

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

BULLETIN 1798

July 10, 1968

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July 10, 1968

1. COURT DECISIONS - IN RE CROSS KEYS HOTEL & REST., INC. -
DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-402-67

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CROSS KEYS HOTEL & REST., INC.
37 W. Cherry Street
Rahway, New Jersey

Holder of Plenary Retail Consumption
License C-15, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Rahway.

Argued May 13, 1968 - Decided June 3, 1968

Before Judges Conford, Collester and Labrecque

On appeal from Director, Division of Alcoholic
Beverage Control

Mr. Francis C. Foley argued the cause for
appellant Cross Keys Hotel and Rest., Inc.
(Messrs. Foley and Gazi, attorneys).

Mr. Michael J. Mehr, Deputy Attorney General,
argued the cause for respondent Division of
Alcoholic Beverage Control (Mr. Arthur J. Sills,
Attorney General of New Jersey, attorney).

The opinion of the court was delivered by

LABRECQUE, J.A.D.

(Appeal from Director's decision in Re Cross Keys Hotel
& Rest., Inc., Bulletin 1771, Item 1. Director affirmed.
Opinion not approved for publication by the Court committee
on opinions.)

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSIONS STAYED DURING PENDENCY OF APPEALS.

In the Matter of Disciplinary Proceedings against)

CROSS KEYS HOTEL & REST., INC.)
37 W. Cherry Street)
Rahway, New Jersey)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-15 issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway)

Francis C. Foley, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Leon Chorkavy, Jr., Esq., and David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On November 14, 1967, an order was entered herein (file S-7316) suspending the license for ninety days effective November 21, 1967, for renting of rooms for purposes of illicit sexual intercourse. Re Cross Keys Hotel & Rest., Inc., Bulletin 1771, Item 1.

On April 24, 1968, I entered an order herein (file S-7469) suspending the license for thirty-five days effective May 1, 1968, for possession of alcoholic beverages not truly labeled. Re Cross Keys Hotel & Rest., Inc., Bulletin 1797, Item 3.

Prior to the effectuation of the orders of suspension, on respective appeals filed, the Appellate Division of the Superior Court stayed the operation of the suspensions until the outcome of the appeals.

The court affirmed the Director's action in the first case on June 3, 1968. In re Cross Keys Hotel & Rest., Inc., (App.Div. 1968), not officially reported, recorded in Bulletin 1798, Item 1.

Although mandate on affirmance had not yet been received, licensee's attorney has advised that no further appeal will be taken; that the appeal in the second case would be withdrawn by stipulation of dismissal to be filed; and has requested that penalty be imposed as soon as possible. Hence, the total suspension of one hundred twenty-five days may now be reimposed.

Accordingly, it is, on this 7th day of June, 1968,

ORDERED that Plenary Retail Consumption License C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway to Cross Keys Hotel & Rest., Inc. for premises 37 West Cherry Street, Rahway, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1968, commencing at 2:00 a.m. Tuesday, June 11, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Monday, October 14, 1968.

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING, NUMBERS BETS) - SALE TO A MINOR - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JENNIE MERCURIO, SAM MERCURIO and FRANK MERCURIO
61 - 14th Street
Hoboken, New Jersey

CONCLUSIONS AND ORDER

 Holders of Plenary Retail Consumption License C-97 issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken

Licensees, by Sam Mercurio, Pro se
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) on February 2, March 2 and 23, 1968, they permitted the playing of card games for money stakes on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) on March 23, 1968, they possessed or permitted a numbers bet slip on the licensed premises, in violation of Rule 6 of State Regulation No. 20.

In addition, the licensees entered a technical plea of not guilty to charge (3) alleging that on March 23, 1968, they sold a drink of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20, such plea being accompanied by the statement that "we admit that this boy was served drinks, but only after he showed us a driver's license with the age of 21 or 22. We waive hearing on this charge and leave finding up to the director."

With respect to the third charge, it is well established that the mere display by the minor of a driver's license to evidence age constitutes no defense as a matter of law to a charge alleging violation of the applicable regulation. See the Special Note to Rule 1 of State Regulation No. 20 appearing at pages 86 and 87 of the 1967 pamphlet state regulations. Hence, in view of the admission of the sale, I find the licensees guilty of this charge.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Addas, Bulletin 1779, Item 8), on the second charge for sixty days (cf. Re Lenron, Inc., Bulletin 1789, Item 5) and on the third charge for fifteen days (Re Norwood Restaurant & Lounge, Inc., Bulletin 1787, Item 6), or a total of ninety days, with remission of five days in view of the confessional plea entered to the first two charges and the lack of contest to the third charge, leaving a net suspension of eighty-five days.

Accordingly, it is, on this 6th day of May, 1968,

ORDERED that Plenary Retail Consumption License C-97, issued by the Municipal Board of Alcoholic Beverage Control of the

City of Hoboken to Jennie Mercurio, Sam Mercurio and Frank Mercurio for premises 61 - 14th Street, Hoboken, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1968, commencing at 2:00 a.m. Monday, May 13, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, August 6, 1968.

JOSEPH M. KEEGAN
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION, STORAGE AND POSSESSION OF ALCOHOLIC BEVERAGES - CLAIM FOR RETURN OF MONEY DEPOSITED ON STIPULATION AND OF ALCOHOLIC BEVERAGES DENIED - DEPOSITED CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on March 16, 1965 of a quantity of alcoholic beverages and a 1963 Chevrolet Van Type Truck at 303 Washington Street, in the City of Jersey City, County of Hudson and State of New Jersey, and in the Matter of the Seizure on March 17, 1965 of a quantity of alcoholic beverages at 504 Clinton Avenue, in the City of Newark, County of Essex and State of New Jersey.) Case No. 11,446
)
) ON HEARING
) CONCLUSIONS
) AND ORDER

Charles H. Tuttle, Esq., appearing for claimants, Louis L. Epstein and Julius Epstein, t/a Stratford International Tobacco Co.
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 the provisions of R.S. 33:1-66 and State Regulation No. 28, and further, pursuant to a cash certificate in the sum of \$2,000.00 deposited with the Director of Alcoholic Beverage Control by Louis L. Epstein and Julius Epstein, t/a Stratford International Tobacco Co., (hereinafter Stratford), to determine whether 420 containers of alcoholic beverages and one 1963 Chevrolet Van Type Truck, seized on March 16, 1965 at 303 Washington Street, Jersey City, New Jersey and 180 containers of alcoholic beverages seized on March 17, 1965 at premises 504 Clinton Avenue, Newark, New Jersey, constitute unlawful property and should be forfeited; and further, to determine whether the said sum of \$2,000.00 deposited by Stratford, under protest, as evidenced by the aforesaid cash certificate, representing the appraised retail value of the Chevrolet truck, (which was released to Stratford) set forth in the said cash certificate, should be forfeited or returned to it.

When the matter came on for hearing pursuant to R.S. 33:1-66, Stratford, represented by Charles H. Tuttle, Esq., (an attorney admitted to the bar of the State of New York, who was granted permission to represent Stratford at this hearing) entered a special appearance.

In a prepared statement admitted into evidence, counsel for Stratford argued as follows:

"(1) That this division respect the decision and judgment of the United States District Court of New Jersey (three judges sitting), reported in 261 F. Supp. 192, and summarily affirmed by the United States Supreme Court on October 16, 1967;

"(2) That, as to the merchandise specified in the notice of this hearing as seized on March 16, 1965, it be returned forthwith;

"(3) That the sum of \$2,000 referred to in the notice of hearing as having been deposited 'under protest,' be returned forthwith, with interest thereon."

He makes a further demand that the "seized automobile truck specified in the notice of this hearing as seized on March 16 - 17, 1965, it be returned forthwith".

This demand obviously has no factual validity since the said motor vehicle had heretofore been returned to the claimant upon the posting of the cash certificate hereinabove referred to.

In support of these "demands", counsel for the claimant advocated that:

"(1) the seizure was an unlawful invasion of the business rights and the property rights of (Stratford), authorized by and conducted under license of the Federal Government pursuant to its exclusive jurisdiction over foreign commerce;

"(2) the seizure was made on the predicate of a demand and condition by the Director which the afore-said controlling decisions by the United States District Court and the United States Supreme Court have determined that he had no lawful right to require, and to impose on the lawful federally licensed business in foreign commerce in which (Stratford was) engaged;

"(3) the seizure was in violation of the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States;

"(4) the seizure was in violation of Article 1, Section 8 (3) and Article III, Section 2(1) and (2) of the same Constitution; and

"(5) In consequence, the Director has no lawful right or power to continue the illegal seizure, or to proceed at or by this hearing, or the procedure stated in the notice thereof, to impose or effect the forfeitures or penalties proposed and threatened in the notice of this hearing.

"Accordingly, my position on this special appearance is that the demands heretofore made by (Stratford) and by me on (its) behalf for the return of what has been seized were demands as of right, and should have been complied with, and that this hearing cannot lawfully be set up or conducted in frustration of those rights."

Upon completion of presentation of this statement, the attorney for the claimant withdrew from the hearing and refused to participate further therein.

In order to obtain a proper perspective of the issues to be considered at this hearing, it would be well to preface a summary and evaluation of the testimony developed herein with a brief history of the proceedings which preceded and led up to the institution of the instant proceedings.

Stratford conducts its business as a partnership under the name "Stratford International Tobacco Co.", at premises 504 Clinton Avenue, Newark, which premises are not licensed by the State of New Jersey. Stratford is primarily engaged in the sale of tax-free tobaccos to ships in the Port of New York which includes some 15 ports in the State of New Jersey. As a concomitant to this business it also sells tax-free liquor to the ships pursuant to Federal permits. Claimant purchases its liquor from foreign and domestic distributors and stores it in federally bonded warehouses in the State of New Jersey. The liquor is delivered in claimant's trucks from its warehouse to the ships docked at the piers. The liquor is then sold by the ship owners to the ships' passengers beyond the limit of the jurisdiction of New Jersey.

In March, 1963 claimant applied to the Division for a plenary wholesale liquor license for the 1962-63 licensing year expiring June 30, 1963. The Alcoholic Beverage Act does not provide for a special license for sale of tax-free liquor in bond. Such sales may be made under a plenary wholesale license of which some 75 licenses had been issued in this State (in 1964). In its application Stratford represented that it intended to sell alcoholic beverages to ships docked at the New Jersey piers for consumption beyond the territorial limits of the United States.

The Division expressed a willingness to grant such license to cover such tax-free activity, subject to the same condition imposed on Marine Tobacco Co., the only other licensee so engaged in this State, namely, that no sales of alcoholic beverages will be made in New Jersey under such license except such as are made in bond to steamship companies to become part of ships' stores for use beyond the jurisdiction of this State. The Director held that Stratford was not entitled to an unrestricted license on the basis of the limited "public need" adduced at the hearing, but that the Director was authorized to issue to Stratford a restricted plenary wholesale license as aforesaid. Re Epstein, Bulletin 1565, Item 3. The applicants refused to accept a limited license, and insisted upon a plenary license without restrictions or conditions. An appeal from the Order of the Director was taken to the Appellate Division of the Superior Court which affirmed the ruling of the Director with respect to the granting of a limited license. Epstein v. Director of Alcoholic Beverage Control, App. Div. A-98-63 (May 21, 1964), not approved for publication, cert. denied 43 N.J. 260 (1964).

In its per curiam decision, the Court observed that the plaintiffs did not attempt to show that there was a public need or necessity for another plenary wholesale license as such. All that the Director said was that there was a need for an additional license in the particular area for sales of tax-free liquor in bond to ships' stores. Thus, the Director properly found that the applicant did not establish that there was a need in New Jersey for a "plenary wholesale license" "without any limitations or conditions"; therefore, the application was properly denied. Epstein v. Director of Alcoholic Beverage Control, supra.

Thereafter, on March 6, 1964 the claimant applied for a Class D liquor transportation license. It was stipulated that notwithstanding their failure to obtain a wholesale State license they had continued to solicit and sell tax-paid liquor to ships' docks in New Jersey.

At this point, for the first time in the State proceedings, Stratford formally challenged the constitutionality of requiring a wholesale license for its business. The Director held that Stratford's wholesale and sales activity was subject to New Jersey Alcoholic Beverage Law, "within the confines of the Twenty-First Amendment as it relates to the commerce clause". The Director concluded that since Stratford did not procure a wholesale license for its solicitation and sale of tax-free liquor it could not be granted a transportation license to transport liquor for such unlicensed activity. Re Epstein, Bulletin 1597, Item 7.

In short, the Director held that since Stratford did not hold a New Jersey license to sell or solicit the sale of tax-free liquor (in that Stratford refused said license) Stratford would not be entitled to a limited transportation permit to transport the liquor which it was selling in violation of the laws of New Jersey. The denial of a transportation license was also appealed to the New Jersey Superior Court, Appellate Division. Pending that appeal the Director wrote Stratford in 1965 noting it "had made specific sales" as hereinabove described. The letter warned it "to discontinue the sale and delivery of alcoholic beverages particularly to ships docked at New Jersey piers".

Before the Appellate Division could hear the matter, an action was instituted in the United States District Court and a three judge court was constituted and convened to consider the matter, in accordance with 28 U.S.C. Sec. 2281. The Court decided that Stratford's activities were protected by the commerce clause and were beyond New Jersey's power under the Twenty-First Amendment. The Court further held that the applicability of the New Jersey statute was outside the ambit of the Twenty-First Amendment and was an impermissible restraint on foreign commerce. Epstein v. Lordi, 261 Fed. Sup. 921 (D.C., N.J. 1966). Accordingly, the Court enjoined the State from enforcing or attempting to enforce N.J.S.A. 33:1-11 against Stratford. An appeal from this decision was taken to the United States Supreme Court where it was affirmed on October 16, 1967 (two Justices noted probable jurisdiction and would have set the case for oral argument).

We pause at this point to explain that the pivotal consideration of the three man Court in Epstein v. Lordi, *supra* (261 Fed. Sup. 921) related to the matter of constitutional permissibility of the requirement of R.S. 33:1-11 as applied to Stratford.

"N.J.S.A. 33:1-11, insofar as pertinent, provides as follows:

'Class B licenses; subdivisions; fees:

'Class B licenses shall be subdivided and classified as follows:

'Plenary Wholesale license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute alcoholic beverages

to retailers and wholesalers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom; provided, however, that the delivery of such alcoholic beverages by the holder of this license to retailers licensed under this Title shall be from inventory in a warehouse located in New Jersey which is operated under a plenary wholesale license. The fee for this license shall be \$3,000.00"

The State of New Jersey has been restrained from regulating, by way of its sales and distribution licensing scheme, commercial transactions which are completely consummated within this State's jurisdiction, which include the solicitation, sale and actual delivery of alcoholic beverages by a wholesaler domiciled in this State to retailers who are ship owners located in this State.

The Court thus concluded that New Jersey's regulatory scheme as announced in the provisions of the aforementioned section when applied to Stratford placed an unconstitutional burden on the commerce clause of the United States Constitution so as to be repugnant or inconsistent with the said commerce clause, and violative thereof. It held that its applicability was an impermissible restraint on foreign commerce as it related to the plaintiff since it imposes an undue burden, and subjects Stratford to inherently excessive State Regulation. Accordingly, it enjoined the Director from requiring Stratford to acquire a plenary wholesale license under the aforementioned section where its complete commercial transaction, including solicitation, sale and actual delivery of tax-free, in-bond liquor occurs within the State of New Jersey.

However, the Court hastened to point out that New Jersey contains wide latitude in the exercise of its police power "to regulate matters of local concern even though interstate commerce is incidentally affected; and, as we have noted, this scope is exceptional in the case of intoxicants". 261 Fed. Sup. at p. 941.

The Court explicitly counselled that:

"Through cooperation with Customs authorities, New Jersey can obtain considerable information for its own efforts to keep tabs on plaintiffs' local inventories and their disposition. Whatever additional safeguards New Jersey might legitimately require to supplement and corroborate the existing Federal controls could also be accomplished via the less restrictive and less burdensome device of the transport Class D license for which the plaintiffs have applied." 261 Fed. Sup. 938.

R. S. 33:1-13 reads as follows:

"Class D licenses shall be as follows:

"Transportation license. The holder of this license shall be entitled, subject to rules and regulations, to transport alcoholic beverages into, out of, through and within the state of New Jersey and to maintain a

warehouse. The fee for this license shall be two hundred dollars."

"Such a license, issued under N.J.S.A. 33:1-13 and augmented by rules appropriate to its scope, would provide ample authority to permit some supervision of the liquor's transport and transfer until it left the State on board the departing vessels. The fact that Class D licenses would not support regulation of the sales transactions themselves is of no moment; for whatever Stratford's terms of sale, method of solicitation or means of competition, it is the physical movement and storage of the liquor itself which creates the opportunities for diversion. And the physical control would be ensured by the web of Federal and State inspection and custody." 261 Fed. Sup. 938.

The Court emphasized that the validity of the transportation license requirement was not before it since the plaintiffs had agreed to accept one, and added "If its implementation leads to rules applied to Stratford which are challenged as outside the sphere permitted New Jersey by Hostetter and Ammex, that too will be 'another case for another day.'" See Epstein v. Lordi, Note 19, 261 Fed. Sup. at p. 938.

Questions Presented at the Seizure Hearing

Stratford contends that Epstein v. Lordi, supra (261 Fed. Sup. 921, affirmed by the United States Supreme Court October 16, 1967) "should be a sufficient record for an immediate release of the seized properties and render the proposed hearing unnecessary."

The Division contends, however, that the transportation by Stratford of alcoholic beverages without having first obtained a transportation license, and which were transported in an unlicensed motor vehicle was illegal. Also violative of the Statute was its possession of 15 cases of alcoholic beverages, stored outside the "in bond" control of the Customs Bureau, which were seized on March 17, 1965. Thus, bearing on these issues will be the applicability of the aforementioned Federal decision to the two factual situations involving the said seizures.

The specific issues to be resolved at this hearing include:

1. As to the seizure on March 16, 1965, whether such vehicle was transporting alcoholic beverages without requisite New Jersey license in violation of R.S. 33:1-2 which prohibits anyone from transporting alcoholic beverages in New Jersey without first obtaining a transportation license.
2. If so, whether the owner of the said vehicle "acted in good faith", and "unknowingly violated the provisions" of the New Jersey Alcoholic Beverage Law within the meaning of R.S. 33:1-66(e) and Rule 3(b) of State Regulation No. 28.
3. As to the seizure on March 17, 1965, whether the 15 cases in question were possessed with intent to sell the same without a license in violation of R.S. 33:1-2 which prohibits anyone from selling alcoholic beverages in New Jersey without first obtaining a license. Such activity comes within the provisions of R.S. 33:1-66(b).

Facts Elicited At This Seizure Hearing

The file of this Division which was supplemented by testimony of ABC Agents B & L reflects the following:

Pursuant to a specific complaint that Stratford was illegally transporting alcoholic beverages in unlicensed vehicles in the State of New Jersey, and was also warehousing alcoholic beverages in an unlicensed warehouse, ABC Agents B & L visited the premises of the Rapid Trucking Co. at 303 Washington Street, Jersey City on March 16, 1965. The Rapid Trucking Co. is a licensed carrier and had been transporting products for Stratford. In a conversation with John Hummel, traffic manager with Rapid, Hummel stated that he was under the impression that Stratford had been issued a license by this Division authorizing it to engage in the liquor business; and that is the reason why he had, on prior occasions, transferred liquor to Stratford's motor vehicles.

At about 3:00 P.M. on the above date, a vehicle bearing the name of Stratford International Tobacco Co. was driven into the yard of the Rapid Trucking Co. and when its (Stratford's) driver observed the ABC agents, he re-entered his truck and drove off. About 15 or 20 minutes later, Louis Epstein, one of the partners of Stratford, telephoned Hummel, who answered the phone in the presence of the agents, and asked whether the "visitors" were still around. When Hummel assured him that they were not there, Epstein informed him that he was going to send the truck down to pick up the merchandise, namely, 35 cases of alcoholic beverages.

The agents, thereupon, left the premises and parked their vehicle at a point of observation. They noted that, within a few minutes, the van type truck, bearing the legend, "Stratford International" was driven into the yard, backed into another truck which had previously come from the Harborside Warehouse, and the driver unloaded the cases of alcoholic beverages from the Rapid Truck onto the Stratford vehicle. When the Stratford Truck was driven into the street, it was intercepted by the agents, who then questioned the driver, identified as Nicholas Kiballo. In the truck were found 35 full cases of assorted liquor which Kiballo admitted were to be delivered to the Newark warehouse of Stratford.

In a signed statement, the driver stated that he was instructed by "Larry" Epstein to make this pickup at Rapid's for delivery to Stratford's warehouse. It was ascertained that "Larry" is a nickname for Louis Epstein. The truck did not bear any Federal or State insignia authorizing it to transport alcoholic beverages in the State of New Jersey.

The driver admitted that he did not have in his possession any transit insignia or permit issued either by the United States Customs Service or by this Division. The truck and the alcoholic beverages were, thereupon, seized and taken to the warehouse of this Division.

Based upon the driver's statement, the agents obtained a search warrant in the Superior Court, Essex County, authorizing them to search the warehouse of Stratford, located at 504 Clinton Avenue, Newark.

After serving the said warrant on Louis Epstein, the agents seized the 15 cases. This warehouse is located in an old "bank building" which serves also as a warehouse for Stratford's cigarettes and vehicles. A check of the United States Customs' record at Harborside Warehouse revealed that the 35 cases aboard Stratford's unlicensed truck were released for 15 ships docked at the New Jersey and New York docks.

The 15 cases found in Stratford were traced to a single delivery consigned to Steamship South Pole, Brooklyn, New York which was released on March 9, 1965 to Rapid Trucking Co. and intercepted by Stratford at Rapid's Terminal on the same date. It was ascertained that the Steamship South Pole had arrived in Brooklyn on March 7, 1965 and sailed on March 8, 1965. This information came from United States Customs Agent Adam Olszewski, who reported that the United States Customs had overlooked this shipment, which should have been returned to the Customs' bonded warehouse when the shipment was not consummated.

It is thus clear from the above facts that the Rapid Trucking Co. permitted Stratford to pick up alcoholic beverages at its New Jersey terminal in its unlicensed vehicle. It is also evident that Stratford transported the alcoholic beverages in the said unlicensed vehicle which did not have a transit insignia or any markings of the United States Customs affixed thereto and stored the alcoholic beverages in an unlicensed warehouse. The warehouse at 504 Clinton Avenue, Newark, is not a federally bonded warehouse.

The agents questioned Louis Epstein who asserted that the 15 cases had been consigned to a ship by the name of "Michael L"; that the alcoholic beverages were to be delivered on March 8th; that the "Michael L" sailed on March 8th before Stratford could make the delivery; and the 15 cases were delivered to Stratford's warehouse and consequently consigned to another consignee. The 15 cases originally came from the "in bond" warehouse of Harborside Terminal.

Findings of Fact and Conclusions of Law

1. I find that the decision in Epstein v. Lordi does not render constitutionally impermissible the applicability of R.S. 33:1-13 requiring Stratford to obtain a transportation license prior to transportation and delivery of alcoholic beverages within the State of New Jersey.
2. Stratford did not have a license authorizing the transportation of alcoholic beverages in the State of New Jersey.
3. Stratford was transporting alcoholic beverages without the requisite New Jersey transportation license in an unlicensed vehicle which did not bear any transit insignia affixed thereto or an inscription painted thereon in violation of Rule 2 of State Regulation No. 17. Furthermore, the vehicle did not even contain any transit insignia issued by the United States Customs Service nor did the operator of the said vehicle have in his possession any special permit or license authorizing him to transport said alcoholic beverages. The Alcoholic Beverage Law provides that it shall be unlawful to transport alcoholic beverages without a license except in limited amounts for personal consumption as defined in R. S. 33:1-2. Any alcoholic beverages unlawfully transported are illicit. R.S. 33:1-1(i). All such illicit

beverages and the vehicle in which they were transported are, therefore, unlawful property. R.S. 33:1-1(y).

Such unlawful property must be seized by any officer knowing or having any reasonable cause to believe it to be unlawful property. R.S. 33:1-66(a). Seizure Case No. 11,670, Bulletin 1701, Item 4; Seizure Case No. 10,707, Bulletin 1467, Item 4; Seizure Case No. 10,701, Bulletin 1448, Item 5. Therefore, the seizure of the said property by this Division's agents was lawful, and, indeed, statutorily commanded.

4. Where the Director is satisfied that the claimant has acted in good faith and has unknowingly violated the law, he may order the return of the property upon payment of reasonable costs incurred. Rule 3(b) of State Regulation No. 28; R.S. 33:1-66(e).

Since it is clear that Stratford knowingly and willfully transported alcoholic beverages on March 16, 1965, without having first obtained a transportation permit, and transported the said alcoholic beverages in an unlicensed vehicle, the Director is without authority to return either the alcoholic beverages or the motor vehicle in which they were so transported.

Accordingly, the said alcoholic beverages and the truck in which they were transported constitute unlawful property and should be forfeited. R.S. 33:1-2; R.S. 33:1-1(i & y); R.S. 33:1-66; Seizure Case No. 10,701, supra. I therefore recommend that the claim of Stratford for the return of the alcoholic beverages be denied; and that the cash certificate in the sum of \$2,000.00 deposited with the Director by Stratford, under protest, representing the retail value of the said Chevrolet, as appraised for the Director, and set forth in the cash certificate, be ordered forfeited.

5. As to the 15 cases of alcoholic beverages seized in Stratford's warehouse: The record established that this warehouse was not federally bonded, thus, the liquor stored therein was not under United States Customs Control.

In Epstein v. Lordi, supra (261 F. Supp. at p. 937), the Court stated:

"The local interest is clearly defined. Assertion of the police power over federally supervised liquor in bond is predicated on the danger of diversion; to the extent that it minimizes this danger, the Federal scheme, while not pre-empting State action, reduces its justifiable scope."

The Court noted further that, in the matter then before it, the Director had not alleged or proved any diversion of Stratford's merchandise to users within New Jersey (at p. 938).

6. However, the record in the matter sub judice plainly establishes that there was such diversion, or at least, the opportunity for diversion of Stratford's merchandise. The 15 cases of liquor were diverted from a federally bonded warehouse to Stratford's unbonded facility. The said movement to this uncontrolled warehouse afforded Stratford the very opportunity for diversion to users within the State of New Jersey which the Alcoholic Beverage Law seeks to prevent.

Under these circumstances, it is crystal clear, and the inference may be properly drawn, that the said merchandise was taken out of the continuous path of exportation for use in foreign commerce. Its storage in the unbonded warehouse constituted a violation of R.S. 33:1-2, and made it subject to the provisions of R.S. 33:1-66.

Accordingly, I find that the 15 cases in question were possessed with intent to sell the same without a license in violation of R.S. 33:1-2. I, therefore, recommend that the claim for the return of the said alcoholic beverages seized on March 17, 1965 be denied, and that an Order be entered forfeiting the same.

Conclusions and Order

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, I concur in the recommended conclusions in the Hearer's report and adopt them as my conclusions herein.

Accordingly, it is on this 8th day of May, 1968,

DETERMINED and ORDERED that the sum of \$2,000.00 representing the appraised retail value of the Chevrolet truck, paid under protest by Stratford pursuant to a stipulation signed on its behalf shall be, and the same is hereby forfeited, in accordance with the provisions of R.S. 33:1-66; and it is further

DETERMINED and ORDERED that the alcoholic beverages referred to in Schedule "A" attached hereto, constitutes unlawful property, and the same be, and is hereby forfeited in accordance with the provisions of R.S. 33:1-66, and shall 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"

- 600 - bottles of alcoholic beverages
- 1 - 1963 Chevrolet Van Truck, Serial and Engine No. 11052, N.J. Registration XA3937

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Thomas Basralian and Alice Basralian)
t/a River Vale Picnic Grove)
404 River Vale Road)
River Vale, PO Westwood, N.J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of River Vale.)
- - - - -

James P. Dugan, Esq., Attorney for Licensees
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) on October 4, 1967 they possessed alcoholic beverages in eight bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20, and (2) in their current application for license they failed to disclose their record of prior license suspensions, in violation of R.S. 33:1-25.

Licensees have a previous record of suspension of license by the municipal issuing authority for five days effective June 1, 1964, for sale during prohibited hours. In addition, the license then held by Alice Basralian in partnership with James Basralian was suspended by the municipal issuing authority for two days effective April 17, 1957, for sale during prohibited hours, failure to disclose both of which being the subject of the second charge.

The prior record of suspension of license for dissimilar violation occurring in 1957 more than five years ago disregarded in admeasuring the penalty, the license will be suspended on the first charge for thirty days (Re Harlem Cafe, Inc., Bulletin 1787, Item 9) and on the second charge for ten days (Re Makem, Inc., Bulletin 1785, Item 7), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring in 1964 within the past five years (Re Diesel Inn, Incorporated, Bulletin 1786, Item 6), or a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 8th day of May 1968,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of River Vale to Thomas Basralian and Alice Basralian, t/a River Vale Picnic Grove, for premises 404 River Vale Road, River Vale, be and the same is hereby suspended for forty (40) days, commencing at 1 a.m. Wednesday, May 15, 1968, and terminating at 1 a.m. Monday, June 24, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6.

ACTIVITY REPORT FOR MAY 1968

ARRESTS:

Total number of persons arrested		17
Licensees and employees	5	
Bootleggers	12	

SEIZURES:

Motor vehicles - cars		2
- trucks		1
Alcohol - gallons		5.
Distilled alcoholic beverages - gallons		5.
Wine - gallons		5.
Brewed malt alcoholic beverages - gallons		70.

RETAIL LICENSEES:

Premises inspected		908
Premises where alcoholic beverages were gauged		755
Bottles gauged		11,621
Premises where violations were found		150
Violations found		188
No Form E-141-A on premises	96	Disposal permit necessary 3
Application copy not available	41	Other mercantile business 3
Unqualified employees	18	Other violations 27

STATE LICENSEES:

Premises inspected		43
License applications investigated		16

COMPLAINTS:

Complaints assigned for investigation		427
Investigations completed		453
Investigations pending		254

LABORATORY:

Analyses made		89
Refills from licensed premises - bottles		52
Bottles from unlicensed premises		9

IDENTIFICATION:

Criminal fingerprint identifications made		14
Persons fingerprinted for non-criminal purposes		432
Identification contacts made with other enforcement agencies		312

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities		6
Violations involved		6
Sale to minors	3	Possessing chilled beer (DL lic.) 1
Sale during prohibited hours	2	
Cases instituted at Division		34
Violations involved		38
Beverage Tax Law non-compliance	5	Possessing indecent matter 2
Sale during prohibited hours	4	Permitting bookmaking on premises 1
Possessing liquor not truly labeled	4	Failure to keep true books of account 1
Sale to minors	4	Hindering investigation 1
Permitting misc. gambling on prem.	4	Unqualified employee 1
Permitting hostesses on premises	3	Permitting bookmaking, numbers and pool games on premises 1
Fraud and front	3	Permitting foul language on prem. 1
Permitting immoral acty. on prem.	2	
Fraud in application	1	
Cases brought by municipalities on own initiative and reported to Division		20
Violations involved		23
Sale to minors	7	Failure to close prem. during prohibited hours 2
Acts of violence	5	Permitting gambling (bookmaking & numbers) on premises 2
Permitting brawls, etc. on prem.	3	
Sale during prohibited hours	3	
Permitting foul language on prem.	1	

HEARINGS HELD AT DIVISION:

Total number of hearings held		51
Appeals	3	Eligibility 13
Disciplinary proceedings	29	Tax revocation 6

STATE LICENSES AND PERMITS:

Total number issued		15,061
Licenses	1	Wine permits 2
Solicitors' permits	21	Miscellaneous permits 540
Employment permits	607	Transit insignia 11,743
Disposal permits	51	Transit certificates 1,580
Social affair permits	516	

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued	124
Enforcement files established	2

JOSEPH M. KEEGAN
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: June 6, 1968

*Includes one cancellation proceeding - license improvidently issued by reason of conviction of officer for crime involving moral turpitude.

7. DISCIPLINARY PROCEEDINGS - POSSESSION OF PIN-BALL MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Oakland Bowling Lanes, Inc.)
Spruce Street)
Oakland, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Oakland.)
-----)

Peter J. Cammarano, 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 January 22, 1968 it possessed four pin-ball machines on the licensed premises, in violation of Rule 7 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 Hudson Lanes, Ltd., Bulletin 1737, Item 7.

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

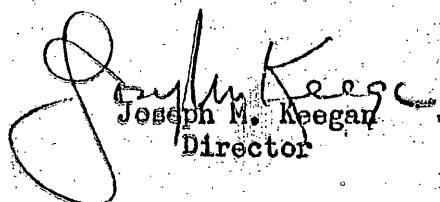
ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Oakland to Oakland Bowling Lanes, Inc., for premises on Spruce Street, Oakland, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, May 27, 1968, and terminating at 2 a.m. Saturday, June 1, 1968.

JOSEPH M. KEEGAN
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Sunrise Market Inc.
t/a Sunrise Shop Rite and/or Shop Rite of Caldwell
540 Passaic Avenue
West Caldwell, New Jersey

Application filed July 1, 1968 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-112 from Theodore J. Leitereg, t/a Leitereg Beer & Soda Distributing Co., Rear 106 Matawan Road, Madison Township, New Jersey.


Joseph M. Keegan
Director