, 106 (App. Div. 1950); Klein v. Twp. of North Bergen, 10 N. J. Super. 128, 131 (App. Div. 1950); Neiden Bar and Grill v. Municipal Bd., etc. Newark, 40 N. J. Super. 24, 29 (App. Div. 1956).

We are by no means sanctioning a disregard of the Newark ordinance in the future. On the contrary factual issues before the Newark Board, which fall within the scope of the ordinance, should be resolved through a hearing, conducted in the manner referred to in Handlon v. Town of Belleville, 4 N. J. 99, 105 (1950). Only in this fashion in the ordinary case can justice be done (as it should be done) "in the initial consideration itself." Fifth Street Pier Corp. v. City of Hoboken, 22 N. J. 326, 337 (1956).

But here there was no prejudice. In view of that conclusion, we need not consider another approach to these problems, which has been adverted to by the parties: it is said that in every case the right to a hearing de novo in the Division, on testimony taken there (Cino v. Driscoll, 130 N. J. L. 535, 539 (Sup. Ct. 1943)), cures any infirmity allegedly arising by reason of a denial of a hearing before the local board. However, as observed at the oral argument, the hearing is not de novo entirely; the burden which falls on the applicant before the board, namely, to make out his case by a preponderance of the proofs (Family Finance Corp. v. Gaffney, 11 N. J. 565, 575 (1953); Holly v. Bates, 7 N. J. 191, 197, 198 (1951)), becomes heavier on his appeal to the Division, since in a discretionary matter such as this, he must show manifest error or some abuse of discretion below. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N. J. Super. 598, 600 (App. Div. 1955). Indeed where the facts of a case are in dispute and the local board does not permit the licensee to offer evidence in his behalf, the Division would not even know what action the local board would have taken had it been apprised of all the facts. Would (or should) the Division sit as a board in such a case? But we need not pursue the point. As already stated, there was no denial of substantial justice by the Newark board here; the facts were laid before it in substance and were not, in reality, in dispute and, more than that, an opportunity was afforded by it for oral argument. Accordingly, we need not consider whether, and in what cases, the hearing before the Division would cure an infirmity below.

Nordco contends next that the punishment visited upon it, namely, the refusal to renew its license, was unreasonable and unjust. The contention rests in substance on a charge of disparate treatment among the licensees in Newark. Cf. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N. J. 373, 379 et seq. (1956), emphasizing that such a problem must be considered in the light of the broad discretion vested in the agency; Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J.

Super. 172, 175 (App. Div. 1949). Even in the case of a criminal sentence, disparate treatment within the statutory limits is not regarded as a ground for judicial interference (State v. Benes, 16 N. J. 389, 396 (1954); Orfield, Criminal Appeals in America, p. 106 (1939); Annot. 29 A.L.R. 318; 89 A.L.R. 299), except perhaps where there has been an abuse of discretion. State v. Schmelz, 17 N. J. 227, 238 (1955); Livingston Hall, Reduction of Criminal Sentences, 37 Columbia L. Rev. 762, 775 (1930); Orfield, Criminal Appeals, supra, p. 110; see cases, 24 C.J.S. 782 n. 56.

Some general assertions are made by Nordco as to proceedings in Newark for the renewal of licenses over the last 20 years; and some reference is made to certain licensees whose licenses have been renewed, even though they were guilty of some single, much more serious offense than is involved here, or guilty of as many as four minor violations spread over a period of years. We do not need to probe these assertions -- though we may say that it does not appear that the other licensees referred to had, like Nordco, their licenses suspended in the current and also the preceding licensing years, nor that any of them had called for help from the police 59 times during the year. Indeed it may be that the Newark Board in the exercise of its discretion might properly have refused to renew other licenses. However as an appellate court, we are concerned merely with the question whether the refusal to renew Nordco's license was the result of intentional discrimination or other arbitrary action. Camden County v. Pennsauken Sewerage Auth., 15 N. J. 456, 469, 471 (1954). And Nordco has not established that here.

Nordco argues finally that the determination below should be reversed or modified because it was not afforded a reasonable opportunity to transfer its license and realize on the good will built up by it in connection with the place where the tavern was located. The point can be disposed of simply by saying that we are not going to hold, as a general matter, that the Division and the local board abuse their discretion in not allowing a licensee such an opportunity when his application to renew his license is about to be rejected. The Director said in his conclusions: "Were I to follow this procedure [of affording such opportunities] as a general practice, a desirable reduction in the number of licensed places would never be accomplished." In addition it is to be observed that in view of the Division's determination that the tavern constituted a "trouble spot", it could hardly be claimed that there was any abuse in discretion in not affording Nordco an opportunity to transfer the license to a certain vendee under contract with Nordco, who wanted to continue the business at the same location.

Affirmed.

2. COURT DECISIONS -- BOOTS 'N SADDLE v. NEWARK, DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND DAVIS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-156-56

BOOTS 'N SADDLE, a New Jersey corporation,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND WILLIAM HOWE DAVIS, DIRECTOR,)
Respondents.)

Argued December 21, 1956. Decided January 10, 1957.

Before Judges Clapp, Jayne and Francis

Mr. Alexander Krauss argued the cause for Boots 'N Saddle (Messrs. Levy & Krauss, attorneys; Messrs. Paul E. Parker and Irving J. Zwillman, on the Brief)

Mr. Samuel B. Helfand argued the cause for the Division of Alcoholic Beverage Control (Mr. Grover C. Richman, Jr., Attorney General)

Mr. Jacob M. Goldberg argued the cause for the Board of Alcoholic Beverage Control of the City of Newark (Mr. Vincent P. Torppey, Corporation Counsel; Mr. James E. Abrams, on the Brief)

The opinion of the Court was delivered by

CLAPP, S.J.A.D.

Boots 'N Saddle, a New Jersey corporation, appeals from an order of the Division of Alcoholic Beverage Control, affirming a determination of the Board of Alcoholic Beverage Control of the City of Newark, which refused to renew Boots 'N Saddle's plenary retail liquor consumption license for the year July 1, 1956 to June 30, 1957. The Newark Board had refused to renew the license for the preceding year, but it had been reversed by the Division with respect to that year.

The corporation had been operating a tavern at 441 Washington Street, Newark, since January 1952. On November 9, 1953, its license had been suspended for 45 days because it had sold liquor for consumption off the premises, other than in original containers, and because of other offenses, including the suffrance of obscene language on the premises. Furthermore it appears from the testimony of a police captain, taken under oath before the Newark Board in the present proceeding, that from January 1952 to June 30, 1955, 11 complaints had been made as to alleged incidents on the premises, including these; January 20, 1955, a charge of lewdness and immoral activities, which was apparently dismissed; November 6, 1954, a charge of

solicitation for prostitution, which was dismissed; and eight complaints as to assaults, the outcome of which is not stated. The license was apparently not suspended in connection with any of these incidents.

In addition it appeared from the captain's testimony that there were four charges made against the licensee during the licensing year ending June 30, 1956; permitting assaults or brawls to take place on the premises on July 16, 1955 and May 4, 1956; and sales to minors on March 23, 1956 and April 4, 1956. One of these charges respecting an assault resulted in a 20 day suspension of the license, and one of the charges for making a sale to a minor resulted in a 15 day suspension of the same; the other two charges were either dismissed or not prosecuted.

At the hearing before the Division it was established that the police were summoned 60 times during the licensing year ending July 1, 1956, apparently as a result of messages relayed through a Newark District Telegraph buzzer installed in the tavern. Furthermore in that hearing a plain-clothesman in the police department who was assigned to the local precinct, testified that after taking into account the complaints that arise from the premises and the numerous times the radio cars are called there, he thought Boots 'N Saddle was worse than any of the other taverns in the precinct (another precinct than that in which Nordco is located). The 60 calls to the police for help and the complaints above mentioned go to support the Division's finding herein that the tavern was a "trouble spot."

Except for a charge that there has been a violation of due process, the questions raised here are substantially the same as those raised in the case of Nordco v. Div. of Alcoholic Beverage Control, decided herewith, and the decision in that case disposes of the issues here.

The due process question arises in connection with the refusal by the Newark Board to allow the various licensees, including Boots 'N Saddle and Nordco, Inc., to adduce proofs before it when they applied for a renewal of their licenses. Boots 'N Saddle does not in any way attempt to analyze the constitutional question, and it cites no authority bearing thereon, except Adams Theatre Co. v. Keenan, 12 N. J. 267 (1953), which is referred to in Nordco. It merely asserts that there was a denial of due process. Moreover, it may be noted this question appears not to have been raised in the tribunals below. State v. Jones, 4 N. J. 374, 379 (1950).

However, the major circumstance in this case (as well as in Nordco) is that in our opinion there has been no denial of substantial justice. Thus it appears, after the adequate opportunity afforded before the Division for the adduction of proofs, that there is in reality no factual controversy; more than that, it appears that the Newark Board was given an adequate picture of the essential aspects of the case, and it afforded counsel a sufficient opportunity for argument. Accordingly if there was error in the action of the Newark Board, it was of a harmless sort.

The magnificent concept of due process would seem to have acquired a most perverse function if it could be made use of in order to reverse a case where substantial justice has plainly been rendered. As Mr. Justice Jackson said for the Supreme Court in Market Street R. Co. v. Railroad Com. of Cal., 324 U. S. 548, 562 89 L. ed. 1171, 1182 (1945):

"* * * due process deals with matters of substance and is not to be trivialized by formal objections that have no substantial bearing on the ultimate rights of parties."

We should add that we do not think that the instant case presents the unusual situation, referred to in Nordco, namely, one in which the court, despite any lack of prejudice, feels impelled to look beyond the case and to remand it for a new trial in order "to lay down a guide for the tribunal below in the future or to satisfy some fundamental policy."

Under the circumstances we do not think we need involve ourselves in questions of due process.

Affirmed.

3. COURT DECISIONS - MOSKOWITZ v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND NEWARK.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-142-56

MORRIS MOSKOWITZ,)
)
Plaintiff-Appellant,)
)
-vs-)
)
STATE OF NEW JERSEY, DEPARTMENT OF LAW)
AND PUBLIC SAFETY, DIVISION OF ALCO-)
HOLIC BEVERAGE CONTROL, and BOARD OF)
ALCOHOLIC BEVERAGE CONTROL, CITY OF)
NEWARK, NEW JERSEY,)
)
Defendants-Respondents.)
-----)

Argued December 21, 1956. Decided January 10, 1957.

Before Judges Clapp, Jayne and Francis

Mr. James C. Conlon argued the cause for Appellant, Morris Moskowitz (Messrs. Del Deo & Conlon, attorneys)

Mr. Samuel B. Helfand argued the cause for the Division of Alcoholic Beverage Control (Mr. Grover C. Richman, Jr., Attorney General)

Mr. Jacob M. Goldberg argued the cause for the Board of Alcoholic Beverage Control of the City of Newark (Mr. Vincent P. Torppey, Corporation Counsel; Mr. James E. Abrams, on the Brief)

The opinion of the Court was delivered by

CLAPP, S.J.A.D.

Morris Moskowitz appeals from an order of the Division of Alcoholic Beverage Control affirming a determination of the Board of Alcoholic Beverage Control of the City of Newark, which

refused to renew Moskowitz's plenary retail liquor consumption license for the year July 1, 1956 to June 30, 1957. The Newark Board had refused to renew the license for the preceding year, but it had been reversed by the Division with respect to that year.

Moskowitz had been operating a tavern at 60 Waverly Avenue, in a congested area in the City of Newark, for about ten years. In January 1955, the license was suspended ten days for selling liquor during prohibited hours, and on May 3, 1955, it was suspended another ten days for permitting or suffering a brawl to take place on the premises. In July 1956 it was suspended forty days for selling liquor on Sunday and permitting obscene language on the premises. On January 22, 1956 two women who were making a disturbance were arrested by a special officer employed by Moskowitz, and again on February 5, 1956 two women were arrested by this officer for a like reason. Arrests resulting from disturbances are indicative of conditions affecting the premises, and it makes no difference that the licensee employs the special officer who makes the arrests.

Appellant's brief herein follows very closely the brief submitted by Nordco in the case of Nordco v. Div. of Alcoholic Beverage Control, decided herewith. While the factual situations differ, nevertheless the opinion there disposes of the legal questions raised here. In 1956 Moskowitz was found guilty of an offense as above stated, resulting in the suspension of his license for 40 days (as compared with an offense committed by Nordco, leading to a suspension of 15 days in that year). Moreover during the licensing year ending June 30, 1956, his tavern called upon the police 25 times for help, principally through a Newark District Telegraph buzzer installed in the tavern (as compared to 59, more than twice as many, like calls made by Nordco). In the preceding year Moskowitz's license was suspended twice for 10 days each (as compared to a 20 day suspension of Nordco's license in that year). Differentiations can be made between the two cases, but we see no sufficient basis for finding an abuse of discretion here.

Affirmed.

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on September 7, 1956 of a quantity of alcoholic beverages and a Buick sedan, on Route 130 near Kinkora Road, in the Township of Mansfield, County of Burlington and State of New Jersey.

Case No. 9291

ON HEARING CONCLUSIONS AND ORDER

Flatbush Auto Discount Corp., by Sidney Newman, Vice-President. 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, and a Buick sedan, described in a schedule attached hereto, seized on September 7, 1956 on Route No. 130, near Kinkora Road, Mansfield, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Flatbush Auto Discount Corp., which sought recognition of its alleged lien on the Buick sedan. Forfeiture of the alcoholic beverages was not opposed by any person.

Reports of ABC agents and other documents in the file, presented in evidence with the consent of the representative of the finance company, disclose the following facts:

A New Jersey State Trooper halted the Buick sedan on the above date and location during his routine patrol of traffic on the highway. He ascertained that the occupants of the car were Ben Ziegler, its registered owner, and Samuel Hairston. When the trooper discovered 26 two-quart "Mason" jars of alcohol, without any label or stamp indicating the payment of tax on alcoholic beverages on any of the jars, he arrested the two men, and took into custody the motor vehicle and alcohol. Later such motor vehicle and alcohol were turned over to ABC agents.

A portion of the alcohol in 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 46 percent.

Ben Ziegler gave a signed statement to the trooper wherein it appears that while on a visit in Georgia he was at a party where persons present were drinking moonshine, and he purchased the jars of alcohol from a man whom he met there, and who obtained such alcohol somewhere in a wooded area.

The alcohol is illicit because of the absence of any label or tax stamp on any of the jars, and further, because it is moonshine liquor. R. S. 33:1-1(1), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Flatbush Auto Discount Corp. presented in evidence a chattel mortgage which it holds by assignment, signed by Ben Ziegler and one Carrie Swint, dated June 18, 1956, in the amount of \$1143.60, secured by the mortgage on the Buick sedan in question.

Sidney Newman testified that the finance company had a previous account with James Ziegler, a brother of Ben Ziegler, with Carrie Swint as a co-signer, in the amount of \$1326.48, and that it was a satisfactory account.

The present transaction originated with a call from the used car dealer to the finance company inquiring whether it would finance the purchase of the Buick in question for Ben Ziegler and Carrie Swint. The finance company ascertained that Ben Ziegler was not working but on compensation, and that he was a brother of James Ziegler. The company also ascertained that Carrie Swint was still gainfully employed by a footwear concern, and extended credit solely on that account because of their previous satisfactory experience with her first account. Ben Ziegler does not appear to have any previous criminal record.

I am satisfied that the finance company acted in good faith and did not know, or have any reason to suspect that Ziegler would transport illicit alcohol in the motor vehicle. The amount secured was composed of a balance of \$750.00, and finance and insurance charges of \$393.60. The present balance due, without deduction for prepayment, is \$1000.65. The appraised value of the vehicle is \$925.00. Under such circumstances, I shall recognize the lien of the finance corporation, and return the motor vehicle to it upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 13th day of December, 1956, Flatbush Auto Discount Corp. pays the costs incurred in the seizure and storage of the Buick sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that they 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: December 3, 1956.

SCHEDULE "A"

- 26 - two-quart jars of alcohol
- 1 - Buick sedan, Serial No. 368060232, Engine No. 2969047, New York Registration 44-78-CK.

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE RESIDENCE - STOCK OF ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE USED TO TRANSPORT ALCOHOLIC BEVERAGES RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on)	Case No. 9293
September 9, 1956 of a quantity)	
of alcoholic beverages, a Mercury)	
sedan and \$58.71 in cash on)	
premises occupied by Rufus Brown)	ON HEARING
located on Orchard Terrace,)	CONCLUSIONS AND ORDER
Jamesburg, in Monroe Township,)	
County of Middlesex and State of)	
New Jersey.)	

Cole, Morrill & Berman, Esqs., by Morrill Cole, Esq., Attorneys for Eastern Acceptance Corporation.
 Clausen, Klein & Kovacs, Esqs., by Oliver R. Kovacs, Esq., Attorneys for Rufus Brown.
 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, \$58.71 in cash, and a Mercury sedan, described in a schedule attached hereto, seized on September 9, 1956 in and about premises occupied by Rufus Brown, located on Orchard Terrace, Jamesburg, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Rufus Brown, who sought return of the motor vehicle, and an appearance was entered on behalf of Eastern Acceptance Corporation, which sought recognition of its alleged lien on the motor vehicle. Forfeiture of the alcoholic beverages and cash was not opposed by any person.

Reports of ABC agents and other documents in the file, presented in evidence with consent of counsel for Rufus Brown and the finance company, disclose the following facts:

On September 9, 1956 an ABC agent entered the dwelling occupied by Rufus Brown at the above location to investigate a complaint that alcoholic beverages were being sold there without a license. The agent purchased drinks of whiskey from Brown, for which he accepted money identified by serial number. The agent also observed Brown serve and sell alcoholic beverages to other persons who were present. The agent left the premises for a short while, then returned, purchased another drink of whiskey from him, and other ABC agents and local police officers then entered.

The agents seized 85 cans of beer, 14 pint bottles of wine, two pint bottles of whiskey, and a two-quart "Mason" jar of moonshine alcohol, \$58.71 in cash, which included the marked money, and the Mercury sedan, owned by Brown, which was parked on the street.

The alcoholic beverages were seized because Brown did not hold any license to sell alcoholic beverages and the premises

were not licensed for that purpose, and the motor vehicle was seized because Brown told the agents that he purchased the moonshine in Georgia and transported such liquor in the car. Later Brown changed his story and said that he purchased the moonshine from a person who delivered it to his home, but that he at times transported in such car taxpaid alcoholic beverages from the liquor store to his home, where they were sold.

The "Mason" jar of alcohol is illicit because there was no label thereon or stamp indicating the payment of tax on alcoholic beverages. The other alcoholic beverages are illicit because the evidence presented warrants the conclusion that they were intended for unlawful sale. R. S. 33:1-1(i), R. S. 33:1-88. Such illicit alcoholic beverages, and the motor vehicle in which such alcoholic beverages were transported constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

Eastern Acceptance Corporation presented in evidence a conditional sales contract dated March 28, 1956 signed by Rufus Brown, evidencing the sale of the Mercury sedan in question, with an unpaid balance of \$1357.92. The finance company holds such contract by assignment. It also presented a Certificate of Ownership of a motor vehicle issued by the Division of Motor Vehicles of this State covering the Mercury sedan, which has noted thereon that the finance company holds a lien on the vehicle. The unpaid balance due on the contract, after rebate for prepayment, is \$893.16.

Before extending credit to Rufus Brown, the finance company received information that he resided for eight years at an address in Jamesburg and was employed as a machine operator for six years by an industrial concern, and was furnished with the names of various business and personal references. The finance company checked the residence and employment information and found it to be correct, and received favorable replies from the references. The finance company had financed Brown's purchase of another car in 1954, and that account had been satisfactory. Rufus Brown does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that the finance company acted in good faith and did not know or have any reason to suspect that Rufus Brown would transport illicit alcoholic beverages in the motor vehicle. I shall therefore recognize its lien against the Mercury sedan to the extent of \$893.16.

It appears that the appraised retail value of the Mercury sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. Such motor vehicle will therefore be returned to the Eastern Acceptance Corporation upon payment of such costs.

Counsel for Rufus Brown stipulated on the record that if the Mercury sedan is returned to the finance company the application of Rufus Brown for return of the motor vehicle should be considered withdrawn.

Accordingly, it is DETERMINED and ORDERED that if on or before the 17th day of December, 1956, Eastern Acceptance Corporation pays the costs incurred in the seizure and storage of the Mercury sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" and \$58.71 in cash constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that they 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: December 5, 1956

SCHEDULE "A"

- 85 - 12 oz. cans of beer
- 14 - one-pint bottles of wine
- 2 - pint bottles of whiskey
- 1 - two-quart "Mason" jar of alcohol
- 1 - Mercury sedan, Serial 53ME49376M, 1956 N.J. Registration KV27H
\$58.71 in cash

6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

NICHOLAS GORGO)
t/a Talk of the Town)
e/s Tuckahoe Road, Star Cross)
Franklin Township (Gloucester County))
PO Franklinville, New Jersey,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Franklin Township (Gloucester County).)

George A. Streitz, 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:

"During the early morning hours of Sunday, October 28, 1956, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises in that a female entertainer performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20."

The file herein discloses that on Saturday, October 27, 1956, at about 11:45 p.m., two ABC agents visited the licensed premises where they observed about sixty patrons (male and female) at the bar and about two hundred patrons (male and female)

seated in the dining room in which a five-piece band was supplying music for dancing and entertainment. About one hour after their arrival the agents heard the orchestra leader announce the opening of the floor show and introduce "The exciting, tantalizing, exotic dancing Alma Dunning", following which Alma appeared on the dance floor. She wore a red bra and two revealing pink panels (streamers) running from her waist to her ankles.

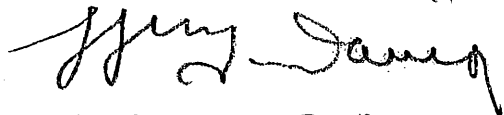
The band started to play rhythmic music and Alma, in time with the same, gave an exhibition of the familiar "bumps and grinds". The audience responded with shouts of "Take it off". Alma then did a "strip tease" accompanied by "bumps and grinds". After discarding some of her flimsy garb, Alma finally stood before the crowd in a flesh colored bra and a "G" string accentuated by red sequins. In this practically nude fashion, Alma continued her "bumps and grinds" and assumed positions and performed other movements of her body in such manner as to simulate sexual intercourse. Upon conclusion of her lewd performance, Alma left the stage to which, upon the demand of the patrons, she immediately returned and gave an encore of her indecent dance.

In mitigation of penalty, the attorney for the defendant has submitted a statement which I have carefully considered. I, however, do not find any extenuating circumstances in this matter which would impel me to impose less than the established penalty in cases of this type.

Defendant has a prior adjudicated record. Effective February 7, 1955, his license was suspended for ten days for sale to minors. Re Gorgo, Bulletin 1051, Item 6. The usual suspension for the violation as set forth in the charge herein is thirty days. Re Sharpe, Bulletin 1112, Item 5. However, since the aforesaid prior dissimilar violation occurred within a five-year period, an additional five-day penalty will be added, making a total suspension of thirty-five days. Re DeFreitas, Bulletin 1139, Item 1. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 27th day of December 1956,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of Franklin Township (Gloucester County) to Nicholas Gorgo, t/a Talk of the Town, e/s Tuckahoe Road, Star Cross, Franklin Township (Gloucester County), be and the same is hereby suspended for a period of thirty (30) days, commencing at 3 a.m., January 7, 1957, and terminating at 3 a.m., February 6, 1957.



William Howe Davis
Director