

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1225

June 11, 1958

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - POLLAK AND HALAPI v. NEWARK.
2. DISCIPLINARY PROCEEDINGS (Passaic) - LOTTERY - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PERMITTING OBSCENE LANGUAGE - LICENSE SUSPENDED FOR 40 DAYS.
3. DISQUALIFICATION - THREE CONVICTIONS ON CHARGES OF BEING DRUNK AND DISORDERLY WITHIN PAST FIVE YEARS - APPLICATION TO LIFT DENIED.
4. AUTOMATIC SUSPENSION (Long Branch) - SALE TO MINOR - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - APPLICATION TO LIFT GRANTED.
5. SEIZURE - FORFEITURE AND PADLOCK PROCEEDINGS - ILLICIT STILL, PERTINENT EQUIPMENT AND OTHER PERSONAL PROPERTY ORDERED FORFEITED - PREMISES WHERE STILL WAS SEIZED ORDERED PADLOCKED - MOTOR VEHICLE USED FOR TRANSPORTATION OF ILLICIT STILL ORDERED FORFEITED - CLAIM OF INNOCENT LIENOR AGAINST MOTOR VEHICLE RECOGNIZED.
6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED - APPLICATION OF OWNER OF MOTOR VEHICLE FOR ITS RETURN DENIED FOR FAILURE TO ESTABLISH GOOD FAITH.
7. DISQUALIFICATION - CONVICTION OF DISQUALIFYING CRIME AFTER ENTRY OF PRIOR ORDER REMOVING DISQUALIFICATION - FIVE YEARS' GOOD CONDUCT - APPLICATION GRANTED.
8. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1225

JUNE 11, 1958.

1. APPELLATE DECISIONS - POLLAK AND HALAPI v. NEWARK.

JOHN POLLAK and EMMA HALAPI,)
t/a JOHN'S TAVERN,)

Appellants,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent.)

Robert W. Wolfe, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on October 1, 1957 it unanimously denied appellants' application for transfer of a plenary retail consumption license from John Pollak to John Pollak and Emma Halapi and from premises 282 Ferry Street to premises 100 Chambers Street, Newark.

"Appellants allege that respondent's action was erroneous in that it was unreasonable, arbitrary, capricious, without legal basis and an abuse of discretion.

"Respondent contends that its action was based on the factual testimony adduced at the hearing before it which failed to establish that there is any public necessity or convenience to be served by the transfer to the proposed new location.

"The appeal was heard de novo pursuant to Rule 8 of State Regulation No. 15 and the transcript of the proceedings before respondent Board was received in evidence and additional testimony was adduced by appellants, pursuant to Rule 6 of State Regulation No. 15.

"The evidence adduced at the hearing before respondent Board shows that the proposed site of transfer comes within the provisions of the Revised Ordinances of the City of Newark pertaining to plenary retail consumption licenses; that it is located in an industrial district suitable under the Zoning Ordinance for a tavern location; that it is located on the corner of Chambers and Clover Streets, three blocks distant from appellants' present location, which is on Ferry Street, a main thoroughfare, and that there are ten licensed premises in the neighborhood of the proposed site. A petition listing the names and addresses of objectors, which was referred to by the Secretary of respondent Board as a 'voluminous file', was submitted to the issuing authority and fifteen objectors, nine of whom owned property within 200 feet of the proposed site, appeared at said hearing and selected as their representatives four of the property owners who testified that there was no need for, or convenience to be served, by the transfer; that Chambers Street is residential in character on which there are

mostly two-family structures housing numerous children whose playground are the streets on which the proposed site of transfer is located, and that there are presently ten or twelve licensed premises in the immediate neighborhood.

"At the hearing herein appellant called five residents of the neighborhood as witnesses, two of whom testified that they had no objection to the granting of the transfer, and another testified as to the physical characteristics of the area surrounding the proposed site from which he concluded that it was in an industrial area. The other two witnesses who had testified as objectors before respondent Board and had maintained that Chambers Street, where they reside, is a residential street, were again examined primarily to elicit from them that the surrounding area of the proposed site was other than residential in character.

"The decision as to whether or not a transfer will be granted to a section residential and business in character which appears from the evidence to be the case herein, is primarily to be determined in the sound discretion of the local issuing authority. So also as to the number of licensed premises which should be permitted in such a section. Prior et al. v. Clifton et al., Bulletin 1072, Item 2, and cases cited therein.

"After considering all the facts and circumstances herein, I find no indication that the action of respondent was improper, arbitrary or unreasonable, and I conclude that appellant has failed to sustain the burden of establishing that respondent's action was erroneous and should be reversed. Rule 6 of State Regulation No. 16. I, therefore, recommend that an order be entered affirming respondent's action and dismissing the appeal herein."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's attorney, pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the entire record herein, including the transcripts of the testimony, the Hearer's Report and the exceptions and argument filed, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 14th day of April, 1958,

ORDERED that the action of respondent Board be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - LOTTERY - SALE IN VIOLATION OF
RULE 1 OF STATE REGULATION NO. 38 - PERMITTING OBSCENE
LANGUAGE - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary)
Proceedings against)

EDWARD J. SAMSEL)
t/a SPORTSMAN'S INN)
84 Third Street)
Passaic, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-86, issued by the)
Board of Commissioners of the)
City of Passaic.)

Nicholas Martini, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against
defendant:

'1. On Saturday, August 3, 1957 you possessed,
had custody of and allowed, permitted and suffered
tickets and participation rights in a lottery, commonly
known as the "numbers game", in and upon your licensed
premises; in violation of Rule 6 of State Regulation
No. 20.

'2. On Saturday, August 3, 1957, at about 12:50
a.m., you sold and delivered and allowed, permitted and
suffered the sale and delivery of alcoholic beverages,
viz., 5 cans of Schaefer Beer, at retail, in their
original containers for consumption off your licensed
premises, and you allowed, permitted and suffered the
removal of such alcoholic beverages from your retail
licensed premises; in violation of Rule 1 of State
Regulation No. 38.

'3. On the night of Wednesday, July 24, and
during the early morning of Thursday, July 25, 1957 and
on the night of Friday, August 2, and during the early
morning of Saturday, August 3, 1957, you allowed, per-
mitted and suffered foul, filthy and obscene language
in and upon your licensed premises; in violation of
Rule 5 of State Regulation No. 20.'

"Defendant entered a plea of non vult to Charge 2 and
pleas of not guilty to Charges 1 and 3.

"With respect to Charge 2, the file herein discloses
that at about 11:15 p.m. August 2, 1957, ABC agents who parti-
cipated in the investigation of defendant's licensed premises
observed the barmaid, Mary Samsel (wife of the licensee herein),
sell several cans of beer to a patron for off-premises consump-
tion; that at about 12:45 a.m. the following morning one of the
agents purchased five cans of beer from the barmaid who placed
the order under the bar saying, 'They'll be here when you are
ready to go'; that shortly thereafter, when the agents informed
the barmaid that they were leaving, she handed them the five

cans of beer which they took with them from the premises; that the agents returned immediately, identified themselves to the barmaid and informed her of the violation and that she refused to give a written statement respecting the after-hours sale.

"At the hearing on Charges 1 and 3, the Division called as its witnesses two ABC agents whose testimony succinctly stated is as follows: At about 10:30 p.m. July 24, 1957, they visited the defendant's licensed premises and remained therein for over two and one-half hours; that during their stay they made the acquaintance of a female patron who, in the presence of the bartender and the licensee's wife, expressed her prurient sentiments in loud and filthy terms. To recount the language used would serve no useful purpose. Suffice to say her unsavory conduct was not restrained by the licensee or his agents.

"The agents testified further that, while they were in defendant's licensed premises on August 2, 1957, they conversed with the female patron whom they had met on their previous visit and that she, within hearing of Mrs. Samsel, indulged in ribaldry similar to that heretofore engaged in by her without in any way being checked. The agents also testified that at 12:45 a.m. the following morning, at which time the licensee arrived, they identified themselves and that a search of the premises revealed what appeared to be 'numbers' slips which they seized and which the licensee said he believed were notations of the hours worked and the pounds of materials used by him as a refrigeration engineer.

"Mary Samsel testified in substance that, during her tour of duty as barmaid in the licensed premises, she didn't hear any indecent language used by the aforesaid female patron who, she said, was a regular customer whom she had known for five or six years.

"The female patron admitted that she indulged in some of the vulgarity testified to by the agents after one of them 'tried to make me a proposition. So I didn't like the proposition that he made me and I started to swear.' She testified that Mrs. Samsel couldn't have heard her because 'the television was on and the juke box is always going.'

"John Koptyra (a bus driver) testified that he is a cousin of the licensee and a part-time bartender on the licensed premises; that he plays the 'numbers' but never at defendant's tavern; that he tended bar on Friday, August 2, 1957, and, having in his pocket notations of 'numbers' he had played and remembering that he had been informed on a prior occasion that it was a violation to have 'numbers' slips on his person while tending bar, he took the slips from his pocket and hid them in a cigar box which was on a shelf under the bar of the licensed premises; that the following day he returned to get the slips and learned that the agents had seized them. He testified further that neither Mr. nor Mrs. Samsel knew that he played the 'numbers' or that the seized slips were 'numbers' slips, although he had admitted to the latter that they were his.

"Considering all the facts and circumstances herein, together with memoranda submitted by the attorneys for the respective parties, I conclude that the Division has established the guilt of defendant with respect to Charges 1 and 3

by more than a fair preponderance of the believable evidence. In view of the confessional plea with respect to Charge 2, I recommend that an order be entered suspending defendant's license for a period of fifteen days on Charge 1 (Re Rybicki, Bulletin 1087, Item 12); fifteen days on Charge 2 (Re Prawdzik, Bulletin 1190, Item 7), and ten days on Charge 3 (Re Moskowitz, Bulletin 1127, Item 4), making a total suspension of forty days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by defendant's attorney within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 14th day of April, 1958,

ORDERED that Plenary Retail Consumption License C-86, issued by the Board of Commissioners of the City of Passaic to Edward J. Samsel, t/a Sportsman's Inn, for premises 84 Third Street, Passaic, be and the same is hereby suspended for forty (40) days, commencing at 3:00 a.m. April 21, 1958, and terminating at 3:00 a.m. May 31, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISQUALIFICATION - THREE CONVICTIONS ON CHARGES OF BEING DRUNK AND DISORDERLY WITHIN PAST FIVE YEARS - APPLICATION TO LIFT DENIED.

In the Matter of an Application to)
Remove Disqualification because of)
a Conviction, Pursuant to R. S.)
33:1-31.2.)
Case No. 1408)
-----)

CONCLUSIONS

BY THE DIRECTOR:

Applicant's fingerprint record discloses that on October 13, 1944 he was sentenced to serve thirty days on a charge of being a disorderly person; on December 19, 1944 he was arrested on a charge of breaking, entry and larceny, changed to disorderly person, for which, on December 22, 1944, he was sentenced to serve thirty days in a county jail and placed on probation for one year; on October 26, 1945, after pleading non vult to an indictment charging breaking and entry, he was sentenced to Annandale Reformatory, indeterminate; sentence was suspended and he was placed on probation for three years; on June 16, 1949 applicant, after pleading nolo contendere to a charge of transporting a stolen motor vehicle in interstate commerce, was sentenced to the custody of the Attorney General for a period of thirty days; on October 21, 1949, after being arrested on three charges of burglary, applicant was returned to Annandale Reformatory from which he was paroled on October 13, 1950; on April 12, 1953 he was sentenced to serve ten days in a county jail on a disorderly person's charge; on April 21, 1954 applicant was charged with burglary and being a parole violator; he was found not guilty on the burglary charge and on June 30, 1954 was returned to Annandale

Reformatory as a parole violator and paroled on November 11, 1954. On January 25, 1955 he was sentenced to serve thirty days in a county jail on a charge of being drunk and disorderly and on August 2, 1955 he was again sentenced to serve sixty days in a county jail for being drunk and disorderly.

Applicant is 30 years of age. Between the ages of 17 and 28 (October 13, 1944 - August 2, 1955), he was arrested as hereinabove set forth on nine occasions and incarcerated for various periods of time. The crimes of which he was convicted on October 26, 1945, June 16, 1949 and October 21, 1949 involve the element of moral turpitude and the applicant is thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R. S. 33:1-25, 26.

One of the statutory requirements necessary for the lifting of a disqualification is that applicant must have conducted himself in a law-abiding manner for a period of five years last past. R. S. 33:1-31.2; Re Case No. 1226, Bulletin 1073, Item 9.

In view of his aforesaid conflicts with the authorities in 1953, 1954 and 1955, I am satisfied that the applicant has not so conducted himself and, therefore, will deny his application.

WILLIAM HOWE DAVIS
Director.

Dated: April 10, 1958.

4. AUTOMATIC SUSPENSION - SALE TO MINOR - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - APPLICATION TO LIFT GRANTED.

Auto. Susp. #152)
In the Matter of a Petition to)
Lift Automatic Suspension of)
Plenary Retail Consumption License)
C-45, issued by the Board of Com-)
missioners of the City of Long)
Branch to)

BRIGHTON BAR & GRILL, INC.)
t/a BRIGHTON BAR & GRILL, INC.)
119-121 Brighton Avenue)
Long Branch, N. J.)
-----)

ON PETITION
O R D E R

A. Henry Giordano, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on April 18, 1958, Anthony T. Pingitore (president of Brighton Bar & Grill, Inc.) was fined the sum of \$500.00 and costs after he had pleaded non vult in the Monmouth County Court to a charge of selling alcoholic beverages to minors, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by the corporation. R. S. 33:1-31.1. The petition requests the lifting of the automatic suspension.

By order dated November 25, 1957, I suspended the license held by the corporation for forty-five days after finding the corporation guilty of a charge alleging that it sold alcoholic beverages to six minors, in violation of Rule 1 of State Regulation No. 20. See Bulletin 1202, Item 6. This suspension was effective from 2:00 a.m. December 2, 1957 to 2:00 a.m. January 16, 1958. The criminal proceedings

involved the same minors named in the disciplinary proceedings. I am satisfied that the suspension imposed in the disciplinary proceedings was adequate and, hence, I shall grant the relief requested.

Accordingly, it is, on this 23rd day of April, 1958,

ORDERED that the statutory automatic suspension of License C-45, held by Brighton Bar & Grill, Inc., t/a Brighton Bar & Grill, Inc., be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

5. SEIZURE - FORFEITURE AND PADLOCK PROCEEDINGS - ILLICIT STILL, PERTINENT EQUIPMENT AND OTHER PERSONAL PROPERTY ORDERED FORFEITED - PREMISES WHERE STILL WAS SEIZED ORDERED PAD-LOCKED - MOTOR VEHICLE USED FOR TRANSPORTATION OF ILLICIT STILL ORDERED FORFEITED - CLAIM OF INNOCENT LIENOR AGAINST MOTOR VEHICLE RECOGNIZED.

Seizure Case No. 9600)
In the Matter of the Seizure on)
October 24, 1957 of a still,)
appurtenant equipment, a quantity)
of alcohol, \$82.45 in cash and other)
personal property at premises 191)
South 9th Street (Third Floor), in)
the City of Newark, County of Essex)
and State of New Jersey.)

ON HEARING
CONCLUSIONS AND ORDER

Seizure Case No. 9604)
In the Matter of the Seizure on)
October 31, 1957 of a still part and)
a Buick sedan at 150 Charles Street,)
in the City of Newark, County of)
Essex and State of New Jersey.)

LeRoy J. D'Aloia, Esq., Attorney for Willie Green and Osteen
Johnson, Jr.
Chivian & Chivian, Esqs., by Louis Chivian, Esq., Attorneys
for General Motors Acceptance Corporation.
I. Edward Amada, Esq. and Dora P. Rothschild, appearing for
the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"These related matters came on for hearing pursuant to R. S. 33:1-66 and R. S. 33:2-4 to determine whether an unregistered still, appurtenant equipment, a quantity of alcohol, \$82.45 in cash and various articles of furniture and fixtures and other personal property seized on October 24, 1957 at 191 South 9th Street and a Buick sedan and an alleged still part seized on October 31, 1957 at 150 Charles Street, both in the City of Newark, which seized property is described in a schedule attached hereto, constitute unlawful property and should be forfeited, and further to determine whether the premises where the still was seized should be padlocked.

"An appearance was entered at the hearing by Willie Green, the registered owner of the Buick sedan, who sought its return, and an appearance was entered on behalf of General Motors Acceptance Corporation which sought recognition of its alleged lien on such vehicle. Counsel for Osteen Johnson, the owner of the premises, consented by stipulation on the record to padlocking of the third floor apartment of 191 South 9th Street, Newark, where the unregistered still was found, for the suggested period of 60 days. He represented that the padlocking for a longer term would seriously impair Johnson's ability to meet his mortgage payments and other carrying charges on the premises. No one contested forfeiture of any of the property seized at such premises. Thus the only matter in issue was whether the Buick sedan should be forfeited in so far as Willie Green was concerned, and in so far as the finance company is concerned, whether its lien claim should be recognized.

"Some details of the seizure of the unregistered still must be related in order to properly develop the chain of events which led to the seizure of the Buick sedan. As appears from the facts admitted on the record, although a woman named Erline Kinney was in the apartment where such still was found, ABC agents found therein correspondence addressed to Willie Green, a bill for an unlisted telephone at that address in the name of Willie Green, a bill to Willie Green for a vacuum cleaner, men's clothing, a social security card in his name, and one of the mail boxes in the building bore his name. The Buick sedan had been observed on at least one occasion parked in the vicinity of such premises and a Dodge truck owned by Green had been observed there on three occasions. Willie Green was convicted on May 26, 1954 for operating an illicit still at other premises in Newark and sentenced to serve twelve months in the Essex County Penitentiary.

"ABC agents obtained a warrant for the arrest of Willie Green and apprehended him on October 31, 1957 at his place of employment at 150 Charles Street, Newark. At such time they ascertained that his Buick sedan was parked on the premises and on inspection thereof they discovered therein a copper coil attached to the remnants of a household gas heater. Thereupon the agents seized the motor vehicle and copper coil.

"The unregistered still seized in the apartment, and the coil found in the car were produced at the hearing. The copper coils in such still were compared with the coil seized in the car and were found to be identical. Therefore, from visual observation, the coil found in the car, aside from any other use, was adaptable for use as part of a still.

"Willie Green testified that on October 28th or 29th while driving his car he had picked up the gas heater and coil, for its copper value, from a garbage receptacle as an article of junk, more from a scavenger impulse than from regular junk activities on his part; that although he repaired television sets in the 9th Street apartment, slept there one or two nights a week, and had an intimate association with Erline Kinney, he denied that he was aware of or had any connection with the illicit still activities carried on there.

"The illicit still, illicit alcohol and all personal property seized therewith at the 9th Street address, including the \$82.45 in cash, constitute unlawful property and are subject to forfeiture, and the premises subject to padlocking. R. S.

33:1-1(1) & (y), R.S. 33:1-2, R.S. 33:1-66, R.S. 33:2-2 and R.S. 33:2-5. I recommend that your order to that effect be entered, with padlocking limited to 60 days for the reasons hereinbefore set forth.

"I believe that in view of the background of Willie Green, as detailed above, a finding is warranted that the copper coil found in his car, although capable of legitimate use, was in fact adaptable for and intended by him to be used in the unlawful manufacture of alcoholic beverages and, hence, constitutes unlawful property under the provisions of R. S. 33:1-1(y) and R.S. 33:2-2, and together with the motor vehicle in which it was transported and found, subject to forfeiture. I recommend the entry of an order to that effect. Seizure Case No. 7582, Bulletin 872, Item 9.

"With reference to the claim of the General Motors Acceptance Corporation it appears that Willie Green was released from prison in March 1955. He obtained employment for a short time with a railroad and then was employed by a metals concern for over two years, and was arrested at its plant while so employed. He owned a car which he sold when, in July 1957, he purchased the Buick sedan in question from his cousin Willie Austin, who held title under a conditional sales contract dated May 2, 1956 and assigned to the finance company.

"In accordance with the practice of the finance company, Austin and Green executed a document designated as a Transfer of Equity dated July 16, 1957 approved by the dealer who sold the car, and accepted by the finance company.

"Thereby Green succeeded to the rights Austin had in the car. This document evidenced that the sum of \$1699.72 was then the balance due to such company. A certificate of ownership of the motor vehicle issued by the Division of Motor Vehicles of this state was obtained evidencing title to the car in the name of Willie Green with the lien of the finance company noted thereon.

"Before consenting to the transfer of equity and extending credit to Willie Green, the finance company secured information that he was 30 years of age, divorced, resided at a Newark address, and was employed by the metals concern for two years with earnings of \$320.00 per month, had an additional income from his television repair service, and was furnished with the name of his bank and a business reference.

"The finance company's supervisor testified that he personally approved the transfer after other personnel employed by the company verified that Green was actually employed as stated, and obtained from a local independent credit bureau a report furnishing the name of Green's wife and the information that he had recently satisfied a judgment obtained against him by a loan concern, had been sued for an insignificant sum by a local hospital, and that a retail merchant had difficulty in ascertaining Green's whereabouts in 1956. There was no other derogatory information. The supervisor further testified that in evaluating this information he considered the favorable factors that there was considerable equity in the car (which had been sold in 1956 for more than \$4900.00); that Austin, the original purchaser, remained as an obligor, and that Green's employment for over two years evidenced his stability; that under such circumstances the

satisfied judgment against Green and the other information did not necessarily compel him to consider Green an unfavorable credit risk, and that the particular facts developed were not such as usually would require investigation of Green's possible criminal record; and that in fact he did not know that Green actually had a criminal record. The amount presently due on the contract after rebate of prepayment is \$1062.32.

"Under the evidence presented, the finance company appears to have made a reasonable investigation of Green's background and activities and, therefrom, did not have any reason to suspect that he was engaged in illicit liquor activities and that the motor vehicle might be used in connection therewith. I am of the opinion that the facts within its knowledge were not of such character as to lead a reasonably prudent person to suspect that Green had a criminal record and hence the finance company was not required to make any inquiry of any law enforcement agency concerning the same. Seizure Case No. 9472, Bulletin 1192, Item 3.

"Accordingly, I recommend that Willie Green's application for return of the Buick sedan be denied because he cannot be regarded as having acted in good faith and unknowingly violated the law; and that the lien claim of General Motors Acceptance Corporation against such motor vehicle should be recognized to the extent of \$1062.32.

"It appears likely that the amount realized at public sale of the motor vehicle will exceed the cost of seizure and amount of the lien. I further recommend that the motor vehicle be ordered sold."

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

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

Accordingly, it is, on this 1st day of April, 1958,

DETERMINED and ORDERED that the Buick sedan described in Schedule "A" attached hereto constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66 and that it shall be offered for sale at public sale pursuant to State Regulation No. 29 and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained, otherwise the motor vehicle will be returned to General Motors Acceptance Corporation upon payment of the costs of its seizure, storage and sale; and it is further

DETERMINED and ORDERED that if the Buick sedan is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second, out of the balance, if any, there shall be paid to the General Motors Acceptance Corporation its lien claim, recognized to the extent of \$1062.32; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

DETERMINED and ORDERED that the balance of the seized property listed in the aforesaid Schedule "A" in both cases, including the sum of \$82.45 in cash, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66 and R. S. 33:2-5, and shall be sold at public sale for the use of the state in accordance with State Regulation No. 29 or 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

ORDERED that the third floor apartment located at 191 South 9th Street, in the City of Newark, County of Essex and State of New Jersey, being the premises upon which the still was seized, shall not be used or occupied for any purpose whatsoever, for a period of sixty days, commencing the 1st day of May, 1958.

WILLIAM HOWE DAVIS
Director.

SCHEDULE "A" - SEIZURE CASE NO. 9600

- 1 - 5 gal. jug of alcohol
- 3 - gal. jugs of alcohol
- 1 - copper cooker
- 1 - cooler and coils
- 1 - gooseneck
- 2 - tanks
- 1 - pump and motor
- 1 - copper container
- 2 - gas stoves
- 2 - window fans
- 4 - radios
- 2 - refrigerators
- 2 - television sets
- 2 - tires
- Miscellaneous furniture and fixtures and
other personal property
- \$82.45 in cash

SCHEDULE "A" - SEIZURE CASE NO. 9604

- 1 - copper coil
- 1 - Buick sedan, Serial No. 44741, New Jersey
Registration EP8175.

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED - APPLICATION OF OWNER OF MOTOR VEHICLE FOR ITS RETURN DENIED FOR FAILURE TO ESTABLISH GOOD FAITH.

In the Matter of the Seizure on January 23, 1958 of 114 two-quart jars of alcohol and a Buick sedan on the northbound lane of the New Jersey Turnpike at the 82 Mile Post, in the Borough of Milltown, County of Middlesex and State of New Jersey.

Case No. 9642

ON HEARING CONCLUSIONS AND ORDER

William H. Bass, Pro se. Dora P. Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66 to determine whether 114 two-quart jars of alcohol, and a Buick sedan, described in a schedule attached hereto, seized on January 23, 1958 on the northbound lane of the New Jersey Turnpike at the 82 Mile Post, Milltown, New Jersey, constitute unlawful property and should be forfeited.

"William H. Bass, the registered owner of the Buick sedan, appeared at the hearing and sought return of the motor vehicle. No one appeared to oppose forfeiture of the alcohol.

"Reports of ABC agents and other documents in the file, presented in evidence with consent of William H. Bass, disclose the following facts:

"A New Jersey State Trooper halted the Buick sedan on the above date and location during his routine patrol of traffic on the highway. The trooper ascertained that the motor vehicle was being operated by William Edward Cherry. When the trooper discovered in the trunk of the car the 114 two-quart jars of alcohol without any stamp on any of the jars evidencing payment of tax on alcoholic beverages, he took into custody the alcohol and motor vehicle and arrested Cherry. Later the alcohol and motor vehicle were turned over to ABC agents.

"The contents of one of the jars was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes, with an alcoholic content by volume of 47 per cent.

"The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R. S. 33:1-1(i), R. S. 33:1-88. William E. Cherry, in a signed statement, relates that he drove in the car to Tarboro, North Carolina, and there, by previous arrangement, met a man whose name and address he professes not to know, to whom he turned over his car with a sum of money in the glove compartment, on a street, and later when he regained possession of the car the alcohol had been placed therein, and the money removed; that he was transporting the alcohol to his home in Brooklyn, New York where he intended to sell the same, and that he had borrowed the car from Bass, whom he told that he would use the car to visit his mother in North Carolina.

"Such illicit alcohol, and the Buick sedan in which it was transported and found constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"William H. Bass claims that he loaned the car to Cherry on the latter's representation that he intended to use the car to look for employment. The pertinent details of Bass' testimony are as follows: He was an unemployed bricklayer at the time, and was also for about five months superintendent of the building where he resided. While removing ashes and garbage to the sidewalk, he accidentally soiled Cherry's clothes as he was passing, and thereby they became acquainted with each other. Cherry began to help him occasionally in his duties, visited him in his apartment and a casual friendship developed. Cherry lost his employment at a nearby service station. On Tuesday, January 21st Cherry asked Bass for the loan of his car to look for employment in Long Island. Bass consented and gave Cherry the keys and registration to the car late at night. Cherry was to return the car Wednesday afternoon, or early Thursday morning. Some time on Thursday Bass' girl friend told him that Cherry's girl friend had called her to give Bass the message that he was to call Cherry's girl friend. He did so and she informed him that Cherry had driven to Jersey and had obtained a pint of whiskey for which he was apprehended. This occurred despite the fact that Cherry knew Bass' telephone number, and the fact that Bass claims that neither he nor his girl friend were acquainted with Cherry's girl friend.

"Bass had a number of dependents, and when employed, states that he earns about \$125.00 a week, of which about \$75.00 is available for his personal use.

"Bass owns a 1957 Buick which he purchased on December 17, 1956 in addition to the 1950 Buick which he purchased for \$500.00 in August 1957. His monthly installment payments on each car were \$84.07 and \$27.00 respectively. He claims that he purchased the second car because his new car was becoming adversely affected by the dirt and dust which prevailed during the course of the construction work on which he was employed. He claimed that he had a 1953 Buick with which he had the same trouble. He did not sell the 1957 car because he would 'lose more money than I had in the car.'

"Asked how Cherry knew the telephone number of Bass' girl friend, Bass said that 'because I been there a lot, that is why, and I told him when I lent him my car before, if I don't be there I come to the service station to pick it up the following morning.'

"A person who seeks the return of property subject to forfeiture on claim that he acted in good faith and did not know or have any reason to suspect that such vehicle would be used in violation of the Alcoholic Beverage Law must establish such facts by clear and convincing evidence to the satisfaction of the Director, who is entrusted with discretionary authority to direct such return. If the evidence presented creates a doubt as to its truthfulness the claim is denied, even if the actual facts cannot be ascertained. Seizure Case No. 6544, Bulletin 657, Item 6.

"In the instant case, Cherry declares that he told Bass that he intended to visit his mother. Bass claims that Cherry told him he was to drive to Long Island; by Bass' account

Cherry was to keep the car from Tuesday midnight until Wednesday afternoon or Thursday; Bass' ownership of two cars and his description of the involved manner of notifying him of the seizure are not explained satisfactorily. In short, there appears to be more than meets the eye to account for Cherry's possession of the car. In my opinion, Bass has not satisfactorily established that he is innocently involved in the matter. I therefore recommend that his application for return of the car be denied.

"I further recommend that the motor vehicle and alcoholic beverages be declared forfeited."

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

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

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: April 14, 1958.

SCHEDULE "A"

- 114 - two-quart jars of alcohol
- 1 - Buick sedan, Serial 35987731,
Engine 62112735, N. Y.
Registration 1L5257.

7. DISQUALIFICATION-- CONVICTION OF DISQUALIFYING CRIME AFTER ENTRY OF PRIOR ORDER REMOVING DISQUALIFICATION - FIVE YEARS' GOOD CONDUCT - APPLICATION GRANTED.

In the Matter of an Application) to Remove Disqualification because) of a Conviction, Pursuant to R. S.) 33:1-31.2.)	CONCLUSIONS AND ORDER
Case No. 1380) -----))	

BY THE DIRECTOR:

In 1925 petitioner was twice convicted of illegal possession of liquor, being fined \$250.00 on the first occasion and \$550.00 on the second. In 1927, upon conviction of conspiracy to obstruct justice in a liquor matter, petitioner was fined \$400.00 and given a six months' suspended sentence. On December 5, 1940, the statutory disqualification resulting from the above convictions was removed by order of the Acting Commissioner of Alcoholic Beverage Control. Re Case No. 120, Bulletin 434, Item 9.

It appears that on November 19, 1951 petitioner pleaded guilty to income tax evasion and was sentenced by a federal judge to a penal institution for a period of one year and one day, and fined \$10,000.00. He was released from prison on September 8, 1952. It appears from the testimony of petitioner that although he failed to report the true amount of income for 1944, the case was not disposed of until November 1951. A conviction of the crime of evading payment of income tax is one which may or may not involve the element of moral turpitude. Re Blank, Bulletin 96, Item 10. In the present case because of the severe sentence, I am satisfied that the crime in question involves moral turpitude.

Petitioner testified that since his release from the penal institution in 1952 he had devoted his time to repairing and painting his six cottages in order to rent them to summer vacationers. However, in 1955 floods in the area resulted in the total destruction of the cottages. Since 1955 petitioner has engaged in renting boats and selling fishing supplies for a livelihood.

Petitioner produced four character witnesses (a state official, an attorney at law, an operator of a construction business and a retired municipal official) who have known petitioner twenty-four or more years and all were in agreement that he bears a good reputation in the community in which he resides for being a law-abiding person. The police department in the municipality wherein petitioner lives has advised that there are no complaints or investigations presently pending involving the petitioner.

In a proceeding such as that now under consideration where an application has been made to remove disqualification because of a conviction occurring after the entry of a previous order removing disqualification, I feel reluctant to grant the relief requested. However, I have carefully examined the record herein and it appears from the testimony given by petitioner and his character witnesses that petitioner (now 63 years of age) is not a person with criminal tendencies. Furthermore, the character witnesses (all substantial persons) who have had occasion to see petitioner frequently during the past five years since he left the penal institution, are convinced that he has completely rehabilitated himself and has become a good member of society. I conclude that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 16th day of April, 1958,

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

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Valley Beverage Distributors, Inc.
191 Paris Avenue
Northvale, N. J.

Application filed June 2, 1958 for person-to-person transfer of State Beverage Distributor's License SBD-204 from Donald Perretti, t/a Valley Beverage Distributors.

Rudolph Paul Manganello
t/a Ocean County Beverage
Fairfield Avenue, Cedarwood Park
Laurelton, Brick Township, N. J.

Application filed June 3, 1958 for person-to-person, place-to-place transfer of the 1958-59 State Beverage Distributor's License SBD-91 from Tony Jiannantino, t/a T. J. Beverage, 433 Central Boulevard, Fort Lee, N.J.

Supreme Beverage Company
466-70 South 10th Street
Newark, N. J.

Application filed June 3, 1958 for place-to-place transfer of State Beverage Distributor's License SBD-144 for the 1958-59 period, from 631-635 Bergen St., Newark, N. J.

Camden County Beverage Company
747-749 South 11th Street
Newark, N. J.

Application filed June 4, 1958 for place-to-place transfer of Limited Wholesale License WL-60 for the 1958-59 period, from 95 North 11th St., Newark, N. J.

Park Beverages, A Corporation
t/a Park Beverages
15-17 Hackensack Avenue
Ridgefield Park, N. J.

Application filed June 5, 1958 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-114 from Jersey State Beverage Distributors, Inc., 177-179 Somerset St., Newark, N. J.


William Howe Davis
Director