

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

BULLETIN 1923

August 13, 1970

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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

BULLETIN 1923

August 13, 1970

1. APPELLATE DECISIONS - FLYHA, INCORPORATED v. RIDGEFIELD.

Flyha, Incorporated,)	
)	
Appellant,)	
v.)	On Appeal
)	
Borough Council of the Borough)	CONCLUSIONS
of Ridgefield,)	AND ORDER
Respondent.)	
)	
Thomas J. Ryan, Esq., Attorney for Appellant)	
Michael L. Scherby, Esq., Attorney for Respondent)	

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent (hereinafter Council) whereby on June 17, 1969 it denied appellant's application for renewal of plenary retail consumption license for 1969-70 for premises 603 Broad Avenue, Ridgefield.

The resolution adopted by the Council reads as follows:

"WHEREAS, FLYHA, INC., a New Jersey corporation with its principal office located at 603 Broad Avenue, Ridgefield, New Jersey, has applied for renewal of its retail consumption alcoholic beverage license, for premises now known as Stage Coach Inn and situate at 603 Broad Avenue, in the Borough of Ridgefield, aforesaid; and

"WHEREAS, it is the duty of the Mayor and Council of the Borough of Ridgefield to investigate all applicants for such licenses and to exercise proper discretion in considering and granting such application; and

"WHEREAS, the following circumstances have been brought to the attention of the Mayor and Council of the Borough of Ridgefield:

(1) That despite the fact that a complete change of stockholders and ownership of said applicant corporation occurred sometime in the early part of 1969, the new stockholders failed to notify the Mayor and Council of the Borough of Ridgefield of such change, as required by law, until finally requested to do so by the Borough Clerk of the Borough of Ridgefield; and

(2) That no notice of change of trade name from the 'Stone Hearth' to the present name of 'Stage Coach Inn' was ever timely sent to the Borough Clerk; and

(3) That no proof of publication regarding the afore-

mentioned complete change of ownership was filed with the Borough Clerk of the Borough of Ridgefield, although same has been requested by said Borough Clerk on numerous occasions; and

(4) That the notice form required to be published at the time of application for renewal of the aforementioned retail consumption license describes one Josephine Sepede as a principal stockholder and director of the applicant corporation, while the application form filed lists no such person as having any interest in said corporation; and

"WHEREAS, in pursuance of its duty and obligation to intelligently consider each application and properly exercise discretion concerning same, the Mayor and Council of the Borough of Ridgefield did cause a police investigation to be made with regard to said applicant corporation, which investigation disclosed the following facts:

(1) The person always in charge of the applicant's premises, and who has complete control of all operation of the tavern known as the Stage Coach Inn, is one Anthony Barresi; and

(2) Although the application filed by Flyha, Inc., does not disclose any interest in said corporation held or controlled by said Anthony Barresi, the corporate resolution relating to banking transactions indicates that the only person authorized to sign checks on behalf of said corporation is the said Anthony Barresi, who is not an officer of said corporation, and that therefore no officer, stockholder or director of the applicant corporation is authorized to sign checks on behalf of said corporation; and

(3) The said Anthony Barresi admitted that the two persons named as the sole stockholders and directors of the corporation are his sisters; and

"WHEREAS, the Mayor and Council of the Borough of Ridgefield deem and interpret said activities and information to mean that the aforementioned corporation is under the complete domination and control of the said Anthony Barresi and that the Mayor and Council of the Borough of Ridgefield would be justified in 'piercing the corporate veil' and construing the application to be an application in fact on behalf of the said Anthony Barresi; and

"WHEREAS, the said Anthony Barresi previously applied to the Mayor and Council of the Borough of Ridgefield for a retail consumption license to operate the same premises which are herein involved, which application was, for the best interest of the Borough of Ridgefield and by way of discretion of the Mayor and Council of the Borough of Ridgefield, denied on July 6, 1967, which denial was thereafter affirmed on an appeal and hearing de novo before the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control, by way of conclusions and order of November 21, 1967; and

"WHEREAS, in addition to the foregoing the Mayor and

Council of the Borough of Ridgefield are of the opinion that the aforementioned acts of failing to notify appropriate authorities of change of corporate ownership, change of trade name and proof of publication, as required by law, indicates a lack of regard for appropriate authority and law and the Mayor and Council of the Borough of Ridgefield being of the opinion, based on all the foregoing information and facts, that the issuance of a retail consumption license to the applicant, Flyha, Inc., would be contrary to the best interest of the Borough of Ridgefield.

"NOW, THEREFORE, BE IT RESOLVED that the application for a plenary retail consumption license made by Flyha, Inc., be and the same is hereby denied."

In its petition of appeal appellant urges that the action of the Council was erroneous for the following stated reasons:

"The Appellant gave due notice to the Respondent of the change of stockholders and ownership of said applicant corporation. The notice to permit the applicant to be known as Stagecoach Inn was timely given to the Respondent. The publication referred to was admittedly an error made by the newspaper publishing the same due to a typographical error and this was brought to the attention of the Borough Clerk. The matter of the true owners of the stock of the corporation was investigated by the State ABC authorities prior to the application for renewal and found to be in good faith. The Respondent has erred in denying the renewal of this application by the Appellant."

The Council in its answer denied the substantive allegations contained in the petition of appeal.

Upon filing of the appeal an order dated July 2, 1969, was entered by the Director extending the term of appellant's 1968-69 license until further order herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

A review of the testimony and exhibits reveals the factual complex as follows: For a period of approximately five years prior to July 1968 Patrick J. Flynn (holder of ninety-eight per cent. of the stock of Flyha, Inc., also known as Fly-Ha, Inc.) operated a restaurant and tavern business at 603 Broad Avenue, Ridgefield, using the name "Stone Hearth." In the latter part of 1968 or early 1969 Mrs. Marion Abbatiello, Borough Clerk of Ridgefield, noted a change in the name of the tavern from "Stone Hearth" to "Stage Coach Inn" and brought this to the attention of the Mayor and Council and the State Division of Alcoholic Beverage Control.

By letter dated April 22, 1969, Flyha, Inc. was informed by the Division that a recent investigation conducted by it disclosed that there had been a change in the stockholders of the corporation and that it had failed to file notice of such change with the local issuing authority and to cause the notice of change to be published in compliance with

Rules 11, 12 and 13 of State Regulation No. 2 and R.S. 33:1-34. Flyha was directed to comply therewith within ten days. A copy of the aforesaid letter, which had been sent to the Borough and stamped received by Borough Clerk's office April 25, 1969, was marked R-7 in evidence.

The Borough Clerk denied ever seeing a copy of a letter dated April 24, 1969, purportedly sent by H. Dick Cohen, former attorney for appellant, to the Borough Clerk informing him that Flynn and his associates had agreed to sell all of their shares of stock in Flyha, Inc. to Jennie DeMuro and Josephine Sepede and that it was their intention to operate the business at the present address under the name "The Stage Coach Inn" (R-4 in evidence). The Borough Clerk admitted receiving an undated letter signed by Jennie DeMuro on May 29, 1969 and stamped "received" on the same day which stated that she and Josephine Sepede had purchased all of the stock in Flyha from the former stockholders in "the early part of 1969" (R-1 in evidence).

On behalf of appellant Anthony J. Barresi testified that his sisters Josephine Sepede and Jennie DeMuro own all of the stock of the corporate appellant and that he is the manager of the restaurant and bar business conducted by it. At the time of the hearing his sisters were in Florida for a rest after having been hospitalized for some time before then.

The appellant maintained a corporate checking account in National Community Bank in Ridgefield. He is the only individual authorized to issue checks, purchase liquor and bar materials. The main reason for being given sole authority to sign checks was so he "wouldn't have to go chasing around for a co-signature." He compared this operation with his management of a large farm in Morris County in behalf of one of his sisters and her husband where he had complete charge, including authorization as sole signer of checks, purchasing, hiring and firing. He had frequent meetings with his sisters concerning the operation of the business. He is not aware of any complaints having been made concerning the operation of the tavern since July 1968.

H. Dick Cohen (a New Jersey attorney) was entrusted with all of appellant's legal matters, including making of all of the required applications to the licensing authority. It was his impression that the Borough Clerk had been given timely notice of the change of trade name from "Stone Hearth" to "Stage Coach Inn." A letter dated June 10, 1969, sent by Attorney H. Dick Cohen to the Clerk of the Borough of Ridgefield enclosing a certified copy of a trade name certificate filed by Flyha, Inc., trading as The Stage Coach Inn, with the County Clerk, was marked A-1 in evidence. A copy of the aforesaid trade name certificate dated May 12, 1969 was marked A-2 in evidence. It listed Josephine Sepede and Jennie DeMuro (president and secretary, respectively, of Flyha, Inc., trading as The Stage Coach Inn) as the only persons interested in the firm. An affidavit of publication of a notice in the "Bergen Bulletin" (a local newspaper) on June 5 and June 12, 1969, that appellant Flyha, Inc., trading as Stage Coach Inn, had applied to respondent for a plenary retail consumption license, was marked A-3 in evidence. These matters were the concern of attorney Cohen.

The decision to refurbish the restaurant and to change its type of operation was mutually agreed upon among the witness and his sisters.

A check dated October 1, 1968, signed by Anthony J. Barresi for Flyha, Inc., payable to Edwin Muller, Attorney, in the sum of \$500 for services rendered in connection with the transfer of the corporate stock of Flyha, Inc. and for other services, to which was attached a bill for services dated September 19, 1968, unsigned and bearing no letterhead and addressed to "Flyha, Inc., Mrs. Josephine Sepede and Mrs. Jennie DeMuro" for services rendered in connection with the stock transfer and for other services, and a closing statement for the sale of said stock dated August 14, 1968, signed by Jennie DeMuro, Josephine Sepede and Patrick J. Flynn, were received in evidence as Exhibits A-4 and A-5 respectively. The witness was also present at the closing.

On cross examination the witness reiterated that the change in stockholders of Flyha took place in August 1968; he was aware that notice of change of corporate ownership had to be given, and he had assumed that the publication of the change had been attended to by attorney Cohen. He conceded receiving a notice from the Borough or from the Division informing him that it was incumbent upon the corporation to give notice of change of ownership. Inasmuch as the transfer and closing had transpired in August 1968, the statement in R-1 to the effect that the change of stockholders occurred in the early part of 1969 did not "make sense" to him. His sisters go to the tavern at least weekly when they are physically able. No checks have been drawn to his sisters because the business has not been profitable. Up to the date of the hearing, he is the only person authorized to sign checks in behalf of the corporation. He denied ever telling anyone that he is the owner of the Stage Coach Inn.

Barresi admitted signing an undated trade name certificate for The Stage Coach Inn conducting the business of restaurant, bar and grill, said certificate having been sworn to on October 16, 1968. The certificate was prepared by Cohen and stated that he (Anthony J. Barresi) and Josephine Sepede were the owners thereof. He asserted that he and his attorney were in error in the execution thereof. If he had read it thoroughly, he would not have signed it. The certificate which bore the authentication that the original thereof had been filed in the office of the County Clerk on October 16, 1968 was received in evidence as R-2. It was his recollection that the name change to "Stage Coach Inn" and a new sign bearing that name was placed on the exterior of the premises in the Fall of 1968. He had assumed that the attorney had informed the Borough Clerk of the change of name to "Stage Coach Inn" prior to June 1969, at which time a second trade name certificate had been filed with the County Clerk indicating that Josephine Sepede and Jennie DeMuro were the persons interested in the business (A-1 in evidence). Attorney Cohen did not inform him that he had not notified the Borough. Acting on advice of their physician (who had prescribed a two-weeks rest period), both of his sisters went to Florida about three weeks prior to the date of this hearing (January 30, 1970). It had been his impression that both would be available for the hearing. A letter handed to Barresi by Dr. C. T. Markert, dated January 29, 1970, was given to appellant's substituted attorney and was received in evidence as Exhibit R-3. Barresi had requested the doctor to furnish him with a letter stating why the sisters had to stay in Florida. Dr. Markert's letter stated:

"To Whom It May Concern:

This is to advise that Mrs. Josephine Sepede is in Florida at this time and for the next several

weeks upon my advice.

Mrs. Sepede suffers from a heart condition.

Sincerely,
Dr. C. Markert."

Barresi asserted that he did not read the letter prior to handing it to the substituted attorney.

He did not furnish any financing to his sisters for the purchase of the stock of the corporation. An agreement dated August 14, 1968, executed by Josephine Sepede and Jennie DeMuro as pledgors, and Patrick J. Flynn as pledgee, providing for this pledge of corporate appellant's stock, was marked in evidence A-7.

On redirect examination the witness testified that R-2 (the trade name certificate that had been executed by Josephine Sepede and Anthony J. Barresi) was prepared at Cohen's office and mailed to him for signature. It was for that reason that he signed the certificate.

On recross examination Barresi testified that he swore to the truth of the statements contained in R-2 before the notary public; however, he was careless and unthinking as to what the document had represented.

At this point appellant rested its case.

A trade name certificate for "The Stage Coach Inn", stating that Josephine Sepede and Anthony Barresi were the owners thereof, sworn to and filed in the Bergen County Clerk's office on October 16, 1968 (see infra R-2), bearing the certification of the Bergen County Clerk dated December 30, 1969 that the original was still on file in that office, was received in evidence as Exhibit R-5.

Respondent's attorney asserted that he had subpoenaed both Mrs. Sepede and Mrs. DeMuro to testify and noted that they were not present at the hearing. Most of the previously scheduled hearings had been adjourned due to representations that either or both of them were ill. He was not informed of their unavailability until the evening prior to the hearing, although both had been in Florida the past three weeks. Appellant's attorney represented that its prior attorney was ill, and for that reason respondent was not informed of the absence of the two women from the State. However, he informed respondent's attorney of their absence as soon as he had knowledge thereof.

Arthur H. Miller, an administrative assistant of National Community Bank (Ridgefield branch), produced the original corporate signature card filed with that office showing that Anthony J. Barresi (manager) was exclusively authorized to sign checks and other commercial paper, and to borrow money from the bank in behalf of the corporation. This item was received in evidence as Exhibit R-6. The account was opened on September 6, 1968, and it was in nowise amended except for a change of name. The trade name certificate (R-2), which Barresi asserted he had executed in error, had been filed with the bank. It bore the stamp mark "Ridgefield Office" and the account number. Flyha filed no other trade name certificate with the bank.

In addition to testifying as indicated supra, Mrs. Marion Abbatiello (who had been Borough Clerk for a period of

eleven years) stated that she had not received proof of publication of change of corporate ownership; the only proof of publication she received was in June 1969 which referred to the annual application for renewal of license.

On cross examination the witness asserted that she had no knowledge of any complaint against Flyha other than as above stated; the notice of renewal application published in June 1969 and the letter which she received from Mrs. DeMuro on May 29, 1969 (R-1) did contain the names of the corporate officers.

The medical certificate of Dr. Herbert Pardell dated October 20, 1969, indicating that Jennie DeMuro was recovering from an acute myocardial infarction, was admitted in evidence, A-8. A newspaper known as "Bergen Bulletin" published on June 12, 1969, indicating that the notice of the application for the renewal of its license by Flyha was published on June 5, 1969, was received in evidence as A-9. It was stipulated that the name Joseph Sepede should have read Josephine Sepede.

In adjudicating this matter it should be noted that Rule 11 of State Regulation No. 2 provides that, when there is any change in corporate stockholdings whereby any person acquires more than 10% of the stock of any corporation, the licensee shall cause a written notice of such change to be filed with the municipal issuing authority within ten days after the occurrence thereof. Rule 12 of the said regulation provides that in every such case the corporate licensee shall, within the same time, cause to be published a Notice of Change in Corporate Structure and sets forth the form thereof, and Rule 13 provides for the publication of said notice in a newspaper and that proof of such publication shall be furnished by the licensee to the local issuing authority in affidavit form within ten days after publication thereof.

R.S. 33:1-34 provides that:

"Whenever any change shall occur in the facts as set forth in any application for license, the licensee shall file with the commissioner or other issuing authority, as the case may be, a notice in writing of such change within ten days after the occurrence thereof; said change, when so notified, shall thereupon become part of said application for license to the end that subsequent changes must likewise be so notified; but no notice need be given by corporate licensees of changes in stockholdings therein unless and until the aggregate of such changes, if made before the time of said application, would have prevented the issuance of the license."

It is apparent that the licensee at no time complied with Rules 12 and 13 of State Regulation No. 2. It is also apparent that the licensee did not notify the local issuing authority of the change in stockholding, in compliance with Rule 11, until May 29, 1969 (see R-1) which was approximately one month after the Division sent it notice directing it to comply with the aforesaid rules and the Alcoholic Beverage Law and approximately nine months after the change occurred.

In appraising the overall spectrum of the factual complex, my attention is focused upon the fact that in 1967 Barresi had applied to the Borough of Ridgfield for a person-to-person transfer of plenary retail consumption license C-3 held by Patrick J. Flynn, t/a Stone Hearth, at premises 603 Broad Avenue, Ridgfield, to himself. Ridgfield denied the application for the

stated reasons that (1) in the year 1959 Barresi was convicted of assault and battery in the municipal court of Little Ferry and (2) Barresi had an interest (50%) in Great Arrow Investment Corp. which operated a restaurant and tavern in Little Ferry known as "The Stage Coach Inn" which had its license revoked. See Re Great Arrow Investment Corp., Bulletin 1341, Items 1 and 2. Parenthetically, it should be noted that the corporate licensee was found guilty by the Division of four charges, one of which was that two agents of this Division received a severe beating, necessitating hospital treatment, and that Anthony Barresi participated in the assault and battery committed upon the agents. Upon appeal (Barresi v. Ridgefield, Bulletin 1770, Item 2), the Division affirmed the action of the local authority. In that appeal to the Division, which was heard de novo, my attention is focused upon the following testimony offered by Barresi:

"I went through the procedure of purchasing this place rather deeply and, in fact, almost -- I have made some few changes in it, figuring I would run into no problem making it certainly a completely different operation from what it was, more or less clean-cut operation, and so forth, and certainly for the betterment of the town..."

"Q I don't understand what you mean when you say you made changes and are operating it.

"A Not really operating it but I had been involved in it figuring I would run into no problems with the Borough for any reason."

Questioned by his attorney with respect to the above statement, he insisted that Flynn was, in fact, operating the premises at the present time. He was then asked the following:

"Q You have expended money for plans for redecoration, etcetera?

"A Yes, but it is completely his operation. I have nothing to do with the operation."

On cross examination Barresi retracted his previous statement and stated that he did not invest any money in the improvement of the premises; that his only investment was for "legal fees and so on."

Again, returning to the instant appeal, I am also impelled to consider the following circumstances: (1) Admittedly, the corporate resolution filed with the bank (R-6) invests Barresi with sole authority to sign negotiable paper and obtain credit. His reasoning that he did not want to "go chasing around for a co-signature" is specious. Many corporate enterprises do not provide for co-signatures. However, frequently, in order to facilitate the operation of the business, one person, of several, is authorized to sign checks; (2) After failing in his attempt to obtain a transfer of the license to him in 1967, a corporate transfer of stock was arranged in 1968 wherein Barresi's two sisters, whom it is conceded knew very little concerning the operation of the business, became the sole stockholders and officers, and they entrusted him with full and complete authority to purchase, hire and fire. Additionally, on October 16, 1968 Barresi signed and swore to the truth of the contents of a trade name certificate (R-2), the original of which was filed in the office of the appropriate County Clerk and a copy thereof lodged with the bank, which stated that he and Josephine Sepede were the

owners of the restaurant and tavern business conducted at the aforesaid address under the name "The State Coach Inn." No cancellation of this trade name certificate was ever filed. It is my considered judgment that Barresi was trying to gain admission through "the rear door" after failing in his attempt to enter through "the front door."

As was so aptly stated in Barresi v. Ridgefield, *supra*, it is basic that the transfer of a liquor license is not an inherient or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. A license to vend intoxicating liquor is merely a temporary permit or privilege to do what would otherwise be illegal. Kravis v. Hock, 135 N.J.L. 259 (Sup.Ct. 1947). It is not a contract. It is not property. R.S. 33:1-26; In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). The unique position of a liquor licensee was outlined in Blanck v. Magnolia, 39 N.J. 484, 490 (1962):

"From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied...."

No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Paul v. Gloucester County, 50 N.J.L. 585. To obtain a transfer of a license from person to person, the transferee must qualify as an original licensee. Neiden Bar & Grill, Inc. v. Newark, 40 N.J. Super. 24 (App.Div. 1956). The test in the issuance of liquor licenses is whether the public good requires it. Paul v. Gloucester County, *supra*. In Zicherman v. Driscoll, 133 N.J.L. 586, 588, the court said:

"...The common interest of the general public should be the guide post in the issuing and renewing of licenses."

Furthermore, there has been no proof that the Council's action was based upon any improper motives. Bumball v. Burnett, 115 N.J.L. 254 (1935). Since the Council has determined that a grant of the said application would be inimical to the best interests of the community, a reversal of its action is justified only where its refusal was the result of intentional discrimination or other arbitrary action. Such was not established herein. Cf. Federici's Hideaway, Inc. v. Belleville, Bulletin 1595, Item 2; Chestnut Wines & Liquor, Inc. v. West Orange, Bulletin 1740, Item 1.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Or, to put it another way, where reasonable men, acting reasonably, determine that the license should not be renewed, the Director should affirm such determination in the absence of a finding that the "act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

After considering all of the proofs herein, it is my judgment that the respondent acted reasonably and in the public interest.

It is therefore recommended that the respondent's action in denying appellant's application for renewal of said license be affirmed and the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report and argument in support thereof were filed by the attorney for the appellant pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel, the Hearer's report and the exceptions thereto, which I find to be lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 11th day of June 1970,

ORDERED that the action of the respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on July 2, 1969, extending the term of appellant's license for the 1968-69 licensing period pending the determination of the appeal, be and the same is hereby vacated, effective immediately.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - CLUB ALI BABA, INC. v. PATERSON.

CLUB ALI BABA, INC.,)
t/a CLUB ALI BABA,)
Appellant,)
v.)
BOARD OF ALCOHOLIC BEVERAGE)
CONTROL FOR THE CITY OF)
PATERSON,)
Respondent.)

ON APPEAL
ORDER

Schiffman, Browne & Galluccio, Esqs., by Harvey R. Browne, Esq.,
Attorneys for Appellant
Joseph L. Conn, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from the revocation on May 13, 1970 by respondent Board of Alcoholic Beverage Control for the City of Paterson of plenary retail consumption license C-123 issued to appellant for premises 98 Straight Street, Paterson.

Prior to hearing, appellant's attorneys advised me that the appeal was withdrawn.

No stay of the order of revocation by respondent was granted by this Division pending the outcome of the appeal.

Accordingly, it is, on this 15th day of June 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - PURCHASE FROM UNAUTHORIZED SOURCE -
LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

EDNA LACEY)
t/a Jamaica Inn)
506 Market Street)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-31, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Newark.)

Horowitz, Bross & Sinins, Esq., by Irwin A. Horowitz, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that on a date during the latter part of January or early February 1970, she purchased or obtained sixteen (16) cases of various brands of champagne from an unauthorized source, in violation of Rule 15 of State Regulation No. 20.

Reports of the investigation disclose that fourteen cases of various brands of champagne were found stored in the stock-room and in an adjacent room on the licensed premises, without any supporting invoices. Licensee's manager, in a signed and sworn statement, admits that this stock remained from an order of sixteen cases of champagne he purchased in the latter part of January or early February 1970, from a man he had never seen before, who came in the premises at about 8:30 or 9:00 p.m. and offered to sell and immediately deliver the sixteen cases at Five (\$5.00) Dollars a case and that he accepted the offer and delivery without raising any question of the man as to whether or not he was a licensee or a licensed solicitor of a licensee authorized to sell alcoholic beverages to retailers for resale. The filed wholesale price of champagne of brands in question averaged Nineteen (\$19.00) Dollars a case. From all the facts and circumstances, a permissible inference may be drawn that the champagne had been stolen and that the manager either knew or suspected it had been stolen. I so find.

Absent prior record, the license will be suspended for seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days. Re Gold-Ross, Inc., Bulletin 1811, Item 2.

Accordingly, it is, on this 15th day of June 1970,

ORDERED that Plenary Retail Consumption License C-31, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Edna Lacey, t/a Jamaica Inn, for premises 506 Market Street, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970,*commencing at 2:00 a.m. Monday, June 29, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Monday, September 7, 1970.

RICHARD C. McDONOUGH
DIRECTOR

* Amended order entered June 24, 1970 deferring dates of suspension for period commencing 2:00 a.m. Wednesday, July 29, 1970 and terminating at 2:00 a.m. Wednesday, October 7, 1970.

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE ORDERED FORFEITED AND SOLD AT PUBLIC SALE - CLAIM OF INNOCENT LIENOR OF MOTOR VEHICLE RECOGNIZED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 12,284
December 14, 1969 of a quantity of)	
alcoholic beverages and a Chevrolet sedan)	ON HEARING
on Public Highway 42, in the City of Camden,)	CONCLUSIONS
County of Camden and State of New Jersey.)	AND ORDER

Chivian & Chivian, Esqs., by Louis Chivian, Esq., appearing for claimant, General Motors Acceptance Corporation.
Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, of the Revised Statutes of New Jersey and State Regulation No. 28, to determine whether nine containers of alcoholic beverages and a 1966 Chevrolet, more particularly described in an inventory annexed hereto, made part hereof and marked Schedule "A", seized on December 14, 1969 on Public Highway 42, 1/2 mile south of Morgan Boulevard, Camden, N.J. constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, the only appearance entered was on behalf of the General Motors Acceptance Corporation, which sought recognition of its lien upon the said motor vehicle.

The file of this Division, which contained the reports of the State trooper and other documents, reflects the following: On December 14, 1969 at 6:00 P.M. a State trooper observed two automobiles parked in a U-turn area of State Highway 42 in Camden, and two men were standing between the Chevrolet and another car. The Chevrolet was later identified as belonging to Willie L. Pugh. When these men saw the State trooper approach, they entered their respective cars. The State trooper stopped and questioned them. While they were exhibiting their license, the trooper smelled an odor of alcohol coming from the Chevrolet motor vehicle. He observed a 4/5 bottle of White Label Dewar's Blended Scotch Whisky on the front floor of that vehicle. He checked the vehicle further

and found, in the trunk, eight one-gallon jugs of untaxed alcohol along with a metal tub of corn mash. None of the containers of alcohol had affixed to them any stamps indicating payment of tax.

The trooper took possession of the alcohol, all of which were turned over to agents of this Division.

Pugh was thereupon placed under arrest, and charged with illegal possession and transportation of alleged untaxed alcohol in violation of R.S. 33:1-2; R.S. 33:1-50; and he was also charged with possession of a deadly weapon. R.S. 33:2A:1-51-41.

On December 31, 1969, a sample of one of the seized bottles was analyzed by the Division chemist who reports that it is an alcoholic beverage, fit for beverage purposes, with an alcoholic content by volume of 47%. The alcoholic beverages seized herein are illicit because they are untaxed and were illegally transported. Thus, the said beverages and the motor vehicle in which they were transported, constitute unlawful property and should be forfeited. R.S. 33:1-1(x & y); R.S. 33:1-2; R.S. 33:1-50; R.S. 33:1-66; Seizure Case No. 11,765, Bulletin 1715, Item 7.

The file which was admitted into evidence contained the affidavit of mailing; affidavit of publication; chemist's report certified by the Director and the inventory.

Robert S. Sinnett, credit supervisor of the General Motors Acceptance Corporation, testified in support of its lien claim on the said vehicle. He gave the following account: The General Motors Acceptance Corporation purchased the conditional sales contract dated June 15, 1967 signed by Willie L. Pugh covering the said motor vehicle.

Prior to the said purchase of this contract by this claimant, a background investigation was made on its behalf by the Camden Credit Bureau. The investigation disclosed that Pugh was married, owned the home in which he lived, was steadily employed for the past 20 years as a processor at a local pickle factory and had a good credit rating. Nothing derogatory was uncovered in this investigation after contacts were made with the local bank, with which Pugh had business relations.

The witness further stated that there is now due to the said claimant, as of the date of the hearing herein, a total of \$301.64. He appraised the value of the vehicle, depending upon its condition, at \$750.00 to \$800.00, although he admitted that the wholesale blue book value would be between \$850.00 and \$900.00. The witness also stated that this vehicle was originally purchased for \$3,455.00, on which \$1,377.15 was paid in cash at the time of the purchase and 30 regular monthly payments were made thereon. Finally, he added that this claimant did not know or have any reason to believe that this vehicle would be used in unlawful liquor activity.

I am satisfied from the evidence presented that the claimant acted in good faith, and did not know, or have any reason to believe, that Pugh would be involved in the unlawful transportation and possession of the illicit alcoholic beverages for which this motor vehicle would be used. Seizure Case No. 10,975, Bulletin 1507, Item 3; Seizure Case No. 10,448, Bulletin 1383, Item 5.

A Hearer's Report was specifically waived by the claimant herein.

I shall, accordingly, recognize the lien of the General Motors Acceptance Corporation upon the motor vehicle in question to the extent due on its conditional sales contract in the sum of \$301.64. It appears that the retail value of the 1966 motor vehicle as listed in the standard NADA blue book is \$1,255.00. The appraised retail value of the said motor vehicle substantially exceeds the amount of the lien claim and the cost of seizure and storage.

Accordingly, it is on this 23rd day of June, 1970

DETERMINED and ORDERED that the Chevrolet sports coupe described in Schedule "A", constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66, and that it be offered for sale, at public sale, pursuant to State Regulation No. 29, and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained; and it is further

DETERMINED and ORDERED that, if the said Chevrolet sports coupe is sold, out of the proceeds of said sale there shall be first deducted the cost of seizure, storage and sale as may have been incurred or may be incurred; second, out of the balance, if any, there shall be paid to the General Motors Acceptance Corporation its lien claim recognized to the extent of \$301.64; and third, the balance of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

DETERMINED and ORDERED that the seized alcoholic beverages, as set forth in Schedule "A", attached hereto, 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.

RICHARD C. McDONOUGH
DIRECTOR

SCHEDULE "A"

- 9 - containers of alcoholic beverages
- 1 - 1966 Chevrolet sports coupe, Serial No. 1643Y193571, Engine No. 78436672, N.J. Registration ITL-267.

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PATIO COURT MOTEL, INC.)
t/a Sharon Motor Inn)
Route 73, 1000' South of the)
Maple Shade Circle)
Maple Shade, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Township Committee of the Township of Maple Shade.)

S. M. Gretzkowski, Jr., Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on April 8, 1970, it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Charcoal Hearth, Inc., Bulletin 1908, Item 9.

Accordingly, it is, on this 25th day of June 1970

ORDERED that Plenary Retail Consumption License C-19 (as renewed for the 1970-71 licensing period), issued by the Township Committee of the Township of Maple Shade to Patio Court Motel, Inc., t/a Sharon Motor Inn, for premises Route 73, 1000' South of the Maple Shade Circle, Maple Shade, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Thursday, July 2, 1970, and terminating at 3:00 a.m. Tuesday, July 7, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 POLLYANN SKEARS)
 t/a Brass Rail)
 Mt. Rt. #12)
 Lopatcong Township)
 PO Phillipsburg, N. J.)
 Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of Lopatcong Township.)

CONCLUSIONS AND ORDER

Licensee, Pro se.
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on March 25, 1970, she possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Wallace, Bulletin 1906, Item 13.

Accordingly, it is, on this 26th day of June 1970

ORDERED that Plenary Retail Consumption License C-3 (as renewed for the 1970-71 licensing period), issued by the Township Committee of Lopatcong Township to Pollyann Skears, t/a Brass Rail, for premises Mt. Rt. #12, Lopatcong Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Saturday, July 4, 1970, and terminating at 2:00 a.m. Tuesday, July 14, 1970.



Richard C. McDonough
Director