

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 791

JANUARY 19, 1948.

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STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

January 19, 1948

BULLETIN 791

1948 19 1007

1. APPELLATE DECISIONS - EGG HARBOR TOWNSHIP BEVERAGE ASSOCIATION ET  
ALS. v. EGG HARBOR TOWNSHIP ET ALS.

DISCIPLINARY PROCEEDINGS - ISSUANCE OF LICENSE IN VIOLATION OF  
PROVISIONS OF R. S. 33:1-12(1) - SITUATION CORRECTED - CHARGES  
DISMISSED.

EGG HARBOR TOWNSHIP BEVERAGE )  
ASSOCIATION, and JOHN CHAMBERLAIN, )  
MICHAEL OTTEPKA and ISRAEL COTTMAN, )  
Appellants, )

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF EGG HARBOR, and STANLEY V. SMITH, )  
HERMAN MEYER, SAMUEL G. BOWEN, 2nd, )  
and ELIZABETH M. GARRITY, )  
Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

----- )  
EGG HARBOR TOWNSHIP BEVERAGE )  
ASSOCIATION, and JOHN CHAMBERLAIN, )  
MICHAEL OTTEPKA and ISRAEL COTTMAN, )  
Appellants, )

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF EGG HARBOR, and NICHOLAS KLEVA, )  
Respondents. )

----- )  
William T. Cahill, Esq., Attorney for Appellants.  
No appearance for Respondent Township Committee.  
Emerson Richards, Esq. and Stephen A. Damico, Esq., Attorneys for  
individual Respondents.

In the Matter of Disciplinary )  
Proceedings against )  
STANLEY V. SMITH )  
Northfield-Margate Blvd. )  
Egg Harbor Township, N. J., )

Holder of Plenary Retail Consump- )  
tion License C-28 for fiscal year )  
1946-47, issued by the Egg Harbor )  
Township Committee. )

CONCLUSIONS  
AND ORDER

----- )  
In the Matter of Disciplinary )  
Proceedings against )  
HYMAN COHEN & ALFONSO BURCH )  
Cor. West Jersey & Mulberry Ave. )  
Cardiff, Egg Harbor Township, N.J., )

----- )  
Holders of Plenary Retail Consump- )  
tion License C-28 for current fiscal )  
year, issued by the Egg Harbor )  
Township Committee. )

----- )  
Emerson Richards, Esq., Attorney for Defendant Stanley V. Smith.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

## BY THE COMMISSIONER:

The above appeals were filed from the action of respondent Township Committee in adopting an ordinance on December 17, 1946 whereby the number of plenary retail consumption licenses in the township was limited to thirty, and the number of plenary retail distribution licenses was limited to two, and from the subsequent action of the Township Committee in issuing plenary retail consumption licenses to respondents Stanley V. Smith, Herman Meyer and Samuel G. Bowen, 2nd, and plenary retail distribution licenses to respondents Elizabeth M. Garrity and Nicholas Kleva.

The individual appellants herein are licensees in the Township of Egg Harbor.

The ordinance, which was in effect prior to the adoption of the ordinance on December 17, 1946, limited the number of plenary retail consumption licenses to twenty-seven, and contained no provisions for the issuance of plenary retail distribution licenses. Appellants contend that respondent Township Committee abused its discretion in adopting the ordinance increasing the number of licenses and subsequently issuing the licenses considered herein pursuant thereto.

The Township of Egg Harbor has a population slightly in excess of 3,000. Prior to the issuance of the licenses considered herein, 27 plenary retail consumption licenses had been issued. Cf. Falkner v. Egg Harbor and Gill, Bulletin 665, Item 7.

When the ordinance was adopted on December 17, 1946, and the licenses granted on December 20 and December 31, 1946, Committeemen Eccles and Jeremiah were still members of the Township Committee although they had been defeated for reelection in November 1946 and their terms of office expired on December 31, 1946. They, together with Committeeman Walsh, voted in favor of the ordinance and the issuance of the additional licenses. The aforesaid three members constituted a majority of the Township Committee as then organized. There is nothing in the record to indicate that these Committeemen were improperly motivated in voting for the ordinance and the additional licenses.

The evidence herein discloses that eleven of the previously existing consumption licenses had been issued for premises located on Black Horse Pike, a heavily traveled highway, and that six additional consumption licenses had been issued for premises in close proximity to the said highway. There is no doubt that there is a very heavy concentration of consumption licenses on or near the Black Horse Pike. However, the premises for which a consumption license was granted to respondent Herman Meyer are located on the Somers Point-Longport Boulevard approximately six miles from the Black Horse Pike. There is testimony that the traffic is heavy on the Somers Point-Longport Boulevard, and that the license in question is required to serve the needs of persons traveling along this highway. The premises for which a consumption license was issued to Samuel G. Bowen, 2nd, are located "in the woods" a distance of at least two miles from the Black Horse Pike. There is evidence that the latter license is to be used principally in connection with the service of meals by the licensee to members of the Atlantic City Tuna Club, of which the licensee was formerly steward. The evidence also shows that the plenary retail distribution licenses were issued to respondents Elizabeth M. Garrity and Nicholas Kleva for premises in close proximity to each other on the Black Horse Pike. There are no other plenary retail distribution licenses in the Township of Egg Harbor, and the nearest package goods store is located in Pleasantville and approximately two and one-half miles from the premises licensed to Garrity and Kleva.

The number of existing plenary retail consumption licenses may be taken into consideration in determining the need for a plenary retail distribution license, but it is also true that a package goods license fills a need quite distinct from that supplied by a tavern, and it may well be an important matter of social convenience and necessity that such a license be granted. Sanford Drug Co. v. Maplewood, Bulletin 71, Item 6.

In the light of the evidence as to the location of the aforesaid additional plenary retail consumption licenses, and considering also the fact that no plenary retail distribution licenses had previously been issued in the township, I cannot say that the members of the local issuing authority, as then constituted, abused their discretion in granting the licenses in question. All of the aforesaid licenses were renewed for the present fiscal year. Matters resting in discretion are not, in general, subject to review on appeal unless an abuse of discretion is shown. Hudson Bergen etc. Ass'n v. Board of Commissioners, 135 N.J.L. 502.

After carefully reviewing all the evidence I find that appellants have failed to prove that the action of the respondent issuing authority in granting licenses to respondents Meyer, Bowen, Garrity and Kleva was arbitrary or unreasonable. Hence the decision of respondent issuing authority as to these licenses will be affirmed.

The situation as to the plenary retail consumption license issued to respondent Stanley V. Smith is different. His license was granted for premises on the Northfield-Margate Boulevard, approximately five miles from the Black Horse Pike. There appeared to be some need for a license on the Northfield-Margate Boulevard. After the appeal case had been heard, however, it was ascertained that Stanley V. Smith had for many years been conducting a bait and fishing tackle business on the premises for which his license was issued. It was also ascertained that on June 30, 1947 the Township Committee of the Township of Egg Harbor had transferred said license to Alfonso Burch and Hyman Cohen for premises at Mulberry and West Jersey Avenues "subject to the outcome of an appeal pending before the State Alcoholic Beverage Commissioner in the case against Stanley V. Smith". The license was renewed for the present fiscal year in the names of Burch and Cohen for the same premises.

Since the issue as to the type of premises operated by Stanley V. Smith had not been raised in the appeal, respondent Smith and the present holders of the license, Burch and Cohen, were ordered to show cause in the above disciplinary proceedings why the license in question "should not be suspended, revoked or cancelled and declared null and void". At the hearing held on July 17, 1947, on the order to show cause, Smith admitted that his application for a license disclosed that he intended to conduct other business, including "fishing, bait, boat hire", on the premises sought to be licensed. He also testified that, in fact, he never sold any alcoholic beverages under his license.

R. S. 33:1-12(1) provides that a plenary retail consumption license "shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on." It thus appears that the license was issued to Stanley V. Smith in violation of R. S. 33:1-12(1).

It also appears, however, that the unlawful situation has been corrected by the transfer of the license to other premises licensed to Burch and Cohen. There is no evidence that any other business is

conducted on the premises now licensed. No appeal was filed from said transfer, or from the renewal of said license for the present fiscal year. Under all the circumstances I shall also affirm the issuance of the license to Stanley V. Smith, which license has been transferred and renewed as aforesaid, and shall dismiss the rule to show cause. Cf. Retail Liquor Distributors v. Atlantic City and Repetti, Bulletin 88, Item 12, and Bulletin 89, Item 12; Re Pasternak, Bulletin 287, Item 7; Re Ruocco, Bulletin 789, Item 2.

Accordingly, it is, on this 8th day of January, 1948,

ORDERED that the action of respondent Township Committee, in adopting the ordinance dated December 27, 1946, and in issuing the licenses considered herein to each of the individual respondents, be and the same is hereby affirmed; and it is further

ORDERED that the rule to show cause in the above disciplinary proceedings be and the same is hereby discharged.

ERWIN B. HOCK  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FRONT FOR INDIVIDUAL - FAILURE TO HAVE EXCLUSIVE CONTINUOUS POSSESSION FOR THREE YEARS - FALSE ANSWERS IN LICENSE APPLICATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )  
 )  
 FRENCH-AMERICAN ATHLETIC CLUB, INC. )  
 Silver Spring Farm )  
 Mt. Olive Township )  
 P. O. Flanders, N. J., )  
 )  
 Holder of Club License CB-3, issued )  
 by the Township Committee of the )  
 Township of Mount Olive. )  
 ----- )

CONCLUSIONS  
AND ORDER

Harry A. Shuback, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that (1) in its current license application, it falsely concealed the interest of one Henri Diage in the license and business conducted thereunder, (2) in its current license application, it falsely concealed the fact that it had agreed to permit the said Henri Diage to retain 75% of the net profits of the licensed business, (3) ever since May 14, 1947, it permitted the said Henri Diage to exercise the privileges of its successive licenses, and (4) it falsely stated in its current license application that it had been in exclusive and continuous possession and use of club quarters for at least three years immediately prior to submitting the said application.

The testimony discloses that for more than a year prior to May 1947, when it first obtained its liquor license, the club had been meeting once a month in the rear room of premises located in Paterson, N. J. It had neither possession nor use of these or any other club quarters during that period, within the meaning of Rule 4 of State Regulations No. 7.

In May 1947 it arranged with Henri Diage, who operates a summer resort, to apply for a liquor license in its name for the premises in question, upon the understanding that the licensed business would be managed by the said Henri Diage under an agreement whereby the latter would retain all of the receipts of the licensed business, with the exception of 25% of the net profits to be paid to the club. The original license fee was paid for out of Henri Diage's personal funds, and the current license fee was paid for out of a bank account in the club's name, which account was within the control of the said Henri Diage and in which he commingled funds of his restaurant business with that received from the sale of alcoholic beverages.

It is clear from the record that the license, although nominally issued to the club, was actually operated for the benefit of Henri Diage, with the club being paid 25% of the net profits from the sale of alcoholic beverages for the use of its name. It is equally apparent that the club does not have any exclusive possession or use of the licensed premises, as required by the aforesaid regulation.

I find the defendant guilty as charged. The license will be revoked.

Accordingly, it is, on this 12th day of January, 1948,

ORDERED that Club License CB-3, issued by the Township Committee of the Township of Mount Olive to French-American Athletic Club, Inc., Silver Spring Farm, Mount Olive Township, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - CLUB - FAILURE TO HAVE EXCLUSIVE CONTINUOUS POSSESSION FOR THREE YEARS - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against  
THIRTEENTH WARD ITALIAN DEMOCRATIC CLUB  
1300 Decatur Street  
Camden, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Club License CB-37, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

-----  
Joseph Tomaselli, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that it falsely stated in its application upon which it obtained its current club license that it had been in exclusive, continuous possession and use of the premises for which the liquor license was sought for at least three years immediately prior to making application, in violation of R. S. 33:1-25.

It appears from the evidence presented in the instant case that defendant club was organized in 1929 or 1930. Club meetings were held in homes of various members thereof until 1941 when the Thirteenth Ward Italian American Citizens Democratic Club, whose headquarters were located in a building known as 1300 Decatur Street,

Camden, permitted defendant to use part of its clubhouse to hold monthly meetings. This privilege continued until February 1947. The Thirteenth Ward Italian American Citizens Democratic Club held a club liquor license for the premises in question from 1943 until January 6, 1947, at which time the license was revoked by order of the State Commissioner of the Department of Alcoholic Beverage Control. See Re Thirteenth Ward Italian American Citizens Democratic Club, Bulletin 745, Item 3.

Shortly thereafter the defendant club purchased the fixtures and furniture from the Thirteenth Ward Italian American Citizens Democratic Club and rented the premises 1300 Decatur Street, Camden from the owner thereof. Application was then made by defendant club for a club liquor license, and in said application it was alleged that all legal requisites had been met. The license was granted by the local issuing authority.

It is evident by the facts presented herein that defendant club could not have had exclusive possession of the premises 1300 Decatur Street, Camden for a period of three years. Domenico Grande, a trustee and one of the original incorporators, testified that defendant club became a tenant in said premises in April 1947. Previous thereto defendant had been granted the privilege of using a part of said premises for its monthly meetings by the then tenant, the Thirteenth Ward Italian American Citizens Democratic Club. The mere fact that defendant club met monthly in a part of the premises designated by the Thirteenth Ward Italian American Citizens Democratic Club, the bona fide tenant, for a period of three years cannot be construed as a compliance with Rule 4 of State Regulations No. 7. Said Rule provides, among other things, that "\*\*\*no license shall be issued to any club unless it shall have been in exclusive continuous possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application for a license." (Underlining mine.) Cf. Gesang-Verein Boonton, Inc. v. Montville, Bulletin 453, Item 10.

I find defendant guilty of the charge preferred herein.

In view of the fact that the defendant does not qualify for a club license within the contemplation of Rule 4 of State Regulations No. 7, I have no alternative other than to revoke its license.

Accordingly, it is, on this 12th day of January, 1948,

ORDERED that Club License CB-37, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to the Thirteenth Ward Italian Democratic Club, for premises 1300 Decatur Street, Camden, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - PERMITTING PROSTITUTES AND PERSONS OF ILL REPUTE ON LICENSED PREMISES - PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES - PERMITTING LICENSED PREMISES TO BE USED IN CONNECTION WITH SOLICITATION FOR PROSTITUTION - PERMITTING LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

JOSEPH B. KAIMAN )  
 242 Straight Street )  
 Paterson 2, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-210, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )  
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Milton Schamach, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. On divers days between July 22, 1947 and August 14, 1947, you allowed, permitted and suffered known prostitutes and persons of ill repute in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20.

"2. On the dates aforesaid, you allowed, permitted and suffered your licensed premises and your licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise, viz., solicitation for prostitution, in violation of Rule 4 of State Regulations No. 20.

"3. On the dates aforesaid, you allowed, permitted and suffered lewdness and immoral activity, viz., solicitation for prostitution, in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20.

"4. On the dates aforesaid, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20."

Two ABC agents testified that they visited defendant's licensed premises on the afternoon of July 22, 1947 and observed a woman about twenty-five years of age, who appeared to be intoxicated, embracing an older woman companion. A man who was with these women was unsuccessful in his attempt to kiss the younger woman but did place his hands on her breast. One of the investigators testified that the licensee told him that the younger woman was a "Lesbian". The agents testified that, shortly after these three persons left the premises, they engaged in conversation with the defendant relative to other women who remained in the premises and were told by the defendant that "most of them in here are OK", and that if any were diseased he would notify the ABC investigators. As defendant was refilling the investigators' glasses, according to the ABC investigators, a young woman entered the barroom and immediately spoke to an elderly man about leaving the premises to engage in sexual intercourse. After this couple left, one of the ABC agents remarked to defendant that the girl was attractive and the defendant retorted by saying that the investigator should not have anything to do with her because she was expensive.

The investigators testified that they returned to defendant's licensed premises on the evening of July 23, 1947, and a woman about

forty years of age who was known as Gertrude engaged in conversation with them. A short time thereafter another girl came over to where they were seated and accepted several drinks from them. This girl, known as Vera, attempted to kiss the investigators but upon being admonished by them she became angry. Vera then grabbed the investigators by their private parts and asked which one wanted to go out with her. The investigators testified that when they tried to leave the premises, Vera asked if they would leave some money for her and before one of the investigators could retrieve his change from the bar, Vera picked up several one-dollar bills.

The investigators testified that they again returned to defendant's premises on the afternoon of July 24, 1947 and informed a bartender by the name of "Mike" that they had a date with Vera and asked "Mike" if she were clean and he said that he knew a man who had had sexual relations with her and that he was all right. Sometime after the ABC agents arrived at the licensed premises the licensee came in and they questioned him concerning Vera. The licensee said that he did not believe that she was afflicted with a venereal disease.

On July 31, 1947, ABC agents visited the tavern and spoke to defendant concerning some of the girls whom they had met previously. The agents testified that they observed Gertrude and Bea, who had accompanied the alleged "Lesbian" on their visit on July 22, 1947.

Two other ABC agents were assigned to investigate defendant's licensed premises on August 14, 1947. One of the agents testified that he met Gertrude in defendant's premises and she agreed to accompany him to a hotel a short distance away. The latter agent, according to his testimony, questioned the licensee regarding the woman and he was told that he had nothing to worry about.

Defendant admits that he conversed with the ABC agents at various times concerning women patrons but insisted that he paid little attention to the interrogations of the investigators as he was busy at the time. Defendant testified that he had no personal knowledge of the girls' physical conditions but was repeating what he had heard others say about them.

Defendant contends that no immoral activities took place upon the licensed premises. The facts, however, disclose an intimate and wholly undesirable relationship between defendant's licensed premises and certain of its female patrons. The licensee, by his conduct of the licensed premises, encouraged and condoned the immoral activities. He cannot escape responsibility therefor merely because they ultimately were consummated off the premises.

There is no doubt in my mind that defendant's tavern was frequented by known prostitutes and persons of ill repute. Re Bryant, Bulletin 492, Item 1. I find also that the premises were conducted in such manner as to become a nuisance. In State v. Berman, 120 N.J.L. 381, 383, former Chief Justice Brogan stated:

"It has been repeatedly held that any place of public resort is a public nuisance where illegal practices are habitually carried on or when such place becomes the habitual resort of thieves, drunkards, prostitutes, &c., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

See also State v. Williams, 30 N.J.L. 102, 104.

A licensee may not escape responsibility for improper activities or conduct upon the licensed premises merely by closing his eyes and ears. On the contrary, licensees must use their eyes and ears, and

use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3. The purpose of Rule 5 of Regulations No. 20 is to prevent licensed premises from becoming a source of crime and immorality. Hence, a licensee may not allow, permit or suffer lewdness or immoral activities upon his premises. Nor may he allow, permit or suffer the licensed premises to be conducted in such a manner as to constitute a nuisance.

I find the defendant guilty of the charges preferred against him. A licensee who deliberately encourages such practices and conditions as existed in the instant case is not a fit person to be associated with the alcoholic beverage industry. I shall therefore revoke defendant's license, effective immediately.

Accordingly, it is, on this 12th day of January, 1948,

ORDERED that Plenary Retail Consumption License C-210, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joseph B. Kaiman, for premises 242 Straight Street, Paterson, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - PERMITTING PROSTITUTES AND PERSONS OF ILL REPUTE ON LICENSED PREMISES - PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES - PERMITTING LICENSED PREMISES TO BE USED FOR PROSTITUTION - PERMITTING LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

GEORGE FLAX )  
222 Straight Street )  
Paterson 1, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-137 issued by the Board of Alcoholic Beverage Control of the City of Paterson. )  
)  
)

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Nussman & Kaplan, Esqs., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. On August 14, 1947, you allowed, permitted and suffered in and upon your licensed premises a known prostitute and person of ill repute in violation of Rule 4 of State Regulations No. 20.

"2. On the date aforesaid, you allowed, permitted and suffered your licensed premises and your licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise, viz., prostitution, in violation of Rule 4 of State Regulations No. 20.

"3. On the date aforesaid and on divers days prior thereto, you allowed, permitted and suffered lewdness and immoral activity, viz., the maintenance of a place of assignation, in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20.

"4. On the date aforesaid and on divers days prior thereto, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20."

On August 14, 1947, an ABC agent accompanied a woman named "Gertrude", whom he had met in other licensed premises, to the licensed hotel operated by defendant herein. See Re Kaiman (decided herewith). The agent rented a room from defendant for the sum of \$1.50, and was permitted to accompany "Gertrude" to the room although the couple had no baggage and had not been required to sign any register. Shortly thereafter, by prearrangement, members of the Paterson Police Department entered the room and arrested the woman. The defendant refused to sign a written statement, but admitted verbally that he had frequently rented a room to the same woman and that the ABC agent was the second man who had rented a room with the woman on that day. Check of the licensed premises disclosed that two other rooms in the hotel were occupied by couples who were not married to each other.

In alleged mitigation it is stated that defendant is seventy-five years of age; that he has been engaged in the liquor business for forty-four years, and that he enjoys a good reputation in the City of Paterson. It is also stated that defendant has discontinued the operation of the hotel in connection with his licensed business. However, a licensee who deliberately encourages such practices and conditions as existed in the instant case is not one to be associated with the alcoholic beverage industry. I shall, therefore, revoke the defendant's license, effective immediately.

Furthermore, because the defendant owns the building in which the licensed premises are located and because of the seriousness of the charges herein, I shall disqualify the premises known as 222 Straight Street, Paterson, New Jersey, for a period of two years from the date herein.

Accordingly, it is, on this 12th day of January, 1948,

ORDERED that Plenary Retail Consumption License C-137, issued by the Board of Alcoholic Beverage Control of the City of Paterson to George Flax; for premises 222 Straight Street, Paterson, be and the same is hereby revoked, effective immediately; and it is further

ORDERED that licensed premises known as 222 Straight Street, Paterson, be and the same are hereby declared ineligible to become the subject of any further alcoholic beverage license of any kind or class for a period of two (2) years, commencing on the date hereof.

ERWIN B. HOCK  
Commissioner.

## 6. RECAPITULATION OF ACTIVITY FOR PERIOD FROM JULY 1, 1947 THROUGH DECEMBER 31, 1947

	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTAL
<u>ARRESTS:</u>							
Licenses and employees	5	4	2	3	8	-	13
Bootleggers	9	9	12	7	14	7	58
<u>SEIZURES:</u>							
Stillis -- under 50 gallons	-	-	3	1	-	-	4
over 50 gallons	1	-	2	1	-	-	4
Motor vehicles - cars	-	1	1	2	2	1	7
- trucks	-	1	-	-	-	-	1
Alcohol - gallons	1.95	33.00	36.50	172.00	162.00	.50	405.95
Brewed malt alcoholic beverages (beer, ale, etc.) gallons	27.37	21.06	19.50	120.58	150.49	13.03	352.03
Distilled alcoholic beverages (whiskey, brandy, etc.) gallons	--	--	4.40	.68	25.59	.20	30.87
Wine - gallons	218.32	4.35	32.33	407.32	10.05	-	672.37
Mash - gallons	--	--	2,800.00	--	--	--	2,800.00
<u>RETAIL LICENSEES:</u>							
Total number of premises inspected	823	961	725	987	920	800	5,216
Total number of premises where alcoholic beverages were gauged	397	590	812	688	590	745	3,822
Total number of bottles gauged	6,373	10,233	12,875	10,855	9,140	12,218	61,694
Total number of premises where violations were found	111	75	46	54	46	39	371
Total number of violations found	130	114	62	83	87	88	564
<u>Type of violations found:</u>							
Illicit liquor - bottles	14	38	15	31	52	35	185
Unqualified employees	20	21	17	25	10	31	124
Regulations #38 sign not posted	23	17	10	7	8	5	70
Gambling devices	32	8	4	2	-	1	47
Improper beer taps	12	11	-	1	3	3	30
Probable fronts	6	13	1	4	5	1	30
Disposal permit necessary	4	3	6	-	3	4	20
Prohibited signs	2	-	4	3	2	2	15
Other mercantile business	1	-	3	3	1	1	9
Price pamphlet not displayed	1	1	-	-	-	-	2
Other violations	15	-	4	5	3	5	32
<u>STATE LICENSEES:</u>							
Premises inspected	-	-	5	-	6	11	22
License applications investigated	25	16	18	22	9	9	99
<u>COMPLAINTS:</u>							
Complaints assigned for investigation	382	326	243	307	272	242	1,772
Complaints investigated, reviewed and closed	396	284	281	328	263	296	1,848
Investigations completed - not closed administratively	11	19	11	11	25	24	--
Investigations assigned - not yet completed	255	261	210	202	223	160	--
<u>LABORATORY:</u>							
Analyses made	111	100	101	55	190	114	671
"Shake-up" cases (alcohol, water and artificial color) - bottles	5	7	8	5	12	6	43
Liquor found to be not genuine as labeled - bottles	18	4	18	17	35	32	124
<u>IDENTIFICATION BUREAU:</u>							
Criminal fingerprint identifica- tions made	8	12	13	10	30	5	78
Persons fingerprinted for non- criminal purposes	365	223	199	228	159	168	1,342
Identification contacts made with other enforcement agencies	387	171	209	189	179	170	1,305
Motor vehicle identifications via N. J. State Police Teletype	12	4	5	6	6	8	41
<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>							
Cases transmitted to municipalities	14	17	13	21	12	16	93
<u>Violations involved:</u>							
Sale during prohibited hours	4	2	6	7	5	8	32
Sale to minors	4	3	3	7	1	1	19
Mislabeled beer taps	3	9	-	1	2	1	16
Bookmaking	-	1	2	3	2	4	12
Permitting brawls on premises	1	1	1	-	-	1	4
Unqualified employees	-	3	1	-	-	-	4
Sale to intoxicated persons	-	-	1	1	-	1	3
Gambling	-	-	1	1	-	-	2
Hostesses	-	-	1	-	-	1	2
Permitting immoral activity	1	-	1	-	-	-	2
Permitting slot machines on -licensed premises	-	-	-	2	-	-	2
Possessing chilled beer (DL-Licensee)	1	-	1	-	-	-	2
Sale outside scope of license	1	-	1	-	-	-	2
Hindering investigation	-	-	-	-	-	1	1
Noise	1	-	-	-	-	-	1
Conducting premises as a nuisance	-	-	1	-	-	-	1
Permitting lottery (punchboard) on premises	-	-	-	-	1	-	1
Permitting prostitutes on premises	1	-	-	-	-	-	1
Sales on Election Day	-	-	-	-	1	-	1

	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTAL
<u>DISCIPLINARY PROCEEDINGS INSTITUTED (CONT'D):</u>							
<u>Cases instituted at Department</u>	14	13	14	19	19	11	90
<u>Violations involved:</u>							
Fraud and front	2*	4*	3*	7	9	2*	27
Illicit liquor	4	1	3	5	1	5	19
Sale during prohibited hours	4	1	3	-	3	-	11
Sale to minors	1	-	1	1	6	-	9
Sale under fair trade price	1	2	-	-	1	1	5
Pin-ball machines	-	2	2	1	-	-	5
Permitting immoral activity on premises	-	2	-	1	-	1	4
Sale outside scope of license	2	1	1	-	-	-	4
Sale to non-members by club	1	1	-	1	-	1	4
Unqualified employees	-	-	2	1	-	1**	4
Conducting business as nuisance	-	2	-	1	-	-	3
Permitting bookmaking on premises	1	-	-	1	-	1	3
Permitting hostesses on premises	-	-	1	1	-	1	3
Aiding illegal activity	-	2	-	-	-	-	2
Hindering investigation	-	-	1	1	-	-	2
Permitting prostitutes on premises	-	2	-	-	-	-	2
Serving women at the bar	-	1	-	-	-	1	2
Slot machines	-	1	-	1	-	-	2
Failure to afford view into premises during prohibited hours	1	-	-	-	-	-	1
Failure to file notice of change in application	-	-	1	-	-	-	1
Failure to file notice of retailer's default	-	1	-	-	-	-	1
Gambling devices	-	1	-	-	-	-	1
Lewdness	-	-	1	-	-	-	1
Licensee working while drunk	-	-	1	-	-	-	1
Permitting female impersonators on the premises	-	-	-	1	-	-	1
Permitting lottery (punch board) on the premises	-	-	1	-	-	-	1
Sales to intoxicated persons	-	-	-	-	1	-	1
Sale to retailer in default	-	1	-	-	-	-	1
Serving beverages other than ordered	-	-	1	-	-	-	1
* 1 case also involves cancellation proceedings.							
** includes proceedings to cancel employment permit.							
<u>Cases brought by municipalities on own initiative and reported to the Department</u>							
	-	7	2	2	8	4	23
<u>Violations involved:</u>							
Sale to minors	-	3	2	-	4	1	10
Brawls	-	1	-	1	3	-	5
Sale to intoxicated persons	-	-	-	1	2	-	3
Sale during prohibited hours	-	1	-	-	-	1	2
Bookmaking	-	1	-	-	-	-	1
Hindering an investigation	-	-	-	-	1	-	1
Licensee working while drunk	-	-	-	1	-	-	1
Permitting gambling (cards) on premises	-	-	-	-	-	1	1
Possessing slot machines on premises	-	-	-	-	-	1	1
Serving women at bar	-	-	-	-	1	-	1
Violation of special condition	-	1	-	-	-	-	1
<u>CANCELLATION PROCEEDINGS INSTITUTED:</u>							
	1	-	-	-	-	1	2
<u>Violations involved:</u>							
Issuance in violation of Limitation Law	1	-	-	-	-	-	1
License issued in excess of quota and State Limitation Law	-	-	-	-	-	1	1
<u>HEARINGS HELD AT DEPARTMENT:</u>							
	31	50	48	37	40	35	241
Appeals	8	21	26	9	9	3	76
Disciplinary proceedings	13	12	13	15	19	20	92
Eligibility	4	6	5	7	6	7	37
Seizures	2	5	3	6	5	4	25
Application for license	2	6	1	-	-	-	9
Tax revocation	-	-	-	-	1	1	2
<u>PERMITS ISSUED:</u>							
	5,554	1,086	1,037	1,977	1,357	779	11,790
Employment	1,801	231	126	125	90	104	2,477
Solicitor	2,717	132	185	165	117	110	3,426
Social affair	348	415	445	481	388	236	2,313
Disposal of alcoholic beverages	88	217	87	204	167	126	889
Special wine	26	7	71	894	517	122	1,637
Miscellaneous	574	84	123	108	78	81	1,048

## 7. PROMULGATION OF RULES 4(a) AND 4(b) OF STATE REGULATIONS NO. 34.

DELIVERIES MAY BE MADE TO RETAILERS PURSUANT ONLY TO A BONA FIDE SIGNED ORDER - RETURNS PROHIBITED AFTER 30 DAYS FROM THE DATE OF DELIVERY EXCEPTING AFTER WRITTEN PERMISSION FROM THE COMMISSIONER.

January 15, 1948.

TO ALL NEW JERSEY RETAIL AND WHOLESALE LICENSEES:

In recent months there has developed a growing practice of delivering to retailers items of alcoholic beverages other than those ordered. As a result, many retailers who have refused to pay invoices for such unordered items within the prescribed thirty-day credit term have been posted in default pursuant to State Regulations No. 39, thereby jeopardizing their credit standing in the industry.

This undesirable situation has caused much confusion and difficulty in determining the difference between legitimate returns for proper business reasons and those returns effected to give one wholesaler undue advantage over another. Restrictions against consignment sales and sales with the privilege of return must be implemented by formal rule so as to facilitate proper control and guard against tied houses and the undue stimulation of the sale of alcoholic beverages.

Accordingly, I hereby promulgate, effective February 2, 1948, additional Rules 4(a) and 4(b) of State Regulations No. 34 which, respectively, require that no manufacturer or wholesaler may deliver or cause to be delivered to a retailer any alcoholic beverages (except malt beverages) other than those items appearing on a bona fide order signed by the retail licensee or his agent, and that manufacturers and wholesalers who made the original deliveries or caused them to be made, may accept delivery of returns from retailers within 30 days from the date of delivery, but that thereafter no returns may be accepted by the wholesaler excepting after written permission from the Commissioner has been obtained.

The rules are promulgated as follows:

"Rule 4(a). No manufacturer or wholesaler shall deliver or cause to be delivered to a retailer any alcoholic beverages (except malt beverages) other than those alcoholic beverages itemized on a bona fide order first signed by the retail licensee or his agent. Such signature shall appear on the face of the order sheet immediately following the last item of alcoholic beverages appearing thereon. The bona fide order shall be executed and signed in duplicate, and a copy left with the retail licensee.

"Copies of all orders shall be kept at the licensed premises of the retail licensees and of the manufacturer or wholesaler respectively, for a period of one year from the date thereof, unless the Commissioner shall have granted written permission to the wholesaler to keep them at a place outside of the State designated by him, and shall be available for inspection by representatives of the Department at all times.

"Rule 4(b). Manufacturers and wholesalers may accept delivery from a retailer for return only alcoholic beverages (except malt beverages) originally delivered by them, within 30 days from the date of the delivery of such beverages to a retailer. Thereafter, no merchandise shall be accepted for return from a retailer except after written permission from the Commissioner has been obtained."

ERWIN B. HOCK  
Commissioner.

8. SEIZURE - FORFEITURE PROCEEDINGS - STOLEN ALCOHOLIC BEVERAGES RETURNED TO OWNER - MOTOR VEHICLE RETURNED BECAUSE EVIDENCE INSUFFICIENT TO ESTABLISH TRANSPORTATION THEREIN OF SUCH ALCOHOLIC BEVERAGES.

Case No. 7156

In the Matter of the Seizure on August 5, 1947, of a Buick coupe in the vicinity of 98 Frelinghuysen Avenue, in the City of Newark, County of Essex and State of New Jersey; and the seizure of 95 four-fifth quart bottles and 44 quart bottles of various brands of alcoholic beverages on the same day at 225 Sanford Avenue, in the Town of Kearny, County of Hudson and State of New Jersey.

ON HEARING CONCLUSIONS AND ORDER

Anthony A. Calandra, Esq., Attorney for Angelo Alfano.
Waclaw Swieczkowski, Pro Se.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a Buick coupe seized in the vicinity of 98 Frelinghuysen Avenue, Newark, N.J. and 95 - 4/5 quart bottles and 44 quart bottles of alcoholic beverages seized at 225 Sanford Avenue, Kearny, N. J. on August 5, 1947, constitute unlawful property and should be forfeited.

The alcoholic beverages allegedly were stolen from Waclaw Swieczkowski's licensed tavern located at 282 Ferry Street, Newark, N. J. It is alleged that thereafter the alcoholic beverages were sold to one Angelo Alfano and his brother-in-law, and in turn sold by them to other persons, from whom the alcoholic beverages were recovered by Newark police officers. The Buick coupe, owned by Angelo Alfano, was seized by the officers solely upon the basis of Alfano's signed sworn statement which indicated that he had used the car to transport such alcoholic beverages. The motor vehicle and alcoholic beverages were later turned over to the State Department of Alcoholic Beverage Control.

Alfano and the other persons involved were arrested on charges based upon the theft of the alcoholic beverages and, in addition, Alfano was charged with the unlawful transportation of alcoholic beverages.

When the matter came on for hearing pursuant to R. S. 33:1-66, Alfano resisted forfeiture of his car on claim that he had not used it to transport the alcoholic beverages and that anything to the contrary in his statement was inaccurate and there by mistake.

The evidence indicates that the stolen liquor was transported from a "dump" to Alfano's garage and from there transported to the purchaser's garage. The language of Alfano's statement does not clearly set forth that his car was used to transport the liquor to his garage, although that is the normal inference from the language used. There is, however, a direct admission by Alfano in his statement that the liquor was transported from his (Alfano's) garage to the purchaser's garage in "My car".

At the hearing Alfano testified that his Buick coupe had not at any time been used to transport the stolen liquor; that he went to the "dump" in his car but that the liquor was brought to his garage in the car of the person who committed the theft; that the liquor was transported from his garage to the purchaser's garage and from that garage to a third place in vehicles other than Alfano's. Alfano attributes anything to the contrary in his written statement to his alleged nervous and upset condition when in custody and being questioned.

The Newark police officer who made the seizure testified that when taking Alfano's statement he did not question him specifically as to whether one or two cars were at the "dump" where the stolen liquor was first picked up. In answer to the question whether Alfano at any time, when making his statement, specifically said that his car was used to transport the alcoholic beverages, he replied that "If it's in the statement that is the words"; that he thinks Alfano said "My car" if it is in his statement. The police officer further says that the person who committed the theft denied that he had used his car, and the ultimate purchaser from whom the liquor was seized told him that he hired a car to transport the liquor to the place where it was seized; that this was the extent of his investigation as to the possibility that any car other than Alfano's was used to transport the stolen liquor.

While strict formality of procedure does not govern forfeiture proceedings, nevertheless my decision must be based upon legally competent evidence in the record. Hence, my judgment must not be swayed or influenced by written statements made by Alfano's alleged accomplices concerning the matter, whether favorable or unfavorable to him. These statements, upon objection by Alfano's counsel, were not admitted in evidence inasmuch as under our Constitutional safeguards a person must be confronted by, and afforded an opportunity to cross-examine, any witnesses in a case. Alfano's alleged accomplices, when called upon, refused to testify, claiming their Constitutional immunity from being compelled to testify where such testimony would incriminate them.

Although Alfano may ultimately be convicted in criminal proceedings for unlawfully transporting alcoholic beverages, the outcome of such proceedings is uncertain and may be long delayed. Only his plea of guilty would be evidential in these seizure proceedings. Seemingly, it would contravene fundamental legal rights to defer decision in the seizure proceedings to await the eventuality of possible further evidence becoming available, or the outcome of the criminal proceedings. The Alcoholic Beverage Law concerning forfeiture affords a claimant his "day in court", which necessarily implies a reasonably prompt decision in the case on the evidence available.

The only evidence before me which would lead to the conclusion that Alfano's car was in fact used to transport the stolen liquor is Alfano's statement. The evidence leaves me in some doubt as to whether the damaging admissions were in Alfano's own words or whether Alfano was fully aware of their import. Under such circumstances, while I may suspect that Alfano's car was used to transport the stolen alcoholic beverages, I cannot, in good conscience, find that the Department has sustained the burden of establishing such unlawful use of the car by a preponderance of the evidence. Cf. Seizure Case 6525, Seizure Case 6796, Bulletin 677, Item 11. The motor vehicle will therefore be returned to Alfano.

The stolen liquor will be returned to Waclaw Swieczkowski, the innocent licensee, after it is no longer required for evidential purposes in the pending criminal proceedings.

ERWIN B. HOCK  
Commissioner.

Dated: January 14, 1948.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Max Milask, t/a Neptune Distributors - SBD-121  
3707 Sunset Ave.,  
Atlantic City, N. J.

Application for additional warehouse at 3 Cooper St.,  
Westmont, N. J., filed January 15, 1948.

The Ebling Brewing Company Inc.  
30 Maple St.  
Bergenfield, N. J.

Application for Limited Wholesale License filed January 16, 1948.

*Erwin B. Hock*  
Commissioner.