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

BULLETIN 1957 March 15, 1971

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ITEM

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1. APPELLATE DECISIONS - PICKWICK PRODUCTS, INC. v. JERSEY CITY and GLADSTONE.

PICKWICK PRODUCTS, INC.)
Appellant,)
v.) ON APPEAL
) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC) AND ORDER
BEVERAGE CONTROL OF THE CITY
OF JERSEY CITY, and PERRY)
GLADSTONE,)
Respondents.)

Davidson, Miniutti & Nester, Esqs., by Joseph Nester, Esq., Attorneys for Appellant
James F. Ryan, Esq., by Louis P. Caroselli, Esq., Attorneys for Respondents
Perry Gladstone, Respondent-licensee, Pro se

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City (Board) which, on May 28, 1970, granted the application of the respondent Perry Gladstone for a place-to-place transfer of his plenary retail consumption license from premises 511 Communipaw Avenue, to premises 488 Communipaw Avenue, Jersey City.

Appellant alleges that the action of the Board was erroneous because it is in violation of the distance ordinance requirements of the local ordinance; it does not meet the distance requirements for such transfer, as set forth therein, nor does it come within the exceptions set forth in the ordinance.

The answer of the Board denies the substantive allegations of the petition. It sets forth that there was no evidence adversely reflecting the qualifications necessary for the granting of the said transfer; and further, that it acted within its proper discretion.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

The facts, briefly, are as follows: Respondent Gladstone, was granted the subject license in the summer of 1969 for premises located in a building which he owns at 511 Communipaw Avenue, Jersey City. According to his testimony at this plenary de novo hearing, he never operated under the said license at these premises.

He states that he does not intend to operate the premises personally at the proposed new address, but "I am trying to sell it. I have a buyer. I do not intend to operate it." It was stipulated that no hardship situation was presented to the Board nor was the said grant by the Board based thereupon.

The transfer of the said license was granted under an exception set forth in Section 4 of the Local Ordinance K-1299, which reads in pertinent part, as follows:

> "Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption license, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said license may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated."

It is admitted that the said transfer was to premises which are within an area of a circle having a radius of five hundred feet, having at its central point an existing licensed premises covered by a plenary retail consumption license.

The attorney for the Board, while conceding that the hardship exception was not applicable, argues nevertheless, that the transfer comes within the second exception, namely, "or if the landlord of such licensed premises shall consent to a vacation thereof". He maintains that since Gladstone was the owner of the premises and obviously consented to the vacation of his present premises, that the Board, in the exercise of its discretion, properly granted the said transfer.

It has been long established by this Division that that portion of the ordinance which requires the consent of the owner of the property from which a license is to be transferred is unreasonable and restrictive because it does not carry out the objects of the Alcoholic Beverage Law. It serves only the private interests of the owners by giving them a strangle hold on their tenants whereby refusal to give consent could be made the means thereby of exacting an exorbitant rent. Re DeYoe, Bulletin 278, Item 8. Thus, that portion of the ordinance requiring consent of the owner is void because it is clearly unreasonable and completely without relation to the purposes of distance regulations. Re Cielukowski, Bulletin 716, Item 6; Van Houten v. Deal, Bulletin 895, Item 1.

Such consent was not a valid consent within R.S. 33:1-26, and was fatally defective. See Walsh v. Bradley, 121 N.J. Eq. 359; Lachow v. Alper, 130 N.J. Eq. 588; Novack v. Kraus, 138 N.J. eq. 241. Cf. Delaware Tavern, Inc. v. Atlantic City et al, Bulletin 758, Item 1.

The fact that Gladstone was the owner of the property from which the license was sought to be transferred is irrelevant since, as stated above, it is based on an invalid exception to the said ordinance. The said ordinance must be strictly construed in conformance with the public policy behind R.S. 33:1-40, enabling local governing bodies to limit the number of retail liquor outlets within their jurisdiction. Permitting the transfer under these cirumstances would be merely a subterfuge to subvert and undermine the public policy as enunciated by the statute hereinabove cited. Cf. Smith v. Bosco, 66 N.J. Super. 165 (App. Div. 1961).

In any event, the transfer based upon the invalid exceptions cannot be sustained. I conclude that, under the facts and law hereinabove cited, the said transfer cannot be sustained. Accordingly, I recommend that an order be entered reversing the action of the respondent Board.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the argument of counsel in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 6th day of January 1971,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby reversed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - MONTAUK BAR, ET ALS. v. PASSAIC.

MONTAUK BAR, et als.,)
Appellants,)
v.) ON APPEAL
) CONCLUSIONS
) AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY
OF PASSAIC,)
Respondent.)

HAMMER & HAMMER, ESQS., BY DAVID L. HAMMER, ESQ., ATTORNEYS FOR APPELLANTS.
AUGUST C. MICHAELIS, ESQ., BY WILLIAM P. SCHEY, ESQ., ATTORNEY FOR RESPONDENT.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of the respondent (hereinafter Board) which, on June 23, 1970 denied appellant's application for renewal of its plenary retail consumption license for the 1970-71 licensing period for premises 248-250 Madison Street, Passaic. Upon the filing of the said appeal, the Director entered an order dated June 29, 1970 extending the term of appellant's 1969-70 license until further order herein.

Appellant's petition of appeal alleges that the action of the Board was erroneous in that (a) appellant was not afforded an opportunity for a formal hearing before the Board; (b) that the action of the Board was arbitrary, capricious and an abuse of its discretion; (c) that appellant was denied due process and (d) that no reasons were stated by the Board for its action.

The Board, in its answer, denies the substance of allegations in the complaint and defends that: (a) its adoptive resolution sets forth that "public necessity and convenience dictate that said license not be renewed"; (b) its action was reasonable and proper and in the best interests of public welfare; (c) its action was based in part upon the fact that "appellant knowingly and fraudulently misrepresented material facts in the securing of its license."

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.

I

Appellant asserts a jurisdictional challenge by alleging that the Board denied the said application for renewal without granting it a hearing on its said application. There is no merit to this contention. Rule 8 of State Regulation No. 2 reads, in pertinent part, as follows:

"No hearing need be held....if the issuing authority, on its own motion, after the requisite

> statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

Since the Board decided on its own motion to deny the said application, it was not required to hold a hearing. In any event, the appellant was afforded full opportunity at this plenary de novo hearing to present such testimony as it considered relevant to this proceeding. Cf. Cino v. Driscoll, 130 N.J.L. 535 (1943). Furthermore, the Board set forth in its resolution its reason for denying the same. Thus, the Board has fulfilled its obligation under this rule; and the charge that the Board failed to set forth the reason for its action lacks factual basis.

II

A brief background introduction to this matter is required. The appellant applied to the Board for renewal of its license for the 1969-70 licensing period. Upon denial thereof, the matter was then appealed to this Division and was adjourned from time to time by motion of the attorneys for the appellant and the Board. It appears that the Board predicated its request for adjournment on the ground that it desired a more complete investigation of the appellant, and requested the assistance of this Division in such investigation. Finally, when the matter was set down for hearing, it was mutually agreed that the action of the Board be reversed, and an order dated June 23, 1970 was entered by the Director to that effect. However, in the Order the following is set forth:

> "At the time of the hearing and before testimony was taken, the attorney for respondent moved for a reversal of its action herein. It was stipulated by both counsel for appellant and respondent that the said reversal shall be made without prejudice to any future rights of respondent in any action it may take with respect to the licensee on any matter, both before and after the date herein. Good reason appearing therefor, I shall grant the request." Montauk Bar (Corp.) v. Passaic, Bulletin 1924, Item 3.

Thus, when appellant applied for renewal of the 1970-71 license, the Board in its discretion and in accordance with the specification set forth in the aforementioned order, denied appellant's application.

At the hearing held herein, Ramon Cruz, testifying on behalf of the appellant, gave the following account: He had been employed by Mr. Joseph Satkin who was an owner and operator of several taverns in the City of Passaic. Satkin recommended that he purchase this tavern and arrange for Satkin's attorney to prepare the contract for the said sale. He admitted that he holds a 1% stock interest in the Blue Fountain and the 68 Lounge, plenary retail consumption licensees in Passaic, in which Joseph Satkin is the principal stockholder. However, he failed to set forth his interest in these two licensees in his application.

When he was originally granted a renewal of his application, he was informed by the Board that one of the conditions upon which the grant of the application was predicated,

was that he was to sever any connection or association with Satkin. Nevertheless, during this period, he was gainfully employed by Satkin at the M & M Market, owned by Satkin.

He explained that he did not invest any money in the purchase of these premises. Satkin introduced him to the Silko Vending Machine Co. which had certain vending machines located in the subject premises. The Silko Vending Machine Co. loaned him $4500.00 which he repaid periodically from the profits made from those machines.

For his services therein, he drew a salary of $98.00 a week in addition to a salary that he was drawing from his employment at the M & M Market. He asserted that he worked at the M & M Market from 9 a.m. for about 5 or 6 hours and was paid on an hourly basis. He would then go to the subject premises where he worked as a bartender from 6 p.m. until 1 a.m., at which time another bartender would take over. He also admitted that Joseph Reiss, Satkin's accountant, was the only person authorized to sign any checks. However, most of the transactions were made on a cash basis and payments for supplies to the tavern were all transacted on a cash basis.

Dr. Nathan T. Brussel, the owner of the building in which this tavern is located, testified that Cruz entered into a lease agreement with him for the licensed premises. He assumed that Cruz is the operator thereof. However, he usually receives the rent check from a bartender on duty at the premises because he usually comes to the building early in the morning. Cruz is not at the tavern at those times. He receives monthly checks for payment of the rent, but does not know who signs those checks.

Walter Pych, a liquor salesman, employed by Federal Wine & Liquor Co., testified that he had been serving this account for the past two years and has seen Cruz occasionally on the premises. However, usually the orders for liquor are given to him by the bartender on duty. He usually visits these premises in the morning but does not see Cruz there because Cruz is not on duty at that time. The payments to him are made in cash.

Henry J. Steenstra, employed by the Public Service Gas and Electric Company, testified that the bills for service by this company are sent to Cruz, in care of the Montauk Bar. However, he did not know whether the bills are paid by check or in cash.

Milton J. Mostel, the Chairman of the Board, gave the following account: when the license was originally transferred to Cruz, Cruz was informed that he was required to sever all connection with Satkin, and Cruz agreed to this. The Board carefully examined the application and was not satisfied with the representation by Cruz that he was, in fact, the owner of these premises. It was the feeling of the Board that Cruz was, in fact, acting as a front for Satkin.

Joseph Reiss, the accountant for Satkin, who was also the accountant for Cruz, was summoned to the meeting and was requested to present an affidavit setting forth that Cruz had no association with Satkin. Although such affidavit was promised, Reiss failed to produce the same.

Mostel, who is a certified public accountant, in active practice for over 35 years, examined such books as were presented to the Board. However, despite the Board's request that all the records be produced, some of the basic records were not made available.

From his investigation of the records, he found that they were not kept properly. He was informed that the records for the 1969-70 licensing period "was not written when I was investigating--but, I examined the first year, the '68-'69 year. From my investigation I would have to conclude that these records don't properly reflect the transactions of the company, one; and two, that in fact there's almost no doubt in my mind Mr. Cruz does not own this tavern but is acting as a front for some other people. Probably Satkin."

He explained that Cruz was presumably drawing a salary of $98.00 per week. He found many checks made out to "cash" but these never had any endorsement on them. He noted one check made payable to "cash" in the sum of $2,245.00. This was one of a number of checks made so payable, which were listed as "advances". "At the end of the year they're wiped out as additional salary to Ramon Cruz. In fact, we don't know whether Ramon Cruz ever got this money because unfortunately Ramon Cruz, it seems, didn't file a tax return." He was informed of this fact by appellant's accountant, Joseph Reiss.

Investigation further disclosed that Cruz does not, in fact, endorse these checks and the monies reflected on the checks are charged to "advances" or "loans receivable". The total amount of these advances amounted to $9,754.00 for the period from December to May 1969.

Thus, he explained Cruz's basic salary is listed as $98.00. However, at the end of the year, a journal entry is made to which $7500.00 is added to his salary account, and it is charged off as an "advance account". Mostel asked for an explanation from Reiss but no explanation was ever received.

The examination of the books further disclosed that a check made out to "cash" and endorsed by Cruz was noted as a legal fee to an attorney. This check, in the amount of $400.00 was issued in December 1969. However, in checking with the attorney, Peter Zangara, he denied that he had ever received any legal fee or was paid in cash or otherwise by appellant.

The investigation also noted that no register tapes were retained to establish the accuracy of receipts from this operation and deposits were usually made in even amounts in the bank. Thus, in the opinion of this witness, the records do not properly reflect the transactions that actually occurred.

The witness also averred that both Cruz and Reiss admitted that Cruz was working for Satkin at the M & M Market, and rarely appeared at the premises. However, when he asked Cruz for a W-2 form with respect to any monies received from the M & M Market, he was told by Reiss that he actually did not receive any monies, but was promised by Satkin that, eventually, he would receive an interest in the business.

Additionally, the witness found that there was one check issued by the Montauk Bar which was actually signed by Satkin.

On cross examination, Mostel insisted that the books and records did not reflect the actual transactions that occurred. He was told by Reiss that he (Reiss)pays all the bills and makes out all the checks. According to the information that this witness has, Cruz was familiarly referred to as Satkin's bodyguard and, in fact, never performed any duties as bartender at these premises. With respect to Satkin, he stated that "on the basis of what we know about Joseph Satkin, he has no--he is not a person that should ever have a tavern license in this Town."

The Board felt strongly against any licensee being associated with or controlled by Joseph Satkin: "Every tavern this man ever had any connection with in the City of Passaic was a horror. There were at least three directly owned by him which we refused to renew and every instance we were sustained." He explained that in these taverns there were many instances of violence and crime and Satkin has "a propensity for running a tough place." In any event, the Board would never consider granting a license to Satkin.

Finally, it was his conviction, and that of the Board, that Joseph Satkin was, in fact, the true owner of this license, and that Cruz was merely fronting for him. It is for this reason and because of the refusal of Cruz to sever his association with Satkin, that the Board determined that the public interest would best be served by denying the said application.

My examination and evaluation of the testimony leads to the following findings of fact:

(1) In its application to the Board for renewal of this license, the appellant knowingly and fraudulently misrepresented material facts in the securing of its license. It failed to set forth that Ramon Cruz, listed as the president and principal stockholder, was also holder of 1% of the stock in the 68 Lounge and The Fountain, both of which were plenary retail consumption licensees in the City of Passaic.

(2) Ramon Cruz falsely represented himself as the principal stockholder holding 98% of the issued and outstanding stock of the corporate appellant, although in fact, he was acting as a front for Joseph Satkin who was the true and beneficial owner of the stock in the said license.

(3) Cruz did not invest any money for the purchase of his alleged interest in the said license and the obvious reason therefor, was that he was not, in fact, the true owner thereof, but was acting as a front for Joseph Satkin.

(4) Cruz was, in fact, an employee at the said licensed premises and received a salary in the sum of $98.00 per week.

(5) Since Cruz was, in fact, an employee of Joseph Satkin, he did not nor could he comply with the condition imposed by the Board, to wit: that the license was renewed for the prior licensing period upon the express condition that he divest himself from any connection or association with Joseph Satkin.

(6) The Board was persuaded that any connection that Joseph Satkin had with a liquor license in that municipality would be contrary to the public interest because of Satkin's other

associations and interests in liquor licenses, which eventuated in denial of renewal of the said licenses.

(7) The examination of the books and records of the appellant for the operation of these premises established that they were not kept in compliance with the statute and the rules and regulations of this Division. They further indicated, in fact, that Joseph Reiss, the accountant for Joseph Satkin, was in full financial control as the agent for Satkin, made disbursements, signed checks and transacted all the other necessary financial business of this license.

(8) From the evidence adduced herein, it is clear that Joseph Satkin has an undisclosed interest in the license and, therefore, the application as heretofore noted, falsely misrepresented material facts.

In considering the reasonableness of the Board's action, it should be noted that a liquor license is a temporary permit or privilege to conduct a business otherwise illegal. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). Whether it should be renewed rests in the sound discretion of the local issuing authority and, upon review, its determination should not be disturbed unless the evidence indicates a clear abuse of that discretion. 279 Club v. Newark, 73 N.J. Super. 15, 21 (App. Div. 1962); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Further, as was stated in Zicherman v. Driscoll, 133 N.J.L. 586 at p. 587:

> "The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guidepost in the issuing and renewing of licenses."

In the area of licensing, the determinative consideration is the public interest in the creation or continuance of the licensed operation. Blanck v. Magnolia, 38 N.J. 484. In thus implementing the salutary objectives of statutory liquor control, the responsibility of a local issuing authority is "high", its discretion "wide", and its guide the "public interest". Lubliner v. Board of Alcoholic Beverage Control of Paterson, 33 N.J. 428, 446 (1960).

I am persuaded that the application did not directly reflect the ownership of the stock of the appellant, contained misrepresentation of material facts and was a fraud upon the Board. I also find that Cruz was not, in fact, the owner of the stock, but that he was a front for an undisclosed interest. All of this satisfied the Board that the renewal of this license would be contrary to the public interest. See Sharp's Lodge, Inc. v. Lakewood, Bulletin 1842, Item 1; Florence Methodist Church v. Township Committee of Florence Twp., 38 N.J. Super. 85.

My assessment and evaluation of the totality of the evidence presented herein, the exhibits and the summation of counsel, lead me to the irresistable conclusion that the renewal of this license would be inimical to the public interest; that, conversely, the interests of the community would best be served by denying renewal of the appellant's license.

It is, therefore, recommended that the Board's action in denying appellant's application be affirmed, and the appeal herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by appellant pursuant to Rule 14 of State Regulation No. 15.

I find that the matters contained in the exceptions have either been considered by the Hearer in his report or are without merit.

Consequently, having considered the entire record, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions and argument with respect thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of January 1971,

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 dated June 29, 1970, extending the term of appellant's 1969-70 license pending the determination of this appeal, be and the same is hereby vacated, effective immediately.

RICHARD C. McDONOUGH
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - CLAIM OF OWNER REJECTED ABSENT GOOD FAITH - CASH AND ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure on July 27, 1969 of a quantity of alcoholic beverages and $260.00 in cash at Lillian's Restaurant, 356 - 15th Avenue in the City of Newark, County of Essex and State of New Jersey.	Case No. 12,228 ON HEARING CONCLUSIONS AND ORDER

Philip Weinstein, Esq., appearing for claimant, Lillian Stewart.
Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 25 containers of alcoholic beverages and $260.00 in cash, included in which was a postal money order in the sum of $15.00, more particularly described in an inventory attached hereto, made part hereof, and marked Schedule "A", seized on Sunday, July 27, 1969 at premises known as Lillian's Restaurant, 356 - 15th Avenue, Newark, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Mrs. Lillian Stewart, the operator of the said premises, represented by counsel, sought the return of the seized cash.

The Division's case was presented through the introduction of its file in evidence with the consent of the claimant, supplemented by the testimony of ABC Agent S.

However, the file was admitted into evidence specifically subject to the challenge by the claimant to the actual amount of the seized cash and claimant's specific denial of possession of the alcoholic beverages. The file contained the affidavit of mailing, the affidavit of publication, the inventory, the "marked" ten-dollar bill, the chemist's report, and the record of the "marked" bill.

The said file discloses the following: On Sunday, July 27, 1969, at about 11:10 A.M., ABC Agent S, in possession of a "marked" ten-dollar bill, entered the subject premises which are located on the ground floor of a multi-family dwelling. The premises consist of a restaurant with tables, chairs and the usual fixtures and equipment for such facilities. He walked to the kitchen in the rear of the premises and spoke to a male, later identified as Walter Shearin.

He requested that Shearin sell him a pint of scotch. Shearin produced a pint bottle of Dewar's White Label Scotch which was not quite full. At this point, a female, later identified as Lillian Stewart, the proprietress, (claimant herein) entered the premises. Shearin asked Stewart if there was more scotch. Stewart obtained a bottle of scotch and in the presence of Shearin, filled the pint bottle held by Shearin. Shearin stated that the price for this pint bottle of scotch was $6.00. The agent gave him the "marked" ten-dollar bill and received as change therefor, three one-dollar bills and four quarters. The agent then left the premises; he returned thereto about 1:50 P.M., accompanied by another ABC agent and local police officers.

They immediately identified themselves; ABC Agent M placed Shearin and Stewart under arrest, following which a search and seizure were made of the premises. The search revealed 25 containers of assorted alcoholic beverages and the police officers recovered $260.00 in cash, which included a postal money order in the sum of $15.00 and the "marked" ten-dollar bill, commingled therewith.

Shearin was charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50(a). Stewart was charged with possession of alcoholic beverages with intent to sell the same without a license and aiding and abetting in the sale of alcoholic beverages in violation of R.S. 33:1-50(b & e). They were held in bail for arraignment in the Newark Municipal Court.

An analysis of a sample of one 4/5 pint bottle, full, of White Label Dewar's Blended Scotch Whisky was made by the Division chemist and his report certified by the Director on August 12, 1969 established that it was an alcoholic beverage, fit for beverage purposes, with an alcoholic content by volume of 43.85%.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Stewart, Shearin or for any other person at, or for the premises in question.

Since there was no permit or license authorizing the sale of alcoholic beverages as aforesaid, they are illicit because

they were intended for sale without a license. Such alcoholic beverages and the cash, as set forth in Schedule "A" herein, constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 11,913, Bulletin 1776, Item 4.

Lillian Stewart, testifying in support of her claim for the return of the cash seized herein, gave the following account: She is the owner of the restaurant in the premises wherein the said seizure took place. She had no knowledge of any alcoholic beverages being sold or served nor was she ever present when any alleged sales took place. She had $380.00 which was hidden in a pillow in the bedroom within the said premises. $100.00 of that sum belonged to one Rudolph Davis who gave her this money to hold for him. It was his custom to give her $100.00 each week and she would return the money to him when he needed it.

On the morning of the date alleged herein, ABC Agent M entered the premises and had breakfast for which he paid her $1.25. She denied that there were any alcoholic beverages on the premises with the exception of one can of beer. She also denied knowing that Shearin had any alcoholic beverages. She was then asked, on cross-examination,

"Q Were you there when they searched the premises and found the money?

A Yes, because I was getting ready to close up.

Q With that money wasn't there a ten dollar marked bill?

A Yes, because I had taken all the money out of the cash register."

And further:

"Q What did (Agent M) say to you about the bottle of whiskey he had in his hand?

A He said he bought it from Mr. Shearin.

Q What did you say?

A I asked him what time, when did he get it. He said about a couple of hours ago.

Q Did you speak to Mr. Shearin then?

A I asked him about it. He said he remembered it.

Q He remembered it?

A Yes."

Walter Shearin testified as follows: He is the brother of Stewart and has been employed on the premises for the past three years. The premises are open all night on weekends. He came into the premises at about 12:30 or 1:00 a.m. on that date and worked until the confrontation, that afternoon. He had some bottles of alcoholic beverages which he frankly admits selling, although his sister was unaware of his activity.

He remembered Agent M seeking to buy a bottle of scotch and his filling the quart bottle with scotch which he sold the agent for $6.00. However, he denied that his sister was present at the time of the said transaction. The police officers were the ones who recovered the money from the bedroom and counted it in his presence and in the presence of Agent M.

Agent M did not enter the bedroom. Finally he admits that he has been selling alcoholic beverages over a period of time, and explained that he would usually secrete the alcoholic beverages in various parts of the premises.

Rudolph Davis testified that he left $177.00 with Mrs. Stewart some time at the end of July but he could not recall exactly what date this money was left with her. He added that he was in the habit of posting with Mrs. Stewart $100.00 every Saturday and she would return it to him upon request.

ABC Agent M, testifying in rebuttal, refuted the testimony of Mrs. Stewart and Shearin and asserted that Mrs. Stewart was the one who obtained the quart bottle from the kitchen and filled it with the scotch whiskey, whereupon he paid Shearin in that transaction. His search of a refrigerator revealed 21 cans of beer, two 1/2 pint bottles of vodka, a fifth of vodka and a fifth of scotch.

The Newark Police officers searched the adjacent bedroom and seized the cash hidden therein; a ten-dollar "marked" bill was found commingled therewith. The money was counted in the presence of Stewart and Shearin, and the ten-dollar "marked" bill was shown to her as well as the list prepared prior to the agent's entry, containing the serial number of the "marked" bill. Shearin readily admitted the sale. Mrs. Stewart, however, insisted at that time that she hadn't "done anything".

Agent M, on cross-examination, denied that he had any breakfast in these premises on this occasion or on any other occasion. He also maintained that these premises had been under surveillance and he had entered the restaurant on prior occasions during which he observed alcoholic beverages being sold to and consumed by patrons. He did not recall seeing a cash register on the premises, and recalls that Mrs. Stewart went into the bedroom to obtain the bottle, and that was the room in which the local police officers found the money. Finally, the witness added that these premises were well-known as an after-hours speakeasy, and that, on the occasions that he visited the premises, he never saw anyone served food; he "only saw drinking going on there on many occasions".

I have had an opportunity to observe the demeanor of the witnesses as they testified and to evaluate their testimony. Testimony to be believed must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances, Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

It is quite apparent, from the credible testimony presented, that these premises, which were open all night were an after-hour speakeasy operation. I do not believe Shearin's contention that patrons came to these premises at 4:00 or 5:00 a.m. for the purpose of dancing.

Nor do I believe Mrs. Stewart's testimony that she was totally unaware of the activities of her brother who forthrightly admitted selling illicit alcoholic beverages over a considerable period of time. I am satisfied that the Division's witnesses gave a straight-forward and believable account of what transpired, and I am similarly persuaded that Mrs. Stewart was present and participated in the alleged unlawful sale to the said agent.

There appears to be no contradiction to the agent's testimony that the cash was recovered by the local police officers and was actually counted in the presence of both Mrs. Stewart and Shearin. The evidence thus clearly and convincingly established that the claimant had knowledge of the illegal activity on the premises.

The Director has the discretionary authority to return property subject to forfeiture to a person who has established to his satisfaction that she acted in good faith and did not know or have any reason to suspect that her property would be used in violation of the Alcoholic Beverage Law. R.S. 33:1-66(e). Since I have found that Mrs. Stewart participated in the unlawful sale and had knowledge of the alleged unlawful activity, the element of good faith would be determined negatively. Seizure Case No. 10,444, Bulletin 1391, Item 5.

Therefore, the cash which was commingled with the "marked" money is unlawful property, subject to forfeiture. It is, accordingly, recommended that the claim of the said claimant be denied, and that an Order be entered forfeiting the alcoholic beverages and cash, as set forth in Schedule "A".

Conclusions and Order

No exceptions to the Hearer's Report were taken by the claimant herein pursuant to Rule 4 of State Regulation No. 28.

After carefully considering all the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 14th day of January, 1971,

DETERMINED and ORDERED that the claim of Lillian Stewart be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the seized cash in the sum of $260.00 be and the same is hereby forfeited, pursuant to the provisions of R.S. 33:1-66 to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages be and the same are hereby forfeited, and shall 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"

25 - containers of alcoholic beverages
$260.00 - cash

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, WITH REMISSION OF 5 DAYS FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
PRINCE BAR & GRILL, INC. 370 Princeton Avenue Jersey City, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)

Licensee, by Sylvester Damiano, Vice-President-Treasurer, Pro se
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, October 3, 1970, it sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for five days effective July 16, 1962, for possessing an alcoholic beverage in a bottle not truly labeled. Re Prince Bar & Grill, Inc., Bulletin 1468, Item 12.

This prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, 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 Stanczyk, Bulletin 1939, Item 8.

Accordingly, it is, on this 13th day of January 1971,

ORDERED that Plenary Retail Consumption License C-158, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Prince Bar & Grill, Inc., for premises 370 Princeton Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, January 25, 1971, and terminating at 2 a.m. Thursday, February 4, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE TO INTOXICATED PERSON - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
JOSEPH C. & ELLIE SANTOS t/a Joe's Bar & Grill 113 South Feltus Street South Amboy, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-8, issued by the Common Council of the City of South Amboy.	)

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

BY THE DIRECTOR:

Licensees plead guilty to charges alleging that (1) on October 4, 1970 they sold a quart-size container of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20, and (2) on October 3, 1970 they sold drinks of beer to an intoxicated adult patron, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for ten days (Re Brierhurst Associates, Inc., Bulletin 1919, Item 6), and on the second charge for twenty days (Re Petito, Bulletin 1849, Item 4), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 15th day of January 1971,

ORDERED that Plenary Retail Consumption License C-8, issued by the Common Council of the City of South Amboy to Joseph C. & Ellie Santos, t/a Joe's Bar & Grill, for premises 113 South Feltus Street, South Amboy, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, February 1, 1971, and terminating at 2 a.m. Friday, February 26, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Ritchie & Page Distributing Co., Inc.
280-288-292 Third Street
Trenton, New Jersey

Application filed March 9, 1971 for additional warehouse license for premises 680 South Clinton Avenue, Trenton, New Jersey, in connection with State Beverage Distributor's License SBD-77.

Richard C. McDonough
Director