

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2015

December 6, 1971

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

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December 6, 1971

1. ADVERTISING - NEW DIVISION POLICY WITH RESPECT TO RADIO AND
TELEVISION ADVERTISING BY RETAILERS.

Arnold L. Zucker, Executive Secretary
New Jersey Broadcasters Association
New Brunswick, New Jersey

Dear Mr. Zucker:

I have reviewed the request of the New Jersey Broadcasters Association that retail alcoholic beverage licensees be permitted to advertise their licensed businesses by means of radio and television. Additionally, I have reviewed similar recent requests by a number of licensees.

As you are aware, this matter was last considered by former Director Lordi who, on January 13, 1967, determined at that time that it was not appropriate to relax the long-standing Division policy, in existence since the inception of this agency in 1933, disapproving of retailers utilizing radio or television to advertise their establishments as places where the public might purchase alcoholic beverages. Such ruling is reprinted in Division Bulletin 1720, Item 5. Director Lordi predicated his determination upon his belief that it would not be in the public interest to allow the privacy of the family home to be invaded by means of the air ways for the purpose of inducing the purchase of alcoholic beverages by the consumer.

Since taking office, I have endeavored to re-examine many of the long-standing alcoholic beverage policies in this State with a view to determining whether they meet the test of modern times. It is my belief that a policy should not be perpetuated merely because of its existence for a long period of time or because there has been no alternative experience. To warrant the continuance of a policy, it must be justifiable at all times, not merely at its inception. It must be able to stand on its own two legs and withstand the assaults of its critics on the basis of reasonableness.

In this light, I have carefully considered the instant request that the policy in question be modified at this time to permit retail advertising over the air ways, with restrictions. The restrictions would continue the ban on distilled spirits radio or television advertising, in accordance with the self-imposed code of the National Association of Broadcasters, and also would bar price and brand advertising and descriptive advertising extolling the taste or quality of the product.

Today, newspaper and magazine advertising by alcoholic beverage retailers enters the home routinely. There may be minors or abstainers in the home receiving such publications, but no adverse public reaction is thus created. It is argued, however, that radio and television are different from newspaper and magazine advertising. There may well be a difference in the impact of the two types of media, such as, for example, that which formed the basis of the Federal ban on radio or television cigarette advertising, while permitting newspaper and magazine cigarette advertising; but should the difference be deemed of such an extreme degree as to justify a total ban on advertising over the air? I think not.

In order to gain the experience of sister states with

respect to this type of activity, I have written to each of the state alcoholic beverage control agencies of the states which have licensing systems similar to ours, and have received replies disclosing that only seven have regulations prohibiting alcoholic beverage advertising over the air by retailers. None of the others expressed any problems with their advertising policies.

In view of these considerations, and after careful analysis of all of the aspects of this matter, I have determined that a modification of this State's policy with respect to radio and television advertising by retailers would not be contrary to the public interest. Accordingly, I hereby rule that retail licensees may now engage in said type of advertising, provided that such advertising complies with the restrictions of State Regulation No. 21 and further provided that such advertising does not include mention of (1) specific types of distilled spirits, (2) the price or size of drinks of alcoholic beverages, (3) the specific brands of drinks or package goods of alcoholic beverages or (4) descriptions unduly extolling the taste, quality or virtues of any alcoholic beverages.

The continuance of this approval is also conditioned upon the absence of any future problems arising from this change. If experience demonstrates the need for remedial action, it will be taken, both with respect to disciplinary action against retailers' licenses and with respect to restriction of the advertising privilege. In this connection, it should expressly be noted that licensees will be held fully accountable for the content of any of their advertising material broadcast over the radio and television. Doubtful situations should be submitted to this Division for advance approval.

I enlist the cooperation of the members of your Association, all radio and television broadcasters and the entire alcoholic beverage industry to ensure that no abuses arise from this type of advertising so that the public confidence in the maturity and responsibility of the alcoholic beverage and broadcasting industries will be maintained in the future.

Richard C. McDonough
Director

2. COURT DECISIONS - POLO CHEZ, INC. v. DIVISION OF ALCOHOLIC
BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-517-70

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF NEW JERSEY,

Respondent,

v.

POLO CHEZ, INC., a corporation of the
State of New Jersey, t/a Gary's Bar,

Appellant.

Argued October 26, 1971 - Decided November 4, 1971.

Before Judges Sullivan, Leonard and Carton.

On appeal from Division of Alcoholic Beverage Control.

Mr. Edward G. D'Alessandro argued the cause for
appellant (Messrs. Friedman and D'Alessandro, attorneys).

Mr. Charles R. Parker, Deputy Attorney General, argued
the cause for respondent (Mr. George F. Kugler, Jr.,
Attorney General, attorney; Mr. Stephen Skillman,
Assistant Attorney General, of Counsel).

PER CURIAM

(Appeal from decision in Re Polo Chez, Inc., Bulletin
1947, Item 2. Director affirmed. Opinion not
approved for publication by the Court Committee on Opinions.)

3. COURT DECISIONS - MONTAUK BAR, INC. v. PASSAIC and DIVISION
OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1031-70

MONTAUK BAR, INC.,

Appellant

v.

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY
OF PASSAIC,

Respondent.

Argued October 26, 1971 - Decided November 8, 1971.

Before Judges Sullivan, Leonard and Carton.

On appeal from the Department of Law and Public Safety,
Division of Alcoholic Beverage Control.

Mr. Miles R. Feinstein argued the cause for appellant
(Mr. Richard J. Manfre on the brief; Messrs. Tencza,
Feinstein & Manfre, attorneys).

Mr. David S. Piltzer, Deputy Attorney General, argued
the cause for the Division of Alcoholic Beverage Control
(Mr. George F. Kugler, Jr., Attorney General of New
Jersey, attorney).

Mr. William P. Schey, Assistant City Attorney, filed a
Statement in Lieu of Brief on behalf of the City of
Passaic (Mr. August C. Michaelis, City Attorney,
attorney).

PER CURIAM

(Appeal from decision in Re Montauk Bar, Inc., Bulletin
1957, Item 2. Director affirmed. Opinion not approved
for publication by the Court Committee on Opinions.)

4. COURT DECISIONS - LINCROFT INN, INC. v. MIDDLETOWN - DIRECTOR
AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-483-70

LINCROFT INN, a corporation of
the State of New Jersey,

Appellant,

vs.

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MIDDLETOWN,

Respondent.

Argued November 3, 1971 - Decided November 11, 1971.

Before Judges Kilkenny, Mintz and Lane.

On appeal from State Division of Alcoholic Beverage
Control.

Mr. Leon M. Rosen argued the cause for appellant
(Messrs. Rosen & Kanov, Attorneys; Mr. Rosen, on
the brief).

Mr. Robert H. Otten argued the cause for respondent
(Mr. Whitney Crowell, Township Attorney; Mr. Otten,
on the brief).

Mr. George F. Kugler, Jr., Attorney General, submitted
Statement in Lieu of Brief for Division of Alcoholic
Beverage Control (Mr. David S. Piltzer, Deputy Attorney
General, of counsel).

The opinion of the Court was delivered

PER CURIAM.

(Appeal from decision in Re Lincroft Inn, Inc., Bulletin
1947, Item 1. Director Affirmed. Opinion not approved
for publication by the Court Committee On Opinions.)

5. APPELLATE DECISIONS - DE VRIES v. PASSAIC.

Ann De Vries, t/a Harrison)
House,)
Appellant,) On Appeal
v.)
Board of Alcoholic Beverage) CONCLUSIONS and ORDER
Control of the City of)
Passaic,)
Respondent.)

Appellant, by Florin De Vries, Pro se
August C. Michaelis, Esq., by William P. Schey, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

On June 28, 1971 respondent Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) adopted a resolution denying appellant's application for renewal of her plenary retail consumption license for the 1971-72 license period. The reason set forth in the resolution was that public necessity and convenience dictated that the said license not be renewed.

Appellant challenged this action and in her petition of appeal sets forth that she was not notified of the reasons for the Board's action and that the said action was erroneous because there were no justifiable grounds for denial of the said renewal application.

The Board filed an answer denying the allegations of the petition and sets forth that the license was not renewed because necessity and convenience so dictated.

When the matter came on for hearing pursuant to Rule 14 of State Regulation No. 15, the attorney for the Board stated that the Board did not desire to contest this matter and requested that the Board's answer to the petition of appeal be withdrawn.

Florin De Vries (son of appellant) appeared at the hearing and stated that his mother was unable to appear because she had suffered injuries in an automobile accident and was still under doctor's care for a broken vertabrae in her neck. He also stated that the attorney who had heretofore represented her in this matter had been dismissed and appellant desired to present this matter pro se.

Since the burden of establishing that the action of the Board was erroneous and should be reversed rests with the appellant (Rule 6 of State Regulation No. 15), Florin De Vries offered testimony on behalf of appellant. He stated that he and his father share the management of the licensed premises. In his opinion the premises have been operated in an orderly and law-abiding manner and that no charges had been preferred against appellant for any violation of the Alcoholic Beverage Law. He also asserted that there were no complaints from neighbors about the operation of the premises. He noted that, when he suspected that there were narcotic users on the premises, he personally apprised the local vice squad of his suspicions. However, upon investigation on several occasions by the Police Department, no such activity was uncovered. Nevertheless, he discharged a bartender because that person received "too many phone calls at night" and did not keep certain people out of the premises as he was directed to do.

A Hearer's report was specifically waived by the parties hereto. I shall, therefore, consider the matter based upon the record herein. I find that there has been no evidence to establish that these premises were operated improperly or that public necessity and convenience dictated that such license should not be renewed.

Thus, appellant has sustained her burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15; cf. Bayonne v. B & L Tavern, Inc., 42 N.J. 131 (1964); Salmanowitz v. Hightstown, Bulletin 807, Item 2.

Accordingly, it is, on this 19th day of October 1971,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to renew the said license for the 1971-72 license period in accordance with the application filed therefor.

Richard C. McDonough
Director

6. APPELLATE DECISIONS - EV-MAR CORP. v. PATERSON.

Ev-Mar Corp., t/a Counsellors)	
Lounge & Restaurant,)	
Appellant,)	
v.)	
Board of Alcoholic Beverage)	On Appeal
Control for the City of)	
Paterson,)	O R D E R
Respondent.)	
-----)	

La Duca & Ivler, Esqs., by J. George Ivler, Esq., Attorneys
for Appellant
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for
Respondent

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby on August 28, 1971 it suspended appellant's plenary retail consumption license for premises 22 Hamilton Street, Paterson, for a period of twenty days, the effective dates of said suspension being deferred to permit appellant to apply to the Director for the payment of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971. The suspension was imposed after appellant was found guilty of charges alleging that (1) on Monday, July 5, 1971 it sold and served alcoholic beverages on its licensed premises during prohibited hours and (2) on the said date it failed to keep its licensed premises closed; both in violation of local ordinance.

Prior to the date fixed for hearing herein, the attorney for appellant advised me in writing that the appellant desired to withdraw the appeal. No reason appearing to the contrary,

It is, on this 21st day of October 1971,

ORDERED that the appeal be and the same is hereby dismissed and that the twenty-day suspension heretofore imposed by respondent is hereby restored to commence at 3 a.m. Tuesday, November 9, 1971, and terminating at 3 a.m. Monday, November 29, 1971.

Richard C. McDonough
Director

7. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - MUNICIPAL SUSPENSION OF 3 DAYS REIMPOSED UPON WITHDRAWAL OF APPLICATION FOR FINE IN LIEU OF SUSPENSION.

In the Matter of Disciplinary)	
Proceedings against)	
)	
Larchmont Liquors, Inc.)	CONCLUSIONS
t/a Larchmont Liquors)	and
2700 Morris Avenue)	ORDER
Union, N. J.,)	

Holder of Plenary Retail Distribution)
License D-11, issued by the Township
Committee of the Township of Union.)

Weiner, Weiner & Glennon, Esqs., by John T. Glennon, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleaded non vult before the municipal issuing authority to charges that it sold alcoholic beverages to a minor, age 18, in violation of Rule 1 of State Regulation No. 20, whereupon its license was suspended for three days. The dates of such suspension were held in abeyance in order to afford the licensee opportunity to apply to the Director to pay a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

The licensee now requests that its said application to pay a fine in lieu of suspension be dismissed and that the three-days suspension imposed by the municipal issuing authority be reimposed.

Accordingly, it is, on this 21st day of October 1971,

ORDERED that Plenary Retail Distribution License D-11, issued by the Township Committee of the Township of Union to Larchmont Liquors, Inc., t/a Larchmont Liquors, for premises 2700 Morris Avenue, Union, be and the same is hereby suspended for three (3) days, commencing at 2 a.m. Monday, November 1, 1971, and terminating at 2 a.m. Thursday, November 4, 1971.

Richard C. McDonough,
Director.

8.

ACTIVITY REPORT FOR OCTOBER 1971

ARRESTS:		
Total number of persons arrested - - - - -		40
Licensees and employees - - - - -	12	
Bootleggers - - - - -	10	
Minors - - - - -	18	
SEIZURES:		
Still - 50 gallons or under - - - - -		1
Alcohol - gallons - - - - -		25
Mash - gallons - - - - -		55
Distilled alcoholic beverages - gallons - - - - -		3.26
Wine - gallons - - - - -		20.723
Brewed malt alcoholic beverages - gallons - - - - -		124
COMPLAINTS AND INVESTIGATIONS:		
Inspections & visits made on assigned investigations - - - - -		1,524
Complaints assigned for investigation - - - - -		321
Investigations completed - - - - -		293
Investigations pending - - - - -		355
Premises where alcoholic beverages were gauged - - - - -		412
Bottles gauged - - - - -		6,711
Premises where violations were found - - - - -		186
Number of violations found - - - - -		264
License applications investigated - - - - -		8
Contacts made with other law enforcement agencies - - - - -		440
LABORATORY:		
Analyses made - - - - -		98
Refills from licensed premises - bottles - - - - -		49
Bottles from unlicensed premises - - - - -		11
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		23
Persons fingerprinted for non-criminal purposes - - - - -		366
Identification contacts made with other enforcement agencies - - - - -		252
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		1
Violations involved - - - - -		1
Fail. to close prem. during prohibited hours - - - - -	1	
Cases instituted at Division - - - - -		26
Violations involved - - - - -		30
Sale to minors - - - - -	8	Perm. lottery, bkmdg. & misc. gambi. - - - - - 1
Perm. lottery acty. on premises - - - - -	6	Perm. immoral activity on prem. - - - - - 1
Perm. bookmaking acty. on prem. - - - - -	2	Possessing liquor not truly labeled - - - - - 1
Sale during prohibited hours - - - - -	2	Permitting misc. gambling - - - - - 1
Fraud and front - - - - -	2	Purchase from improper source - - - - - 1
Hindering investigation - - - - -	1	Unauthorized transportation - - - - - 1
Perm. lottery & bookmaking on prem. - - - - -	1	Fail. to keep true books of account - - - - - 1
Unqualified employee - - - - -	1	
Cases brought by municipalities on own initiative and reported to Division - - - - -		15
Violations involved - - - - -		16
Sale to minors - - - - -	6	Fraud in application - - - - - 1
Sale during prohibited hours - - - - -	3	Perm. persons of ill repute on prem. - - - - - 1
Conducting business as a nuisance - - - - -	2	Permitting brawl on premises - - - - - 1
Hindering investigation - - - - -	1	Fail. to close prem. dur. proh. hrs. - - - - - 1
Perm. loitering by minors unaccomp. by adults (local reg.) - - - - -	1	Perm. gambling on premises - - - - - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		31
Appeals - - - - -	2	Eligibility - - - - - 3
Disciplinary proceedings - - - - -	23	Seizures - - - - - 3
STATE LICENSES AND PERMITS:		
Total number issued - - - - -		1,883
Licenses - - - - -	2	Wine permits - - - - - 307
Solicitors' permits - - - - -	43	Miscellaneous permits - - - - - 274
Employment permits - - - - -	376	Transit insignia - - - - - 265
Disposal permits - - - - -	92	Transit certificates - - - - - 14
Social affair permits - - - - -	512	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Enforcement files established - - - - -	9	

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: November 16, 1971

9. SEIZURE - FORFEITURE PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FROM UNLICENSED GROCERY STORE - CLAIM FOR RETURN OF ALCOHOLIC BEVERAGES DENIED ABSENT GOOD FAITH - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure	:	Case No. 12,352
on July 12, 1970 of a quantity	:	
of alcoholic beverages at 513	:	On Hearing
Bergen Street, in the City of	:	
Newark, County of Essex and	:	CONCLUSIONS and ORDER
State of New Jersey.	:	

.....
 Simandl, Itzikman & Kraemer, Esqs., by Daniel Leff, Esq.,
 appearing for claimant, Meyer Krieger.
 Harry D. Gross, Esq., appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether 896 containers of alcoholic beverages seized in an unlicensed grocery store at 513 Bergen Street, Newark, N.J. on July 12, 1970 constitute unlawful property and should be forfeited.

The seizure was made by officers of the Newark Police Department on July 12, 1970 and thereafter adopted by this Division.

At the hearing herein, it was stipulated by the parties that the premises 513 Bergen Street is owned and operated by Meyer Krieger as a grocery store and are unlicensed premises.

On behalf of the Division, Newark police officer Irving Ellis testified that on July 12, 1970 at approximately 8:30 A.M. while on routine patrol, he observed a male adult, later identified as Colie A. Hill, departing the premises in question with a whiskey bottle in his hand. The bottle was identified and admitted in evidence. Upon returning to the premises with Hill, Officer Ellis questioned Meyer Krieger who admitted the sale. Krieger was thereupon arrested.

On cross-examination Ellis testified that five additional bottles of alcoholic beverages were found behind the counter and were seized. Krieger was removed to police headquarters by another officer; Hill thereafter identified the store clerk as the person from whom he had made the purchase, the clerk was thereupon arrested, charged with sale of alcoholic beverages without a license in violation of N.J.S.A. 33:1-50, contrary to N.J.S.A. 33:1-2. Krieger was returned to the premises shortly thereafter, and a search of the rear storeroom was then conducted by several Newark policemen. Ellis did not take part directly in the subsequent search but did witness a substantial amount of alcoholic beverages being removed by other officers. The premises in question is located directly across the street from a licensed premises known as Big Mike's, Inc.

James H. Perry, Jr. testified for the Division that on the date in question, he was on duty with Officer Ellis and substantially corroborated the direct testimony of Officer Ellis.

On cross-examination he testified that both Krieger and his clerk, Brown, were arrested. He accompanied Krieger to the police station and did not return to the premises for the subsequent seizure.

James Powell testified on behalf of the claimant, that on July 11, 1971 he was employed as a clerk in the grocery store at 513 Bergen Street. At approximately 8:00 P.M. Hill entered the premises, purchased some groceries and departed, leaving a brown paper bag on the counter and asked that it be kept for him. Powell placed the unopened bag under the counter. At closing time, he reported to Krieger at the licensed premises across the street, Big Mike's, Inc. and advised him of the package left by Hill. He did not work the following day nor is he presently employed by Krieger. He concluded that there was no other whiskey on the premises when he departed.

Meyer Krieger testified that he is the principal stockholder of the licensee, Big Mike's, Inc., a plenary retail consumption licensee located at 199 Rose Street, Newark. Further, he is the principal stockholder of Krismar Corp., owner of premises 513 Bergen Street, Newark. He operated a grocery store thereat on the date of the seizure herein but has discontinued his operation thereof.

On the evening of July 11, 1970 he was tending bar at Big Mike's at approximately 9:00 P.M. Powell reported to him after closing the grocery store as he usually does and advised him that Hill had left the package.

Additionally, Krieger testified that he was informed by a usually reliable source that the licensed premises was to be robbed that night. The premises had been robbed approximately one dozen times between January 1, 1970 and the date of seizure, the most recent of which occurred approximately one week prior to the date of the seizure herein. He thereafter informed Lieutenant McCauley, 4th Precinct, Newark Police and was advised to "take the stuff home with you". Thereafter, he transferred the entire alcoholic beverage stock from his licensed premises to the grocery store and placed a portion of it in a closet, and locked the remainder in a walk-in refrigerator.

He continued that there were several loose bottles of wine and beer under the counter. On Sunday morning, July 18, 1970, he was operating the grocery store when Hill entered and requested his package. Krieger ordered his clerk, Brown, to give the bottle to Hill and Brown did so. Hill departed and returned shortly in the company of Officers Ellis and Perry. He was then asked the following:

"Q Three minutes later what happened?

A Well, Ellis came in with Mr. Hill and Officer Perry, 'You sold this man this bottle.'

"Q They accused you.

A Yes.

"Q They spoke to you.

A They didn't accuse me; I'm sorry. Mr. Ellis says, if I may say it, hearsay, 'Mr. Hill said he bought a bottle here.'

"Q What did you respond to that?

A 'Yes,' I said, 'sure....Don't everybody sell it?'

"Q Were you serious when you said that?

A No. I was joking with him. When Mr. Ellis informed me he wasn't joking I apologized and said, 'I am terribly sorry. I thought you were fooling with me.'

"Q Did you thereafter deny you had sold the whiskey?

A Yes, I did."

He was thereafter arrested, taken to precinct headquarters and returned approximately two hours later. Having left his keys at home, Krieger broke the lock on the walk-in refrigerator at the request of the police officer.

He stated that the inventory of alcoholic beverages seized had been placed by him on the unlicensed premises to avoid robbery and that at no time was any sale of alcoholic beverages transacted on the unlicensed premises.

On cross-examination, he testified that he has been in the liquor business for approximately 25 years and was aware that a special permit to store alcoholic beverages was required but explained that the information with respect to the alleged hold-up did not come to him until late Saturday evening and that there was no way to acquire the special permit on such short notice.

He concluded that his purported admission as to the sale was made to the officers in jest because he knew the officers, and he would not have said such a thing to strangers.

William D. Brown testified on behalf of the claimant that he was employed on the premises as a clerk on the date in question. Hill entered and requested his package. Brown handed him a bag from beneath the counter. While he did not see the contents of the bag he could tell by handling it that it was a bottle. Hill did not pay him any money for the package nor did he see Hill pay any money to Krieger. When the officers entered he was busy elsewhere. He insisted that he saw no alcoholic beverages sold on that morning or at any other time during his six months of employment.

On cross-examination, he testified that he did not hear the conversation between the officers and Krieger; the bottle in question was not in a paper bag; he had no knowledge that there was a large amount of alcoholic beverages locked in the walk-in refrigerator; and he denied making the sale himself, but had no knowledge of what transpired with respect to the alleged payment by Hill to Krieger.

N.J.S.A. 33:1-1(i) defines illicit beverages as:

"Any alcoholic beverage sold....warehoused...
possessed...in violation of this chapter..
and any alcoholic beverage possessed, kept,

stored, owned...with intent to...sell...
warehouse..in violation of the provisions
of this chapter."

N.J.S.A. 33:1-2 provides:

"that it shall be unlawful to...sell...
warehouse...alcoholic beverages in this
state except pursuant to and within the
terms of a license."

N.J.S.A. 33:1-1(y) defines unlawful property as:

"all illicit beverages".

N.J.S.A. 33:1-1(x) defines unlawful alcoholic beverage
activity as:

"the...sale...warehousing...of any alco-
holic beverage in violation of this chapter...
or the storing in this state of alcoholic
beverage with intent to...sell...warehouse...
alcoholic beverages in violation of this
chapter."

It is admitted that the premises 513 Bergen Street, Newark,
N.J. is an unlicensed premises. The seized alcoholic beverages
are illicit, and their storage as described herein constitutes
unlawful alcoholic beverage activity.

Additionally, there is testimony that Krieger admitted a
sale of alcoholic beverages from this unlicensed premises,
thereby compounding the offense.

Both Officers Ellis and Perry testified that Krieger
admitted the sale and Officer Ellis additionally testified
that "Mr. Krieger was not laughing. In fact, Mr. Krieger was
very nasty at that particular time." Krieger, on the other
hand, testified that he admitted the sale in a joking manner
because he knew both police officers. Had they been strangers
he would not have done so. Upon realizing that the officers
were serious, he thereupon recanted. Hill, the phantom purchaser,
entered the premises on the evening before and left the bottle
to be picked up the following day.

Having observed the demeanor of the witness and considering
all the circumstances, I accept the testimony of the officers as
credible and forthright and reject the testimony of Krieger and
of Powell as the testimony of witnesses seeking to evade the
consequences of their actions.

To suggest that Hill, with no further explanation, left
the bottle in question to be picked up the following morning
does not comport with common experience. I reject the explana-
tion.

In Seizure Case No. 11,155, Bulletin 1576, Item 2, a licensee
conspired to defraud an insurance concern. In furtherance there-
of, he stored a considerable quantity of alcoholic beverages on
the premises of another licensee. Nowhere in that case is there
any testimony with respect to a sale or intent to sell. None-
theless it was held that the alcoholic beverages were illicit
beverages and became unlawful property when they were unlawfully
transported and stored. Here I have additionally found that an

unlawful sale accompanied the unlawful storage.

I, therefore, find that the Division has established by a clear preponderance of the believable evidence that the alcoholic beverages seized are illicit because they were stored and sold in violation of Alcoholic Beverage Laws and the Regulations of this Division. N.J.S.A. 33:1-66(b); State Regulation No. 28.

The Director has the discretionary authority to order the return of seized property upon showing by the claimant that he has acted in good faith and has unknowingly violated the law. Rule 3(b) of State Regulation No. 28.

Since the claimant herein was personally and directly involved in both the unlawful sale and storage, I find an absence of good faith on the part of claimant. Furthermore, since the claimant is a licensee with 25 years experience in the trade, it cannot seriously be argued that he unknowingly violated the law.

It is, therefore, recommended that an order be entered denying the claim herein and directing that the seized alcoholic beverages be forfeited.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 21st day of October, 1971

DETERMINED and ORDERED that the seized alcoholic beverages, set forth in Schedule "A" attached hereto, constitute unlawful property, and the same be and are hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66 to be retained for the use of hospitals or State, county or municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Richard C. McDonough,
Director

SCHEDULE "A"

896 - containers of alcoholic beverages

10. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE
SUSPENDED FOR 90 DAYS, LESS 18 FOR PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
Joseph H. Campisi)	
t/a Joe Ray's)	
251 Fabyan Place)	
Newark, N. J.,)	CONCLUSIONS
)	and
Holcer of Plenary Retail Consumption)	ORDER
License C-688, issued by the Municipal)	
Board of Alcoholic Beverage Control)	
of the City of Newark.)	
-----)		
Leon Sachs, Esq., Attorney for Licensee		
Edward F. Ambrose, Esq., Appearing for Division		

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers dates between April 29 and May 14, 1971, he permitted tickets in a lottery, commonly known as the "numbers game", to be sold on the licensed premises, and on May 14, 1971, he possessed such tickets in a "numbers game", in violation of Rule 6 of State Regulation No. 20.

Absent prior record, the license will be suspended for ninety days, with remission of eighteen days for the plea entered, leaving a net suspension of seventy-two days. Re Jean Arnone, Bulletin 1971, Item 3.

Accordingly, it is, on this 22nd day of October 1971,

ORDERED that Plenary Retail Consumption License C-688, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph H. Campisi, t/a Joe Ray's, for premises 251 Fabyan Place, Newark, be and the same is hereby suspended for seventy-two (72) days, commencing at 2:00 a.m. Tuesday, November 9, 1971, and terminating at 2:00 a.m. Thursday, January 20, 1972.

Richard C. McDonough
Director

11. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary)
Proceedings against)

Forpa, Inc.)
t/a Spirits Shop)
414 Highway #71)
Spring Lake Heights (Boro), N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Distribution)
License D-1, issued by the Borough)
Council of the Borough of Spring Lake)
Heights.)

- - - - -)
Richard J. Fay, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

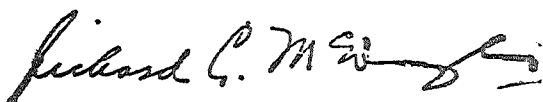
Licensee pleads non vult to a charge alleging that on August 13, 1971, it sold alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Buckwald, Bulletin 1982, Item 8. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$340 in lieu of suspension.

Accordingly, it is, on this 27th day of October 1971,

ORDERED that the payment of a \$340 fine by the licensee is hereby accepted in lieu of a suspension of license for five (5) days.


Richard C. McDonough
Director