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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

BULLETIN 930 MARCH 26, 1952.

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ITEM

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

BULLETIN 930 MARCH 26, 1952.

1. COURT DECISIONS - TUBE BAR, INC. ET AL. v. COMMUTERS BAR, INC. ET AL. - ORDER AFFIRMING ACTION OF ISSUING AUTHORITY REVERSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

No. A-35-51, September Term, 1951

TUBE BAR, INC., a New Jersey corporation, et al.,

Appellants,

-vs-

COMMUTERS BAR, INC., et al.,

Respondents.

Argued February 25, 1952; decided March 12, 1952

Before McGeehan, Jayne and Wm. J. Brennan, Jr., JJ.

Mr. John Warren argued the cause for Appellants (Mr. John Warren, Attorney for Appellant Tube Bar, Inc.; Mr. Charles Hershenstein, Attorney for Appellant Universal Markets; Mr. Michael Halpern, Attorney for Appellants John Maske, Joseph Gorman, Grays Eating Places of N. J., Bernhard Miller, John DeDousis, Journal Square Bakery, Inc. and Theodore G. Antos; Mr. John J. LaFianza, Jr., Attorney for Appellant Finbar).

Mr. Lawrence A. Whipple argued the cause for Respondents (Messrs. Wall, Walsh, Kelly & Whipple, Attorneys for Respondent Commuters Bar, Inc.; Mr. Jacob J. Levey, Attorney for Respondent Board of Alcoholic Beverage Control of the City of Jersey City).

The opinion of the Court was delivered by

McGEEHAN, S. J. A. D.

The Board of Alcoholic Beverage Control of the City of Jersey City granted the transfer of the plenary retail consumption license of Commuters Bar, Inc. from 35 Enos Place to store 9-B, Journal Square. On appeal, the Director of the State Division of Alcoholic Beverage Control affirmed the action of the Jersey City Board. Tube Bar, Inc. and others appeal.

An ordinance of Jersey City adopted in 1937 and amended in 1941 authorizes the Board of Alcoholic Beverage Control of Jersey City to grant the transfer of plenary consumption licenses under certain conditions. The power of the municipality to pass such an ordinance is not in question. The ordinance, in pertinent part, provides:

"Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail

> Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated."

It is conceded (1) that the license was transferred to "premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption License"; (2) that Commuters Bar, Inc. did not hold "a Plenary Retail Consumption License at the time of the passage" of the ordinance or its amendment in 1941; (3) that the landlord of the licensed premises on Enos Place did not "consent to a vacation thereof"; and (4) that the license of Commuters Bar, Inc. was "transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated".

The Jersey City Board granted the transfer on its finding that "in the opinion of the Commission the applicant has reasonable apprehension that he will be compelled to vacate premises now occupied by him and therefore will sustain a serious hardship and loss of his license, and considering the cosmopolitan nature of the neighborhood to which he seeks the transfer, an exception should be made and the transfer granted". It is conceded that under the terms of the ordinance applicable to this case, the local Board was not authorized to grant a transfer which violated the general 750-feet provision, unless (1) the applicant was a licensee holding a plenary retail consumption license at the time of the passage of the ordinance or, at the latest, at the time of the passage of the amendment thereto in 1941; and (2) the licensee shall be compelled to vacate the licensed premises. When a commission, board, body or person is authorized by ordinance, passed under a delegation of legislative authority, to grant or deny a license or permit, the grant or denial thereof must be in conformity with the terms of the ordinance authorizing such grant or denial. 9 McQuillin, Municipal Corporations, Par. 26.73 (3rd Ed. 1950); Bohan v. Weehawken, 65 N. J. L. 490, 493 (Sup. Ct. 1900). Nor can such commission, board, body or person set aside, disregard or suspend the terms of the ordinance, except in some manner prescribed by law. Public Service Ry. Co. v. Hackensack Imp. Com., 6 N. J. Misc. 15 (Sup. Ct. 1927); 62 C. J. S., Mun. Corp., Par. 439. The local Board therefore lacked power to grant the transfer for two reasons: first, because the applicant did not meet the first condition imposed under the proviso; and, second, because the Board did not make a finding sufficient to justify the issuance under the second condition of the proviso. That the local Board realized its finding that the applicant "has reasonable apprehension that he will be compelled to vacate premises now occupied by him" was not sufficient to meet the finding required by the provision of the ordinance, is indicated by its conclusion that "an exception should be made and the transfer granted."

R. S. 33:1-26 (amended L. 1943, c. 152, Par. 1) provided:

"***The action of the other issuing authority in granting or refusing to grant any application for a transfer of license to a different place of business * * * shall be subject to appeal to the commissioner within thirty days from the date such action was taken. * * * "

On appeal to the Director of the State Division of Alcoholic Beverage Control, he affirmed the action of the local Board in granting the transfer of the following findings; (1) the condition of the proviso that the applicant must be a licensee who held a license at the time of the passage of the ordinance, or at least at the time of its amendment, was an unreasonable regulation as applied to this particular case (but see Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940)); and (2) the local Board had found that the other condition, namely, that the licensee "shall be compelled to vacate the licensed premises," had been met and the Director's function "on appeals of this type is not to substitute my personal opinion for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal view on the subject. * * * From the record before me in this appeal I do not find that respondent Board's granting of the application was arbitrary or unreasonable or otherwise in abuse of its discretionary power so as to call for a reversal of the action taken."

While the Director found the first condition of the proviso unreasonable in its application in this case, and therefore no bar to the grant of the transfer, there is no suggestion that he made any such finding with respect to the second condition, namely, that the licensee shall be compelled to vacate the premises. As shown by the above quotation from his opinion, he assumed that the local Board had found that the applicant had met the second condition, and he relied thereon; and he disavowed any independent finding on his part, or that he would have made the same finding on the evidence presented.

We conclude there was no evidence to support a finding that this licensee met the second condition of the proviso, namely, that he was compelled to vacate the licensed premises. From the evidence it appeared that Commuters Bar, Inc. acquired the license to conduct business at Enos Place on or about February 27, 1951, taking from the prior licensee an assignment of a lease agreement which the prior licensee had entered into on September 1, 1948, with the owner of the premises. This lease was for a period of five years and contained the following clause: "The landlord may terminate this lease on ninety (90) days notice to the tenant in the event that the corner space now occupied by First Savings and Loan Association becomes available or in the event that the First Savings and Loan Association removes from said premises."

On May 25, 1951, the owner of the premises gave a release, effective July 1, 1951, to First Savings and Loan Association, from its obligation under the lease upon which it occupied the corner space mentioned above. The First Savings and Loan Association vacated the corner store on or about July 1, 1951, and the owner leased it to another for a term beginning July 1, 1951. While it is argued that the owner, by his actions, has waived any right to give the 90-day notice to vacate, we find it unnecessary to consider this argument. The owner of the Enos Place premises has never given any notice of termination to Commuters Bar, Inc., and Commuters Bar is still bound by the lease for the Enos Place premises. There was no evidence to support a finding that the owner had any intention to give such a notice, let alone that he threatened to do so. At the time that the local Board found that the licensee had "reasonable apprehension that he will be compelled to vacate premises now occupied by him," the lease had more than two years and five months to run. We have here no situation where the licensee's lease will soon

expire and he is unable to get a renewal thereof without an exorbitant increase in the rental, or any other situation which could support a finding by the local Board or by the Director that this licensee met the second condition of the proviso of the ordinance.

In summary, the local Board had no power to grant the transfer because the first condition of the proviso of the ordinance was not met and there was no proper finding that the second condition had been met. Even if we were to assume that the Director had power to treat the appeal as one from the local Board's refusal to grant the transfer and had power to disregard the conditions imposed by ordinance, which he found unreasonable in their application to the particular case, he still lacked power to grant the transfer without a finding on his part that the reasonable provisions of the ordinance applicable in the particular case were met. This the Director did not do.

The order of the Director is reversed.

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2. APPELLATE DECISIONS - FELDMAN v. IRVINGTON.

AUGUST FELDMAN, trading as TOWN TAVERN,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE TOWN OF IRVINGTON,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

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Sidney Simandl, Esq. and John J. Gaffey, Esq., Attorneys for Appellant.
Matthew Krafte, Esq., Attorney for Respondent.

This is an appeal from a ten-day suspension imposed by respondent after it had found appellant guilty of a charge alleging that on or about June 22, 1950, he allowed, permitted and suffered bookmaking on his licensed premises, in violation of Rule 7 of State Regulations No. 20.

At the hearing below, three Commissioners voted in favor of the resolution adjudging appellant guilty and two Commissioners voted against said resolution.

Upon the filing of the appeal herein, the suspension was stayed until further order of the Director. See R. S. 33:1-31.

Respondent admits that appellant did not personally participate in the alleged bookmaking, and that he had no actual knowledge that his bartender was engaging in any such activity.

On behalf of respondent, William F. Graef, Deputy Chief of Police, testified that on June 22, 1950, he spoke to the bartender at the appellant's tavern and asked him "whether or not he had been accepting any bets in the establishment". The bartender did not answer the question, but shortly thereafter handed to the Deputy Chief a slip of paper and explained that "it represented moneys people owed him on horse race bets and some other items *** which he had loaned some money to people, small amounts". The slip merely contained about eighteen names (apparently the names of various persons) and figures (apparently representing a sum of money) after each name.

A police detective testified that, while they were in appellant's premises, he heard the Deputy Chief ask the bartender what the names on the slip meant, and that the latter replied that "some of this is money he had loaned, others for bets". Another detective testified that, at Police Headquarters on the same day, the bartender indicated to the Deputy Chief, in explanation of the items on the slip, that "some of them were bets that were taken in the Town Tavern on Springfield Avenue in Irvington and others were personal loans".

There is no evidence in the case as to the date upon which the items were written on the slip introduced into evidence. The Deputy Chief testified that he did not see the bartender make any entries on the slip. Moreover, the slip does not contain the names of any horses, or odds, or race tracks or anything to connect it with horse racing or gambling.

An additional witness, whose name appeared on the slip, was called by respondent. He testified that he had placed bets with the bartender when he met him on the street in another municipality, but had not placed bets at the appellant's tavern in Irvington. He said that only once, "quite a while" before June 22, 1950, he had telephoned a bet to the bartender at the appellant's tavern. There was also offered in evidence, over objection, a statement given by another man whose name appeared on the slip. Even if this statement is admissible, it carries little, if any, weight because it refers to betting prior to December 1949.

Bookmaking has been defined by our courts as "the making or taking and recording or registering of bets or wagers on races or kindred contests". State v. Morano, 134 N.J.L. 295, 299 (E. & A. 1946). The recording of a bet is an essential element of the offense. In 24 Am. Jur. 415, under the title "Gaming and Prize Contests", it is said that "the cases are in accord that in order to constitute the offense of bookmaking, it is essential that there be some method of recording bets, and that without writing or recording there can be no bookmaking".

The evidence herein is not sufficient to sustain the charge that bookmaking was allowed, permitted or suffered at appellant's premises. Moreover, I am not satisfied from the evidence that any bets were placed with the bartender at the tavern "on or about June 22, 1950". The only competent evidence concerning the placing of any bets on appellant's premises is that of the witness who testified that on a single occasion he telephoned a wager to the bartender "quite a while" prior to June 22, 1950, and the statement referring to bets allegedly made prior to December 1949. It is doubtful if the charge, as drawn, is sufficient to include the placing of bets but, in any event, the evidence does not show that any bet was placed with the bartender at appellant's premises "on or about June 22, 1950".

Under the circumstances, I have no alternative other than to reverse respondent's action.

Accordingly, it is, on this 17th day of March, 1952,

ORDERED that the action of the respondent, in finding the appellant guilty of the charge herein and suspending his license for a period of ten days, be and the same is hereby reversed.

EDWARD J. DORTON
Acting Director.

3. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

CATHERINE RAMASCO
603 Bergenline Avenue
Union City, N. J.,

Holder of Plenary Retail Consumption License C-203, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

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

Defendant pleaded not guilty to the following charge:

"On April 12, 1951, and on divers days prior thereto, you engaged in and allowed, permitted and suffered bookmaking and gambling in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20."

At the hearing two investigators employed in the Hudson County Prosecutor's Office testified that on the afternoon of April 12, 1951, they entered the barroom of defendant's licensed premises and proceeded through the barroom to a kitchen, immediately to the rear of the barroom, where they made a search in the presence of the licensee, her sister and another woman.

The investigators testified that in between two water pipes in the kitchen they found seven slips of paper. One of the investigators, who was qualified to express an opinion by reason of the fact that he had conducted gambling investigations for three years, identified the slip as "horse bets". This investigator also testified that, at that time, the licensee told him that "she plays the races and occasionally a customer would come in and to do a favor she would take the bet from him"; that "some lad would come around nearly every day and she would place bets with him" and that "she took a couple of bets over the bar from a couple of customers the night before".

Later on the same day the licensee was examined by an Assistant Prosecutor at the Hudson County Prosecutor's Office. After said examination she signed a statement in which she identified three of the seized slips as representing bets made by her. Referring to the other four slips, the following questions and answers appear therein:

"Q These two white slips, one of which has a bet on it 1. Miss Baron, 6 Ruddy, and then 2-2-0 parley and the second white slip containing a bet on 'Sugar Drop' under the rug parley 2-0-0 and also containing another bet 'Sugar Drop' Mrs. Baron 2-0-0 parley and the yellow slip having contained a bet on 'Tilly Rose' 15-0-0 those three slips have to do with bets that somebody else gave you, is that right?

A That's right.

* * *

Q I also notice that we have another slip of paper here with a bet on it, the slip says 6--Ruddy 4-0-0, somebody outside handed you this bet to place for him? *** Somebody else handed you that one yesterday?

A Yes sir.

* * *

Q Now, who did you give your bets to?

A I wouldn't want to say.

Q Does somebody come around every day and ask you if you want to make a bet on the horses?

A No, not every day."

The evidence herein establishes that horses known as "Ruddy", "Under the Rug" and "Tilly Rose" ran at a New York racetrack on April 11, 1951.

Defendant, who was her only witness, testified that all of the betting activity took place outside the tavern, either on the sidewalk or in an automobile of the bookmaker (identified only as "Larry"), which vehicle, she alleges, was parked around the corner from the licensed premises. Specifically the defendant claimed that "Larry" would ride by the licensed premises between noon and 1:00 p.m. and blow his horn three times, and that thereupon defendant would go outside and meet him in his car. She further testified that, as to four of the betting slips which were seized by the investigators, several men approached the car, handed the slips and money to her, which she then merely handed over to "Larry". Defendant also testified that, when "Larry" paid off bets on April 12, 1951, she merely handed the money to the winner "who was waiting for it", but she could not satisfactorily explain why she was the conduit for the pay-off or why she still had in her possession the betting slips for the winning horses after an alleged "pay-off" which she claims occurred outside the tavern.

Her testimony given at the hearing is wholly unworthy of belief. I believe that she told the true story to the investigators and to the Assistant Prosecutor.

From all of the evidence, I find that defendant "engaged in and allowed, permitted and suffered bookmaking and gambling in and upon" her licensed premises on April 11, 1951.

The evidence herein does not indicate that defendant's gambling activities were widespread or continuous. Consequently, and because defendant has no prior adjudicated record, I shall impose a suspension of twenty days which is the minimum for this type of offense where the licensee personally participated in the unlawful activities. Re Ferment, Bulletin 635, Item 5; Re Jarvis, Bulletin 897, Item 9.

Accordingly, it is, on this 19th day of March, 1952,

ORDERED that Plenary Retail Consumption License C-203, issued by the Board of Commissioners of the City of Union City to Catherine Ramasco, for premises 603 Bergenline Avenue, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. March 28, 1952, and terminating at 3:00 a.m. April 17, 1952.

EDWARD J. DORTON
Acting Director.

4. DISCIPLINARY PROCEEDINGS - SPECIAL PERMITTEE - SALE TO UNAUTHORIZED PERSONS CONTRARY TO CONDITIONS OF PERMIT - PERMIT SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN A. HEIM
130 Becker Avenue
Rochelle Park, N. J.,

Holder of Special Permit SM No. 7742, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

John A. Heim, Defendant-permittee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant has pleaded guilty to a charge alleging that he sold and served alcoholic beverages to persons not members of the New Jersey National Guard, the New Jersey Naval Militia, or their bona fide guests, in violation of one of the express conditions of his special permit authorizing sale and service of alcoholic beverages at the National Guard Armory, West Englewood, New Jersey.

An examination of the within file discloses that on Saturday, February 16, 1952, alcoholic beverages were sold and served to ABC agents by an employee of defendant-permittee and also by defendant-permittee.

Special Permit SM No. 7742 specifically provides, among other things, that alcoholic beverages be sold only for on-premises consumption to members of the New Jersey National Guard, the New Jersey Naval Militia, and their bona fide guests. The ABC agents were not members of either military organization or bona fide guests of members thereof.

Under the circumstances presented in the instant case, I shall suspend the permit for a period of fifteen days, less five days' remission for the plea, or a net suspension of ten days.

Accordingly, it is, on this 13th day of March, 1952,

ORDERED that Special Permit SM No. 7742, issued by the Director of the Division of Alcoholic Beverage Control to John A. Heim, 130 Becker Avenue, Rochelle Park, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 24, 1952, and terminating at 2:00 a.m. April 3, 1952.

EDWARD J. DORTON
Acting Director.

5. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HARRY W. VANDERBACH ASSOCIATION
213 - 69th Street
Guttenberg, N. J.,) CONCLUSIONS AND ORDER

Holder of Club License CB-83, issued by the Director of the Division of Alcoholic Beverage Control.)

Vanderbach & Vanderbach, Esqs., Attorneys for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that it sold, served and delivered and allowed the consumption of alcoholic beverages on its licensed premises before noon on Sunday, in violation of a local regulation.

The file discloses that two ABC agents observed a number of men enter the side door of the club between 11:00 and 11:30 a.m. on Sunday, March 2, 1952. The agents thereupon followed another man through the same door and proceeded to the barroom in the basement, where they saw a man tending bar and eight men drinking whiskey or beer. The agents asked for beer but were refused when they admitted that they were not club members. At 11:35 a.m. the agents identified themselves. The member of the club who was acting as bartender admitted selling and serving the drinks, but claimed that he was unfamiliar with the "hours" regulations affecting club licensees.

Defendant has no prior adjudicated record. The minimum suspension for a local "hours" violation is fifteen days. Re Belvedere and Pintozzi, Bulletin 899, Item 9. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of March, 1952,

ORDERED that Club License CB-83, issued by the Director of the Division of Alcoholic Beverage Control to Harry W. Vanderbach Association, for premises 213 - 69th Street, Guttenberg, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. March 24, 1952, and terminating at 3:00 a.m. April 3, 1952.

EDWARD J. DORTON
Acting Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANNIE & SAMUEL BESTRACKY
130 Chapel Street
Newark 5, N. J.,

Holders of Plenary Retail Consumption License C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Vincent T. Flanagan, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

The defendants pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

On February 23, 1952 an ABC agent seized on defendants' premises one quart bottle labeled "Schenley Reserve Blended Whiskey 86 Proof" and one quart bottle labeled "Seagram's Seven Crown Blended Whiskey 86.8 Proof" when his field tests indicated a variance between the labels on the bottles and the contents thereof. An analysis by the Division chemist disclosed that the contents of the said bottles were not genuine as labeled. Annie Bestracky admitted pouring other whiskey into these two bottles because she was "low" on these brands.

The licensees have no previous adjudicated record. I shall suspend their license for a period of fifteen days, less five days for the plea entered herein, leaving a net suspension of ten days. Re Rustic Cabin, Inc., Bulletin 912, Item 13.

Accordingly, it is, on this 18th day of March, 1952,

ORDERED that Plenary Retail Consumption License C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Annie & Samuel Bestracky, 130 Chapel Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 25, 1952, and terminating at 2:00 a.m. April 4, 1952.

EDWARD J. DORTON
Acting Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - UNWITTING POSSESSION AND TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED - ILLICIT ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure on December 8, 1951 of two 5-gallon cans of alcohol and a Dodge truck) at the intersection of the White Horse Pike and Pump Branch Road, in the Township of Winslow, County of Camden, and State of New Jersey.	Case No. 7979 ON HEARING CONCLUSIONS AND ORDER

Carl Kisselman, Esq., by Ignazio V. DiMartino, Esq., appearing for Thomas Anthony Iannaco.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

On December 8, 1951 Trooper Joseph Demming of the New Jersey State Police stopped Thomas Anthony Iannaco while he was driving his Dodge truck on the White Horse Pike in Winslow Township because there was no tail light on the truck. The trooper then discovered that Iannaco was transporting two five-gallon cans of alcohol in the truck.

Iannaco, his truck, and the alcohol were taken into custody by the trooper and ABC agents were notified. Questioned by the officers, Iannaco told them that the cans were given to him by an unidentified man on December 5th after Iannaco had towed this man's truck from a nearby mud hole; that he understood the cans contained antifreeze for radiators and did not know that actually it was beverage alcohol.

The ABC agents took possession of the car and alcohol. There were no tax stamps or labels on the cans. The alcohol has since been analyzed by the Division chemist who reports that it is fit for beverage purposes with an alcoholic content by volume of 91.2%.

The alcohol is obviously bootleg, and is an illicit alcoholic beverage. R. S. 33:1-1(i). Such alcohol, as well as the truck in which it was transported, constitute unlawful property and both are subject to forfeiture. R. S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

At the hearing in the case, held pursuant to R. S. 33:1-66, Iannaco appeared with counsel to seek the return of his truck and at the hearing repeated the story he had previously told to the officers.

Possession and transportation of bootleg alcohol is a serious violation of the Alcoholic Beverage Law. Normally there is little, if any, substance to a claim that it was possessed and transported in good faith and in unwitting violation of the law.

It is urged that in the instant case there is merit to Iannaco's claim of innocent possession of the bootleg alcohol. It appears that at the time of the seizure ABC agents ascertained that Iannaco operated a produce business in Philadelphia with his brother, James. Thomas does not appear to have any previous criminal record. At the hearing in the case he testified that he also operated a general store in Waterford, owns a farm, and operates a brick trucking business; and that he owns a fleet of tractors and trucks which are used in his various business ventures. He is 47 years of age, married, and seems to be a man of means. Judged by these circumstances he does not appear to have had any incentive to dabble in bootleg liquor.

When apprehended, he immediately gave the officers the explanation which he repeated at the hearing. He went with them immediately to the location where he claims he towed the other man's car. The officers pointed out to him that they could not see any mud hole. Nevertheless, at the hearing he presented a number of photographs showing the condition of the road but the photographs do not clearly disclose whether or not there was a mud hole at the spot in question. On the whole Iannaco's conduct throughout appears to be that of an honest person seeking to explain his plight. It may have been a foolish action on his part to accept a gift of anti-freeze from a stranger but undoubtedly an owner of tractors and trucks would have a legitimate use for such a gift. Whatever discrepancies, if any, that appear in his detailed account of the incident are not of such serious nature as to justify rejection of his claim of innocence.

In view of all the circumstances, especially his good background, I shall give Thomas Iannaco the benefit of the doubt and accept his claim that he was entirely unaware that he possessed and transported bootleg alcohol. Accordingly, the motor vehicle will be returned to him upon payment of the costs of seizure and storage. R. S. 33:1-66(e). Forfeiture of the alcohol is not opposed.

Accordingly, it is DETERMINED and ORDERED that if on or before the 21st day of March, 1952, Thomas Anthony Iannaco pays the costs incurred in the seizure and storage of the Dodge truck, described in Schedule "A" attached hereto, such Dodge truck will be turned over to him; and it is further

DETERMINED and ORDERED that the two 5-gallon cans of alcohol 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 Acting Director of the Division of Alcoholic Beverage Control.

EDWARD J. DORTON
Acting Director.

Dated: March 11, 1952

SCHEDULE "A"

2 - 5-gal. cans of alcohol
1 - Dodge Truck, Serial No. 83308729, Engine No. T112184617, 1951 N. J. Registration X/A5652

8. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALES OF ALCOHOLIC BEVERAGES IN RESTAURANT FORMERLY LICENSED - ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS ORDERED FORFEITED - VARIOUS ARTICLES RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on September 7, 1951 of a quantity of alcoholic beverages, various fixtures, furnishings, equipment and foodstuffs at 270 Ocean Avenue, in the Borough of Sea Bright, County of Monmouth and State of New Jersey.	Case No. 7913 ON HEARING CONCLUSIONS AND ORDER

Edward F. Juska, Esq., by Clarkson S. Fisher, Esq., Attorney for Sea Bright Investment Company.
Coast Cigarette Service Inc., by Howard Boehme.
Andrew Risman, by Frank R. Dearing.
Jersey Farms, Inc., by Samuel Stern.
Majestic Amusements, by Philip Mandia.
Talco Cash Register Co., by H. Myron Tallmadge.
Michael Priyanno, Pro Se.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

On September 7, 1951, ABC agents seized 32 bottles of beer, 15 bottles of other alcoholic beverages, and furnishings, fixtures, equipment, foodstuffs, and $36.82 in cash, at a restaurant known as the "Ocean Spray Food Bar" located at 270 Ocean Avenue, Sea Bright, N. J. because of alleged unlicensed sales of alcoholic beverages therein.

Pending seizure hearing in the case, Coast Cigarette Service Inc. deposited the sum of $125.00, representing the appraised value of a cigarette vending machine and a cigar vending machine, with the Director of the Division of Alcoholic Beverage Control, under protest, pursuant to R. S. 33:1-66, and thereupon obtained return of such machines. The vending company has stipulated that whether this sum shall be returned to it, or be forfeited, shall be determined in such seizure proceeding.

At a hearing held pursuant to R. S. 33:1-66, and such stipulation, the above named claimants appeared and sought return of various items of the property seized.

ABC agents testified as follows: The establishment was equipped with a large hexagonal bar of the type usually found in a tavern. A cash register was located on a stand placed in the center area of the bar. On September 2, 1951 one of the agents was at the place, for the first time, as a casual visitor. He observed three men drinking bottled beer. He did not see any retail liquor license displayed. He went to the bar, ordered, was served with, and paid for a bottle of beer. The bartender was subsequently identified as John Halatas. The agent also observed a man, subsequently identified as John Osterstock, remove an empty beer bottle from the top of the bar and place it underneath the bar. The agent observed between 15 and 18 beer cases with beer bottles on the floor outside of and within five to eight feet of the bar. He did not check to see whether the bottles were full or empty.

On September 7th the first agent and a fellow agent entered the establishment to make further check concerning the sale of alcoholic beverages there. Halatas was acting as bartender. The agents ordered and were served by Halatas with three rounds of beer -- two bottles on each occasion -- and some sandwiches. They paid for the beer and sandwiches with bills previously identified by serial numbers, which Halatas placed in the cash register.

Another ABC agent and the local Chief of Police entered the establishment, whereupon all of the officers identified themselves and the marked bills were recovered from the cash register. The officers seized two bottles of beer which were in front of the two agents, a case of beer and about four cases of empty beer bottles on the floor outside the bar, a quantity of beer in a Coca Cola cooler outside the bar, bottles of various brands of alcoholic beverages in a cabinet behind the bar, and bottles of alcoholic beverages under a nearby staircase.

Halatas told the agents that he was employed by John Osterstock. This was confirmed by Mr. Osterstock when he arrived on the scene shortly thereafter. Osterstock said that he was the proprietor of the restaurant and that the owner of the realty was the Sea Bright Investment Company. Osterstock instructed Halatas not to sign any statement concerning the matter although Halatas verbally admitted in Osterstock's presence that he sold beer to the agents.

Neither John Halatas, John Osterstock nor Sea Bright Investment Company held any license authorizing either of them to sell or serve alcoholic beverages, and the restaurant was not licensed for that purpose.

The bottles of beer purchased by the agents and seized, are illicit because they were sold without a license. The other alcoholic beverages seized are likewise illicit because the fair inference is that they were intended for unlawful sale. R. S. 33:1-1(i). Such illicit alcoholic beverages, and the other personal property 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.

The gist of defense to forfeiture presented by Osterstock is that he possessed all of the alcoholic beverages found in the establishment for the use of himself and his friends and not for sale; that Halatas was not authorized or employed to sell alcoholic beverages.

The sale of beer in what appears to be the normal routine of the business activities of the establishment, with the proceeds placed in the cash register; the numerous cases of beer bottles in the place on each occasion; Osterstock's removal of the empty beer bottle from the bar on September 2; and the failure of Halatas to appear at the hearing to support Osterstock's contention, emphatically negative the claim made by Osterstock that the alcoholic beverages were used only by himself and friends. I am satisfied from the evidence that alcoholic beverages were being sold in the restaurant with Osterstock's knowledge and consent.

The defense to forfeiture presented by the Sea Bright Investment Company is that it is the actual legal owner of the restaurant equipment and business; that it acted in good faith and knew nothing of whatever violation of the Alcoholic Beverage Law was committed.

John Osterstock is the president of the Sea Bright Investment Company. It is actually a one-man corporation. Osterstock owns substantially all of its stock, it is under his sole control; and he manages its affairs. When leasing a cash register in June 1951 the written agreement reads: "J. S. Osterstock doing business as the Ocean Spray House". Osterstock testified that Halatas is employed by the corporation.

The owner of the restaurant, whether in legal effect John Osterstock or his corporation, knew or should have known that Halatas was selling alcoholic beverages there. I do not believe that Halatas sold these beverages without authority. The operator of a speakeasy cannot escape forfeiture of its equipment by setting up an ostensible corporate ownership of the establishment.

Neither John Osterstock nor his corporation, Sea Bright Investment Company, acted in good faith and unknowingly violated the Alcoholic Beverage Law and hence, I cannot relieve either from forfeiture of the seized property. R. S. 33:1-66(e).

In order to obtain relief herein, the other claimants must establish to my satisfaction that they 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).

There is no direct evidence that any of these claimants actually observed the presence, or sales of alcoholic beverages when at the restaurant. The troublesome question is whether the presence of the large bar placed the claimants on notice that alcoholic beverages were being sold in the restaurant, and hence required them to ascertain whether the place was properly licensed.

If such inquiry had been made it would undoubtedly have revealed that the premises in question had previously been operated as a licensed tavern and that the license had been transferred elsewhere. Thereafter, legitimate restaurant activities had apparently been carried on there and the bar had been used for the sale of food. The establishment had all outward appearances of a restaurant. The presence of the bar did not in itself signify that alcoholic beverages were being sold there. Seizure Case No. 7594, Bulletin 888, Item 6.

Since the restaurant appeared to be a legitimate business enterprise, and Osterstock and his company did not have any previous record for violating any alcoholic beverage laws, it is immaterial that some of the claimants did not investigate the character and background of the owner of the restaurant. Seizure Case No. 7092, Bulletin 766, Item 2; Seizure Case No. 7776. Accordingly, I shall recognize their claims.

It appears that the seized property includes a cigarette vending and a cigar vending machine, owned by Coast Cigarette Service Inc., returned to it on deposit of the aforesaid $125.00; an Emerson television set and table owned by Andrew Reisman; a "Dale" shooting gallery machine owned by Michael Priyanno; a Kelvinator ice cream cabinet owned by Jersey Farms Inc.; a "Rockola" music machine; a "Baby Face" pinball machine, and a Basketball machine, owned by Philip Mandia and Frank Mandia, partners trading as Majestic Amusements; and a National cash register owned by Talco Register Co.

Accordingly, it is DETERMINED and ORDERED that if on or before the 31st day of March, 1952, the above mentioned claimants pay their respective share of the costs of the seizure and storage, as allocated by the Acting Director, the sum of $125.00 will be returned to Coast Cigarette Service Inc., and the other items will be returned to the other respective claimants; and it is further

DETERMINED and ORDERED that the balance of the seized property 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 Acting Director of the Division of Alcoholic Beverage Control.

EDWARD J. DORTON
Acting Director.

Dated: March 19, 1952.

SCHEDULE "A"

32 - bottles of beer
15 - bottles of other alcoholic beverages
1 - bar
1 - Pistol Shooting Gallery machine and currency therein
1 - pin ball machine and currency therein
1 - basketball machine and currency therein
1 - Rockola Music Box and currency therein
1 - cigarette vending machine and currency therein
1 - cigar vending machine and currency therein
30 - bar stools
1 - Emerson television set and table
1 - dresser
1 - National cash register
1 - Drip-O-Lator
1 - sink
1 - Zenith portable radio
1 - bar mixer
1 - Kelvinator deep freeze
1 - Garland gas range and table
2 - wooden counters
1 - wooden ice box
2 - electric toasters
1 - Campbell Soup Kitchen
1 - Silex coffee maker
2 - Coca Cola coolers
37 - chairs
11 - tables
1 - portable typewriter
1 - safe
$36.82 in cash
Miscellaneous restaurant equipment and foodstuffs as listed in the inventory on file

9. STATE LICENSES - NEW APPLICATIONS FILED.

Lucien Ardin Inc.
559-565 Sixth Avenue, New York 11, New York.
Application filed March 18, 1952 for Wine Wholesale License.

Friedman's Express, Inc.
556 Market Street, Newark, N.J.
Application filed March 18, 1952 for Transportation License.

Joseph J. Tredy
720 - 27th St., Union City, N. J.
Application filed March 20, 1952 for State Beverage Distributor's License.

Edward J. Dorton.
Acting Director.