

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

BULLETIN 829

JANUARY 20, 1949.

TABLE OF CONTENTS

ITEM

1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL SALE AND UNLICENSED VEHICLE USED FOR TRANSPORTATION THEREOF ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE BY INNOCENT LIENOR RECOGNIZED.
2. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1948 TO DECEMBER 31, 1948 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R. S. 33:1-19.
3. RECAPITULATION OF ACTIVITY FOR PERIOD FROM JULY 1, 1948 THROUGH DECEMBER 31, 1948.
4. DISCIPLINARY PROCEEDINGS (Hackensack) - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Harrison) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Highlands) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, STOCK OF MERCHANDISE, AND FIXTURES AND EQUIPMENT IN SPEAKEASY IN LUNCHROOM ORDERED FORFEITED.
8. DISCIPLINARY PROCEEDINGS (Sea Bright) - HOLDER OF SOLICITOR'S PERMIT EMPLOYED BY A RETAILER OF ALCOHOLIC BEVERAGES - PERMIT SUSPENDED FOR 5 DAYS.
9. CANCELLATION PROCEEDINGS (Wayne Township) - RETAIL LICENSE ISSUED TO NON-RESIDENT CANCELLED.
10. APPELLATE DECISIONS - ROBINSON v. GLASSBORO.
11. CANCELLATION PROCEEDINGS (Newark) - SOLICITOR'S PERMIT CANCELLED BECAUSE HOLDER THEREOF CONVICTED OF CRIME INVOLVING MORAL TURPITUDE AFTER PERMIT ISSUED.

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

BULLETIN 829

JANUARY 20, 1949.

1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL SALE AND UNLICENSED VEHICLE USED FOR TRANSPORTATION THEREOF ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE BY INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure on) Case No. 7318
September 13, 1948 of a Mercury)
coupe and 48 - 4/5 quart bottles)
of whiskey transported therein,)
on Delilah Road in the City of) ON HEARING
Pleasantville, County of Atlantic) CONCLUSIONS AND ORDER
and State of New Jersey.)

Oscar Le Wine, Esq., Attorney for Albert A. Angelini.
Kirkman, Mulligan and Harris, Esqs., Attorneys for the Boardwalk
National Bank of Atlantic City.
Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a Mercury coupe and 48 - 4/5 quart bottles of whiskey being transported therein, described in a schedule attached hereto, seized on September 13, 1948 on Delilah Road, Pleasantville, New Jersey, constitute unlawful property and should be forfeited.

It appears that local police officers were called by a storekeeper, who became frightened when two men repeatedly knocked on the store door at about 3:30 a.m. on the day in question. These men, Edward James Ryan and Joseph R. Bychick, told the officers that they were trying to get to a telephone to call an Atlantic City garage because the Mercury coupe had broken down. When the officers inspected the car they found 24 bottles of whiskey in two sealed cases in the rear of the car, and the other 24 bottles of whiskey in one sealed and one unsealed case in the trunk of the car. At first, these men told the officers that they did not know that the whiskey was in the car.

The officers detained the men, took possession of the car and whiskey, and the State Department of Alcoholic Beverage Control was notified. ABC agents then obtained signed statements from the two men, and from Albert A. Angelini, the registered owner of the car.

It appears from these statements that Angelini was employed as a bartender, and Bychick as a porter, in an Atlantic City hotel. Both claim that it was their practice to take possession of alcoholic beverages owned, and left over at convention banquets, by various organizations; that the seized whiskey was gathered by them from three large parties held in June at the hotel, and was stored there by them awaiting further acquisitions of whiskey; ultimately they intended to sell the whiskey to friends and share the proceeds.

On the day in question, Angelini and Bychick decided to remove the whiskey from the hotel. Angelini called his garage and left word that Bychick was to be permitted to take his car. Thereafter, Bychick drove the car from the garage to the hotel, placed the four cases of whiskey in the car and visited a number of taverns with Ryan, who went along for the ride, and ended up in Pleasantville. The motor vehicle was not licensed to transport alcoholic beverages.

When the matter came on for hearing pursuant to R. S. 33:1-66, Albert A. Angelini appeared with counsel and sought return of the car. He did not request return of the whiskey nor contest its forfeiture.

Angelini testified that for the past three years he has been employed as a bartender at the Atlantic City hotel and was similarly employed at various other taverns for the past ten years. His testimony is vague concerning the customary disposition of whatever alcoholic beverages are left over at convention banquets; he says that in some cases it is taken, under supervision of the wine steward, to the hotel's wine cellar and, in other cases, taken by a bartender or porter, perhaps without the knowledge of the wine steward. He claims that sealed cases of whiskey are frequently abandoned by those in charge of convention banquets. It is extremely doubtful that sealed cases are abandoned, or that any responsible hotel employee would take possession of alcoholic beverages left over at a banquet and store them in the hotel's stockroom unless such beverages originally were and still remained part of the hotel's stock of alcoholic beverages.

Hence, there is considerable doubt whether Angelini and Bynick legitimately obtained possession of the whiskey in question. In any event, alcoholic beverages intended for unlawful sale are illicit. Likewise, alcoholic beverages transported in an unlicensed vehicle, except a limited quantity for personal consumption not here involved, are illicit. R. S. 33:1-1(i), R. S. 33:1-2. Illicit alcoholic beverages and the vehicle in which they are transported constitute unlawful property and are subject to seizure and forfeiture. R. S. 33:1-1(y), R. S. 33:1-66.

Counsel states that he knows that Angelini was in the wrong and does not intend to contest the proceedings, but, in mitigation, asserts that Angelini has lost his employment at the hotel, and in view of his record of honorable service in the armed forces and otherwise previously clear record, that clemency should be extended to Angelini and the car returned to him.

I am authorized to relieve a person from forfeiture only in a case where it is established to my satisfaction that such person has acted in good faith and has unknowingly violated the law. R. S. 33:1-66(e).

It is doubtful, at this late date, and especially since he was employed as a bartender, that Angelini was not in fact aware that it was unlawful to transport 48 - 4/5 quarts of whiskey in an unlicensed vehicle. In any event, he admits that he knew it was unlawful for him to sell alcoholic beverages without a license.

An essential ingredient of good faith in a case of this nature is that the alcoholic beverages must have been transported for a lawful purpose, in a legitimate enterprise, even if the transporter was unaware that the actual transportation was unlawful.

The fact that there is no evidence that Angelini had actually sold any of the whiskey is immaterial. It is too late for him to withdraw from, or abandon, his intended unlawful sale of such whiskey after he is caught. Cf. Seizure Case No. 6584, Bulletin 656, Item 9.

Since, for the reasons above expressed, I cannot find that Angelini acted in good faith, his application for return of the motor vehicle is denied.

During the course of the hearing, it developed that the Boardwalk National Bank of Atlantic City was alleged to hold a chattel mortgage

on the vehicle. Thereafter, the bank submitted the original chattel mortgage, note, and an affidavit made by one of its officers, from all of which it appears that on August 22, 1947 the bank loaned Angelini \$850.05 secured by a chattel mortgage on the motor vehicle in question. The indebtedness was to be paid in monthly installments of \$56.67, and the present unpaid balance is \$113.34.

It further appears that before accepting the mortgage the bank caused an investigation to be made by an independent credit agency concerning Angelini's background and character, and that this investigation did not disclose any detrimental information but on the contrary indicated that Angelini was gainfully employed by the hotel and appeared to be a law-abiding and industrious person.

I find that the Boardwalk National Bank of Atlantic City has a valid and subsisting lien of \$113.34 against the motor vehicle in question and that the bank did not know or have any reason to suspect that the motor vehicle would be used to transport alcoholic beverages unlawfully. Hence, I shall recognize its lien. R. S. 35:1-66(f).

The retail value of the Mercury coupe exceeds the amount of the lien and the Director of the Division of Purchase and Property of the State Department of the Treasury advises that such Department is interested in retaining the motor vehicle for the use of a state institution. Hence, an order will be entered retaining the motor vehicle for the use of the State, conditioned upon the payment of the lien claim thereon of \$113.34.

Accordingly, it is DETERMINED and ORDERED that the Mercury coupe described in Schedule "A" attached hereto, constitutes unlawful property and be retained for the use of the State of New Jersey conditioned upon payment to the Boardwalk National Bank of Atlantic City of its lien claim in the amount of \$113.34; and it is further

DETERMINED and ORDERED that the whiskey, more fully described in the aforesaid Schedule "A", constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 35:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: January 7, 1949.

SCHEDULE "A"

- 1 - Mercury coupe, Serial No. 99A1237235,
1948 N. J. Registration AA89Z
- 12 - 4/5 qt. bottles of Old Crow Whiskey
- 12 - 4/5 qt. bottles of Old Forrester Whiskey
- 12 - 4/5 qt. bottles of Seagrams 7 Crown Whiskey
- 12 - 4/5 qt. bottles of Schenley Whiskey

2. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1948 TO DECEMBER 31, 1948 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid	
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid				
Atlantic	487	\$ 198,850.00	68	\$ 23,200.00	14	\$ 1,366.64						569	\$ 223,416.	
Bergen	818	295,638.59	294	77,597.55	57	5,653.56	51	\$ 2,186.45	6	\$ 1,609.55	6	1220	\$ 382,685.	
Burlington	186	72,325.00	30	8,343.84	38	5,327.80	1	25.00				255	86,021.	
Camden	455	217,650.00	83	29,925.00	57	5,400.61			1	375.00	1	595	253,350.	
Cape May	133	65,750.00	11	3,300.00	13	1,371.23						157	70,821.	
Cumberland	81	35,300.00	15	3,500.00	29	3,872.20						123	42,672.	
Essex	1376	759,110.07	349	203,608.00	97	12,979.31	33	1,650.00				1855	977,347.	
Hudson	106	33,600.00	14	3,300.00	14	1,391.30						134	38,291.	
Island	1563	677,830.00	298	117,810.00	76	9,226.84	74	3,159.66				2011	808,026.	
Madison	79	22,820.00	6	1,637.50	5	600.00						90	25,057.	
Maricopa	425	255,000.00	51	20,700.00	41	5,650.00			1	140.00	2	516	281,490.	
Middlesex	636	296,450.00	70	21,095.00	53	5,039.40	5	225.00				764	322,809.	
Morris	544	268,085.23	109	36,835.00	28	3,398.90	9	350.00	29	12,525.62	29	690	321,195.	
Morris	355	116,775.00	94	29,450.93	35	3,740.87	1	25.00	6	1,237.50	7	484	151,229.	
New Jersey	187	104,936.04	42	17,636.00	12	1,300.00						1	240	123,872.
Passaic	881	361,310.00	164	50,790.00	33	4,089.80	11	500.00				1089	416,689.	
Paterson	50	18,900.00	7	1,300.00	9	775.00						66	20,975.	
Passaic	186	77,961.58	33	8,373.15	19	2,021.30						238	88,856.	
Passaic	170	44,055.00	15	3,005.00	6	353.70			1	225.00	1	191	47,638.	
Passaic	546	291,100.00	142	56,900.00	60	6,950.00	20	987.50				768	355,937.	
Passaic	148	41,370.46	17	3,307.50	25	2,547.74			2	238.42	1	191	47,464.	
Totals	9412	\$4,254,817.67	1910	\$722,514.47	721	\$83,056.20	205	\$9,108.61	46	\$16,351.09	48	12246	\$5,085,848.	

Respectfully submitted,
John H. Michelson, Deputy Director.

WIN B. HOCK, Director.

January 11, 1949

3. RECAPITULATION OF ACTIVITY FOR PERIOD FROM JULY 1, 1948 THROUGH DECEMBER 31, 1948

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>OCT.</u>	<u>NOV.</u>	<u>DEC.</u>	<u>TOTAL</u>
ARRESTS:	31	30	7	17	13	25	123
Licenses and employees	3	2	0	3	1	3	12
Bootleggers	27	27	7	14	11	22	108
ABC agent impersonators	1	1	0	0	1	0	3
SEIZURES:							
Motor vehicles - cars	0	2	1	1	0	0	4
- trucks	0	0	0	2	0	0	2
Still - over 50 gallons	1	0	0	0	1	0	2
- 50 gallons or under	2	0	0	0	1	1	4
Alcohol - gallons	0	1.16	0	0	25.00	0	26.16
Mash - gallons	150.00	0	0	100.00	1,423.00	10.00	1,683.00
Distilled alcoholic beverages - gals.	3.15	26.75	10.40	15.12	40.39	16.53	112.34
Wine - gallons	.69	110.02	1.80	556.87	1.80	17.80	688.98
Brewed malt alcoholic beverages-gals.	26.51	57.64	8.16	133.74	20.86	60.67	307.58
RETAIL LICENSEES:							
Premises inspected	633	640	572	664	976	952	4,437
Premises where alcoholic beverages were gauged	475	547	829	1,020	972	872	4,715
Bottles gauged	7,966	9,107	13,705	16,650	15,622	14,929	77,979
Premises where violations were found	21	35	43	19	16	31	165
Violations found	34	39	50	21	17	33	194
Type of violations found:							
Unqualified employees	18	8	15	8	6	10	65
Other mercantile business	1	1	14	6	1	8	31
Probable fronts	6	4	4	0	3	2	19
Gambling devices	4	2	7	1	1	0	15
Reg. #38 sign not posted	1	1	2	1	1	9	15
Prohibited signs	0	3	0	1	2	1	5
Improper beer taps	2	4	5	1	0	0	12
Disposal permit necessary	1	0	0	2	2	1	6
Other violations	1	16	3	1	2	3	26
STATE LICENSEES:							
Premises inspected	4	4	12	26	47	39	132
License applications investigated	25	18	14	14	8	8	87
COMPLAINTS:							
Complaints assigned for investigation	269	354	279	350	231	276	1,759
Investigations completed	329	370	360	382	301	307	2,049
Investigations pending	(174)	(215)	(161)	(129)	(101)	99	99
LABORATORY:							
Analyses made	105	145	115	136	110	115	726
"Shake-up" cases (alcohol, water and artificial color)	7	7	5	5	8	10	42
Liquor found to be not genuine as labeled - bottles	15	20	30	15	7	7	94
IDENTIFICATION BUREAU:							
Criminal fingerprint identifications made	23	32	18	11	11	25	120
Persons fingerprinted for non-criminal purposes	325	195	225	235	151	117	1,248
Identification contacts made with other enforcement agencies	285	170	178	140	152	112	1,037
Motor vehicle identifications via N. J. State Police Teletype	8	10	10	11	12	6	57
DISCIPLINARY PROCEEDINGS							
Cases transmitted to municipalities	20	19	13	13	7	14	86
Violations involved:							
Sale during prohibited hours	5	7	11	8	3	7	41
Sale to minors	9	5	2	3	1	4	24
Permitting bookmaking on premises	2	1	0	1	0	1	5
Permitting brawls on premises	2	2	0	0	0	0	4
Mislabeling beer taps	0	3	0	0	0	0	3
Sale to intoxicated persons	1	2	0	0	0	0	3
Permitting hostesses on premises	0	0	0	1	1	1	3
Sale outside scope of license	1	0	0	0	0	1	2
Sale to non-members by clubs	1	0	0	0	1	0	2
Permitting lottery activity on premises (numbers)	0	0	0	0	1	1	2
Permitting gambling on premises (cards)	0	0	0	0	1	1	2
Failure to afford view into premises during prohibited hours	0	0	0	0	0	1	1

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>OCT.</u>	<u>NOV.</u>	<u>DEC.</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (Cont'd):							
Cases instituted at Division	15	19	15	25*	26	14	112****
Violations involved:							
Possessing illicit liquor	2	4	1	2	7	2	18
Fraud and front	0	2	3**	8	4***	0	17
Sale during prohibited hours	4	2	0	3	4	0	13
Sale below Fair Trade price	1	2	3	3	0	3	12
Permitting immoral activity	2	0	0	1	4	2	9
Sale to minors	0	1	0	2	3	1	7
Mislabeling beer taps	0	0	4	1	1	0	6
Conducting business as a nuisance	2	0	0	1	2	1	6
Transportation in unlicensed vehicle	0	4	0	0	0	1	5
Delivery by wholesaler not supported by order	0	3	0	0	1	0	4
Sale outside scope of license	1	0	1	0	0	2	4
Permitting hostesses on premises	1	0	0	0	2	1	4
Sale to non-members by clubs	1	0	0	0	2	1	4
Delivery by wholesaler without accompanying invoice	0	3	0	0	0	0	3
Permitting pin ball machines	1	0	1	1	0	0	3
Hindering investigation	1	0	1	1	0	0	3
Purchase from improper source	1	0	0	1	0	1	3
Sale to intoxicated persons	1	0	0	0	1	1	3
Sale on credit to retailer in default	0	1	0	3	0	0	4
Failure to report retailer in default	0	1	0	1	1	0	3
Seller giving inducement with sale to retailer	0	2	0	0	0	0	2
Furthering illegal activity	2	0	0	0	0	0	2
Sale to retailer on default list	0	0	0	0	2	0	2
Permitting bookmaking on premises	0	0	0	1	0	0	1
Failure to afford view into premises during prohibited hours	0	0	0	1	0	0	1
Permitting slot machines on premises	0	0	0	0	1	0	1
Sale by wholesaler under listed price	0	1	0	0	0	0	1
Wholesaler furnishing free goods to retailer	0	1	0	0	0	0	1
Wholesaler furnishing inducement with sale to retailer	0	1	0	0	0	0	1
Aiding and abetting unlicensed transportation	0	1	0	0	0	0	1
Failure to affix transportation insignia to vehicle	0	1	0	0	0	0	1
Transporting alcoholic beverages without accompanying invoice	0	0	1	0	0	0	1
Unqualified employees	0	0	0	0	1	0	1
Permitting lottery activity on premises (wheel of chance)	0	1	0	0	0	0	1
Permitting gambling on premises	0	1	0	0	0	0	1
Violation of special condition	0	1	0	0	0	0	1
Permitting brawls on premises	0	1	0	0	0	0	1
Retailer bottling without license	0	0	1	0	0	0	1
Serving women at a bar	0	0	1	0	0	0	1
Failure to report retailer off default	0	0	0	0	1	0	1
Failure to file contract of employment of solicitor	0	0	0	0	1	0	1
Failure of wholesaler to retain copies of orders	0	0	0	0	1	0	1
Employing solicitor without permit	0	0	0	0	1	0	1
Solicitor employed by retailer	0	0	0	0	1	0	1
Licensee working while drunk	0	0	0	0	0	1	1
Retailer participating in wash sale	0	0	0	0	0	1	1
Solicitor aiding and abetting sale by one retailer to another	0	0	0	0	0	1	1
Solicitation beyond scope of permit	0	0	0	0	0	1	1
Solicitor aiding and abetting wash sale	0	0	0	0	0	1	1
Permittee convicted of crime involving moral turpitude	0	0	0	0	0	1	1

*1 includes cancellation proceedings

**2 include cancellation proceedings

***1 includes cancellation proceedings

**** includes 4 cancellation proceedings

Cases brought by municipalities on own initiative and reported	3	3	5	5	4	4	24
Violations involved:							
Permitting brawls on premises	1	2	1	2	0	2	8
Sale during prohibited hours	1	1	1	0	1	0	4
Conducting business as a nuisance	1	0	1	1	0	0	3
Sale to minors	0	0	2	1	3	0	6
Violation of special condition	0	1	0	0	0	0	1
Sale to intoxicated persons	0	0	0	1	0	0	1
Permitting persons of ill repute on premises	0	0	0	1	0	0	1
Permitting hostesses on premises	0	0	0	1	0	0	1
Permitting solicitation for immoral activity	0	0	0	1	0	0	1
Permitting females to tend bar	0	0	0	1	0	0	1
Unqualified employees	0	0	0	0	0	1	1
Permitting noise on premises	0	0	0	0	0	1	1

	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTAL
CANCELLATION PROCEEDINGS instituted at Division	0	0	2	0	0	0	2
Violations involved:							
Issuance of license in excess of quota	0	0	1	0	0	0	1
Issuance of license to non-resident	0	0	1	0	0	0	1
HEARINGS HELD AT DIVISION:							
Total number of hearings held	31	60	41	44	39	37	252
Appeals	13	34	5	5	3	5	65
Disciplinary proceedings	10	10	17	32	19	23	111
Eligibility	3	9	11	4	9	6	44
Seizures	4	3	3	2	6	0	18
Tax revocation	0	0	1	0	0	1	2
Application for license	0	4	2	1	1	2	10
Hearing on petition	1	0	2	0	1	0	4
PERMITS ISSUED:							
Total number of permits issued	5,894	968	1,052	1,562	1,551	791	11,818
Employment	1,785	198	165	149	92	90	2,479
Solicitors	2,777	97	144	176	103	80	3,397
Disposal of alcoholic beverages	207	155	149	102	127	103	843
Social affairs	365	388	428	458	452	227	2,318
Special wine	75	31	55	493	687	208	1,549
Miscellaneous	665	99	111	184	90	83	1,232

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
MATTHEW WEINSTEIN & RUTH WEINSTEIN
T/a LIBRARY DELICATESSEN & LIQUOR SHOP
275 Main Street
Hackensack, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-1 issued by the City Council of the City of Hackensack.

Defendant-licensees, appearing Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge of selling six 4/5 quart bottles of Schenley Reserve Blended Whiskey below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On December 17, 1948, Matthew Weinstein sold to an ABC agent six 4/5 quart bottles of Schenley Reserve Blended Whiskey for the sum of \$22.00. The established price for one 4/5 quart bottle of this product is \$4.04 (see Bulletin 814), resulting in a minimum price of \$24.24 for six bottles.

Defendants have no prior record. The license will be suspended for the minimum ten-day period, less five days for the plea, leaving a net suspension of five days. Re Markowitz, Bulletin 792, Item 9.

Accordingly, it is, on this 10th day of January, 1949,

ORDERED that Plenary Retail Distribution License D-1, issued by the City Council of the City of Hackensack to Matthew Weinstein & Ruth Weinstein, t/a Library Delicatessen & Liquor Shop, for premises 275 Main Street, Hackensack, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. January 17, 1949, and terminating at 9:00 a.m. January 22, 1949.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MORRIS FENICHEL)
T/a MORRIS' TAVERN)
108 First Street)
Harrison, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Town Council of the Town of Harrison.)

-----)
Morris Fenichel, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed an illicit alcoholic beverage, namely, one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", in violation of R.S. 35:1-50.

On November 29, 1948, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined 41 bottles of alcoholic beverages on defendant's premises and seized the bottle mentioned in the charge when the contents thereof appeared to be at variance with label requirements. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottle varied substantially in acids and solids from the contents of a genuine sample of the same product. Defendant denies that he refilled the seized bottle and alleges that an employee admitted that he drank some of the Canadian Club and filled the bottle with "Harwood". Nevertheless, defendant is responsible for any "refills" found in his stock of liquor.

Defendant has no prior record. I shall suspend defendant's license for the minimum period of fifteen days, less five for the plea, leaving a net suspension of ten days. See Bulletin 827, Item 11.

Accordingly, it is, on this 10th day of January, 1949,

ORDERED that Plenary Retail Consumption License C-19, issued by the Town Council of the Town of Harrison to Morris Fenichel, t/a Morris' Tavern, for premises 108 First Street, Harrison, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. January 17, 1949, and terminating at 2:00 a.m. January 27, 1949.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANTHONY J. ROMAN)
T/a TONY'S SHORE HOTEL)
150-152 Bay Avenue)
Highlands, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Borough Council of the Borough of Highlands.)

-----)
Sidney Simandl, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On or about May 17, 1948, agents of the Federal Treasury Department, Alcohol Tax Unit, seized on defendant's licensed premises two 4/5 quart and one pint bottle, each labeled "Laird's Three Star Apple Brandy 86.4 Proof". There can be no question that the said labels did not truly describe the contents of said bottles and that the said contents of said bottles were in fact illicit alcoholic beverages.

Defendant is responsible for illicit alcoholic beverages found in his possession on his licensed premises. Defendant has no prior adjudicated record. I shall suspend his license for the minimum period for possession of three bottles of illicit liquor, twenty days. Re Zeidner and Cohen, Bulletin 680, Item 2. Remitting five days thereof because of the plea will leave a net suspension of fifteen days.

Accordingly, it is, on this 10th day of January, 1949,

ORDERED that Plenary Retail Consumption License C-22, issued by the Borough Council of the Borough of Highlands to Anthony J. Roman, t/a Tony's Shore Hotel, for premises 150-152 Bay Avenue, Highlands, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 17, 1949, and terminating at 2:00 a.m. February 1, 1949.

ERWIN B. HOCK
Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, STOCK OF MERCHANDISE, AND FIXTURES AND EQUIPMENT IN SPEAKEASY IN LUNCHROOM ORDERED FORFEITED.

In the Matter of the Seizure on)
October 1, 1948 of a quantity of)
beer, empty beer bottles, soda,)
and fixtures, equipment, and food-)
stuffs at 266 Glenwood Avenue, in)
the Town of Bloomfield, County of)
Essex and State of New Jersey.)

Case No. 7322

ON HEARING
CONCLUSIONS AND ORDER

Kessler & Kessler, Esqs., by William L. Vieser, Esq., Attorneys for
Henry Pomeranz.
Harry Castelbaum, 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 of the Revised Statutes, and further, pursuant to the provisions of a stipulation entered into by Henry Pomeranz, to determine whether a quantity of beer, soda and fixtures, equipment and foodstuffs, described in a schedule attached hereto, seized on October 1, 1948 from Henry Pomeranz at 266 Glenwood Avenue, Bloomfield, New Jersey, constitute unlawful property and should be forfeited.

It appears that Pomeranz operated a small lunchroom located in part of a large factory building at the above address. ABC agents seized the beer and other articles because, according to one of the agents, Pomeranz sold him bottles of beer without a license at the lunchroom on September 30th and October 1, 1948. Pomeranz was arrested for violating the liquor laws, and gave the agents a signed statement admitting the sales of beer to the agent, and declaring that he had been selling about two cases of beer a week for the past month.

Pending the seizure hearing in the case, all of the seized property except the beer and empty beer bottles were returned to Pomeranz upon payment by him to State Commissioner of Alcoholic Beverage Control of its appraised retail value of \$250.00, under protest, pursuant to R. S. 33:1-66. Pomeranz has stipulated that said Commissioner shall determine in this proceeding whether this money shall be returned to him.

When the matter came on for hearing pursuant to R. S. 33:1-66, and the stipulation, Henry Pomeranz appeared with counsel and sought return of the aforesaid sum of \$250.00. Forfeiture of the beer and empty beer bottles was not contested.

Mr. Pomeranz testified that he is nearly 70 years of age, formerly a baker, but now practically retired, except for the operation of the lunchroom, which is usually open from six in the morning until three in the afternoon. He estimates his earnings at about \$20.00 or \$25.00 a week. Pomeranz claims that most of the fixtures are the property of the owner of the factory, and that he is the owner of part and his wife the owner of the other part of the balance of the equipment.

Pomeranz further says that it has been his practice to have beer at the place for his own use, and that, from time to time, when a factory employee purchased sandwiches and other food and asked Pomeranz for beer, he sold it to the employee at cost. He says that, although he knew it was unlawful to sell alcoholic beverages without a license, he did not think he was violating the law, because he did not sell the beer for profit, but merely as an accommodation.

The sale of alcoholic beverages without a license is unlawful, whether sold for a profit or not; indeed, even if served with meals with no separate charge being made for the alcoholic beverages.

Re Amato, Bulletin 726, Item 8. The seized beer, or some part of it, was, under the evidence, intended for unlawful sale and, hence, is an illicit alcoholic beverage. R. S. 33:1-1(i). Such illicit alcoholic beverage, and the other personal property seized therewith in the lunchroom, constitutes unlawful property, subject to seizure and forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 35:1-66.

There are no innocent claimants here involved upon whom forfeiture might work an undue hardship, inasmuch as the fixtures and equipment were never removed from the place, and are available to the actual owner or owners thereof, free from any possibility of forfeiture because Pomeranz deposited the cash retail value of such items in their place and stead.

Pomeranz's alleged good background, poor financial condition, and alleged honest belief that a license was not necessary to sell alcoholic beverages without profit, are urged as mitigating factors. Natural common sense indicates that it is improbable that Pomeranz actually believed that he did not need a license if he sold beer at cost. Similar considerations have been urged in previous cases, and rejected as not warranting relief from forfeiture. See Seizure Case No. 7114, Bulletin 815, Item 2, and cases cited therein.

Forfeiture of the seized property, including the money deposited in place of that part of the property which was returned, must follow as of course. See Seizure Case No. 7250, Bulletin 826, Item 5. Henry Pomeranz's request for return of the money which he deposited with me is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the beer and empty beer bottles, itemized in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions or destroyed in whole or in part at the direction of the Director of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the quantity of foodstuffs, merchandise, fixtures and equipment seized at the premises, as itemized in an inventory made thereof, which inventory is referred to as if incorporated herein at length, constitutes unlawful property, and the sum of \$250.00 representing the retail value thereof, paid under protest to the State Commissioner of Alcoholic Beverage Control by Henry Pomeranz, be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with law.

ERWIN B. HOCK

Director.

Dated: January 12, 1949.

SCHEDULE "A"

- 25 - bottles of beer
- 47 - empty beer bottles
- 12 - cases of soda
- 1 - Kelvinator Ice Box
- 1 - Cold Spot Ice Box
- 1 - Coca Cola cooler
- 1 - porcelain top table
- 1 - gas stove
- 1 - scale
- 1 - American Electric Meat Slicer
- Miscellaneous pots, pans, equipment and foodstuffs
- 1 - display case
- 1 - fire extinguisher

8. DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT EMPLOYED BY A RETAILER OF ALCOHOLIC BEVERAGES - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

HARRY J. McDERMOTT, JR.)
1256 Ocean Avenue)
Sea Bright, N. J.,)

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit No. 3179, issued by the Director of the Division of Alcoholic Beverage Control.)

Benjamin Gruber, Esq., Attorney for Defendant-Permittee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge as follows:

"On November 10, 1948, while you were interested in the wholesaling of alcoholic beverages by reason of your employment as a solicitor for Austin Nichols & Co., Inc., a holder of a New Jersey plenary wholesale license, you were, at the same time, also interested in the retailing of alcoholic beverages at the retail licensed premises of Overlook Hotel, Inc., t/a Overlook Hotel, Portland Road & Highland Avenue, Highlands, N. J., by reason of your employment as a bartender on said retail licensed premises; in violation of R. S. 33:1-43."

The employment appears to have been entered into without a full realization that any wrongdoing was involved therein.

In view of the fact that there appears to be no aggravating circumstances and that defendant has no prior adjudicated record, I shall suspend his solicitor's permit for the minimum period of five days. Cf. Re Gursky, Bulletin 747, Item 2. Defendant surrendered his permit on December 17, 1948.

Accordingly, it is, on this 12th day of January, 1949,

ORDERED that Solicitor's Permit No. 3179, issued by the Director of the Division of Alcoholic Beverage Control to Harry J. McDermott, Jr., 1256 Ocean Avenue, Sea Bright, be and the same is hereby suspended for a period of five (5) days. Since the permit has been surrendered, however, imposition of penalty will be withheld until such time as defendant may obtain further permit or license.

ERWIN B. HOCK
Director.

9. CANCELLATION PROCEEDINGS - RETAIL LICENSE ISSUED TO NON-RESIDENT CANCELLED.

In the Matter of Cancellation)
Proceedings against)

STELLA PAPPAS)
T/a OUR HOMESTEAD)
Route 23, Mountain View)
Wayne Township)
P.O. R.F.D. 1, Little Falls, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-42, issued by the Wayne)
Township Committee.)

-----)
Sidney Finkel, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Notice was served upon Stella Pappas, t/a Our Homestead, to show cause why License C-42, issued to her by the Wayne Township Committee, should not be cancelled and declared null and void on the ground that such license was improvidently issued to a non-resident of New Jersey in violation of R. S. 33:1-25.

The investigation in this matter discloses that the said Stella Pappas was a resident of Brooklyn, New York, at the time the license in question was issued to her by the local issuing authority. Since its inception, the Alcoholic Beverage Law has provided that a retail license may not be issued to an individual who is not a resident of the State of New Jersey.

I have been informed by the lawyer who represented Stella Pappas that there would be no appearance at the hearing scheduled herein because his client has conveyed the property formerly used as the licensed premises, and is no longer interested in the liquor license. I shall cancel the license.

Accordingly, it is, on this 12th day of January, 1949,

ORDERED that the order to show cause why Plenary Retail Consumption License C-42, issued by the Wayne Township Committee to Stella Pappas, t/a Our Homestead, for premises on Route 23, Mountain View, Wayne Township, should not be cancelled and declared null and void, be and the same is hereby made absolute; and it is further

ORDERED that operation, if any, under the aforementioned license must cease forthwith, and the license certificate itself must be surrendered to the Township Committee of the Township of Wayne for cancellation.

ERWIN B. HOCK
Director.

10. APPELLATE DECISIONS - ROBINSON v. GLASSBORO.

VICTOR B. ROBINSON, trading as)
ROBINSON CAFE,)

Appellant,)

-vs-)

BOROUGH COUNCIL OF THE BOROUGH)
OF GLASSBORO,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Frank Sahl, Esq., Attorney for Appellant.
George B. Marshall, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of the Borough Council of the Borough of Glassboro denying the renewal of his plenary retail consumption license for the present fiscal year for premises N/E Cor. High and Academy Streets, Glassboro. Upon the filing of the appeal the license for the fiscal year 1947-48 was extended pending determination of the appeal, in accordance with the provisions of R. S. 33:1-22. The appellant has held successive licenses for the premises in question since Repeal.

Respondent sets forth in the answer, among other things, as its reason of its action that: "appellant has allowed, permitted and suffered in and upon the licensed premises disturbances, lewdness, brawls and unnecessary noises, and has allowed, permitted or suffered the licensed place of business to be conducted in such a manner as to become a nuisance."

During the fiscal year 1944-45, appellant's license was suspended on three separate occasions; once, for an improperly labeled beer tap, and twice for sales of alcoholic beverages to minors. Since that time appellant's record has apparently been clear.

Chief of Police Watson testified that on occasions during the past two years the Police Department was contacted for the purpose of apprehending disorderly persons in or near appellant's licensed premises. He stated, in answer to a question concerning the conduct of the appellant's premises: "Well, the condition is a nuisance on the outside mainly, there are a few complaints inside, but most of our stuff is on the outside; the arguments occur possibly inside and they finish on the outside." He denied ever witnessing any acts of lewdness in or about the licensed premises. When questioned concerning the noise with respect to the appellant's premises, Chief Watson testified: "Well, there is noise where the patrons are talking to each other a little loud and boisterous." When questioned whether the noise was noticeable on the street, he testified: "I wouldn't say so only in a case where somebody paid some attention to it; if they were going on their business it probably wouldn't annoy them."

There is no evidence that any lewdness occurred on the licensed premises. Several witnesses produced by the respondent testified that they observed numerous intoxicated and noisy persons on the street in the vicinity of the licensed premises. They testified that some of these persons urinated on the sidewalk. There is no evidence that any of these alleged incidents were called to the attention of appellant.

Appellant produced several witnesses who testified that they frequented appellant's premises on occasion and that they have never observed anything wrong with respect to the operation and conduct of appellant's business establishment.

Appellant, his wife, and a bartender testified that they have always endeavored to operate the premises in an orderly manner.

While it lies within the sound discretion of an issuing authority to determine in the first instance whether an applicant is worthy of a renewal of his license privileges, such exercise of discretion must be based on valid and substantial grounds. The present appellant has had his license renewed from year to year since 1933. The respondent issuing authority renewed his license for the fiscal year 1945-46 although appellant had been guilty of three violations during the previous licensing period. Also, the license was renewed for the fiscal years 1946-47 and 1947-48. The Chief of Police, when queried concerning the conduct of the premises during the past two years compared with the present time, stated: "I'd say it was about the same." Common fairness dictates that the investment of a licensee in his business should not be jeopardized except on grounds which are attributable to some malfeasance or misconduct on his part. Cf. Salmanowitz v. Hightstown, Bulletin 807, Item 2; Weber v. Lakewood, Bulletin 657, Item 3; Vasto v. Atlantic Highlands, Bulletin 622, Item 4.

On the record before me, I am constrained to reverse the refusal to renew the appellant's license. See Weber v. Lakewood, Bulletin 657, Item 3. Appellant will thus be given a further opportunity to demonstrate his worthiness to hold a license. See Freeland v. Roselle, Bulletin 352, Item 5; R & F Inc. v. Teaneck, Bulletin 467, Item 3. The conclusion which I have reached herein applies merely to the renewal for the present license year. Respondent will have a full opportunity to consider the manner in which the premises have been conducted for the current year and, in the exercise of its reasonable discretion, to determine the question of further renewal, if and when an application is filed for renewal of the license for the fiscal year beginning July 1, 1949.

Accordingly, it is, on this 14th day of January, 1949,

ORDERED that the action of respondent be and the same is hereby reversed and respondent is directed to issue to the appellant a renewal of his license for the current licensing year for which he has applied.

ERWIN B. HOCK
Director.

11. CANCELLATION PROCEEDINGS - SOLICITOR'S PERMIT CANCELLED BECAUSE HOLDER THEREOF CONVICTED OF CRIME INVOLVING MORAL TURPITUDE AFTER PERMIT ISSUED.

In the Matter of Disciplinary Proceedings against
 SIDNEY N. ARNOLD
 8 Stecher Street
 Newark 8, N. J.,
 Holder of Solicitor's Permit No. 820, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Sidney N. Arnold, Defendant-permittee, Pro Se.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge as follows:

"On December 23, 1948, you alias Nat Arno were convicted in the Essex County (N. J.) Court of the crime of false swearing, which crime involves moral turpitude, such conviction being an act or happening occurring after the time of your making application for a solicitor's permit which, if it had occurred before said time, would have prevented the issuance of such permit."

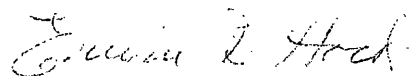
By virtue of the aforesaid conviction, defendant became ineligible to hold a license or permit under the Alcoholic Beverage Law, R. S. 33:1-25, 26.

The disqualification caused by his conviction of crime involving moral turpitude is statutory and will exist for at least five years and until the disqualification is removed. R. S. 33:1-31.2.

Under the circumstances, the permit will be cancelled.

Accordingly, it is, on this 12th day of January, 1949,

ORDERED that Solicitor's Permit No. 820, issued by the Director of the Division of Alcoholic Beverage Control to Sidney N. Arnold, 8 Stecher Street, Newark, be and the same is hereby cancelled, effective immediately.



Director.