

BULLETIN 1065

JUNE 1, 1955

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Newark) - CHARGE ALLEGING THAT LICENSEE PERMITTED AN ACT OF VIOLENCE ON LICENSED PREMISES, DISMISSED - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
2. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1954, THROUGH MARCH 31, 1955.
3. DISCIPLINARY PROCEEDINGS (Englewood) - CLUB LICENSE - SALE TO NON-MEMBERS - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE RESIDENCE - ALCOHOLIC BEVERAGES AND FURNITURE ORDERED FORFEITED - APPLICATION FOR RETURN OF PROPERTY BY WIFE OF SPEAKEASY OPERATOR DENIED - CASH SURRENDERED BY SPEAKEASY OPERATOR FROM HIS PERSON RETURNED.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. ACTIVITY REPORT FOR APRIL 1955.
8. INTERPRETATIONS OF RULES OF STATE REGULATIONS NO. 39 (EXTENSION OF CREDIT BY MANUFACTURERS AND WHOLESALERS TO RETAIL LICENSEES).
9. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1065

JUNE 1, 1955

1. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING THAT
LICENSEE PERMITTED AN ACT OF VIOLENCE ON LICENSED
PREMISES, DISMISSED - SALE AT LESS THAN PRICE LISTED
IN MINIMUM CONSUMER RESALE PRICE LIST - SALE DURING
PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE
REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED
FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOHN RUTKA,
249 Bruce Street,
Newark 3, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consump-)
tion License C-318, issued by the)
Municipal Board of Alcoholic Bever-)
age Control of the City of Newark.)

ORDER

George B. Astley, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following
charges:

- "1. On Sunday, December 5, 1954, you sold a pint
bottle of Calvert Reserve Blended whiskey, an alco-
holic beverage, at less than the price thereof
listed in the then currently effective Minimum
Resale Price List published by the Director of the
Division of Alcoholic Beverage Control; in violation
of Rule 5 of State Regulations No. 30.
- "2. On Sunday, December 5, 1954, at about 2:40 P.M.
and again at about 3:05 P.M., you sold and delivered
and allowed, permitted and suffered the sale and de-
livery of alcoholic beverages, at retail, in their
original containers for consumption off the licensed
premises; in violation of Rule 1 of State Regulations
No. 38."

Defendant pleaded not guilty to the following
charge:

- "3. On October 25, 1954, you allowed, permitted and suf-
fered an act of violence and disturbance in and upon
your licensed premises; in violation of Rule 5 of
State Regulations No. 20."

Oral argument was had before me, at which time de-
fendant's attorney urged dismissal of third charge on the
ground that the preponderance of credible evidence favors
the licensee and that testimony of Rose Pappas, complaining
witness, is unworthy of belief.

The complaining witness, Mrs. Rose Pappas, who
has patronized the licensee's tavern for many years, testi-
fied to the following effect:

At about 2 p.m. on the afternoon of October 25, 1954, she entered the tavern alone and took her place at the bar. She had a dollar of her own and borrowed five dollars from the bartender. From 2 p.m. until 5 p.m. she drank highballs but cannot remember how many. The licensee entered the barroom about 5 p.m., took his place behind the bar, and relieved the bartender. The licensee started a heated discussion with her concerning the sum of \$20 which he claimed to have loaned her the previous day and which she denied. During the course of the discussion the licensee called upon Alex Kurzinsky, who is Mrs. Pappas' friend, to confirm the fact that he had loaned her the money. Mrs. Pappas and the licensee then exchanged mutual insults which eventuated in the licensee, from behind the bar, striking her across the face with the back of his hand, knocking her off the stool upon which she was seated. The licensee, the bartender and another person then carried her to a back room and closed the door. In a few minutes the licensee returned to the back room and asked her to return to the bar and sit down. The assault occurred about 7:30 p.m. As a result of being struck she suffered a cut on the lip, a black eye and her eyeglasses were broken. Police officers, who had not been summoned by her, entered the tavern and within her hearing asked what was the trouble and the licensee told them there was no trouble. She did not contradict the licensee or speak a word to the officers. With that the officers left. She remained in the tavern until about 9 o'clock. The licensee then obtained a taxi-cab for her and she left the tavern. The next day she made an informal complaint against the licensee at a police station but thereafter did not press the complaint.

Alex Kurzinsky testified that he entered the licensee's tavern between 7:30 and 8 p.m. on the day in question. When he entered he heard the argument between Mrs. Pappas and the licensee, who asked Kurzinsky whether he witnessed the loan of \$20. He saw the licensee from behind the bar slap Mrs. Pappas with the back of his hand, saw her fall to the floor and saw her being carried into the back room. He heard her try to get out of the room. He observed her come back into the barroom at the licensee's request. He was present when the officers came in but did not know why they were there. He did not hear any conversation between the officers and anyone in the tavern. When he left the tavern at about 9 p.m. Mrs. Pappas remained in the tavern. He keeps company with Mrs. Pappas as a friend.

The licensee and his witnesses tell a completely different story.

The licensee testified that Mrs. Pappas entered the tavern about 7 p.m. on the day in question while he was on duty as bartender. She appeared to him to be intoxicated. She asked him for the loan of \$5. He replied that he would not give her any money or serve her any drinks. She then became abusive and called him insulting names. The licensee tried to quiet Mrs. Pappas and asked her to leave. She refused and continued to be abusive. At about 7:30 p.m. he called the police. The police arrived within fifteen minutes. Upon their arrival he told the officers that they would have to put Mrs. Pappas out of the tavern. She told them that there was no trouble there; that she intended to leave right away. The officers left, advising that, if there was any further trouble, to call them again.

Mrs. Pappas remained in the tavern about one hour-and-a-half after the officers left, still abusive. Mrs. Pappas left with Kurzinsky about 9:30 p.m. The licensee did not at any time strike her or carry her into the back room.

The licensee's version is corroborated in most respects by two patrons, particularly their specific statements that Mrs. Pappas entered the tavern at about 7 p.m.; that they were there during the entire time that Mrs. Pappas was there; that the licensee refused to serve her any drinks and did not strike her, although she used abusive and indecent language much of the time; and that they saw her leave with Kurzinsky shortly after 9 p.m. A third patron testified that he entered the tavern about 7:15 p.m., sat on a stool next to Mrs. Pappas, who asked him for the loan of some money, and that he refused and moved away. This witness likewise corroborates the licensee in most of the details of the latter's testimony.

Where there is such direct conflict in testimony it is difficult to extract the kernel of truth. However, there is a certain area of agreement. Both sides agree that Mrs. Pappas was in the licensed premises from at least 7 p.m. until about 9 p.m.; that she was a frequent visitor at the tavern and friendly with the licensee; and that there was disorder there during the period in question which resulted in summoning the police.

First considering Mrs. Pappas' version, there appears therein many illogical aspects, seemingly contrary to normal human behavior, which tend to render doubtful the credibility of her account. If she had been struck as she said, it would have been natural for her to complain to the police when they entered the tavern. If she had been hurt physically or emotionally, would she have remained there for two hours after the alleged assault or failed to press her complaint in police court? If she had suffered a physical hurt as alleged by her, would it not have been visible and required medical attention? Furthermore, would it not have been normal for Kurzinsky, her friend, to remonstrate when he saw her struck down and carried into the back room, or attempt to release her therefrom or to voice his indignation to the officers when they came into the tavern, none of which he did.

Turning to the licensee's version and that of his witnesses, there is much which is likewise not credible. I do not believe that Mrs. Pappas was in the tavern (from 2 p.m. until 9 p.m. as she claims, or from 7 p.m. until 9 p.m. as the licensee claims) without being served any alcoholic beverages. Each witness is naturally influenced by some interest in the case, however slight. Nevertheless, all of the licensee's witnesses emphatically stated that the licensee did not strike Mrs. Pappas and that Kurzinsky took her home. I do not have the benefit of the police officers' disinterested accounts relating with whom they talked, the subject thereof, and what, if anything, they observed concerning Mrs. Pappas' physical condition.

In the light of the weakness in Mrs. Pappas' account as above related, I cannot completely disregard the testimony of the licensee and his witnesses. While the licensee is to be censured for permitting a disorder to arise and continue in his licensed tavern for two hours or thereabouts, no matter who was responsible therefor, nevertheless I cannot find that the

preponderance of the evidence establishes that the licensee allowed, permitted or suffered an act of violence and disturbance in and upon the licensed premises within the contemplation of the Rule. Cf. Re DiBernardo, Bulletin 928, Item 7. I, therefore, find defendant not guilty as to charge 3.

The file herein discloses as to charges 1 and 2 that on Sunday, December 5, 1954, at about 2:30 p.m., two ABC agents, who were in the premises to investigate a complaint that the licensee was selling alcoholic beverages below the minimum resale price and for consumption off the licensed premises on Sunday, observed a man enter and take a seat at the bar. The bartender, Theodore Cudoba, sold this man a pint bottle of whiskey, delivering it to him in the kitchen. Thereafter one of the agents asked Cudoba to sell him a pint of whiskey of a certain brand. Cudoba did not have this brand, whereupon the agent told Cudoba that Calvert whiskey, which Cudoba had on hand, would be satisfactory. Thereupon Cudoba picked up a pint bottle of Calvert Reserve Blended Whiskey and instructed the agent to go into the kitchen. The agent and Cudoba then went to the kitchen. There Cudoba handed the pint bottle of whiskey to the agent who concealed it on his person with Cudoba's approval. The men returned to the bar where the agent paid Cudoba \$2.75 for the pint of Calvert Reserve Blended Whiskey. Both agents then informed Cudoba that they were leaving and left the licensed premises, returning immediately thereafter. At this time the agents disclosed their identity. The then current minimum price for a pint bottle of Calvert Reserve Blended Whiskey was \$2.83.

Defendant has a prior adjudicated record. Effective July 13, 1950, the license, then held in the names of John and Mary Rutka, was suspended for fifteen days by the Division for "refills." Re Rutka, Bulletin 882, Item 5. Effective September 7, 1953, the license, then in the name of John Rutka, was suspended for five days by the local issuing authority for permitting gambling at cards. The minimum period of suspension for the violation set forth in charge 1 is ten days (Re Locust Inn, Inc., Bulletin 1050, Item 10). The minimum suspension for the violation set forth in charge 2 is fifteen days (Re Pawlowski Tavern, Inc., Bulletin 1055, Item 5). In view of the prior dissimilar record I shall suspend defendant's license for a period of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days. Cf. Re McCann, Bulletin 1039, Item 8.

Accordingly, it is, on this 11th day of May, 1955,

ORDERED that plenary retail consumption license C-318, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to John Rutka, for premises 249 Bruce Street, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. May 19, 1955, and terminating at 2 a.m. June 13, 1955.

WILLIAM HOWE DAVIS,
Director.

2. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1954 THROUGH March 31, 1955

	1st Quarter July, Aug., Sept.		2d Quarter Oct., Nov., Dec.		3d Quarter Jan., Feb., March		Total
ARRESTS:							
Total number of persons arrested	79		95		60		234
Licenses and employees	19		31		18		68
Bootleggers	60		63		42		165
ABC agent impersonator	0		1		0		1
SEIZURES:							
Motor vehicles - cars	16		14		9		39
- trucks	4		2		0		6
Stills - over 50 gallons	10		5		3		18
- 50 gallons or under	7		8		5		20
Alcohol - gallons	0		680.00		5.00		685.00
Mash - gallons	7,006.50		31,371.00		1,980.00		40,357.50
Distilled alcoholic beverages - gallons	530.51		358.60		221.76		1,110.87
Wine - gallons	95.06		81.36		37.00		211.42
Brewed malt alcoholic beverages - gallons	192.23		36.81		37.40		266.44
RETAIL LICENSEES:							
Premises inspected	3,405		2,832		2,161		8,398
Premises where alcoholic beverages were gauged	1,553		1,872		1,873		5,298
Bottles gauged	29,199		34,501		37,299		100,999
Premises where violations were found	247		216		153		616
Violations found	330		284		221		835
Type of violations found:							
Unqualified employees	136		116		75		327
Other mercantile business	53		23		32		88
Reg. #38 sign not posted	29		22		19		70
Disposal permit necessary	35		17		11		63
Prohibited signs	12		3		2		17
Gambling devices	1		4		2		7
Probable fronts	2		0		0		2
Improper beer taps	1		1		0		2
Other violations	81		98		80		259
STATE LICENSEES:							
Premises inspected	43		11		8		62
License applications investigated	37		32		30		99
COMPLAINTS:							
Complaints assigned for investigation	1,389		1,258		1,280		3,927
Investigations completed	1,231		1,194		1,211		3,636
Investigations pending	(184)		(158)		145		145
LABORATORY:							
Analyses made	412		356		403		1,171
Refills (from licensed premises) - Bottles	6		3		12		21
Bottles from unlicensed premises	115		112		58		285
IDENTIFICATION BUREAU:							
Criminal fingerprint identifications made	87		83		45		215
Persons fingerprinted for non-criminal purposes	694		488		461		1,643
Ident. contacts made w/other enforcement agencies	710		428		420		1,558
Identifications via N.J. State Police teletype	9		14		4		27
DISCIPLINARY PROCEEDINGS:							
Cases transmitted to municipalities	40		35		53		128
Violations involved:							
Sale during prohibited hours	24		18		27		69
Sale to minors	12		8		17		37
Permitting brawls on premises	2		1		4		7
Permitting bookmaking on premises	1		1		3		5
Possessing chilled beer (DL licensee)	2		1		0		3
Permitting females at bar (local reg.)	1		2		0		3
Permitting gambling (pools, wagering)	0		1		2		3
Permitting hostesses on premises	0		1		1		2
Employing female bartender (local reg.)	0		1		1		2
Failure to afford view into premises during prohibited hours	0		0		2		2
Sale to non-members by clubs	0		0		2		2
Possessing contraceptives on premises	1		0		0		1
Sale to intoxicated persons	1		0		0		1
Sale outside scope of license	0		1		0		1
Permitting slot machines on premises	0		1		0		1
Sale over service bar (local reg.)	0		0		1		1
Unqualified employee	0		0		1		1
Cases instituted at Division	46		49		75*		170
Violations involved:							
Sale to minors	14		16		28		58
Sale during prohibited hours	13		11		13		37
Permitting immoral activity on premises	6		9		4		19
Unauthorized transportation	2		2		5		9
Sale below minimum resale price	0		5		9		14
Hindering investigation	2		4		2		8

*Includes one cancellation proceeding - license improvidently issued to club no longer bona fide.

	1st Quarter July, Aug., Sept.	2d Quarter Oct., Nov., Dec.	3d Quarter Jan., Feb., Mar.	Total
DISCIPLINARY PROCEEDINGS (Continued)				
Cases Instituted at Division (Continued)				
Violations involved:				
Permitting hostesses on premises	2	3	2	7
Possessing illicit liquor	3	1	2	6
Sale outside scope of license	2	1	3	6
Mislabeled beer taps	3	2	0	5
Unqualified employees	4	0	1	5
Conducting business as a nuisance	1	3	1	5
Possessing indecent matter	0	1	4	5
Permitting lottery activity (raffles, numbers, pools)	1	1	2	4
Fraud and front	0	3	1	4
Permitting bookmaking on premises	0	1	3	4
Retailer soliciting house to house	0	0	3	3
Permitting gambling (cards) on premises	2	0	0	2
Permitting females at bar (local reg.)	2	0	0	2
Sale to non-members by clubs	1	1	0	2
Violation of special ruling	0	1	1	2
Permitting foul language on premises	0	1	1	2
Permitting brawls on premises	0	0	2	2
Possessing slot machines on premises	0	0	2	2
Failure to afford view into premises during prohibited hours	0	0	2	2
Retailer to retailer sales	0	0	2	2
Whslr. accepting unauth. returns from retailer	1	0	0	1
Solicitor selling to consumers	1	0	0	1
Permitting female impersonators on premises	1	0	0	1
Sale during license suspension	1	0	0	1
Permitting pin ball machine on premises	0	1	0	1
Possessing contraceptives on premises	0	1	0	1
Act of violence on premises	0	1	0	1
Employee working while intoxicated	0	0	1	1
Sale on credit to retailer in default	0	0	1	1
Soliciting orders by telephone	0	0	1	1
Cases brought by municipalities on own initiative and reported to Division	27	42	31	100
Violations involved:				
Sale to minors	21	23	15	59
Permitting brawls on premises	2	9	7	18
Sale during prohibited hours	3	6	7	16
Permitting immoral activity on premises	0	3	1	4
Conducting business as a nuisance	1	1	1	3
Permitting bookmaking on premises	1	1	0	2
Hindering investigation	0	2	0	2
Failure to afford view into premises during prohibited hours	0	2	0	2
Sale to intoxicated persons	0	2	0	2
Permitting hostesses on premises	0	0	2	2
Unqualified employee	0	0	2	2
Permitting gambling (wagering) on premises	1	0	0	1
Service in private room (local reg.)	1	0	0	1
Failure to display license certificate	0	1	0	1
Permitting prostitutes on premises	0	1	0	1
Permitting lottery activity on premises	0	1	0	1
Permitting persons of ill repute on premises	0	1	0	1
Permitting foul language on premises	0	1	0	1
Aiding and abetting sale without license	0	1	0	1
Licensee working while intoxicated	0	0	1	1
Employee working while intoxicated	0	0	1	1
Possessing slot machines on premises	0	0	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	113	107	130	350
Appeals	22	13	10	45
Disciplinary proceedings	40	47	71	158
Eligibility	20	19	22	61
Seizures	20	21	14	55
Tax revocations	5	5	9	19
Applications for license	6	2	4	12
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	19,413	4,453	2,845	26,711
Licenses	933	13	9	955
Employment permits	662	420	315	1,397
Solicitors	2,938	161	173	3,272
Disposal	212	298	312	822
Social affair	1,086	1,055	836	2,977
Wine	1	1,422	19	1,442
Miscellaneous	640	470	312	1,422
Transportation insignia	12,828	579	812	14,219
Transportation certificates	113	35	57	205

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE TO NON-MEMBERS - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

IDEAL LODGE NO. 470, I.B.P.O.
ELKS OF THE WORLD,
19 Humphrey Street,
Englewood, New Jersey.

CONCLUSIONS

AND

ORDER

Holder of Club License CB-186, issued)
by the Director of the Division of
Alcoholic Beverage Control.)

Ideal Lodge No. 470, I.B.P.O. Elks of the World, defendant-
licensee, by Robert L. Tonia, Exalted Ruler.
Dora P. Rothschild, Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On Wednesday, April 13, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a person not a bona fide member of your club or a bona fide guest of such member; in violation of Rule 8 of State Regulations No. 7."

The file herein discloses that about 9 p.m. on Wednesday, April 13, 1955, two ABC agents arrived in the vicinity of defendant's licensed premises as the result of a complaint that defendant made a practice of selling alcoholic beverages to non-members. One of the agents was admitted to the premises by Allen Wade, a bartender. Wade asked the agent whether he knew the latter, to which the agent replied that Wade had seen him before. Wade accompanied the agent to the barroom where a group of patrons were drinking alcoholic beverages at the bar. The agent ordered a bottle of beer which was served by Wade and for which the agent paid Wade thirty cents. While the agent was drinking the beer, the other agent who had remained outside sought and gained admission to the licensed premises, after disclosing his identity. The second agent asked Wade whether all the persons at the bar were members of the club. Wade replied that they were all guests. Specifically questioned as to whether the first agent was a club member, Wade replied that he had not asked the agent whether he was a member, but nevertheless had sold him the bottle of beer. The first agent then identified himself and Wade said that he thought this agent was a member.

Defendant has a prior record. Its license was suspended by the local issuing authority for the balance of its term effective April 20, 1938 (a) for permitting gambling on the licensed premises, (b) for fraud in its application for license, and (c) for employing an unqualified person on its licensed premises. Its license was thereafter again suspended on two occasions by the local issuing authority for sales to non-members - on the first occasion for twenty days effective February 23, 1946, and on the second occasion for twenty-five days effective November 23, 1949.

This is the third similar violation during a period of less than ten years and more than five years. The dissimilar violation, having occurred more than ten years previous, will be disregarded in arriving at penalty. Re Burlington Lodge, Bulletin 983, Item 8. I shall suspend defendant's license for a period of forty-five days, less five days for the plea herein, leaving a net suspension of forty days. Re International Workers Order, Bulletin 885, Item 6.

Accordingly, it is, on this 5th day of May, 1955,

ORDERED that Club License CB-186, issued by the Director of the Division of Alcoholic Beverage Control to Ideal Lodge No. 470, I.B.P.O. Elks of the World, for premises 19 Humphrey Street, Englewood, be and the same is hereby suspended for forty (40) days, commencing at 1 a.m. May 12, 1955, and terminating at 1 a.m. June 21, 1955.

WILLIAM HOWE DAVIS,
Director.

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE RESIDENCE - ALCOHOLIC BEVERAGES AND FURNITURE ORDERED FORFEITED - APPLICATION FOR RETURN OF PROPERTY BY WIFE OF SPEAKEASY OPERATOR DENIED - CASH SURRENDERED BY SPEAKEASY OPERATOR FROM HIS PERSON RETURNED.

In the Matter of the Seizure on October 24, 1954, of a quantity of alcoholic beverages, fixtures, furnishings and equipment and \$103.70 in cash, at 5023 Chapel Avenue, Pennsauken Township, County of Camden and State of New Jersey.)
Case No. 8737
On Hearing
CONCLUSIONS AND ORDER

Ramona Bass, 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 alcoholic beverages, \$103.70 in cash, fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on October 24, 1954 at 5023 Chapel Avenue, Pennsauken Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Ramona Bass entered an appearance and sought return of \$1,000.00, which she had paid under protest to the Director of the Division of Alcoholic Beverage Control, to obtain return of the furniture, fixtures, and equipment which were seized. Forfeiture of the alcoholic beverages was not opposed.

The Hearer's Report setting forth the facts presented at the hearing in the case and his recommendations thereon was mailed to Ramona Bass. No objection or exception to such report was filed within the time limited therefor.

After careful consideration of the complete record in the case, and review of the Hearer's Report, I find the following

to be established by the evidence presented:

On October 17, 1954, ABC agents visited a two-story dwelling located at 5023 Chapel Avenue, Pennsauken, New Jersey to investigate a complaint that alcoholic beverages were being sold there without a license. One of the agents was admitted into the dwelling by a man later identified as Earl Bass. The agent purchased a pint of whiskey from Bass, for which he paid \$4.00, and left without disclosing his identity.

On October 24, 1954, the agent returned to the premises accompanied by other ABC agents and local police officers. The agent entered the kitchen, where he observed a number of men and women seated at a table, drinking beer and whiskey. The agent asked Ramona Bass, who was in the room, for the whereabouts of Earl Bass. She directed the agent to the dining room, where he was greeted by Earl Bass, who again sold the agent a pint of whiskey for \$4.00. The agent left the dwelling for a few minutes, and returned with the other agents and the police officers, all of whom identified themselves.

Earl Bass did not hold any license authorizing him to sell alcoholic beverages, and the premises were not licensed for that purpose.

The agents seized 82 bottles of beer, four cans of beer, 62 bottles of various other alcoholic beverages, some of which were found in a bedroom occupied by Mr. & Mrs. Bass on the second floor, some in the kitchen, various furniture, fixtures and equipment in the dwelling, and \$103.70 (including four "marked" \$1.00 bills which the agent gave Bass in payment for the whiskey) which Earl Bass had on his person and surrendered. The alcoholic beverages included four jugs of "corn whiskey". These four jugs did not bear any labels, or stamps indicating the payment of tax on alcoholic beverages.

On October 25, 1954, Ramona Bass deposited \$1,000.00 with the Director of the Division of Alcoholic Beverage Control under protest, pursuant to R. S. 33:1-66, and thereupon obtained return of all of the seized property except the alcoholic beverages and the aforesaid sum of \$103.70.

On October 26, 1954, Ramona Bass signed a stipulation wherein she elected to have the Director of the Division of Alcoholic Beverage Control determine in these proceedings whether the \$1,000.00 deposited by her should be forfeited or returned to her.

Ramona Bass stated at the hearing that \$375.00 of the \$1,000.00 is her money and the balance is borrowed money; that she has not worked for a year because of ill health, and she does not know how she will be able to pay back the money she borrowed. She states further that she knew her husband sold whiskey for a period of about two years, although it was without her consent and despite her protests; however, that she could not "turn your own husband in". She asserts that most of the articles of furniture seized were either purchased by her or given to her, and that the total value does not exceed over six or seven hundred dollars. She testified that her husband had been a longshoreman, but in recent years worked at a racetrack and for the past two years has limited his activities to the sale of alcoholic beverages at their home.

I am satisfied from the evidence presented that the seized alcoholic beverages were intended for unlawful sale and hence are illicit. The "corn whiskey" in the jugs which had no labels or tax stamps affixed thereto is illicit on that score. R.S. 33:1-1(1), R.S. 33:1-88. Such illicit alcoholic beverages and all personal property seized therewith on the premises, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

The sum of \$103.70 in cash surrendered by Earl Bass from his person, is not subject to forfeiture under the Alcoholic Beverage Law. Only such amount as definitely appears to represent "fruits of the crime" - proceeds of the unlawful sale of alcoholic beverages may be confiscated under general law. Seizure Case No. 8685, Bulletin 1046, Item 10. The only money clearly so identified are the four "marked" one-dollar bills. Bass' practice of selling alcoholic beverages does not present legal justification for a finding that the entire sum of \$103.70 actually represents receipts of such unlawful sales. Hence, in fairness, the sum of \$99.70 should be returned to Earl Bass even though he has not made any request therefor.

Ramona Bass seeks to be relieved of forfeiture on a plea of poverty and her claimed inability to prevent her husband from operating a speakeasy in her home. She further asserts that the articles returned to her did not have the value of \$1,000.00.

However, the evidence presented does not sustain her claim. Money and perhaps other assets were found in her trunk in her bedroom, and not seized on her protestation that it was her personal property. It would therefore seem that she was not in a helpless financial condition. Secondly, it is doubtful whether a wife's protests to her husband at his unlawful activities would go unheeded, or that she could not devise an effective method of putting a stop to such activities short of causing her husband's arrest. In any event, it is too easy an escape from forfeiture to permit the operator of a speakeasy to hide behind his wife's skirt. Thirdly, it is improbable that every item of furniture in their home was purchased by or given to the wife. Lastly, Ramona Bass' personal opinion of the value of the articles returned to her, which opinion is influenced by her self-interest, does not overcome the careful appraisal made by the Division's Inspector, who at the hearing reiterated that the value of \$1,000.00 was a minimum estimate.

I am, therefore, satisfied that the sum of \$1,000.00 is the reasonable retail value of the property returned to Ramona Bass. In order to justify the return of such sum to Ramona Bass, she must establish to my satisfaction that she acted in good faith, and unknowingly violated the law herself, or did not know or have any reason to suspect that her husband was violating the Alcoholic Beverage Law. R.S. 33:1-66 (e & f). Ramona Bass makes no pretense that she was unaware of her husband's activities, on the contrary, she admits complete knowledge thereof. Lacking this essential requirement, the other considerations urged by Mrs. Bass, even if established, cannot prevail. See Seizure Case No. 7459, Bulletin 851, Item 7.

Accordingly, it is DETERMINED and ORDERED that the alcoholic beverages, described in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and

that they 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; and it is further

DETERMINED and ORDERED that the balance of the seized property, consisting of various items of furniture, fixtures, and equipment listed in the aforesaid Schedule "A" constitutes unlawful property and that the sum of \$1,000.00, representing the appraised retail value of such articles, paid under protest to the Director of the Division of Alcoholic Beverage Control by Ramona Bass to obtain return of these articles, be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with the law; and it is further

DETERMINED and ORDERED that the aforesaid four "marked" one-dollar bills be turned over to the State Treasurer, and that the sum of \$99.70 be returned to Earl Bass.

WILLIAM HOWE DAVIS,
Director.

Dated: April 20, 1955.

SCHEDULE "A"

82 bottles of beer
4 cans of beer
62 bottles of various sizes of assorted
alcoholic beverages
91 bottles of soda
1 Frigidaire
1 electric clock
1 Admiral television
1 Philco radio
1 G. E. Refrigerator
1 Coolerator ice box
1 Thor washing machine
Various household furniture, fixtures
and equipment itemized in the seizure
inventory in the case.
\$103.70 in cash

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS
IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 -
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

PETER GARDIANOS,
455 Jackson Avenue,
Jersey City 4, N. J.,)

CONCLUSIONS

AND

Holder of Plenary Retail Distribu-)
tion License D-89, issued by the)
Municipal Board of Alcoholic Bever-)
age Control of the City of Jersey City.)

ORDER

Peter Gardianos, Defendant-licensee, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold an alcoholic beverage at retail, in its original container, for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at about 12:50 p.m., on Sunday, April 17, 1955, defendant sold a pint bottle of whiskey to an ABC agent for off-premises consumption. The agent paid defendant for the bottle of whiskey, placed it in his pocket and left the premises. He returned immediately thereafter accompanied by another agent, at which time they made their identity known to defendant.

Defendant has no prior adjudicated record. Under the circumstances, I shall suspend his license for the minimum period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Zayak, Bulletin 1031, Item 6.

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

ORDERED that Plenary Retail Distribution License D-89, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Peter Gardianos, for premises 455 Jackson Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 9 a.m., May 16, 1955, and terminating at 9 a.m., May 26, 1955.

WILLIAM HOWE DAVIS,
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS
IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 -
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

BERGER COMPANY, INC.,
t/a 418 CLUB,
418 Jackson Avenue,
Jersey City, N. J.,

Holder of Plenary Retail Consump-
tion License C-261, issued by the
Municipal Board of Alcoholic Bev-
erage Control of the City of Jersey
City.

CONCLUSIONS

AND

ORDER

Berger Company, Inc., Defendant-licensee, by Herbert E.
Schwartz, Secretary-Treasurer.
Dora P. Rothschild, Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging
that it sold an alcoholic beverage at retail, in its orig-
inal container, for consumption off the licensed premises;
in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that on Sunday, April
17, 1955, at about 1:40 p.m., a bartender employed by de-
fendant sold a pint bottle of whiskey to an ABC agent for off-
premises consumption. The agent paid the bartender for the
bottle of whiskey, placed it in a back pocket of his trousers
and left the premises. He returned shortly thereafter with
another agent and the agents identified themselves to the
bartender.

Defendant has no prior adjudicated record. Under the
circumstances, I shall suspend its license for the minimum
period of fifteen days. Five days will be remitted for the
plea entered herein, leaving a net suspension of ten days.
Re Zayak, Bulletin 1031, Item 6.

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

ORDERED that Plenary Retail Consumption License
C-261, issued by the Municipal Board of Alcoholic Beverage
Control of the City of Jersey City to Berger Company, Inc.,
t/a 418 Club, for premises 418 Jackson Avenue, Jersey City,
be and the same is hereby suspended for a period of ten
(10) days, commencing at 2 a.m., May 16, 1955, and terminat-
ing at 2 a.m., May 26, 1955.

WILLIAM HOWE DAVIS,
Director.

7.

ACTIVITY REPORT FOR APRIL 1955

ARRESTS:

Total number of persons arrested	27
Licenseses and employees	11
Bootleggers	16

SEIZURES:

Motor vehicles - cars	5
Stillia - over 50 gallons	5
- 50 gallons or under	1
Mush - gallons	0.542.76
Distilled alcoholic beverages - gallons	426.47
Wine - gallons	.16
Brewed malt alcoholic beverages - gallons	6.93

RETAIL LICENSEES:

Premises inspected	733
Premises where alcoholic beverages were gauged	591
Bottles gauged	11,280
Premises where violations were found	58
Violations found	77
Type of violations found:	
Unqualified employees	25
Other mercantile business	12
Gambling devices	5
Reg. 38 sign not posted	5
Disposal permit necessary	5
Prohibited signs	1
Probable front	1
Other violations	23

STATE LICENSEES:

Premises inspected	5
License applications investigated	11

COMPLAINTS:

Complaints assigned for investigation	182
Investigations completed	133
Investigations pending	149

LABORATORY:

Analyses made	150
Refills from licensed premises - bottles	4
Bottles from unlicensed premises	35

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	21
Persons fingerprinted for non-criminal purposes	202
Identification contacts made with other enforcement agencies	216
Motor vehicle identifications via N. J. State Police teletype	2

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	15
Violations involved:	
Sale to minors	0
Sale during prohibited hours	3
Permitting brewis on premises	2
Sale to non-members by club	1
Permitting lottery activity on prem.	1
Cases instituted at Division	15
Violations involved:	
Sale to minors	6
Sale during prohibited hours	3
Unqualified employees	2
Sale below minimum resale price	2
Unauthorized transportation	1
Cases brought by municipalities on own initiative and reported to Division	15
Violations involved:	
Sale to minors	5
Sale during prohibited hours	4
Permitting brewis on premises	4
Permitting gambling on premises	1
Permitting immoral activity on prem.	1

HEARINGS HELD AT DIVISION:

Total number of hearings held	40
Appeals	8
Disciplinary proceedings	16
Eligibility	7
Seizures	5
Tax revocations	10
Applications for license	2

STATE LICENSES AND PERMITS ISSUED:

Total number issued	2,047
Licenses	5
Employment permits	1,875
Solicitors	68
Disposal	86
Social affair permits	260
Miscellaneous	17
Transportation insignia	435
Transportation Certificates	5

William Howe Davis
Director

May 3, 1955

8. INTERPRETATIONS OF RULES OF STATE REGULATIONS NO. 39 (EXTENSION OF CREDIT BY MANUFACTURERS AND WHOLESALERS TO RETAIL LICENSEES).

TO ALL NEW JERSEY MANUFACTURERS AND WHOLESALERS:

The following questions have arisen in connection with the interpretation of State Regulations No. 39:

1. The effect of the delivery to a manufacturer or wholesaler of an ordinary check by a retailer then in default.
2. The effect of the delivery to a manufacturer or wholesaler by a collection attorney or collection agency, of such attorney's or agency's ordinary check representing collection of a retailer's defaulted account.

With respect to 1, Rule 2(c) of State Regulations No. 39 provides that ordinary checks may not be accepted as payment of a defaulted account. This has been interpreted to mean that ordinary checks may not be accepted either as full or partial payment. Defaulted accounts must be fully discharged (either in lump sum or installments) by payment in cash as defined in Rule 1(c). See Bulletin 914, Item 10.

While ordinary checks may not be accepted as payment of a defaulted account, they may be received by the manufacturer or wholesaler and deposited in the bank. If an ordinary check or checks in the full amount of the default are received by the manufacturer or wholesaler and promptly deposited in the bank, the defaulted account may, nevertheless, not be considered paid unless and until said check or checks have cleared the retailer's bank and have been paid. The defaulted account may be considered paid and the manufacturer or wholesaler may file with the Director notice of payment, pursuant to Rule 5(d) of State Regulations No. 39, only if and when said check or checks in the full amount of the default have cleared the retailer's bank and have been paid. Such ordinary check or checks may be deemed to have cleared the retailer's bank and to have been paid when either (a) the manufacturer or wholesaler receives advice from its bank that said check or checks have cleared and have been paid, or (b) sufficient time (under the particular facts and circumstances) has elapsed since the deposit of such check or checks for notice of dishonor (if the check or checks were dishonored) to have been received by the manufacturer or wholesaler in the ordinary course of business and, despite the lapse of such sufficient time, no such notice of dishonor has been received by the manufacturer or wholesaler.

If the above procedure has been followed, the NOTICE OF PAYMENT OF DEFAULT required by Rule 5(d) of State Regulations No. 39 shall bear, under "FORM OF PAYMENT", the legend "Ordinary check (or checks) deposited (date)". Under "DATE PAID" shall appear the legend "Cleared (date)".

With respect to 2, for the purpose of collection of defaulted accounts under State Regulations No. 39, a collection attorney or collection agent retained or employed by a manufacturer or wholesaler (other than a regular employee of the manufacturer or wholesaler) shall be deemed to be the agent of the manufacturer or wholesaler.

A manufacturer or wholesaler may accept an ordinary check or checks drawn by its collection attorney or collection agent, in the full amount of the default, as payment of a defaulted account only if the check or such attorney or agent is accompanied by the written representation of such attorney or agent that the retailer has (a) made payment to such attorney or agent in cash, as defined in Rule 2(c), or (b) has delivered to such attorney or agent an ordinary check or checks in the full amount of the default and such check or checks were deposited in the bank by said attorney or agent and have cleared the retailer's bank and have been paid. Such ordinary check or checks may be deemed to have cleared the retailer's bank and to have been paid when (a) the attorney or agent receives advice from his bank that said check or checks have cleared and have been paid, or (b) sufficient time (under the particular facts and circumstances) has elapsed since the deposit of such check or checks for notice of dishonor (if the check or checks were dishonored) to have been received by the attorney or agent in the ordinary course of business and, despite the lapse of such sufficient time, no such notice of dishonor has been received by the attorney or agent.

If an ordinary check of a collection attorney or agent has been accepted as payment of a defaulted account, the NOTICE OF PAYMENT OF DEFAULT required by Rule 5(d) of State Regulations No. 39 shall bear, under "FORM OF PAYMENT", the legend "Collection attorney's (or collection agent's) check", and under "DATE PAID" shall appear the date the attorney's or agent's check was received.

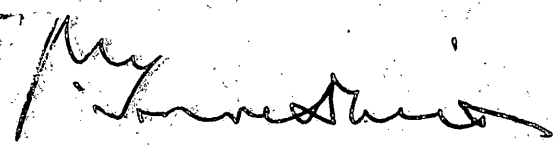
Of course, under no circumstances can ordinary checks be accepted as either full or partial payment for any alcoholic beverages delivered to a retailer listed on the Default List at the time of the delivery.

William Howe Davis,
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Peter Merola,
94 Mt. Prospect Avenue,
Newark, N. J.

Application filed May 20, 1955, for Transportation License.



William Howe Davis,
Director.