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

BULLETIN 1089 DECEMBER 7, 1955.

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ITEM

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

BULLETIN 1089 DECEMBER 7, 1955.

1. COURT DECISIONS - CHRISTY AND FLORENCE TOWNSHIP v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL ET ALS. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-673-54

THE FLORENCE METHODIST CHURCH, THE FIRST BAPTIST CHURCH OF FLORENCE, THE FIRST WESLEYAN METHODIST CHURCH OF FLORENCE, ST. STEPHENS EPISCOPAL CHURCH,

Respondents,

-vs-

THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FLORENCE and GERTRUDE CHRISTY,

Appellants,

DEPARTMENT OF LAW AND PUBLIC SAFETY OF NEW JERSEY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Respondent.

Argued October 31, 1955. Decided November 9, 1955.

Before Judges Clapp, Jayne and Francis

Mr. George Pellettieri argued the cause for Appellant (Messrs. Pellettieri & Rabstein, attorneys)

Mr. Martin L. Haines argued the cause for the Respondent Churches (Messrs. Dimon, Maines & Bunting, attorneys)

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

The opinion of the Court was delivered by

CLAPP, S.J.A.D.

The appellant, Mrs. Gertrude Christy, made application to the Township Committee of the Township of Florence for a transfer to herself of a plenary retail liquor consumption license and also for a place-to-place transfer of the license. The Committee granted her application by a vote (according to the record) of 6 to 5. Appeal was then taken to the Division of Alcoholic Beverage Control by four churches. The Division reversed the Committee, and Mrs. Christy now appeals to us.

The Division's decision, rendered by its Director, rests on a finding that in seeking the license, Mrs. Christy

is acting as a "front" for her husband, James E. Christy, who under N.J.S.A. 33:1-25, 33:1-31.2 is disqualified to hold a license. He has been convicted of larceny, possession of lottery tickets, maintaining a gambling house and gaming, atrocious assault and battery, and false swearing. The first question raised by Mrs. Christy is whether this finding, that she is "a front" for him, is supported by the proofs.

She has been married to him for 20 years. In 1942, with moneys admittedly furnished by him, she bought the premises now proposed for the tavern. Though she thereafter rented them to the Florence Athletic Club, she cannot remember who paid the rent. Moreover she never inspected the premises in those years (except to go there occasionally for a drink) and so, professedly, never learned that (as one witness testified) the upper stories of the building were at the time used by Christy and another person as a "horse room" and for the operation of dice games. Some years later Christy (according to the same witness) attempted unsuccessfully to secure a liquor license in the name of the Florence Athletic Club, using the Club apparently as a front for himself and at least one associate of his.

Mrs. Christy's story is that her father, desiring to provide her with a means of livelihood, offered her the $10,000 she needed to buy the liquor license now applied for. He, a tailor all his life, had then recently sold for $65,000 a farm standing in his name, in which he had never lived, but in which she and Christy had resided several years without paying rent. Was this $10,000 Christy's money? As the Director indicated, her testimony on various matters is to be discredited. She claimed she did not know how Christy got his money during their entire married life, though he provided her with several Cadillacs, diamond rings and the means to travel extensively. She "lived good", as she put it. For years Christy has had the repute of being a professional gambler.

It is significant that the application for the present license was made by her just before Christy got out of prison. It is significant too that both of them are now living right over the proposed tavern in an apartment from which he could readily manage the tavern; and further that she is totally inexperienced in the liquor business or any other business. The proofs are sufficient to sustain the Director's findings.

There is no question but that a license may be denied to one who acts in name only, just to serve the interest of some person disqualified under the statute. Cf. Wilks v. Liquor Control Commission, 122 Conn. 443, 190 Atl. 262, 263 (1937); State v. Kiernan, 238 Mo. App. 507, 181 S. W. 2d 798, 803 (1944); State v. McCanless, 176 Tenn. 352, 141 S. W. 2d 885 (1940). Mrs. Christy's first contention fails.

The second question raised by her is whether the proofs before the Division warranted its interference with the action of the Township Committee.

The matter lay within the discretion of the Committee, and hence the Division could not reverse in the absence of a manifest mistake or other abuse of discretion on the Committee's part. However a discretion also is committed to the Division, and hence we will not interfere with its action unless we find that it has manifestly erred or otherwise abused its discretion. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N. J. Super. 598, 600 (App. Div. 1955).

We cannot say here that the Division clearly erred in finding (in effect) that there had been clear error on the part of the Committee. After a hearing de novo before the Division, Cino v. Driscoll, 130 N. J. L. 535 (Sup. Ct. 1943), the action of the local body is to be judged not solely on the basis of the matters before it, but also in the light of the proofs adduced in the Division. The proofs so adduced here are of sufficient strength to warrant the action taken by the Division in the case.

However, even apart from those proofs, it should be pointed out that pursuant to some alleged arrangement not appearing on the record, the Committee refused to allow Mrs. Christy to be examined by counsel for the objectors in the hearing before it. It is not established that the objectors consented to this arrangement. Under the terms of the statute the Committee is charged with a duty to conduct a public hearing, N.J.S.A. 33:1-24, and hence with a duty not to interfere with the production of proper proofs at such a hearing. See Wilson v. Jersey City, 94 N. J. L. 119, 122 (E. & A. 1920); Miner v. Larney, 87 N. J. L. 40, 41 (Sup. Ct. 1915); cf. Handlon v. Town of Belleville, 4 N. J. 99, 105 (1950). Mrs. Christy's second point fails also.

Her third contention is that most likely the Hearer in this case actually wrote the conclusions and order signed by the Director. Cf. Mazza v. Cavicchia, 15 N. J. 498 (1954). However we were advised on the oral argument that the Hearer did not write them; that he made no report, oral or written, to the Director and indeed completely severed his connection with the case at the conclusion of the hearing. This disposes of the third point.

Mrs. Christy's fourth point is that the Director's decision should be reversed because the Hearer made no report. It is said first that the point was waived. At the conclusion of the hearing in the Division, this appears:

> "The Hearer: Well, now gentlemen, you have the right to submit the matter to the Director on the record today, or to sum up, or submit briefs, or argue the matter before the Director. What is it you wish to do?
>
> Mr. Pellettieri: I am willing to submit it on the record.
> Mr. Dimon: I am willing to submit it on the record, sir.
> The Hearer: Both gentlemen agree to submit the case on the record today?
> Mr. Dimon: Yes."

Since the parties agreed to submit the case to the Director on the "record today", they would seem thereby to have waived any contention that a report should be added to that record. However Mrs. Christy's counsel protests this construction vigorously, and we need not press it.

It can hardly be denied that it is most desirable that he who hears should either decide or at least report. Otherwise, that important matter, designated demeanor evidence, is wholly eliminated from the case. The Division assures us it has under consideration the promulgation of remedial regulations on the matter.

But, however desirable such a report would be, it cannot be held essential to the validity of the decision, provided the parties are given a fair opportunity (as they have been here) not

only to know what claims are being presented to the Director, but also to contest them. The cases are set out in Mazza v. Cavicchia, 15 N. J. 498, 517, 518 (1954), and it is quite unnecessary to repeat them here.

The former Supreme Court heard a variety of matters on depositions taken before Commissioners or Examiners without any report. R.S. 2:27-228 et seq., Supreme Court Rules 191 to 195 et seq., 16 N. J. Misc. 871. Note the like practice as to Examiners in Chancery prior to L. 1871 p. 127, Chancery Rules 64-84, Nixon's Digest 1099 (1868), and under certain circumstances thereafter, Chancery Rules 93 et seq., 1 N. J. Misc. 760, 16 N. J. Misc. 603. Surely there was no lack of due process then.

The fourth contention is without merit.

Affirmed.

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2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on September 7, 1955, of two jugs of alcohol and a Mercury sedan on Route No. 130, Bridgeport, Logan Township, Gloucester County, New Jersey.	Case No. 8978 ON HEARING CONCLUSIONS AND ORDER

Ulious Hines, Pro Se.
Abram Greenberg, Esq., Attorney for Girard Discount Company.
I. Edward Amada, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey to determine whether two jugs of alcohol and a Mercury sedan, described in a schedule attached hereto, seized on September 7, 1955, on Route 130, Bridgeport, Logan Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Ulious Hines, the registered owner of the motor vehicle, appeared and sought its return, and an appearance was entered on behalf of Girard Discount Company, which sought recognition of its alleged lien on the motor vehicle.

Reports of ABC agents and other documents in the file, admitted into evidence with the consent of the above claimants, disclose the following facts:

New Jersey State Troopers halted the motor vehicle on the above date and location in the course of their traffic duty. Ulious Hines was driving the vehicle, accompanied by three passengers. The troopers discovered in the trunk of the car two jugs of alcohol without any labels or stamps indicating the payment of tax on alcoholic beverages. Thereupon the troopers took into custody the men, car and alcohol. The car and alcohol were later turned over to ABC agents.

A sample of the contents of one of the jugs was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 43.2 per cent.

The alcohol is illicit because of the absence of any labels or tax stamps on the jugs. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Girard Discount Company has presented a Pennsylvania Bailment Lease, which it holds by assignment, indicating the conditional sale on May 7, 1955 to Ulious Hines of the motor vehicle in question. The balance secured by the document was $1056.24. The present balance due thereon after rebate for prepayment is $631.22.

The finance company also presented a Certificate of Title to the motor vehicle issued by the Department of Revenue of Pennsylvania which has noted thereon that the Girard Discount Company has a lien on the Mercury sedan.

It appears that prior to extending credit to Hines the finance company received information concerning his employment, residence and background, which it carefully checked, and confirmed that he was employed by an industrial concern and had a good financial rating. Its investigation did not develop any detrimental information concerning Hines. His fingerprint record does not disclose any previous arrest or conviction for violating any liquor laws.

I am satisfied that the Girard Finance Company acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be transported in the motor vehicle. I shall therefore recognize its lien to the extent of $631.22. R. S. 33:1-66(f).

It appears that the appraised value of the Mercury sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. The motor vehicle will therefore be returned to Girard Discount Company upon payment of the costs of its seizure and storage.

Hence, it is unnecessary to reach a conclusion upon the request of Ulious Hines for return of the motor vehicle on his doubtful claim that he was not responsible for and had no knowledge of the presence of the illicit alcohol in his car, since he stipulated at the hearing that his claim should be considered withdrawn if the motor vehicle is returned to the finance company.

Accordingly, it is DETERMINED and ORDERED that if on or before the 7th day of November, 1955, the Girard Discount Company pays the costs incurred in the seizure and storage of the Mercury sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the two jugs of alcohol listed in the aforesaid Schedule "A" constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that they be retained for the use of hospitals and state, county and municipal institutions or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: October 25, 1955.

SCHEDULE "A"

2 - jugs of alcohol
1 - Mercury sedan, Serial No. 51ME30547M, Engine No. F-8707605, Pennsylvania Registration J-4607.

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB - STOCK OF ALCOHOLIC BEVERAGES AND EQUIPMENT AND FURNISHINGS ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on June 25, 1955, of a quantity of alcoholic beverages, furniture, fixtures, and equipment at the club quarters of the Independent Political and Civic Club, located at 176 Reid Street, in the City of Elizabeth, County of Union and State of New Jersey.	Case No. 8919 ON HEARING CONCLUSIONS AND ORDER

Turton and Turton, Esqs., by George B. Turton, Esq., Attorneys for Elizabethport Banking Company.
Michaels and Michaels, Esqs., by Joseph H. Muraskin, Esq., Attorneys for Sachs Quality Stores, Inc.
Maurice Schapira, Esq., Attorney for Automatic Music Service.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, $25.40 in cash, furniture, fixtures and equipment, described in a schedule attached hereto, seized on June 25, 1955 at the club quarters of the Independent Political and Civic Club, located at 176 Reid Street, Elizabeth, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlicensed sales of alcoholic beverages at the club quarters.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Elizabethport Banking Company, which sought recognition of its alleged lien on a television set; an appearance was entered on behalf of Sachs Quality Stores, Inc., which sought recognition of its alleged lien on various items of furniture; and an appearance was entered on behalf of Automatic Music Service, which sought return of a music machine.

ABC agents testified as follows: On June 18, 1955 two agents visited the club quarters to investigate a complaint that alcoholic beverages were being sold there without a license. They observed that the large store windows had inscribed thereon the name of the club and that its premises consisted of a large sitting room, furnished with tables, chairs, lamps, and a television set, and a rear room wherein there was a music box, shuffleboard, refrigerator, and a crude bar or counter with a number of stools in front thereof. Various persons were in the room, drinking beer and whiskey served to them by Girard Jones. The agents purchased beer and whiskey from Jones.

These agents returned on June 24th at about 11:00 p.m., proceeded to the rear room, and observed persons there drinking alcoholic beverages. The agents again purchased various drinks of alcoholic beverages from Girard Jones and paid for them with four one-dollar bills identified by serial numbers.

Neither the Independent Political and Civic Club nor Girard Jones held any license authorizing either of them to sell alcoholic beverages, and the premises were not licensed for that purpose. Accordingly, the agents seized all of the alcoholic beverages which were in the premises as well as the furniture, fixtures and equipment therein and recovered the marked money with other cash receipts in a cash box which was seized.

The evidence presented establishes that the seized alcoholic beverages were intended for unlawful sale and hence are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and all other personal property, including the cash, seized in the club quarters constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

The Elizabethport Banking Company presented a conditional sales contract dated January 14, 1955 signed by Girard Jones covering a Columbia Television set and securing an unpaid balance of $154.84. The present balance due thereon is $134.61. At the time of the purchase of the set, the dealer was advised that it was to be delivered to the political club. The bank purchased the contract from the dealer and prior thereto investigated the residence, employment, and background of Girard Jones and confirmed his information that he had been employed for fourteen years by one industrial concern, and that he had a good financial rating. The person who delivered the set testified that when he came to the premises he found the club quarters locked and apparently unfurnished and arranged to leave the set with a person residing nearby whom Jones had instructed to accept the set and pay the C.O.D. charge.

Evidence was presented by Sachs Quality Stores, Inc. to the effect that on January 10, 1955 it sold various articles of furniture, under a conditional sales contract, at a cost totaling $471.95 to Girard Jones, to be delivered to the club quarters. The furniture company likewise checked the employment and background of Jones and found him to be gainfully employed and seemingly of good character. Its delivery man delivered part of this furniture on February 9 and 21, 1955. He stated that on each occasion the club quarters were practically unfurnished. The present balance due on the contract is $221.95.

Automatic Music Service has established that it is the owner of the AMI music box seized on the premises and that it placed the machine there on January 26, 1955 in accordance with the request made by Jones. Both the person who placed the machine there and the person who serviced the machine on behalf of the music company state that there were no alcoholic beverages visible on any occasion that they were there. They did observe what they describe as a grocery counter or bar.

These three above mentioned claimants appear to have dealt with Jones, ostensibly acting for the club, in the normal course of their business and delivered the various equipment to what appeared to be a normal place for club activities. The only problem presented is whether the presence of the counter or bar put these claimants on notice to ascertain definitely whether alcoholic beverages were to be sold there pursuant to a license.

I am satisfied that from the circumstances which existed, as they appear in the testimony, the persons who merely delivered the television set and furniture to premises which were first being outfitted, and the person who placed the music box there and serviced the machine thereafter acted with reasonable prudence even though they may have observed the counter there. I shall therefore recognize these claims. R.S. 33:1-66(f). Cf. Seizure Case No. 6928, Bulletin 709, Item 9.

There is no advantage to the State to retain the television set, or furniture, covered by the conditional sales contracts conditioned upon payment of the unpaid balance.

Accordingly, it is DETERMINED and ORDERED that if on or before the 14th day of November, 1955 the Elizabethport Banking Company pays the costs, allocated by me, of the seizure and storage of the television set; Sachs Quality Stores, Inc. pays the cost relating to its furniture, and Automatic Music Service pays the cost relating to its music machine, as listed and described in Schedule "A" attached hereto, these specific items will be returned to the respective claimants; and it is further

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

WILLIAM HOWE DAVIS
Director.

Dated: October 31, 1955.

SCHEDULE "A"

13 - bottles of assorted brands of whiskey
120 - cans of beer
36 - bottles of soda
1 - music box with currency therein
1 - shuffle alley
6 - bar stools
1 - bar
1 - refrigerator
17 - chairs
4 - tables
1 - hat rack
4 - bridge lamps with stands
1 - electric lamp
2 - couches with pads
1 - sofa
1 - television set
1 - gas heater
1 - bowl
1 - leather bag
1 - pan
40 - shot glasses
1 - cash box
2 - books
$25.40 in cash

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN FOOD MARKET - STOCK OF ALCOHOLIC BEVERAGES FORFEITED - FIXTURES AND EQUIPMENT RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on March 27, 1955 of a quantity of alcoholic beverages, furniture, fixtures and equipment, at Prince's Southern Market, located at 73 Bay Street, in the Town of Montclair, County of Essex and State of New Jersey.	Case No. 8837 ON HEARING CONCLUSIONS AND ORDER

George R. Sommer, Esq., Attorney for Prince Albert Lewis.
Milton B. Levin, Esq. and Charles E. Stein, Esq., Attorneys for Victor Adding Machine Co.
George J. Werner, Esq., Attorney for Dierickx Vending Co.
Irving Reiken, Esq., Pro se.
I. Edward Amada, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, furniture, fixtures and equipment, described in a schedule attached hereto, seized on March 27, 1955 at Prince's Southern Market, 73 Bay Street, Montclair, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66 Prince Albert Lewis appeared and sought return of the seized property, except an adding machine, cigarette vending machine and chopping block; an appearance was entered on behalf of Victor Adding Machine Co. which sought return of a Victor Adding Machine; an appearance was entered on behalf of Dierickx Vending Co. which sought return of a cigarette vending machine; and an appearance was entered in behalf of Irving Reiken, who sought return of the seized property.

The Hearer's Report setting forth the facts presented at the hearing in the case and his recommendations thereon was mailed to all of the claimants with the exception of Irving Reiken, who presented his claim at a supplemental hearing held after the mailing of the Hearer's Report.

I have given careful consideration to the complete record in the case, have reviewed the Hearer's Report, and make the following findings as established by the evidence presented:

An ABC agent was assigned to investigate a complaint that alcoholic beverages were being sold without a license at Prince's Southern Market, 73 Bay Street, Montclair. On Sunday, March 20, 1955, at about 2:30 p.m., such ABC agent entered the market and purchased some items from Prince Albert Lewis, the proprietor of the establishment. The agent asked Lewis if the latter knew where the agent could obtain two fifth bottles of whiskey. Lewis offered to supply the agent therewith if afforded a little time. The agent left the store and returned in 15 minutes. At such time Lewis pointed to a paper bag on the counter. In the bag was a fifth of Seagram 7 Crown Whiskey and two pint bottles of Calvert Reserve Whiskey. Lewis told the agent that he was unable to obtain two fifth bottles of whiskey. The agent was told by Lewis that the price was $6.75 for the fifth and $3.75 for each of the pints of whiskey, totaling $14.25, but took $14.00 in payment, explaining that he was giving the agent a break. The agent

left the premises with the alcoholic beverages.

On March 20, 1955, the New Jersey Minimum Consumer Resale Price for a fifth of Seagram 7 Crown Whiskey was $4.49 and the price of a pint of Calvert Reserve Whiskey was $2.83, making a total price for the three bottles of $10.15. Hence, Lewis was selling the whiskey for a profit and not for accommodation as alleged by his attorney.

The ABC agent returned the following Sunday, March 27th, at about 11:15 a.m. One George Toy met the agent, told him that Lewis was not feeling well and was in a room in back of the store. The agent talked with Lewis and asked him if he had any whiskey. Lewis replied that he had none on the premises. The agent asked if Lewis could get him some and Lewis replied that he did not feel like going out at all that day. At the conclusion of this conversation, the agent signaled for the entry of other ABC agents and local police officers who proceeded to execute a search warrant obtained on the basis of the unlawful sale of alcoholic beverages on the previous Sunday.

The agents seized a bottle of Schenley Whiskey, nearly full, which was in a rear room, 69 bottles of beer which were in a refrigerator meat case, and all of the equipment, fixtures, furniture and merchandise in and about the store premises, including 40 whiskey glasses which were in a closet in the rear room.

Prince Albert Lewis did not hold any license authorizing him to sell alcoholic beverages and the premises were not licensed for that purpose. According to the ABC agent Lewis stated that the beer and whiskey belonged to him.

Prince Albert Lewis' fingerprint report discloses a long list of convictions of various criminal offenses, the first in 1929 and the last in 1954, including violation of various liquor laws, the last such conviction having occurred on June 11, 1948.

Prince Albert Lewis' version of the March 20th incident is that when the agent asked him for whiskey he replied that he had no whiskey there but he could get a boy to go to Bloomfield and there obtain whiskey for the agent; that the agent agreed and told Lewis to send for two fifths of whiskey or two pints and a fifth of whiskey; that Lewis told one Jim Manning, who was going to Bloomfield, to get the whiskey; and that Manning came back in an hour or so with the whiskey. Lewis claims that he paid Manning $14.00 therefor and collected that amount from the agent when he delivered the whiskey to him. (There was no corroborative evidence presented that Manning actually obtained the whiskey or was given any money by Lewis in advance or upon delivery.) Lewis admitted that he knew that a licensee is not permitted to sell alcoholic beverages on Sunday for off-premises consumption. Lewis claims that the whiskey glasses were owned by a social organization which met elsewhere and were kept at Lewis' place for safekeeping. Of the approximately three cases of beer seized, Lewis states that two cases belong to him and he usually takes a few containers of beer at a time to his home for personal use. He had no satisfactory explanation as to why he could not store a few cases of beer for his own use at his home rather than in the store, located about two miles from his home.

Prince Albert Lewis seeks return of the seized property apparently on claim that no cause for forfeiture of such property for violation of the Alcoholic Beverage Law has been established.

His delivery of the whiskey to the agent on March 20, 1955 was an unlawful sale. A merchant not licensed to deal in

alcoholic beverages cannot accept money for, or even give away alcoholic beverages in his place of business. Seizure Case No. 7747. Lewis must have been fully aware from his previous violations that he was violating the law in the present instance and his offense was aggravated by his admission that he knew that Sunday sales of bottled alcoholic beverages for consumption other than at a tavern are prohibited.

The unlawful sale of alcoholic beverages by Lewis on March 20th is a pertinent factor in determining whether the beer and bottle of whiskey found on the premises a week later were intended for like unlawful sale. Seizure Case No. 7460, Bulletin 854, Item 1. It seems inherently implausible that beer intended for his own use was stored by Lewis at his market, a considerable distance from his home. His explanation that the 40 whiskey glasses were kept on the premises for a social organization for safekeeping seems to be a mere pretense. Under the circumstances, including Lewis' past record, there is a strong inference justifying the conclusion that the beer and whiskey seized on March 27th was intended for unlawful sale.

Such alcoholic beverages are therefore illicit. R. S. 33:1-1(f). The illicit alcoholic beverages together with all other personal property seized therewith constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. Prince Albert Lewis cannot recover any of the seized property because it is obvious that he did not act in good faith and unknowingly violate the law. His request for the return of the seized property is, therefore, denied.

The branch manager of Victor Adding Machine Co. presented a document which evidenced that its adding machine Model 683-4, Serial #1098-087 was loaned to Prince Albert Lewis on February 7, 1955 when he left his machine for repairs. He testified that a delay of a month or two before the company is notified to make the necessary repairs at the amount of the estimate is not unusual. Lewis brought his adding machine to Victor Adding Machine Co. The latter had no occasion to visit his establishment. Victor did not engage in a commercial transaction involving the sale of equipment or the loan of equipment on a profit-sharing basis. It loaned Lewis another machine pending repairs to his machine.

Edward Dierickx, one of the partners, t/a Dierickx Vending Co., testified that he purchased a route of vending machines on location in November 1954 and that Prince Market was one of the locations; that on January 13, 1955 he placed the cigarette vending machine there which is the one that was seized.

Irving Reiken produced a bill of sale dated February 23, 1955 from a constable of Essex County issued to Reiken evidencing the sale to him on July 30, 1954 of all goods and chattels located in store premises 73 Bay Street, Montclair, by virtue of an execution issued out of the Essex County District Court against Albert Lewis. Reiken did not remove the goods and chattels because he was carrying on protracted negotiations with Lewis concerning payment of the debt owed by Lewis and represented by the judgment against him.

None of the claimants investigated the background and character of Prince Albert Lewis since his establishment was, to all outward appearances, a grocery and meat market. There were no alcoholic beverages visible. Under such circumstances, their failure to investigate and perhaps discover his conviction in 1948 and prior thereto, of violating the liquor laws is not a factor because it does not logically follow that despite the

lapse of seven years, there was an inference that Lewis was still engaged in illegal liquor activity. It is equally logical to assume, from the absence of any further conviction of violating the liquor law, that Lewis was no longer engaged in such activity. Seizure Case No. 6927, Bulletin 697, Item 4; Seizure Case No. 8451, Bulletin 1009, Item 5.

I am, therefore, satisfied that the above named claimants, except Prince Albert Lewis, acted in good faith and with reasonable prudence and I shall, therefore, recognize their claims. R. S. 33:1-66(f). Irving Reiken's claim is recognized to the extent of $471.46, the consideration stated in his Bill of Sale representing the amount of the judgment and costs.

It will not be to the advantage of the State to pay the aforesaid sum and retain the seized property, excluding the cigarette machine and adding machine, because it appears that the retail value thereof does not exceed the amount of such lien and the cost of seizure and storage. Accordingly, the adding machine will be returned to Victor Adding Machine Co. and the cigarette vending machine will be returned to Dierickx Vending Co. and the balance of the seized equipment, except the alcoholic beverages and the soda, will be returned to Irving Reiken upon payment of the cost of the seizure and storage of the respective items as allocated by the Director. It is not the function of the Division to resolve the priorities between the claimants or the legal effect of Reiken's Bill of Sale, as it relates to the right of possession of Victor Adding Machine Co. to the adding machine, or the Dierickx Vending Co. to the cigarette vending machine. As the costs are paid, each of the parties will be advised of the actual time and place of the delivery of the respective items, well in advance of such delivery, so that the persons concerned may take any legal action they desire to resolve any disputes. Seizure Case No. 8614, Bulletin 1033, Item 6.

Accordingly, it is DETERMINED and ORDERED that if on or before the 14th day of November, 1955, the Victor Adding Machine Co. pays the costs of seizure and storage of the adding machine; the Dierickx Vending Co. pays the costs of seizure and storage of the cigarette vending machine; and Irving Reiken pays the costs of the seizure and storage of the balance of the seized property, the adding machine, cigarette vending machine, and balance of the seized property, except the beer and soda, will be returned to the respective claimants; and it is further

DETERMINED and ORDERED that the beer and soda, listed 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.

Dated: November 2, 1955.

SCHEDULE "A"

69 - bottles of beer
1 - bottle of whiskey
144 - bottles of soda
1 - cigarette machine with currency therein
1 - Coca Cola cooler
1 - Hobart slicing machine

1 - grinding machine
3 - freezers
1 - Dayton scale
1 - show case
1 - National cash register
1 - U. S. stamp machine
1 - adding machine
1 - Smith typewriter
1 - fan
1 - chopping block
1 - music box with currency therein
40 - whiskey glasses
Numerous assorted canned goods and groceries as listed in the inventory in the case.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on August 6, 1955, of a quantity of alcohol and a Pontiac sedan on the northbound lane of the New Jersey Turnpike in Edison Township, County of Middlesex, State of New Jersey.	Case No. 8954 ON HEARING CONCLUSIONS AND ORDER

Brass and Brass, Esqs., by Sidney A. Brass, Esq., Attorneys for Alexander Pratt.
Hamlet Discount Corporation, by R. G. Fetner, Manager.
I. Edward Amada, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcohol and a Pontiac sedan, described in a schedule attached hereto, seized on August 6, 1955 on the northbound lane of the New Jersey Turnpike, in Edison Township, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by a New Jersey State Trooper on the above date and location during the course of his traffic duty when he halted the motor vehicle and discovered seven two-quart jars and one pint bottle of illicit alcohol therein. Alexander Pratt, the owner of the motor vehicle, and his wife, Ann Elizabeth Pratt, were in the vehicle. Thereafter the motor vehicle and alcohol were turned over to ABC agents.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Alexander Pratt, who sought return of the motor vehicle, but stipulated that such request should be considered withdrawn in the event that the alleged lien claim of Hamlet Discount Corporation, which also entered an appearance, is recognized. No one opposed forfeiture of the alcohol, which Alexander Pratt and his wife admitted is bootleg alcohol, transported by them in the Pontiac sedan in question.

Such illicit alcohol, and the motor vehicle in which it was transported and found, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

Hamlet Discount Corporation has presented a chattel mortgage dated July 7, 1955 signed by Alexander Pratt covering the Pontiac sedan in question, securing the payment of $790.20. The present balance due thereon after rebate for prepayment is $610.22.

The finance company also presented a Certificate of Title of a Motor Vehicle issued by the Department of Motor Vehicles of North Carolina for the motor vehicle, which has the lien of the finance company noted in such certificate.

It appears that the finance company has dealt with Alexander Pratt for a number of years, and knew him to be of good reputation and employed by the Railway Express Agency in Hamlet for many years; that during the course of its dealings with Alexander Pratt it inquired of the Clerk of the local Criminal Court, and other local police authorities; all of whom advised that Pratt had no criminal record. The finance company has submitted the sworn statements of the Sheriff of Richmond County; a member of the North Carolina Highway Patrol; and a sergeant of the local police, to the same effect. An affidavit of an agent of Pratt's employer likewise certifies to his employment and previous good reputation. Alexander Pratt, in his testimony at the hearing, corroborated the above details covering his background.

I am satisfied that the Hamlet Discount Corporation acted in good faith and did not know, or have any reason to suspect, that illicit alcoholic beverages would be transported in the motor vehicle. I shall therefore recognize its lien to the extent of $610.22. R. S. 33:1-66(f).

It appears that the appraised value of the Pontiac sedan does not exceed the amount of the lien claim and the costs of the seizure and storage. The motor vehicle will therefore be returned to Hamlet Discount Corporation upon payment of the costs of its seizure and storage.

Hence, for the reasons aforementioned, it is not necessary to comment upon the doubtful claim of Alexander Pratt that his wife purchased the bootleg alcohol in his home, placed it in his car, intended for consumption on their visit in this part of the country, all without his knowledge or consent.

Accordingly, it is DETERMINED and ORDERED that if on or before the 14th day of November, 1955, the Hamlet Discount Corporation pays the costs incurred in the seizure and storage of the Pontiac sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the seven two-quart jars and one pint bottle of alcohol listed in the aforesaid Schedule "A" constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that they be retained for the use of hospitals and state, county and municipal institutions or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: November 3, 1955.

SCHEDULE "A"

7 - one-half-gallon jars of alcohol
1 - one-pint bottle of alcohol
1 - Pontiac sedan, Serial and Engine No. W8WH-6889, North Carolina Registration W90805.

6. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PINE ACRES COUNTRY CLUB, INC.
4th St. & Mulberry Ave., Cardiff
Egg Harbor Township
PO Box 289, Pleasantville, N. J.,

Holder of Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Egg Harbor.

CONCLUSIONS AND ORDER

Pine Acres Country Club, Inc., Defendant-licensee, by J. Henry Johnson, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

The file in the instant case discloses that at about 10:00 p.m. on Sunday, September 25, 1955, a member of the State Police observed Walter Bass, the assistant manager of defendant's licensed establishment, serve a bottle of beer to each of two young men while they were seated in a booth. After questioning the youths as to their ages, it was ascertained by the officer that they were 16 and 17 years of age, respectively. However, neither of the minors was questioned by anyone connected with the licensed premises concerning his age.

Defendant has no prior adjudicated record. The minimum penalty for a sale to two minors, if otherwise unaggravated, would be a suspension of the license for ten days. However, since the instant case is aggravated by the tender ages (16 and 17) of the minors involved, an additional fifteen days will be added. Cf. Re Schuyler, Bulletin 1032, Item 3. This makes a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 7th day of November, 1955,

ORDERED that Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Egg Harbor to Pine Acres Country Club, Inc., 4th St. & Mulberry Ave., Cardiff, Egg Harbor Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 7:00 a.m. November 15, 1955, and terminating at 7:00 a.m. December 5, 1955.

WILLIAM HOWE DAVIS
Director.

7. STATE LICENSES - NEW APPLICATIONS FILED.

Langer Transport Corp.
Route 1 and Danforth Avenue
Jersey City, N. J.
Application filed November 22, 1955 for additional warehouse at U. S. Highway #1, Edison Township, N. J.

Joe Stareshefsky
t/a Park Beverages
15-17 Hackensack Avenue
Ridgefield Park, N. J.
Application filed November 23, 1955 for person-to-person transfer of State Beverage Distributor's License SBD-17 from Joseph Woznica and Emily Woznica, t/a Park Beverages, 15-17 Hackensack Avenue, Ridgefield Park, N. J.

Michael Kostic
Box 232 Black Horse Pike
Cecil, P. O. Williamstown R.D. 1, N. J.
Application filed November 23, 1955 for State Beverage Distributor's License.

William Howe Davis
Director.