

BULLETIN 1048

JANUARY 31, 1955.

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - EMPIRE LIQUOR CO. ET ALS. v. NEWARK ET ALS. - ORDER OF DIRECTOR AFFIRMED.
2. COURT DECISIONS - RAJAH LIQUORS v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL ET ALS. - ORDER OF DIRECTOR AFFIRMED.
3. DISCIPLINARY PROCEEDINGS (Trenton) - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Montville Township) - SALES TO MINORS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
5. STATE BEVERAGE DISTRIBUTOR'S LICENSE (Atlantic City) - OBJECTIONS TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.
6. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES IN MOTOR VEHICLE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - HUSBAND OF REGISTERED OWNER OF MOTOR VEHICLE UNAWARE OF PRESENCE OF SUCH BEVERAGES IN CAR IN HIS POSSESSION - MOTOR VEHICLE RETURNED.
7. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1954 THROUGH DECEMBER 31, 1954.
8. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE USED IN CONNECTION THEREWITH RETURNED TO INNOCENT OWNER.
9. DISCIPLINARY PROCEEDINGS (Union City) - SALE TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.



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

BULLETIN 1048

JANUARY 31, 1955.

1. COURT DECISIONS - EMPIRE LIQUOR CO. ET ALS. v. NEWARK ET ALS. -
ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 278-53

EMPIRE LIQUOR CO., ARROW SALES CO.,)
CAPITAL AUDIT CORP., and PRESTON)
ROBINSON, DANIEL BENDER and WESTON)
AND COMPANY,)

Appellants,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, and RAJAH LIQUORS, a cor-)
poration, and DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL,)

Respondents.)
-----)

Argued January 10, 1955. Decided January 20, 1955.

Before Judges Clapp, Jayne and Francis.

Mr. Robert C. Gruhin argued the cause for the Appellants.

Mr. Leo Yanoff argued the cause for the Respondent, Rajah
Liquors.

(Messrs. Green & Yanoff, Attorneys.)

PER CURIAM.

The Municipal Board of Alcoholic Beverage Control of the City of Newark granted the application of Rajah Liquors for a renewal of its plenary retail liquor consumption license for the year July 1, 1953 to July 1, 1954, for certain premises. On appeal the Director of the state Division of Alcoholic Beverage Control affirmed the order after a de novo hearing.

Appeal was then taken to this court and pending argument Mazza v. Cavicchia, 15 N. J. 498 (1954), was decided. It appeared that a copy of the hearer's report to the Director had not been served upon appellants as the Mazza case indicated was necessary. So on application the record was remanded to permit this to be done, exceptions thereto to be filed and a hearing held on the exceptions before the Director. The record discloses that this was accomplished. The new Director then independently reviewed the testimony, proceedings and original determination, and concluded that the renewal should be affirmed. We agree that compliance with the mandate of the Mazza case has been shown.

It is now argued that appellants were not given a full, fair and complete hearing by the hearer who conducted the inquiry for the Division. The exceptions to the hearer's report have not been included in the appendix and so we are without knowledge as to whether this specific ground was raised before the Director.

The opposition to the renewal of the license was predicated upon a charge that Rajah Liquors did not have possession or the right to possession of the premises in question when the application was filed or when the local Board acted favorably thereon.

It was undisputed that at some time previous to the institution of the proceeding before the local Board, Rajah Liquors had acquired the license to sell alcoholic beverages at the premises. At the hearing it was conceded that no attempt had been made to operate at that address but that Rajah had applied for a transfer of the license to 269-271 Springfield Avenue, Newark, which matter was then pending.

Appellants say their counsel was hampered and interfered with improperly by the hearer and by opposing counsel who were not restrained by the hearer, in the production of evidence relating to the issue raised by them. The hearing did lack decorum and in some measure the control which must be exercised if such appeal proceedings are to serve the purpose for which they were designed. It must be said, however, that none of the participants can escape some measure of responsibility for the condition which existed.

In any event, the problem for us is whether any prejudice was suffered by appellants as the result of the nature of the hearing. Our examination of the record, including the concurring determinations of the two Directors has satisfied us that substantial proof was introduced to show the required right to possession of the premises in Rajah Liquors and that the Director was justified in making a finding that such right existed. And further we are unable to declare from our study of the hearing that appellants suffered any detriment arising from rejection of evidence or the conduct of the hearing which would call for a reversal of the order for renewal.

The period covered by the license renewal under attack having expired, the issue of mootness of the appeal was raised by the court. However, it was not briefed by the parties and they have advised that because the transfer proceedings referred to are still in litigation, it has been necessary to apply for another renewal of this license for the year 1954-1955. The action taken on that application is also the subject of appeal and in connection therewith the outcome of this matter is being awaited. For these reasons we have concluded not to decide whether the passage of time has made the issue between the litigants purely academic.

The order is affirmed.

2. COURT DECISIONS - RAJAH LIQUORS v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL ET ALS. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-8-54

RAJAH LIQUORS,)
Appellant,)
-vs-)
DIVISION OF ALCOHOLIC BEVERAGE CONTROL and WILLIAM HOWE DAVIS, Director, MUNICIPAL BOARD OF ALCO- HOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, EMPIRE LIQUOR CO., T. D. HOLDING CO., ALEXANDER NACK, and WESTON AND COMPANY,)
Respondents.)
-----)

Argued January 10, 1955. Decided January 21, 1955.

Before Judges Clapp, Jayne and Francis.

Mr. Leo Yanoff argued the cause for Appellant.
(Messrs. Green & Yanoff, attorneys)

Mr. Samuel B. Helfand argued the cause for the Division
(Mr. Grover C. Richman, Jr., Attorney General).

Mr. Robert C. Gruhin argued the cause for Respondent,
Empire Liquor Co.

The opinion of the Court was delivered by

CLAPP, S.J.A.D.

Rajah Liquors, in connection with its plenary retail consumption license for the year July 1, 1952 to June 30, 1953, made application to the Newark Board of Alcoholic Beverage Control to transfer the license from its present location to another place 570 feet away. The Board unanimously denied the application, and its decision was affirmed by the State Division.

A like application was then made to the Newark Board with respect to the 1953-1954 license; and this application, the Newark Board, by a vote of two to one, granted. However, the State Division reversed. Rajah appeals.

The law entrusts the local board with a discretion as to the transfer of liquor licenses. Passarella v. Board of Commissioners, 1 N. J. Super. 313, 319 (App. Div. 1949); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172, 174 (App. Div. 1949). And the State Division on an appeal in such a matter, N.J.S.A. 33:1-26, 33:1-38, will interfere in the exercise of the board's discretion only because of an abuse of the discretion, Hudson Bergen, etc. Assn v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947), Passarella v. Board of Commissioners, 1 N. J. Super. 313, 319 (App. Div. 1949), *supra* -- that is, because of a manifest mistake, Smith v. Smith, 17 N. J. Super. 128 (App. Div. 1951), clearly unreasonable action or some more untoward impropriety. Such is the scope of review before the Division in such a matter, notwithstanding that testimony is taken de novo. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943).

However the State Division on such an appeal is likewise invested with a discretion, and accordingly we, on appeal from it, will not interfere in the exercise of its discretion unless there has been a manifest mistake or a more gross transgression on its part. Hickey v. Division of Alcoholic Beverage Control, 31 N. J. Super. 114 (App. Div. 1954).

Our task is simply to apply these principles to the facts. The three members of the Newark Board voted for the first decision. One died, and the member replacing him, voted at the second hearing to grant the transfer. The second of these three members voted to deny the transfer both times. But the third member changed his position at the second hearing, and the State Director held that, although there was no evidence of improper motivation, the crux of the case was the switch he made in his position.

In passing upon the reasonableness of the third Commissioner's action, it is worthy of note that when the second application was made, the Newark Board held apparently unanimously "we will be bound", by the Division's action on the appeal (then pending) as to the first application. Nevertheless two months after the Division affirmed the denial of the first application, the local board reversed itself.

The most important factor involved in the first decision, as we see it, was the very heavy concentration of taverns in the area. Within a radius of 750 feet of the place to which Rajah sought to transfer its license, there were, at the time of the second hearing before the Division, 24 persons with consumption licenses -- that is, taverns -- not to speak of 4 package stores. On the other hand the Director in his decision on the first appeal found that at the time of that decision there were within that radius only 19 consumption licenses and 3 package stores, whereas within 750 feet of Rajah's present location, there were then but 16 consumption licenses and 3 package stores. If these figures are accurate, there seem to be quite a few more taverns, maybe 50% more, in the locality to which Rajah proposed to transfer than in its present locality; and furthermore the congestion at the proposed locality would seem to be increasing. At any event conditions had certainly not improved in this important respect so as to warrant the third Commissioner's change in position.

There is a more serious matter. At the second hearing before the Newark Board, it was learned for the first time (there was no testimony on the point at the first hearing) that the Board of Education had definitely approved a site for a proposed school, which adjoined the proposed location of the tavern. We may overlook that on the second appeal to the State Division it appeared that an entrance to this school is planned to be put within 200 feet of an entrance to the tavern at its proposed situs and that the Board of Education then opposed Rajah's application. Rajah argues that 6 taverns will be displaced by the school (of course they may move somewhere else in the same locale); but that very argument leaves the school in the case as a major factor -- and of quite as much significance as the matter of congestion. Cf. Price v. Excise Board of Town of Millburn, 29 N. J. Super. 103 (App. Div. 1953).

Rajah, posing a hypothetical problem, suggests that the third member of the Newark Board could not be said to have acted unreasonably at the Board's second hearing if the position he took at the first hearing was in fact unreasonable. There is nothing before us to indicate that his first position was unreasonable. Nor did he say it was, when he gave his opinion at the second hearing. Indeed in that opinion, he passes over, without any mention at all, the considerations we deem to be the most important before him -- viz., the congestion of licenses in the area and the erection of the school.

With these considerations in view, we come back to the question which the State Director alludes to as the crucial one -- namely, was the third Commissioner clearly unreasonable in changing his position? Upon that question, and in the face of the facts here, we certainly cannot find the Director to be manifestly in error.

Affirmed.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL BASH)
T/a BASH'S LIQUOR STORE)
180-182 South Broad Street)
Trenton 9, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Trenton.)

Frank Thompson, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) during prohibited hours, he sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38; and (2) he hindered and failed to facilitate an investigation, in violation of R. S. 33:1-35.

The file herein discloses that, during the investigation of a specific complaint that defendant was selling alcoholic beverages in original containers for off-premises consumption on Sundays and after 10:00 p.m. on weekdays, in violation of Rule 1 of State Regulations No. 38 which prohibits such sales, two ABC agents went to the vicinity of defendant's licensed premises at approximately 10:00 p.m. on Wednesday, December 1, 1954. Defendant enjoys the "broad package privilege" under P. L. 1948, ch. 98, and has a service room equipped with tables and chairs for on-premises drinking and another room equipped with a counter which is used as a package goods department.

At 10:15 p.m. one of the agents entered the premises by means of the door leading to the service room. He waited for the other agent, who entered at 10:17 p.m., and then went into the package department. The first agent then asked defendant, who was behind the counter, for a 4/5 quart bottle of Roma Port Wine. Defendant placed a bottle of that brand in a paper bag, handed it to the agent and charged him 85 cents therefor. The agent left the premises, closely followed by his colleague. Both agents immediately returned to the package department and identified themselves as agents. When they confronted defendant, who is elderly and infirm, he became excited and claimed that the sale was made before 10:00 p.m. but declined to check the time by telephone. He failed to cooperate with the agents who were seeking to check his license certificate and a copy of the license application and, at one point, picked up from

the counter where the agent had placed it the bag containing the bottle of wine which he had sold to the agent. The agent went behind the counter and recaptured the bottle and admonished defendant not to make another attempt to seize it. Defendant then became more calm and pleaded for "a break."

Defendant has no prior adjudicated record. In mitigation it is claimed that defendant was uncertain of the time and that, because of his age, condition and certain other circumstances "became excited and confused and reached for the bottle of wine which one of the agents had and said that (he) would give him his money back." Reference is also made not only to the poor state of health of defendant but also of his wife who was present when the violations took place.

With respect to Charge (1), defendant's uncertainty with respect to the time is no excuse. For the purpose of the pertinent regulation, it is his responsibility to know the time. The usual penalty for an unaggravated first violation of this type is a fifteen-day suspension of the license. Re Hassell, Bulletin 1036, Item 2. There are serious implications involved in Charge (2) -- hindering an investigation. Indeed, "hindering" strikes at the very heart of enforcement and control. Re Kelly, Bulletin 947, Item 1; Re Menzel, Bulletin 948, Item 2. However, under the peculiar circumstances in this case and taking into account defendant's age, physical condition and other attendant circumstances, I shall suspend his license for ten days on Charge (2), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of January, 1955,

ORDERED that Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Trenton to Michael Bash, t/a Bash's Liquor Store, 180-182 South Broad Street, Trenton, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 20, 1955, and terminating at 2:00 a.m. February 9, 1955.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
ARTHUR P. WARREN)
T/a WARREN'S BAR & GRILL)
Bloomfield Avenue, Pine Brook)
Montville Township)
P. O. Pine Brook, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Montville.)

-----)
James A. Palmieri, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging (1) that he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at his licensed premises to minors and allowed, permitted and suffered consumption of said alcoholic beverages by said minors

in and upon his licensed premises, in violation of Rule 1 of State Regulations No. 20 and (2) that during prohibited hours, he sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at approximately 11:00 p.m., December 4, 1954, ABC agents who were in defendant's licensed premises observed the bartender therein serve two rounds of beer to Edward ---, age 18, and John ---, age 19, without inquiring as to their age. At 11:20 p.m., the said minors purchased for off-premises consumption two bottles of beer which the bartender put in a paper bag, telling the minors to pick up the package which he placed on the floor at the far end of the bar. When the minors departed, the agents followed, identified themselves, seized the beer and returned with the minors to the licensed premises where they obtained signed sworn statements from the bartender and minors admitting the aforesaid violations.

Defendant has no prior adjudicated record. The minimum suspension for a sale of alcoholic beverages to eighteen and nineteen-year-old minors (Charge 1) is ten days. Re Toretch, Bulletin 929, Item 11. The minimum suspension for the offense involved in Charge (2) is fifteen days. Re Bohling, Bulletin 1036, Item 3. I shall suspend defendant's license for twenty-five days and remit five days for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of January, 1955,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Montville to Arthur P. Warren, t/a Warren's Bar & Grill, Bloomfield Avenue, Pine Brook, Montville Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 21, 1955, and terminating at 2:00 a.m. February 10, 1955.

WILLIAM HOWE DAVIS
Director.

5. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to)
the Transfer of a State Beverage)
Distributor's License held by)
EDWARD CICCARONE)
T/a ED CHICCO, Importer,)
from 1429 Absecon Boulevard,)
Atlantic City to 3506 Atlantic)
Avenue, Atlantic City, N. J.)

CONCLUSIONS

Leo J. Berg, Esq., Attorney for Applicant.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores Association and the Atlantic-Cape May County Liquor Stores Association, Objectors.
Sidney Simandl, Esq., Attorney for Atlantic City Licensed Beverage Association.

BY THE DIRECTOR:

Written objections were filed on behalf of the New Jersey Retail Liquor Stores Association, the Atlantic-Cape May County Liquor Stores Association and the Atlantic City Licensed Beverage Association alleging, in substance, that the area to which applicant seeks to transfer

is adequately served by the present retail outlets. The Board of Commissioners of the City of Atlantic City opposed the transfer on the ground that the area in question is now amply serviced by other retail licensees and that the location of the licensed premises on one of the main streets of Atlantic City would result in added traffic congestion.

At the hearing on these objections the applicant testified that his present premises at 1429 Absecon Boulevard is on the outskirts of Atlantic City, approximately 2-1/2 to 3 miles from the proposed new location at 3506 Atlantic Avenue; that he proposes to conduct a salesroom at said proposed new location and to sell beer and soda water there by the case. He further testified that, if the transfer is granted, he will occupy the new premises under a lease and sell his present premises which he now owns, reserving a small portion thereof for a warehouse. He also testified that, in his opinion, there are not sufficient outlets in the area surrounding the proposed new location; that, of the eight retail licensees in the general area, four conduct restaurant businesses and only one holds a plenary retail distribution license; and that he would make small deliveries from the new Atlantic City store but would continue to make most of his deliveries from the warehouse on Absecon Boulevard.

A representative of one of the objectors (the holder of a plenary retail distribution license on Atlantic Avenue) testified in opposition to the transfer and it was stipulated that three others (all holders of plenary retail distribution licenses) would testify to the same effect. Their principal objection was that applicant's present location is on the outskirts of Atlantic City in an area which is not built up and where there is but one retail licensee, whereas the proposed new location is in a built-up part of Atlantic City where there are dwellings, apartment houses and businesses, including a number of plenary retail consumption licensees and one large plenary retail distribution licensee. It was admitted that there were other state beverage distributor licensees in Atlantic City but, for the most part, it was contended that they were in a different kind of neighborhood (designated "warehouse areas") and that these licensees did not have or did not exercise the privilege of selling at retail. The objectors agreed with the local issuing authority with respect to the traffic hazard.

Generally speaking, the objection of the Associations is based upon the contention that the area to which the transfer is sought is adequately served by existing licensees. However, in considering this objection it must be borne in mind that the privileges of a state beverage distributor's license are state-wide and, thus, the question of public necessity and convenience cannot be determined on the narrow basis of the single municipality in which the prospective licensee would conduct its business or a particular section of that municipality. Re Variety Beers and Soda Distributors, Inc., Bulletin 1000, Item 6; Re Vigor Beverages Co., Inc., Bulletin 941, Item 9. Nevertheless, the transfer of a license, whether state or municipal, to another premises is not a privilege inherent in a license. Re Variety Beers and Soda Distributors, Inc., supra; Van Schoick v. Howell, Bulletin 120, Item 6. If good cause appears, an application for transfer may be denied in the discretion of the issuing authority. Re Variety Beers and Soda Distributors, Inc., supra; Re Warren, Bulletin 945, Item 6.

The objection of the Board of Commissioners is based on its belief that the transfer would result in added traffic congestion. While municipal consent is not a statutory prerequisite to the issuance of a state license, it must be recognized that the local governing body is in a position to be well informed on local conditions. Applicant admitted that he was aware of the fact that the Board of Commissioners "did not like the traffic conditions" and there is no denial that Atlantic Avenue is one of the city's heavily traveled thoroughfares. That traffic conditions may properly be considered in licensing matters, see Freed v. Wayne Township, Bulletin 802, Item 7.

Considering all of the circumstances, including the fact that applicant seeks to transfer his license from a location on the outskirts of the city, a distance of 2-1/2 to 3 miles to a location on a main thoroughfare in a built-up section of the city where he proposes to establish a salesroom, and in view of all of the aforementioned objections, particularly with respect to anticipated traffic congestion, I am unable to find that the proposed transfer will promote the general welfare.

For the reasons aforesaid, the application for transfer of the license will be denied.

WILLIAM HOWE DAVIS
Director.

Dated: January 12, 1955.

6. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES IN MOTOR VEHICLE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - HUSBAND OF REGISTERED OWNER OF MOTOR VEHICLE UNAWARE OF PRESENCE OF SUCH BEVERAGES IN CAR IN HIS POSSESSION - MOTOR VEHICLE RETURNED.

In the Matter of the Seizure on)	Case No. 8633
June 12, 1954 of a 5-gallon can)	
of alcohol and a Pontiac club)	
coupe, on Elizabeth Street near)	ON HEARING
Gaston Avenue, in the City of)	CONCLUSIONS AND ORDER
Garfield, County of Bergen and)	
State of New Jersey.)	

Julius E. Kramer, Esq., Attorney for Peter Iracane and Filomena Iracane.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a five-gallon can of alcohol and a Pontiac coupe, described in a schedule attached hereto, seized on June 12, 1954 on Elizabeth Street, near Gaston Avenue, Garfield, New Jersey, constitute unlawful property and should be forfeited.

On the above date police officers were investigating alleged gambling in a building in the above vicinity, and during the course thereof they inspected various motor vehicles parked nearby. One of these cars was the Pontiac coupe in question, in which they discovered the five-gallon can of alcohol. Thereupon the officers seized the car and alcohol, notified the Division of Alcoholic Beverage Control, and turned over such car and alcohol to its agents.

The can in which the alcohol was contained did not bear any label, or stamp indicating the payment of tax on alcoholic beverages. A sample of the alcohol was analyzed by the Division's chemist, who reports that it is alcohol and water fit for beverage purposes, with an alcoholic content by volume of 84.5 per cent.

When the matter came on for hearing pursuant to R. S. 33:1-66, Filomena Iracane, the registered owner of the Pontiac coupe, and her husband Peter Iracane, appeared and sought return of the motor vehicle. Peter Iracane claims that he drove the car to the vicinity of the building where the alleged gambling activities were being carried on, was one of the persons there when the place was raided, but that when he parked the car, he did not have the alcohol therein, and was not responsible for its presence. Peter Iracane and Filomena Iracane do

not deny that the five-gallon can of alcohol was actually found in the car, and do not oppose forfeiture of the alcohol.

Such alcohol is illicit because of the absence of a label or tax stamp on the can in which it was contained. R.S. 33:1-1(1), R.S. 33:1-88. It is actually bootleg alcohol. The illicit alcohol and the motor vehicle in which it was 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.

Normally a person is presumed to be aware of whatever there is in his car, and it is natural to be skeptical of any claim to the contrary, especially where there is bootleg alcohol in the car. Nevertheless, where a claimant has a law-abiding background, and gives a straightforward, logical and convincing account evidencing his innocence in the matter, he is afforded relief from forfeiture. Seizure Case No. 8669, Bulletin 1042, Item 11.

Peter Iracane does not appear to have any previous criminal record for violating any liquor law. He was employed legitimately for a number of years, although unemployed for the past year or two, when the concern by whom he was employed discontinued business. He and his wife had accumulated financial resources which they used during the period of his unemployment. There are overtones that he perhaps resorted to gambling. Aside from the incident in question, there are no such overtones that he resorted to bootlegging. While not controlling in these proceedings, it may be pointed out that the Bergen County Grand Jury recently dismissed the criminal proceedings against Peter Iracane arising out of his arrest for violating the Alcoholic Beverage Law. According to Peter Iracane, the car was parked for a considerable length of time. The windows of the car were not locked.

Why some unknown person should place the can of alcohol in the Iracane car is an unresolved question. Any number of possibilities present themselves, even that Iracane actually placed the can in his car. However, after careful consideration of all of the evidence presented, I shall give Peter Iracane the benefit of the doubt, and therefore find that he was not responsible for the presence of the alcohol in the Pontiac coupe. It is therefore unnecessary to determine whether his wife is actually the sole owner of the car, or whether Peter Iracane has a substantial interest therein.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 17th day of January, 1955, Filomena Iracane pays the costs incurred in the seizure and storage of the Pontiac coupe, described in Schedule "A" attached hereto, such motor vehicle will be returned to her; and it is further

DETERMINED and ORDERED that the can of alcohol 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. 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 the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS

Director.

Dated: January 5, 1955.

SCHEDULE "A"

- 1 - 5-gallon can of alcoholic beverages
- 1 - Pontiac Club Coupe, Serial No. W8PB8852,
1954 N. J. Registration YJ702.

7. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1954 THROUGH DECEMBER 31, 1954

	1st Quarter July, Aug., Sept.	2d Quarter Oct., Nov., Dec.	Total
ARRESTS:			
Total number of persons arrested	79	95	174
Licensees and employees	19	31	50
Bootleggers	60	63	123
ABC agent impersonator	0	1	1
SEIZURES:			
Motor vehicles-cars	16	14	30
-trucks	4	2	6
Still - over 50 gallons	10	5	15
- 50 gallons or under	7	8	15
Alcohol - gallons	0	680.00	680.00
Mash - gallons	7,006.50	31,371.00	38,377.50
Distilled alcoholic beverages - gallons	530.51	358.60	889.11
Wine - gallons	93.06	81.36	174.42
Brewed malt alcoholic beverages - gallons	192.23	36.81	229.04
RETAIL LICENSEES:			
Premises inspected	3,405	2,832	6,237
Premises where alcoholic beverages were gauged	1,553	1,972	3,425
Bottles gauged	29,199	34,501	63,700
Premises where violations were found	247	216	463
Violations found	330	284	614
Type of violations found:			
Unqualified employees	136	116	252
Other mercantile business	33	23	56
Disposal permit necessary	35	17	52
Reg. #38 sign not posted	29	22	51
Prohibited signs	12	3	15
Gambling devices	1	4	5
Probable fronts	2	0	2
Improper beer taps	1	1	2
Other violations	81	98	179
STATE LICENSEES:			
Premises inspected	43	11	54
License applications investigated	37	32	69
COMPLAINTS:			
Complaints assigned for investigation	1,389	1,258	2,647
Investigations completed	1,231	1,194	2,425
Investigations pending	(184)	158	158
LABORATORY:			
Analyses made	412	356	768
Refills (from licensed premises) - bottles	6	3	9
Bottles from unlicensed premises	115	112	227
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made	87	83	170
Persons fingerprinted for non-criminal purposes	694	488	1,182
Ident. contacts made w/other enforcement agencies	710	428	1,138
MV identifications via N.J.State Police teletype	9	14	23
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities	40	35	75
Violations involved:			
Sale during prohibited hours	24	18	42
Sale to minors	12	8	20
Permitting brawls on premises	2	1	3
Possessing chilled beer (DL licensee)	2	1	3
Permitting females at bar (local reg.)	1	2	3
Permitting bookmaking on premises	1	1	2
Possessing contraceptives on premises	1	0	1
Sale to intoxicated persons	1	0	1
Sale outside scope of license	0	1	1
Permitting hostesses on premises	0	1	1
Permitting gambling (prize fight pool, wagering)	0	1	1
Permitting slot machines on premises	0	1	1
Employing female bartender (local reg.)	0	1	1
Cases instituted at Division	46	49	95
Violations involved:			
Sale to minors	14	16	30
Sale during prohibited hours	13	11	24
Permitting immoral activity on premises	6	9	15
Hindering investigation	2	4	6
Misabeled beer taps	3	2	5
Permitting hostesses on premises	2	3	5
Unqualified employees	4	0	4
Possessing illicit liquor	3	1	4
Unauthorized transportation	2	2	4
Conducting business as a nuisance	1	3	4
Sale below minimum resale price	0	5	5
Sale outside scope of license	2	1	3
Fraud and front	0	3	3

	1st Quarter			2d Quarter			Total
	July,	Aug.,	Sept.	Oct.,	Nov.,	Dec.	
DISCIPLINARY PROCEEDINGS (Continued)							
Cases instituted of Division (Continued)							
Violations involved:							
Permitting gambling (cards) on premises	2			0			2
Permitting females at bar (local reg.)	2			0			2
Permitting lottery activity (raffle, numbers)	1			1			2
Sale to non-members by clubs	1			1			2
Wholesaler accepting unauth. returns from retailer	1			0			1
Solicitor selling to consumers	1			0			1
Sale during license suspension	1			0			1
Permitting female impersonators on premises	1			0			1
Permitting foul language on premises	0			1			1
Violation of special ruling	0			1			1
Permitting bookmaking on premises	0			1			1
Permitting pin ball machine on premises	0			1			1
Possessing contraceptives on premises	0			1			1
Act of violence on premises	0			1			1
Possessing indecent advertising matter	0			1			1
Cases brought by municipalities on own initiative and reported to Division	27			42			69
Violations involved:							
Sale to minors	21			23			44
Permitting brawls on premises	2			9			11
Sale during prohibited hours	3			6			9
Permitting immoral activity on premises	0			3			3
Permitting bookmaking on premises	1			1			2
Conducting business as a nuisance	1			1			2
Hindering investigation	0			2			2
Failure to afford view into premises during prohibited hours	0			2			2
Sale to intoxicated persons	0			2			2
Permitting gambling (wagering) on premises	1			0			1
Service in private room (local reg.)	1			0			1
Failure to display license certificate	0			1			1
Permitting prostitutes on premises	0			1			1
Permitting lottery activity (football pool, lottery slips)	0			1			1
Permitting persons of ill repute on premises	0			1			1
Permitting foul language on premises	0			1			1
Aiding and abetting sale without license	0			1			1
HEARINGS HELD AT DIVISION:							
Total number of hearings held	113			107			220
Appeals	22			13			35
Disciplinary proceedings	40			47			87
Eligibility	20			19			39
Seizures	20			21			41
Tax revocations	5			5			10
Applications for license	6			2			8
STATE LICENSES AND PERMITS ISSUED:							
Total number issued	19,413			4,452			23,866
Licenses	933			13			946
Employment permits	662			420			1,082
Solicitors "	2,938			161			3,099
Disposal "	212			298			510
Social affair "	1,086			1,055			2,141
Special wine "	1			1,422			1,423
Miscellaneous "	640			470			1,110
Transportation insignia	12,828			579			13,407
Transportation certificates	113			35			148

WILLIAM HOWE DAVIS
Director.

Dated: January 12, 1955.

8. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE USED IN CONNECTION THEREWITH RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on)
September 25, 1954 of a still,)
appurtenant equipment, a quantity)
of alcohol and a G.M.C. truck in)
woodland east of Route 73, near)
Cooper Road, in Voorhees Township,)
County of Camden and State of New)
Jersey.)

Case No. 8716

ON HEARING
CONCLUSIONS AND ORDER

-----)
Alfred M. Bradley, t/a Bradley's Automotive Service, Pro Se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapters 1 and 2, Revised Statutes of New Jersey, to determine whether a still, appurtenant equipment, a quantity of alcohol, and a G.M.C. truck, described in a schedule attached hereto, seized on September 25, 1954 in woodland east of Route 73, near Cooper Road, Voorhees Township, New Jersey, constitute unlawful property and should be forfeited.

New Jersey State Troopers discovered and seized the still on the above date and location. They also seized the truck, which was parked in the vicinity of the still, and three hundred pounds of sugar which were on the ground near the truck. The seizure included about a gallon of illicit alcohol, fit for beverage purposes, with an alcoholic content by volume of 43.6 per cent. Jonous Ferman McGee and William Fletcher were arrested at the scene of the seizure. The license plates on the truck had been issued to Bradley's Automotive Service.

The Division of Alcoholic Beverage Control was notified and the seized property was turned over to its agents. The still was not registered with the Director of the Division of Alcoholic Beverage Control, as required by R.S. 33:2-1.

When the matter came on for hearing pursuant to R.S. 33:1-66 and R.S. 33:2-4, Alfred M. Bradley appeared and sought return of the truck. No one opposed forfeiture of the balance of the seized property.

The unregistered still and other property seized therewith constitute unlawful property and are subject to forfeiture. R.S. 33:2-2, R.S. 33:2-5. The inference is justified that the truck was used to transport sugar to the still, and intended for the transportation of illicit alcohol. Such truck and the illicit alcohol constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66.

Alfred M. Bradley does not controvert the above facts, as established by reports of ABC agents and other documents in the file, which were admitted into evidence with his consent. He claims that he is the owner of the truck, and loaned it to McGee in good faith, unaware that McGee would use it in unlawful alcoholic beverage activity.

According to Bradley's testimony he has been in the automobile repair business for about 12 years. He has known McGee for two or three years, and understood that McGee was a plumber and was also employed by a real estate concern. In January 1954 Bradley exchanged his Ford sedan for McGee's truck. Bradley was unable to obtain a Certificate of Title to the truck because of an unpaid balance thereon

due to a finance company, of which Bradley was not informed at the time of the exchange. In the meantime Bradley placed his dealer's plates on the truck and used the truck in his business. On various occasions Bradley permitted McGee to borrow the truck. On September 20, 1954 McGee brought the Ford to Bradley's shop for repairs, and borrowed the truck pending completion of the repairs. On September 25, 1954 the truck was seized as aforesaid. Thereafter Bradley obtained a formal Certificate of Title from the motor vehicle authorities of the State of Pennsylvania. The file discloses that at the time of the seizure one of the troopers was informed that the truck was owned by McGee and might still be registered in his name; that McGee had purchased a car and was trading in the truck; that McGee had an accident with the car, and, while repairs were being made thereon, McGee was using the truck, which bore license plates issued to Bradley Automotive Service.

The transaction described by Bradley does not appear improbable. Bradley had a shop for repair of motor vehicles. He was not generally in the business of selling motor vehicles. Hence, since he had dealer's plates available, he would not have urgent need for the formal title to the truck in order to use the truck in his business. Evidently he did not deal at arm's length with McGee, which may explain why he did not press McGee to pay the small amount due the finance company and transfer formal title to Bradley.

Needless to say, the acquisition of title, formal or otherwise, to a motor vehicle after its seizure for a violation of the Alcoholic Beverage Law, will not be recognized, and will be disregarded in the present instance. However, the other evidence above referred to tends to establish that Bradley is the actual owner of the truck. His failure to obtain transfer of the Certificate of Title contemporaneous with the sale seemingly does not invalidate the sale. Cf. Majors v. Majors, 37 A. 2d. 528, 349 Pa. 334, Seizure Case No. 8486, Bulletin 1015, Item 8.

I am advised that Bradley, by his demeanor and conduct at the hearing, appeared to be honest and convincing. I shall therefore give him the benefit of any doubt, and accordingly find that he has satisfactorily established that he was the owner of the G.M.C. truck at the time of its seizure.

McGee does not appear to have any previous criminal record for violating any liquor laws. Although Bradley permitted McGee to use the truck on various occasions, it was ostensibly for use to transport McGee's plumbing tools and equipment, and it does not appear that Bradley knew, or had any reason to suspect, that McGee would use the truck in connection with the illicit still activities. The G.M.C. truck will be returned to Alfred M. Bradley upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 17th day of January, 1955, Alfred M. Bradley pays the costs of seizure and storage of the G.M.C. truck, said truck will be returned to him; and it is further

DETERMINED and ORDERED that the balance of 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 R.S. 33:2-5, 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.

WILLIAM HOWE DAVIS
Director.

Dated: January 5, 1955.

SCHEDULE "A"

- 1 - one gallon of alcohol
- 6 - 100 gallon barrels with mash
- 4 - 100 gallon empty barrels
- 1 - gooseneck
- 1 - copper coil
- 1 - dephlegmator
- 1 - hydrometer
- 1 - stove base
- 1 - stove hood
- 1 - 100 gallon cooker
- 2 - 55 gallon drums
- 1 - tub
- 1 - bucket
- 18 - 5 gallon cans
- 300 - lbs. of sugar
- 20 - lbs. of coke
- 12 - lbs. of yeast
- 1 - tarpaulin
- 1 - G.M.C. truck, Serial No. FC10118749, Engine No. 2136477-A.L., 1954 Pennsylvania Registration 1X632

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 RED ROBIN CAFE & RESTAURANT, INC.
 414 - 38th St.
 Union City, N. J.,
 Holder of Plenary Retail Consumption License C-222, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

 Irving Edelstein, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to two minors, and allowed, permitted and suffered the consumption of alcoholic beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

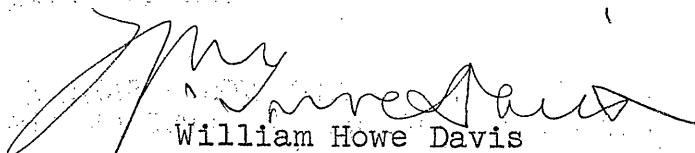
The file herein discloses that on December 10, 1954, ABC agents, who were in defendant's licensed premises, observed Pvt. Simone --- (age 18) and Joseph --- (age 19) enter with two adult males. In the presence of the agents, the bartender served drinks of alcoholic beverages, paid for by one of the adults, to the four patrons and, as the two minors were consuming beer served to them, the agents made known their identity and seized the beer for evidential purposes. Both minors admitted that they had told the bartender they were of full age but each denied that he had represented in writing that he was twenty-one years of age or over.

Defendant has a prior adjudicated record. Effective July 7, 1942, its license was suspended for five days by the local issuing

authority for "refilling." Since the prior violation occurred more than ten years ago, it will not be considered in fixing the instant penalty. I shall suspend defendant's license for ten days (the minimum suspension for sale of alcoholic beverages to eighteen and nineteen-year-old minors). Re Toretch, Bulletin 929, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 19th day of January, 1955,

ORDERED that Plenary Retail Consumption License C-222, issued by the Board of Commissioners of the City of Union City to Red Robin Cafe & Restaurant, Inc., for premises 414 - 38th Street, Union City, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. January 31, 1955, and terminating at 3:00 a.m. February 5, 1955.


William Howe Davis
Director.