

Mr. Ernest M. Tapner, DP  
26 Rose Avenue,  
Madison,  
Morris County, New Jersey

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

BULLETIN 867

FEBRUARY 8, 1950.

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New Jersey State Library



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

BULLETIN 867

FEBRUARY 8, 1950.

1. APPELLATE DECISIONS - SIMON v. PATERSON AND PASSERO.

SIDNEY L. SIMON, )  
Appellant, ) CONCLUSIONS  
-vs- ) AND ORDER  
BOARD OF ALCOHOLIC BEVERAGE )  
CONTROL OF THE CITY OF PATERSON, )  
and JAMES PASSERO, )  
Respondents. )

-----  
Salvatore D. Viviano, Esq., Attorney for Appellant.  
Joseph R. Brumale, Esq., Attorney for Respondent Board of  
Alcoholic Beverage Control.  
William K. Azar, Esq., Attorney for Respondent James Passero.

BY THE DIRECTOR:

This is an appeal from the granting by the respondent Board of a transfer of a plenary retail distribution license formerly held by Julius E. Weiner, for premises 142 Washington Street, to the individual respondent herein for premises 168-170 Union Avenue, Paterson, N. J.

The appellant contends, first, that he was not notified of the hearing held below, despite his written notice of objection to the Board. See Rule 8 of State Regulations No. 6. The proof in support of this contention is meager and fails to support the allegation, which is categorically denied by the Board. It affirmatively appears that, at such hearing, the appellant's present attorney appeared on behalf of certain other objectors and presented considerable testimony and cross-examined witnesses called by the applicant. In any event, any prejudice that the appellant may have suffered has been completely nullified by the full opportunity afforded to him to present all of his objections at the appeal hearing herein which was held de novo. Cf. Ashton v. Hopewell and Corcoran, Bulletin 782, Item 11.

The appellant also argues that the issuing authority abused its discretion in granting the place-to-place transfer since, in his opinion, the neighborhood was already well supplied with liquor establishments. The premises to which the transfer was granted are located in a light industrial zone and in an area, described in the record by a real estate expert, as "the most densely populated section of the city of Paterson". In addition to stores, gasoline stations and other businesses in the vicinity, there are several factories, a warehouse and a garage situated there. Within a radius of one mile of the premises in question, there are three "package" stores, the nearest of which is more than 1000 feet distant from that of the respondent licensee. No abuse of the discretion, initially lodged in each issuing authority, to determine the number of licenses that may be issued in any particular area, is discernible under the recited circumstances.

Lastly, the appellant contends that the Board should have refused to approve the transfer on the ground that the contract of sale between the transferor and the respondent licensee is void

because, in addition to the sale of the liquor stock and good will, it allegedly provided for a sale of the liquor license as such. His argument is based upon R.S. 33:1-26 which, in part, provides that a license shall not "be deemed property, subject to...sale...or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter".

The quoted statutory provision obviously was intended to fortify the fundamental concept of the Alcoholic Beverage Law, namely, that the power to determine who shall exercise the privileges of a liquor license and to whom it may be transferred resides exclusively in the governmental licensing authorities and does not depend upon the will of private citizens or upon any private agreement between them. It is for that reason that the courts have refused to enforce, as contrary to public policy, any agreement which purported to give a third person any control of the disposition of a liquor license. See, e.g., Rawlins v. Trevethan, 139 N. J. Eq. 226 (Ch. 1947), which involved parties occupying the relationship of landlord and tenant-licensee. That situation obviously does not obtain here.

As between a seller and purchaser, the contract is unenforceable because of "the inability of equity to direct the local board in the exercise of a discretion vested in it". Iavicoli v. DiMarco, 142 N.J. Eq. 699 (E. & A. 1948). Nevertheless, it may be said that, realistically, although a license is not property, it has been recognized as "a privilege that usually has some money value and that sometimes has great money value". Drozdowski v. Sayreville, 133 N.J.L. 536 (Sup. Ct. 1946).

As has been heretofore noted, the transfer of a liquor license is not dependent upon any agreement between the parties. Under the Alcoholic Beverage Law, requisite jurisdiction to transfer a license from one person to another is founded, for present purposes, upon a proper application, and a proper consent signed by the transferor. (See R.S. 33:1-26.) The application and consent in this case satisfied the statutory requirement and were sufficient to invest the respondent Board with jurisdiction to approve the application, irrespective of the contract of sale between the transferor and the respondent licensee and even assuming, but not conceding, the invalidity of such contract.

I have decided this contention on the merits because the precise issue has not heretofore been formally passed upon by this agency. However, the proofs do not satisfy me that an independent sale of the license, as distinguished from the tangible assets and good will, was expressly provided for in the contract of sale. The contract itself was not produced in evidence. It is true that the writing annexed to the application included the language that consent was given to the transfer of the license "to Mr. James Passero as he is purchasing the business and same". It is also true that the respondent licensee answered, in the affirmative, a single inquiry as to whether he "purchased this liquor business and liquor license". This evidence, however, lacks the probative force necessary to sustain the factual contention.

The action of the respondent Board is affirmed.

Accordingly, it is, on this 27th day of January, 1950,

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

ERWIN B. HOCK  
Director.

- 2. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - CHARGE OF PERMITTING CLUB PREMISES TO BE OPEN DURING PROHIBITED HOURS DISMISSED ON GROUND THAT LOCAL ORDINANCE WAS UNREASONABLE AS APPLIED TO DEFENDANT - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against )

WOODROW WILSON DEMOCRATIC CLUB )  
 OF PASSAIC, N. J., INC. )  
 108 Passaic Street )  
 Passaic, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-13, issued by the Board of Commissioners of the City of Passaic. )

-----)  
 Stanley J. Polack, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On Sunday, August 28, 1949, between 8:30 a.m. and 9:15 a.m., you failed to have your entire licensed premises closed; in violation of Section Four C of an Ordinance adopted by the Board of Commissioners of the City of Passaic on July 15, 1941, which requires that licensed premises, except bona fide hotels and restaurants shall be closed between the hours of 3:00 a.m. and 1:00 p.m. on Sundays.

"2. On Sunday, August 28, 1949, at about 9:15 a.m., while investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety were investigating the above alleged violation occurring at your licensed premises on that date, you hindered and failed to facilitate such investigation; in violation of R.S. 33:1-35."

Section 4 of the Passaic City ordinance, adopted July 15, 1941, reads:

"SECTION FOUR.

"a. No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage or allow the consumption of any alcoholic beverage on the licensed premises between the hours of 3:00 a.m. and 6:00 a.m. weekdays and the hours of 3:00 a.m. and 1:00 p.m. Sundays...

"c. During the hours when sales of alcoholic beverages are prohibited, the entire licensed premises shall also be closed except in bona fide hotels and restaurants...."

An agent of the Division testified that at about 7:30 a.m. on Sunday, August 28, 1949, he and a fellow agent stationed themselves opposite the front of defendant's premises; that at 8:30 a.m. a group of persons gathered before the premises; that ten minutes later a man entered through the front door; that, shortly thereafter, the agents walked to the rear of the premises and took a position affording a view of the interior. The agent testified that he then saw about fifteen or twenty persons in defendant's barroom; that one man, who was behind the bar, took a bottle, which appeared to be a whiskey bottle, from the back bar and poured some of its contents into two

small whiskey glasses and then poured the contents of one of the whiskey glasses into a larger glass held by another man. The first man was defendant's steward. The second man was a member of defendant's house committee.

The agent testified that he, with his fellow agent, walked promptly to the front of the building and entered the licensed premises and identified himself to K... (the house committee member) and to D... (the steward): "I took out my badge and showed it to both of these men and said I was an ABC agent." He testified that K... held a glass containing a liquid that "appeared like coffee"; that, after identifying himself, he said to K...: "Let me see what is in that glass"; that K... walked past him and said: "It is only coffee", whereupon the agent said: "Let me see it", and with that he walked at a rapid pace towards the ladies' room, and opened the door and spilled the contents of the glass and came out again", and that K... washed the glass and put it among the other glasses.

Then the agent testified that, after he had identified himself to D..., he went for a glass which D... had behind the bar and which also contained a liquid that looked like coffee; that: "I reached for it and as I reached for it Mr. D... took that glass and went to the extreme front of the bar and spilled its contents into the sink and washed the glass and put it among the other glasses". When asked whether he spoke to D... when he reached for the glass, the agent replied: "I said I wanted that glass and he said it was only coffee, and I said why did he throw it away, and he said it didn't taste right."

When asked whether K... and D... raised any question with him as to whether he and his companion were ABC agents, the agent answered: "No, they never said a word."

Both agents testified that when they examined the glasses behind the bar they found two whiskey glasses which had an odor of whiskey.

The testimony of the second ABC agent corroborated in substance the testimony of the first agent except that the second agent engaged in no conversation with D... and K...

All of the testimony herein indicates that there were two or three cardboard cartons of black coffee at the edge of the bar when the agents entered the premises.

Defendant's president testified that on the particular Sunday the club had arranged to have a bus ride and picnic, the bus being scheduled to leave, from in front of the club premises, at 9:00 a.m. He testified that the premises were open that morning merely for the purpose of taking out various kitchen utensils, and food which had previously been prepared for the occasion.

K... testified as follows: On the Sunday morning in question, he arrived at the club premises at about 8:40 a.m. and immediately sent his son to a nearby restaurant for two containers of coffee. Upon the son's return, K... poured a glass of coffee for himself and one for D... While K... was drinking the coffee two men, later identified as ABC agents, entered the premises. When one of the agents asked what he was drinking, K... said "coffee"; and he continued to drink until the glass was empty. K... testified that he did not suspect the agents were law enforcement officers because they were dressed as "fishermen"; and that the agent did not identify himself until after the glass of coffee had been consumed.

Regarding the washing of the glass, the questions and answers on cross-examination were:

Q "Did you go toward the ladies' room?"

A "No, I washed the glass and put it behind the bar."

Q "Why did you go inside there to wash the glass?"

A "There was no water there behind the bar."

Q "Isn't there a trough?"

A "Yes, there is, but you have to open it up."

Q "Don't you have faucets in the ladies' room?"

A "Yes, but I didn't want to dirty it."

Q "You didn't want to dirty the trough?"

A "No."

Q "How did you know it was clean? When did you see him clean it?"

A "A couple of days before."

Q "You saw him clean it a couple of days before, and you didn't want to get it all splashed with water. But there was a faucet back there?"

A "Yes."

Q "And yet you went to the ladies' room?"

A "It was close."

Q "You had to open the door in the ladies' room?"

A "It was open."

Q "There was a sink in there?"

A "Yes."

Q "And what did you do with the glass?"

A "I washed it out."

Q "And then you went behind the bar?"

A "Yes."

D... testified that he opened the premises for the purpose of obtaining utensils and food for the picnic. He testified that he had drunk one glass of coffee and was drinking a second glass when the ABC agent asked to see what was in the glass. D... stated that he said: "That's nothing; it is just coffee." He explained that he "spilled" the coffee into the sink because it "didn't taste good". D... stated that the ABC agent had identified himself to him before the agent asked to see what was in the glass. When asked, on direct examination: "Now, did you use any kind of whiskey bottle or any other liquor bottle from the time you stepped inside up to the time the inspectors came inside?", D... replied: "No, I didn't use any bottles." To the question: "Did you use any small whiskey glass

that morning for that purpose?", D... replied: "Not that morning"; and to the question: "Did you pour any whiskey or liquor into those small glasses?", D... replied: "No sir."

It is difficult to conceive of a proper or sufficient reason why a bona fide club licensee should not be permitted to remain open for its club purposes other than the sale, etc. of alcoholic beverages while bona fide hotels and restaurants are permitted to remain open for their purposes other than the sale, etc. of alcoholic beverages. Regarding the first charge, I find that the closing of premises requirement in Section Four C of the City's 1941 ordinance (i.e., the omission therefrom of an exception in favor of club licenses when bona fide hotels and restaurants are excepted) is unreasonable as applied to defendant. See on this point, but not necessarily to indicate my agreement with the reasoning therein, Moose et al. v. Trenton, Bulletin 438, Item 1. Thus, the first charge will be and is dismissed.

Revised Statutes, 33:1-35 provides, with respect to authorized investigations by agents of the Division, that "every licensee, and every director, officer, agent and employee of every licensee, shall ....facilitate, as far as may be in their power to do so, in any such investigation, ... and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever." There can be no question or doubt as to the purpose and meaning of, and the necessity for, the statutory provision. Sound law enforcement requires that licensees cooperate with, and not hinder, the authorized activities of the control agents. Hindering of an investigation may be found without necessary relation to the specific object or objects of the investigation. It is clear that there may be a finding of guilt under the second charge herein, if a preponderance of the evidence supports such a finding, despite a dismissal of the first charge.

On the record before me, I am convinced that deliberate hindering occurred. On that record the testimony designed to show lack of timely knowledge of the agents' identities and innocent destruction of evidence is not worthy of belief. I find defendant guilty under the second charge.

Defendant has a prior record. On January 15, 1941, defendant was found guilty (sentence suspended) by the municipal issuing authority of permitting gambling on the licensed premises. Effective May 12, 1941, defendant's license was suspended for fifteen days for selling to non-members and permitting gambling on the licensed premises. However, because of the length of time which has elapsed since the prior dissimilar violations, I shall not consider the prior record in fixing the period of suspension herein. I shall suspend the license for a period of fifteen days. (See Re Loyal Order of Moose #217, Bulletin 520, Item 3.)

Accordingly, it is, on this 31st day of January, 1950,

ORDERED that Club License CB-13, issued by the Board of Commissioners of the City of Passaic to Woodrow Wilson Democratic Club of Passaic, N. J., Inc., for premises 108 Passaic Street, Passaic, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. February 6, 1950, and terminating at 3:00 a.m. February 21, 1950.

ERWIN B. HOCK  
Director.

3. DISCIPLINARY PROCEEDINGS - PLENARY WHOLESALER LICENSEE - CONDUCTING A PROMOTIONAL CONTEST IN VIOLATION OF RULE 11 OF STATE REGULATIONS NO. 34 - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against SEAGRAM-DISTILLERS CORP. Suite 1214-19 1180 Raymond Boulevard Newark 2, N. J., Holder of Plenary Wholesale License W-85, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Frederick J. Lind, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"During the month of May, 1949, you conducted and participated in a promotional contest in connection with the sale and distribution and the promotion of the sale and distribution of alcoholic beverages other than malt alcoholic beverages, and allowed, permitted and suffered your employees to participate in such contest; in violation of Rule 11 of State Regulations No. 34."

The facts are not in dispute. The record indicates that during the month of May 1949 defendant conducted a national contest in which ten licensed New Jersey wholesale distributors participated and which was based upon the aforesaid distributors' performance with respect to the merchandising of Seagram's products, sales being secondary and displays of Seagram merchandise being primary in importance. Eventually a trophy, suitably inscribed, was awarded to each of three of the wholesale distributors who were numbered among the winners of the contest. The trophy itself had no intrinsic value and was not given to any individual salesman or any member of the firm.

Rule 11 of State Regulations No. 34, promulgated on February 4, 1949, effective February 10, 1949, provides as follows:

"No manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages shall conduct or participate in any promotional contest in connection with the sale or distribution, or the promotion of the sale or distribution, of alcoholic beverages other than malt alcoholic beverages, or allow, permit or suffer any employee to participate in such contest."

In alleged mitigation, and in connection with the plea of non vult, defendant alleges that Rule 11 of State Regulations No. 34 is vague and indefinite because "it does not draw the line where the normal and constitutional rights of a business venture to improve its sales by intra-corporate efforts ends and where the line begins that such efforts are deemed to be promotional contests". It is further alleged that it was the considered opinion of Seagram's officers that the "sales improvement endeavor" was well within such normal and constitutional rights and did not constitute a violation of Rule 11. I cannot agree that the language of the Rule is vague

or indefinite. The object of the defendant was to improve sales, and a reward, albeit without intrinsic value, was given to the winners of the contest. These facts clearly constitute the activity a promotional contest within the meaning of the Rule. If any cash bonus, allowance or other inducement over and above salary, commission or compensation had been given to any individual solicitor, it would, of course, have constituted a violation of Rule 1 of State Regulations No. 35. I find defendant guilty as charged.

Defendant has no prior record. Under all the circumstances, including the plea of non vult, I shall suspend its license for a period of five days.

Accordingly, it is, on this 31st day of January, 1950,

ORDERED that Plenary Wholesale License W-85, issued by the Director of the Division of Alcoholic Beverage Control to Seagram-Distillers Corp., Suite 1214-19, 1180 Raymond Boulevard, Newark, be and the same is hereby suspended for five (5) days, commencing at 12:01 a.m. February 6, 1950, and terminating at 12:01 a.m. February 11, 1950.

ERWIN B. HOCK  
Director.

4. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

In the Matter of an Application )  
to Remove Disqualification )  
because of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )  
Case No. 785. )  
----- )

CONCLUSIONS  
AND ORDER

BY THE DIRECTOR:

In 1936 petitioner was convicted of larceny and sentenced to probation for one year. On October 25, 1949, I dismissed a prior petition filed herein solely because it appeared that petitioner had falsely denied, in an application filed for a solicitor's permit, that he had been convicted of any crime. In the Conclusions and Order filed therein, he was given permission to renew his application for relief after January 19, 1950. Re Case No. 785, Bulletin 858, Item 8.

The petitioner has now reapplied to have his disqualification removed. It appears that he has not been convicted of any crime since the denial of his prior petition on October 25, 1949.

After careful consideration of the entire record, I conclude that petitioner's association with the alcoholic beverage industry will not be contrary to the public interest. Hence, I shall now grant the relief sought.

Accordingly, it is, on this 31st day of January, 1950,

ORDERED that petitioner's statutory disqualification, because of the conviction referred to herein, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2.

ERWIN B. HOCK  
Director.

5. DISCIPLINARY PROCEEDINGS - SALE AND ADVERTISING OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

HARRY STEIN, BERTHA STEIN, )  
MILTON ZUCKER, MILDRED S. ZUCKER, )  
T/a HARRY STEIN & SON )  
216 Madison Street )  
Passaic, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Distribution License D-12, issued by the Board of Commissioners of the City of Passaic. )

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Kristeller & Zucker, Esqs., Attorneys for defendant-licensees. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they advertised for sale and sold alcoholic beverages at retail below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

In an issue of a daily newspaper, published in or about Passaic, N. J. on December 29, 1949, licensees advertised Canadian Club Blended Canadian Whisky, an alcoholic beverage, at a price of \$5.67 a fifth, with the following additional notation in said advertisement, "discount by case". While the price quoted for a fifth bottle of Canadian Club Blended Canadian Whisky is correct, no discount for case purchases is permissible on this item.

On December 30, 1949, one of the partners in said licensed partnership sold to an agent of the State Division of Alcoholic Beverage Control a case of 12 4/5 quarts (fifths) of Canadian Club Blended Canadian Whisky, an alcoholic beverage, for the price or sum of \$64.64, which price is 5% less than the minimum consumer price for said item as disclosed in the list of such prices, effective October 1, 1949.

The minimum penalty for Fair Trade violations is ten days. Re Markowitz, Bulletin 792, Item 9. Defendants have no prior adjudicated record. I shall suspend their license for ten days, remitting five days for the plea, leaving a net suspension of five days. See Bulletin 792, Item 9.

Accordingly, it is, on this 31st day of January, 1950,

ORDERED that Plenary Retail Distribution License D-12, issued by the Board of Commissioners of the City of Passaic to Harry Stein, Bertha Stein, Milton Zucker, Mildred S. Zucker, t/a Harry Stein & Son, for premises 216 Madison Street, Passaic, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. February 6, 1950, and terminating at 9:00 a.m. February 11, 1950.

ERWIN B. HOCK  
Director.

February 1, 1950

6.

ACTIVITY REPORT FOR JANUARY 1950

<b>ARRESTS:</b>		
Total number of persons arrested	-----	23
Licensees and employees	----- 4	
Bootleggers	----- 19	
<b>SEIZURES:</b>		
Motor vehicles - cars	-----	2
Stills - over 50 gallons	-----	2
- 50 gallons or under	-----	3
Mash - gallons	-----	175.00
Distilled alcoholic beverages - gallons	-----	52.73
Wine - gallons	-----	8.84
Brewed malt alcoholic beverages - gallons	-----	9.75
<b>RETAIL LICENSEES:</b>		
Premises inspected	-----	860
Premises where alcoholic beverages were gauged	-----	799
Bottles gauged	-----	15,519
Premises where violations were found	-----	96
Violations found	-----	53
Type of violations found:		
Gambling devices	----- 19	Other mercantile business
Unqualified employees	----- 13	Prohibited signs
Reg. #38 sign not posted	----- 5	Other violations
Probable fronts	----- 3	
<b>STATE LICENSEES:</b>		
Premises inspected	-----	22
License applications investigated	-----	10
<b>COMPLAINTS:</b>		
Complaints assigned for investigation	-----	300
Investigations completed	-----	367
Investigations pending	-----	159
<b>LABORATORY:</b>		
Analyses made	-----	110
"Shake-up" cases (alcohol, water and artificial color) - bottles	-----	8
Liquor found to be not genuine as labeled - bottles	-----	6
<b>IDENTIFICATION BUREAU:</b>		
Criminal fingerprint identifications made	-----	54
Persons fingerprinted for non-criminal purposes	-----	124
Identification contacts made with other enforcement agencies	-----	167
Motor vehicle identifications via N. J. State Police Teletype	-----	17
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities	-----	12
Violations involved:		
Sale during prohibited hours	----- 6	Sale to non-members by clubs
Permitting brawls on premises	----- 2	Permitting slot machines on premises
Sale to minors	----- 2	Licensee working while drunk
Cases instituted at Division	-----	23
Violations involved:		
Sale under Fair Trade price	----- 5	Possessing illicit liquor
Sale to minors	----- 5	Advertising below Fair Trade
Fraud and front	----- 5	Possessing contraceptives on premises
Sale to non-members by clubs	----- 3	Sale to intoxicated persons
Sale during prohibited hours	----- 3	Delivery on credit to retailer in default
Permitting immoral activity on premises	----- 2	Failure to report retailer in default
Permitting hostesses on premises	----- 2	Failure to retain copies of orders
Cases brought by municipalities on own initiative and reported to Division	-----	Purchase from improper source
Cases brought by municipalities on own initiative and reported to Division	-----	2
Violations involved:		
Permitting brawls on premises	----- 2	
Sale to minors	----- 1	
Hindering investigation	----- 1	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held	-----	42
Appeals	----- 7	Seizures
Disciplinary proceedings	----- 11	Tax revocation
Eligibility	----- 10	Application for license
<b>PERMITS ISSUED:</b>		
Total number of permits issued	-----	732
Employment	----- 97	Social affairs
Solicitors	----- 88	Special wine
Disposal of alcoholic beverages	----- 125	Miscellaneous

ERWIN B. HOCK, DIRECTOR

7. APPELLATE DECISIONS - KIMMELMAN v. LINDEN AND SZKUTNIK.

ALEX KIMMELMAN,	)	
Appellant,	)	
-vs-	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC	)	CONCLUSIONS AND ORDER
BEVERAGE CONTROL OF THE CITY	)	
OF LINDEN, and MARY SZKUTNIK,	)	
Respondents.	)	

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Harry Mopsick, Esq., Attorney for Appellant.  
 Lewis Winetsky, Esq., Attorney for Respondent Municipal Board.  
 Irving V. Schwartz, Esq., Attorney for Respondent Mary Szkutnik.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board whereby it transferred a plenary retail consumption license from the former holders thereof to respondent Mary Szkutnik, and from premises known as 907 Woodlawn Avenue to premises known as 11A East Price Street, Linden.

The petition of appeal alleges that the action of respondent Board was erroneous for reasons which may be summarized as follows: (1) numerous persons who were either taxpayers or tenants residing in the immediate neighborhood of 11A East Price Street objected to the transfer of the license; (2) there is no public need or necessity for a license at said premises, and (3) said premises are within 300 feet of an existing licensed premises, contrary to the provisions of a local ordinance.

As to (1) and (2): Appellant did not appear at the hearing held herein. On behalf of appellant an officer of a corporation which owns a large apartment house at 18 East Price Street testified that she represented the tenants of the apartment house who had signed the petition against the transfer of the license. Her objection was based upon the contention that it would be undesirable to permit the operation of a licensed place of business opposite the apartment house.

The evidence herein discloses that the principal business street of Linden is Wood Avenue, and that East Price Street begins at and runs in an easterly direction from Wood Avenue. On one side of East Price Street there are a number of stores, including a super market with a bowling alley above, between Wood Avenue and 11A East Price Street. On the other side of East Price Street there is one hardware store between Wood Avenue and the apartment house, and four or five stores to the east of the apartment house. The section is zoned for business, and at the present time it appears that the neighborhood is of a mixed business and residential character. Respondent Mary Szkutnik testified that she intends to serve hot lunches at her place of business, which is equipped with kitchen facilities.

Chairman Erlenkotter, of the Municipal Board, testified that the members of the Board unanimously voted to grant the transfer because they believed that there was need for a licensed premises of this character in this neighborhood which was developing as a business district. If the licensed premises are properly conducted, they should be no more objectionable than any other business place to residents of the apartment house.

As to (3): This contention is based upon the provisions of a municipal ordinance dated December 20, 1938. However, since it appears that the premises 11A East Price Street are not within 300 feet of an existing licensed premises, there is no need to construe the ordinance. This alleged reason for reversal has not been established by the evidence.

Under all the circumstances, I conclude that the appellant has not sustained the burden of proof in establishing that the action of the Municipal Board was erroneous.

Accordingly, it is, on this 2nd day of February, 1950,

ORDERED that the action of respondent Municipal Board be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Director.

8. MORAL TURPITUDE - COMMERCIALIZED GAMBLING MAY OR MAY NOT INVOLVE MORAL TURPITUDE - UNDER FACTS OF CASE APPLICANT HELD TO BE NOT INELIGIBLE TO BE EMPLOYED ON LICENSED PREMISES.

February 1, 1950.

Re: Case No. 611

In September 1949, subject pleaded guilty to a charge of "Bookmaking" in violation of a State Statute, R.S. 2:135-3. He was sentenced by a County Judge in this State to a term of one to two years in State Prison. On November 2, 1949, he was recalled by said Judge. His prison sentence was suspended and he was placed on probation for three years and fined \$1,000.00, the minimum fine under the statute.

Apparently, subject drifted into the "business" partially because of a financial insecurity. He was not connected with any other bookmaker. His book was small and his "customers" apparently limited to subject's business acquaintances and their friends.

Commercialized gambling may or may not involve moral turpitude. In Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. In Case No. 283, Bulletin 337, Item 14, the conviction of a "lieutenant" of the real operator of a lottery conducted on a large scale, it was held, did involve moral turpitude. So also in a case wherein it was held multiple convictions showed a reckless disregard for law warranting the conclusion that the last offense involved moral turpitude. See Re Case No. 246, Bulletin 293, Item 10. In the instant case none of the elements aforementioned are found. I conclude that the single crime of which petitioner is convicted did not involve moral turpitude. Re Case No. 143, Bulletin 500, Item 6.

Although applicant is not disqualified by statute because of the aforesaid conviction, it is, nevertheless, the responsibility of the local issuing authority to determine to its satisfaction whether applicant is a fit person to be associated with the alcoholic beverage industry.

Edward F. Hodges  
Attorney.

APPROVED:  
ERWIN B. HOCK  
Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL ON FARM - STILL, MOTOR VEHICLE AND OTHER ARTICLES ORDERED FORFEITED - BUILDINGS ORDERED PADLOCKED - CLAIM OF INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure on ) Case No. 7450  
May 31, 1949 of a still, a quantity )  
of alcohol, various items of house- )  
hold furniture, and a Chevrolet )  
sedan, at the Avis Farm located in ) ON HEARING  
the vicinity of Crown Point Road, ) CONCLUSIONS AND ORDER  
Township of Logan, County of )  
Gloucester and State of New Jersey. )

----- )  
Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys  
for Anthony Maiuro.  
Lloyd & Horn, Esqs., Attorneys for Atlantic City Electric Co.  
Harry Castelbaum, 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 2, Revised Statutes of New Jersey, to determine whether a still, a quantity of alcohol, various items of household furniture, and a Chevrolet sedan, itemized in a schedule attached hereto, seized on May 31, 1949 at the Avis Farm located in the vicinity of Crown Point Road, Logan Township, Gloucester County, New Jersey, constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

It appears that on May 31, 1949 ABC agents visited the farm, on complaint that an illicit still was located there. The agents found and seized a large still in operation in a cinder block building on the premises. Anthony Maiuro, the owner of the farm, was present at the time and was arrested. The agents seized the still equipment, the household furniture in the farmhouse, and Maiuro's Chevrolet sedan which was parked near such dwelling.

The still was not registered with the Director of Alcoholic Beverage Control as required by R.S. 33:2-1 and, therefore, constitutes unlawful property. Such still, all equipment seized therewith, the household furniture and the motor vehicle, are therefore subject to forfeiture and the premises subject to padlocking. R.S. 33:2-2, 5.

When the matter came on for hearing pursuant to R.S. 33:2-4, Anthony Maiuro appeared with counsel and sought return of the household furniture and the Chevrolet sedan and also sought to avoid padlocking of the premises. An appearance was also entered on behalf of the Atlantic City Electric Co., which sought recognition of an alleged lien claim against an electric kitchen range which it had sold to Maiuro.

Maiuro seeks to claim that he did not personally participate in the operation of the still. He admitted that, due to his pressing need for money, he rented the building about seven weeks before the seizure with knowledge that a still was to be placed there at a rental of \$50.00 per week and with an additional advance of \$500.00.

There are cases where the circumstances were so extenuating that the Director, in the exercise of his discretion, relieved the owner of the premises from padlocking and forfeiture. See Seizure Case No. 7080, Bulletin 749, Item 7. However, Maiuro has not established any such state of facts. This was a large commercial still in active operation, with over 600 gallons of alcohol on hand. Operators of the still slept in the farmhouse and brought food there, which Maiuro served. Maiuro is unmarried and does not appear to have been gainfully employed since 1947. He says that he purchased the premises in

June 1948 with the intention of becoming a poultry farmer. From that time to May 1949, when the seizure was made, he claims that his net income from the sale of poultry did not amount to more than \$300.00, and that he had no other source of income. His attention was called to his fingerprint record which sets forth that he had been arrested in 1941 by Federal authorities on a conspiracy charge involving an illicit still and that the charge was nolle prossed in 1943 while he was in military service. He said he did not remember the case. He volunteered the information that in 1934 or 1935 he was imprisoned for three months in Philadelphia for a violation of its liquor laws. Under all of the circumstances, I shall not exercise my discretionary authority to relieve him from padlocking or forfeiture of the furniture and motor vehicle. R.S. 33:2-7.

The Atlantic City Electric Co. has presented a conditional sales contract covering the electric kitchen range seized in the case. The purchase price was \$176.56 and the balance presently due thereon is \$37.10. I am satisfied that the company did not know or have any reason to suspect that there was an illicit still at the premises. Accordingly, I shall recognize its claim of \$37.10.

The retail value of such range exceeds the amount of the lien and the Director of the Division of Purchase and Property of the State Department of the Treasury advises that such Department is interested in retaining the range for the use of a state institution. Hence, an Order will be entered retaining the range for the use of the state, conditioned upon the payment of the lien claim thereon of \$37.10.

Accordingly, it is DETERMINED and ORDERED that the General Motors Frigidaire Range described in Schedule "A" attached hereto, constitutes unlawful property and be retained for the use of the State of New Jersey conditioned upon payment to the Atlantic City Electric Co. of its lien claim in the amount of \$37.10; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in the aforesaid schedule constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5, 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; and it is further

ORDERED that all of the buildings on the Avis Farm owned by Anthony Maiuro located in the vicinity of Crown Point Road, Township of Logan, County of Gloucester and State of New Jersey, being the premises on which the still was seized, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 10th day of March, 1950.

ERWIN B. HOCK  
Director.

Dated: February 2, 1950.

SCHEDULE "A"

133 - 5-gal. cans of alcohol  
546 - 5-gal. empty cans  
1 - copper column  
1 - copper cooker  
2 - galvanized tanks  
3 - fuel oil tanks  
3 - steam pumps  
1 - water pump  
1 - oil burner  
1 - water tank  
1 - copper tank

SCHEDULE "A" (Cont'd)

- 1 - steam boiler
- 5 - wooden vats with mash
- 1 - Gruno electric refrigerator
- 1 - Norge electric refrigerator
- 1 - electric kitchen range
- 1 - washing machine
- 30 - items of household furniture
- 1 - Chevrolet sedan, Serial No. 14JA0536203,  
Engine No. M2557973, License No. 1949  
Registration ZJ61E
- Misc. personal property

10. DISCIPLINARY PROCEEDINGS - WINE WHOLESALE LICENSEE - VIOLATIONS OF RULES 4(a), 5(b) AND 6 OF STATE REGULATIONS NO. 39 - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against )  
 )  
 BISCEGLIA BROS. WINES CORPORATION )  
 47-46 - 30th Street )  
 Long Island City, New York, )  
 )  
 Holder of Wine Wholesale License )  
 WW-2, issued by the Director of the )  
 Division of Alcoholic Beverage )  
 Control. )  
 ----- )

CONCLUSIONS AND ORDER

Morris Rosenzweig, Esq., Attorney for Defendant-licensee.  
 Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On March 10 and 25, June 6 and 17, and July 18, 1949, you sold and delivered alcoholic beverages not for payment in cash on delivery to New Jersey retail licensees -----, which licensees were at the time of said deliveries listed on the Default List of the State Division of Alcoholic Beverage Control, in that you made deliveries of wine to said retailers on credit; in violation of Rule 4(a) of State Regulations No. 39.
- "2. On July 12 and 22, 1949, each date being more than three days after a New Jersey retail licensee became in default to you pursuant to Rule 2(a) of State Regulations No. 39, you failed to file with the State Director of Alcoholic Beverage Control a notice of such default, in that you failed to notify the said Director that retail licensees ----- had failed to make payment for alcoholic beverages delivered to the retailers by you on June 6 and 17, 1949, respectively; in violation of Rule 5(b) of State Regulations No. 39.
- "3. On or about September 13, 1949 and on divers days prior thereto, you failed to keep at your licensed premises copies of invoices for merchandise delivered by you to retail licensees; in violation of Rule 6 of State Regulations No. 39."

Defendant alleges that the violations set forth in Charges 1 and 2 were due to an oversight on the part of defendant's employees, and that it has adopted changes in the office routine which it is hoped will safeguard against the possibility of similar errors in the future.

As to Charge 3: The Vice-President of defendant corporation admitted that certain copies of customers' invoices had not been retained, but promised that in the future all copies of customers' invoices would be retained as required by Rule 6 of State Regulations No. 39.

Defendant was given an opportunity to obtain a special permit (see Bulletin 849, Items 1 and 3). Having failed to do so, the present proceedings were instituted.

Defendant has no prior adjudicated record. Under all the circumstances, and considering the plea entered herein, I shall suspend defendant's license for a period of five days.

Accordingly, it is, on this 3rd day of February, 1950,

ORDERED that Wine Wholesale License WW-2, issued by the Director of the Division of Alcoholic Beverage Control to Bisceglia Bros. Wines Corporation, for premises 47-46 - 30th Street, Long Island City, New York, be and the same is hereby suspended for five days, commencing at 7:00 a.m. February 13, 1950, and terminating at 7:00 a.m. February 18, 1950.

ERWIN B. HOCK  
Director.

11. STATE LICENSES - NEW APPLICATION FILED.

Feuer Transportation Inc.  
152 Downing St.  
Yonkers, New York.

Application for Transportation License filed February 6, 1950.

*Erwin B. Hock*

Director.