Mr. Gossweiler

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1391 June 22, 1961

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1391 June 22, 1961

1. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - OBSCENE LANGUAGE - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
MARLBOROUGH HOTEL CORPORATION t/a MARLBOROUGH HOTEL CORP. 323 Lexington Avenue Lakewood, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Lakewood.	)	

Saul C. Schutzman, Esq., Appearing for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On March 5, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Laura ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On March 5, 1961, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

On March 5, 1961, at about 2:20 A.M., ABC agents observed bartender James Van Pelt serve a bottle of beer to a 19-year-old girl. The agents identified themselves to Van Pelt who admitted making service of the beer to the minor without inquiring as to her age.

During the time the agents were in the defendant's licensed premises a loud argument ensued during which time a female, her male companion and another male (who sat at another section of the bar) used filthy and indecent language. After the lapse of about five minutes, the bartender made an attempt to stop it but the participants still continued to use the indecent language for twenty minutes thereafter before the bartender told one male to desist at which time the other male and his female companion left the premises.

Defendant has a prior adjudicated record. Effective March 3, 1958 its license was suspended by the Director for five days (Bulletin 1218, Item 5) and again for fifteen days, effective September 3, 1958 (Bulletin 1242, Item 8) for sales of alcoholic beverages to minors. The sale to a minor in the instant matter is the third similar violation committed by the defendant within a period of five years.

The attorney for the defendant, in attempted mitigation of penalty, alleges that the ownership of 98 of the 100 shares of the outstanding capital stock of the defendant-corporate licensee had been acquired by one Joseph Rocco since the prior violations and, therefore, the past record of the defendant should not be considered when fixing the penalty herein. The attorney further states that "the present operation does not include anybody formerly associated with the association insofar as its business policies or conduct is concerned, since the stock held by Mr. and Mrs. Enno is only for qualifying purposes..." The application pursuant to which the current license was issued discloses that Edward Enno, holder of one share of stock, is president and director of the corporate-licensee; that Jenny Enno, holder of one share of stock is secretary and director and that Joseph Rocco, holder of ninety-eight shares of stock, is vice-president, treasurer and director. It further appears that prior to the acquisition of the stock by Rocco, said Edward Enno and Jenny Enno each held 33-1/3 shares of said stock and were president and secretary, respectively of the present defendant corporate-licensee. Inasmuch as Edward and Jenny Enno continued as stockholders and still hold the respective offices aforementioned in the defendant corporation, I have no alternative other than to take into consideration its previous record.

The minimum penalty for sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Sonny's Countryside Tavern, Inc., Bulletin 1379, Item 6. This being the third suspension of defendant's license within five years for sale to minors, I would ordinarily suspend its license for forty days. Re Meury's Barn, Inc., Bulletin 1274, Item 4. However, since it appears that the present stockholders of defendant corporation were not personally involved in the previous violations or in the present violation, I shall, under the circumstances in this case, suspend defendant's license for thirty days on Charge 1. Cf: Ocean Avenue Tavern Inc. Bulletin 1390, Item 3 and for a period of ten days on Charge 2 (Re La Rocca, Bulletin 1364, Item 10), making a total of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 17th day of April 1961,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Lakewood to Marlborough Hotel Corporation, t/a Marlborough Hotel Corp. for premises 323 Lexington Avenue, Lakewood, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m., Monday, April 24, 1961, and terminating at 2:00 a.m., Monday, May 29, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - CETRANO v. PATERSON.

EUGENE CETRANO,

Appellant,

v. ORDER

BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON,

Respondent.

James F. Colaianni, Esq., Attorney for Appellant.
Theodore D. Rosenberg, Esq., by Louis Infald, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby on March 8, 1961, it denied an application filed by appellant for the transfer of plenary retail consumption license C-247 from Angelo Padula to appellant and from premises at 85 Water Street to premises at 350 Preakness Avenue, Paterson.

Prior to the hearing of the appeal, the attorney for appellant advised me in writing that his client desired to discontinue the appeal and that the attorney for respondent had consented thereto. No reason to the contrary,

It is, on this 13th day of April 1961,

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

WILLIAM HOWE DAVIS
DIRECTOR

3. MORAL TURPITUDE - CONVICTION FOR UNLAWFUL POSSESSION OF MARIHUANA HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

Re: Eligibility No. 695 April 14, 1961

Applicant seeks a determination as to whether or not he is ineligible for employment by the holder of a liquor license in New Jersey by reason of his conviction of a crime.

Applicant's criminal record discloses that on December 26, 1944 he was fined $20.00 for a violation of a city ordinance; that on February 26, 1951 he was fined $10.00 for gambling; that on May 15, 1952 he was placed on probation for 1 year in a magistrate's court for unlawful use of marihuana; that on December 14, 1953 he was fined $25.00 as a gambling house proprietor; that on March 13, 1956 he was sentenced in a magistrate's court to serve 90 days in the Essex County Penitentiary for unlawful use of marihuana; that on October 24, 1956, after pleading non vult to a charge of unlawful possession of marihuana, he was sentenced in a county court to serve from 2 to 3 years in New Jersey State Prison from which institution he was paroled on March 24, 1958.

Unlawful possession of marihuana may or may not involve moral turpitude. Where aggravating circumstances appear it has been held that such crime involves moral turpitude. Re Case No. 444, Bulletin 520, Item 10; Re Case No. 402, Bulletin 490, Item 8.

In the instant case applicant had 57 marihuana cigarettes, 5 in his personal possession and 52 concealed in an old oil stove in his home. He was prosecuted for the use of the same in the magistrate's court and for possession of marihuana in a county court. When apprehended by the police, applicant stated he would buy $20.00 worth of marihuana cigarettes, that he would use them and now and then would sell a couple.

Considering the number of marihuana cigarettes found in applicant's possession, his trafficking in marihuana, and the sentence of the court, it is my opinion that applicant's conviction on October 24, 1956 involves the element of moral turpitude and precludes him from engaging in the alcoholic beverage industry in this State.

In addition, the prior unsavory record of applicant raises a doubt in my mind of his fitness to become engaged in such industry even in the future unless he definitely rehabilitates himself and can prove by his conduct that he is worthy of pursuing this line of endeavor.

Applicant, however, may make application to the Director to remove his disqualification on or after March 24, 1963 (5 years from March 24, 1958, the date of his aforesaid parole).

I. Edward Amada
Attorney

APPROVED:

William Howe Davis
Director

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN HOTEL - RESTAURANT - STILL PARTS - ALCOHOLIC BEVERAGES FURNISHINGS, EQUIPMENT, AND CASH RECEIPTS ORDERED FORFEITED.

In the Matter of the Seizure on June 22, 1959 of a quantity of alcoholic beverages, fixtures, furnishings, equipment, and $26.76 in cash at the Moran Hotel, 50 Marshall Street, in the City of Elizabeth, County of Union and State of New Jersey.	)	CASE NO. 10,009 ON HEARING CONCLUSIONS AND ORDER

Fast and Fast, Esqs., by Herman L. Fast, Esq., Attorneys for the Claimant, Sterling Lee Hill.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me, pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes of New Jersey, to determine whether certain alcoholic beverages, furnishings, fixtures and other personal property, one "still part", a barrel of mash and $26.76 in cash, as more particularly described in the schedule attached hereto and marked "Schedule A", which was seized on June 22, 1959 in premises known and designated as the Moran Hotel, 50 Marshall Street, Elizabeth, New Jersey constitute unlawful property, and should be forfeited.

The Hearer inadvertently neglected to prepare and file a Hearer's Report, and since no inquiry was made by any of the interested parties with reference thereto, the matter, for some unexplained reason, was never determined. In addition, the Hearer recently reached the mandatory retirement age and is no longer with this Division, and the attorney of claimant being apprized of this fact has consented to waive a Hearer's Report, and accept an adjudication by me based upon the record and brief filed by him.

An appearance was made on behalf of Sterling Lee Hill, who claimed the property, furnishings and fixtures, with the exception of the still parts and mash. Mr. Hill, through his attorney, applied for an early hearing in advance of the statutory hearing, on the ground that as the operator of the said hotel, hardship would follow if he were compelled to await the said statutory hearing, scheduled for July 27, 1959. Accordingly, such hearing was held, and at the conclusion of the said hearing it was determined that no action would be taken on the claim for the return of the said property until the statutory hearing, because of the fact that counsel was unable to stipulate with respect to the completion of the record at this hearing.

The statutory hearing was accordingly held on July 27th, and from these hearings the following evidence was adduced.

Reports of ABC agents and the testimony of an officer of the Elizabeth Police Department and other documents disclose the following facts:

On Monday, June 22, 1959 the Division received information from the Elizabeth Police that alcoholic beverages were being sold without a license in the premises in question. Acting upon this information, and pursuant to a plan between ABC agents and the local police, at about 2:00 P.M., of that day a plainclothesman entered the hotel premises which were owned by the claimant, Sterling Lee Hill, and arranged for the use of a room later that night, for himself and a female friend.

At about 10:00 P.M. of that night, the said plainclothesman, in possession of seven marked $1.00 bills, and in the company of a female companion, entered the hotel and purchased two shots of V.O. Whiskey from one Lorene Phillips, who was in charge of the hotel, and the restaurant, which was part of the hotel. Payment was made to Miss Phillips with two marked $1.00 bills, from which she gave to the officer change of fifty cents. They were then shown to the room; and shortly thereafter the aforesaid female came back downstairs to the restaurant part of the hotel and purchased two more drinks of the same brand of whiskey from Lorene Phillips, who again accepted two marked $1.00 bills in payment therefor, and gave her fifty cents in change. Immediately upon this purchase, ABC agents and local police officers arrested the said Lorene Phillips and confiscated the furnishings and personal property, including the $26.76 cash, all of which were located in the said premises. The agents examined another part of the same building and in the basement of the building, which is owned and controlled by the said claimant, certain still parts were found, together with a 55 gallon barrel of mash. The operative facts, up to this point, are substantially admitted by this claimant.

In further support of the Division's case, a sworn statement of Lorene Phillips was received in evidence, wherein she admitted that the claimant is the operator of the hotel; that she was in charge of the same, and had been selling alcoholic beverages for about one month prior to the date set forth hereinabove, in accordance with the express instructions of the claimant. The said Lorene Phillips refused, however, to testify at these hearings, on the

advice of her counsel, because of a criminal charge presently pending against her, and now being considered by the Union County Grand Jury. The records of this Division do not disclose any license authorizing the sale of alcoholic beverages to either Sterling Lee Hill, Lorene Phillips or the Moran Hotel, or for the premises where the violations took place.

A sample of the said whiskey was submitted to the Division's chemist for analysis, and it was determined that it was fit for beverage purposes with alcohol by volume of 44.0 percent. Similar samples were taken of the other two bottles; one of them contained alcohol by volume of 47 percent and was found to contain gin fit for beverage purposes. Samples were also taken of the mash identified by tag marked "58", and it was found to contain alcohol by volume of 3.8 percent and to be fit for distillation of alcohol therefrom, fit for beverage purposes in the absence of bichloride of mercury, which was added. An analysis of a sample of a six ounce bottle of mash identified by tag marked "68" proved that this had alcohol by volume of 4.5 percent and was a mash fit for distillation of alcohol therefrom, fit for beverage purposes, in the absence of bichloride of mercury, which was added.

It should be noted that neither this claimant nor anyone else appeared to oppose forfeiture of the still parts or mash products, found in the basement of these premises.

The sale of alcoholic beverages at premises without a license, or of such alcoholic beverages as are intended for that purpose, is illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and all other personal property seized therewith, including the $26.76 in cash, constitute unlawful property and are subject to forfeiture R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Claimant, Sterling Lee Hill, testified in support of his claim, that he does not hold any license issued by me or the local issuing authority, authorizing him, or anyone on the said premises, to sell alcoholic beverages. He states however that he was not on or in the premises at the time the alleged sales were made; that Lorene Phillips, who was his manager at the time and place in question, did not have any authority to make these sales; nor did he know of any sales made by her at that or any other time; that the bottles of alcoholic beverages confiscated by the agents were in fact purchased by him for his own use, and not for re-sale; and that he had no knowledge of any still parts, barrels of mash or any equipment for the manufacture of alcoholic beverages, which were found in the basement of his premises.

Counsel for claimant has submitted a memorandum in which he projects four arguments in support of his application for the return of the seized property to the claimant, briefly summarized as follows: (1) that no search warrant was issued prior to the seizure of the claimed articles, (2) assuming illegal seizure, only the whiskey sold should have been seized (sic) and (3) the seizure was illegal because there was no proof of unlawful activity on the part of the claimant, (4) the presence of a still part and a barrel with mash does not validate the illegal seizure.

I shall discuss the points raised seriatim. It is a well-established principle that forfeiture does not depend upon the seizure of the property pursuant to a search warrant. Re Tricoli, Bulletin 164, Item 9, citing cases from the Federal Jurisdiction, Strong v. United States, 46 F. (2d) 257 (C.C.A. 1st, 1931); United States v. Various Items of Personal Property, 40 F. (2d) 422 (C.C.A. 2nd, 1930), affirmed 282 U.S. 577 (1930); Dodge v. United States, 272 U. S. 530

(1926). Seizure Case No. 7480, Bulletin 857, Item 3, Seizure Case No. 5450, Bulletin 364, Item 14 and Seizure Case No. 7939, Bulletin 927, Item 9; Seizure Case No. 5644, Bulletin 378, Item 5; Re Amato Bulletin 726, Item 8; Seizure Case No. 9280, Bulletin 1166, Item 8.

Next, the claimant contends that only the whiskey sold should have been seized. This appears to be a specious argument, because it is unrealistic and without the intendment of the Statute. In support of this contention, claimant cites R.S. 33:1-66, which provides that all alcoholic beverages sold in violation of the Rules and Regulations are declared unlawful property and shall be forfeited. It is however, clear that the pertinent provision applicable to this situation is R.S. 33:1-66(b) which provides:

> "All alcoholic beverages, fixtures and personal property, located in or upon any premises, building, yard or enclosure connected with a building in which an illicit beverage is found, possessed, stored or kept are hereby declared unlawful property and should be seized, forfeited and disposed of as other unlawful property seized under this section." (Emphasis mine)

I find that since the alcoholic beverages contained in these premises were intended for sale, and were actually sold, that they constitute illicit alcoholic beverages and are subject, therefore, to forfeiture, within the contemplation of the Section hereinabove set forth.

The contention implicit in this argument, that only the whiskey sold should have been seized, has been consistently rejected by the Division. See Seizure Case No. 7480, Bulletin 857, Item 3, cited with approval in Seizure Case No. 8553, Bulletin 1033, Item 7; Seizure Case No. 8634, Bulletin 1056, Item 4. In Seizure Case No. 7263, Bulletin 812, Item 2, the Director used the following language,

> "This clear statutory language has from the very outset of the State Department of Alcoholic Beverage Control been construed to mean just what it says. Under its provisions the Commissioner ordered forfeited the entire equipment of a restaurant speakeasy."

R.S. 33:1-2, R.S. 33:1-66(b). On the evidence presented it is established that the alcoholic beverages seized in these premises were intended for unlawful sale and hence were illicit. It therefore follows as of course, that the equipment and furnishings seized therewith likewise constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-66. Seizure Case No. 9919, Bulletin 1283, Item 7.

The next contention of the claimant is that there was lack of proof of any unlawful alcoholic beverage activity on his part. In support of this contention, he states that he was not present at the time of the alleged sale; that Miss Phillips was not authorized by him, to sell any alcoholic beverages; and that he could not be chargeable with her unlawful acts, unless he directed or knowingly assented to or permitted such sale by his employee.

In furtherance of this argument counsel states that "The proceedings here, if not criminal in nature, are at least quasi-criminal." It is clear that my jurisdiction herein is neither criminal nor quasi-criminal but is, in fact, civil in nature. See Kravis v. Hock, 137 N.J.Law (Sup. Ct. 1948). The issue here is not whether the claimant is guilty of any criminal act, but whether the

property seized herein is subject to forfeiture because of the violation of the provisions of R.S. 33:1, et seq.

It is clear that the liability of the claimant for the acts of his employee would be civil and not criminal in nature. Hence, the general liability would be the same as that applicable to a licensee of any given licensed premises as it relates to the acts of his agents, servants or employees.

It is indisputable that the woman employee, Miss Phillips, was placed in charge of the premises by the claimant, at the time alleged, and had the apparent authority to operate the hotel and restaurant. Thus, the general rule applies, that a master is responsible for the wrongful acts of his servant, if done within the scope of her employment, upon the express or implied authority given her, considering the nature of the service required, and the circumstances under which the act was committed. Smith v. Bosco, 126 N.J.L. 452, 454; Klitch v. Betts, 89 N.J.L. 348; Michael v. Southern Lumber Co., Inc., 101 Id. 1.

Whatever is done by the employee by virtue of her employment, and in furtherance of its ends, is deemed by the law to be an act done within the scope of her employment; and in determining whether such conduct was within the scope of her employment, it is proper to inquire whether she was, at the time, engaged in serving her master. 37 C.J.S. Sec. 570, and cases cited therein. The alcoholic beverages dispensed by the woman employee herein were made available by the claimant, and her acts were clearly within the scope of her employment

The evidence further discloses that on June 22 when Police Officer Bryant first visited these premises, he had a conversation with the claimant, Sterling Lee Hill, and asked him for a beer. Hill then went to the refrigerator to get a bottle of beer, opened it and said, "There isn't any. They just run out." When Lorene Phillips was questioned she admitted and later reduced this admission to a sworn statement, that the claimant, Hill, had instructed her to sell intoxicating beverages, and these beverages were placed at her disposal for such sale. The fact that two sales were made, coupled with the conversation had with the claimant earlier in the day, appears to be incompatible with claimant's claim of innocence, and leads one to the inescapable inference that he knew, or should have known that alcoholic beverages were being sold on these premises. With these facts established, the principle to be applied comes clearly within the interdiction of 48 Corpus Juris Secundum, Section 271, wherein it is stated,

> "According to other decisions, however, a person is liable for violations of the liquor laws committed by his servant or agent while pursuing the ordinary business entrusted to him, even though such violations are committed in the absence of the principal or master. Hershorn vs. People, 113 P. 2nd 680, 108 Colo. 43, 139 A.L.R. 297. If the whole course of the principal's or master's business is unlawful as where he keeps liquor for sale without a license, he is responsible for any sales made by his agents, clerks, or servants, whether or not he knew of the particular sale or consented thereto, and no matter what his order to them may have been."

See Poland vs. State, 166 N.E. 675, 89 Ind. App. 454; Malone v. State, 119 S.W. (2nd), 885, Tex. Cr.306.

Since I have concluded that, on the basis of the believable evidence and the logical inferences flowing therefrom, the liquor

was kept by the claimant for the purpose of sale without a license, I therefore conclude that the acts of his employee, Miss Phillips, were unlawful. See Kennedy vs. U.S., 14 Fed. (2nd) (C.C.A. Nev.).

The claimant raises the additional point, to the effect that the presence of a still part and a barrel with mash do not validate the alleged illegal seizure. In this connection it is only necessary to note that, according to the claimant's own testimony, he has been in sole possession of this building and the basement thereof, for seven years prior to the seizure. I am satisfied, from the believable evidence presented, that the claimant knew of the presence of the still part and the mash. Since he does not claim either of these items, it is unnecessary to further develop the arguments in this connection.

I shall, therefore, deny the application of the claimant for the return of the seized property, including the cash of $26.76, more fully described in "Schedule A" attached hereto and shall order a forfeiture of the same.

Accordingly, it is, on this 12th day of April, 1961,

DETERMINED and ORDERED that the seized property, including the $26.76 in cash, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

3 - bottles of whiskey
1 - cash register
1 - white enamel cupboard
13 - chairs
4 - tables
1 - electric fan
1 - television set
1 - wall clock
1 - radio
1 - coat stand
1 - music box and currency therein
1 - still part
1 - 55 gal. barrel with mash
$26.76 in cash

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN "CLUB" PREMISES - STOCK OF ALCOHOLIC BEVERAGES, EQUIPMENT AND CASH ORDERED FORFEITED - CLAIM OF LANDLORD FOR RETURN OF SODA MACHINE DENIED FOR ABSENCE OF GOOD FAITH - MUSIC MACHINE AND POOL TABLE ORDERED RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on October 29, 1960 of a quantity of alcoholic beverages, furnishings, fixtures, equipment and $26.26 in cash at the club quarters of South Side Motorcycle Club located at 476 Huntsdon Street, in the City of Newark, County of Essex and State of New Jersey.	Case No. 10,444 ON HEARING CONCLUSIONS AND ORDER

Leonard Schlesinger, Appearing for Emerson Automatic Music, partner in the company.
L. D. Peterman, appearing 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:

"This matter came on pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey to determine whether a quantity of alcoholic beverages, furnishings, fixtures, $26.26 in cash and equipment, described in an inventory as set forth in schedule annexed hereto, and marked 'Schedule A', seized on October 29, 1960 at the club quarters of South Side Motorcycle Club located at 476 Huntsdon Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

"When the matter came on for hearing pursuant to R.S. 33:1-66 an appearance was entered on behalf of Emerson Automatic Music Co., a corporation, which sought return of a Seeburg music machine, more generally known as a 'juke box', and a pool table (with its equipment) who An appearance was also entered by the landlord of the premises who sought the return of a pepsi-cola cooler. No one opposed forfeiture of the balance of the property, and the alcohol seized.

"ABC agents testified substantially as follows:

"On October 22, 1960 an ABC agent entered the South Side Motorcycle club and found 18 men and women sitting around in a poolroom and in the adjacent room listening to juke box music and drinking beer from cans. The agent went into the adjacent room, where he found a small room and saw seven patrons drinking beer or whiskey. He ordered a bottle of Ballantine beer and paid thirty-five cents to the bartender, known as King who was later identified as William Baker, vice-president of the South Side Motorcycle Club. The agents then turned to their premises on October 29, 1960 and Agent J reentered the premises while other agents and Newark police officers remained on the outside. At that time he proceeded to the room wherein the bar was located, was served drinks and paid for them with marked bills. He noticed several men and women consuming beer from cans and was also served on this occasion by William Baker. Shortly thereafter other ABC agents and local police entered the premises, observed most of the patrons holding glasses containing highballs or cans containing beer. The agents revealed their identity and seized the alcoholic beverages, $26.26 in cash and the furnishings, fixtures and equipment, as set forth in the schedule annexed hereto.

"Neither the South Side Motorcycle Club nor William Baker held any license, authorizing the sale of alcoholic beverages, and the premises were not licensed for that purpose. William Baker was arrested and arraigned before the Municipal Court of the City of Newark on charge of the sale of alcoholic beverages without a liquor license in violation of R.S. 33:1-50(a) and also possession of alcoholic beverages with intent to sell same without a license. He was held for Grand Jury action on these charges.

"The seized alcoholic beverages were intended for sale without a license and hence are illicit R.S. 33:1-1(i). Such illicit alcoholic beverages, the sum of $26.26 in cash and all other personal property seized in the premises constitute unlawful property and are subject to forfeiture R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"At the hearing William Baker admitted that neither the Club nor he has a license to sell alcoholic beverages. He stated that the club members do not pay specifically for drinks but that the cost of these drinks are taken from their dues. He admitted that Agent J was not a club member, but that he had "contributed" thirty-five cents for each drink.

"Mr. L. D. Peterman testified that he is the landlord of these premises and that William Baker is his brother-in-law. He denied that he had any knowledge of any of the sales of alcoholic beverages on the premises although he admitted that he visited the premises frequently and remained on the premises. When he was asked by the ABC agents, 'Aren't you interested in what happens in the premises you rent to the Club?', this claimant answered, 'I don't care'.

"It taxes one's credulity to believe that with the consistent activity as reflected in the statements of the ABC agents on both October 22, and October 29, the landlord of these premises should have been unaware of the fact that alcoholic beverages were being sold, purchased, and consumed in these premises. It is particularly significant that on October 22 there were no less than 18 patrons drinking whiskey and beer from cans. The relationship of this claimant to William Baker would indicate that he was more intimately aware of the activities in these premises than would have perhaps been true in any other landlord - tenant relationship.

"The Director has discretionary authority to return property subject to forfeiture to a person who establishes to his satisfaction that he acted in good faith and did not know or have any reason to suspect that his property would be used in violation of the Alcoholic Beverage Law R.S. 33:1-66(f). The conclusion is inescapable upon the circumstances in this matter, that this claimant's conduct displays a markedly careless indifference to what use was made of these premises, and of his claimed property, so that, as far as forfeiture proceedings are concerned, Peterman cannot be regarded as having acted in good faith Cf Seizure Case No. 8554, Bulletin 1034, Item 9 and Seizure Case No. 9965, Bulletin 1297, Item 4.

"From the evidence submitted on behalf of the Emerson Automatic Music Co. it appears that the Seeburg music machine and the pool table (with its equipment) were installed in these premises about seven or eight months prior to the date of the seizure. Leonard Schlesinger, testifying on behalf of this claimant, stated that he had been in this business for some twenty-odd years and after this equipment was placed in these premises, visited the premises only for the purpose of servicing his machine. He denied ever seeing any alcoholic beverages being served or consumed. He usually went there during the morning hours and made no inquiry with respect to the sale

or consumption of alcoholic beverages. So far as he was concerned the establishment had the outward appearance of a Club. I am satisfied that this claimant acted in good faith, and did not know or have any reason to believe that alcoholic beverages were being sold in the premises in question. It is recommended that the claim of Emerson Automatic Music Co. be recognized and that an order be entered to return said property to claimant, provided it pays the costs of the seizure and storage before a date to be fixed in said order. R.S. 33:1-66(f).

"It is further recommended that an order be entered forfeiting the pepsi cola cooler and the other items set forth in Schedule 'A'".

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

Accordingly, it is, on this 13th day of April 1961,

DETERMINED and ORDERED that if on or before the 24th day of April, 1961, the Emerson Automatic Music Co. pays the costs of the seizure and storage of the Seeburg Music Machine and the pool table (with its equipment), said items will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the $26.26 in cash, more fully described in Schedule "A" attached hereto, constitute unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the state in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

3 - 4/5 quart bottles of various brands of alcoholic beverages
73 - 12 oz. cans of beer
2 - music boxes and currency therein
1 - cigarette vending machine and currency therein
1 - television set
1 - pool table and equipment
1 - pepsi cola cooler
1 - fan
1 - cash box
$26.26 in cash

6. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AND PERMITTING UNAUTHORIZED PERSONS ON LICENSED PREMISES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RALPH G. REYNOLDS
t/a Ralph's Tavern
486 Central Avenue
Jersey City 7, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-370, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On Sunday, March 19, 1961, between 10:00 A.M. and 12:20 P.M., you conducted your licensed business; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950.

"2. On Sunday, March 19, 1961, between 10:00 A.M. and 12:20 P.M., you suffered and permitted persons except yourself and your actual employees and agents in and upon your licensed premises; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950."

On Sunday, March 19, 1961, two ABC agents took a post of observation outside the premises of defendant-licensee and saw males entering and leaving the premises by way of a hallway door. At 12:20 p.m. that day the agents went into the premises, identified themselves to James Wilson Walker (who was acting as bartender) and found five men seated around a table in the rear part of the barroom drinking beer and whiskey. Walker verbally admitted to the agents that he had opened the tavern at about 10 a.m. that morning and had served beer and whiskey to the patrons.

The local ordinance prohibits the conduct of the licensed business on the premises between the hours of 2 a.m. and 1 p.m. on Sundays, and further provides that a licensee shall not suffer or permit any person whatsoever, except the licensee and his actual employees, upon the licensed premises during prohibited hours.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days, the minimum penalty for violations of this type. Re Canzano, Inc. Bulletin 1275, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of April 1961,

ORDERED that Plenary Retail Consumption License C-370, issued by the Municipal Board of Alcoholic Beverage Control of the City

of Jersey City to Ralph G. Reynolds, t/a Ralph's Tavern, for premises 486 Central Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, April 24, 1961, and terminating at 2 a.m. Thursday, May 4, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM LIFTED UPON CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against

SPARTA ASSOCIATES, INC.
3 Center Street
Sparta, N. J.

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Sparta

ON PETITION
ORDER

James F. McGovern, Jr., Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On March 27, 1961, I suspended defendant's license for the balance of its term because the manner in which it was then conducting its business constituted a violation of Rule 6 of State Regulation No. 32. In said order it was provided that, in the event the unlawful situation was corrected, application might be made to me for the lifting of said suspension but in no event would an order lifting said suspension be entered prior to the expiration of ten days from the effective date thereof, namely, prior to 2 a.m. April 13, 1961.

By letter dated April 10, 1961, the attorney for petitioner advised me that defendant had complied with suggested changes and that the licensed premises now resemble a public barroom. On April 11, 1961, an ABC agent inspected defendant's premises and ascertained that a new sixteen-foot U-shaped bar, 42½ inches in height and two feet in width, had been erected with elbow rests and brass rail foot rests. There were nine new wooden bar stools in the premises to be installed around the bar after a coat of shellac had been applied to them. The agent also observed shelves along both the left and right walls, a service counter located on the left side of the premises and no floor displays between the bar and the service counter or in the middle of the floor. On the upper portion of the interior of the show-window there was a 10"x30" wooden sign advertising the premises as a barroom.

It sufficiently appearing that the room in which defendant intends to sell and display alcoholic beverages is a "public barroom" within the meaning of the term as used in the statute and regulation, and it further appearing that ten days will have expired at 2 a.m. Wednesday, April 13, 1961, I shall lift the suspension as of that time.

Accordingly, it is, on this 12th day of April 1961,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Sparta to Sparta Associates, Inc., for premises 3 Center Street, Sparta, be restored to full force and operation effective at 2 a.m. Thursday, April 13, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against	)
CELLAR TAVERN, INCORPORATED 9 Oak Street Butler, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Butler.	)

Mellinger & Rudenstein, Esqs., by Seymour Rudenstein, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

At the hearing held herein the attorney appearing for defendant stated that his client does not oppose the prosecution in this matter and entered a plea of non vult to the charge hereinafter set forth. He further stated that the purpose of the hearing was to permit defendant to offer testimony in mitigation and explanation of the circumstances under which the offense was committed.

The charge herein reads as follows:

"On December 22, 1960, you sold and offered for sale, at retail, directly or indirectly one case (12 - 4/5 quart bottles to the case) of Seagram's Seven Crown Blended Whiskey, an alcoholic beverage, at less than the price thereof filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30."

The file in this case discloses the following facts: On the evening of Thursday, December 22, 1960, two ABC agents entered defendant's premises and sat at the bar. At that time Paul Whritenour was tending bar and Joseph Dilzer was walking around in the premises. Shortly after 9 p.m. one of the agents asked the bartender if he had any Seagram's Seven Crown whiskey in cases and the bartender replied "Yes, we have it but go and see Joe. He'll take care of you and give you a good deal." This agent then spoke to Joseph Dilzer who, after a short conversation with the agent, said to him "look, this whiskey sells for $4.79 a fifth. I'm going to sell it to you for $4.25 a fifth." Dilzer placed a cardboard case containing 12 - 4/5 quart bottles of Seagram's Seven Crown Whiskey on the floor and accepted from the agent five $10 bills and one $1 bill, the numbers on which had previously been noted by the agents. The agent who made the purchase carried the case from the premises but returned shortly thereafter with two other ABC agents who had remained outside. After the agents identified themselves to Dilzer, he denied making the sale but the marked money was found in his possession. The minimum consumer resale price then in effect for Seagram's Seven Crown whiskey was $4.79 a fifth, less a permissible discount of 5% on case lots, thus making the minimum consumer price $54.61 for a case.

The evidence presented on behalf of defendant at the hearing is material as to penalty in this case because of the previous record of Joseph Dilzer. His record as an individual licensee and as an officer of licensed corporations is fully set forth in Re Butler Oak Tavern, Bulletin 1055, Item 1. In that case, by order dated March

14, 1955, I revoked a license held by said corporation because of Dilzer's record which included three separate violations similar to the violation herein. On appeal the revocation was affirmed. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 36 N.J. Super. 512 (App.Div. 1955). At the hearing herein Howard Gutman testified that he is president and owner of 98% of the stock of defendant corporation; that his wife (Dorothy) holds one share and his sister one share; that on July 7, 1960, defendant entered into a ten-year lease of the first floor and a garage with Joseph Dilzer and Mamie Dilzer, owners of the premises at 9 Oak Street, Butler, which are the identical premises formerly occupied by and licensed to Joseph Dilzer or various corporations controlled by him, one being Butler Oak Tavern; that on July 19, 1960, defendant obtained a transfer of a license to said premises; that in August 1960 defendant employed Joseph Dilzer as a bartender at a weekly salary of $150 and that Dilzer has no interest in defendant corporation. Howard Gutman (a former solicitor licensed by this Division) further testified that he has known Dilzer since 1947 and admitted on cross-examination that he had heard that Dilzer had some trouble as a licensee. He also testified that, after the violation was committed herein, the corporation discharged Dilzer and notified him and his wife that the corporation was cancelling the lease as of May 1, 1961, in accordance with a clause in the lease granting the lessee the right to cancel on sixty days' notice.

Defendant has no prior record. When Dorothy Gutman held a license in Livingston, her license was suspended for thirty days, effective May 19, 1952, for dissimilar charges. Bulletin 936, Item 4. However, since these dissimilar violations occurred more than five years ago, they will not be considered in fixing penalty herein. The minimum penalty for the violation charged herein is ten days. Re Toms River Liquors, Inc., Bulletin 1362, Item 5. In fixing the penalty in this case, I am not particularly impressed by Howard Gutman's testimony that he had only a hazy knowledge of Dilzer's record as a licensee. Under all the circumstances, including the plea entered on the hearing date, I shall suspend defendant's license for forty-five days.

Accordingly, it is, on this 17th day of April 1961,

ORDERED that Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Butler to Cellar Tavern, Incorporated, for premises 9 Oak Street, Butler, be and the same is hereby suspended for forty-five (45) days, commencing at 3 a.m. Tuesday, April 25, 1961, and terminating at 3 a.m. Friday, June 9, 1961.

William Howe Davis
Director