

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

BULLETIN 1620

June 25, 1965

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Board's decision was grounded upon the factual testimony before it from which, in its sound discretion, it "concluded that the penalty imposed substantiated such action."

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted in accordance with procedure authorized by Rule 8 of State Regulation No. 15, and was supplemented at this hearing by testimony of witnesses produced on behalf of appellant. It was, of course, recognized, in this connection, that while the appellant produced as its witness on appeal the minor who allegedly made the purchase, it was clear that this minor was a witness hostile to appellant, and liberality was afforded in his examination.

In support of respondent's case, respondent introduced the minor Frederick --- (age 18 years) whose testimony was substantially corroborated by two other minors who allegedly accompanied him to appellant's licensed premises on the night in question.

The picture reflected from the testimony herein is as follows: Frederick testified that he had purchased alcoholic beverages at appellant's premises on seven or eight occasions prior to September 18, 1964. On this night, at about 9:00 p.m., in the company of James --- (age 18 years, and the owner and driver of the motor vehicle) and Wayne --- (age 17 years), he arrived at the licensed premises. The car was parked at the corner, and Frederick entered the tavern and purchased seven quarts of Reingold beer. The sale was transacted with Joseph Perine (who is designated as "Joseph C. Berrini" in the transcript before me), whom the minor identified as the bartender. He does not recall whether Hyman Schulman (the licensee) was present on that occasion. He returned to the motor vehicle with this beer, and the three minors drove to Vauxhall where they consumed the beer.

Thereafter, at approximately 10:30 p.m., they returned to the licensed premises; Frederick again entered the tavern and purchased four quart containers of beer. The reason he bought containers of beer was that "they didn't sell bottles after ten o'clock, so I had to get the containers."

It appears that the minors were then involved in an accident in Maplewood and were questioned by the Maplewood police. Frederick was specifically questioned about the place in which he had purchased the beer, and he said "someone bought it for me." At the hearing before me, he was asked why he didn't admit to the police that he had purchased the beer at these licensed premises. His answer: "I didn't want to ruin a good thing. I figured if I could go there and get beer I might as well keep it up and go back again and get some more."

The testimony further shows that this minor returned to these premises on October 2 and sought to purchase some alcoholic beverages, but Perine refused to sell it to him because, as the minor explained it, the licensee was present. He further stated that when he sought to purchase alcoholic beverages, Schulman and Perine discussed the request between themselves and "Mr. Schulman said I didn't look old enough, but as far as asking me for proof, they didn't. They just said I didn't look old enough."

Thereafter, on October 7, 1964, ABC Agent S accompanied Frederick to the licensed premises which he identified as the place where he had made these alleged purchases; and on October 9 Agent S,

together with Frederick, returned and questioned both the bartender and the appellant. They both denied that any sales had been made to this minor. However, the bartender did not execute a written statement prepared by Agent S.

The other two minors (Wayne and James) both identified the licensed premises as the place from which Frederick had made these purchases, and also corroborated the details with respect to the events that occurred on September 18, 1964. They both testified that they saw Frederick enter these licensed premises alone and emerge therefrom with the beer purchases. They also supported the testimony as to the re-purchase of containers on the second visit. Wayne specifically identified the premises as the place he re-visited with his father prior to a court appearance growing out of the incident in Maplewood, and was positive that this was the place where these alleged purchases took place.

Joseph Perine (employed by the licensee as a bartender) stated that he was on duty on September 18, but denied having sold any alcoholic beverages to this minor. He testified that the first time he saw Frederick was on October 2 when Frederick came in and sought to purchase a bottle of whiskey. He asked him for proof of age, and Frederick left the premises and never returned. He insisted that he signed a statement to that effect for the ABC agents (which Agent S specifically denies).

Hyman Schulman (the appellant) testified that the first time he saw this minor was on October 2, at which time the minor sought to purchase alcoholic beverages. He refused to sell the same to him because of lack of proof of age. On examination by the member of this Board, Schulman stated that he was present on September 18 since "I am there every weekend. That is Friday and Saturday." However, he admitted that at the time of confrontation on October 9, the minor pointed out Perine as the one who sold him the beer. He also admitted that he handles Reingold beer and that, in fact, he does sell containers of beer.

We are dealing here with a purely disciplinary action and such action is civil in nature, and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). There is a sharp conflict in the testimony of the witnesses produced by both the appellant and the Board. Testimony, to be believed, must not only proceed from the mouth of credible witnesses, but must be credible in itself. No testimony need be believed but rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

It should be further noted that each case must be decided upon its own peculiar facts and circumstances. At the plenary hearing on appeal, I have had an opportunity to observe only the demeanor of the principal minor Frederick. I did not approve of his almost flippanant manner of testifying, and his clear realization that he was not entirely truthful with the Maplewood police at the time of their interrogation of him. Thus my evaluation of his testimony was necessarily circumspect.

Nevertheless, while not subscribing to or condoning his demeanor, I felt imperatively persuaded that his version had the substantial ring of truth with respect to the alleged purchases.

I have taken particular note of the fact that he was carefully and searchingly cross-examined by the competent attorney for appellant, and by the individual members of the Board. His unequivocal identification of the licensed premises and of the bartender who served him, the consistencies of his statement with respect to the particular circumstances which he reiterated at the hearing before me, are convincing and credible. Even his cynical reason for not disclosing the identity of the licensee to the Maplewood police, namely, that he did not want to "ruin a good thing" because he felt he might want to return in the future to these premises, buttresses the thrust of testimony. It is certain that his failure to reveal such identity was not out of compassion for the licensee, but entirely in his distorted self-interest. In addition to his testimony, the Board apparently was satisfied that the two minors who accompanied him presented a truthful version of what had transpired.

I must also admit that I was not impressed with the testimony of Perine (the bartender) particularly where he insists that he signed a statement prepared by the ABC agent. This was vigorously denied by the agent. As was pointed out before, there is no measure of the weight of evidence other than the feeling of probability which it engenders. Wigmore Evidence, 3d Ed., sec. 2948. The testimony of the minors stands in a much better posture.

Further, it should be pointed out that the ultimate test in these proceedings must be one of reasonableness on the part of the Board. In other words, could the Board, as reasonable men, acting reasonably, have come to its determination based upon the credible evidence presented? They have had an opportunity to observe all of the witnesses, and clearly and unanimously believed the testimony of the minors.

The Director's function on an appeal of this kind is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton & Klingler, Bulletin 1245, Item 1; Tash v. Princeton, Bulletin 1585, Item 3. Simply stated, this means that the Director should not reverse unless he finds as a fact that there was a clear abuse of discretion, or unwarranted finding of fact or mistake of law by the Board.

I have carefully evaluated both the transcript of the hearing below and the testimony presented before me at this plenary de novo hearing. In view of the positive identification of appellant's licensed premises by the three minors and the other circumstances hereinabove, I am imperatively compelled to support the decision of the Board.

I therefore find that, under all of the circumstances, there has been the necessary quantum of proof, namely, by a preponderance of the believable evidence of appellant's guilt. I conclude that appellant has failed to carry the burden that respondent's action was erroneous and against the weight of the evidence as required by Rule 6 of State Regulation No. 15.

Appellant additionally asserts that the penalty herein was arbitrary and unduly harsh and oppressive. It has generally been held by this Division that a suspension imposed in a disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority, and that the power of the Director to reduce or modify it must be sparingly exercised and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v.

Harrison, Bulletin 1296, Item 2. I cannot say, under the circumstances of this case, that a penalty of fifteen days suspension imposed herein was so severe as to form a basis for reversal or even modification on this appeal. Indeed, fifteen days is the usual period of suspension imposed by this Division, in unaggravated circumstances, for the sale of alcoholic beverages to an 18-year-old minor. See, for example, Re Charlie's Capri, Inc., Bulletin 1595, Item 5.

I therefore recommend that an order be entered affirming the Board's action and dismissing the appeal, fixing the effective dates for the suspension imposed by the Board, and stayed pending the entry of the order herein.

#### Conclusions and Order

No written exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the evidence in the case, the oral argument of the attorneys for the respective parties at the instant appeal hearing and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Report of investigation discloses that the licensed premises has recently suffered severe fire damage, as a result of which the licensed business is not presently being conducted and thus no effective penalty can be imposed at this time. Hence, the effective dates for the suspension of license will be fixed by the entry of a further order herein after the operation of the licensed business has been resumed.

Accordingly, it is, on this 28th day of April, 1965,

ORDERED that the action of the respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-515, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Hyman Schulman, t/a Hy's Tavern, for premises 488 Avon Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI  
DIRECTOR

2. APPELLATE DECISIONS - HIGGINS v. MIDDLETOWN.

Rose Sullivan Higgins, t/a )  
 O'Flaherty's, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Township Committee of the )  
 Township of Middletown, )  
 )  
 Respondent. )

ON APPEAL  
 AMENDED ORDER

-----  
 Fredric Baar, Esq., Attorney for Appellant.  
 Vincent C. DeMaio, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On April 14, 1965, I entered Conclusions and Order herein affirming the action of respondent in suspending the license of appellant for fifteen days following its finding that appellant sold alcoholic beverages to a minor and reimposing the fifteen-day suspension of license imposed by respondent, commencing Wednesday, April 21, 1965, and terminating Thursday, May 6, 1965. Higgins v. Middletown, Bulletin 1618, Item 4.

It now appears that two days of the suspension were served prior to the filing of the appeal and stay of the suspension pending determination of the appeal. Hence, the order heretofore entered should have reimposed only the balance of thirteen days of the suspension rather than the full suspension of fifteen days.

Accordingly, it is, on this 30th day of April, 1965,

ORDERED that the previous order of suspension herein is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of the Township of Middletown to Rose Sullivan Higgins, t/a O'Flaherty's, for premises northeast corner State Highway #35 and Chapel Hill Road, Middletown, be and the same is hereby suspended for thirteen (13) days, commencing at 9:00 a.m. Wednesday, April 21, 1965, and terminating at 9:00 a.m. Tuesday, May 4, 1965.

JOSEPH P. LORDI  
 DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE BELOW FILED PRICE - FALSE STATEMENT IN APPLICATION FOR LICENSE - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 80 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Wallace J. Mianowski and Wallace J. Kislowski, t/a Wally's Bar & Grill  
207 Bloomfield Avenue  
Bloomfield, New Jersey

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-2, issued by the Town Council of the Town of Bloomfield.

ORDER

Licensees, by Wallace Mianowski, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on Sunday, January 24, 1965, they sold (1) and (2) drinks of alcoholic beverages after 2:00 a.m. in violation of local ordinance, (3) a pint bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38, and (4) below filed price, in violation of Rule 5 of State Regulation No. 30, and (5) in their current application for license, failed fully to disclose their record of prior license suspensions, in violation of R.S. 33:1-25.

Licensees have a previous record of suspension of license by the Director for twenty days effective March 19, 1957, for sale during prohibited hours, in violation of local ordinance and State Regulation No. 38, and sale below filed price (similar to the violations alleged in charges 1, 2, 3 and 4) (Re Mianowski and Kislowski, Bulletin 1164, Item 6) and by the municipal issuing authority for fifteen days effective September 20, 1962, for sale in violation of State Regulation No. 38, non-disclosure of this suspension of license being the subject of the fifth charge.

The prior record of suspensions of license for similar violation within the past five years and more than five and less than ten years ago considered, the license will be suspended on the first and second charges for twenty days (Re S.M.S. Corp., Bulletin 1569, Item 15), on the third charge for thirty-five days (Re Doc's Spa, Inc., Bulletin 1548, Item 4), on the fourth charge for fifteen days (Re Salomon, Bulletin 1583, Item 10) and on the fifth charge for ten days (Re Rosman, Bulletin 1600, Item 10), or a total of eighty days, with remission of five days for the plea entered, leaving a net suspension of seventy-five days.

Accordingly, it is, on this 28th day of April, 1965,

ORDERED that Plenary Retail Consumption License C-2, issued by the Town Council of the Town of Bloomfield to Wallace J. Mianowski and Wallace J. Kislowski, t/a Wally's Bar & Grill, for premises 207 Bloomfield Avenue, Bloomfield, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1965, commencing at 2:00 a.m. Wednesday, May 5, 1965; and

it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Monday, July 19, 1965.

JOSEPH P. LORDI  
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against

Kit-Kat Club, Inc.  
t/a Kit-Kat Club  
42 West Broadway  
Paterson, New Jersey

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-148, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

ORDER

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Sidney B. Rosenthal, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 5, 1965, it sold drinks of alcoholic beverages to two minors, ages 19 and 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for five days effective February 22, 1965, for sale to a minor. Re Kit-Kat Club, Inc., Bulletin 1607, Item 10. In addition, the license then held by George Shaw (40% stockholder of the licensee corporation) for premises 415 Washington Street, Newark, was revoked by the Director effective August 9, 1954, for permitting solicitation for prostitution (Re Shaw, Bulletin 1028, Item 1) and the license of Brick's Bar, Inc. (in which corporation George Shaw was treasurer and principal stockholder) for premises 205-207 Water Street, Paterson, was suspended by the Director for fifteen days effective January 4, 1960, for sale in violation of State Regulation No. 38 (Re Brick's Bar, Inc., Bulletin 1322, Item 6).

The prior record considered, and especially the aggravating circumstance of the occurrence of the instant violation in close proximity to the suspension for similar violation, as well as the confessional plea entered, the license will be suspended for forty days.

Accordingly, it is, on this 28th day of April 1965,

ORDERED that Plenary Retail Consumption License C-148, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Kit-Kat Club, Inc., t/a Kit-Kat Club, for premises 42 West Broadway, Paterson, be and the same is hereby suspended for forty (40) days, commencing at 3 a.m. Wednesday, May 5, 1965, and terminating at 3 a.m. Monday, June 14, 1965.

JOSEPH P. LORDI  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

John Mattern and Edith Mattern  
t/a J & E Tavern  
73 Hancock Avenue  
Jersey City 7, New Jersey

Holder of Plenary Retail Consumption License C-111, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensees, by John Mattern, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

CONCLUSIONS

AND

ORDER

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on April 7, 1965, they sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensees have a previous record of suspension of license by the Director for seventy-five days effective August 21, 1963, for similar violation and acceptance of horse race and numbers bets. Re Mattern, Bulletin 1528, Item 3. In addition, the license then held by these licensees for premises 105-107 39th Street, Union City, was suspended by the Director for forty-five days effective July 3, 1961, for similar violation, sale in violation of municipal hours regulation and acceptance of horse race and numbers bets. Re Mattern, Bulletin 1403, Item 4.

The prior record of suspension of license for two similar violations occurring within the past five years considered, the license will be suspended for forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days. Re Barone, Bulletin 1584, Item 4.

Accordingly, it is, on this 29th day of April, 1965,

ORDERED that Plenary Retail Consumption License C-111,

issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Mattern and Edith Mattern, t/a J & E Tavern, for premises 73 Hancock Avenue, Jersey City, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. Thursday, May 6, 1965, and terminating at 2:00 a.m. Tuesday, June 15, 1965.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - DEATH OF LICENSEE AFTER CHARGE PREFERRED AND BEFORE HEARING - CHARGE NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against )

Charles A. Fetter )  
t/a Dutch Kitchen )  
3604-06-08 Atlantic Avenue )  
Atlantic City, New Jersey )

Holder of Plenary Retail Consumption License C-157 for the 1963-64 period issued by the Board of Commissioners of the City of Atlantic City and during the pendency of these proceedings extended to )

CONCLUSIONS  
AND

Gennaro Consalvo and Betty Jane Fetter, Co-Executors of the Estate of Charles A. Fetter, Deceased and subsequently transferred from them to )

ORDER

Harry Langerman )  
t/a Langerman's Binnacle )

for the same premises, for the 1964-65 period. )

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Gennaro Consalvo, Esq., Attorney for Charles A. Fetter and for Gennaro Consalvo and Betty Jane Fetter, Co-Executors of the Estate of Charles A. Fetter, Deceased.

Edwin H. Helfant, Esq., by Sherman L. Kandis, Esq., Attorney for Harry Langerman.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.  
BY THE DIRECTOR:

By Notice dated June 2, 1964, the Division preferred a charge against the above-named Charles A. Fetter, alleging a sale of alcoholic beverages by a bartender at the premises on May 23, 1964, to three minors, two age 18 and one 20, in violation of Rule 1 of State Regulation No. 20.

Under date of June 4, 1964, the attorney for Charles A. Fetter notified the Division that Mr. Fetter died that day and thereafter filed with the Division a certified copy of death certificate, issued by the Registrar of Vital Statistics for Atlantic City.

Upon death of Charles A. Fetter, the license automatically lapsed and the disciplinary proceedings against him instituted by Notice dated June 2, 1964, came to an end. Re: Brennan, Bulletin 113, Item 1.

However, effective June 18, 1964, the Board of Commissioners of the City of Atlantic City, pursuant to R.S. 33:1-26, revived the license by extending it in the names of Gennaro Consalvo and Betty Jane Fetter, Co-Executors of the Estate of Charles A. Fetter, Deceased and, effective April 1, 1965, transferred the license to Harry Langerman, t/a Langerman's Binnacle for the same premises. This revival and transfer of license resulted in the reactivation of the disciplinary proceedings herein against Harry Langerman. See also Rules 1, 2 and 3 of State Regulation No. 16. He has, however, through his attorney, petitioned the Director not to prosecute the proceedings and, in support thereof, filed an affidavit in which he declares under oath, among other things, the following:

"I am not related to the late Charles A. Fetter nor do I have any connection with any members of his family or anyone connected with the late Charles A. Fetter.

"I took this transfer with notice of a violation pending against license #C-141 and I am submitting this affidavit for the purposes of substantiating the fact that I never had any connection, affiliation or association in the license or business conducted thereunder while the license was in the name of Charles A. Fetter."

After due consideration of all the facts and circumstances and in particular honoring the statements made by Harry Langerman under oath, I have decided to grant his petition. The decision may be otherwise in cases involving different facts or circumstances or where the license has been transferred to a person who participated in the alleged violation. Re: Campbell, Bulletin 676, Item 9.

Accordingly, it is, on this 29th day of April 1965,

ORDERED that the disciplinary proceedings herein be and the same are hereby nolle prosequi.

JOSEPH P. LORDI  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - LICENSE SUSPENDED FOR 40 DAYS - NO REMISSION FOR CONFESSIVE PLEA ENTERED AT HEARING.

In the Matter of Disciplinary Proceedings against  
 Cambar, Inc.  
 202 South 5th Street  
 Camden, New Jersey  
 Holder of Plenary Retail Consumption License C-98, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS  
 AND  
 ORDER

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 Molotsky, Rabkin & Gross, Esqs., by Ira Rabkin, Esq., Attorneys for Licensee.  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

At the hearing herein, licensee pleaded non vult to a charge alleging that on March 12, 19 and 26, 1965, it conducted the licensed place of business as a nuisance, viz., permitting apparent female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates mentioned, the licensed premises was patronized by small numbers of apparent female homosexuals, i.e., two, three and five of a total patronage of thirty-seven, fourteen and twenty-three.

Absent prior record, on the basis of the facts appearing (simple congregation of a relatively small number of apparent homosexuals), the license will be suspended for forty days (Re 32 Club, Inc., Bulletin 1444, Item 3; Re Club Delite, Inc., Bulletin 1495, Item 6), with no remission for the plea untimely entered at the hearing (Re Fluckiger, Bulletin 1590, Item 5).

Accordingly, it is, on this 29th day of April, 1965,

ORDERED that Plenary Retail Consumption License C-98, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Cambar, Inc. for premises 202 South 5th Street, Camden, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. Thursday, May 6, 1965, and terminating at 2:00 a.m. Tuesday, June 15, 1965.

JOSEPH P. LORDI  
 DIRECTOR

8. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE DWELLING - CLAIMS OF UNLAWFUL SEARCH AND SEIZURE, AND ENTRAPMENT REJECTED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure	)	
on April 10, 1964 of a quantity	)	Case No. 11, 284
of alcoholic beverages at 19	)	
West Street, in the City of	)	On Hearing
Newark, County of Essex and State	)	CONCLUSIONS
of New Jersey.	)	and
-----)	)	ORDER

Robert Smith, Pro se.  
David S. Piltzer, 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 23 bottles of wine, more particularly described in a schedule attached hereto, made part hereof, and marked Schedule "A", seized on April 10, 1964 at premises occupied by Robert Smith at 19 West Street, Newark, New Jersey, 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 premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, Robert Smith appeared pro se at the said hearing and sought return of the said alcoholic beverages.

James G. Woolridge, testifying on behalf of the Division, gave the following account: He is a friend of Robert Smith and has frequently purchased wine from him at the West Street address. On April 10, 1964 he went to Smith's place of residence, which is located on the second floor at the above address, and purchased a sealed bottle of Tiger Rose Wine for which he paid seventy-five cents, in cash. As he left the building he was accosted by local police officers and admitted that he had purchased the said wine. He was then handed a dollar bill by the police officers and in their company returned to the second floor, knocked on the door and requested another bottle of wine. As he handed Smith the money and received the bottle of wine, the police officers entered the apartment and immediately arrested Smith.

Detective George Reilly, a member of the Newark Police Department, stated that at 11:15 P.M. on April 10, 1964 in the company of Detective Zmijewski, he observed Woolridge talking with another person on the outside of the West Street premises and saw Woolridge hand this other person some money. Woolridge went into the premises and emerged therefrom shortly with a bottle of wine. Upon questioning him they were informed that he had just purchased the wine from Robert Smith and they thereupon accompanied Woolridge to the second floor of the premises. Woolridge knocked on the door and asked Smith for a bottle of Tiger Rose Wine. He handed Smith \$1.00. Smith then gave him a bottle of Tiger Rose Wine and the officers, who were standing nearby in the darkened hallway, approached Smith and identified themselves. "...He tried to close the door in our faces. We pushed the door open and placed him under arrest."

A search of the bedroom apartment disclosed 11 pints of Twister wine and another 12 pints of Tiger Rose Wine which were seized by the officers and later adopted by this Division. The officers did not have a search warrant. Smith was thereupon arrested, charged with the unlawful sale of alcoholic beverages, under Title 33:1-1, which was thereafter reduced to a charge under City Ordinance 20.9. He was arraigned in the Municipal Court of the City of Newark, found guilty of said charge and fined.

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

Robert Smith, the claimant, testifying in his own behalf, admitted the sale of the wine to Woolridge, but stated that he had frequently given him wine without charge, since he was a friend of his. He also admitted that he knew that it was against the law to sell alcoholic beverages without a license. However, he asserted that the police officers had no right to enter his apartment without a search warrant and that he was entrapped into selling this wine. "...When they brought him to my house I believe it is entrapment wh they brought him in as a friend of mine."

Since this claimant admits that he sold alcoholic beverages without a license authorizing such sale, the only issue to be considered was whether the seizure of the said alcoholic beverages was, in fact, illegal, because of the absence of a search warrant. The general rule is that forfeiture under this statute does not depend upon the seizure of property pursuant to a search warrant. Re Tricoli, Bulletin 164, Item 9; Strong v. United States, 46 F. (2d) 257 (C.C.A. 1st, 1931); Seizure Case No. 9280, Bulletin 1166, Item 8; Seizure Case No. 10,934, Bulletin 1510, Item 5.

Since this sale was made in the presence of police officers and the violation of the liquor laws was committed in their presence, it is well-established that no search warrant was necessary. It is clear that where a search and seizure is made incidental to an arrest, as a result of the direct knowledge of an officer of the violation of the liquor laws obtained through his hearing, sight or other senses, or where it is, in his presence and he can plainly see such activity, no search warrant is necessary. Cf. The Helen 72 Fed. 2d 772, United States v. 146, 157 Gallons of Alcohol (D.C., D.N.J.) 3 Fed. Sup. 450. Thus, the defense of illegal search and seizure must be rejected because there was a direct sale to an individual in the presence of the agent. The search was made after the arrest of the offender and incidental to said arrest.

Furthermore, there was no entrapment in this case because the illegal sale was made voluntarily by the claimant and was not planned by the police officer against one not intending its perpetration. There is no evidence here that the police officers engaged in persuasion or fraud to induce the claimant to commit this unlawful act. They merely afforded the claimant the opportunity to commit the violation charged. Re Highlander Hotel Corp., Bulletin 1475, Item 1; Cf. State v. Rosenberg, 37 N.J. Super. 197 (App. Div. 1955).

Since this claimant did not have any license authorizing him to sell alcoholic beverages, the illicit wine found in his possession constitutes unlawful property and is subject to forfeiture. R.S. 33:1-1(1); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 9576, Bulletin 1212, Item 3; Seizure Case No. 10,044, Bulletin 1313, Item 6.

I therefore recommend that an Order be entered forfeiting the alcoholic beverages, as set forth in the annexed schedule.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 29th day of April, 1965,

DETERMINED and ORDERED that the alcoholic beverages, more fully described in Schedule "A", attached hereto, constitute unlawful property and the same be and hereby are 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

SCHEDULE "A"

23 - bottles of wine

9. DISCIPLINARY PROCEEDINGS - ORDER DEFERRING EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against )  
R S M Associates, Inc. )  
t/a Crescendo Lounge )  
Shopping Center (unnumbered) )  
North Broadway, north end, 2nd section )  
Lower Penns Neck Township, )  
PO Pennsville, New Jersey )  
Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Lower Penns Neck. )

AMENDED ORDER

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Licensee, by Irving Spiro, President, Pro se.  
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

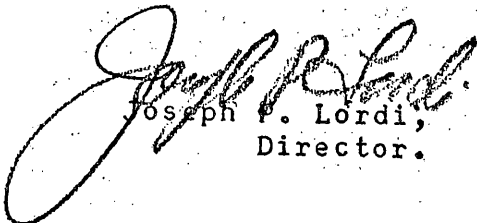
On April 26, 1965, I entered an order herein suspending the license for twenty-five days commencing May 3, 1965 (Re R S M Associates, Inc., Bulletin 1618, Item 8).

Licensee has requested that the imposition of the suspension be deferred for three weeks and, for good cause appearing, I have granted the request.

Accordingly, it is, on this 30th day of April 1965,

ORDERED that the previous order of suspension herein is hereby vacated. It is further

ORDERED that License C-2, issued by the Township Committee of the Township of Lower Penns Neck to R S M Associates, Inc., t/a Crescendo Lounge, for premises Shopping Center (unnumbered) North Broadway, north end, 2nd section, Lower Penns Neck, be and the same is hereby suspended for twenty-five (25) days, commencing at 7 a.m. Monday, May 24, 1965, and terminating at 7 a.m. Friday, June 18, 1965.



Joseph P. Lordi,  
Director.