

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

I. E. Amada

BULLETIN 1228

JUNE 26, 1958.

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

BULLETIN 1228

JUNE 26, 1958.

1. APPELLATE DECISIONS - KAHN'S LIQUOR SHOP v. CALDWELL AND  
SUNRISE MARKET, INC.

KAHN'S LIQUOR SHOP,	)	
	)	
Appellant,	)	
-vs-	)	
	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH	)	
OF CALDWELL, and SUNRISE MARKET,	)	
INC., t/a SUNRISE SHOP RITE,	)	
	)	
Respondents.	)	

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Leonard Brass, Esq., Attorney for Appellant.  
Julius Y. Krill, Esq., Attorney for Respondent Borough Council.  
Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.,  
Attorneys for Respondent Sunrise Market, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Borough Council of the Borough of Caldwell whereby, by a four to two vote, it granted the application of Sunrise Market, Inc., to transfer its plenary retail distribution license from 275 Bloomfield Avenue to 478 Bloomfield Avenue in the Borough of Caldwell.

"The basic facts are that the licensee discontinued the operation of its food market located at 275 Bloomfield Avenue and obtained from the Borough Council a transfer of its license to a larger food or super market which it opened at 478 Bloomfield Avenue, next door to appellant.

"Appellant's primary objection to such transfer is that it represents unfair competition in that his business will be seriously and adversely affected thereby and, hence, that the respondent Council acted unreasonably in granting such transfer. This objection is not a factor in the case. Kelley v. Manalapan, Bulletin 531, Item 3. In the cited case, a tavern license was transferred to a location directly opposite Kelley's tavern thus furnishing added competition. Commissioner Driscoll stated:

"An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing licensee will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual. It is settled that a denial of a license may not be predicated upon the sole ground of injury to the profitable conduct of the business of existing licensees. Sobocienski et al. v. Newark et al., Bulletin 239, Item 8; Licata v. Camden, Bulletin 342, Item 1; Delia v. New Providence et al., Bulletin 408, Item 3; Turetsky v. Garfield, Bulletin 524, Item 3."

"To like effect see Jamison v. Liberty, Bulletin 640, Item 7, and Schuster v. Union et al., Bulletin 754, Item 2.

"The transfer was granted by the respondent Council at a meeting at which representations of the appellant's attorney and counter representations by counsel for the licensee were the only matters presented. At the appeal herein, appellant was to all intents the only objector to testify since the only other witness presented on his behalf was a housewife residing in a nearby community, who had only a casual notion of the issues involved, had no previous opinion as to the number of licenses sufficient to supply the needs of the community, and merely voiced a personal objection to the location of the license at the new address.

"It appears that written objections of the appellant were considered by the respondent Council and spread upon the minutes of the meeting. The pertinent excerpts of such objections, aside from those presenting the aspects of competition, were that a greater number of customers at the new location would be women and children and, hence, the transfer would be undesirable, and that there was a greater need for the license at the old location than at the new. Counsel for appellant reiterated in effect this viewpoint in his representations to the respondent Council.

"A super market as such enjoys no special advantage or disadvantage over any other type of retail establishment insofar as a location for a liquor license is concerned. Schneider et al. v. Parsippany-Troy Hills et als., Bulletin 1209, Item 2.

"Thus, the only matter to be considered is the geographical location of licensed package stores in the area, which is the primary shopping district for Caldwell and other neighboring municipalities with a shopping patronage estimated at 40,000 to 50,000 persons.

"The shopping area extends approximately 1600 to 2000 feet, for eight blocks on the north side and for six blocks on the south side of Bloomfield Avenue. The Sunrise Market premises formerly were located at the extreme easterly end of such avenue and the appellant's licensed premises are presently located at the extreme westerly end thereof. From the former Sunrise Market premises, located near Forest Avenue on the north side of Bloomfield Avenue, and running west to Central Avenue, a distance of six blocks, the Sunrise package store license was on the first block and three other such licenses are presently located in the third, fourth and fifth blocks, respectively. On the south side of Bloomfield Avenue there are three such licensed premises, one located in the second block and two in the third block running westerly from the direction of Forest Avenue. Formerly there appears to have been two or three other licensed retail liquor establishments on the same block with the Sunrise license at 275 Bloomfield Avenue, either next to another or separated by one intervening business establishment. For clarity, the package store licensed premises on the north side of Bloomfield Avenue, aside from number 275, are numbered 345, 363 and 391; those on the south side are numbered 344, 354, 372 and 480, the last-mentioned being appellant's licensed premises.

"The section of the area from Forest Avenue to Central Avenue, consisting of six blocks on the north side and five on the south side of Bloomfield Avenue, formerly was, and presently is, a heavy shopping district. The section from Central Avenue running west to Prospect Street (to which section the appellant

transferred his license in 1950 from the area east of Central Avenue) consisting of two blocks on the north side and a very large block on the south side of Bloomfield Avenue, formerly was a lesser shopping area. However, in the past ten years, a marked increase in business establishments has gravitated to that area. In the period mentioned, three new buildings have been erected there -- a department store and the building where Sunrise is presently located, formerly occupied as an Acme Super Market, on the south side of Bloomfield Avenue and a telephone building on the north side. In addition, there are a number of business establishments located in the older buildings on the south side of Bloomfield Avenue, such as a gas station, an A. & P. Market, an ice cream store, a barber shop, an electrical appliance store, a hardware store, a dealer in sewing machines and an automobile appliance store. On the north side there is an automobile agency, a used car lot, a wholesale and retail electrical supply store, and a restaurant and bus station on the corner of Central Avenue and Bloomfield Avenue. Some of these businesses were recently established and considerable free parking has been provided in this section, whereas the other section only has a metered municipal parking area.

"The net effect of the transfer in question is to locate another package liquor store in this section thus reducing to six the number of such licenses in the older section.

"To my mind the mere recital of these facts evidences that this action of the majority of the respondent Council was not an arbitrary, unreasonable or capricious act.

"The guiding principles on applications of this nature have been stated time and again. In the language of DeCicco and Rula v. Manville, Bulletin 467, Item 1:

'This Department has repeatedly held that, in accordance with the principle of "home rule," determination as to the geographic distribution of retail liquor licenses in a municipality and as to the number of licenses to be permitted in any area lies within the sound and bona fide discretion of the local issuing authority. See Rosenvinge v. Metuchen, Bulletin 249, Item 6, and Raynor v. West Deptford, Bulletin 462, Item 5, and cases there cited.'

Similarly, in O'Bertz v. Perth Amboy, Bulletin 1011, Item 1, it was said:

'While it is true that, generally, the question of public necessity and convenience is paramount in determining whether a license should be granted for a particular location, the instant case involves not the issuance of a new or additional license but the place-to-place transfer of a license which has been in existence for many years within this same business area. In such cases it has been held that the mere fact that other licensees also serve the same neighborhood is not a valid reason for denying a place-to-place transfer from one location in a neighborhood to another location in the same neighborhood, since no increase in concentration of licenses results from such transfer. Kupay v. Passaic, Bulletin 803, Item 9; Grower v. Hackensack, Bulletin 789, Item 1, Costa v. Verona, Bulletin 501, Item 2.'

See Geltzeiler v. Newark, Bulletin 1171, Item 1, to like effect.

'The question as to whether licensed premises shall be permitted in a particular section of the municipality is a matter confided to the sound discretion of the issuing authority. Carriell v. Newark et als., Bulletin 1043, Item 2. On appeal the burden of showing that the municipal issuing authority abused its discretion rests with the appellant. Rule 6 of State Regulation No. 15.' Klein & Tucker v. Fair Lawn et als., Bulletin 1175, Item 3.

"I have also given consideration to other objections (1) that the issuing authority failed to take testimony at the hearing on the objections but merely acted upon representations of counsel (the underlying facts were not really in dispute, see Nordco, Inc. v. State, 43 N. J. Super. 277); (2) that there was other irregular conduct by such issuing authority when considering the application; and (3) that a super market where minors are likely to be employed and signs likely to be displayed to induce patrons to shop there, is not a proper place for a retail liquor license, and do not find that such objections have any serious impact on the merits of the matter or furnish any grounds for reversal of the action of the issuing authority.

"In my opinion appellant has not sustained the burden of proof of establishing that the action of the issuing authority in granting transfer of the license was erroneous. I recommend, therefore, that an order be entered affirming this action."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 28th day of April, 1958,

ORDERED that the action of respondent Borough Council of the Borough of Caldwell be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PERMITTING OBSCENE LANGUAGE - HINDERING - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

ORANGE SPORTSMEN'S CLUB, INC. )  
647 Scotland Road )  
Orange, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-4, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Orange. )

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James A. Palmieri, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On Sunday, March 9, 1958, between 11:20 a.m. and 12:42 p.m., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed the consumption of alcoholic beverages on your licensed premises; in violation of Section II of an Ordinance adopted by the Board of Commissioners of the City of Orange on July 7, 1936, as amended December 19, 1939.

"2. On Sunday, March 9, 1958, between 12:42 p.m. and 1:20 p.m., you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.

"3. On Sunday, March 9, 1958, between 12:40 p.m. and 1:20 p.m., you, through your officers, directors, stockholders, agents, servants, employees and other persons in your behalf, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by an Inspector and an Investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R. S. 33:1-35."

The file herein discloses that at 11:20 a.m. Sunday, March 9, 1958, ABC agents (hereinafter referred to as Agents D and S) arrived in the vicinity of defendant's licensed premises and from a vantage point observed several men enter and leave the tavern between 11:38 a.m. and 12:11 p.m. At 12:40 p.m. Agent S knocked on the locked front door of defendant tavern and, in response, a man shouted "one o'clock." When Agent S displayed his badge and made known his identity, the man ran back into the barroom. Agent D, peering through the front window, observed a female and five males seated at the bar behind which was a bartender and upon which were glasses and whiskey bottles. Shortly thereafter a man identified as Irving Berlin (president of the corporate licensee herein) came to the door, at which time both agents identified themselves but Berlin delayed admitting them, screaming at the patrons all the while

to "get those glasses off the bar." Agent D could see the bartender taking the whiskey bottles off the bar and considerable activity on the part of the patrons. Finally Berlin admitted the agents who then observed a patron place a glass of liquid on the sink behind the bar. The agents further observed another patron push from the bar and break a glass containing a similar beverage. The agents seized the glass of liquid from behind the bar and the unconsumed portion of the drinks on the bar. When the agents asked Berlin the time and it was noted that it was 12:43 p.m. by his watch, Berlin remarked "So what" and gave vent to filthy and indecent invectives, the repetition of which would serve no useful purpose. The bartender indulged in similar vulgarities and refused to tell the agents his name, which Berlin also refused to make known. The file discloses that throughout their investigation the agents were vilified and castigated and impeded in their work by Berlin, the bartender and some of the patrons, one of whom attempted to destroy the seized evidence and had to be forcibly restrained by the agents while Berlin and the others looked on derisively. When the agents were leaving the premises, Berlin remarked, "Some day, some where, I'm going to meet you. Then we'll see what happens." The report of the Division's chemist shows that the samples of the liquid seized by the agents contained whiskey and soda.

Defendant has no prior adjudicated record. I shall suspend its license for fifteen days on Charge 1 (Re Callahan, Bulletin 1203, Item 9); ten days on Charge 2 (Re Moskowitz, Bulletin 1127, Item 4), and, since Charge 3 involves a type of violation which strikes at the very heart of enforcement control and was aggravated in this case by deliberate castigation and vilification of the enforcement agents, coupled with threats of reprisal, the minimum period of twenty days' suspension usually imposed (Re The Village Barn, Inc., of New Jersey, Bulletin 1051, Item 3) will be increased by five days, making a total suspension of fifty days for the violations set forth in the three charges. Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 28th day of April, 1958,

ORDERED that Plenary Retail Consumption License C-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Orange Sportsmen's Club, Inc., for premises 647 Scotland Road, Orange, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. May 5, 1958, and terminating at 2:00 a.m. June 19, 1958.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES  
(INDECENT MOTION PICTURES) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

LOUIS WENZEL JR., POST #147, )  
AMERICAN LEGION )  
Legion Place )  
East Paterson, PO Box 91, N.J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-400, issued )  
by the Director of the Division of )  
Alcoholic Beverage Control. )

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Defendant-licensee, by Leroy Toci, Commander.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging:

"1. On April 11, 1958, you allowed, permitted and suffered in and upon your licensed premises, matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures, viz., motion picture films of male and female persons engaged in acts of sexual intercourse, acts of sexual perversion and other lewd and indecent sexual poses, acts and practices; in violation of Rule 17 of State Regulation No.20.

"2. On April 11, 1958, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the projection, exhibition and display thereon of the aforementioned motion picture films; in violation of Rule 5 of State Regulation No. 20."

On April 11, 1958, members of the East Paterson Police Department conducted a "raid" on a so-called "smoker" at the defendant's licensed premises, at which time one of the films referred to in the charges was being shown to a group of forty-three men, of whom seven appeared to be members of the Post. The police seized the film, together with eight others of similar nature. These films were definitely pornographic and lewd in the extreme. No purpose will be served by a detailed description thereof.

Defendant has no previous adjudicated record. It is unfortunate that a small number of members of the Post caused and participated in the violations hereinabove set forth, thereby not only bringing discredit to their organization but also jeopardizing the accommodation provided by its club license to all of its members, most of whom were innocent in this matter and may well abhor disgusting exhibitions of this kind. Under all the circumstances, including the plea, I shall suspend its license for a period of ninety days (Re Pambello, Bulletin 802, Item 1).

Accordingly, it is, on this 5th day of May, 1958,

ORDERED that Club License CB-400, issued by the Director of the Division of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. May 14, 1958; and it is further



ORDERED that, if any license be issued to this licensee or any other person for the premises in question for the 1958-59 licensing year, such license shall be under suspension until 3:00 a.m. August 12, 1958.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary  
Proceedings against

FRANK SCHUMANN & AL SCHUMACHER  
t/a MIDLAND PARK INN  
112 Godwin Avenue  
Midland Park, N. J.,

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consump-  
tion License C-1, issued by the  
Borough Council of the Borough of  
Midland Park.

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Saltzman, Rubenstein & Kosoff, Esqs., by Edward H. Saltzman,  
Esq., Attorneys for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants pleaded not guilty to the following charge:

'On November 6 and 7, 1957, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of horse race bets on the former date and the acting as a depository for money won on a horse race bet and the paying of such money to the bettor on the latter date; in violation of Rule 7 of State Regulation No. 20.'

"At the hearing held herein an ABC agent (hereinafter designated as Agent R) testified that he entered defendants' licensed premises on Wednesday, November 6, 1957, at 12:40 p.m., and took a seat at the bar; that about one-half hour later a patron, John E. Gill (hereinafter identified as Eddie) entered and placed on the bar a check for fifty dollars which Al Schumacher (who was tending bar) took to the register; that the bartender looked at a notation on a piece of paper, returned to the bar and gave Eddie eighteen dollars in bills; that Eddie turned to another patron and said, 'My luck has to change pretty soon.' Agent R further testified that he and Eddie engaged in a conversation about horse-racing during which he told Eddie that he had a tip on Rich and Rare in the 6th race at Laurel Park and would like to play two dollars to win and two to place; that he then gave four dollars to Eddie who went to the 'phone booth, returned to the bar and said that he got the bet in; that he and Eddie then went to the latter's car which was outside, looked at a newspaper listing odds at Laurel Park and returned; that Eddie then introduced him as Jerry to the bartender and said to the bartender, 'I called a bet in for him and if it hits I'll leave the money with you. O.K.', to

which the bartender replied, 'O.K.' Agent R also testified that another ABC agent (hereinafter identified as Agent F) who had entered the premises about 1:20 p.m. and joined him and Eddie at the bar later handed six dollars to Eddie to play two across the board on Hidden Gold in the 6th race at Garden State; that Eddie told Agent F he would take care of the bet for him and that Al Schumacher was 'right there in front of us' when that bet was made. The agents left the premises shortly after 2:00 p.m.

"As to that portion of the charge referring to November 7, 1957, Agent R testified that he and Agent F returned to the premises on that date at about 12:55 p.m.; that Frank Schumann was then acting as bartender and Al Schumacher was in the premises; that Al walked behind the bar, picked up a sum of money from the back bar and handed it to Agent R, stating at the same time that 'Eddie left this for you.' The money amounted to \$10.80, which was the amount due to the agent on Rich and Rare which had won on the previous day paying \$6.60 to win and \$4.20 to place. Agent R further testified that he and Agent F then tried to place bets directly with Al but that Al refused to take their bets and told them that Eddie had taken their bets and called them in and that 'we don't take any bets here.'

"The agents returned to the premises on November 14, 1957, and identified themselves to the licensees. At that time Al told the agents that he didn't know what the \$10.80 was for until after Eddie had left the money with him.

"At the hearing Agent F substantially corroborated the testimony given by Agent R.

"On behalf of defendants, Eddie testified that he is a former jockey and is now employed by an engineering company. He admitted that on November 6 he visited defendants' premises as a patron and that Agent R then asked him to get in a bet for him. However, he testified that he accepted the money from this agent while they were outside at the car; that he did not tell Al on November 6 that he would leave the winning money with him and that he did not tell Al that the \$10.80 he gave to him on November 7 represented winnings on a horse bet. Eddie also admitted that on November 6 he accepted a bet on Hidden Gold from Agent F but says that this bet was made at the door as the agents were leaving the premises.

"Al Schumacher admitted that on November 7 he gave to Agent R the sum of \$10.80 which Eddie had left with him on that morning. He denied that he had any knowledge at that time that the money represented a winning bet. He denied that on November 6 Eddie had introduced Agent R to him and also denied that Eddie had then told him that he would leave the winnings with him to give them to said Agent.

"After considering all the testimony herein and the brief submitted by defendants' attorney, I conclude that, while the licensees did not accept bets, one of them knew that bets were placed with Eddie on the licensed premises and that one of them paid off a winning bet. Under these circumstances defendants are guilty as charged. Re Llewellyn Recreation Center, Bulletin 1146, Item 1. Defendants have no prior adjudicated record within the past ten years. It is recommended, therefore, that an order be entered suspending defendants' license for a period of twenty-five days.

Re Johnson and McMahon, Bulletin 1146, Item 4; Re Cicchino, Bulletin 1187, Item 7; Re Bedkowski, Bulletin 1204, Item 11."

Although no formal exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16, the attorney who appeared for defendants advised me by letter that he believed the charge should be dismissed upon the evidence presented. I have carefully reviewed the evidence and the brief submitted by said attorney before the Hearer's Report was prepared, and I agree with the conclusion of the Hearer that, under the circumstances, defendants are guilty as charged. I so find. I also agree with the Hearer as to the period of suspension which should be imposed.

Accordingly, it is, on this 23rd day of April, 1958,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Midland Park to Frank Schumann & Al Schumacher, t/a Midland Park Inn, for premises 112 Godwin Avenue, Midland Park, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. May 1, 1958, and terminating at 7:00 a.m. May 26, 1958.

WILLIAM HOWE DAVIS  
Director.

5. ADVERTISING - USE OF "WX" TELEPHONE NUMBER DISAPPROVED -  
CONSTRUED AS INDUCEMENT PROHIBITED BY RULE 20 OF STATE  
REGULATION NO. 20.

May 9, 1958

Jules Simandl, Inc.  
Elizabeth, N. J.

Gentlemen:

This acknowledges your letter of May 2, 1958 in which you ask whether you may use a "WX" telephone number so that customers in suburban Essex County may call your licensed premises in Elizabeth collect. You also ask whether you may advertise, "From Livingston 6, Redwood 1, South Orange 3, etc. call WX 1234 for free delivery...this is a free call."

The answer is "No", and for several reasons. Rule 20 of State Regulation No. 20 provides as follows:

"No licensee privileged to sell any alcoholic beverages at retail shall, directly or indirectly, offer or furnish any gift, prize, coupon, premium, rebate, discount or similar inducement with the retail sale of any alcoholic beverage for consumption off the licensed premises; provided, however, that nothing herein shall prevent such licensees from furnishing advertising novelties of nominal value."

Obviously, the payment of the cost of the telephone call placing the order is an "inducement" and the suggested advertisement is an "offer" within the meaning of the Rule.

In addition, the suggested practice would constitute a violation of the spirit and perhaps the letter of State Regulation No. 30, which provides for minimum consumer resale prices of alcoholic beverages.

In passing, it may be noted that, in order for other retail licensees to compete with you on an equal basis, they too would have to use a "WX" telephone number or, in some other way, reimburse the customer for the cost of the telephone call, again in violation of State Regulation No. 30.

Accordingly, your request is hereby denied.

Very truly yours,  
WILLIAM HOWE DAVIS  
Director.

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - APPLICATION FOR RETURN OF MOTOR VEHICLE DENIED BECAUSE OF OWNER'S FAILURE TO ESTABLISH GOOD FAITH - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 9622
November 27, 1957 of a quantity	)	
of alcohol and a Chevrolet sedan	)	
on the northbound lane of the New	)	ON HEARING
Jersey Turnpike at the 36 Mile Post,	)	CONCLUSIONS AND ORDER
in the Township of Mount Laurel,	)	
County of Burlington and State of	)	
New Jersey.	)	
-----)		

Nathaniel James, Pro se.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66 to determine whether 120 two-quart 'Mason' jars of alcohol and a Chevrolet sedan, described in a schedule attached hereto, seized on November 27, 1957 on the northbound lane of the New Jersey Turnpike at the 36 Mile Post in Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

"Nathaniel James, the registered owner of the Chevrolet sedan, appeared at the hearing and sought its return. No one appeared to oppose forfeiture of the alcohol.

"Reports of ABC agents and other documents in the file, presented in evidence with consent of Nathaniel James, disclose the following facts:

"A New Jersey State Trooper halted the Chevrolet sedan on the above date and location during his routine patrol of traffic on the highway. The trooper ascertained that the motor vehicle was being operated by Blankford Taylor, with Nathaniel James and Villious Houston passengers therein. When the trooper discovered the 120 two-quart jars of alcohol, part in the trunk and part on the rear seat, without stamps on any of the jars evidencing payment of tax on alcoholic beverages, he took into custody the alcohol and motor vehicle and arrested Taylor, James and Houston. Later, the alcohol and motor vehicle were turned over to ABC agents.

"A sample of the contents of one of the jars was analyzed by the Division chemist who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 45.1 per cent.

"The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R. S. 33:1-1(i), R. S. 33:1-88. Taylor, in his signed statement in the file, claims that a car stopped alongside his car on the highway, the driver blew the horn and he went to see what was wanted. The driver of the car, whom he did not know, asked if he wanted to buy the alcohol and he purchased the alcohol and transferred it to his car.

"Such illicit alcohol, and the Chevrolet sedan in which it was transported and found, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

"Nathaniel James claims that he did not know that the alcohol was in his car. Such a claim is contrary to the normal presumption that a person knows what articles are being transported in his motor vehicle, in which he is a passenger. Seizure Case No. 8760, Bulletin 1062, Item 3.

"Nathaniel James gives the following explanation of his presence in the car: He loaned the car to Taylor. Such loans were frequent because Taylor formerly worked with him. On this occasion, Taylor asked James if he wanted to take a ride with him. They picked up Villious Houston. While they were riding, Taylor stopped at the side of the road, where he held a conversation with the driver of another car who had also stopped. While they were talking, he entered the nearby woods and was absent for about ten or fifteen minutes. He returned to the car and they were later stopped by the trooper. He did not know the alcohol was in the car. The alcohol in the rear seat was covered by a cloth. He was not employed at the time. He was not too well off financially. He did not ask Taylor what he discussed with the other man.

"Blankford Taylor testified that the entire transaction with the driver of the other car was purely accidental and not pre-arranged and that he did not test the contents of the jars which he purchased.

"Villious Houston claims that she was asleep in the car and did not hear the horn being sounded by the other driver, was not awakened by the stopping of the car in which she was riding, and did not hear or see James leave or return to the car.

"The Director is authorized to return property subject to forfeiture to its owner if he establishes to the Director's satisfaction that he is personally innocent of any unlawful liquor activities and had not reason to suspect that his property would be used in connection therewith. R. S. 33:1-66 (e & f).

"It needs no extended discussion of the testimony presented on behalf of James to demonstrate that it is extremely improbable that he was unaware that the alcohol was in his car, even if, as seems doubtful, it was placed there at the time and in the manner he describes. The evidence presented by James in his attempt to establish his innocence is implausible and, instead, creates a strong inference that he either had a direct interest in the purchase of the bootleg alcohol or had knowledge of such purchase. I recommend that his request for the return of the Chevrolet sedan be denied, and the car and alcohol be ordered forfeited. Seizure Case No. 8760, supra."

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 recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of April, 1958,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS  
Director.

SCHEDULE "A"

120 - two-quart. "Mason" jars of alcohol  
1 - Chevrolet sedan, Serial and Engine  
Number 14 JKD69746, Delaware  
Registration 105572.

7. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN  
MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR  
10 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

ANGELO INNOCENTI )  
t/a ANGELO'S WINES & LIQUORS )  
5506 Hudson Boulevard )  
West New York, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-66, issued by the )  
Board of Commissioners of the Town )  
of West New York. )

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Green and Yanoff, Esqs., by Leo Yanoff, Esq., Attorneys for  
Defendant-licensee.

Edward F. Ambrose, Esq., appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On October 9, 1957, at your licensed premises, you sold, at retail, one case (twenty-four 16 ounce cans) of Ballantine Extra Fine Beer, an alcoholic beverage, at less than the price thereof listed in the then currently effective pamphlet of New Jersey Minimum Consumer Resale Prices of Alcoholic Beverages published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.'

"At the hearing held herein, the Division called as its witnesses three ABC agents hereinafter referred to as Agent M, Agent O and Agent D.

"Agent M testified that he was assigned to investigate a complaint that the defendant was selling Ballantine beer below the minimum consumer resale price; that on October 9, 1957 at about 12:18 p.m., aforementioned agents and he arrived in the immediate vicinity of the defendant's licensed premises which he alone entered while his two companions waited on the outside; that he approached Angelo Innocenti, the licensee, who was standing behind a counter and asked him the price of a case of Ballantine beer (16-ounce cans); that Innocenti replied, '\$5.40'; that he then stated to Innocenti, 'My neighbor, Mr. Stिताleto, from 66th Street, said I could get it cheap here'; that Innocenti answered, 'The best I can do is \$5.25 a case', and that he agreed to pay the same. Agent M further testified that after he agreed to pay the \$5.25, Innocenti pointed to a number of cases of beer (stacked in case lots) in the center of the premises directly in front of and about four feet from the counter and said, 'There is one over there. Get it.'; that as he was bending over to pick up the requested case of beer which was on top of one of the piles, the licensee said, 'That's it. That's it.' He thereupon picked up a case of Ballantine beer (16-ounce cans), carried it to the counter and placed it thereon in front of Innocenti; that he then paid Innocenti \$5.25 and saw Innocenti place the money in a cash register (the minimum consumer resale price for a case of Ballantine beer - 16-ounce cans - is \$5.60); that during the aforementioned transaction there were two other persons on the premises, one, a patron who was drinking wine at a table about three or four feet from the counter and the other, an individual who appeared to be a salesman; that after paying the \$5.25 as aforesaid, he carried the case of beer from the premises and joined the other two agents in the street. Agent M continued to testify that the three agents re-entered the premises, identified themselves to Innocenti and informed him of the violation; that Innocenti admitted he charged \$5.25 for the aforesaid case of beer; that he knew the minimum consumer resale price for said beer was \$5.60, and that he wrote his name and date upon the said case of beer and identified it as the case of beer he sold to him.

"Agents O and D testified that on October 9th aforesaid at about 12:15 p.m., they, together with Agent M, arrived in the vicinity of defendant's licensed premises; that at about 12:18 p.m. they observed Agent M enter the defendant's licensed premises; that four minutes later they saw him emerging therefrom with a case of beer; that Agent M and they immediately returned to the premises, approached Innocenti who was behind the counter, and identified themselves; that they were present when Agent M placed the case of beer on the counter and questioned the licensee with reference to the sale of the same; that they heard Innocenti state that he sold the said case of beer to Agent M for \$5.25.; that he knew the minimum consumer resale price for said case of beer was \$5.60; that he identified the case of beer as the one he sold to Agent M and saw him write his name and date on said case of beer.

"Frank DeLeo, called as a witness for the defendant, testified that he has been a customer of the licensee for over twenty years; that on October 9, 1957 at about noon, he was standing in front of the counter on defendant's licensed premises and engaged in conversation with an old acquaintance when



he observed Agent M enter the premises, approach the licensee at the counter and ask for a case of 'Krueger beer - 16 ounce'; that the licensee came from behind the counter and accompanied Agent M to the center of the store where various brands of beer (in case lots) were on display; that Agent M, in the presence of the licensee, picked up one of the said cases of beer, the brand of which he did not see, and 'paid for it on the display where the beer was laid out and walked out. He didn't come to the counter at all' and that at the time there were six persons on the premises. DeLeo further testified that he believes he was present when Agent M returned to the premises with the other two agents; that he 'was busy talking to this young fellow. We were talking about different things, and I didn't pay any attention what was going on'; that he had remained standing at the counter and conversing as aforesaid for about ten or fifteen minutes, during which time the premises 'looked as if it was pretty busy'. On cross-examination DeLeo stated that the man whom he believed to be Agent M picked up a case of Ballantine beer although he had asked for Krueger's beer; that neither the licensee nor he commented about same and that he could not swear that it was Agent M who had picked up the case of Ballantine beer.

"Angelo Innocenti, the licensee, testifying on his own behalf, stated that on October 9th aforesaid, between 12 noon and 1:00 p.m., Agent M entered his licensed premises, asked him for a case of Krueger's beer (16-ounce size) and the price thereof; that he informed the agent the price was \$5.25; that he thereupon left six or seven customers standing at the counter while he walked a distance of about twelve feet from his cash register; accepted \$5.25 from Agent M and pointed to a display of popular brands of beer from which Agent M took a case, but that he did not wait to see which brand Agent M had selected.

"Innocenti further testified that Agent M returned to the premises with Agents O and D and a case of Ballantine beer (24 16-ounce cans) selected from the aforesaid display; that he had intended to sell the agent a case of Krueger beer containing 24 16-ounce bottles (minimum consumer resale price is \$4.50 plus a deposit of 75 cents for returnable bottles).

"On cross-examination, Innocenti testified that he knew the minimum consumer resale price for a case of 24 16-ounce cans of Ballantine beer was \$5.60; that at no time did Agent M or he specify the type of container desired; that he was too busy to observe what kind of beer Agent M carried from the premises; that while being questioned by the agents about the aforesaid sale of beer he did not mention Krueger's beer to them nor did he mention the brand of beer he had sold to Agent M.

"It is quite apparent that little weight can be given to Mr. DeLeo's testimony. I am satisfied that he paid no greater attention to Agent M on his first visit to the premises than he says he did on his return visit with the other two agents. Nor am I favorably impressed with Innocenti's testimony that he left six or seven customers standing at the counter and waited upon Agent M out of turn.

"I have carefully considered all the testimony adduced herein, together with the brief filed by counsel on behalf of the licensee, and find that, notwithstanding the exhaustive cross-examination of the agents, their testimony remained unshaken and that they gave an accurate and truthful account of what transpired on their visits to the licensed premises. Under the circumstances, I conclude that the Division has sustained



the burden of proof of defendant's guilt by a fair preponderance of the believable evidence, and it is recommended that defendant be found guilty as charged.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered providing that the defendant's license be suspended for a period of ten days. (Re Kugel & Glick, Bulletin 1214, Item 6)."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 28th day of April, 1958,

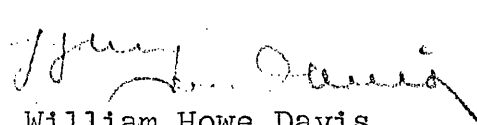
ORDERED that Plenary Retail Consumption License C-66, issued to Angelo Innocenti, t/a Angelo's Wines & Liquors, for premises 5506 Hudson Boulevard, West New York, be and the same is hereby suspended for ten (10) days, commencing at 3:00 am. May 5, 1958, and terminating at 3:00 a.m. May 15, 1958.

WILLIAM HOWE DAVIS  
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Saxon Beverage Company  
615 Adams Street  
Hoboken, N. J.

Application filed June 24, 1958 for State Beverage Distributor's License.

  
William Howe Davis  
Director.