

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

BULLETIN 1786

April 9, 1968

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - DELROZ, INC. v. BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWN OF WEST ORANGE - DIRECTOR AFFIRMED.
2. APPELLATE DECISIONS - OAKLYN TAVERN, INC. v. OAKLYN.
3. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1967 TO DECEMBER 31, 1967 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 58 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20).
4. DISCIPLINARY PROCEEDINGS - (Orange) - FALSE STATEMENTS IN LICENSE APPLICATION (FRONT) - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 25 DAYS UPON PROOF OF CORRECTION.
5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CANDY STORE - CLAIM OF OWNER REJECTED AND SUM DEPOSITED ON STIPULATION BY OWNER ORDERED FORFEITED ABSENT GOOD FAITH - CLAIM OF INNOCENT VENDING MACHINE CLAIMANT RECOGNIZED - ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED.
6. DISCIPLINARY PROCEEDINGS - (Buena) - FALSE STATEMENT IN LICENSE APPLICATION (RESIDENCE) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT 10 DAYS AFTER PROOF OF CORRECTION OF UNLAWFUL SITUATION.
7. DISCIPLINARY PROCEEDINGS (Union City) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Pennsauken) - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1786

April 9, 1968

1. COURT DECISIONS - DELROZ, INC. v. BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE TOWN OF WEST ORANGE - DIRECTOR
AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-1504-66

DELROZ, INC., t/a TWINS
LOUNGE,

Appellant,

vs.

BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE TOWN OF
WEST ORANGE,

Respondent.

Argued March 11, 1968 -- Decided March 21, 1968

Before Judges Gauklin, Lewis and Kolovsky.

On Appeal from Division of Alcoholic
Beverage Control.

Mr. Matthew T. Rinaldo argued the cause
for appellant (Messrs. Rinaldo and Rinaldo,
attorneys).

Mr. Jeffrey R. Lowe, Deputy Attorney General,
argued the cause for respondent (Mr. Arthur
J. Sills, Attorney General of New Jersey,
attorney).

Mr. Louis Lando, attorney for Board of Alcoholic
Beverage Control of Town of West Orange, filed a
Statement in Lieu of Brief.

PER CURIAM.

Appeal from Director's decision in Delroz, Inc. v.
West Orange, Bulletin 1755, Item 1. Director affirmed. Opinion
not approved for publication by court committee on opinions.

2. APPELLATE DECISIONS - OAKLYN TAVERN, INC. v. OAKLYN.

Oaklyn Tavern, Inc., t/a)
 Oaklyn Tavern,)

Appellant,)

On Appeal

v.)

CONCLUSIONS AND ORDER

Borough Council of the)
 Borough of Oaklyn,)

Respondent.)

 Francis E. Malloy, Esq., Attorney for Appellant
 Raymond W. Uliase, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appellant Oaklyn Tavern, Inc., t/a Oaklyn Tavern, the holder of a plenary retail consumption license for premises 712 White Horse Pike, Oaklyn, was found guilty by respondent Borough Council of the Borough of Oaklyn (hereinafter Council) on a charge of selling and serving alcoholic beverages to a minor and permitting the consumption of same by the said minor at its licensed premises on June 10, 1967, in violation of Rule 1 of State Regulation No. 20, and its license was suspended for thirty days effective 2:00 a.m. October 1, 1967.

Appellant filed this appeal challenging said conviction, and an order was entered on October 16, 1967, staying respondent's order of suspension until further order of the Director. Pursuant thereto, the license certificate was returned to the licensee at 4:30 p.m. on October 13, 1967, after twelve days of the suspension had been served.

In its petition of appeal appellant alleges that the Council's action was erroneous and should be reversed because it was contrary to the weight of the evidence. It also contends that the penalty imposed was so harsh and unjust as to constitute an abuse of discretion.

In its answer the Council admits the jurisdictional allegations, avers that the charge was established by legally sufficient and adequate evidence, and that the penalty imposed was "justified considering the offense and the appellant's past record."

This matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

ABC Agent C, produced as a witness on behalf of the Council at the hearing herein, testified as follows: Accompanied by ABC Agents B and G, he entered the appellant's tavern on June 10, 1967, at approximately 1:15 a.m. Shortly thereafter he observed a person who appeared to him to be a minor, and was later identified as Stephen ---, join two males who were standing near the bar. One of these persons ordered three draught beers and the bartender (later identified as James Harrison) served the three beers and was paid therefor. Stephen consumed a portion of the beer served to him and, while consuming same, this agent and Agent G identified themselves and questioned him. At first Stephen produced a false driver's license which reflected his age to be twenty-three years. Upon further questioning, however, he admitted that he was nineteen years old. The unconsumed portion of beer in Stephen's glass was detained as evidence and subsequently submitted to the Division chemist.

In addition to the certification by the Division chemist that this was in fact an alcoholic beverage fit for beverage purposes, it was stipulated by appellant's attorney that the fluid was indeed beer.

On cross-examination this witness added that, upon confrontation with the minor, he informed the president of the corporate appellant (Arthur C. Milne) that Stephen had displayed a false driver's license. At that point Vincent Desario, who was employed as a doorman, joined the group and insisted that Stephen had displayed proper identification and had informed him that he was over twenty-one years of age.

The agents left the premises with Stephen who then denied that he had been questioned by the doorman at any time and insisted that he had not been stopped or questioned upon entering the said premises or by the bartender.

ABC Agent B testified that he participated in this investigation on the date in question and stationed himself at the end of the bar near the main entrance. He kept the doorman under surveillance and particularly noted that Stephen entered the premises without being stopped or questioned by the doorman. After Stephen was served the beer and had partly consumed it, Agent B joined in the confrontation.

Evidence as to the date of the birth of Stephen was presented by his mother Mildred Fernandez. It stated that he was born on May 1, 1949, and a birth certificate was submitted in evidence in support thereof.

Stephen also testified that he was born on May 1, 1949, and gave the following account: He first entered the tavern earlier that evening and remained there for some time. He then decided to leave and told his two companions that he wanted to go home. After waiting outside for them for a while, one of his friends came outside, invited him back in with the offer to buy him a drink. He then returned to the premises, seated himself at the bar and consumed part of a beer which was purchased for him by his friend Tommy. On neither occasion was he ever stopped or questioned by the doorman when he entered the premises nor did the bartender require that he make any representation with respect to his age.

Arthur C. Milne (president of the corporate appellant) testified that one of the agents confronted him with the fact that Stephen had been served and consumed alcoholic beverages although the doorman had insisted that he had checked Stephen's identification at the time he entered the tavern.

Robert J. Butler (who was employed as a bartender on the date in question) corroborated the testimony of Milne with respect to the alleged conversation with the doorman. He added that he did not serve the minor but that the other bartender served the minor's friend who in turn gave the beer to Stephen.

We are dealing here with purely disciplinary measures and their alleged infractions; such measures are civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). Furthermore, the burden of establishing that the Council acted erroneously and with an abuse of its discretion is upon the appellant and the ultimate test in these matters is one of reasonableness on the part of the Council. Or, to put it another way, could the Council, as reasonable men, acting reasonably, have come to its determination based upon the credible evidence presented. Cf. Hudson Bergen Liquor Dealers Ass'n v. Hoboken, 135 N.J.L. 502.

The Director's function on an appeal of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton & Klingler, Bulletin 1245, Item 1; Tash v. Princeton, Bulletin 1585, Item 3. In other words, the Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council. Cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

I have had an opportunity to observe the demeanor of the witnesses as they testified, and particularly the appearance of the minor as well. This minor had such a youthful appearance that it is difficult to understand how anyone could mistake him for a person of statutory maturity. There is abundant evidence in this case that Stephen was in fact a minor, and the contention of appellant's attorney that his age was not established by a preponderance of the evidence must be rejected. The mother's testimony and the birth certificate were produced in support of the minor's true age. The cases are legion that the minor's own testimony with respect to his age is sufficient to establish that fact. Lombardo's Grill, Inc. v. Elizabeth, Bulletin 1339, Item 1.

The attorney for the appellant contends that this minor was checked at the door and he assumes that this is an adequate defense. However, there is no dispute as to the fact that the minor was served and did consume alcoholic beverages without making any written representation as to his age. It

is therefore, abundantly clear that the appellant did not comply with the strict provisions of the statute. R.S. 33: 1-77 contains the following proviso:

"... that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over" (underscoring ours).

In a Special Note in explanation of Rule 1 of State Regulation No. 20 (at page 86 of the 1967 Rules and Regulations) it is set forth that a mere verbal inquiry as to age, or the display of a document representing said age, is no defense. The representation in writing required by the Alcoholic Beverage Law is a "writing made by the minor at or prior to the time of sale or service. Such a writing must be signed by the minor in the presence of the licensee or his employee and one in which the minor gives his name, address, age, date of birth and, by signing the writing, makes a statement that he is making the representation as to his age to induce the licensee to make the sale"(underscoring added). No written representation was made in this case and, as I stated hereinabove, the very appearance of the minor could not under any circumstances justify service of alcoholic beverages to him. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen Liquor Dealers Ass'n v. Hoboken, supra; Butler Oak Tavern v. Div. of Alcoholic Beverage Control, supra.

Appellant further argues that the facts in this case are analogous to those of Laurino v. Division of Alcoholic Beverage Control, 81 N.J. Super. 220. I do not find that that case is dispositive of the matter of sub judice. In Laurino the licensee employed and sold alcoholic beverages to girls who were under twenty-one years of age but reasonably appeared to be over twenty-one years. They made written representations, received identification cards from the local police department showing that they were over twenty-one. The court held that, where these girls were able to deceive experienced police officials, the licensee's defense was meritorious. Clearly, the minor in the instant matter made no such written representation, nor did he reasonably appear to be twenty-one years of age or older.

Under the circumstances herein I believe that there has been established the necessary quantum of proof, namely, by a preponderance of the believable evidence, to establish appellant's guilt.

I also conclude that the Council, acting reasonably, reached a reasonable conclusion in finding the appellant guilty of the said charge.

Finally, the appellant argues that the penalty imposed was unduly excessive and harsh. It has been generally held by this Division that a suspension imposed in a disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Rigoletti v. Wayne, Bulletin 1430, Item 2; Lou's Liquors v. Plainfield, Bulletin 1692, Item 1, aff'd Lou's Liquors v. Plainfield and Div. of Alcoholic Beverage Control (App. Div. 1967), not officially reported, reprinted in Bulletin 1719, Item 1.

The licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective June 5, 1963 and again for five days effective April 24, 1966, both for sale to a minor. Accordingly, the penalty imposed herein, based on the facts and prior record, does not exceed the Director's minimum penalty practice in similar cases, and it cannot be considered to be too severe. Cf. Re Kerwin, Bulletin 1726, Item 3; Re Benny's Tavern, Inc., Bulletin 1462, Item 4.

I therefore find that the appellant has failed to meet its burden of establishing that the Council's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15. It is accordingly recommended that an order be entered affirming the Council's action, dismissing the appeal, and fixing the effective dates for the eighteen-day balance of the suspension imposed by the Council.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the memoranda submitted by the attorneys for the respective parties in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of February 1968,

ORDERED that the action of the respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-5 issued by the Borough Council of the Borough of Oaklyn to Oaklyn Tavern, Inc., t/a Oaklyn Tavern, for premises 712 White Horse Pike, Oaklyn, be and the same is hereby suspended for the eighteen (18) day balance of the original thirty (30) day suspension, commencing at 4:30 p.m. Monday, February 26, 1968, and terminating at 2:00 a.m. Friday, March 15, 1968.

Joseph M. Keegan
Director.

3.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1967 TO DECEMBER 31, 1967 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 58 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20)

CLASSIFICATION OF LICENSES														
County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Sea. Retail Consumption		Licen- ses Expired	Licenses Surren- dered Revoked	Number Licenses in Effect	Total Fees Paid
	No.	Fees	No.	Fees	No.	Fees	Issued	Fees	Issued	Fees				
	Issued	Paid	Issued	Paid	Issued	Paid								
Atlantic	483	\$ 206,960.00	74	\$ 27,775.00	30	\$ 2,420.00							587	\$ 237,155.00
Bergen	818	344,806.00	301	93,913.00	159	14,499.59	46	\$ 2,214.50	5	\$1,398.75			1329	456,831.84
Burlington	198	93,159.00	43	16,431.00	52	7,100.00	1	50.00					294	116,740.00
Danden	454	245,049.68	85	39,035.00	81	8,064.86			1	450.00		1 CB	620	292,599.54
Jape May	139	78,400.00	13	4,700.00	18	2,250.00							170	82,350.00
Lumberland	81	43,097.27	15	4,450.00	30	4,050.00							126	51,597.27
Essex	1258	808,872.47	346	228,000.00	93	12,750.00	24	1,200.00	2	1,500.00	1 CS		1722	1,052,322.47
Gloucester	108	39,790.00	15	3,910.00	24	2,220.00							147	45,920.00
Hudson	1423	643,800.40	297	121,900.00	80	9,372.68	59	2,500.00				1 C	1858	777,573.08
Hunterdon	79	31,508.00	15	8,878.00	16	1,800.00							110	42,186.00
Jersey	414	295,599.02	51	26,294.00	63	9,376.44						3 C	525	331,269.46
Middlesex	635	322,905.00	88	30,155.00	128	10,817.90	4	200.00					855	364,077.90
Monmouth	552	294,178.00	126	45,670.00	67	7,666.25	10	492.00	18	10,030.12			773	358,036.37
Morris	359	151,457.00	104	44,081.00	71	6,682.50	15	750.00	5	1,560.00		1 C	553	204,530.50
Ocean	196	110,370.55	53	23,912.00	46	5,122.74							295	139,405.29
Passaic	828	346,077.00	169	52,560.00	50	6,050.00	6	300.00					1053	404,987.00
Paterson	52	20,746.00	8	1,640.00	20	1,775.00							80	24,161.00
Somerset	190	89,535.00	42	13,225.00	41	4,791.78							273	107,551.78
Sussex	166	47,995.00	21	4,400.00	13	740.00	1	50.00	1	225.00			202	53,410.00
Union	547	326,086.00	144	75,116.00	89	9,658.07	26	1,293.00					806	412,153.07
Warren	147	44,810.00	21	5,325.00	31	3,276.74			1	225.00			200	53,636.74
Total	9127	\$4,585,201.39	2031	\$871,370.00	1202	\$130,484.55	192	\$9,049.50	33	\$15,388.87	1	6	12578	\$5,611,494.14

additional C 12 New CB 2 CS renewed
C Rev. 3 Retired 1 Cancelled 1 CB cancelled 32 CS expired

Joseph M. Keegan
Director

March 11, 1968

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION (FRONT) - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 25 DAYS UPON PROOF OF CORRECTION.

In the Matter of Disciplinary
Proceedings against

111 Park St. Corporation
t/a The Galaxy
111-113 Park Street
Orange, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-25, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Orange.

Nathaniel S. Goldring, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

- "1. In your application dated July 14, 1966, filed with the Municipal Board of Alcoholic Beverage Control of the City of Orange, upon which you obtained the transfer of your plenary retail consumption license, in answer to Question No. 22, you falsely listed William Vogt as the holder of 20 shares (22 2/9%) of your issued and outstanding stock, whereas in truth and fact Hubro Industries, Inc., was the true and beneficial owner of said 20 shares; in violation of R.S. 33:1-25.
- "2. In your above mentioned application, in answer to Question No. 23, you falsely stated that no one other than the stockholders listed in answer to Question No. 22 thereof had any beneficial interest directly or indirectly, in the stock held by said stockholders, whereas in truth and fact Hubro Industries, Inc., was the true and beneficial owner of the 20 shares of your stock listed in the name of William Vogt; in violation of R.S. 33:1-25.
- "3. From August 16, 1966, to date, you knowingly aided and abetted Hubro Industries, Inc., to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52."

The facts are sufficiently set forth in the quoted charges when there is added the fact that Hubro Industries, Inc. is unqualified to hold a retail license by reason of the undisclosed 50 per cent. interest therein of one Jacob Fichtelberg, a non-resident of New Jersey, viz., a resident of New York. See Re Hubro Industries, Inc., Bulletin 1783, Item 3.

Although the licensee has no previous record of suspension of license, the license then held by Aaron Heyman

(an officer and 22 per cent. stockholder of the licensee corporation) and Leo Roet for premises 900 Springfield Avenue, Irvington, was suspended by the municipal issuing authority for five days effective July 28, 1952, for sale to minors.

The prior record of suspension for dissimilar violation occurring more than five years ago disregarded, the license will be suspended on Charges 1, 2 and 3 for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Hubro Industries, Inc., supra.

Since to date no correction of the unlawful situation has been accomplished, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than twenty-five days from the date of the commencement of the suspension herein.

Accordingly, it is, on this 19th day of February 1968,

ORDERED that Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to 111 Park St. Corporation, t/a The Galaxy, for premises 111-113 Park Street, Orange, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1968, effective 2:00 a.m. Monday, February 26, 1968, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 2:00 a.m. Friday, March 22, 1968.

Joseph M. Keegan
Director

- 5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CANDY STORE - CLAIM OF OWNER REJECTED AND SUM DEPOSITED ON STIPULATION BY OWNER ORDERED FORFEITED ABSENT GOOD FAITH - CLAIM OF INNOCENT VENDING MACHINE CLAIMANT RECOGNIZED - ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED.

In the Matter of the Seizure)	
on April 28, 1967 of a quantity)	Case No. 11,899
of alcoholic beverages and \$108.60)	
in cash in a candy store located)	On Hearing
at 40 West Broadway, in the City)	
of Paterson, County of Passaic)	CONCLUSIONS and ORDER
and State of New Jersey .)	
- - - - -		

Eliezer Reyes, Pro Se.
J.A.J. Vending Corp., by Joseph Fiorito, Vice President and Treasurer
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28, and, further, pursuant to two stipulations, each dated August 22, 1967, executed by Eliezer Reyes and the J.A.J. Vending Corp., respectively, to determine whether 33 cans of beer, \$108.60 in cash, and various fixtures, furnishings and equipment, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on April 28, 1967 in a candy store located at 40 West Broadway, Paterson, N.J. constitutes unlawful property and should be forfeited; and further, to determine whether the sums of \$200.00 from Eliezer Reyes and \$450.00 from J.A.J. Vending Corp., deposited under protest under the aforesaid stipulations for the Director, representing the retail value of the fixtures, furnishings and equipment as set forth specifically thereunder, should be forfeited or returned to them.

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

At the said hearing Eliezer Reyes appeared pro se and sought the return of the sum under the stipulation signed by him, representing the retail value of the fixtures, furnishings and equipment. J.A.J. Vending Corp. entered an appearance, pro se, and sought the return of the sum deposited under stipulation, representing the retail value of a juke box, pool table and pinball machine.

The file of this Division was admitted into evidence by stipulation of said claimants, and contained the affidavit of mailing, affidavit of publication, chemist's report certifying to the alcoholic content of the alcoholic beverages seized, the record of the "marked" money, two "marked" one-dollar bills, the inventory, the original stipulations, and the copies of the cash receipts.

The Division's file, which was supplemented at this hearing by testimony of ABC Agent C established the following: On Friday, April 28, 1967 at approximately 8:30 P.M. ABC Agents C and B entered the premises in question which are located on the ground floor of a four-story brick building. Upon entering the said premises they observed a juke box located along the wall, a pinball machine and a pool table in the center of the room. In the rear was a counter from which candy, cigarettes, coffee and sandwiches were dispensed. Adjoining this room was a rear room which contained a table, chairs and two refrigerators.

When the agents first entered, they noted there were four males playing dominoes and drinking Rheingold beer. At 8:45 P.M. the agents made their first purchase of beer which was served to them by Jose Rivera Gonzalez, who acted as bartender. Their last purchase of beer was made at 9:20 P.M. and the agents

gave Gonzalez two "marked" one-dollar bills, which Gonzalez placed in the cash register. At about 10:00 P.M. local police officers arrived at the premises, whereupon the agents identified themselves to Gonzalez, advised him of the violations and placed him under arrest. The two "marked" one-dollar bills were found in the register together with other monies totalling \$108.60.

It was later learned that Gonzalez is the uncle of Eliezer Reyes, the owner of the premises. A search of the premises and seizure of the property was thereupon effected.

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

On May 5, 1967 a sample of the contents of one of the seized cans of beer was analyzed by the Division chemist who certified that it is an alcoholic beverage fit for beverage purposes with an alcoholic content of 4.57%.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the commingled cash, as set forth in Schedule "A" herein, constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Eliezer Reyes, testifying in support of his claim, gave the following account: He purchased a case of beer for a party which was to take place on the following Sunday and placed the beer in one of the refrigerators at these premises. On the night in question, he left his uncle, Jose Gonzalez, in charge of the premises and his uncle later admitted to him that he sold beer on that night.

On cross-examination it developed that he had four cases of beer on the premises. When he was confronted by the agents he denied authorizing his uncle to sell the beer to anyone. He explained the reason that his uncle sold the beer was that in Puerto Rico, where his uncle came from, persons are permitted to sell beer without a license.

Gonzalez was not produced as a witness at this hearing.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith and did not know, or have any reason to believe, that the property would be used in unlawful liquor activity. I am satisfied, under the facts and circumstances of this case, that Reyes purchased the beer for re-sale and was involved in the unlawful liquor activity. Since there is, therefore, an absence of good faith, the Director does not have the authority under the compulsion of the Statute and the applicable regulation to return the said property. R.S. 33:1-66(e); Seizure Case No. 11,860, supra.

It is accordingly recommended that an Order be entered directing the forfeiture of \$200.00 paid under protest, pursuant to the stipulation signed by Eliezer Reyes, representing the

retail value of certain furnishings, fixtures and equipment and, further, directing the forfeiture of the alcoholic beverages and cash, as set forth in the Schedule "A" annexed hereto.

J.A.J. Vending Corp., Inc. trading as Mid-Towne Amusements, presented a claim for the return of the deposit upon which it secured the return of a juke box, pool table and cigarette machine, as reflected in the aforementioned stipulation.

Joseph Fiorito, vice-president of the corporate claimant, testifying in support of the said claimant, produced invoices which satisfied me that this claimant is the owner of the said property. He stated that these machines were originally installed at premises operated by Reyes at 963 Main Street, Paterson and were moved to his present premises. He asserted that, before installing the machines he made a credit investigation because he had made a loan to Reyes, and ascertained that his credit references were satisfactory. He also relied upon an application which was executed by Reyes with the City of Paterson which said application contained the following question and answer:

"8. Have you or any person mentioned in this application ever been convicted of a crime or violation of any City Ordinance involving gambling.

A. No."

He assumed that the Municipal Licensing Division followed its usual procedure of having the background and record of the applicant checked by the police department. It was his understanding that the application "...immediately goes before the Detective Bureau, and the Detective Bureau checks them out thoroughly and gives us the okay or not." He personally handed the application to the local licensing division, and after waiting a month, during which he assumed a thorough investigation was made, the license was granted.

He made no personal investigation of the background of Reyes or of the subject premises.

On the basis of the evidence presented, I am persuaded that the claimant relied upon the investigation presumably made of Reyes by the police department. While this does not excuse his failure to make a personal investigation of the background of Reyes and the activities at the premises, there is no affirmative evidence to establish that this claimant knew of the unlawful activities.

Furthermore, Glenn Demarest, a collector and mechanic employed by this claimant, testified that during his visits to the premises, he did not observe any beer or other alcoholic beverages on the premises or any sale or service thereof.

While this claimant is not relieved from his obligation to make a personal investigation of the background of Reyes and the activities at the premises, I find that, under the circumstances herein, the claimant merely acted imprudently and should be given the benefit of the doubt. I, therefore, recommend that its claim for the return of the deposit posted, under the aforementioned stipulation be recognized, and the sum paid thereunder be returned to it. Seizure Case No. 11,850, Bulletin 1749, Item 6.

Conclusions and Order

No exceptions were filed to the Hearer's report pursuant to Rule 4 of State Regulation No. 28.

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

Accordingly, it is, on this 16th day of February, 1968

DETERMINED and ORDERED that the claim of Eliezer Reyes for the return of the money deposited under stipulation be and the same is hereby denied; and that the sum of \$200.00, deposited by the said claimant, under protest, with the Director under the said stipulation, representing the retail value of fixtures, furnishings and equipment which were returned to this claimant, be and the same is hereby forfeited in accordance with law; and it is further

DETERMINED and ORDERED that the sum of \$450.00, representing the appraised retail value of certain equipment which was returned to the claimant, J.A.J. Vending Corp., paid under protest pursuant to a stipulation signed on its behalf, shall be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages and cash be and the same are hereby 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.

Joseph M. Keegan,
Director

SCHEDULE "A"

83-- containers of alcoholic beverages
Miscellaneous fixtures, furnishings and equipment
\$108.60 - cash

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION (Residence) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT 10 DAYS AFTER PROOF OF CORRECTION OF UNLAWFUL SITUATION

In the Matter of Disciplinary Proceedings against

Diesel Inn, Incorporated
Buena-Hammonton Road
Buena, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13 issued by the Borough Council of the Borough of Buena

Adamo & Pagliughi, Esqs., by Martin L. Pagliughi, Esq.,
Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that in its current application for license dated June 2, 1967, it falsely stated that Peter Pepe, its 96.66 per cent. stockholder, was a resident of New Jersey (whereas, in fact, he was a resident of Pennsylvania), in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective August 4, 1958, for sale during prohibited hours, and by the Director for ten days effective October 29, 1962, for possession of an alcoholic beverage not truly labeled. Re Diesel Inn, Inc., Bulletin 1485, Item 9.

The prior record of suspension of license for dissimilar violation in 1958 occurring more than five years ago disregarded, the license will be suspended for ten days (Re Visidor Corporation, Bulletin 1776, Item 6), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring in 1962 within the past five years (Re Boysen's Sunset Tavern, Inc., Bulletin 1766, Item 3), or a total of fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days.

Reports of investigation disclose that the licensed business is not currently being conducted and, since to date no correction of the unlawful situation has been accomplished, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than ten days from the date of submission of proof of correction.

Accordingly, it is, on this 21st day of February, 1968,

ORDERED that Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of Buena to Diesel Inn, Incorporated for premises on Buena-Hammonton Road, Buena, be and the same is hereby suspended for the balance of its term,

viz., until midnight June 30, 1968, commencing at 3:00 a.m. Wednesday, February 28, 1968, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license not sooner than ten days after the filing of such petition.

Joseph M. Keegan
Director

17. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Old Elm Corp.
2821 Bergenline Avenue
Union City, N. J.

Holder of Plenary Retail Consumption
License C-8 issued by the Board of
Commissioners of the City of
Union City

CONCLUSIONS
AND
ORDER

George R. Sommer, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 6, 1967, it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Anderson Hotel Incorporated, Bulletin 1767, Item 12.

Accordingly, it is, on this 26th day of February, 1968,

ORDERED that Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the City of Union City to Old Elm Corp. for premises 2821 Bergenline Avenue, Union City, be and the same is hereby suspended for five (5) days, commencing at 3:00 a. m. Monday, March 4, 1968, and terminating at 3:00 a. m. Saturday, March 9, 1968.

Joseph M. Keegan
Director

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Lomor, Inc.
t/a "Lombardo's"
6324 Westfield Avenue
Pennsauken, N. J.

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption
License C-5 issued by the Township
Committee of the Township of
Pennsauken

John H. Mohrfeld, III, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 2, 1968, it sold drinks of alcoholic beverages to two minors, both age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Kurland, Bulletin 1719, Item 6.

Accordingly, it is, on this 20th day of February, 1968,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Pennsauken to Lomor, Inc., t/a Lombardo's for premises 6324 Westfield Avenue, Pennsauken, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a. m. Monday, February 26, 1968, and terminating at 3:00 Thursday, March 7, 1968.

JOSEPH M. KEEGAN
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Town Beverage, A Corporation
730 Irving Place
Secaucus, New Jersey

Application filed April 8, 1968 for person-to-person transfer of State Beverage Distributor's License SBD-10 from Richard C. Berardo, t/a Town Beverage.


Joseph M. Keegan
Director