

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 1037

NOVEMBER 18, 1954.

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

BULLETIN 1037

NOVEMBER 18, 1954.

1. APPELLATE DECISIONS - SCHERZER ET AL. v. ATLANTIC HIGHLANDS AND ATLANTIC HIGHLANDS YACHT CLUB.

PAUL SCHERZER, CHARLES DATO,)
WARREN SELLERS, LAWRENCE BORGES,)
ANDREW RICHARD,)

Appellants,)

-vs -)

BOROUGH COUNCIL OF THE BOROUGH)
OF ATLANTIC HIGHLANDS, and ATLANTIC)
HIGHLANDS YACHT CLUB,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Maurice A. Cohen, Esq., Attorney for Appellants.
Roberts, Pillsbury & Carton, Esqs., by John M. Pillsbury, Esq.,
Attorneys for Respondents.

BY THE DIRECTOR:

This is an appeal from the action of respondent Borough Council whereby it issued a club license for the 1953-54 licensing year to respondent Atlantic Highlands Yacht Club.

Appellants, who are licensees or employees of licensees in the Borough of Atlantic Highlands, allege that the issuance of the license was erroneous for reasons which may be summarized as follows:

- (a) appellants did not have an opportunity to oppose the issuance of the license;
- (b) appellants were not afforded an opportunity to present evidence to the Director in connection with his waiver of compliance with Rules 3 and 4, of State Regulations No. 7;
- (c) the issuance of the license was arbitrary, capricious, illegal and contrary to the provisions of the Alcoholic Beverage Law, the Rules and Regulations of the Division of Alcoholic Beverage Control and ordinances and resolutions of the Borough.

The evidence herein discloses that in March 1942 the Borough Council of the Borough of Atlantic Highlands created a Commission known as "The Harbor Commission of Atlantic Highlands, N. J.", consisting of seven persons appointed by the governing body, at least two of whom must be members of the governing body. The Commission was granted broad powers to take any action deemed advisable or necessary for the maintenance, operation and use of the harbor, water front, beach land and all properties, structures, piers, bulkheads, breakwaters and jetties located upon lands owned or leased by the Borough. In the latter part of 1952 the Commission caused to be erected at a cost of nearly \$40,000.00 a two-story building located on Simon Lake Drive, Atlantic Highlands. The Commission leased part of this building to Michael Stellas as a luncheonette. Between June 1953 and April 13, 1954, the Commission permitted the Atlantic Highlands Yacht Club to occupy another portion of the building without any definite agreement as to the amount of rent to be paid. On April 13, 1954, the Commission leased to the Yacht Club for a term of one year the grill room or barroom on the first floor, stairway leading to second floor and the second floor of said building. The portion of the building set forth in the lease constitutes the licensed premises.

As to reason (a): Respondent Atlantic Highlands Yacht Club was incorporated on June 4, 1953. It filed its application for the license in question on June 11, 1953, and duly advertised its notice of intention on June 12, 1953, and June 19, 1953. An ordinance amending a prior ordinance and providing for the issuance of one club license in the Borough had been passed on final reading by the Borough Council on June 9, 1953, and was duly advertised on June 12, 1953. An ordinance further amending said prior ordinance and fixing the fee for a club license at \$150.00 per annum was passed on final reading by the Borough Council on July 28, 1953, and duly advertised on July 31, 1953. No written objections to the issuance of the license or to the adoption of the amending ordinances were filed at any time with the Borough Clerk. No action was taken upon the pending application filed by the Yacht Club until after the Borough Council obtained from the then Director a letter, dated December 28, 1953, wherein he waived the requirements of Rules 3 and 4 of State Regulations No. 7, so far as they concerned the pending application. At its next meeting, held on January 1, 1954, at 11:45 a.m., the Borough Council unanimously granted the pending application. Appellants herein, having failed to file any written objections, are in no position to complain that they had no opportunity to oppose the issuance of the license by the Borough Council. In any event, they have been afforded full opportunity to present their evidence at the hearing of this appeal. Cf. Marsteller v. Somers Point et al., Bulletin 244, Item 7.

As to reason (b): There is no provision in State Regulations No. 7 requiring the Director to afford objectors an opportunity to be heard upon an application for a waiver of the provisions of Rules 3 and 4 of State Regulations No. 7. Appellants did not request an opportunity to be heard before the waiver was issued. I would hesitate in any case to set aside the action of my predecessor in granting a waiver, and there appears to be no sound reason for taking such action in this case. An examination of the evidence herein indicates that the organization now incorporated under the name of "Atlantic Highlands Yacht Club" may be said to have been in existence since 1947.

As to reason (c): Respondent Yacht Club appears to be fully qualified to hold a club license. It has a large number of members who dock their boats in the Atlantic Highlands harbor. The nearest licensed premises are more than one thousand feet from the premises in question. While two members of the Borough Council are members of the Harbor Commission, the provisions of R. S. 33:1-20 do not apply to this case because no member of the Borough Council is a member of the Yacht Club. Re Farias, Bulletin 426, Item 9. Appellants have failed to show that the issuance of the license was arbitrary or capricious or contrary to the provisions of the Alcoholic Beverage Law, the Rules and Regulations of this Division or the ordinances and resolutions of the Borough.

For the reasons aforesaid, the action of respondent Borough Council will be affirmed.

Accordingly, it is, on this 28th day of October, 1954,

ORDERED that the action of respondent Borough Council of the Borough of Atlantic Highlands be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - PARKERSON v. HOPEWELL TOWNSHIP AND KAY.

RUSSELL E. PARKERSON,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF HOPEWELL, and)

HAZEL M. KAY, trading as)
GREEN TAVERN,)

Respondents.)

Frank Thompson, Jr., Esq., Attorney for Appellant.
Ruhlman & Ruhlman, Esqs., by Cassel R. Ruhlman, Esq., Attorneys
for Respondent Township Committee.
Sidney Simandl, Esq., Attorney for Respondent-licensee.

BY THE DIRECTOR:

This is an appeal from respondent-Committee's action on June 3, 1954, whereby it granted respondent-licensee's application for place-to-place transfer of her plenary retail consumption license from Pennington-Washington Crossing Road to 2572 Pennington Road.

A hearing on the application for transfer was held by respondent Township Committee on May 27, 1954, at which appellant and several other residents testified in opposition to the proposed transfer and a petition was filed containing the names of nineteen residents of the neighborhood who also objected to the transfer. The reasons stated by the objectors were substantially the same as those contained in the petition of appeal, as hereinafter set forth. A petition containing approximately one hundred seventy-five signatures was also presented urging that the transfer be granted because, in the opinion of the signers, it would be for the best interests of the Township in general, the residents thereof and the welfare of all concerned.

In his notice of appeal appellant alleges that the action of respondent Township Committee was erroneous for the following reasons: (1) it will result in a violation of the local zoning ordinance; (2) there is no public necessity or convenience to be served by the transfer; (3) the transfer will result in the increase or creation of a traffic hazard; (4) it will result in an undue concentration of licenses in the area since a plenary retail consumption license and a plenary retail distribution license are presently located near the proposed new location on Pennington Circle.

Respondents deny that the action of respondent-Committee was erroneous.

This appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15.

The following facts were established, substantially without contradiction. The proposed new premises are located on a traffic circle considerably more than a mile from the previous location of the licensed premises. There is a large space for off-street parking. The area immediately adjacent to the traffic circle is in a "business" zone established by the local zoning ordinance. One plenary retail consumption license and one plenary retail distribution license are presently located on the same traffic circle. A residence "A" zone immediately adjoins said business zone particularly to the north and east of the traffic circle. Article X, Section 2a, of the zoning ordinance permits in business districts the use of buildings and premises for retail or wholesale stores or business except (inter alia) "restaurants, any part of which is located within one hundred-fifty (150) feet of a residential district." From the evidence it would appear that respondent-licensee's property and building at the new location are within one hundred fifty

At the hearing herein appellant and several other residents of the nearby residential "A" zone appeared and testified in opposition to the transfer. Their testimony may be summarized as follows: They object to the noise emanating from the licensed premises and the parking lot adjacent thereto; these noises are most objectionable late at night; their properties would depreciate in value; the automobiles of the licensee's patrons would create a traffic hazard at the traffic circle, and the service of food (which was evidenced by a road sign and which had commenced on a small scale but was expected to be increased) would constitute the licensed premises a "restaurant", thus violating the zoning ordinance. They further testified that the existing plenary retail consumption premises and the existing plenary retail distribution premises, both of which are located on the traffic circle, are adequate to serve the needs of the public.

A real estate man and a traffic consultant also testified on behalf of appellant. The former testified that the transfer would seriously affect the residential quality of the area which he described as "high class" and that property values would depreciate considerably. The traffic consultant testified that the location of the licensed premises on the traffic circle would increase the traffic hazard but admitted that the location of any retail or wholesale store at the same premises would also increase the traffic hazard.

On behalf of respondents, the Chief of Police, the Township Clerk, Mayor Reikosky, Township Committeeman Holcombe, two of respondent-licensee's sons and the owner of the property appeared and testified.

The Chief of Police testified that there were no disturbances or traffic problems at the new premises after the transfer was granted; that the premises were quiet, orderly and clean, and that no noise from the licensed premises was audible more than fifty feet away. On cross-examination he admitted that there was "quite a bit of traffic" on the Circle but expressed it as his opinion that there was less of a traffic hazard at the new premises than there was at the former location.

The Clerk produced the official records, including letters for and against the transfer, and testified that the transfer had been granted by a vote of two-to-one, Mayor Reikosky and Committeeman Holcombe voting in favor of the transfer and Committeeman Woodward voting against it.

Mayor Reikosky testified that he is very familiar with the new location; that the traffic hazard is "at a minimum;" that "there is no noise to amount to anything;" that they have had no complaints against the licensee; there is a "combination bar and restaurant" on the other side of the Circle; that there is a need for a tavern where one can "secure refreshments without feeling obligated to buy something to eat;" that the nearest such premises is four or five miles away, and that the nearby residents were glad to have such a tavern nearby. He further testified that he has visited the licensed premises; that there was no noise and that the premises were well conducted. On cross-examination he testified that, on the two occasions when he had been in the licensed premises, he had not seen food being served. He admitted that some of the persons who had stated that they were in favor of the proposed transfer were from other surrounding municipalities but that the objectors live in Hopewell.

Committeeman Holcombe testified that he concurred in the views expressed by Mayor Reikosky, and added that he differentiates between a licensed premises which serves only sandwiches and a "restaurant." He testified that he had not seen food served at the new location and that he would not call it a "restaurant."

Respondent-licensee's sons, who are employed upon the licensed premises, testified that minute steaks and hamburgers had been served at the new premises as an "accommodation" and "not for profit making;" that, at the hearing below, it had been indicated that the kitchen might be enlarged but that they would not sell "hot platters" if there was a feeling that they shouldn't serve them. According to their testimony, the service of food had been discontinued shortly before the hearing on this appeal upon advice of counsel. In addition to oral argument before the Director, memoranda were submitted by counsel for appellant and counsel for respondent-licensee. In his memorandum counsel for appellant contends that the licensed premises constitute a "restaurant" within the meaning of the zoning ordinance and that, because said ordinance prohibits restaurants within one hundred fifty feet of a residential district, the transfer is in contravention of the ordinance and the spirit thereof. He further contended that there was no public necessity and convenience for the transfer since there are a number of other licensed premises in the municipality and a plenary retail consumption license and a plenary retail distribution license near the new premises on the traffic circle.

The burden of establishing that the respondent Township Committee's action is erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15.

With respect to appellant's contention that respondent-licensee's premises constitute a "restaurant" and that, consequently, the transfer would be a violation of the zoning laws, an examination of the ordinance fails to reveal a definition of the word "restaurant." Thus we must look elsewhere. The word is defined in the Alcoholic Beverage Law (R. S. 33:1-1(t)) as "An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted." This definition has been interpreted and applied in a number of cases, the most recent of which is Green Acres Restaurant & Bar, Inc. v. Lodi, Bulletin 1030, Item 4. See also Asbury Park Licensed Beverage Association v. Asbury Park, Bulletin 628, Item 3; Asbury Park Licensed Beverage Association v. Asbury Park, Bulletin 644, Item 9; Padalino v. Clifton, Bulletin 977, Item 1. In each of those cases it was held that, to constitute a "restaurant", the premises must regularly and principally be used for the purpose of providing meals to the public in the absence of any other business, except such as is incidental to such establishment. Clearly, respondent-licensee's premises do not meet this definition. However, counsel urges that this definition does not apply in the instant case and cites authorities from other jurisdictions and from dictionary definitions. It is unnecessary here to review all of these authorities and definitions. Suffice it to say that appellant's principal contention appears to be that a restaurant is a place where food or refreshments are either eaten, drunk or absorbed for nourishment, and that the word "restaurant" as used in the zoning ordinance should be construed and interpreted in keeping with the reason and spirit of the ordinance.

Since the word "restaurant", the construction of which is here questioned, is found in a municipal ordinance, it becomes important to ascertain whether or not it has been construed or interpreted by that municipality. From a careful review of the testimony of the two members of the local governing body who voted to grant the transfer in this case it seems clear that, in their opinion, the premises of respondent-licensee were not a "restaurant" within the meaning of the local zoning ordinance. I am unable to find that this construction of the ordinance is erroneous. On the contrary, I find that

appellant has failed to sustain the burden of establishing that the premises in question constitute a "restaurant" within the meaning of the zoning ordinance.

With respect to the contention that the transfer will result in the increase or creation of a traffic hazard and that no public necessity or convenience will be served by the transfer and that such transfer will result in an undue concentration of licenses in the area, it must be remembered that the question of whether or not a license should be permitted in a particular area or at a particular location is a matter within the sound discretion of the local issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Redfield v. Long Branch, Bulletin 1027, Item 1; Baker et al. v. Newark et al., Bulletin 1018, Item 1. I find that appellant has failed to sustain the burden of establishing that the action of respondent Township Committee was erroneous and should be reversed.

Accordingly, it is, on this 3rd day of November, 1954,

ORDERED that the action of the Township Committee be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR LICENSE - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - FAILURE TO FILE NOTICE OF CHANGES IN FACTS IN VIOLATION OF R. S. 33:1-34 - UNLAWFUL SITUATION CORRECTED - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against)

EVA'S TAVERN, INC.)
104 Magazine Street)
Newark 5, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-620 for the 1953-54 and 1954-55 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

-----)
Morris Goldsmith, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against defendant:

"1. In your application dated September 30, 1953 filed with the Municipal Board of Alcoholic Beverage Control of Newark, upon which you obtained your current plenary retail consumption license, you, after listing your stockholders in answer to Question 22 as Alfredo Serra (8 shares or 80%), Eva Serra (1 share or 10%) and Antonio DeOliverira (1 share or 10%), falsely stated 'No' in answer to Question 23, which asks: 'Has any... individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact Manuel da Silva Castro (not mentioned in the application as a stockholder or as beneficially interested in any of your stock) had such interest in that he and Alfredo Serra were the real and beneficial owners of all of your stock; said false statement being in violation of R. S. 33:1-25.

"2. From on or about October 13, 1953 until the present time, you knowingly aided and abetted Manuel da Silva Castro to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R. S. 33:1-52.

"3. In your aforesaid application you falsely stated 'No' in answer to Question 32, which asks: 'Does any individual, partnership, corporation or association hold any chattel mortgage or conditional bill of sale on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license herein applied for?', whereas in truth and fact the National Newark & Essex Banking Company held a conditional bill of sale for refrigeration equipment to be used in connection with the licensed business; said false statement being in violation of R. S. 33:1-25.

"4. You failed to file with the Municipal Board of Alcoholic Beverage Control of Newark, within 10 days after the occurrence thereof, written notice of change in facts set forth in answer to Question 32 of your aforesaid application, such change being that on or about October 13, 1953 you gave a chattel mortgage on your tavern furniture, fixtures and equipment to Antonio DeOliverira; your failure to file such notice being in violation of R. S. 33:1-34."

Defendant has pleaded not guilty to charges 1 and 2 and non vult to charges 3 and 4.

The evidence in the instant case discloses that Alfredo P. Serra and Manuel da Silva Castro (hereinafter referred to as Manuel Castro) furnished the money used for the purchase of the liquor license in question and for the business to be conducted thereunder. Manuel Castro was a native of Portugal, unnaturalized at the time, and therefore precluded under the Alcoholic Beverage Law from holding more than 10% interest in a corporate license. It appears from the evidence adduced herein that Manuel Castro advanced the larger part of the purchase price when the license was transferred to defendant. Upon the advice of an attorney (not the attorney appearing for the defendant in this case) Manuel Castro obtained permission of Antonio DeOliverira, a qualified person, to use his name as the holder of stock in the defendant corporation.

During an investigation by an ABC agent in the matter Alfredo P. Serra and Antonio DeOliverira made written statements embodying the facts aforementioned. The testimony of Alfredo P. Serra and Manuel Castro corroborated in substance the information contained in the aforementioned statements previously obtained by the ABC agent.

It is apparent from the evidence that Manuel Castro and Alfredo P. Serra are the real and beneficial owners of the capital stock of defendant. The fact that Alfredo P. Serra and Manuel Castro relied on the advice of an attorney is unfortunate. The late Commissioner Burnett stated in Re Lipman, Bulletin 324, Item 1, that:

"Advice of counsel' is no excuse for violating the liquor regulations. Licensees who rely upon such advice take the risk of its being inaccurate. The regulations are designed to eliminate undesired conditions at which they are aimed. From the viewpoint of the public interest, it matters little whether a licensee, in violating one of those regulations, acted upon the advice of his attorney."

I find defendant guilty of charges 1 and 2.

Defendant has pleaded non vult to charges 3 and 4

Although defendant-licensee has no prior adjudicated record, Alfredo (Alfred P.) Serra, its president, had his license suspended, effective March 6, 1944, for the balance of its term as a result of his plea of non vult to charges alleging: (a) falsification of his license application by concealing the fact that he had a partner in the license and the business conducted thereunder; (b) he purchased alcoholic beverages from an unauthorized source; (c) he stored alcoholic beverages off his licensed premises and (d) he was convicted of a crime involving moral turpitude. Inasmuch as over ten years have elapsed since the aforesaid violation, I shall not consider said record in fixing the within suspension.

The unlawful situation has apparently been corrected. Manuel Castro has become a naturalized citizen of this country. Seventy per cent of the stock of defendant corporation has been transferred to him.

I shall suspend defendant's license for a period of forty-five days on charges 1, 2 and 4 (Re Kuchar, Bulletin 952, Item 4) and five days on charge 3 (Re Vitale, Bulletin 971, Item 3), making a total suspension of fifty days.

Accordingly, it is, on this 27th day of October, 1954,

ORDERED that Primary Retail Consumption License C-620, issued for the 1954-55 licensing period by the Municipal Board of Alcoholic Beverages Control of the City of Newark to Eva's Tavern, Inc., for premises 104 Magazine Street, Newark, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m. November 1, 1954, and terminating at 2:00 a.m. December 21, 1954.

WILLIAM HOWE DAVIS
Director.

- 4. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAX PAID ALCOHOLIC BEVERAGES IN VIOLATION OF LAW AND REGULATIONS - APPLICATION FOR RETURN OF ALCOHOLIC BEVERAGES AND MOTOR VEHICLE BY OWNER FORMERLY CONVICTED OF LIQUOR LAW VIOLATION DENIED ON FAILURE TO ESTABLISH ALCOHOLIC BEVERAGES INTENDED FOR LEGITIMATE PURPOSES - APPLICATION OF LIENOR DENIED FOR LACK OF EVIDENCE THAT IT CHECKED WITH LIQUOR LAW ENFORCEMENT AUTHORITIES WHETHER THE PURCHASER HAD SUCH RECORD.

In the Matter of the Seizure on)
May 8, 1954 of 180 pint bottles and)
24-4/5 quart bottles of whiskey and a)
Pontiac sedan on the northbound lane)
of the New Jersey Turnpike, at 35 Mile)
Post, in the Township of Mount Laurel,)
County of Burlington and State of New)
Jersey.)

Case No. 8604

ON HEARING
CONCLUSIONS AND ORDER

Wesley Richardson, Pro Se.
General Motors Acceptance Corporation, by Harold Finger, Credit Supervisor.
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 1, Revised Statutes of New Jersey, to determine whether 180 pint bottles and 24 four-fifths quart bottles of whiskey, and a Pontiac sedan, described in a schedule attached hereto, seized on May 8, 1954 on the northbound lane of the New Jersey Turnpike, at 35 Mile Post, in Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

The motor vehicle was seized at about 7:30 p.m. on May 8, 1954 on the Turnpike by a New Jersey State Trooper during a routine patrol of traffic when he discovered the whiskey in the car. The motor vehicle was being driven by Wesley Richardson, with New Jersey license plates issued to Richardson at an address in Englewood, N. J.

Although the whiskey appeared to be tax paid, Richardson did not have in his possession any license, or permit authorizing such transportation in this state, nor any waybill or other invoice for the whiskey. The Division of Alcoholic Beverage Control was notified and the whiskey and motor vehicle were turned over to its agents.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Wesley Richardson appeared and sought return of the motor vehicle and whiskey, and General Motors Acceptance Corporation entered an appearance and sought recognition of its alleged lien claim on the motor vehicle.

If the alcoholic beverages were intended for personal consumption, they exceed the quantity that may be transported for that purpose in a vehicle not licensed in this state to transport alcoholic beverages. If such alcoholic beverages were intended for lawful sale, they must be transported pursuant to a license or permit, irrespective of quantity. R. S. 33:1-2. Hence the alcoholic beverages were transported in violation of the law governing transportation of alcoholic beverages in this state.

If Wesley Richardson can establish to my satisfaction that the source and destination of the alcoholic beverages is legitimate, it is within my discretion to relieve him of forfeiture. R.S. 33:1-66(e)

Richardson testified that he is a member of a number of social clubs located in New York which give parties or dinners, at which functions whiskey is available without cost other than an overall charge for the affair; that the proceeds and whatever alcoholic beverages are not consumed are divided among the members.

Richardson states that he has been the owner of a dry cleaning establishment located on Lenox Avenue, New York City, since 1952; that he and his wife have a residence with his mother-in-law on West 112th Street, New York, and also have a residence with his mother in Englewood, N. J.

Richardson says that he purchased the alcoholic beverages in Washington, D. C. for the "club", with about \$500.00 given to him by a member of the "club". The various discrepancies, inconsistencies, and obviously implausible statements in Richardson's testimony as to the specific arrangements to purchase the alcoholic beverages for "club members", demonstrate that this is a mere pretense on his part. In any event, the alcoholic beverages, by his own admission, were not for his personal use, and hence cannot be imported into New York. See Seizure Case No. 8234, Bulletin 979, Item 2.

The alcoholic beverages must therefore be forfeited because they were transported in the state in violation of our statutes and regulations. R. S. 33:1-2, State Regulations No. 18, Rule 2, and Seizure Case No. 8234, supra.

To recover his car, Richardson must establish that he acted in good faith, was engaged in a legitimate enterprise, and unknowingly violated the law. R. S. 33:1-66(e). On this score it is to be noted at the outset that his claim that the alcoholic beverages were intended for club members has been rejected. Indeed, his account of what transpired told at the time he was apprehended is entirely different from that given by him at the hearing. An ABC agent testified that at that time Richardson told him that on May 8th he loaned his car to a fellow named "Johnny" to go to Washington; that "Johnny" came back

to New York and told him the car was broken down on Route 13, Wilmington, Delaware; that Richardson had someone drive him there, repaired the car, and was on his way back to New York with the car without any knowledge whatsoever that the alcoholic beverages were in the car. Richardson testified that he did not remember making any such statement to the agent.

In addition, Richardson acknowledged that he was charged with violating various liquor laws in 1930 and 1932 in New York, and in 1945 was convicted in a Federal Court for operating or possessing still in New York.

While the evidence presented does not conclusively establish Richardson's purpose in purchasing the alcoholic beverages, it is fair inference, from the contradictory stories, that they were not intended for legitimate purposes. Richardson has not made a full, frank, and honest disclosure of the facts, and hence he has not acted in good faith. His request for return of the Pontiac sedan is denied.

General Motors Acceptance Corporation financed Richardson's purchase of the Pontiac sedan on June 27, 1952. Since Richardson has a criminal record for violating various liquor laws, it is incumbent upon the finance company to establish that it made an adequate investigation of his character and background and failed to discover such record. Seizure Case Nos. 7012 and 7015, Bulletin 743, Item It is to be noted that the finance company's representative testified that if it had acquired knowledge of such record, it would not have extended credit to Richardson.

Such representative testified that while they engaged the services of an independent agency to check the information supplied to it by Richardson covering his employment, residence, and references, it was customary for the finance company itself to check with the Narcotics Bureau, and the Federal authorities concerned with liquor law enforcement, and used form letters for that purpose. In the instant case there has been no evidence presented that any inquiry was made of such Federal authorities, and no satisfactory explanation is advanced to account therefor. Since Richardson was arrested in New York, on the 1945 occasion by the Federal authorities in that state, seemingly mere inquiry would have revealed such record. Consequently, I am compelled to deny recognition of the claim by General Motors Acceptance Corporation.

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

WILLIAM HOWE DAVIS
Director.

Dated: September 16, 1954.

SCHEDULE "A"

- 180 - pint bottles of whiskey
- 24 - 4/5 quart bottles of whiskey
- 1 - Pontiac sedan, Serial and Engine No. L8WH137
1954 N. J. Registration BD S 77

5. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS ON FARM - RETURN OF HOUSEHOLD EFFECTS TO SUB-TENANT DENIED BECAUSE HE FAILED TO ESTABLISH GOOD FAITH AND INNOCENCE - STILL PARTS AND OTHER PERSONAL PROPERTY SEIZED THEREWITH ORDERED FORFEITED - PADLOCKING WAIVED FOR ORIGINAL INNOCENT TENANT.

In the Matter of the Seizure on) Case No. 8518
 February 2, 1954 of various still)
 parts and other personal property)
 on the "Crescent Farm" located on) ON HEARING
 Change Bridge Road, in the Township) CONCLUSIONS AND ORDER
 of Montville, County of Morris and)
 State of New Jersey.)

 Charles A. Stanziale, Esq., Attorney for Max Pedagog.
 William J. O'Hara, Esq. and Francis Fahy, Esq., Attorneys for
 Norda Essential Oil and Chemical Company.
 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 various articles alleged to be parts of a still, and other personal property seized therewith, described in a schedule attached hereto, seized on February 2, 1954 on the "Crescent Farm" located on Change Bridge Road, Montville, New Jersey constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

When the matter came on for hearing, pursuant to R. S. 33:2-4, an appearance was entered for Max Pedagog, then the lessee of the premises, who sought return of various household furniture and furnishings, and an appearance was entered on behalf of Norda Essential Oil and Chemical Company, hereinafter referred to as Norda, which sought to avoid padlocking of the premises and also sought return of some of the articles seized.

There are two buildings on the premises available as living quarters, one with an "office" on the first floor, and a number of other buildings referred to as "chicken houses", all located within an area of a few hundred feet. ABC agents visited the premises on February 2, 1954 on information that there was an illicit still on the farm. They detected what is described as an odor of alcoholic mash to the rear of one of the "chicken houses" emanating from a pit or excavation in the ground covered with plywood and burlap. This pit appeared to be dug recently with a bulldozer, the tracks of which were still visible. The first floor windows of a three-story structure opposite the aforementioned building were covered with tar paper. The agents entered the three-story structure and found there a large mixing vat about 10 feet in diameter, a large steam boiler, two empty sugar bags and a small quantity of urea. Urea is frequently used by illicit still operators in the fermentation process of mash. From this building the agents entered the opposite building above mentioned and there found five wooden vats about 11 feet in diameter, characterized as distilling vats. At the other end of this building the agents found a pump and some other equipment. This was evidently the source of water supply. There was some rubber hose extending from this building to the three-story building where the mixing vat was found. In the "office" which is located near the entrance to the farm there was an electric connection to a bell in the room where the mixing vat was located.

The ABC agents concluded from what was visible and from their experience in such matters, that it was a typical illicit alcohol still installation; that the vats were used in the process of manufacturing alcoholic beverages; and that the only missing parts to complete the still were a copper column and cooker.

The ABC agents seized the vats, boiler, urea and pump as well as an electric motor, television set, radio and heater and some bedding all of which were in the office building, and household articles which were in the other residence.

Both Max Pedagog and Norda disavowed any responsibility for the presence of the vats, the boiler or the sugar bags and urea. They claimed that they did not have any knowledge thereof and professedly could not account for the presence there of such items. Norda claims that such articles were not there when it surrendered possession of the premises to Pedagog early in December 1953 and Pedagog states that he does not know who placed the articles there. Under these circumstances, and in the absence of any evidence that such vats and steam boiler were there for any legitimate purpose, I find that such articles were parts of a still. Such still or still parts were not registered with the Director of the Division of Alcoholic Beverage Control as was required by R. S. 33:2-1. Hence, these articles and all personal property seized on the premises constitute unlawful property and are subject to forfeiture R. S. 33:2-2, R.S. 33:2-5.

Norda was a tenant of the premises and sub-leased them to Pedagog. Pedagog has since surrendered his lease and Norda has resumed its tenancy of the premises. Pedagog seeks the return of household furniture and furnishings allegedly purchased and placed by him in the "office" and other residence. Such request is addressed to my discretionary authority. He must overcome the normal presumption that whatever articles were on the premises during his occupancy thereof were there with his knowledge or consent. He must establish further that he occupied the premises for legitimate and lawful purposes.

Pedagog gives the following account of his background and activities at the farm:

In October 1953 he operated a gasoline service station and repair business in East Hanover, New Jersey. Previous thereto he had been in the used car business. He resided in a three-room apartment in East Hanover and also had a room at a Newark address. He derived a comfortable income from his business in which he had a capital investment of \$3,500.00. During the course of years he has owned three different farms. The last farm he owned was in 1939.

He says that in October 1953 he conceived the idea of fattening poultry and cattle for the market to earn an easier dollar. He estimated that it would require an investment of \$10,000.00. He did not have that much money of his own and no firm promise of obtaining the money from others. Nevertheless, on October 30, 1953 he communicated with the representative of Norda indicating that he desired to rent the farm for \$375.00 a month, on condition that any person on the farm would be required to vacate immediately. Thereafter Norda and Pedagog executed a lease for the premises dated November 30, 1953, for the period of one year, commencing December 15, 1953, at the monthly rental of \$375.00, with security of \$375.00, although such item does not appear in the written lease. Pedagog took possession of the property about December 1, 1953 and was instrumental in having Norda's caretaker and another tenant vacate the premises by December 15. When Pedagog paid his rent in January 1954, his total outlay for rent and deposit was over \$1,000.00.

Pedagog intended to commence his business in March or April 1954, at which time he proposed to clean and repair two buildings and repair the water supply and purchase livestock. In the interval between December 1, 1953 and the date of the seizure Pedagog made no effort to make any such repairs and did not purchase any livestock.

He says that weather conditions prevented him from doing so. In the meantime he purchased and placed about \$1,000.00 of household furnishings in the residence, of which he had no immediate need since he claims that he only visited the farm three or four times in the period December 1, 1953 to January 29, 1954, remaining there for only a few hours at a time. In addition Pedagog hired a caretaker, at \$20.00 a week and board, to act as watchman at the premises. Pedagog has not made any repairs or purchased any livestock since the seizure nor has any other capital investment directly affecting this proposed venture. Indeed, according to ABC agents, Pedagog told them that the money expended by him (for rent, furniture and wages) represented his entire capital. On the other hand Pedagog claims that he told the agents that he expected that he would have to sink all his money in the venture. In determining which version is correct it is to be noted that Pedagog testified that he did not have the money to pay the February rent for the premises.

Pedagog offers the explanation that he wanted immediate complete possession of the farm to house farm laborers so that they would not wander off the farm. (Since he did not expect to begin operations until March or April 1954, seemingly he did not need such accommodations in December 1953.) Pedagog claimed that he needed the watchman on the vacant farm to protect it from vandalism.

While Pedagog claims that prior thereto he only made three or four casual visits to the farm to pay his watchman and pick up mail at a nearby post office, he admitted that he was at the farm from January 29 to February 2, the date of the seizure. During that period he did not see the alarm bell connection in the office, the tar paper on the windows of the three-story building, the mash pit, the large steam boiler, the rubber hose or the vats.

The various improbabilities and illogical conduct inherent in Pedagog's description of his activities raise many serious doubts that Pedagog actually rented the farm for the purpose he states. His conduct does not accord in many respects with what a reasonable person would do in establishing such a business. Pedagog's activities might well be those to be expected of a person operating an illicit still on a farm.

In determining Pedagog's veracity, his prior criminal record should be considered. His fingerprint record discloses conviction in 1930, 1932, 1942, 1945, 1947 and 1949 for various crimes and for which he served various prison sentences. He was pardoned for his last conviction in 1951.

Although I am of the opinion that Pedagog was personally responsible for the illicit still parts on the farm, I do not find it necessary to make a definitive conclusion on that score for the reason that, when he was on the farm from January 29 to February 2, he discovered, or should have discovered, at the least, that such still parts were there. Accordingly, none of the seized property will be returned to Max Pedagog.

Norda was the owner of the farm until 1947. It used the farm to raise chickens and hogs for experimental purposes, warehousing of raw material and dumping of waste material. After 1947 it continued to use the farm for such purposes under a lease with the new owners at the rental of \$600.00 a year and the payment of taxes, insurance and other charges. Its current lease expires December 31, 1954. It sub-leased the farm to Pedagog because Norda had abandoned raising livestock some time previous and due to a scarcity in the spice market it had little, if any, waste to dump. It did not attempt to terminate its lease because it anticipated that the scarcity in the spice market was only temporary and that an improvement in the market would again render the farm useful in its business. Since the seizure Pedagog surrendered its lease to Norda, which has present need of the premises for dumping and warehouse purposes.

Prior to entering into its lease to Pedagog, Norda's representatives made a careful inquiry into Pedagog's qualifications to operate a cattle and chicken farm, checked with the bank he gave as reference, and came to the conclusion therefrom that he was a desirable tenant. I am satisfied that Norda acted with reasonable prudence by accepting Pedagog as its tenant.

In the period between December 1, 1953, when Pedagog took possession, and February 2, 1954, the date of the seizure, Norda's employees may have dumped one or two loads of waste material on the farm. Otherwise none of Norda's personnel were at the farm and seemingly had no occasion to go there and it is asserted that none of Norda's personnel knew of the presence of the illicit still parts there. I am satisfied that Norda acted in good faith and has the present right of possession and need for the farm. Padlocking will therefore be waived.

There has been no definitive proof presented that any specific article seized is Norda's property. Hence, in the exercise of my discretionary authority, I shall not direct the return of any of the seized property to such concern.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, 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.

WILLIAM HOWE DAVIS
Director.

Dated: September 30, 1954.

SCHEDULE "A"

- 5 - large wooden vats, 6' high by 11' 8" wide
 - 1 - high pressure boiler
 - 1 - mixing vat, 3' high by 9' 6" in diameter
 - 1 - oil burner
 - 1 - Sump water pump
 - 1 - 100-gallon, galvanized tank
 - 1 - Meyers pump
 - 2 - electric motors
 - 1 - Motorola television set
 - 1 - RCA radio
 - 1 - Titan heater
- Household furniture and equipment as listed in the inventory in the case.

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on May 8, 1954 of a two-quart "Mason" jar of alcohol and a Buick sedan on the highway designated as Route No. 1, in North Brunswick Township, County of Middlesex and State of New Jersey.)	Case No. 8603
)	ON HEARING
)	CONCLUSIONS AND ORDER

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Lisbon Sosebee, by Guy Willie Powell.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a two-quart jar of alcohol and a Buick sedan, described in a schedule attached hereto, seized on May 8, 1954 on the highway designated as Route No. 1, North Brunswick, New Jersey constitute unlawful property and should be forfeited.

The motor vehicle was seized by New Jersey State Troopers during their routine patrol of traffic on the highway, when they discovered the jar of alcohol in the car. Thomas McMullan was the driver of the car, and George B. Grove and Nettie Moore were passengers therein. There was no label on the jar, nor any stamp indicating the payment of tax on alcoholic beverages.

McMullan gave the troopers a signed statement wherein it appears that while McMullan was en route from Anderson, S.C. to New York City he purchased the jar of alcohol at a gas station in the vicinity of Washington, D. C.

The Division of Alcoholic Beverage Control was notified and the motor vehicle and jar of alcohol were turned over to its agents. The contents of the jar were analyzed by the Division Chemist who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 47.50 per cent.

When the matter came on for hearing, pursuant to R. S. 33:1-66, no one appeared to oppose forfeiture of the alcohol or motor vehicle. Subsequently, Lisbon Sosebee, a used car dealer, requested and was granted a supplemental hearing to afford him an opportunity to present evidence of his alleged lien upon the motor vehicle.

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

Guy Willie Powell, Sosebee's assistant sales manager, appeared at such supplemental hearing. He presented a duplicate copy of a bill of sale dated February 27, 1954 evidencing the sale of the Buick sedan in question from Sosebee to Thomas McMullan, and a note and chattel mortgage from McMullan to Sosebee covering the Buick sedan, securing the unpaid balance of \$578.85. The present balance due is \$478.85.

While Powell did not participate personally in the sale of the car to McMullan, he testified that he and Sosebee knew McMullan quite well; that McMullan was employed by the municipality where he resided,

and also operated a luncheonette. McMullan does not appear to have a criminal record for violating any liquor laws.

I am satisfied that Lisbon Sosebee acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be transported in the motor vehicle. I shall therefore recognize his claim to the extent of \$478.85. R.S. 33:1-66(f).

The Director of the Division of Purchase and Property has advised that the State of New Jersey is not interested in retaining the Buick sedan for the use of any state agency upon payment of the lien claim. The retail value of such vehicle does not appear to exceed the amount of such lien and the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 26th day of October, 1954, Lisbon Sosebee pays the costs incurred in the seizure and storage of the Buick sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to Lisbon Sosebee; and it is further

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

WILLIAM HOWE DAVIS
Director.

Dated: October 18, 1954.

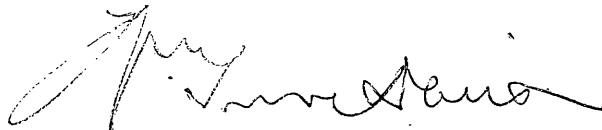
SCHEDULE "A"

- 1 - two-quart Mason jar of alcohol
- 1 - Buick sedan, 1954 South Carolina
Registration E-60-934.

7. STATE LICENSES - NEW APPLICATION FILED.

Highway Transportation Co., Inc.
429 & 415 Bellevue Avenue
Hammonton, N. J.

Application filed November 12, 1954 for Public Warehouse License.



WILLIAM HOWE DAVIS
Director.