

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

BULLETIN 735

OCTOBER 28, 1946.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Newark) - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - HINDERING AND FAILING TO FACILITATE INVESTIGATION - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.
2. CANCELLATION PROCEEDINGS (Jersey City) - ORDER TO SHOW CAUSE WHY LICENSE SHOULD NOT BE CANCELLED AS HAVING BEEN ISSUED IN VIOLATION OF STATE LIMITATION LAW (CHAPTER 147, P. L. 1946) - PROCEEDING DISMISSED IN VIEW OF SUPREME COURT'S DECISION DECLARING STATE LIMITATION LAW NULL AND VOID.
3. DISCIPLINARY PROCEEDINGS (West New York) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.
4. DISCIPLINARY PROCEEDINGS (Hoboken) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.
5. DISCIPLINARY PROCEEDINGS (Somers Point) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.
6. MORAL TURPITUDE - CRIME OF ROBBERY INVOLVED MORAL TURPITUDE.
DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST - APPLICATION TO LIFT GRANTED ON REHEARING.
7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, MUSIC BOX, FIXTURES, FURNISHINGS AND OTHER PERSONAL PROPERTY IN SPEAKEASY ORDERED FORFEITED - SPEAKEASY OWNER'S APPLICATION FOR RETURN OF MUSIC MACHINE AND OTHER FURNISHINGS DENIED.
8. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, CIGARETTE VENDING MACHINE, FIXTURES, FURNISHINGS AND OTHER PERSONAL PROPERTY IN SPEAKEASY ORDERED FORFEITED - APPLICANT FOR RETURN OF CIGARETTE MACHINE FAILED TO ESTABLISH LACK OF KNOWLEDGE OR REASON TO SUSPECT SPEAKEASY ACTIVITIES ON THE PREMISES - MUSIC MACHINE RETURNED TO APPLICANT WHO ESTABLISHED LACK OF SUCH KNOWLEDGE.
9. APPELLATE DECISIONS - VAN HORN v. MANALAPAN TOWNSHIP.
10. APPELLATE DECISIONS - GALLITANO v. SOUTH HACKENSACK TOWNSHIP.
11. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 735

OCTOBER 28, 1946.

1. DISCIPLINARY PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - HINDERING AND FAILING TO FACILITATE INVESTIGATION - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
DANIEL De VIZIO & SALVATORE A. SIMEONE
T/a HOTEL NEWARKER BAR & GRILL
1076 Broad Street
Newark 2, N. J.,
Holders of Plenary Retail Consumption License C-21, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
-----)

CONCLUSIONS
AND ORDER

Defendant-licensees by Salvatore A. Simeone, Partner.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendants have pleaded non vult to the following charges:

"1. On April 18, 1946, you transported alcoholic beverages, viz., 15 cases of beer, to your licensed premises at 1076 Broad Street, Newark 2, N. J., and for use upon your said licensed premises, in a vehicle which did not bear the transit insignia provided by R. S. 33:1-28 and State Regulations No. 17; such transportation being in violation of R. S. 33:1-2.

"2. On the occasion aforesaid, while investigators of the Department of Alcoholic Beverage Control were investigating the above alleged violation occurring on that date, you hindered and failed to facilitate such investigation, in violation of R. S. 33:1-35."

On April 18, 1946, an ABC agent observed two men unloading 15 cases of beer from an automobile which was parked in front of defendants' premises. Investigation disclosed that the automobile, which bore no transportation insignia, was owned by Joseph Cataldo, manager of defendants' licensed premises.

Thereafter, Cataldo signed an affidavit which falsely stated that he, as manager, had purchased the beer on the date of the seizure from Peter Doelger Brewing Corporation. When it was ascertained that he had not purchased this beer from the brewery, a validating permit was cancelled, Cataldo was arrested for unlawful transportation and hindering an investigation and disciplinary proceedings instituted against defendant-licensees. Cataldo now contends that he previously had taken the beer from defendants' premises to his home and that he was returning it at the time of the seizure. In any event, the transportation was unlawful. R.S. 33:1-2. Defendants are responsible for the violations committed by their manager in unlawfully transporting the alcoholic beverages and hindering and delaying the investigation.

After the violations referred to herein were committed, defendants' license was suspended for 80 days by the local issuing authority upon being found guilty on various charges. However, for the reason stated in Re Kasica, Bulletin 729, Item 11, the period of suspension will not be increased herein because of this subsequent violation.

Under all the circumstances of this case, I shall suspend defendants' license for a period of thirty days, less five days for the plea, making a net suspension of twenty-five days.

Accordingly, it is, on this 22nd day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-21, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Daniel De Vizio and Salvatore A. Simeone, t/a Hotel Newarker Bar & Grill, for premises at 1076 Broad Street, Newark, be and the same is hereby suspended for a period of twenty-five (25) days, effective at 2:00 a.m. October 25, 1946, and terminating at 2:00 a.m. November 19, 1946.

ERWIN B. HOCK
Deputy Commissioner.

- 2. CANCELLATION PROCEEDINGS - ORDER TO SHOW CAUSE WHY LICENSE SHOULD NOT BE CANCELLED AS HAVING BEEN ISSUED IN VIOLATION OF STATE LIMITATION LAW (CHAPTER 147, P. L. 1946) - PROCEEDINGS DISMISSED IN VIEW OF SUPREME COURT'S DECISION DECLARING STATE LIMITATION LAW NULL AND VOID.

In the Matter of Cancellation Proceedings against)

MARTIN ZAHNER)
T/a COLUMBIA REST.)
239 Ocean Avenue)
Jersey City, N. J.,)

Holder of Plenary Retail Consumption License C-548 originally issued)
for the fiscal year 1945-46 and thereafter renewed as Plenary Retail)
Consumption License C-164 for the)
fiscal year 1946-47; both licenses)
having been issued by the Board of)
Commissioners of the City of Jersey)
City.)
- - - - -)

O R D E R

It appearing that the above named licensee was served with a notice requiring him to show cause why the licenses hereinabove set forth should not be cancelled and declared null and void because the original license and the renewal thereof were issued in excess of the limitation fixed by P. L. 1946, Chapter 147; and

It further appearing that P. L. 1946, Chapter 147 has been declared null and void by the Supreme Court of the State of New Jersey,

It is, on this 21st day of October, 1946,

ORDERED, that the order to show cause herein be and the same is hereby discharged and the proceedings herein be and the same are hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against
 RICHARD J. REYNOLDS & ELSIE REYNOLDS
 T/a REYNOLD'S TAVERN
 5615 Hudson Avenue
 West New York, N. J.,
 Holders of Plenary Retail Consumption License C-24, issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Alexander A. Abramson, Esq., Attorney for Defendant-licensees.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendants pleaded non vult to a charge alleging that they possessed a 4/5 quart bottle labeled "Teacher's Highland Cream Perfection of Blended Scotch Whisky", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

On September 6, 1946, an investigator of the Department of Alcoholic Beverage Control tested 28 bottles of the open stock of liquor and seized the bottle in question. Analysis by the ABC chemist disclosed that the contents of the seized bottle varied substantially in acids and solids from the contents of a genuine bottle of the same product.

Defendants deny any knowledge of the violation. Nevertheless, licensees must be held strictly responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendants have no previous adjudicated record. I shall, therefore, suspend their license for a period of fifteen days. Re Ward, Bulletin 680, Item 9.

Accordingly, it is, on this 22nd day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-24, issued by the Board of Commissioners of the Town of West New York to Richard J. Reynolds & Elsie Reynolds, t/a Reynold's Tavern, for premises 5615 Hudson Avenue, West New York, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
 Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against FERDINANDO PISANI T/a GLASS BAR 151 First Street Hoboken, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-157, issued by the Board of Commissioners of the City of Hoboken.

Charles DeFazio, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads not guilty to a charge that, on July 1, 1946, he possessed at his licensed premises a 4/5 quart bottle labeled "King William IV V.O.P. Brand Blended Scotch Whisky", which bottle contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

An inspector employed in the Federal Alcohol Tax Unit of the Internal Revenue Department testified that, on July 1, 1946, while making an inspection of defendant's licensed premises, he seized the bottle in question when the contents thereof appeared to him to be questionable. Subsequent analysis, according to the testimony of Abraham G. Blakeley, a chemist employed by the Internal Revenue Department, disclosed that the contents of the seized bottle varied substantially in proof, acid and solid content and percentage of natural color when compared with the result of an analysis of an authentic sample of the same product. The Federal chemist testified it was his opinion, based on the chemical tests made by him, that the seized bottle was refilled with some other brand of whiskey.

Defendant Ferdinando Pisani testified he never tampered with the bottle. He stated that an employee who had been discharged a short time before the violation occurred may have been responsible for the refill. Nonetheless, a licensee must be held strictly accountable for any refills found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

No testimony was offered to refute the analysis made by the Federal chemist. I therefore find defendant guilty of the charge preferred herein.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 22nd day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-157, issued by the Board of Commissioners of the City of Hoboken to Ferdinando Pisani, t/a Glass Bar, for premises 151 First Street, Hoboken, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against)

JOSEPH & FREDERICK H. Di ORIO)
Maryland & Launch Avenues)
Somers Point, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-6, issued by the Common Council of the City of Somers Point.)

Joseph & Frederick H. Di Orio, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants have pleaded non vult to a charge alleging that they possessed two 4/5 quart bottles labeled "Black & White Blended Scotch Whisky", one 4/5 quart bottle labeled "Blended Scotch Whisky Johnnie Walker Red Label", and one 4/5 quart bottle labeled "Gold Bar Extra Quality Martin V.V.O. Brand Special Liqueur, Blended Scotch Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 22, 1946, an investigator of the Department of Alcoholic Beverage Control seized the bottles mentioned in the charge when preliminary tests indicated that the contents of the bottles were not genuine as labeled. Subsequent analyses by the chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottles varied substantially in solids from the contents of genuine bottles of the same products. At the time of the seizure, Frederick H. Di Orio, Sr., father of the licensees and former owner of said licensed premises, admitted to the agent that he had refilled the seized bottle with a Scotch liqueur.

As has been repeatedly pointed out, a patron is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

Since this is the defendants' first adjudicated violation, I shall suspend their license for a period of twenty days. Re Johnson, Bulletin 680, Item 10.

Accordingly, it is, on this 22nd day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Common Council of the City of Somers Point to Joseph & Frederick H. Di Orio, for premises Maryland & Launch Avenues, Somers Point, be and the same is hereby suspended for a period of twenty (20) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

6. MORAL TURPITUDE - CRIME OF ROBBERY INVOLVED MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST - APPLICATION TO LIFT GRANTED ON REHEARING.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, pursuant to)
R. S. 33:1-31.2.)
Case No. 548.)
-----)

CONCLUSIONS
AND ORDER

This is petitioner's second petition for the removal of his disqualification resulting from his conviction of crime involving moral turpitude. His former petition was denied on August 31, 1942, particularly because he had falsely answered "No" in his 1941 and prior applications for liquor licenses to a question in the application which asked, "Have you....ever been convicted of any crime?" See Case No. 231, Bulletin 526, Item 3. Five years having now elapsed since the petitioner filed an application containing a false statement, he was permitted to file a subsequent petition.

There is no question that one or more of the crimes of which petitioner was convicted involved the element of moral turpitude. See Case No. 231, supra. Petitioner's criminal record, however, is clear since 1934.

Witnesses produced at the former hearing and at the hearing on the present petition, comprising neighbors, township officials, a clergyman and friends, all testified that petitioner has, at least during the past five years, been honest and law-abiding. It is now well over five years since the last misstatement in connection with the liquor license formerly held by petitioner. Further, the Chief of Police of petitioner's home community testified at the present hearing that said petitioner is not now, nor has he been the subject of investigation or complaint since he became a resident of said community. In view of these circumstances, I find that petitioner has conducted himself in a law-abiding manner for the last five years and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 22nd day of October, 1946,

ORDERED, that petitioner's statutory disqualification because of the convictions described in Bulletin 526, Item 3, be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ERWIN B. HOCK
Deputy Commissioner.

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, MUSIC BOX, FIXTURES, FURNISHINGS AND OTHER PERSONAL PROPERTY IN SPEAKEASY ORDERED FORFEITED - SPEAKEASY OWNER'S APPLICATION FOR RETURN OF MUSIC MACHINE AND OTHER FURNISHINGS DENIED.

In the Matter of the Seizure on)	Case No. 7013
July 13, 1946, of a quantity of)	
beer, whiskey, wine, soda, fixtures,)	
furnishings and a music machine, at)	ON HEARING
805 Sand Road, in the Borough of)	CONCLUSIONS AND ORDER
Westwood, County of Bergen and)	
State of New Jersey.)	

George W. Weleck, Esq., Attorney for Daniel McCoy.
 Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, a music machine, and furnishings and fixtures, described in a schedule attached hereto, seized on July 13, 1946 at 805 Sand Road, Westwood, N. J., constitute unlawful property and should be forfeited.

Daniel McCoy resides in a one-family dwelling at the above address. On various occasions special permits were obtained from the State Department of Alcoholic Beverage Control, ostensibly on behalf of a "club" authorizing the sale of alcoholic beverages at one-day picnics held in the basement of the dwelling and back yard of the premises. These permits were issued with the approval of the local authorities.

Application was made for a similar permit for a picnic to be held at the premises on July 4, 1946, but apparently the local authorities refused to approve such permit.

On July 4, 1946, ABC agents visited the premises to check complaint that alcoholic beverages were being sold there without a license. They observed 60 or 70 persons, some in the yard and some in the basement, being served alcoholic beverages. One of the agents entered the basement, which was equipped as a barroom, and purchased drinks of alcoholic beverages. This agent returned later that day, and on July 8th, and on each occasion purchased drinks of alcoholic beverages in the basement. On July 10th, he and another ABC agent purchased drinks of alcoholic beverages there. All of these sales of alcoholic beverages were made by Daniel McCoy.

McCoy did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

On the basis of these unlicensed sales of alcoholic beverages, the ABC agents obtained a search warrant for the premises, which they executed on July 13, 1946. The agents seized the bar, alcoholic and other beverages, a cash register with currency therein, a bagatelle pool table, a music box, a cooler, an electric fan, tables and other equipment, all of which were in the basement.

McCoy was arrested on charges of selling alcoholic beverages without a license and possessing alcoholic beverages with intent to sell such beverages unlawfully. He gave the agents a signed statement which in substance confirms their account of his unlawful sales of alcoholic beverages at the place. On September 23, 1946 he pleaded guilty, in criminal court, to the charges, and was fined \$100.00.

The seized alcoholic beverages were obviously intended for sale at this speakeasy and, hence, are illicit. R. S. 33:1-1(i). These illicit alcoholic beverages, together with the other beverages, the music box, the cash register, the currency in such machines, and the other fixtures and furniture, seized in the basement, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, Daniel McCoy appeared with counsel and sought the return of the music machine, bagatelle machine, cash register and electric fan. He did not oppose forfeiture of the other property seized.

McCoy urges that the forfeiture of these items will impose an undue hardship upon him. He does not dispute the fact that all of the seized property is legally subject to forfeiture.

Under R. S. 33:1-66(e) I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law.

It is not clear whether the receipts of the sale of alcoholic beverages under authority of the special one-day picnic permits were retained by any organization or club, or were pocketed by McCoy or others as profits of a private enterprise. In the latter event, such permits would have been fraudulently obtained. In any event, when planning for the July 4th affair this year, the alcoholic beverages were purchased in advance of obtaining the requisite permit. When notified that a permit would not be issued, McCoy decided nevertheless to carry out his plans for the affair. He says that the alcoholic beverages could have been given away if everybody "chipped in", but they did not do that. Actually, he conducted this affair as his private enterprise, and part of the receipts of the unlawful sale of alcoholic beverages were still in the register when it was seized on July 13th.

It thus appears that the elements of good faith and unknowing violation of the law are lacking, because McCoy committed the offenses with the deliberate intent to try to "beat" the law. This compels denial of Daniel McCoy's application for return of the music machine, bagatelle machine, cash register and electric fan.

The evidence does not establish that forfeiture of the property will impose any particular hardship, but rather that McCoy has presented his claim for return of the property from a natural desire to salvage something from the seizure.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: October 22, 1946.

SCHEDULE "A"

- 122 - bottles of beer
- 2 - bottles of whiskey
- 1 - bottle of wine
- 75 - bottles of soda
- 1 - National Cash Register No. 2553306-711
with \$16.66 in currency
- 1 - Coca Cola Cooler
- 1 - Hunter Electric Fan No. E-58575
- 1 - Bagatelle Pool Table
- 1 - Music Box No. 8630 with 65¢ in coins
- 1 - bar
- 2 - tables
- 1 - beer cooler
- 10 - whiskey glasses

8. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, CIGARETTE VENDING MACHINE, FIXTURES, FURNISHINGS AND OTHER PERSONAL PROPERTY IN SPEAKEASY ORDERED FORFEITED - APPLICANT FOR RETURN OF CIGARETTE MACHINE FAILED TO ESTABLISH LACK OF KNOWLEDGE OR REASON TO SUSPECT SPEAKEASY ACTIVITIES ON THE PREMISES - MUSIC MACHINE RETURNED TO APPLICANT WHO ESTABLISHED LACK OF SUCH KNOWLEDGE.

In the Matter of a Seizure on) Case No. 7014
 July 14, 1946, of a quantity of)
 alcoholic beverages, a music box,)
 a cigarette vending machine,)
 fixtures, furnishings and other) ON HEARING
 personal property at 773 Ferry) CONCLUSIONS AND ORDER
 Avenue, in the City of Camden,)
 County of Camden and State of)
 New Jersey.)

Samuel Odell, Pro Se.

Julius G. Obus, t/a South Jersey Amusement Co., Pro Se.

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

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, a music box, a cigarette vending machine, and furnishings and fixtures, described in a schedule attached hereto, seized on July 14, 1946 at 773 Ferry Avenue, Camden, New Jersey, constitute unlawful property and should be forfeited.

On July 14, 1946, ABC agents, checking a complaint that speak-easy activities were being carried on there, entered the basement of a two-story brick dwelling located at the above address. There they found three women, each with a bottle of beer in front of them. These three women told the agents that Reuben Thomas sold them the beer. Thomas at first denied but later gave the agents a signed statement in which he acknowledged, among other things, that he had sold these women bottles of beer.

According to Thomas' statement, the place was the quarters of the "Swan Social Club" which had been recently organized, although it did not have any "charter" or "rules"; and Thomas accepted full responsibility for the unlawful sale of alcoholic beverages.

Neither Reuben Thomas nor the "Swan Social Club" held any license authorizing either of them to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

This basement was equipped with a glass block bar about ten feet in length, cemented to the floor, tables, chairs, a music box, and a cigarette vending machine. These articles, as well as the alcoholic beverages, were seized by ABC agents.

Thomas was arrested on charge of selling alcoholic beverages without a license, and possessing alcoholic beverages with intent to sell such beverages unlawfully. He was arraigned in the Camden Police Court, pleaded guilty and was sentenced to pay a fine of \$100.00 or be imprisoned for 30 days.

It appears clear from the evidence presented that the seized alcoholic beverages were intended for sale at this speakeasy, and hence are illicit. R. S. 33:1-1(i). These illicit alcoholic beverages, together with the music box, cigarette vending machine, currency in such machines, and the fixtures, furnishings and other personal property, all of which were seized in the basement, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, Samuel Odell, the owner of the music box, and Julius G. Obus, the owner of the cigarette vending machine, appeared and sought return of such machines. No one appeared to oppose forfeiture of the balance of the seized property.

Under R. S. 33:1-66(f), I have the discretionary authority to return property subject to forfeiture to a person who has satisfied me that he acted in good faith, and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use.

Mr. Odell produced an account book which listed his music machines and their locations. All but two of the machines appeared to be at commercial locations, on long-term rentals, on a profit-sharing basis. Two machines appear to be for temporary rentals to halls, churches, social clubs and house parties at a fixed fee. The seized machine is one of these two.

Mr. Odell says that he received a request by telephone on behalf of the Swan Social Club for the delivery of a machine at the premises in question for a one-day weekend rental; that, without further ado, he delivered this machine on Saturday, July 13, 1946 and was to pick it up on Monday, July 15th. On Sunday, July 14th, he received information that the machine had been seized.

The employee who placed the machine in the premises testified that, with the bar and other equipment, it looked like a recreation room or club room, typical of cellar recreation rooms in private dwellings. He installed the machine without asking the name of the man whom he met there or giving any particular thought to the activities that were to be carried on there. He says that he thought that there was to be a party at the place.

Where, as here, it is claimed that a music machine is rented to the occupant of a private residence for a single day or weekend, it is incumbent upon a claimant seeking to avoid forfeiture of such machine to establish by the most convincing evidence that he had no reason to suspect that the place was actually a speakeasy or that the person to whom he loaned the machine was a speakeasy operator. Cf. Seizure Case 6875, Bulletin 716, Item 3.

Reuben Thomas apparently has no previous record of violating the liquor laws or any other laws. The "Club" was merely in its formative stage. Hence the failure to investigate the character of the person to whom the machine was to be loaned is immaterial, especially since the rental was merely to be for one day. Seizure Case 6880, Bulletin 713, Item 8.

It is conceivable that a reasonably prudent person could have concluded, even though a bar, tables and chairs were there, that it was nothing more than a recreation room, with the machine being rented for a party at the place. The fact that the rental was in the name of a social club rather than in the name of an individual did not of itself definitely indicate anything to the contrary. I am, therefore, satisfied that Mr. Odell acted in good faith and did not know or have any reason to suspect that the place was a speakeasy. The music machine will therefore be returned to him.

The cigarette vending machine was not in Thomas' premises on a one-day rental, nor upon any assumption that the place was an individual's private recreation room.

Mr. Obus testified that about June 15, 1946, two men, on behalf of the "Swan Club", asked him to place a machine at the premises upon the representation that they were opening a club and intended to obtain a liquor license.

Obus was never at the premises and did not investigate either the place or the club. He frankly admitted that he is only interested in the revenue his machines produce, and that he would place a machine in a person's bedroom if he thought it would do business there.

Obus' employee who installed the machine gives a frank and clear description of their business practice. He says that he has placed machines in private clubs where there have been bars, but has never asked for, or looked for, any liquor license; that he merely assumed that they would not operate without a license.

In the instant case, when delivering the machine, this employee did not ask the man whom he met there for his name, although from its equipment he concluded that it was a place where liquor would be served or sold. Here, too, he took it for granted that it was a legitimate enterprise, and was of the opinion that it was not his business to inquire whether it was a licensed taproom. He was at the place on two occasions to service the machine.

It is manifest that persons installing equipment in a place, with knowledge that alcoholic beverages are to be sold there, should first make certain that it has a proper liquor license, especially where it is not a recognized type of business establishment. This is nothing more than common sense. The facts within the knowledge of Obus or his employee would have led a person of ordinary prudence to discover that alcoholic beverages were to be sold at the premises unlawfully. Hence, the application of Mr. Obus for return of the cigarette vending machine is denied.

Accordingly, it is DETERMINED and ORDERED that, if on or before the 4th day of November, 1946, Samuel Odell pays the cost of seizure and storage of the music machine, it will be returned to him; and it is further

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

ERWIN B. HOCK
Deputy Commissioner.

Dated: October 22, 1946.

SCHEDULE "A"

- 336 - bottles of beer
- 20 - bottles of other alcoholic beverages
- 181 - empty beer bottles
- 76 - glasses
- 1 - cigarette vending machine, Serial No. 72124, and merchandise and coins therein
- 4 - tables
- 9 - stools
- 9 - chairs

9. APPELLATE DECISIONS - VAN HORN v. MANALAPAN TOWNSHIP.

ESTHER VAN HORN,)
trading as RED BALL INN,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF MANALAPAN,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Felcone & Felcone, Esqs., by Michael Felcone, Esq.,
Attorneys for Appellant.
Barkalow & McGowan, Esqs. by M. Raymond McGowan, Esq.,
Attorneys for Respondent.

This is an appeal from the action of respondent Township Committee of the Township of Manalapan in imposing a special condition when it renewed appellant's license for the licensing year 1946-47. Such condition provided that "no dancing be permitted on licensed premises".

There is no question as to respondent's power to impose such a condition, under the provisions of R. S. 33:1-32. The grounds for the appeal are (1) that the action of respondent Township Committee was arbitrary, capricious, discriminatory and unreasonable; (2) that said condition was imposed without proper notice or hearing; and (3) said condition was imposed on grounds which are not within the meaning of the Statute.

The uncontradicted evidence disclosed that, starting some time during the prior licensing period, appellant provided a "cowboy orchestra" for the purpose of the entertainment of and dancing by her patrons; that the dancing was performed in a rather restricted

area, which area also contained tables and chairs at which patrons were served alcoholic beverages; and that the "dancing area" was largely patronized by minors and other young people.

Facilities for dancing are not provided for in any of the other seven licensed places in the township. Nevertheless, all other licensees were advised by the Township Clerk, on instructions from the Township Committee, that there would be no dancing on licensed premises.

There is no provision in the Alcoholic Beverage Law, R. S. 33:1 et seq., which requires that a hearing be held when licenses are issued subject to a special condition. R. S. 33:1-32.

The imposition of a special condition in issuing (or renewing) a license is a desirable method used to correct a special situation. When said condition is not arbitrary or discriminatory or capricious and is deemed by the issuing authority to be necessary and proper to accomplish the purpose of the law, the condition will be upheld.

The undisputed purpose of the special condition is to remove an attraction that tended to and did attract minors to the licensed premises, causing an enforcement problem which respondent Township Committee was not prepared to face. This problem -- the prevention of the service to or consumption by minors of alcoholic beverages -- is a serious one and any reasonable approach to a solution is to be applauded. A municipality may prohibit dancing where liquor is sold on the premises. Cf. Re Harris, Bulletin 16, Item 8; Re Hendricks, Bulletin 81, Item 9. Considering the fact that dancing is not permitted on other licensed premises in said township, we cannot say that such special condition imposed on appellant's license is discriminatory, capricious or arbitrary.

General regulations should best be adopted by ordinance. Re Van Allen, Bulletin 385, Item 2. In the instant case, however, I can find no substantial reason why the regulation in question may not properly be imposed by special condition. I shall affirm the action of the respondent Township Committee.

Accordingly, it is, on this 25th day of October, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

10. APPELLATE DECISIONS - GALLITANO v. SOUTH HACKENSACK TOWNSHIP.

MICHAEL GALLITANO, trading as)
MIKE'S BAR AND GRILL,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF SOUTH HACKENSACK,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Herbert F. Myers, Jr., Esq., Attorney for Appellant.
Ralph W. Chandless, Esq., by John Frank, Jr., Esq., Attorney for Respondent.

This is an appeal from a three-day suspension of a plenary retail consumption license held by appellant for premises at 6 Worth Street, South Hackensack. At the time the suspension was imposed, respondent deferred the fixing of an effective date for said suspension pending the outcome of this appeal.

The three-day suspension was imposed by respondent after it had found appellant guilty of two charges. Charge (1) alleged that on July 14, 1946, and on divers dates prior thereto, appellant had allowed certain persons of ill repute upon his licensed premises in violation of Rule 4 of State Regulations No. 20. It is unnecessary, however, to consider this charge because I conclude that the evidence herein is sufficient to sustain a finding of guilt as to charge (2), which alleged that:

"On the 14th day of July, 1946, and on divers dates prior thereto, you did allow, permit or suffer in or upon your licensed premises, disturbances, brawls and unnecessary noises and you did allow, permit or suffer your licensed place of business to be conducted in such a manner as to become a nuisance in that on April 14, 1946 you did allow, permit or suffer a brawl between Edward Mitchell and Andrew Brooks in which the said Edward Mitchell was cut with a razor and in that on July 13, 1946 you did allow, permit or suffer a brawl between Frazier Mosley and Lester Thompson in which the said Lester Thompson was stabbed with a knife and in that on divers other dates you did allow, permit or suffer Lester Thompson and Esther Gooch Holloway and divers other persons whose names are unknown to engage in or commit disturbances, brawls or unnecessary noise and in that the manner of the conduct of your licensed place of business is and was a nuisance to the public by virtue of the fact that said acts were audible on a public street and continued to be disturbing to the neighborhood contrary to Rule 5 of Regulation 20 concerning conduct of licensees and use of licensed premises promulgated by the Commissioner of Alcoholic Beverage Control by virtue of authority given him under the above Act and reading as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls or unnecessary noises or allow, permit, or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

At the hearing herein both Edward Mitchell and Andrew Brooks testified as to the disturbance which occurred in the licensed premises on April 14, 1946. This affair may best be summed up by the following testimony given by Brooks:

"Q Tell us what the fight was about.

"A I was sitting down to the bar drinking a glass of beer and he came in and twisted my arm - he walked back toward the juke box and then came back and twisted my arm, and I said, 'that hurt', and he said, 'Why don't you straighten up and be a man?', and he grabbed a chair to hit me and I cut him.

"Q Who was taking care of the premises?

"The Hearer: Who was tending bar?

"The Witness: Mike was at the bar."

Mitchell corroborated the fact that the fight took place right alongside the bar and stated that Brooks cut him in the face with a razor with the result that he (Mitchell) was taken to the hospital for treatment.

The evidence further shows that on July 13, 1946, Lester Thompson started an argument with his girl friend in the licensed premises and that, when Frazier Mosley interfered, Thompson "called him a name" and started for the door. Before Thompson reached the door, however, Mosley, who had followed, stabbed Thompson with some instrument which inflicted a four-inch laceration in his left chest, causing drops of blood to be spilled on the floor of the licensed premises. The victim of the attack was subsequently taken to a hospital by members of the Township Police Department. At the hearing Thompson testified that the appellant was back of the bar when this argument started. Thompson testified that the argument had lasted only two or three seconds, but another witness who lives across the street testified that he had heard an argument in the licensed premises about seven minutes or so before Thompson came out the door after he had been stabbed. This latter witness also testified that on June 29, 1946, he had witnessed a disturbance which lasted about twenty minutes and involved three women on the outside and a couple of men on the inside, with the appellant in the doorway between the two groups.

Appellant does not deny that these disturbances occurred or that he was present at the time the disturbances occurred. Apparently he relies upon the contention that, at least as to the disturbances on April 14, and July 13, he did all that a licensee might reasonably be required to do and hence was not guilty of allowing, permitting or suffering the brawls or disturbances. It may well be that, if a disturbance occurs suddenly in licensed premises and the licensee had no reason to anticipate any trouble, he should be held blameless if he acts promptly to quell the disturbance. Many previous cases have so held. However, the evidence herein indicates that appellant participated in the disturbance which occurred on June 29th. There is evidence from which it may be concluded that, when the disturbances occurred on April 14th and July 13th, the arguments had been going on for some time before the stabbings occurred and that during these arguments appellant stood by and did nothing. Under these circumstances appellant was guilty of allowing, permitting and suffering brawls upon his licensed premises. Klucke v. Orange, Bulletin 256, Item 3. Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and

use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 25th day of October, 1946,

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

ORDERED, that the matter be remanded to respondent for the purpose of fixing the effective dates for the three-day suspension. When said dates have been fixed, notification thereof should be sent promptly by respondent to the Department of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Peerless Beverage Company
1000 Morris Ave.
Union, N. J.

Application for Plenary Wholesale License filed
October 23, 1946.

Birch Trucking Corp.
36 Hooper St.
Brooklyn, N. Y.

Application for Transportation License filed October 28, 1946.

Surrey-Arnold, Inc.
1143 East Jersey St.
Elizabeth, N. J.

Application for Warehouse Receipts License filed
October 28, 1946.

New York Terminal Warehouse Co., Incorporated
811 Federal Street
Camden, N. J.

Application for Public Warehouse License filed
October 28, 1946.

Erwin B. Hock

Deputy Commissioner.