

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

BULLETIN 1686

August 3, 1966

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August 3, 1966

1. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - FOUL LANGUAGE - PRIOR DISSIMILAR RECORD OF LICENSEE AND CORPORATIONS WITH COMMON STOCKHOLDER - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

Count Cafe Corporation
39-41 E. Milton Avenue
Rahway, N. J.,

Holder of Plenary Retail Consumption License C-22, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway.

CONCLUSIONS

and

ORDER

Licensee, by Herman Hochberg, President, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, May 8, 1966, it (1) sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) permitted foul, filthy and obscene language by management personnel, in violation of Rule 5 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for thirty-five days effective September 28, 1965, for possession of an alcoholic beverage not truly labeled. Re The Count Cafe, Bulletin 1643, Item 3. In addition, Division records disclose the following with respect to Herman Hochberg and Edward Hennion, respectively 89 and 10 per cent. stockholders of the corporation:

1. License then held by Herman Hochberg and Abraham Weiss for premises 236 Market Street, Newark, suspended by the Commissioner for ten days effective June 3, 1942, and for premises 81 Main Street, Madison, for fifteen days effective October 11, 1948, both for sale below minimum consumer price. Re Weiss and Hochberg, Bulle 514, Item 10; Bulletin 817, Item 8.

2. License then held by Bloomfield-Adams, Inc. for premises 65 Washington Street, Bloomfield (in which Hochberg and Hennion were 89 and 10 per cent. stockholders), suspended by the municipal issuing authority for five days effective October 19, 1960, for thirty-five days effective February 24, 1962, and for thirty-five days effective May 17, 1965, all for sales to minors.

3. License then held by Oak Tavern (a corporation) for premises 193-195 Stuyvesant Avenue, Newark (in which Hochberg and Hennion were 89 and 10 per cent. stockholders), suspended by the municipal issuing authority for five days effective May 7, 1962, and for fifteen days effective July 27, 1964, both for sales to minors.

4. License then held by M 66 Bar (a corporation) for premises 66 South Orange Avenue, Newark (in which Hochberg and Hennion were 89 and 10 per cent. stockholders), suspended by the municipal issuing authority for ten days effective January 6, 1964, for permitting a brawl on the licensed premises.

All of the circumstances considered, including the nature of the violations charged, the confessional plea entered, and particularly the lengthy prior record, especially the number of suspensions in recent years, the license will be suspended for ninety days.

In addition, the licensee is pointedly warned that continuing disregard for the alcoholic beverage regulations may well result in outright revocation of the license.

Accordingly, it is, on this 9th day of June 1966,

ORDERED that Plenary Retail Consumption License C-22, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Count Cafe Corporation, for premises 39-41 E. Milton Avenue, Rahway, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1966, commencing at 2 a.m. Thursday, June 16, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Wednesday, September 14, 1966.

JOSEPH P. LORDI,
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)
Joseph Mattera, Jr.)
t/a Country Liquor Store)
Wildwood Blvd. near Rt. 9,)
1/10 mi. to Rio Grande)
Middle Township)
PO Rio Grande, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Middle.)

Charles W. Sandman, Jr., Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On January 15, 1966, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Lavallette R. ---, age 19; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, Lavallette --- testified that he was born on September 21, 1946, and was nineteen years of age.

On Saturday night, January 15, 1966, the minor and James --- were driven to the licensed premises (a retail package liquor store) by Bob --- in Bob's automobile. They arrived at the licensed premises at "8:15, 8:20" and Bob parked his car facing the right front of the building. The reason for going there was to buy beer. Lavallette had on his person a twenty-dollar bill of his own money and the sum of \$2.80 given to him by his two companions. He saw the licensee in the liquor store and another man who he thought was "dusting the shelves or something." Upon entering, he walked to a case where the cold beer was stored and, not seeing any Budweiser beer, he asked for it, whereupon a person identified as the licensee (Joseph Mattera, Jr.) came to his assistance. Two six-packs of Budweiser beer were put in a bag by Mattera. The minor went to the counter with the package and handed Mattera a twenty-dollar bill which he took out of his wallet and received \$17.20 change which Mattera took from the cash register. The minor returned to the car with the beer. At no time was the minor questioned as to his age or requested to make a written representation as to his age.

On cross-examination, Lavallette repeated the narrative as to the purchase of the beer. In addition, he testified that he met his two companions earlier in the evening at Grossi's restaurant in North Cape May and they had to travel about four miles to get to the licensed premises although there were liquor outlets in North Cape May. He denied being with the pair on Friday night, January 14. He admitted being interviewed by two police officers on Monday, January 17.

James --- testified that he was eighteen years of age and that he met Lavallette at Grossi's restaurant in North Cape May on January 15, 1966. The witness and Lavallette were driven to the licensed premises by Bob, arriving there at "about 8:15, 8:20" p.m., and parked in front of a plate glass window. Lavallette was given the sum of \$2.80 to buy two packs of Budweiser beer. He observed Lavallette enter the licensed premises. He was seated in the front seat of the car and had a clear view of the interior of the premises and he saw a man standing behind the counter wearing a blue shirt, whom he identified as the licensee Joseph Mattera, Jr. Another man was also standing behind the counter. He observed Mattera hand Lavallette a brown paper bag, whereupon Lavallette pulled out his wallet, gave Mattera "something" and Mattera took "something" out of the cash register and handed it to Lavallette. Lavallette brought the bag containing the beer into the car and the group drove off. The witness admitted drinking some of the beer that night.

On cross-examination James testified that he had been acquainted with Lavallette prior to January 15, 1966, but had not been in his company on January 14. He was questioned by Officer Robert Douglas on Tuesday night, January 18. In response to the question, "Why did Officer Douglas come to see you?", the witness responded, "Because the place we had our car parked and drank the beer some one had stolen gasoline a couple of blocks away, and when the police were trying to find out who it was they saw the car I was in, and they had the license number, but not whose car it was, and questioned the boy who took the gasoline, and the boy knew nothing about it and told them about the drinking."

Later, the witness added, "When Officer Douglas came to me he asked me about drinking beer because he had already talked to Bob ---, and Bob --- told him he was drinking beer, and he asked me if I knew anything. He asked me what I did Saturday night. He asked the girl I was with and Bob ---. After I talked about that he asked me if I knew anything about gasoline, but he asked me first about the beer."

The witness then added that on Friday night, January 14, he and a Bobby -- prevailed upon a third person to purchase two six-packs of Budweiser beer at the cost of \$2.80 at a bar in a different municipality. On that Friday night the witness rode around to hide the beer for use the following night (Saturday, January 15). The beer was hidden behind a brick wall in North Cape May. On Saturday night, January 15, fearing that two six-packs would be insufficient, they decided to obtain additional beer.

On redirect examination James testified that on Saturday night, January 15, 1966, he and another male went to the place where the beer had been hidden and found seven cans of the two six-packs, which they consumed at approximately "7, 7:30."

ABC Agent D testified that, in the course of his investigation of the matter now on trial, he, together with Agent S, Lavallette, James and Bob, went to the licensed premises on Wednesday night, January 19, 1966, arriving there between 8:00 and 8:05. The minors directed the agents to the licensed premises. The two agents entered the licensed premises and ascertained from the licensee's wife that the licensee would return shortly. When the licensee walked in Agent D went out to the car where the boys were seated in order to accompany Lavallette into the package store for the purpose of possible identification. The three minors stated, "That is Mr. Mattera who just went in there." Lavallette entered the licensed premises with Agent D and, upon identifying Mr. Mattera as the person who served him, he (Lavallette) was escorted out by the agent. Mattera denied ever seeing the minor before.

Agent S's testimony was similar to that of Agent D as to Lavallette's identification of Mattera as being the person who made the sale. He also testified that Mattera declared he did not recognize the minor and denied selling him anything.

In defense of the charge Joseph Mattera, Jr. testified that he was the owner and licensee of the package liquor store involved in the instant proceeding. On Saturday night, January 15, 1966, he was working behind the counter and a Mr. Costande came into the store at approximately 7 p.m. and stayed with him to closing time. He never saw Lavallette prior to his coming in with the agent on January 19. A tape which the licensee declared was taken from the cash register and reflected all sales on January 15, 1966, was admitted in evidence. The tape recorded no transaction of \$2.80, the cost of two six-packs of Budweiser beer.

On cross-examination the licensee testified that he started each business day with a zero marking on the cash register tape and, at the end of each day, he would write the date on the tape, and he followed that procedure on January 15. He regularly wore a blue shirt and trousers while on duty. He did not recall selling any Budweiser beer at all on the night in question. Business was slow that night.

George Costande testified that he helps out the licensee occasionally and was in the licensed premises from about 7 p.m. to closing time, i.e., 10 p.m. on January 15, 1966. A small volume of business was transacted. He was in the store continuously from 7 to 10, and he did not see Lavallette in the store either on that night or on any other occasion. The tape offered in evidence was similar to the tape which Mattera removed from the cash register on January 15.

On cross-examination the witness declared that he saw Mattera writing the date "1-15-66" on the tape. However, he did not see the total amount taken in that day. The remainder of the

cross-examination was mainly corroborative.

In summation the licensee's attorney in effect argued that the Division had not substantiated the charge by a fair preponderance of the believable evidence.

It is a firmly established principle that disciplinary proceedings against liquor licensees, such as in the instant proceeding, are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was re-echoed in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

Since it was conceded that this proceeding presents a strictly factual situation, the credibility of the witnesses must be weighed.

I have had an opportunity to observe the demeanor of the witnesses as they testified, and I have made a careful analysis and evaluation of their testimony. I am impressed by the fact that the minor made positive identification of the licensed premises and of the licensee who served him. His portrayal of the transaction (that is, the purchase of the beer) was fully buttressed by the testimony of James, who also vividly described the transaction and identified the licensee as the person who waited upon the minor.

A searching cross-examination of the minor directly involved in the purchase, and of James, failed to reveal improper motivation on their part.

A fair evaluation of the evidence clearly leads to the conclusion that the evidence preponderates in favor of a finding of guilt, and I so recommend.

Licensee has a previous record of suspension of license by the Director for twenty days effective September 11, 1962, for similar violation. Re Mattera, Bulletin 1472, Item 5.

It is therefore further recommended that, the prior record of suspension of license for similar violation within the past five years considered, the license be suspended for twenty-five days. Re Luchetti, Bulletin 1613, Item 5.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 20th day of June, 1966,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Middle to Joseph Mattera, Jr., t/a Country Liquor Store, for premises Wildwood Boulevard near Route 9, 1/10 mile to Rio Grande, Middle Township, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1966, commencing at 9:00 a.m. Monday, June 27, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 9:00 a.m. Friday, July 22, 1966.

JOSEPH P. LORDI
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN SPEAKEASY - ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED.

In the Matter of the Seizure)
on February 6, 1965 of a quantity)
of alcoholic beverages and \$15.00)
in cash in a dwelling at 51 Herbert)
Place, in the City of Newark, County)
of Essex and State of New Jersey.)
-----)

Case No. 11,588
On Hearing
CONCLUSIONS and ORDER

Arthur J. Breitkopf, Esq., appearing for Nicholas Valvano.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

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 11 containers of alcoholic beverages and \$15.00 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on February 6, 1965 at a dwelling at 51 Herbert Place, Newark, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made in the course of an investigation by local police officers of a complaint that a disorderly house was being conducted at these premises, involving illegal liquor activity, i.e. sale of alcoholic beverages without a license.

The hearing was consolidated with a hearing on Seizure Case No. 11,593, Bulletin 1864, Item 4, relating to the same premises in order to expedite these matters, albeit involving different seizures on different dates. However, separate Hearer's reports are submitted as a practicable course herein.

An appearance was entered by Nicholas Valvano, who sought the return of the seized property. There was entered into evidence the affidavit of mailing, affidavit of publication, notice of hearing, inventory and the Division chemist's report, duly certified by the Director.

The established facts, as developed through the testimony of local police officers are as follows: On February 6, 1965 local police officers received a complaint of noise and disturbance at premises 51 Herbert Place, Newark. Police Officer Frank M. Donnellan, together with three other officers, entered the said premises and on the second floor observed one Anthony Caprio, standing behind a bar and serving alcoholic beverages. This bar was located in a large room which also contained a pool table and a juke box. From his observation he further noted that upon serving the patrons, he received cash payments therefor, which he placed in a green tin box under the bar. The officer then entered the barroom

and seized the bottles of alcoholic beverages together with the box which contained \$15.00 in bills and coins. The seizure was adopted by agents of the Division.

On cross-examination, it was developed that there were a number of individuals who were sitting around drinking alcoholic beverages at that time. The testimony of this officer was substantially corroborated by Detective Michael Russonella.

Caprio was thereupon arrested for being the proprietor of a disorderly house in violation of the local ordinance; and seven male patrons were also arrested for being inmates of a disorderly house and were arraigned in the Newark Municipal Court.

Caprio was found guilty of maintaining a disorderly house and Valvano was found guilty of being an inmate of a disorderly house under the local ordinance. On appeal to the County Court, and after a trial de novo for violation of the local ordinance they were found "not guilty" and an order was entered for the return of the alcoholic beverages and the cash.

It is obvious that such order is invalid and of no effect with respect to the seized property because jurisdiction with respect thereto is vested in the Director of Alcoholic Beverage Control who has the sole authority to dispose of such property. R.S. 33:1-66(a).

Furthermore, the criminal proceedings under the local ordinance against these individuals have no bearing upon the disposition of the seized property in these proceedings.

The records of this Division show that no license for the sale of alcoholic beverages was issued to Anthony Caprio, Nicholas Valvano or to anyone in the premises in question.

The report of the Division chemist of a sample of a one-quart bottle containing 26 ounces labelled J & B Scotch Whisky, 86 proof, establishes that it is an alcoholic beverage, fit for beverage purposes, with alcohol by volume of 43%.

Nicholas Valvano, the claimant herein, sought the return of the alcoholic beverages and the cash. He gave the following account: He occupies the premises with one Gerald Donnerstag and on the night in question sponsored a birthday party for a friend of his, named Nick Tedesco. He denied that there was any sale of liquor and explained that the coins in the tin box were used for the purpose of playing the juke box.

On cross-examination, he denied that Caprio or anyone else sold liquor from the bar and stated that any of the guests had the right to go behind the bar to serve themselves; they also had free access to the tin box for the purpose of making change. The proceeds from the juke box would be used for buying records. He was asked to explain why people were admitted to obtain free drinks, yet had to pay to play the juke box. His explanation: "I live upstairs. Right? If somebody say downstairs they want to play the juke box all night for nothing. I don't want the quarters. I wanted to keep them from playing if I wanted to go to sleep. I couldn't go to sleep. You let a guy play a juke box for nothing he will play it all day long."

He further admitted that when the police entered the premises he did not inform them that he was the occupant of the premises nor did he deny that liquor was being illegally sold. He also failed to tell them that the reason for this gathering was that he was holding a birthday party for his friend. With respect to the

alcoholic beverages he could not specifically identify any of the items taken except that he asserts, generally, that the alcoholic beverages seized on this date belonged to him.

Anthony Caprio testified that he was present on February 6, 1965 to participate in a birthday party but he denied selling or serving any whiskey to anyone.

On cross-examination, he admitted being behind the bar but said that it was for the sole purpose of helping himself to a club soda. He explained that any of the guests had the right to go behind the bar to help themselves to drinks or to make change from the tin box located there. He further explained that it was very easy for the guests to obtain drinks because all the bottles had pourers on them. Finally, he stated that Valvano had told him that he (Valvano) had purchased the whiskey, since Valvano was the sponsor of this party.

Detective Frank M. Donnellan, called in rebuttal, stated that when he questioned Valvano after the arrest, Valvano stated that he resided at an address other than these premises in question. He further stated Valvano was advised of the charge of unlawful sale of alcoholic beverages and at no time said anything about a birthday party being held on the premises on the date in question.

I have had an opportunity to observe the demeanor of this claimant and to evaluate his credibility as he testified before me. I am singularly unimpressed with his testimony and am persuaded that it is a fabrication, and unworthy of belief. I am equally unimpressed with the testimony of Caprio because it does violence to a sense of reality to believe that the patrons on these premises could obtain alcoholic beverages without cost and yet were required to pay to play the juke box. It is equally incredible that there would be free access to the tin box containing money with no supervision over the said money.

I am convinced, therefore, that the police officers gave an accurate account of what transpired at that time. I am persuaded that the physical setup of these premises, which included the bar, the bar stools, the juke box, the pool table and the cigarette machine; the pourers on the bottles of alcoholic beverages, usually part of a professional operation; and the dispensing of drinks by Caprio and his acceptance of change therefor as observed by the officers, all unmistakably manifested a speakeasy operation.

I therefore conclude that this claimant was engaged in the sale of alcoholic beverages. Since this claimant did not have any license authorizing him to sell alcoholic beverages, the alcoholic beverages are illicit and constitute unlawful property subject to forfeiture. R.S. 33:1-1(i); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,431, Bulletin 1644, Item 3; Seizure Case No. 11,156, Bulletin 1557, Item 5; Seizure Case No. 10,877, Bulletin 1569, Item 8.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, together with the cash, as set forth in Schedule "A" herein, which were used in this operation, constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,182, Bulletin 1568, Item 5.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith and did not know, or have any reason to believe that the property would be used

in unlawful liquor activity. R.S. 33:1-66(f). In addition to this, there must be affirmative and convincing proof to support the claim of ownership. In the absence of these essential elements the Director has no authority to relieve the claimant of forfeiture. R.S. 33:1-66(e); Seizure Case No. 11,059, Bulletin 1533, Item 8; Seizure Case No. 10,695, Bulletin 1444, Item 6.

There has been no credible evidence adduced here to support the claim of ownership of alcoholic beverages by this claimant. Furthermore, the preponderance of the testimony supports the charge of the Division that this claimant was engaged in the proscribed liquor activity. Accordingly, there is an absence of good faith.

It is, therefore, recommended that the application for the return of the alcoholic beverages and cash be denied, and that an order be entered directing the forfeiture of the property seized herein, as set forth in the schedule annexed hereto.

Conclusions and Order

No exceptions were taken to the Hearer's report within the time limited by Rule 4 of State Regulation No. 28.

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

Accordingly, it is on this 13th day of June 1966

DETERMINED and ORDERED that the seized alcoholic beverages and \$15.00 in cash, more fully described in Schedule "A" attached hereto, constitute unlawful property, and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66; and the said alcoholic beverages 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 Alcoholic Beverage Control.

JOSEPH P. LORDI,
DIRECTOR

SCHEDULE "A"

10 - containers of alcoholic beverages
\$15.00 - in cash

4. SEIZURE - FORFEITURE PROCEEDINGS - ALLEGED SPEAKEASY OPERATION - INSUFFICIENT EVIDENCE - ALCOHOLIC BEVERAGES ORDERED RETURNED UPON SUBMISSION OF DETAILED AFFIDAVIT OF CLAIMANT'S TITLE SATISFACTORY TO DIRECTOR.

In the Matter of the Seizure)	
on March 14, 1965 of a quantity)	Case No. 11,593
of alcoholic beverages in a dwelling)	
at 51 Herbert Place, in the City of)	On Hearing
Newark, County of Essex and State of)	
New Jersey.)	CONCLUSIONS and ORDER
-----)		

Arthur J. Breitkopf, Esq., appearing for Gerald Donnerstag.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

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 a quantity of alcoholic beverages, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on March 14, 1965 in a dwelling at 51 Herbert Place, Newark, N. J. constitutes unlawful property and should be forfeited.

The seizure was made by local police officers because of alleged unlawful liquor activity; namely, the sale of alcoholic beverages without a license at the said premises. This hearing was held in consolidation with Seizure Case No. 11,588, Bulletin 1686, Item 3, because they both related to the same premises, albeit involving different seizures on different dates. However, it is considered practicable to submit separate Hearer's reports in these matters.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Arthur Breitkopf, Esq., an attorney representing Gerald Donnerstag appeared and entered a claim in his behalf.

He explained that Mr. Donnerstag was unable to appear at this hearing, without giving any specific reason therefor. It was later learned that Donnerstag was in police custody on an unrelated matter on the date of this hearing.

There was entered into evidence a Division file which contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory and the Division chemist's report duly certified by the Director.

The Division sought to establish its case through the testimony of Detective Michael Russonella of the Newark Police Department. He testified as follows: He first visited these premises on February 6, 1965 pursuant to a complaint that a disorderly house was being conducted thereat during which there was illegal liquor activity. As a result of that visit certain individuals were arrested and appropriately charged with the said offense, under the local ordinance. Seizure Case No. 11,588, supra.

On March 14, 1965 this officer, accompanied by three other detectives, having first obtained a search warrant, entered these premises. He noted that the same physical condition existed, namely, a large room which contained a bar, bar stools, a juke box, cigarette machine and a pool table, all of which manifested a speak-easy operation. He also noted that there were alcoholic beverages

on the bar which were seized by these police officers. However, there was no one behind the bar on this occasion nor did he observe anyone serve any alcoholic beverages to the five persons then present in that room. None of these persons, in fact, were consuming any alcoholic beverages. These persons were arrested together with other individuals who were found in and about the premises, and one Achille Vuotto who was charged with being the proprietor of a disorderly house.

The seizure was adopted by agents of this Division.

On the basis of the evidence presented, I am persuaded that this Division has failed to establish a prima facie case of violation of R.S. 33:1-2 and R.S. 33:1-66.

While the officers obtained a valid search warrant and entered the premises lawfully, the testimony does not support the claim of the unlawful sale of alcoholic beverages or of other unlawful liquor activity within the provisions of the Alcoholic Beverage Law.

Accordingly, the forfeiture proceedings must fail.

It should be noted that Achille Vuotto, one of the persons arrested, was charged with being the proprietor of a disorderly house under local ordinance 20.9, and was found guilty of said charge after trial in the Newark Municipal Court. Donnerstag was charged with being an inmate of a disorderly house, and was found guilty, after trial, in the same Court.

The difficult question now arises as to whom the alcoholic beverages belong and to whom such property should be returned.

Since Donnerstag did not personally appear at this hearing, the only testimony relating to the claim of ownership comes from Nicholas Valvano. He states that he and Donnerstag were co-tenants in this property and the liquor that was seized on February 6, 1965 belonged to him. Thereafter, he states that he left the premises and went on vacation; and that the whiskey that was seized on March 14th was purchased by and belonged to Donnerstag who, he asserts, was, in fact, the proprietor of these premises.

Since this is obviously hearsay testimony, and upon which I place little credence, it cannot be accepted as validly supportive of the claimant's application for the return of the said alcoholic beverages.

However, as a practical matter, I would recommend that the said alcoholic beverages be returned to Donnerstag upon the following condition: that, within 30 days from the date of the service of the within Hearer's report, he submit a verified affidavit setting forth, with supportive proof:

- (a) That he was the tenant and proprietor of the premises in question on March 14, 1965;
- (b) That he purchased, with his own funds, and is the owner of the seized property;
- (c) That he particularly and specifically identify and itemize the alcoholic beverages which he claims belong to him;
- (d) That he set forth the place or places and persons from whom he purchased the said alcoholic beverages, the dates on

which the same were purchased, and the sums paid therefor.

- (e) Such other facts which may help to establish his affirmative claim of title to the said property.

It is further recommended that if such affidavit establishes to the satisfaction of the Director, that this claimant has title to the said property, that an order be entered directing the return of the seized property to the said claimant.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

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

Accordingly, it is DETERMINED and ORDERED that if, on or before the 18th day of July, 1966, the claimant, Gerald Donnerstag, files with the Director of the Division of Alcoholic Beverage Control an affidavit in the manner and form set forth in the within Hearer's Report setting forth such facts as establish, to the satisfaction of the Director, the said claimant's title to the said property, the same shall be returned to Gerald Donnerstag.

Dated: June 13, 1966

JOSEPH P. LORDI,
DIRECTOR

SCHEDULE "A"

14 - containers of alcoholic beverages

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR RECORD OF CORPORATION WITH COMMON STOCKHOLDER - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ALSTO ENTERPRISES, INC.
74 Orient Avenue
Jersey City, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption License C-118, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensee, by Charles W. Alston, Jr., President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, May 22, 1966, it sold a 4/5 pint bottle of whisky for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Although the licensee-corporation has no previous record, the license then held by 677 Ocean Avenue Corporation for premises 677 Ocean Avenue, Jersey City (of which corporation Charles Alston, vice-president of the licensee-corporation, was president), was suspended by the Director for ten days effective September 10, 1963, for similar violation. Re 677 Ocean Avenue Corporation, Bulletin 1531, Item 5.

The prior record of suspension of license of 677 Ocean Avenue Corporation for similar violation within the past five years considered (Re Club Ali-Baba, Inc., Bulletin 1654, Item 4), the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Barone's Lounge, Inc., Bulletin 1670, Item 4.

Accordingly, it is, on this 13th day of June, 1966,

ORDERED that Plenary Retail Consumption License C-118, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Alsto Enterprises, Inc. for premises 74 Orient Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1966, commencing at 2:00 a.m. Monday, June 20, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Friday, July 15, 1966.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBER - SALE FOR OFF-PREMISES CONSUMPTION BY CLUB LICENSEE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against LT. LOUIS J. FALLER POST #4290 V.F.W. INC. 261 Madison Avenue New Milford, N. J. Holder of Club License CB-2, issued by the Mayor and Council of the Borough of New Milford.

CONCLUSIONS AND ORDER

Licensee, by Harold P. Bentzig, Jr., Bar Chairman, Pro se. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that on April 22, 1966, it sold six bottles of beer (1) to a non-member, in violation of Rule 8 of State Regulation No. 7, and (2) for off-premises consumption, in violation of Rule 9 of State Regulation No. 7.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Hasbrouck Heights Post #4591, Bulletin 1639, Item 6) and on the second charge for fifteen days (Re Italian-American Columbus Relief Association, Bulletin 998, Item 3), 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 13th day of June, 1966,

ORDERED that Club License CB-2, issued by the Mayor and Council of the Borough of New Milford to Lt. Louis J. Faller Post #4290, V.F.W. Inc., for premises 261 Madison Avenue, New Milford, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1966, commencing at 2:00 a.m. Monday, June 20, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Friday, July 15, 1966.

JOSEPH P. LORDI, DIRECTOR

7. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #286)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Distribution License D-40,)
 issued by the Municipal Board of)
 Alcoholic Beverage Control of the)
 City of Clifton to)

On Petition
 O R D E R

David Schneider and Irving Parker)
 t/a Richfield Liquors)
 1362 Clifton Avenue)
 Clifton, N. J.)

 H. Donald Levine, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on June 14, 1966, David Schneider, one of the licensees-petitioners, was fined \$50 and \$5 costs in the Clifton Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on May 6, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that David Schneider has taken an appeal from his conviction to the Passaic County Court and that, in disciplinary proceedings conducted by the municipal issuing authority wherein the license was suspended for fifteen days effective July 7, 1966, an appeal to this Division from that suspension is being taken.

In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed pending the outcome of the criminal and disciplinary appeals. Re Kornblau, Bulletin 1667, Item 5.

Accordingly, it is, on this 27th day of June, 1966,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

JOSEPH P. LORDI,
 DIRECTOR

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

In the Matter of Disciplinary Proceedings against
 W Realty Incorporated
 t/a W Bar
 1478 South 9th Street
 Camden, New Jersey,
 Holder of Plenary Retail Consumption Licenses C-183 for the year 1965-66 and C-198 for the year 1966-67, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

 Licensee, by Philip Wintheim, Vice President, Pro se.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on June 3, 1966, it sold mixed drinks of alcoholic beverages to two minors, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Parzanese, Bulletin 1627, Item 6.

Accordingly, it is, on this 1st day of July 1966,

ORDERED that Plenary Retail Consumption License C-198, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to W Realty Incorporated, t/a W Bar, for premises 1478 South 9th Street, Camden, be and the same is hereby suspended for five (5) days, commencing at 7 a.m. Monday, July 11, 1966, and terminating at 7 a.m. Saturday, July 16, 1966.

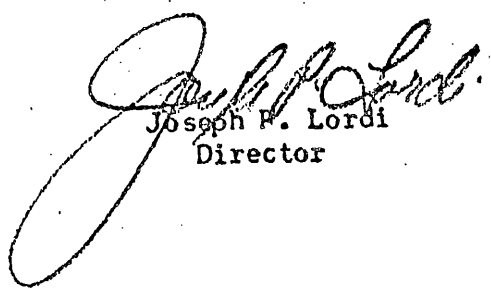
JOSEPH P. LORDI,
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Sanford Kalb
 t/a Kalb Beverage Co.
 436 Hulses Road, Howell Twp.
 PO Farmingdale, N. J.

Application filed July 25, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-97 from Highway #9, Howell Twp., PO Farmingdale, New Jersey

New Jersey State Library



Joseph P. Lordi
Director