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

BULLETIN 1066 JUNE 7, 1955

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New Jersey State Library

STATE OF NEW JERSEY
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1060 Broad Street, Newark 2, N. J.

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1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD OF PREDECESSOR IN INTEREST CONSIDERED - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against 32 BROAD ST. INC., 32 Broad Street, Keyport, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Keyport.	CONCLUSIONS AND ORDER

Karkus & Kantor, Esqs., by Ezra W. Karkus, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge alleging that on January 1, 1955 it sold, served and delivered alcoholic beverages to two minors, Doris --- and Dorothy --- and permitted the consumption of such beverages by said minors, in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the hearing herein, the Division produced as witnesses Doris ---, Dorothy --- and an ABC agent.

Doris testified that she was born on December 19, 1938 and is 16 years of age; that between 1:30 and 2:00 a.m., January 1, 1955, she, Dorothy and two adults, Don and Stanley Uzar, visited defendant's licensed premises and seated themselves in a booth therein; that Stanley went to the bar and returned with four mixed drinks of "Seagram's Seven Whiskey" and "Seven Up"; that she consumed her drink but Dorothy abstained; that thereafter a "girl" approached their booth and asked if the foursome wanted to order another round of drinks; that Don ordered two drinks of the same mixed beverage which they had previously been served; that Stanley went to the bar and Dorothy was escorted to the dance floor by a stranger; that the "girl" brought the requested drinks and placed them on the table in front of her and Don; that both consumed their drinks; and that during the one hour the foursome remained in the tavern no one on the premises inquired as to her or Dorothy's age or required any writing or proof thereof.

Dorothy testified that she was born on May 9, 1939 and is 15 years of age and corroborated Doris' testimony in all respects.

The ABC agent testified that on January 14, 1955, he and another agent were directed to defendant's tavern by the minors who pointed it out as the place where they had been served alcoholic beverages on January 1, 1955. The minors, however, did not identify either the bartender or the "girl" who had served them.

The defendant produced as witnesses Joseph Kanick, President of defendant-corporate-licensee, an Air Force Sergeant, a barmaid and two regular patrons. Kanick and the Sergeant testified that they were the bartenders at the time testified to by the minors and were serving some thirty or more customers at the bar. All of defendant's witnesses testified that they did not see the minors in the tavern and that the only persons who occupied one of the eight booths on the licensed premises were three unidentified male patrons.

It is well settled in this State that a person may testify as to his own age. State v. Girone, 91 N.J.L. 498. It has also been established that the failure of a minor to identify the specific person who made the sale of alcoholic beverages to him is not fatal in disciplinary proceedings, Re LaCorte, Bulletin 469, Item 1; Re Dante, Bulletin 771, Item 9, and that an indirect sale is a "sale" within the statutory definition of R.S. 33:1-1(w). Re Gahr, Bulletin 377, Item 7; Re Fredericks, Bulletin 565, Item 4.

Considering all the facts and circumstances of the instant case, I am satisfied that the clear-cut and intelligently given testimony of the minors presents a true picture of what actually occurred. I, therefore, find defendant guilty of so much of the charge as alleges that alcoholic beverages were served to and consumed by Doris ---.

As to record: It appears that when the license for the premises herein was held by Joseph Kanick, who is 86% shareholder and President and Treasurer of the defendant-corporate-licensee, his license was suspended for ten days by the local issuing authority, effective July 16, 1951, for sales to minors. The prior record of defendant's predecessor in interest must be considered in arriving at the penalty to be imposed in this case. Re New Glass Bar, Inc., Bulletin 922, Item 4; Re New Town Tavern, Inc., Bulletin 1055, Item 2. The minimum penalty for a first offense of sale of alcoholic beverages to minors (unaggravated by their tender age, the number of minors involved or other circumstances) is a suspension of the license for ten days. Since a prior similar offense by a predecessor in interest within a five-year period is considered as a second similar offense, the minimum penalty, if otherwise unaggravated, would be a suspension of the license for twenty days. However, because the instant case is aggravated by the tender age (16) of the minor involved, an additional ten days will be added. Re Tarsi, Bulletin 1058, Item 2. This makes a total suspension of thirty days.

Accordingly, it is, on this 6th day of May 1955,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Keyport to 32 Broad St. Inc., 32 Broad Street, Keyport, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3 a.m. May 16, 1955, and terminating at 3 a.m. June 15, 1955.

WILLIAM HOWE DAVIS,
Director.

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ANTHONY ANTANAITIS, t/a CLUB 999, 999 South Orange Avenue, Newark 6, New Jersey, Holder of Plenary Retail Consumption License C-750, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Anthony Antanaitis, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded <u>non vult</u> to a charge alleging that he sold, served and delivered alcoholic beverages to two minors, and permitted the consumption of such beverages by said minors in and upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on April 6, 1955, ABC agents obtained statements from John --- (age 18) and Paul --- (age 20). In his statement John says that he and Paul entered defendant's premises about 12:30 p.m. on March 20, 1955, and that each purchased from the licensee two glasses of beer, the contents of which they consumed. He further says that they left the licensed premises at about 1:15 p.m. In his statement Paul substantially corroborates the facts set forth in the statement received from the other minor except that he alleges that on that occasion they had three or four glasses of beer. In their statements both minors deny that they were questioned as to their age by anyone on the licensed premises. Subsequently both minors accompanied ABC agents to defendant's premises and at that time they identified defendant's premises as the premises in which they had purchased the beer and the licensee as the person from whom they had made the purchases.

Defendant has no prior adjudicated record. I shall suspend his license for a period of ten days, less five days for the plea entered herein, leaving a net suspension of five days. <u>Re Soerensen</u>, Bulletin 1058, Item 6.

Accordingly, it is, on this 6th day of May, 1955,

ORDERED that plenary retail consumption license C-750, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anthony Antanaitis, t/a Club 999, for premises 999 South Orange Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. May 16, 1955, and terminating at 2 a.m. May 21, 1955.

WILLIAM HOWE DAVIS,
Director.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD NOT CONSIDERED - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

HENRY CRAMER & MARY CRAMER,
S/W corner Union & Sidney Avenues,
Union Beach, New Jersey,

Holders of Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Union Beach.

CONCLUSIONS AND ORDER

Karkus & Kantor, Esqs., by Ezra W. Karkus, Esq., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to a charge alleging that on January 1, 1955, they sold, served and delivered alcoholic beverages to two minors, Doris ---and Dorothy ---, and permitted the consumption of such beverages by said minors, in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the hearing herein, the Division produced as witnesses, Doris ---, Dorothy --- and an ABC agent.

Doris testified that she was born on December 19, 1938, and is 16 years of age; that at about 12:45 a.m., January 1, 1955, she, Dorothy and two adults, Don and Stanley Uzar, visited the defendants' licensed premises and seated themselves at the bar therein; that Stanley ordered "Seagram's Seven Whiskey" and "Seven Up" for the foursome; that the bartender whom she identified as Henry Cramer, one of the licensees, served the requested drinks without requiring proof of the girls' ages; that Dorothy "poured her shot" into Don's glass; that Don switched glasses; that she (the witness) consumed the contents of Don's glass; and that they remained on the premises until approximately 1:30 a.m.

Dorothy testified that she was born on May 9, 1939 and is 15 years of age. She corroborated Doris' testimony in all respects and on cross-examination identified from the witness chair one of the defendants' witnesses (a musician) as the person who entertained with a guitar in the licensees' establishment on the morning in question.

The ABC agent testified that on January 12, 1955, the minors directed him to the defendants' tavern which they pointed out as the place wherein they had been served alcoholic beverages and that therein they identified Henry Cramer (one of the licensees) as the bartender who had served them.

The licensees, five patrons and the aforesaid guitar player, testified respecting their activities at the "open house" in the defendants' establishment, in celebration of the New Year and stated that, though present from New Year's Eve until nearly closing time next morning, they did not see the

minors in the licensed premises. The guitar player stated, "maybe they was there but I didn't see them."

At the hearing, the Hearer, over the objections of the defendants' counsel, permitted testimony by the minors respecting their own ages. I agree with the Hearer's ruling. It is well established in this State that one may testify as to his own age. State v. Huggins, 83 N.J.L. 43; State v. Koettigen, 89 N.J.L. 698; State v. Girone, 91 N.J.L. 498; State v. Andolora, 108 N.J.L. 47.

Defendants' counsel, further, submitted a memorandum in which he argues that the charges herein should be dismissed because of (a) the Division's failure to call Stanley Uzar, (b) the falsehoods in the testimony of the minors, and (c) the failure of the Division to prove the truth of the charges by a preponderance of the evidence.

With respect to point (a): It was admitted by the prosecution that Stanley Uzar was subpoenaed by the Division and not called as a witness, because, it was asserted, his testimony was not deemed necessary. Defendants' counsel contends, therefore, that the failure to call him gives rise to an inference that Uzar's testimony would have been unfavorable to the Division's case. In support of his contention, counsel cites Van Bernum & Van Bernum, 140 N.J. Eq. 413 (E.& A. 1947); Series Publishers Inc. v. Greene, 9 N.J.Super. 166 (App.Div. 1950); Schultz v. Hinz, 20 N.J.Super. 346 (App.Div. 1952). The fact, however, has been overlooked that Stanley Uzar was in the hearing room throughout the proceedings and his presence there was known to the defendants' counsel who had him identified by one of the defendants' witnesses. Uzar, therefore, was available to either party and the unfavorable inference cannot be adduced.

> "An inference adverse to a party because of his failure to produce a certain witness does not arise when the person in question is equally available to both parties, or where the testimony of such witness is comparatively unimportant, or cumulative, or inferior to what is already utilized." O'Neil v. Bilotta, 18 N.J. Super. 82, affmd. 10 N.J. 308.

As to point (b): The testimony of the minors respecting the shape of the bar in the defendants' tavern was their best recollections of their previous observations and cannot be construed to be, as counsel contends, a falsehood requiring the application of the doctrine "falsus in uno, falsus in omnibus." Nor is there any contradiction in the record of Dorothy's testimony respecting a clock on the dashboard of the car in which she and her companions drove to the defendants' tavern. Her testimony on cross-examination is that the car was a "Black Plymouth", and the witness who, at the request of the defendants' counsel, inspected "an automobile" during a recess of the hearing, testified that he inspected a "Green Plymouth" and when asked if the car he inspected was a four-door sedan, he testified, "I can't swear to that either. I didn't pay any particular attention to it." I believe that the minors told the truth as to the service and consumption of alcoholic beverages. As to point (c): I have carefully

reviewed the record herein and am not impressed by the testimony of the defendants or their witnesses, most of whom admitted their preoccupation with shuffle-board and other games during a New Year's celebration at which they partook of a midnight meal, presumably "on the house" and reimbursed their hosts by purchasing and consuming a "few beers." On the contrary, the testimony of the minors, uncontradicted as to the material facts in issue; their identification of the tavern, the bartender and the guitar player who admitted entertaining the patrons on the morning in question are compelling factors in determining that the Division has established the case so far as Doris --- is concerned by a preponderance of the believable evidence. I, therefore, find defendants guilty of so much of the charge as alleges that an alcoholic beverage was served to and consumed by Doris ---.

Defendants have a prior adjudicated record. When the licensees herein held a license for premises 525 Springfield Avenue, Newark, N. J., it was suspended for ten days by the local issuing authority, effective August 23, 1948, for permitting a brawl and conducting the premises as a nuisance. An appeal from the suspension was initiated and later discontinued. See Cramer v. Newark, Bulletin 819, Item 11. Since the previous offense is dissimilar in nature to the instant violation, it will not be considered in fixing the penalty herein. Re Spievy, Bulletin 1054, Item 11. The minimum period of suspension imposed for a first offense of sale of alcoholic beverages to minors (unaggravated by their tender age, the number of minors involved or other circumstances) is a suspension of the license for ten days. However, since the instant case is aggravated by the tender age (16) of the minor involved, an additional ten days will be added. Re Tarsi, Bulletin 1058, Item 2. This makes a total suspension of twenty days.

Accordingly, it is, on this 6th day of May 1955,

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Union Beach to Henry Cramer & Mary Cramer, S/W corner Union & Sidney Avenues, Union Beach, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m., May 13, 1955, and terminating at 2:00 a.m., June 2, 1955.

WILLIAM HOWE DAVIS,
Director.

4. DISQUALIFICATION - CONVICTION FOR VIOLATING MUNICIPAL ORDINANCE WITHIN PAST 5 YEARS - APPLICATION TO LIFT DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2. Case No. 1217.	CONCLUSIONS AND ORDER

BY THE DIRECTOR:

On March 8, 1935 petitioner was fined $100.00 as a result of being convicted of violation of the Alcoholic Beverage Law. On February 25, 1937 petitioner was apprehended and charged with operating an unregistered still in violation of the Federal Internal Revenue Laws as a result of which he was sentenced by a Federal Judge to a county prison for six months and fined $700.00. Petitioner was released from the penal institution after being confined therein for a period of five months. On December 11, 1939 he pleaded guilty to conspiracy to violate and violation of the Federal Internal Revenue Laws by operating an unregistered still. He was placed on probation by a Federal Judge for a period of five years. Apparently petitioner was leading a law-abiding existence until December 6, 1953 when he was fined $200.00 for violation of a local ordinance as a result of his plea of guilty to a charge of being an inmate of a disorderly house (gambling).

The crime of operating an illicit still with intent to defraud the United States of revenue, is a crime involving the element of moral turpitude. Cf. Re Case No. 601, Bulletin 779, Item 7. In view of this it is unnecessary to determine whether the other convictions outlined above involve that element.

Five years have elapsed since petitioner's last conviction of a crime. However, as indicated above, petitioner was fined $200.00 in a municipal court on December 6, 1953 after pleading guilty to violation of a local ordinance when apprehended as an inmate of a disorderly house where gambling was being carried on. Because of this conviction I am unable to conclude that he has conducted himself in a law-abiding manner during the past five years. Hence, I shall deny his application for relief under the provisions of R. S. 33:1-31.2. He will not be eligible to apply for relief under this Section prior to December 6, 1958.

Accordingly, it is, on this 6th day of May 1955,

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

WILLIAM HOWE DAVIS,
Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL IN TRUCK - TRUCK AND ILLICIT ALCOHOL FORFEITED - MOTOR VEHICLE USED AS CONVOY RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on December 11, 1954 of a quantity of alcohol, a Chevrolet truck and a Cadillac sedan, on U.S. Route No. 22, in the Township of Green Brook, County of Somerset and State of New Jersey.	Case No. 8777 On Hearing CONCLUSIONS and ORDER

Angeline Graziosi, Pro se.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcohol, a Chevrolet truck, and a Cadillac sedan, described in a schedule attached hereto, seized on December 11, 1954 on U.S. Route No. 22, Green Brook Township, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by New Jersey State Troopers because the alcohol, which was being transported in the truck, appeared to be illicit, and the Cadillac sedan appeared to be acting as a lookout or convoy for the truck.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered on behalf of Angeline Graziosi, who sought return of the Cadillac sedan. Forfeiture of the Chevrolet truck and the alcohol was not opposed by any person.

Reports of ABC agents and other documents in the file, admitted into evidence with consent of Angeline Graziosi, disclose the following facts:

In the early morning hours of December 11, 1954 two New Jersey State Troopers observed the Chevrolet truck, without a tail light, followed by the Cadillac sedan, moving slowly on the highway designated as U.S. Route No. 22 in Green Brook Township. The troopers halted the truck, whereupon the driver of the Cadillac sedan attempted to pass the truck, but was likewise halted.

The troopers discovered 121 five-gallon cans of alcohol in the truck, which bore license plates issued to Frank W. Farrell, and was being driven by Ugo Salerno. Joseph D. DeNola was a passenger therein. The Cadillac sedan, driven by Joseph Graziosi, bore license plates issued to Angeline Danzi.

There were no labels, or stamps indicating the payment of tax on alcoholic beverages, on any of the cans. The troopers took possession of the motor vehicles and alcohol and placed the three men under arrest.

The Division of Alcoholic Beverage Control was notified and the alcohol and the vehicles were turned over to ABC agents. The contents of one of the cans 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 97.7 per cent. It is bootleg alcohol.

Such alcohol is illicit because of the absence of a label or tax stamp on any of the cans. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the Chevrolet truck 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.

Joseph Graziosi offered the explanation that, as an accommodation, he transported Salerno and DeNola from Jersey City to an unspecified location in Washington, New Jersey, where Salerno and DeNola were to pick up the parked truck and drive it to an unspecified location in Bloomfield, New Jersey, and there deliver it to some unspecified person.

Despite Joseph Graziosi's denial, I am satisfied from the evidence presented and the inferences arising therefrom, that all three men were aware that they were transporting illicit alcoholic beverages, and that Graziosi was driving the Cadillac sedan as a lookout or convoy.

Angeline Danzi is the maiden name of Angeline Graziosi. She sought return of such motor vehicle on claim that she was the actual owner thereof, and that she did not know, or have any reason to suspect, that her husband would use the car for the purpose aforesaid.

She has given what appears to be a forthright and honest account of the pertinent facts, which can be summarized as follows: She is about 19 years of age and was married in June 1954. Her family is law-abiding, and her father is a building contractor. She kept company with her husband for about three years, who then had and still has no regular employment or inclination or aptitude for any such employment. The couple lived with the husband's mother, and depended upon the wife's earnings. In October 1954, she borrowed $350.00 from one of her brothers to purchase the Cadillac. Her husband took an active part in its purchase, and indeed, operated it at all times, since the wife had no driver's license. He drove her to and from her place of employment.

It is possible that Joseph Graziosi is the owner of the car in all but name and that by her own account his wife might have realized from his associates that there was a likelihood that he might engage in an illegal enterprise. However, because of the other circumstances presented, I am reluctant to penalize her, and hence I have given her the benefit of the doubt, and conclude that Angeline Graziosi is actually the owner of the car; further, that her husband's constant use of the car, and their relationship, should not charge her with presumptive knowledge of his misconduct because he has no previous criminal record, and because I prefer to consider that his misconduct was not reasonably to be anticipated from the pattern of his previous background. Cf. <u>Seizure Case No. 8490</u>, Bulletin 1009, Item 3.

Angeline Graziosi will therefore be relieved from any forfeiture penalty. R.S. 33:1-66 (f). Consequently, it is not necessary to determine whether a lookout or convoy car is subject

to forfeiture under the Alcoholic Beverage Law, although such a conclusion appeared to be indicated under the pertinent provisions of such law. Cf. U.S. vs. One 1952 Lincoln Sedan, 213 F. 2nd 786.

Pending decision in the case, Angeline Graziosi deposited the sum of $200.00 with the Director of the Division of Alcoholic Beverage Control, representing the retail value of the Cadillac sedan, and thereupon obtained its return, under a stipulation that the Director should determine on the basis of the evidence presented whether such sum of $200.00 deposited in place of the Cadillac should be forfeited, or returned to her.

Accordingly, it is DETERMINED and ORDERED that the costs of seizure and storage of the Cadillac sedan be deducted from the deposit of $200.00 and the balance returned to Angeline Graziosi; and it is further

DETERMINED and ORDERED that the balance of 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 that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS,
Director.

Dated: April 25, 1955.

SCHEDULE "A"

121 - five-gallon cans of alcohol
1 - Chevrolet truck, Serial No. 14PUL1665, 1954 N.J. Registration XDE273
1 - Cadillac sedan, Serial No. 634-2193, 1954 N.J. Registration HC-Y-20.

6. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAX-PAID ALCOHOLIC BEVERAGES WITHOUT COMPLIANCE WITH STATE REGULATIONS NO. 18 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT OWNER NOT IMPLICATED IN UNLAWFUL TRANSPORTATION.

In the Matter of the Seizure on February 8, 1955 of a quantity of whiskey and a Pontiac coupe, on the northbound lane of the New Jersey Turnpike, in Washington Township, County of Mercer and State of New Jersey.	Case No. 8806 On Hearing CONCLUSIONS AND ORDER

Edward Robinson, Pro se.
Willie S. Melvin, Pro se.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 72 pint bottles, 31 four-fifth quart bottles, and 12 quart bottles of whiskey, and a Pontiac coupe, described in a schedule attached hereto, seized on February 8, 1955 on the northbound lane of the New Jersey Turnpike, Washington Township, New Jersey, constitute unlawful property and should be forfeited.

The whiskey was apparently purchased in Washington, D.C., and was being transported to New York City by Willie S. Melvin in the motor vehicle when he and the whiskey and the motor vehicle were taken into custody by a New Jersey State Trooper on routine traffic duty on the highway, pending investigation whether such whiskey was being transported lawfully. Drew H. Suggs was a passenger in the motor vehicle.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered by Edward Robinson, the registered owner of the Pontiac coupe, who sought its return. An appearance was also entered by Willie S. Melvin, who sought return of the whiskey.

Willie Melvin had in his possession a bill for the whiskey issued to him by a Washington retail liquor dealer. However, he admits that such whiskey was not purchased by him for his personal consumption. He claims that he purchased the whiskey as an accommodation for a social club located in New York City, at the request of one of its officers (Lawrence Grogan). Whatever may have been its actual intended use, the whiskey was not intended for Melvin's personal consumption and hence cannot be imported into New York. Seizure Case No. 8632, Bulletin 1043, Item 5. Probably influenced by discovery of this fact, Willie S. Melvin and Lawrence Grogan have since the hearing advised that they waive any claim for the return of such whiskey. The whiskey will be forfeited as illicit alcoholic beverages because it was transported in violation of Rule 2 of State Regulations No. 18, in that such whiskey

could not be legally imported into New York. Seizure Case No. 8632, supra; R.S. 33:1-1(i), R.S. 33:1-2, R.S. 33:1-66.

Edward Robinson, who seeks return of the Pontiac coupe, presents an odd explanation. He is 33 years of age, has been employed by an automobile assembly plant for about three and a half years, with substantial earnings. He purchased the Pontiac coupe brand new in October 1954, for $3200.00, with a down payment in cash of $1700.00. Previously, he had never owned a car. He obtained a driver's license in November 1954, but did not drive the car to any great extent. He permitted Melvin and Suggs to use the car at will and they contributed towards the garage rent. He thus accounts for the possession of his car by Melvin and Suggs and claims that he had no knowledge that they were to transport whiskey therein. Characterizing his conduct in permitting mere acquaintances to use his brand new car at will, he said, "It does seem strange but that is the way it happened."

Willie S. Melvin was transporting tax-paid whiskey and his unlawful conduct consists either of attempting to bring alcoholic beverages into New York for personal consumption of others or for the purpose of resale. Traffic in bootleg alcoholic beverages is not involved.

In the absence of any previous criminal record of Melvin or Suggs for violating any liquor laws, it seemingly would not be fair to punish Robinson for what appears to be his overly good nature in permitting others to use his valuable property. It is not improbable conduct, although perhaps difficult to understand. These are circumstances similar to those illustrated by Seizure Case No. 8680, Bulletin 1044, Item 4, which do not evidence conduct on the part of the owner of a motor vehicle amounting to abandonment thereof or carelessness to its use, such as were present in Seizure Case No. 8554, Bulletin 1034, Item 9. While there may be the suspicion that the motor vehicle is actually the property of Willie S. Melvin or Drew H. Suggs, I prefer to give Robinson the benefit of the doubt, and hence the Pontiac will be returned to him upon payment of the costs of its seizure and storage.

It will therefore not be necessary to set the matter down for supplemental hearing to afford General Motors Acceptance Corporation an opportunity to present evidence of its alleged lien, a claim recently brought to the attention of the Division.

Accordingly, it is DETERMINED and ORDERED that if on or before the 19th day of May, 1955 Edward Robinson pays the costs of the seizure and storage of the Pontiac coupe, described in Schedule "A" attached hereto, it will be returned to him; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS,
Director.

Dated: May 9, 1955.

SCHEDULE "A"

72 - pint bottles of whiskey
31 - fifth bottles of whiskey
12 - quart bottles of whiskey
1 - Pontiac coupe, Serial and Engine No. L8ZA13244, 1955 N.Y. Registration QD85-10.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN J. KAZIOR,
t/a KAZIOR'S,
11 East Burlington Street,
Bordentown, New Jersey,

Holder of Plenary Retail Consumption License C-9, issued by the City Commission of the City of Bordentown.

CONCLUSIONS AND ORDER

John J. Kazior, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to two minors, and permitted the consumption of such beverages by said minors, in and upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that ABC agents obtained signed sworn statements from Charles --- (age 19) and John --- (age 19) relating that at about 7:30 p.m. on March 21, 1955, they entered defendant's licensed premises wherein they each consumed three or four glasses of beer, served to them at the bar by a bartender who made no inquiry as to their ages, and that they again entered defendant's licensed premises at about 7 p.m. on March 25, 1955, on which occasion each consumed three or four glasses of beer, served to them at the bar by a bartender who made no inquiry as to their ages.

Defendant has no prior adjudicated record. I shall suspend his license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Soerensen, Bulletin 1058, Item 6.

Accordingly, it is, on this 9th day of May, 1955,

ORDERED that plenary retail consumption license C-9, issued by the City Commission of the City of Bordentown to John J. Kazior, t/a Kazior's, for premises 11 East Burlington Street, Bordentown, be and the same is hereby suspended for five (5) days, commencing at 6 a.m. May 16, 1955, and terminating at 6 a.m. May 21, 1955.

WILLIAM HOWE DAVIS,
Director

8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on January 21, 1955 of a jar of alcohol and a Ford sedan, on the northbound lane of the New Jersey Turnpike, at the 33 Mile Post, in Mount Laurel Township, County of Burlington and State of New Jersey.	Case No. 8797 On Hearing CONCLUSIONS AND ORDER

Alexander Levchuk, Esq., Attorney for Nathaniel Brodie.
Cole, Morrill and Berman, Esqs., by Daniel P. Lieblich, Esq., Attorneys for Motor Finance Corporation.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a jar of alcohol and a Ford sedan, described in a schedule attached hereto, seized on January 21, 1955 on the northbound lane of the New Jersey Turnpike, at the 33 Mile Post in Mount Laurel Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of Motor Finance Corporation, which sought recognition of its alleged lien on the Ford sedan. An appearance was also entered on behalf of Nathaniel Brodie, the registered owner of the motor vehicle, who did not present any independent claim, or testify, but merely was there as an observer and to assist the finance company to establish its claim. Forfeiture of the alcohol is not opposed.

Reports of ABC agents and other documents in the file, presented in evidence with consent of the above-named attorneys, disclose the following facts:

On January 21, 1955, a New Jersey State Trooper halted the Ford sedan while on traffic duty on the Turnpike. The car was being operated by Cliff Oliver, and Nathaniel Brodie was one of the passengers therein. When the trooper discovered a two-quart jar of alcohol, without any label, or stamp indicating the payment of tax on alcoholic beverages, in the car, he took possession of the alcohol and motor vehicle. The Division of Alcoholic Beverage Control was notified, and thereupon such alcohol and motor vehicle were turned over to ABC agents.

The contents of the jar 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 45.3 per cent. Nathaniel Brodie, in a signed statement, asserted that he had received the alcohol from an unidentified person in North Carolina, and intended to deliver it to a friend in Freehold whose name and address is unknown to him.

The alcohol is illicit because of the absence of any label or tax stamp on the jar. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and the motor vehicle 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.

Motor Finance Corporation has presented in evidence a conditional sales contract dated November 29, 1954 signed by Nathaniel Brodie covering the Ford sedan in question securing an unpaid balance of $2426.40. This contract was assigned to the Motor Finance Corporation and the balance remaining due on such contract after rebate for prepayment is $1764.18. The finance company has also presented a motor vehicle bill of sale issued by the Division of Motor Vehicles of this state evidencing ownership of the vehicle by Nathaniel Brodie and having noted therein that the Motor Finance Corporation has an encumbrance on the vehicle.

The finance company had previously financed the purchase of other motor vehicles by Nathaniel Brodie. One of such instances was on February 13, 1953 at which time the finance company was furnished with information that Mr. Brodie was employed as a laborer by a grain concern, and was furnished with his place of residence. The finance company verified this information and in addition, checked with a local credit investigating agency whose report disclosed no derogatory information. The finance company then extended credit to Nathaniel Brodie and found the account satisfactory. In April 1954 it financed the purchase of another motor vehicle by Mr. Brodie after following the above procedure with like results. The finance company followed the same procedure with like results, when financing the purchase of the Ford sedan here involved. Nathaniel Brodie does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that Motor Finance Corporation acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be transported in the motor vehicle. I shall therefore recognize its lien to the extent of $1764.18. R.S. 33:1-66(f).

The Director of the Division of Purchase and Property has advised that the State of New Jersey is not interested in retaining the Ford sedan for the use of any state agency upon payment of the lien claim. The retail value of such vehicle does not appear to exceed the amount of such lien and the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 6th day of May, 1955, Motor Finance Corporation pays the costs incurred in the seizure and storage of the Ford sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to such finance company; and it is further

DETERMINED and ORDERED that the jar of alcohol described in the aforesaid Schedule "A" constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions or destroyed in whole or in part at the direction of

the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS,
Director.

Dated: April 26, 1955.

SCHEDULE "A"

1 - two-quart glass jar of alcohol
1 - Ford sedan, Serial and Engine No. U5CG101377, 1955 N.J. Registration MC1195.

William Howe Davis,
Director.

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