

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 726

AUGUST 23, 1946

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DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 726

AUGUST 23, 1946.

1. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM ANOTHER RETAILER - ILLEGAL PURCHASE OF STOLEN ALCOHOLIC BEVERAGES - SALE OF ALCOHOLIC BEVERAGES FOR RESALE - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

CLUB RHUMBA, INC.,
t/a Rhumba Bar and Club Rhumba,
109 Beachway,
Keansburg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Mayor and Municipal Council of the Borough of Keansburg.)
-----)

Haydn Proctor, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to charges alleging, in substance, that:

- (1) On or about June 7, 1946, it purchased 90 cases of beer from a retail licensee;
- (2) On or about June 15, 1946, it purchased 549 cases of stolen beer;
- (3) On or about June 15, 1946, it sold 100 cases of beer to a retail licensee; and
- (4) Between June 20 and June 28, 1946, it stored 449 cases of beer off its licensed premises.

As to (1): Albert Siegel, president of the corporate-defendant, admitted the purchase of 90 cases of beer from a retail licensee on June 7, 1946. He further admitted that delivery of the beer was made in a truck belonging to him, which truck was not licensed for the transportation of alcoholic beverages. In a written statement given to ABC agents on June 27, 1946, he stated that he was aware that it was unlawful to purchase alcoholic beverages from another retail licensee for the purpose of resale but, nevertheless, effected the purchase because the defendant "was very short on beer and I would have probably had to close up without it".

As to (2), (3) and (4): The 549 cases of beer involved in these charges were part of a lot of 600 cases stolen on June 14, 1946, from Ballantine's Brewery. Siegel testified that, several days before June 15, 1946, he received a phone call from one Benjamin Richman, inquiring whether he could use some beer. Siegel replied in the affirmative. On the morning of June 15, 1946, at about 5:00 a.m., two trucks appeared at his premises carrying 549 cases of beer. According to Siegel, he told Richman that he was unable to use all of it and so Siegel arranged with another retail licensee to take 100 cases of the shipment. The balance of 449 cases was delivered to the defendant and stored in a room which

Siegel asserted, in a written statement given by him on July 12, 1946, "was not on the licensed premises". This room, where enforcement agents finally located the beer, was concealed from view by having the wall containing the door entirely blocked off by beaver boards and cases of liquor piled up in front of it.

Siegel's defense is predicated upon his assertion that he had no actual knowledge that the beer had been stolen. He contends that he assumed the transaction was a "black market" sale, since he actually paid more than the prevailing price. In addition, he says that he had formerly purchased beer through Benjamin Richman (who has not held a solicitor's permit for the last four years) and that the latter told him that he was associated with a man "supposed to be with the Ballantine Brewery".

No useful purpose is served by further detailing the testimony in the case. Assuming the verity of Siegel's testimony, the most that can be said in his favor is that he lacked positive knowledge that the beer was stolen. All of the surrounding circumstances, however, are such that he must have either strongly suspected the unlawful source of the beer or, at the least, that he simply decided to assume the risk, in which event he must be held to all the consequences flowing from the illegal purchase. Cf. Re Vesey, Bulletin 608, Item 1.

The minimum penalty warranted on the aforesaid charges would, normally, be a suspension for a period of ninety days. This is true even though it is technically necessary to dismiss charge (4), since an examination of the defendant's license application, despite Siegel's notion to the contrary, indicates that the room where the beer was stored actually constituted a part of the premises covered by the license issued to the defendant.

Since, therefore, the instant violations, standing alone, merit at least a penalty for a ninety-day period, it follows that, because this is the fourth disciplinary proceedings in which either the defendant or its officers have been involved, there is no alternative open to me at the present time except to revoke the license outright. My records indicate that when the license for these premises was in the name of Shirley Siegel, wife of Albert Siegel and secretary of the corporate-licensee, her license was suspended in September, 1940, for sales to minors. Albert Siegel was manager of the premises during her regime as licensee. In April, 1943, two years after the license was transferred by Mrs. Siegel to the defendant, the license was suspended on a similar charge for fifteen days. The third violation, discovered in August, 1943, resulted in a fifteen-day suspension on a charge of possessing refilled liquor. See Bulletin 598, Item 10. Reflected against this background of infractions, defendant's guilt of the three charges herein requires that an order be entered for revocation of its license.

Accordingly, it is, on this 15th day of August, 1946,

ORDERED that Plenary Retail Consumption License C-15, issued by the Mayor and Municipal Council of the Borough of Keansburg to Club Rhumba, Inc., t/a Rhumba Bar and Club Rhumba, for premises 109 Beachway, Keansburg, be and the same is hereby revoked, effective August 19, 1946 at 6:00 a. m.

ERWIN B. HOCK
Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM AN UNLAWFUL SOURCE - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary)
Proceedings against)

MARTIN J. FLYNN,
t/a Shamrock Inn,
94-96 Beachway,
Keansburg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-11, issued by the)
Mayor and Municipal Council of)
the Borough of Keansburg.)
-----)

John J. Meehan, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic
Beverage Control.

This defendant was served with a charge alleging that, on June 15, 1946, he purchased alcoholic beverages from an unlawful source. The defendant, who has been suffering from a heart ailment, was unable to appear and enter a plea and, accordingly, a plea of not guilty was recorded by the Hearer on behalf of the defendant.

The following facts are not in dispute: On June 15, 1946, shortly after midnight, Joseph Callahan, manager of the defendant's tavern, was approached by Albert Siegel, president of the Club Rhumba, Inc., a retail licensee, and arrangements were made for Siegel to sell to the defendant 100 cases of Ballantine's beer. About three or four hours later, during the early hours of the morning, the beer was delivered to the defendant's premises in an unlicensed truck. Callahan, thereafter, at about 5:00 a.m., paid Siegel for the beer with money which he had to borrow.

The 100 cases of beer involved herein were part of a lot of 600 cases of beer stolen from Ballantine's Brewery, 449 of which (exclusive of those sold to this defendant) were purchases by the Club Rhumba, Inc. See Bulletin 726, Item 1, decided simultaneously herewith, for the proceedings against the latter licensee.

If this were the usual case of an unaggravated purchase of alcoholic beverages from another retail licensee, the penalty would be fixed at fifteen days. Re Bollinger, Bulletin 641, Item 2. However, the evidence discloses that no invoice or bill accompanied the delivery. Again, Callahan testified that, although he had never theretofore paid cash for merchandise purchased by the defendant, he did so in this case, even to the extent of borrowing the money to pay for the beer. He had no satisfactory explanation for this unusual conduct. When these facts are considered together with the time of delivery (about 4:00 a.m.), the inference is inescapable that Callahan, if he did not have actual knowledge of the original unlawful source of the beer, must have had some strong suspicion of that fact. In any event, the most charitable assumption is that Callahan, because of the shortage of beer, was impelled to chance the possibility that the beer had been stolen.

If, therefore, there was any proof in this case that Callahan had any contact, direct or indirect, with the persons who had stolen the beer, no lesser penalty than sixty days, in the absence of any previous record, would have been imposed. Cf. Re Green, Bulletin 674, Item 7. There is, however, no such proof in

this case. Moreover, there is no evidence to indicate that the defendant, who was unaware of the transaction until the next day, had any personal participation in any of the events leading to the violation.

The defendant has held a liquor license ever since Repeal and his record is clear of any prior suspensions, except for one imposed in October, 1940, as a result of his pleading guilty to employing a minor and permitting a lottery on his licensed premises. After carefully considering all of the aforesaid circumstances, I shall, upon finding the defendant guilty of the charge herein, impose a penalty for a period of forty days.

Accordingly, it is, on this 15th day of August, 1946,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Municipal Council of the Borough of Keansburg to Martin J. Flynn, t/a Shamrock Inn, for premises 94-96 Beachway, Keansburg, be and the same is hereby suspended for a period of forty (40) days, commencing at 6:00 A.M. August 20, 1946, and terminating at 6:00 A.M. September 29, 1946.

ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM AN UNLAWFUL SOURCE - SALE OF ALCOHOLIC BEVERAGES FOR RESALE - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
LARRY PERGOLA & FRANK PERGOLA,
36 Broad Street,
Keyport, N. J.,
Holders of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Keyport.

CONCLUSIONS
AND ORDER

Larry Pergola and Frank Pergola, Defendant-licensees, Pro Ses. Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

The defendants pleaded non vult to charges alleging in substance that:

- (1) and (2): On June 6 and 7, 1946, they purchased alcoholic beverages from an unlawful source;
- (3): On June 7, 1946, they sold alcoholic beverages to another retail licensee.

The defendant, Frank Pergola, admits that he purchased 100 cases of beer from one McGovern, who operates a cafeteria for the civilian employees at the Naval Base located at Leonardo, N.J. He then arranged to sell 90 of those cases to a retail licensee. This sale was consummated by delivery in an unlicensed truck at a price greatly in excess of that paid for the beer by Pergola. For the proceedings against the other retail licensee, see Club Rhumbá, Inc., Bulletin 726, Item 1, decided today.

The ordinary case involving the sale of alcoholic beverages from one retail licensee to another normally calls for the imposition of a fifteen-day penalty against each licensee. See Re Rappaport, Bulletin 641, Item 1 (vendor) and Re Bollinger, Bulletin 641, Item 2 (vendee). However, the circumstances herein indicate a "black market" sale by the defendants at a substantial profit and require that a sterner penalty be inflicted. See Re Pellington, Bulletin 629, Item 1.

I shall suspend the license for a period of forty days. Five days will be remitted for the plea, leaving a net penalty of thirty-five days.

Accordingly, it is, on this 15th day of August, 1946,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Keyport to Larry Pergola and Frank Pergola, for premises 36 Broad Street, Keyport, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 A.M. August 20, 1946, and terminating at 2:00 A.M. September 24, 1946.

ERWIN B. HOCK
Deputy Commissioner.

4. SEIZURE - FORFEITURE PROCEEDINGS - WINE PRESS AND HOME-MADE WINE MANUFACTURED WITHOUT PERMIT AND INTENDED FOR UNLAWFUL SALE ORDERED FORFEITED.

Case No. 7004

In the Matter of the Seizure on June 30, 1946, of about 150 gallons of home made wine, 5 empty 50 gallon barrels and a wine press, at premises occupied by Tony Azzante, located on Oak Grove School-house Road, North of U. S. Route #322, in the Township of Woolwich, County of Gloucester and State of New Jersey.

On Hearing

CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 35, Chapter 1, of the Revised Statutes, to determine whether a quantity of home made wine, empty barrels and a wine press, described in a schedule attached hereto, seized on June 30, 1946, at a farmhouse occupied by Tony Azzante located in Woolwich Township, N. J., constitute unlawful property and should be forfeited.

On June 30, 1946, an ABC agent purchased a quart of home-made wine from Tony Azzante at his farmhouse. Azzante did not hold any license authorizing him to sell or serve alcoholic beverages, the premises were not licensed for the sale of alcoholic beverages, and Azzante did not hold a permit to manufacture home made wine.

Accordingly, this ABC agent, in company with another agent and local police officers, searched the premises and found and seized the wine, empty barrels, and wine press. Azzante was arrested on charge of unlawful sale and possession of alcoholic

beverages. He has since pleaded guilty to the charges in the Gloucester County Court of Special Sessions and was fined \$100.00.

The home made wine is illicit because it was manufactured without a permit and because it was intended for sale without a license. R.S. 33:1-1(i). Such wine, wine press and empty barrels, are subject to seizure and forfeiture. R.S. 33:1-1(y), R.S. 33:1-66.

When the matter came on for hearing, pursuant to R.S. 33:1-66, no one appeared to oppose forfeiture of the wine and other seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that 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 State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: August 13, 1946.

SCHEDULE "A"

- 3 - 50 gallon barrels of wine
- 1 - 25 gallon barrel of wine
- 5 - empty 50 gallon barrels
- 1 - wine press.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA ON SECOND CHARGE.

In the Matter of Disciplinary Proceedings against

JOHN OSTROWSKI,
t/a Ostrowski's Cafe,
419 Hudson Street,
Hackensack, N. J.,

Holder of Plenary Retail Consumption License C-39, issued by the City Council of the City of Hackensack.

CONCLUSIONS
AND ORDER

Sol Hoberman, Esq., Attorney for Defendant-licensee,
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to charges alleging that (1) On June 24, 1946, he possessed a 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R.S. 33:1-50, and (2) that in his application for license he falsely stated that he had never been convicted of crime

whereas in fact he had been convicted in 1934 of the crime of possessing illicit alcoholic beverages, at which time he was fined the sum of \$150.00.

As to charge (1): On June 24, 1946, an investigator employed by the Department of Alcoholic Beverage Control tested twenty open bottles on defendant's premises and seized the bottle mentioned in the charge when a preliminary test indicated that it contained a blended whiskey and not a blend of straight whiskies. Subsequent chemical analysis confirmed the fact that the contents of the bottle were not genuine as labeled. The licensee and his son, who is employed by him, have stated that they did not tamper with the bottle and have no knowledge as to the manner in which the violation occurred. Nevertheless, it has been determined in numerous cases that a licensee is strictly responsible for any refills found in his stock of liquor. I find defendant guilty as to charge (1) and shall suspend his license for a period of fifteen days on this charge. Re Rudolph, Bulletin 680, Item 1.

With respect to charge (2), under the circumstances of the case, the crime of which he was convicted does not involve moral turpitude, but licensees are required to answer fully and frankly all questions in the application, and a false statement therein violates R.S. 33:1-25. The defendant alleges that someone else filled out the application, but that fact does not excuse the violation. The application was signed and sworn to by defendant.

Under all the circumstances I shall suspend defendant's license for an additional period of ten days, less five days for the plea because of the violation set forth in charge (2), thereby making a total suspension of twenty days. Re Tumulty, Bulletin 558, Item 2.

Accordingly, it is, on this 14th day of August, 1946,

ORDERED that Plenary Retail Consumption License C-39, issued by the City Council of the City of Hackensack to John Ostrowski, t/a Ostrowski's Cafe, for premises 419 Hudson Street, Hackensack, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 A.M. August 21, 1946, and terminating at 3:00 A.M. September 10, 1946.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against
 CHARLES E. BETZ,
 t/a Charloe's Bar & Grill,
 West Park Avenue and Route 35,
 Ocean Township,
 R.F.D. 1, Asbury Park, N. J.,
 Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Ocean.

CONCLUSIONS AND ORDER

 Charles E. Betz, Defendant-licensee, Pro Se.
 William F. Wood, Esq., Appearing for Department of Alcoholic Beverage Control.

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

On July 16, 1946, an investigator of the State Department of Alcoholic Beverage Control seized five bottles containing alcoholic beverages because the contents thereof did not appear to be genuine as indicated by the respective labels. The labels on said bottles indicated five different popular brands of imported Scotch whiskey.

The defendant admits that he had refilled each of the bottles with a domestic "Scotch" type liquor. He said that he could not secure real "Scotch" to satisfy a large demand. Customers are entitled to receive the beverage ordered, or to be told frankly "I am out of that brand." Cf. Re Rudolph, Bulletin 680, Item 1.

Defendant has no previous adjudicated record. I shall suspend his license for twenty-five days, the usual penalty for cases involving a five-bottle refill. Re Marrone, Bulletin 719, Item 4.

Accordingly, it is, on this 14th day of August, 1946,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Ocean to Charles E. Betz, t/a Charloe's Bar & Grill, for premises West Park Avenue and Route 35, Ocean Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. August 20, 1946, and terminating at 3:00 a.m. September 14, 1946.

ERWIN B. HOCK
 Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

HELEN TOMASELLO,)
Black Horse Pike, South of)
12th Street,)
Folsom Borough,)
P. O. Box 147, Hammonton, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4 for the 1945-46 and 1946-47 licensing years, issued by the Borough Council of the Borough of Folsom.)
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Philip L. Lipman, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that she possessed eight bottles of alcoholic beverages, all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R.S. 33:1-50.

The eight bottles in question were part of the defendant's open stock of thirty-two bottles tested by ABC agents on June 3, 1946. The contents of all of these bottles, on being chemically analyzed, disclosed that they varied in substantial respects from genuine samples of the same products.

The licensee has no previous record. I shall, therefore, suspend the license for a period of thirty days. Cf. Re Hassan, Bulletin 688, Item 8, also involving eight "refills", where a forty-day penalty was imposed because the licensee had received a prior warning concerning illicit liquor.

Although this proceeding was instituted during the 1945-46 licensing year, it does not abate but remains fully effective against the renewal license for the 1946-47 licensing year. State Regulations No. 16.

Accordingly, it is, on this 14th day of August, 1946,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Folsom, to Helen Tomasello, for premises on Black Horse Pike, South of 12th Street, Folsom Borough, be and the same is hereby suspended for a period of thirty (30) days, commencing at 12:01 a.m. August 19, 1946, and terminating at 12:01 a.m., September 18, 1946.

ERWIN B. HOCK
Deputy Commissioner.

8. SEIZURE - FORFEITURE PROCEEDINGS - WINE INTENDED FOR SERVICE WITH MEALS IN RESTAURANT NOT LICENSED TO SELL ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. X-16,534-a
 March 13, 1946 of 48 one-gallon)
 jugs of wine at 326 Market Street,)
 in the City of Camden, County of) ON HEARING
 Camden and State of New Jersey.) CONCLUSIONS AND ORDER

 Malandra & Tomaselli, Esqs., by Joseph T. Tomaselli, Esq.,
 Attorneys for Anthony Amato.
 Harry Castelbaum, Esq., appearing for the State Department of
 Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 28 - 1-gallon jugs of "Marca Petri" wine and 20 - 1-gallon jugs of "Roma California Burgundy" wine, seized on March 13, 1946 at 326 Market Street, Camden, N. J. constitute unlawful property and should be forfeited.

Anthony Amato conducts a restaurant at the above address. He does not hold a license to sell or serve alcoholic beverages and the premises are not licensed for the sale of alcoholic beverages. His supply of wine, stored in the cellar underneath the restaurant, was seized because he served wine to his patrons with their meals, upon their request, although without any additional charge.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Anthony Amato appeared with counsel and sought return of the wine.

The ABC agents who participated in the seizure testified, in substance, that on February 9, 1946 one of the agents was served with wine with his meal; that on March 13, 1946 three agents were served with wine with their meals and observed two or three other patrons with drinks of wine in front of them. On the last occasion, one of the agents, when paying for his meal, asked the waitress who had served him with wine what the charge was for the wine. She said, "We do not charge for the wine, it is included in the meal." The agents then disclosed their identity, asked the waitress whether she had any more wine left, and she told them there was some wine in the back room and some in the cellar. A gallon jug with about a half gallon of wine was in the kitchen and the 48 gallon jugs were in the cellar. Amato told the agents, "I do not sell wine -- I give it away."

Counsel for Amato, without presenting any evidence on Amato's behalf, rested his case upon a motion to return the wine. His contentions are that the seizure is illegal because it was not made pursuant to a search warrant, and furthermore, that it was not illegal for Amato to give his patrons wine with their meals.

It has been repeatedly ruled by the State Department of Alcoholic Beverage Control that forfeiture of seized property does not depend upon its seizure pursuant to a search warrant. Re Tricoli, Bulletin 164, Item 9; Seizure Case No. 5450, Bulletin 364, Item 14; Seizure Case No. 5644, Bulletin 378, Item 5.

It has also been repeatedly ruled by this Department that it is a violation of the Alcoholic Beverage Law for the owner of a restaurant, who does not hold any license to dispense liquor, to serve alcoholic beverages with meals, dispense alcoholic beverages to his patrons in any manner or otherwise dabble in alcoholic beverages.

Re Rothermel, Bulletin 19, Item 8; Re Vaccaro, Bulletin 87, Item 2;
Re Renner, Bulletin 115, Item 4; Re Frommelt, Bulletin 123, Item 5;
Re Zoellner, Bulletin 146, Item 10; Re Shamberg, Bulletin 186, Item 1;
Re Kashner, Bulletin 199, Item 12; Re Seizure Case No. 4919, Bulletin
363, Item 2.

Moreover, the service of alcoholic beverages with meals is expressly defined by law as a sale of alcoholic beverages. R. S. 33:1-1(w), which reads:

"Sale. Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, --- and including exchange, barter, traffic in, keeping and exposing for sale, servicing with meals, delivering for value, peddling, possessing with intent to sell ---." (Underscoring mine.)

This language is clear. "Servicing with meals" is declared to be a sale. It is indubitable that this applies to a commercial restaurant which serves meals for pay; that the purpose of this law was to prohibit the service of alcoholic beverages in such a restaurant without a license, irrespective of whether such alcoholic beverages are paid for or are ostensibly given to the customers with their meals without extra charge.

It is a well established principle of law that the service of alcoholic beverages in a restaurant with meals constitutes a sale. 30 Am. Jur., INTOXICATING LIQUORS, Chapter 292, page 410, where it is said:

"The furnishing of intoxicating liquors by a hotel or boardinghouse keeper to his guests as part of their meals is regarded as a sale within the meaning of statutes regulating or prohibiting sales of liquor, and this is true even though there is no extra charge therefor. It follows that in the absence of a permissive statute, the proprietor of an unlicensed hotel or restaurant who furnishes liquor to guests as a part of their meals violates a statute against unlicensed sales." (and cases cited therein).

33 C.J., Chapter 210, page 592:

"Furnishing intoxicants to boarders with their meals has been held to constitute a sale." (and cases cited therein).

The evidence presented establishes that Amato was serving wine with meals to the patrons of his restaurant and that the seized wine was intended for that purpose. The wine is therefore an illicit alcoholic beverage. R. S. 33:1-1(i). It is subject to seizure and forfeiture. R. S. 33:1-1(y), R. S. 33:1-66. The motion that the wine be returned is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized wine, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that such alcoholic beverages be sold, in whole or in part, at public sale for the use of the State, subject to the rules and regulations governing such sale, or be destroyed or retained for the use of hospitals and State, county or municipal institutions, whichever the State Commissioner of Alcoholic Beverage Control may hereafter determine to be for the best interest of the State.

ERWIN B. HOCK
 Deputy Commissioner.

Dated: August 14, 1946.

SCHEDULE "A"

- 28 - 1-gallon jugs of Marca Patri Wine
- 20 - 1-gallon jugs of Roma California Burgundy Wine

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

ALBERTA C. SOFRONEY)
T/a GABLES INN)
2074 Black Horse Pike)
Hamilton Township)
P.O. McKee City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-14 issued by the Township Committee of the Township of Hamilton.)
-----)

Alberta C. Sofroney, Defendant-licensee, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded guilty to a charge alleging that she possessed a 4/5 quart bottle of "The Blended Scotch Whisky of the White Horse Cellar", a 4/5 quart bottle of "Black & White Blended Scotch Whisky", and a 4/5 quart bottle of "Canadian Club Blended Canadian Whisky", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On May 15, 1946, while testing the defendant's open stock of forty-two liquor bottles, an ABC agent seized the three bottles in question. Subsequent analysis disclosed that their contents differed substantially from genuine samples of those products.

In July 1940 the defendant received a warning when field tests revealed that one bottle of liquor was "off color." While, ordinarily, such warning would result in an increased penalty, I will not, because of the lapse of six years, take that warning into consideration in meting out a penalty for the instant offense.

The license will be suspended for the minimum period of twenty days. Re Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 14th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Hamilton to Alverta C. Sofroney, t/a Gables Inn, for premises 2074 Black Horse Pike, Hamilton Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 4:00 a.m. August 19, 1946, and terminating at 4:00 a.m. September 8, 1946.

ERWIN B. HOCK
Deputy Commissioner.

10. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES AND REFRIGERATOR IN SPEAKEASY ORDERED FORFEITED. - CASH REGISTER AND JUKE BOX ORDERED RETURNED TO OWNERS WHO ESTABLISHED THEIR GOOD FAITH AND ABSENCE OF KNOWLEDGE OF CHARACTER OF ESTABLISHMENT.

In the Matter of the Seizure on)
 April 21, 1946, of a quantity of)
 alcoholic beverages, a music box,)
 fixtures, furnishings, and other)
 miscellaneous personal items, at)
 187 West Bergen Place, in the)
 Borough of Red Bank, County of)
 Monmouth and State of New Jersey.)
 - - - - -)

Case No. 6975

ON HEARING
 CONCLUSIONS AND ORDER

Benjamin J. McFarland, Pro se.

National Cash Register Company, by L. J. Keefe, Manager.

Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, a music machine, fixtures, furnishings and miscellaneous personal property, described in a schedule attached hereto, seized on April 21, 1946 at 187 West Bergen Place, Red Bank, New Jersey, constitute unlawful property and should be forfeited.

On April 19, 1946, at about 9:15 p.m., an ABC agent entered a small restaurant at the above address to check a complaint that speakeasy activities were being carried on there. Pinky Lang, a waitress, served the agent with two drinks of whiskey and accepted payment therefor. The agent observed other patrons also being served with whiskey. The agent left without disclosing his identity.

On April 21, 1946, at about 2:15 a.m., this ABC agent, in company with other agents, returned to the premises to execute a search warrant which had been obtained on the basis of the unlicensed sales of alcoholic beverages on April 19th. The first agent again entered, and purchased three drinks of whiskey from Pinky Lang. He had one drink of whiskey in front of him when the other agents entered the premises shortly thereafter.

The agents found and seized four 4/5 quart bottles of whiskey in a closet in a rear room, a number of bottles of soda, an electric refrigerator, a cash register and currency and other articles therein, and a music box and currency therein.

Lewis Davis, the owner of the restaurant, was arrested on charge of unlawful sale and possession of alcoholic beverages, and Pinky Lang was arrested on charge of unlawful sale of alcoholic beverages. Neither of these persons held a license to sell or serve alcoholic beverages, and the premises were not licensed for the sale of alcoholic beverages.

The evidence establishes that the seized whiskey was intended for sale at this speakeasy, and hence is illicit. Such illicit whiskey, together with the other beverages, fixtures, furnishings and receipts of the unlawful enterprise, seized therewith in the restaurant, 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.

When the matter came on for hearing pursuant to R.S. 33:1-66, Benjamin McFarland appeared and sought return of the music machine, and L. J. Keefe appeared for the National Cash Register Company and sought return of the cash register. After the hearing, this Department was notified that a person who claimed to be the owner of the

refrigerator sought its return. However, when the attorney for this person was advised that it would be necessary for the claimant to appear at the Department and establish her claim, at a date convenient to her, there was no response. No one else has appeared to oppose forfeiture of the other personal property seized.

According to the ABC agents, there is a sign bearing the inscription "Green & White Restaurant" on the exterior of the premises. The restaurant is in the rear of a private dwelling, entered by a door leading into a dining room, with a counter, stools, tables and chairs. The music box and register were in this room. Food was prepared in the kitchen. The agents characterized it definitely as a restaurant, and stated that there were no alcoholic beverages visible in the dining room.

Benjamin J. McFarland testified that he is the owner of the music box and placed it in the restaurant, on a profit-sharing basis, about four months prior to the seizure; that he had no knowledge that Davis, the proprietor of the restaurant, was carrying on speakeasy activities there; and that on his semi-monthly visits to service the machine he did not observe anything to cause him to suspect that alcoholic beverages were being sold there.

McFarland says that he was not acquainted with Davis before he placed the machine in the restaurant and did not make any investigation as to Davis' character and background. However, this is not controlling in the instant case, because it does not appear that Davis had a reputation for unlawful alcoholic beverage activities or was ever convicted of violating any liquor laws. Cf. Seizure Case No. 6880, Bulletin 713, Item 8.

The establishment had the outward appearance of a restaurant, and there is no evidence that McFarland should have suspected anything to the contrary.

I therefore find that Benjamin McFarland acted in good faith and did not know, or have any reason to suspect, that his music machine was in a speakeasy. Hence, the machine will be returned to him.

The National Cash Register Company submitted proof that it had sold the cash register to Davis on September 14, 1945 for \$69.90 under a conditional sales contract, recorded in the office of the Monmouth County Clerk, and that there is a balance due and unpaid of \$28.65.

My conclusions as to McFarland's claim apply with equal, if not greater force, to the claim of the National Cash Register Company. The register will be returned.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 26th day of August, 1946, Benjamin McFarland pays the costs of seizure and storage of the music machine, it will be returned to him; and it is further

ORDERED, that if on or before the 26th day of August, 1946, the National Cash Register Company pays the costs of the seizure and storage of the register, it will be returned to it; 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 that 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 State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: August 14, 1946.

SCHEDULE "A"

- 4 - 4/5 quart bottles of whiskey
- 187 - bottles of soda
- 1 - Frigidaire ice box, Model L-6
\$18.23 in currency and miscellaneous personal property in cash register compartment
- 19 - whiskey and highball glasses

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against

CEDAR RESTAURANT & CAFE CO.
T/a WEST END CASINO
717 Ocean Avenue
Long Branch, N. J.,

CONCLUSIONS
AND ORDER

Holder of Seasonal Retail Consumption License CS-2, issued by the Board of Commissioners of the City of Long Branch.

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.,
Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant was charged with possession of eight bottles of assorted alcoholic beverages, all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

Although pleading not guilty to the charge, the defendant does not dispute that the eight bottles referred to were seized by an ABC agent on the licensed premises on July 18, 1946, after he had tested the open stock of twenty-three liquor bottles at one of the defendant's two bars. At the other bar, the agent tested, and found satisfactory, the contents of all of the open containers of alcoholic beverages.

The defendant, likewise, does not question the correctness of the chemist's report of analysis (Ex. S-9), which indicates, generally, that seven of the bottles were substantially diluted with water or other non-alcoholic beverage, and that the eighth was refilled with some other whiskey.

By way of defense, the defendant offered testimony concerning the system it had installed for keeping check on its liquor stock. Without going into detail, it suffices to say that this system, while it probably insured the defendant against being mulcted by its employees, fails to reveal any such salutary purpose for the protection of the public. Although there is no direct proof that any of the defendant's responsible associates had personal knowledge of any tampering with the contents of the seized bottles or that they had personally participated in the infractions, the record falls short of demonstrating that the defendant exercised that degree of care required of all licensees to make certain that the public is protected against the machinations of "chiseling" bartenders.

The defendant argues that the quantum of proof necessary to sustain a criminal conviction of a principal for the acts of an agent, to wit, "that the principal aided, encouraged or connived in the perpetration of the crime" (see State v. Pinto, 129 N. J. L. 255),

should be applicable in these proceedings. This contention lacks merit, as does also the claim that, assuming as true that the bartender had refilled the bottles, such act constituted a conversion by the bartender, thereby ousting the defendant of "possession" of the bottles, within the intendment of the Alcoholic Beverage Law.

I find the defendant guilty as charged.

All of the attendant circumstances considered, I believe that a thirty-day penalty is commensurate with the infraction. Cf. Re Hassan, Bulletin 688, Item 8, where, after a prior warning, the licensee received a forty-day suspension for a similar number of "refills".

A verified petition submitted by the defendant establishes that arrangements had been completed with civic and religious institutions, long prior to July 18, 1946, for holding various charitable affairs at the defendant's premises. Large attendances are anticipated. These affairs are scheduled for August 20, 27, 29 and 30. No reason appears why I should needlessly penalize either the innocent persons who would attend or the recipients of the proceeds of these affairs. Cf. Re Phil Sheridan Knights of Columbus Bldg. Assn., Bulletin 670, Item 12. The period of suspension, therefore, will be scheduled to accommodate justice as well as complete fairness.

The suspension will commence on Monday, August 19, 1946, and terminate on Sunday, September 22, 1946, a grand total of thirty-four days. The license privileges will be restored during that period for the four aforementioned days, leaving a net suspension of thirty days.

Accordingly, it is, on this 14th day of August, 1946,

ORDERED, that Seasonal Retail Consumption License CS-2, issued by the Board of Commissioners of the City of Long Branch to Cedar Restaurant & Cafe Co., t/a West End Casino, for premises 717 Ocean Avenue, Long Branch, be and the same is hereby suspended, commencing at 7:00 a.m. Monday, August 19, 1946, and terminating at 1:00 p.m. on Sunday, September 22, 1946, except that the license privileges will remain in full force and effect during the following periods:

From 7:00 a.m. August 20 to 2:00 a.m. August 21, 1946.
 From 7:00 a.m. August 27 to 2:00 a.m. August 28, 1946.
 From 7:00 a.m. August 29 to 2:00 a.m. August 30, 1946.
 From 7:00 a.m. August 30 to 2:00 a.m. August 31, 1946.

ERWIN B. HOCK
 Deputy Commissioner.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Jerry Boffilo
 T/a J. B. Transportation
 9 Willow St.,
 Millburn, N. J.

Application filed August 21, 1946 for transfer of
 Transportation License T-160 from Peters Transportation
 Service, Inc.

Erwin B. Hock
 Deputy Commissioner.