

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

BULLETIN 1699

November 16, 1966

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1699

November 16, 1966

1. DISCIPLINARY PROCEEDINGS - GAMBLING (DICE GAME) - EMPLOYMENT OF SOLICITOR-PERMITTEE - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary	)	
Proceedings against	)	
HOMESTEAD INN, INC.	)	
t/a HOMESTEAD INN	)	CONCLUSIONS
118 Center Ave.	)	AND ORDER
Atlantic Highlands, N. J.	)	
Holder of Plenary Retail Consumption	)	
License C-10, issued by the Borough	)	
Council of the Borough of Atlantic	)	
Highlands.	)	

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Licensee, by Estelle Borges, Secretary, Pro se.  
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 charges:

"1. On Friday night April 1, 1966, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of a dice game for stakes of money; in violation of Rule 7 of State Regulation No. 20.

"2. On Friday night, April 1, 1966, and prior thereto, you employed and had connected with you in a business capacity, Vincent De Ponte, a person interested, directly or indirectly in the wholesaling of alcoholic beverages by reason of his then also being the holder of a solicitor's permit for employment by Shore Point Distributing Co., Inc., holder of wholesaler's license, viz., a state beverage distributor's license; in violation of Rule 29 of State Regulation No. 20.

"3. On Friday night April 1, 1966, you, through officers, directors, agents and employees, failed to facilitate and hindered and delayed and caused the hindrance and delay of an investigation, inspection and examination at your licensed premises then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35."

This matter was presented in a consolidated hearing involving, in addition to these disciplinary charges, a disciplinary proceeding against Vincent DePonte, a holder of a solicitor's

permit issued by the Director of the Division of Alcoholic Beverage Control for employment by a holder of a wholesaler's license. A consolidated hearing was held because the matters are interrelated and a fair quantum of the same evidence is applicable to the consideration and disposition of both proceedings. However, I have decided to prepare two separate Hearer's reports in order to limit the evidence presented for impartial consideration thereof and protect the rights of all parties.

The Division offered the testimony of two ABC agents in substantiation of the charges.

Agent O testified that, in company of Agent B, pursuant to specific assignment he visited the licensed premises (a barroom located in a hotel) on two occasions.

On March 18, 1966, at approximately 9 p.m., accompanied by Agent B, he entered the licensed premises and they each took a seat at the far end of the bar. The patronage consisted of seven males and one female. Tending bar and serving the patronage was a person referred to as "Bones", later identified as Vincent DePonte. It was learned that Vincent DePonte was employed as a solicitor by Shore Point Distributing Co., Inc., the holder of a wholesaler's license, more specifically a state beverage distributor's license. The agents remained at the bar a period of two hours that night, and DePonte tended bar unassisted during the entire period.

Agents O and B re-visited the licensed premises on April 1, 1966, at approximately 9:30 p.m. They positioned themselves at the far end of the bar near the rest rooms, ordered beer and made observations of the patronage and premises. He observed Vincent DePonte tending bar from the time he entered to approximately 11 p.m. DePonte was unassisted until Estelle Borges (a stockholder and an officer of the licensee corporation) went behind the bar at approximately 10 p.m. A Flo Finan went behind the bar at approximately 11:15 p.m.

At approximately 9:45 p.m. he entered the men's room and saw two men (later identified as James Fogel and George Stromberg) kneeling down playing dice. In response to the question "What did you do and what did you hear?", the agent answered:

"Mr. Stromberg had the dice in his hand, and he said, '8 is my point. Shoot for \$10.' James Fogel said, 'Go ahead.' I observed them both have an undetermined amount of money in their hands. Mr. Stromberg rolled the dice. He said, '7.' I observed him hand Mr. Fogel a \$10 bill."

The agent returned to his former position at the bar and advised Agent B as to his observations. B then left the bar, entered the men's room and, after a lapse of a "couple of minutes", rejoined the witness.

Agent B advised DePonte, "They got a pretty good crap game going on in the men's room." DePonte responded, "Oh, Yes?" and departed from behind the bar and entered the men's room. He returned to his duties in about five minutes. The men that were playing dice emerged from the men's room approximately five minutes thereafter and took a position across the bar from the agents.

Fogel and Stromberg left the bar to enter the men's room on seven occasions and on three of these occasions Agent O left the bar and entered the men's room. On each of these visits into the men's room the agent observed the men shooting dice. Paper currency was exchanged between the two men during the course of the dice playing. Agent B entered the men's room on four occasions. At approximately 10:45 p.m. Agent B informed DePonte, "The dice game is still going on in there." DePonte shrugged his shoulders and walked away. After Agent B emerged from the men's room (after another re-entry), Agent O called the local police department. After completing the call he rejoined Agent B at the bar. Inasmuch as Stromberg and Fogel came out of the men's room and sat at the bar, Agent B was sent outside to advise the police not to enter the licensed premises at that time. At approximately 10:55 p.m. the two men re-entered the men's room. Agent O departed the premises, contacted the police who were waiting outside, and re-entered the premises. He joined Agent B standing at the bar with the two males and Mrs. Borges and Miss Finan tending bar. DePonte was not in the licensed premises at that time. The agents identified themselves to Mrs. Borges and Miss Finan, and Agent O then testified as follows:

"A We informed them of the violation and asked who he was at that time, referring to Mr. DePonte, who he was, and Mrs. Borges and Miss Finan said they didn't know, they didn't know where he lives, never seen him. Miss Finan said she was tending bar all night and there was nobody tending bar but her and Mrs. Borges, \*\*\* all this time there was nobody else tending bar, no male tending bar that night.

Q Where was Mrs. Borges when Miss Finan made this statement only she and Mrs. Borges were tending bar?

A She was next to her.

Q Did Mrs. Borges say anything about that?

A No.

Q Did you point out to Mrs. Borges and Miss Finan you had seen Mr. DePonte tending bar that night?

A Yes, sir.

Q What did she say?

A She said she didn't know what we were talking about; there was nobody else there."

During the half-hour that the agents remained in the premises they repeatedly questioned Mrs. Borges and Miss Finan as to the identity of the male bartender to no avail. In the presence of Mrs. Borges, Miss Finan exclaimed in a loud voice, "You don't know what you are talking about! What do you mean? I was tending bar all night!"

Mrs. Borges took no steps to quiet Miss Finan, nor did she furnish the agents with the identity of the male bartender.

At approximately 12:05 a.m. DePonte walked into the police station and admitted to the agent that he was tending bar that night. He stated that he had been helping out for "a couple of months." As to the gambling, he told the agents that,

"he went in there the first time and he told them to knock it off, if they wanted to shoot dice to go upstairs, which he said he knew was against the law, too. He also stated he told them on previous occasions, previous dates, not to shoot dice in there."

Mr. DePonte admitted that he was the holder of a solicitor's permit issued by the Division of Alcoholic Beverage Control, and was employed by Shore Point Distributing Co., Inc.

At the conclusion of direct examination Mrs. Borges, who appeared in behalf of the licensee corporation, and Mr. DePonte were advised that they had the right to cross-examine the witness.

In response to Mrs. Borges' question as to why she wasn't informed of the dice game, the agent responded that he informed Vincent DePonte of the dice game because he was tending bar and, further, he had no reason to approach Mrs. Borges because he did not know of her connection with the licensed premises at that time.

In addition, Mrs. Borges declared that, when the agent asked her as to the bartender's identity, she knew him only as "Bones" and she did not know his name and address. Miss Finan was not a bartender, she merely helped during the time she was being questioned. She had no knowledge or information as to a dice game in the men's room.

Mr. DePonte asked no questions. He made a statement to the effect that, when he was told about the game in the men's room, he went in and stayed there no longer than "a minute, a minute and a half" and not five minutes. The players emerged therefrom in "three to five minutes." He was not approached a second time by the agents. He did not ignore them.

On redirect examination the agent testified that, in answer to his inquiry, Mrs. Borges stated that "Bones" had been helping out about two months and she had no record of his name.

Mrs. Borges at this point denied she had said "two months" and further stated that "Bones" offered to go behind the bar for her while she went up to get dressed.

Upon further questioning, Agent O testified that DePonte remained behind the bar until approximately 11:10 p.m. although Mrs. Borges had gone behind the bar at 10 p.m. and both of them were serving the patrons.

Agent B testified in substantial corroboration of the testimony of Agent O.

In defense of the charge Mrs. Borges contended that she knew "Bones" approximately sixteen years, that he helped out on three occasions while she went upstairs. On this particular occasion he stayed behind the bar somewhat longer. He usually departs after she comes down. "Bones" wasn't deriving a salary, he was merely helping out. She reiterated that she did not know "Bones'" full name and place of residence. In response to the Hearer's question, Mrs. Borges admitted that she knew that "Bones" had a solicitor's permit, however she didn't think there was any harm in having him help out an hour or two.

Inasmuch as the instant proceeding presents a factual question, I have carefully examined and evaluated the testimony presented herein. Additionally, I have carefully observed and noted the demeanor of all of the witnesses. I am forcefully

persuaded that the version given by the ABC agents was credible and truly portrayed the occurrences of the date in question.

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees 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); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In considering Charge 2 first, I quote the words of the Supreme Court in the case of Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948), wherein the court stated, at p. 255:

"Webster defines the word 'employ:' 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.' The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts."

Applying the reasoning of the Kravis case, supra, to the instant case, I arrive at the inescapable conclusion that DePonte was employed by the licensee and, inasmuch as DePonte was the holder of a solicitor's permit, I recommend that the licensee be found guilty of Charge 2. The fact that DePonte received no remuneration for his services is immaterial. See Re Gilson, Bulletin 754, Item 9.

In considering Charge 1, I find that the evidence as to the playing of dice for money stakes is uncontroverted. Additionally, it is apparent that the bartender DePonte had knowledge of the proscribed activities and failed to terminate them. Furthermore, shouldn't Mrs. Borges, in the exercise of ordinary prudence in the operation and management of a licensed premises, have been suspicious of the conduct of the two males who repeatedly entered and exited from the men's room within a short period of time?

Considering all of the circumstances herein, I am satisfied that the playing of dice for stakes of money was "allowed, permitted and suffered" in and upon the licensed premises by the bartender, as charged. See Re S. Amster, Inc., Bulletin 1657, Item 4; Re Town Tavern of Bound Brook, Inc., Bulletin 1680, Item 7. See also Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947); Conner v. Fogg, 75 N.J.L. 245 (Sup.Ct. 1907). In the Fogg case Judge Trenchard, in considering the terms "permit" and "suffer", stated (at p. 247):

"To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W. Rep. 4), but the term 'permit' has been often used synonymously with 'suffer,' so that it may be said that one who suffers the doing of a thing which he might have prevented permits it."

Applying the firmly established principles to the instant proceedings, I am persuaded that the evidence is clear and convincing that the licensee is guilty of Charge 1 and I so recommend.

As to Charge 3, the evidence is uncontroverted that Mrs. Borges failed to furnish the agents with the name and address of DePonte. I am convinced that this failure was based entirely upon her reluctance to disclose DePonte's identity. It is pertinent to point out that, in response to the Hearer's question as to how long she knew DePonte, Mrs. Borges responded, "about sixteen years" and, in response to the Hearer's question as to whether or not she knew he had a solicitor's permit, Mrs. Borges answered, "Yes, I did know that, but I didn't think there was any harm in it by him helping me out an hour or two." Under the circumstances it is inconceivable that Mrs. Borges did not know "Bones" true identity. Miss Finan's interference, her loud tone of voice and her insistence that "Bones" did not tend bar at all that night (all in the presence of Mrs. Borges and uncontrolled by her) militate against a finding of innocence.

Accordingly I am persuaded that Charge 3 has been sustained by a fair preponderance of the credible evidence and I, therefore, recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of license by the Director for forty days effective October 21, 1953, for permitting a dice game and dice table on the licensed premises and having connected with it a person convicted of crime involving moral turpitude as officer, director and stockholder. Re Homestead Inn, Bulletin 989, Item 3; Bulletin 995, Item 5.

Licensee's record of suspension for similar violation occurring more than ten years ago disregarded, I further recommend that the license be suspended on the first charge for fifteen days (Re Fluckiger, Bulletin 1590, Item 5); on the second charge for five days (Re Tozzie, Bulletin 1611, Item 8), and on the third charge for ten days (Re Triple Lake Ranch, Inc., Bulletin 1676, Item 3), or a total of thirty days.

#### Conclusions and Order

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

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

Accordingly, it is, on this 12th day of September 1966,

ORDERED that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Atlantic Highlands to Homestead Inn, Inc., t/a Homestead Inn, for premises 118 Center Avenue, Atlantic Highlands, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Monday, September 19, 1966, and terminating at 2 a.m. Wednesday, October 19, 1966.

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SOLICITOR EMPLOYED BY RETAIL  
LICENSEE - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary  
Proceedings against

VINCENT DE PONTE  
Iroquois Avenue  
Oceanport, N. J.

CONCLUSIONS  
AND ORDER

Holder of Solicitor's Permit #348,  
issued by the Director of the  
Division of Alcoholic Beverage  
Control for the year 1965-66.

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Vincent DePonte, Permittee, Pro se.  
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

Permittee pleaded not guilty to the following charge:

"On Friday night April 1, 1966, and prior thereto, you the holder of a solicitor's permit for employment by Shore Point Distributing Co., Inc., holder of a wholesaler's license, viz., a state beverage distributor's license, were at the same time employed by and connected in a business capacity with a retail licensee, viz., as a bartender for Homestead Inn, Inc., t/a Homestead Inn, a plenary retail consumption licensee, at its licensed premises 118-120 Center Avenue, Atlantic Highlands, New Jersey; in violation of Rule 7 of State Regulation No. 14."

Testimony relevant to this charge was heard at a consolidated hearing which also involved disciplinary proceedings against Homestead Inn, Inc., t/a Homestead Inn. This report is being submitted simultaneously with Hearer's report in the other case. Separate reports have been prepared in order to limit the relevant testimony required for a fair consideration of each case and to protect the individual rights of the parties concerned.

The Division relied upon the testimony of two agents in substantiation of the charge. It appears that both agents visited the licensed premises (a barroom located in a hotel) on March 18, 1966 at approximately 9 p.m. and took seats at the bar. Tending bar and serving the patronage was a person referred to as "Bones" (later identified as Vincent DePonte). It was learned that Vincent DePonte was employed as a solicitor by Shore Point Distributing Co., Inc., the holder of a wholesaler's license, more specifically a state beverage distributor's license. The agents remained at the bar a period of two hours that night, and DePonte tended bar unassisted during the entire period.

The agents again visited the licensed premises on April 1, 1966 at approximately 9:30 p.m., and positioned themselves at the far end of the bar next to the rest rooms, ordered beer and made observations of the patronage and premises. They observed



Vincent DePonte tending bar from the time they entered to approximately 11 p.m. DePonte was unassisted until Estelle Borges (a stockholder and an officer of the licensee corporation) went behind the bar at approximately 10 p.m.

Later that night, while the agents were at the local police station, DePonte walked in at approximately 12:05 a.m. and he admitted to the agents that he was tending bar that night and had been helping out "for a couple of months." Additionally he admitted that he was the holder of a solicitor's permit issued by the Division of Alcoholic Beverage Control and was employed by Shore Point Distributing Co., Inc.

In defense of the charge Mrs. Estelle Borges stated that she knew "Bones" for a period of approximately sixteen years and that he helped out on three occasions while she went upstairs. On this particular occasion he stayed behind the bar somewhat longer. He usually departs after she comes down. "Bones" was not deriving a salary; he was merely helping out.

Primarily, it should be noted that we are presently dealing with a disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

It must also be stressed that the separation of wholesalers and their solicitors from retailers is a salutary regulation that demands strict enforcement.

The Supreme Court, in the case of Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948), pointed out, at p. 255:

"Webster defines the word 'employ:' 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purposes.' The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts."

Applying the reasoning of the Kravis case, supra, and the well-established Division precedents, I arrive at the inescapable conclusion that DePonte was employed by the licensee. Inasmuch as DePonte admittedly was the holder of a solicitor's permit, I recommend that the permittee be found guilty of said charge. The fact that DePonte received no remuneration for his service is immaterial. See Re Gilson, Bulletin 754, Item 9.

Permittee has no prior adjudicated record. I further recommend that his solicitor's permit be suspended for a period of five days. Re Gitter, Bulletin 1575, Item 2; Re Pisacane, Bulletin 1611, Item 9.

Conclusions and Order

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

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

Accordingly, it is, on this 12th day of September 1966,

ORDERED that Solicitor's Permit #851, issued by the Director of the Division of Alcoholic Beverage Control for the year 1966-67 to Vincent DePonte, 44 Iroquois Avenue, Oceanport, N. J., be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, September 19, 1966, and terminating at 9 a.m. Saturday, September 24, 1966.

JOSEPH P. LORDI  
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN SPEAKEASY - APPLICATIONS OF CLAIMANTS FOR RETURN OF DEPOSITS POSTED IN LIEU OF RETAIL VALUE OF SEIZED PERSONAL PROPERTY DENIED FOR FAILURE TO ESTABLISH GOOD FAITH - DEPOSITS, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure	)	
on December 17, 1965 of a quantity	)	Case No. 11,620
of alcoholic beverages, \$61.60 in	)	
cash, various furnishings, equipment	)	ON HEARING
and foodstuffs in a dwelling at 15	)	CONCLUSIONS
Beckerville Road, Beckerville	)	AND ORDER
Apartments, Manchester Township,	)	
County of Ocean and State of New	)	
Jersey.	)	

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S & S Amusement Co., Inc., claimant, by Pasquale J. Storino,  
Secretary and Treasurer.  
I. Edward Amada, Esq., appearing for 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 and further pursuant to two stipulations, as follows: (1) A stipulation dated April 12, 1966 signed by Martha Banks, to determine whether various furnishings, equipment and foodstuffs set forth in an inventory, (exclusive of certain equipment purportedly owned by the S & S Amusement Co., Inc.), attached hereto, made part hereof and marked Schedule "A", seized on December 17, 1965 in a dwelling at 15 Beckerville Road, Beckerville Apartments, Manchester Township, New Jersey, constitute unlawful property and should be forfeited and further, to determine whether the sum of \$350.00, representing the retail value of the various furnishings, equipment and foodstuffs, exclusive of the alcoholic beverages and \$61.60 in cash, seized simultaneously therewith, paid under protest by Martha Banks, should be forfeited or returned to her, and (2) A stipulation dated March 29, 1966

signed by Pasquale J. Storino, authorized agent for the S & S Amusement Co., Inc. to determine whether a cigarette machine, two pool tables, a juke box, a bowling machine and a pinball machine, set forth in the aforesaid Schedule "A", seized on December 17th aforesaid, constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$600.00, representing the retail value of said machines, pool tables and juke box, paid under protest by the said Pasquale J. Storino as agent of the S & S Amusement Co., Inc., should be forfeited or returned to it; and, also, to determine whether 65 bottles of alcoholic beverages and \$61.60 in cash, seized at the same time and place, shall be forfeited or returned to Martha Banks.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Martha Banks or for the premises where the alleged violation took place.

When the matter came on for hearing, pursuant to R.S. 33:1-66, the S & S Amusement Co., Inc. appeared through its authorized agent, Pasquale J. Storino, and sought return of its deposit in the sum of \$600.00 which it posted with this Division under the stipulation, as aforementioned.

No appearance was entered on behalf of Martha Banks and this Division was advised by her attorney that she did not intend to appear or seek return of the forfeited property or the money deposited by her under the stipulation signed by her.

The file of this Division, which was entered into evidence by stipulation of the claimant, S & S Amusement Co., Inc., contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory, stipulations and the Division chemist's report, duly certified by the Director.

The said file established the following facts: On Friday, December 10, 1965 at 9:15 p.m., ABC Agent T entered the basement of said dwelling which is outfitted as a combination restaurant and pool room. A number of patrons were playing pool and several patrons ordered cans of beer with their meals which was served by a female, subsequently identified as Martha Banks. The agent thereupon ordered a can of Schaefer Beer from Mrs. Banks and paid her therefor, upon being served.

On Friday, December 17, 1965 at about 9:20 p.m. four ABC agents entered the said premises and Agent T ordered a can of beer from Mrs. Banks. Mrs. Banks directed an employee, (later identified as Lillie Mae Baker), to get a can of beer from the refrigerator. Mrs. Baker obtained the beer and handed the same to the agent who, in turn, paid Mrs. Baker therefor with a "marked" one-dollar bill. She rang up thirty-five cents on the cash register for this purchase and handed him sixty-five cents in change. By pre-arrangement, local police officers entered the premises at that time and Agent T identified Mrs. Baker, who has sold him the can of beer at the direction of Mrs. Banks, and he also identified Mrs. Banks as the person who sold him the can of beer on December 10, 1965. Mrs. Banks was then requested to open the cash register, and the one-dollar "marked" bill was found commingled with the total \$61.60, in the said register.

A search of the premises disclosed a quantity of alcoholic beverages as set forth in Schedule "A". Mrs. Baker and Mrs. Banks

were thereupon arrested; Mrs. Banks was charged with sale of alcoholic beverages without a liquor license in violation of R.S. 33:1-2 and R.S. 33:1-50(a), as well as possession of alcoholic beverages with intent to sell the same without a license, contrary to R.S. 33:1-50(b). Mrs. Baker was charged with sale of alcoholic beverages without a license in violation of R.S. 33:1-2 and R.S. 33:1-50(a). They were both released in bail pending arraignment in the Manchester Township Municipal Court.

The report of the Division chemist shows, in part, that a sample of one six-ounce bottle containing a balance of four ounces of alleged Rheingold Beer, seized herein, is an alcoholic beverage, fit for beverage purposes, with alcohol by volume of 6.8%. Another sample of a one-half gallon bottle containing 43 ounces of alleged Calvert Extra Blended Whiskey, 86 Proof, shows that it is an alcoholic beverage, fit for beverage purposes, with alcohol by volume of 43.1%.

Since Martha Banks did not have any license authorizing her 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. 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, the personal property and the commingled 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. 11,431, Bulletin 1644, Item 3; Seizure Case No. 11,597, Bulletin 1679, Item 7.

Accordingly, I recommend that an Order be entered forfeiting the alcoholic beverages, and cash, as well as the deposit posted by her under the stipulation, referred to hereinabove.

The S & S Amusement Co., Inc., presented a claim for the return of the deposit upon which it secured the return of certain personal property reflected in its stipulation and more particularly itemized in Schedule "A" herein. Pasquale J. Storino, testifying in support of the said claim, stated that he is secretary, treasurer and majority stockholder of the corporate claimant, and was authorized to sign the stipulation on its behalf. The stipulation covered two coin-operated pool tables, one coin-operated juke box, one coin-operated pinball machine and one coin-operated shuffle alley which he asserts is the property of the said claimant. However, he failed to produce any indicia of ownership to establish title thereto.

He gave the following account: This claimant has been servicing these premises since 1963 or 1964 until September 1965 when the premises were vacated. The landlord requested that he leave his equipment in the premises because a new tenant was taking over. This new tenant was Martha Banks who commenced operation thereof in October, 1965. He made an arrangement with Martha Banks whereby he was to obtain commissions on a 50-50 basis with her. He admits that, at no time, did he make any background investigation of the prior tenant, or of Martha Banks, to determine whether or not they had been in any prior violation of the liquor laws.

He denied that he ever saw any alcoholic beverages being dispensed during his visits to the premises, and he was particularly pleased with this account because "We had a pretty good collection..."

On cross-examination he admitted that he was aware of the necessity for making such investigation because, as recently as July, 1965, the equipment of this claimant was seized in a raid on a speakeasy operation by agents of this Division. In that incident, this claimant also failed to make the required background

investigation and accordingly, did not seek the return of its seized property.

When pressed as to why he didn't make an investigation with respect to Mrs. Banks, he replied, "To be perfectly honest with you, we were going into our slow season, and I was tickled pink somebody was going to open up this place. I had a lot of equipment in there and rather than take it to my shop I let well enough alone."

The records of this Division disclose that, at least, three prior seizures of property were made by agents of this Division at premises operated as speakeasies by Mrs. Banks. It seems abundantly clear that the claimant, under these circumstances, did not act reasonably, or fulfill its statutory responsibility in the operation of its property in the said premises, particularly in view of his prior experience, with at least one other speakeasy operator, within recent months. Notwithstanding its prior experience, it did not consider it necessary to make a background investigation. It is perfectly clear, from the evidence, that the claimant was willing to take its chances because this was a profitable location.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that it 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 the absence of such a showing, the Director is without authority to return the said property.

Accordingly, I conclude that there was an absence of good faith on the part of this claimant; that it failed to make the requisite investigation of alleged prescribed liquor activity. Thus, it has demonstrated a careless indifference to the use to which its property was being put.

It is, therefore, recommended that its claim be rejected; that the claimant's application for return of the deposit be denied; and that an Order be entered forfeiting the \$600.00 deposited by this claimant, under protest, under the aforementioned stipulation.

#### Conclusions and Order

No exceptions to the Hearer's Report were filed herein pursuant to 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 14th day of September, 1966,

DETERMINED and ORDERED that the sum of \$350.00, representing the retail value of various furnishings, equipment and foodstuffs, paid under protest by Martha Banks, pursuant to a stipulation signed by her, shall be and the same is hereby forfeited in accordance with 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 sum of \$600.00, representing the appraised retail value of a cigarette machine, two pool tables, a juke box, a bowling machine and a pinball machine, paid under protest by S & S Amusement Co., Inc. pursuant to a stipulation signed by it, shall be and the same is hereby forfeited

in accordance with 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 and \$61.60 in cash are hereby forfeited, 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 the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI  
DIRECTOR

SCHEDULE "A"

3 - containers of whiskey  
42 - cans of beer  
19 - pints of wine  
1 - pint of champagne  
1 - cigarette machine  
2 - pool tables  
1 - juke box  
1 - bowling machine  
1 - pinball machine  
\$61.60 in cash

4. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #293 )  
In the Matter of the Automatic )  
Suspension of Plenary Retail )  
Consumption License C-6, issued )  
by the Common Council of the )  
Borough of Hightstown to )  
HEDY'S BAR, INC. )  
t/a HEDY'S BAR )  
500 Mercer Street )  
Hightstown, N. J. )

ORDER

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BY THE DIRECTOR:

On September 12, 1966, Henry Goldstein, president and treasurer of the licensee corporation, was fined \$100 and \$5 costs in the Hightstown Municipal Court after being found guilty of a charge alleging that he sold alcoholic beverages to a minor on July 22, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1.

By order dated August 31, 1966, I suspended the license for fifteen days commencing September 7, 1966 and terminating September 22, 1966, in disciplinary proceedings involving a charge alleging that the licensee sold alcoholic beverages to the same minor. Re Hedy's Bar, Inc., Bulletin 1696, Item 8. Under the circumstances, the suspension having been served, I shall, on my own motion, enter an order lifting the statutory automatic suspension. Re The Canteen, Inc., Bulletin 1685, Item 7.

Accordingly, it is, on this 23d day of September 1966,

ORDERED that the statutory automatic suspension of said license C-6 be and the same is hereby lifted effective immediately.

JOSEPH P. LORDI  
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - PERJURY AND SUBORNATION OF PERJURY - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application	)	
to Remove Disqualification because	)	CONCLUSIONS
of a Conviction, pursuant to R.S.	)	AND ORDER
33:1-31.2.	)	

Case No. 2043

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Robert Burk Johnson, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

Petitioner's criminal record discloses that on June 6, 1945, he was convicted in the Camden County Court for perjury and subornation of perjury and, as a result thereof, was sentenced to serve consecutive sentences of six months in the county jail and fined \$500.00. On December 21, 1945, the balance of the sentence was suspended and the fines were remitted.

Since the crimes of which petitioner was convicted involve the element of moral turpitude (Re Case No. 334, Bulletin 419, Item 10) he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein petitioner (58 years old) testified that he is married and living with his wife; that for the past twenty-eight years he has lived at his present address and that ever since 1957 he has been employed as a truck driver by a municipality.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction in 1945, he has not been convicted of any crime.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against petitioner.

Petitioner produced three character witnesses (a retired laborer, a retired pipe fitter's helper and a carpenter) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

Considering all of the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 28th day of September, 1966,

ORDERED that petitioner's statutory disqualification, because of the convictions described herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

JOSEPH P. LORDI  
DIRECTOR

6. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #294	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary	)	
Retail Consumption License C-18,	)	ON PETITION
issued by the Township Committee of	)	ORDER
the Township of Galloway to	)	
GUSTAV MANUWALD & BERTHA MANUWALD	)	
t/a GUS & BERTHA'S	)	
1148 White Horse Pike	)	
Galloway Township	)	
PO Absecon, N. J.	)	

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Frank J. Ferry, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on August 31, 1966, Gustav Manuwald, one of the licensees-petitioners, was fined \$100 and \$5 costs in the Galloway Township Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on August 22, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. The suspension was effectuated on September 28, 1966.

It further appears that the municipal issuing authority has suspended the license for ten days effective September 6, 1966, after the licensees' confessional plea to charges in disciplinary proceedings alleging the same sale to the minor. It appearing that the municipal suspension has been served, I shall lift the statutory automatic suspension. Re Heide's Tavern, Inc., Bulletin 1683, Item 10.

Accordingly, it is, on this 29th day of September, 1966,

ORDERED that the statutory automatic suspension of said license C-18 be and the same is hereby lifted, effective immediately.

JOSEPH P. LORDI  
DIRECTOR



## 7. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #295 )  
 In the Matter of a Petition to Lift )  
 the Automatic Suspension of Plenary )  
 Retail Distribution License D-7, )  
 issued by the Borough Council of ) ON PETITION  
 the Borough of Bogota to ) ORDER  
 )  
 CLANCEY'S (A Corporation). )  
 31 Fairview Avenue )  
 Bogota, N. J. )

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 Lucchi & Conway, Esqs., by Donald R. Conway, Esq., Attorneys  
 for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on September 20, 1966, Russell Schumeyer, president and treasurer of the licensee-petitioner, was fined \$100 and \$10 costs in the Bogota Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on June 3, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the 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 the municipal issuing authority has suspended the license for fifteen days effective July 1, 1966, after the licensee's plea of guilty to charges in disciplinary proceedings alleging the same sale to the minor. It appearing that the municipal suspension has been served, I shall lift the statutory automatic suspension. Re Heide's Tavern, Inc., Bulletin 1683, Item 10.

Accordingly, it is, on this 30th day of September, 1966,

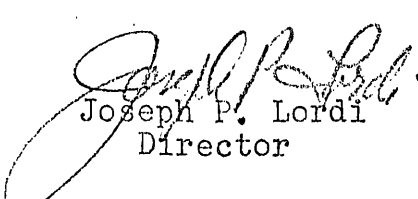
ORDERED that the statutory automatic suspension of said license D-7 be and the same is hereby lifted, effective immediately.

JOSEPH P. LORDI  
 DIRECTOR

## 8. STATE LICENSES - NEW APPLICATION FILED.

J & J Distributing Co.  
 16 Bleeker Street  
 Millburn, New Jersey  
 Application filed November 7, 1966 for place-to-place  
 transfer of Plenary Wholesale License W-30 from 312  
 Frelinghuysen Avenue, Newark, New Jersey.

Pearl Brewing Company  
 312 Pearl Parkway  
 San Antonio, Texas  
 Application filed November 16, 1966 for Limited Wholesale  
 License.

  
 Joseph P. Lordi  
 Director

New Jersey State Library