

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

BULLETIN 1754

September 25, 1967

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1. APPELLATE DECISIONS - NORKUS BROTHERS, INC. v. MANALAPAN -  
ORDER DISMISSING APPEAL.

NORKUS BROTHERS, INC.	)	
(a corp.),	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	O R D E R
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF MANALAPAN,	)	
Respondent.	)	

-----

Dittmar, Dittmar, Goldberg, Cerrato & McGovern, Esqs., by  
Dominick A. Cerrato, Esq., Attorneys for Appellant.  
J. William Boyle, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent whereby on May 31, 1967 it denied an application filed by the appellant for a person-to-person and place-to-place transfer of Plenary Retail Consumption License No. C-7 from Anna Glovich to appellant and to premises located at Tennent Road and Highway #9, Manalapan Township.

Prior to the hearing on appeal the attorneys for the appellant advised me, in writing, that their client has determined "to abide by the decision" of the respondent and desires to discontinue the appeal. No reason appearing to the contrary,

It is, on this 20th day of July 1967,

ORDERED that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI  
Director.

2. APPELLATE DECISIONS - RODALE NITE CLUB, INC. v. PATERSON.

RODALE NITE CLUB, INC., )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 BOARD OF ALCOHOLIC BEVERAGE )  
 CONTROL FOR THE CITY OF )  
 PATERSON, )  
 )  
 Respondent. )

ON APPEAL  
O R D E R

-----  
 Joseph J. Cappa, Esq., Attorney for Appellant.  
 Robert P. Swartz, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from respondent's action suspending its plenary retail consumption license for fifteen days effective May 1, 1967, for sale to a minor. Upon the filing of the appeal, I entered an order on April 27, 1967, staying the suspension pending the determination of the appeal.

Prior to the hearing on appeal, by stipulation dated July 5, 1967, signed by the attorneys for the respective parties herein, the said appeal was withdrawn. No reason appearing to the contrary,

It is, on this 24th day of July, 1967,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the fifteen-day suspension be reinstated against Plenary Retail Consumption License C-113, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Rodale Nite Club, Inc. and transferred during the pendency of these proceedings to Lida Contreras, t/a El Dorado Club, for premises 89-91 Prospect Street, Paterson, commencing at 3:00 a.m. Monday, July 31, 1967, and terminating at 3:00 a.m. Tuesday, August 15, 1967.

JOSEPH P. LORDI  
 Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE BETS) - POSSESSION OF OBSCENE MATERIAL - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

BANBOL, INC. )  
125-127 Jackson Avenue )  
Jersey City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-341 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )  
----- )

Licensee, by James Banta, President, Pro se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that (1) on April 13, 18, 25 and May 2, 1967, it permitted acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) on May 2, 1967, it possessed obscene and indecent motion picture films depicting male and female persons engaged in lewd and indecent sexual poses, acts and practices, in violation of Rule 17 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for sixty days (Re J. & J. Paszkewicz & Son, Inc., Bulletin 1725, Item 1) and on the second charge for fifteen days (Re Toleno and Nagren, Bulletin 1512, Item 2), or a total of seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days.

Accordingly, it is, on this 20th day of July, 1967,

ORDERED that Plenary Retail Consumption License C-341, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Banbol, Inc. for premises 125-127 Jackson Avenue, Jersey City, be and the same is hereby suspended for seventy (70) days, commencing at 2:00 a.m. Thursday, July 27, 1967, and terminating at 2:00 a.m. Thursday, October 5, 1967.

JOSEPH P. LORDI  
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ALEXANDER SANDY, JR. & MARGARET SANDY t/a SANDY'S BAR & GRILL 164 Easton Avenue New Brunswick, N. J.,

CONCLUSIONS AND ORDER

-----  
Holders of Plenary Retail Consumption License C-82 issued by the Board of Commissioners of the City of New Brunswick.

Pincus, Shamy & Sheehan, Esqs., by George J. Shamy, Esq., Attorneys for Licensees. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on February 2 and 9, 1967, they permitted the acceptance of horse race bets, in violation of Rule 7 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the municipal issuing authority for fifteen days effective August 24, 1964, for sale to minors.

The prior record of suspension of license for dissimilar violation occurring within the past five years considered, the license will be suspended for sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days. Re Lavin, Bulletin 1707, Item 2.

Accordingly, it is, on this 20th day of July, 1967,

ORDERED that Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of New Brunswick to Alexander Sandy, Jr. and Margaret Sandy, t/a Sandy's Bar & Grill, for premises 164 Easton Avenue, New Brunswick, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, July 24, 1967, and terminating at 2:00 a.m. Friday, September 22, 1967.

JOSEPH P. LORDI  
Director.

5. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

HERBERT W. PELZER and )  
ESTHER M. PELZER )  
t/a ESTHER-HERB PELZERS )  
Franklin Turnpike )  
Mahwah, N. J., )

CONCLUSIONS AND ORDER

-----  
Holders of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Mahwah. )

Licensees, Pro se.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on May 5, 9, 11 and 12, 1967 they permitted the acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Licensee Herbert W. Pelzer has a previous record of suspension of license by the Director for fifteen days effective January 7, 1952 for permitting bookmaking on the premises, and for forty days effective January 11, 1961 for sale in violation of State Regulation No. 38, permitting obscene language and hindering an investigation. Re Pelzer, Bulletin 922, Item 10; Bulletin 1377, Item 1.

The prior record of suspension of license in 1952 for similar violation disregarded because occurring more than ten years ago and the suspension of license in 1961 for dissimilar violations also disregarded because occurring more than five years ago, the license will be suspended for sixty days (Re J. & J. Paszkewicz & Son, Inc., Bulletin 1725, Item 1), with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 19th day of July 1967,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Mahwah to Herbert W. Pelzer and Esther M. Pelzer, t/a Esther-Herb Pelzers, for premises on Franklin Turnpike, Mahwah, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, July 25, 1967 and terminating at 2:00 a.m. Monday, September 18, 1967.

JOSEPH P. LORDI  
Director.

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY  
Labeled - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )  
STATE RESTAURANT, INC. )  
37 Main Street )  
Hackensack, N. J., )  
Holder of Plenary Retail Consump- )  
tion License C-27, issued by the )  
City Council of the City of )  
Hackensack. )  
-----)

CONCLUSIONS  
AND ORDER

Harvey Smith, Esq., Attorney for Licensee.  
Leon Chorkavy, Jr., Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on  
February 8, 1967 it possessed alcoholic beverages in five  
bottles bearing labels which did not truly describe their con-  
tents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for  
twenty-five days, with remission of five days for the plea  
entered, leaving a net suspension of twenty days. Re Club 435,  
Incorporated, Bulletin 1728, Item 10.

Accordingly, it is, on this 25th day of July 1967,

ORDERED that Plenary Retail Consumption License C-27,  
issued by the City Council of the City of Hackensack to State  
Restaurant, Inc., for premises 37 Main Street, Hackensack, be  
and the same is hereby suspended for twenty (20) days, com-  
mencing at 2:00 a.m. Tuesday, August 1, 1967, and terminating  
at 2:00 a.m. Monday, August 21, 1967.

JOSEPH P. LORDI  
Director.

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 BELVEDERE RESTAURANT, INC. )  
 56-58 Second St. )  
 Hoboken, N. J., )  
 )  
 Holder of Plenary Retail Consumption License C-15 issued by the )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City of )  
 Hoboken. )  
 -----)

CONCLUSIONS AND ORDER

Licensee, by G. Bruno Prezioso, President, Pro se.  
Leon Chorkavy, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 12, 1967, it possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license then held for premises 201 Washington Street and 64 Second Street, Hoboken, by the Director for forty-five days effective July 31, 1961, for sale during prohibited hours, hostess activity, employing female bartender and operating the licensed business as a nuisance. Re Belvedere Restaurant, Inc., Bulletin 1408, Item 4.

The prior record of suspension of license for dissimilar violations occurring more than five years ago disregarded, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Hackensack Golf Club, Bulletin 1726, Item 7.

Accordingly, it is, on this 19th day of July, 1967,

ORDERED that Plenary Retail Consumption License C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Belvedere Restaurant, Inc. for premises 56-58 Second Street, Hoboken, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, July 26, 1967, and terminating at 2:00 a.m. Thursday, August 10, 1967.

JOSEPH P. LORDI  
Director.

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 IVORY CLUB (A Corp.)  
 363 W. Market Street  
 Newark, N. J.,  
 Holder of Plenary Retail Consumption License C-736 issued by the  
 Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER.

-----  
 Licensee, by Emory Hall, President and Treasurer, Pro se.  
 Leon Chorkavy, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 3, 1967, it possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Bohl and Ripp, Bulletin 1724, Item 7.

Accordingly, it is, on this 18th day of July, 1967,

ORDERED that Plenary Retail Consumption License C-736, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ivory Club (A Corp.) for premises 363 W. Market Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Tuesday, July 25, 1967, and terminating at 2:00 a.m. Wednesday, August 9, 1967.

JOSEPH P. LORDI  
Director.

9. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

In the Matter of a Petition )  
 to Lift the Automatic Suspension )  
 of Plenary Retail Consumption )  
 License C-60 issued by the Muni- )  
 cipal Board of Alcoholic Beverage )  
 Control of the City of Clifton to )  
 )  
 JOHN DANTSCHYSCHYN )  
 t/a Yohanus Bar )  
 40 Highland Ave. )  
 Clifton, N. J. )

ON PETITION  
O R D E R

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on July 14, 1967, licensee-petitioner was fined \$50.00 and \$5.00 costs in the Clifton Municipal Court after plea of guilty to a charge of sale of alcoholic beverages to a minor on May 18, 1967, in violation of R. S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R. S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that the municipal issuing authority has suspended the license for ten days effective July 10, 1967, after finding the licensee guilty of a charge in disciplinary proceedings alleging the same sale to the minor. It appearing that the municipal suspension has been served, I shall lift the statutory automatic suspension. Re Krouse, Bulletin 1740, Item 5.

Accordingly, it is, on this 25th day of July, 1967,

ORDERED that the statutory automatic suspension of said License C-60 be and the same is hereby lifted, effective immediately.

JOSEPH P. LORDI  
Director.

10.

ACTIVITY REPORT FOR JULY 1967

**ARRESTS:**

Total number of persons arrested	-----	-----	-----	13
Licensees and employees	-----	5	-----	
Bootleggers	-----	8	-----	

**SEIZURES:**

Motor vehicles - cars	-----	-----	-----	1
Distilled alcoholic beverages - gallons	-----	-----	-----	6.28
Wine - gallons	-----	-----	-----	2.12
Brewed malt alcoholic beverages - gallons	-----	-----	-----	64.75

**RETAIL LICENSEES:**

Premises inspected	-----	-----	-----	416	
Premises where alcoholic beverages were gauged	-----	-----	-----	360	
Bottles gauged	-----	-----	-----	5,561	
Premises where violations were found	-----	-----	-----	96	
Violations found	-----	-----	-----	141	
Unqualified employees	-----	73	Disposal permit necessary	-----	3
Application copy not available	-----	13	Improper beer taps	-----	1
Other mercantile business	-----	3	Other violations	-----	48

**STATE LICENSEES:**

Premises inspected	-----	-----	-----	9
License applications investigated	-----	-----	-----	5

**COMPLAINTS:**

Complaints assigned for investigation	-----	-----	-----	340
Investigations completed	-----	-----	-----	309
Investigations pending	-----	-----	-----	298

**LABORATORY:**

Analyses made	-----	-----	-----	38
Refills from licensed premises - bottles	-----	-----	-----	24
Bottles from unlicensed premises	-----	-----	-----	4

**IDENTIFICATION:**

Criminal fingerprint identifications made	-----	-----	-----	4
Persons fingerprinted for non-criminal purposes	-----	-----	-----	589
Identification contacts made with other enforcement agencies	-----	-----	-----	364

**DISCIPLINARY PROCEEDINGS:**

Cases transmitted to municipalities	-----	-----	-----	8	
Violations involved	-----	-----	-----	8	
Sale during prohibited hours	-----	5	-----		
Sale to minors	-----	3	-----		
Cases instituted at Division	-----	-----	-----	30	
Violations involved	-----	-----	-----	38	
Possessing liquor not truly labeled	-----	11	Permitting hostesses on premises	-----	2
Permitting bookmaking on premises	-----	4	Permitting gambling on premises	-----	2
Permitting lottery activity on prem.	-----	3	Beverage Tax Law non-compliance	-----	1
Permitting immoral acty. on prem.	-----	3	Possessing indecent matter	-----	1
Sale during prohibited hours	-----	3	Permitting female impersonators on prem.	-----	1
Sale to minors	-----	3	Unqualified employees	-----	1
Conducting business as a nuisance	-----	2	Permitting foul language on prem.	-----	1
Cases brought by municipalities on own initiative and reported to Division	-----	-----	-----	13	
Violations involved	-----	-----	-----	21	
Sales to minors	-----	6	Act of violence	-----	1
Conducting business as a nuisance	-----	4	Permitting bookmaking on premises	-----	1
Sale during prohibited hours	-----	3	Permitting brawl on premises	-----	1
Unqualified employees	-----	2	Employee working while intoxicated	-----	1
Fraud and front	-----	1	Failure to close prem. during prohibited hours	-----	1

**HEARINGS HELD AT DIVISION:**

Total number of hearings held	-----	-----	-----	36	
Appeals	-----	7	Eligibility	-----	3
Disciplinary proceedings	-----	24	Order to Show Cause	-----	2

**STATE LICENSES AND PERMITS ISSUED:**

Total number issued	-----	-----	-----	2,417	
Licenses	-----	617	Social affair permits	-----	412
Solicitors' permits	-----	80	Miscellaneous permits	-----	317
Employment permits	-----	627	Transit insignia	-----	201
Disposal permits	-----	97	Transit certificates	-----	62
Wine permits	-----	4		-----	

**OFFICE OF AMUSEMENT, GAMES CONTROL:**

Licenses issued	-----	11	Premises inspected	-----	441
State Fair licenses issued	-----	21	Premises where violations found	-----	22
Enforcement files established	-----	20	Number of violations found	-----	25

JOSEPH P. LORDI  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

11. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY  
LABELED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against  
 780 ROUTE 3, INC.  
 t/a Flame Cocktail Lounge  
 780 Route 3  
 Clifton, N. J.,  
 Holder of Plenary Retail Consumption License C-100, issued by the  
 Municipal Board of Alcoholic Beverage  
 Control of the City of Clifton.

CONCLUSIONS  
AND ORDER

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 Licensee, by Josephine Kwiatkowski, President, Pro se.  
 Leon Chorkavy, Jr., Esq., appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On February 24, 1967, you possessed, had custody of  
 and allowed, permitted and suffered in and upon your  
 licensed premises, an alcoholic beverage in a bottle  
 which bore a label which did not truly describe its  
 contents, viz.,

One pint bottle labeled, 'Old Crow Kentucky  
 Straight Bourbon Whiskey, 100 Proof';

in violation of Rule 27 of State Regulation No. 20."

ABC Agent C testified that on February 24, 1967 he tested  
 all the open bottles of alcoholic beverages in licensee's prem-  
 ises. A preliminary test of a pint bottle labeled "Old Crow  
 Kentucky Straight Bourbon Whiskey, 100 Proof" found in the  
 cabinet below the back bar showed the contents thereof to be  
 "low in proof and up in color." Agent C further testified  
 that he sealed the bottle and brought it to the Division  
 laboratory for chemical analysis.

The report of analysis made by the Division chemist of the  
 contents of the bottle in question was admitted in evidence.  
 The report disclosed that the contents of the bottle, when com-  
 pared with an analysis of a genuine sample of the same brand,  
 were low in proof and acids and high in solids and color. It  
 was the opinion of the chemist that the contents of the seized  
 bottle were not genuine "Old Crow Kentucky Straight Bourbon  
 Whiskey, 100 Proof."

Josephine Kwiatkowski (president of the corporate licensee)  
 testified that, although the license has been held by the said  
 licensee nearly five years, she had no knowledge that the bottle  
 in question was in the licensed premises.

The findings of the Division chemist that the label on  
 the bottle did not describe its contents must be considered con-  
 clusive in the absence of any testimony to the contrary. No  
 such testimony in opposition to the chemist's findings was  
 offered by the licensee.

A licensee's responsibility for any "refills" found on the licensed premises was considered in Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156, wherein, among other things, the court stated:

"...We find nothing within the Alcoholic Beverage Control Act, R.S.33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration."

A licensee, being liable for the actions and conduct of his employees regardless of personal knowledge, intent or participation which resulted in the violation, is not released from responsibility even though the said violation was contrary to express instructions. Mazza v. Cavicchia, 28 N. J. Super. 280, reversed on other grounds 15 N. J. 498; Greenbrier, Inc. v. Hock, 14 N. J. Super. 39; Essex Holding Corp. v. Hock, 136 N. J. 28; Rule 33 of State Regulation No. 20.

I conclude, after careful consideration of the matter herein, that the Division has established the truth of the charge by a fair preponderance of the evidence, and recommend that the licensee be found guilty of said charge.

In view of the fact that the licensee has no prior adjudicated record, it is further recommended that an order be entered suspending the license for ten days, the minimum penalty in first offense cases involving one bottle bearing a label which did not truly describe its contents. Re Jewell Realty Corporation, Bulletin 1733, Item 8.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 18th day of July 1967,

ORDERED that Plenary Retail Consumption License C-100, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to 780 Route 3, Inc., t/a Flame Cocktail Lounge, for premises 780 Route 3, Clifton, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, July 25, 1967, and terminating at 3:00 a.m. Friday, August 4, 1967.

JOSEPH P. LORDI  
Director.

12. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE DWELLING - CLAIM OF OWNER OF SEIZED CASH REJECTED FOR FAILURE TO ESTABLISH GOOD FAITH - CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure )  
on October 30, 1966 of a quantity )  
of alcoholic beverages and \$46.85 )  
in cash at a dwelling located at )  
157 Sherman Avenue, in the City )  
of Newark, County of Essex and )  
State of New Jersey. )

Case No. 11,830

ON HEARING  
CONCLUSIONS AND ORDER

-----  
Bishop Norman, Pro se.

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

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 37 containers of alcoholic beverages and \$46.85 in cash, set forth in a schedule attached hereto, made part hereof and marked Schedule "A", seized on October 30, 1966 at a dwelling occupied by Bishop Norman at 157 Sherman Avenue, Newark, N. J. constitute unlawful property and should be forfeited.

The seizure was made by Newark police officers because of alleged unlawful sales of alcoholic beverages at the said premises.

When the matter came on for hearing pursuant to R. S. 33:1-66 Bishop Norman appeared pro se at the said hearing and sought return of the said seized cash.

Detective Frank M. Donnellan, of the Newark Police Department, testified as follows: Pursuant to a specific assignment to investigate unlawful sales of alcoholic beverages at the above premises, he and Detective Toma stationed themselves on the outside of this one-family dwelling on Sunday morning, October 30, 1966.

During a period of surveillance of approximately 35 minutes, they observed seven males and females enter this house through a side door, remain a short period of time and then emerge. When the seventh person left, he was intercepted and questioned with reference to his whereabouts.

He identified himself as Herbert Armstad, and admitted that a pint of Tiger Rose Wine which he had in his possession was obtained in the said premises from Norman, but that he "did not buy it". The officers then, in the company of Armstad, entered Norman's apartment where they found numerous brands of wine, gin and whiskey on a kitchen table and in a cupboard.

The alcoholic beverages, together with the sum of \$46.85, which Norman had in his possession, was seized, and Norman was thereupon arrested, charged with the sale of alcoholic beverages without a license, in violation of R. S. 33:1-50. The seized property was adopted by agents of this Division.

The records of this Division do not disclose any permit or license authorizing the sale of alcoholic beverages by Bishop Norman, or any other person at or for the premises in question.

The affidavits of mailing and publication, the inventory and a chemist's report certifying to the fact that these were alcoholic beverages were admitted into evidence.

Since this claimant did not have any license authorizing him to sell alcoholic beverages, the illicit alcoholic beverages found in his possession, together with the cash, constitute unlawful property, and are subject to forfeiture. R. S. 33:1-1(i); R.S. 33:1-2; R.S. 33:1-66. Seizure Case No. 11,182, Bulletin 1568, Item 5.

Bishop Norman sought the return of the seized cash, and gave the following account: He denied selling any alcoholic beverages at the premises in question but admitted that he gave bottles of wine to friends of his who came to the premises. These alcoholic beverages were purchased by him on behalf of a whist club which had no identifiable name or charter, and these premises served as the headquarters for that club. Its members would bring wine and liquor from time to time and if a person couldn't pay for wine, Norman would give it to them without charge.

He did, however, charge his friends for food since "I was selling barbecue and different things."; but certainly he would never charge for or sell alcoholic beverages. He was unable, however, to produce any record of the monies allegedly collected or of the names of the members of this alleged club.

The seized cash, he explained, came from his own personal resources and was not from sales of wine or liquor. He was requested to produce some evidence to this Division within a reasonable time after the hearing, of any employment that he had at or near the date of the seizure. Although he promised to produce the same, such record, if any, in fact, existed, was not produced to this date.

Evidence, in order to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself, and must be such as common experience and observation of mankind can accept as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546. Thus, the credibility of a witness must be evaluated and the reasonableness or probability of a witness' testimony bears on his credibility. Using this as a guide, I must reject the account as given by this claimant because I find it totally incredible and inconsistent with common experience. It is absurd to believe that this claimant was charging for food but was distributing alcoholic beverages without receiving payment therefor.

I further disbelieve his explanation that the alcoholic beverages belong to a "club", and that he was the repository of its monies and assets. The truth clearly lies in the testimony of the local detective who saw seven persons enter the premises and shortly emerge therefrom; and the seventh person, when questioned, had a bottle of wine admittedly obtained from the claimant. The circumstances herein strongly support the allegation of the Division that the claimant was engaged in the unlawful sales of alcoholic beverages.

Furthermore, the claimant's explanation of why he refused to sign a statement at the time of confrontation is equally unconvincing.

Since I find that this claimant was engaged in the unlawful sale of alcoholic beverages, his claim lacks the element of good faith; thus, the Director is without authority to authorize the return of the seized cash. Seizure Case No. 11,431, Bulletin 1644, Item 3; Seizure Case No. 11,156, Bulletin 1557, Item 5.

Accordingly, I recommend that Norman's claim for the return of the seized cash be rejected, and that an order be entered forfeiting the cash and the alcoholic beverages.

#### Conclusions and Order

No exceptions were taken to the Hearer's Report pursuant to 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 DETERMINED and ORDERED that the said property, as set forth 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 P. LORDI  
Director.

Dated: July 18, 1967.

#### SCHEDULE "A"

37 - containers of alcoholic beverages  
\$46.85 - cash

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

In the Matter of Disciplinary Proceedings against

NEW ALLWOOD REST, INC.  
777 Bloomfield Avenue  
Clifton, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Plenary Retail Consumption License C-122, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.

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Friend & Friend, Esqs., by Israel Friend, Esq., Attorneys  
for Licensee.

Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control

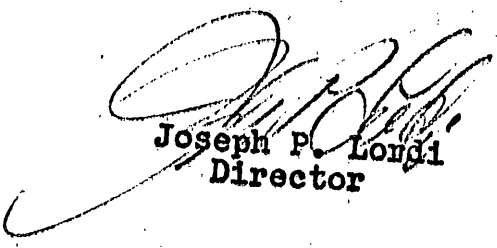
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 13, 1967 it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re First & Last Chance, Inc., Bulletin 1738, Item 4.

Accordingly, it is, on this 30th day of August 1967,

ORDERED that Plenary Retail Consumption License C-122, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to New Allwood Rest, Inc., for premises 777 Bloomfield Avenue, Clifton, be and the same is hereby suspended for five (5) days, commencing at 3 a.m. Monday, September 4, 1967, and terminating at 3 a.m. Saturday, September 9, 1967.

  
Joseph P. Longi  
Director