

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

BULLETIN 1714

February 16, 1967

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

BULLETIN 1714

February 16, 1967

1. COURT DECISIONS - JEANNE'S ENTERPRISES, INC. v. DIVISION
OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-766-64

JEANNE'S ENTERPRISES, INC.,
t/a LE BISTRO,

Plaintiff Appellant,

vs.

93 N. J. Super 230

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL, and
JOSEPH P. LORDI, DIRECTOR OF THE
DIVISION OF ALCOHOLIC BEVERAGE
CONTROL,

Defendants-Respondents.

Argued January 25, 1966 -- Decided February 3, 1966

Before Judges Conford, Kilkenny and Leonard.

Mr. Morris Brown argued the cause for appellant
(Messrs. Wilentz, Goldman & Spitzer, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued
the cause for respondents (Mr. Arthur J. Sills, Attorney
General of New Jersey, attorney; Mr. Avrom J. Gold,
Deputy Attorney General, of counsel).

PER CURIAM

We affirm the order of the Director of the Division of
Alcoholic Beverage Control (Re Jeanne's Enterprises, Inc., Bulletin
1621, Item 1) in suspending plaintiff's plenary retail consumption
license for violation of the Division's Regulation 20, Rule 5,
which provides:

"No licensee shall allow, permit or
suffer in or upon the licensed premises any lewd-
ness, immoral activity, or foul, filthy or obscene
language or conduct ***."

The Factual findings are supported by substantial evidence. Hornauer
v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 504 (App.
Div. 1956).

The right of free speech protected by the First Amendment
and mirrored in the Fourteenth of our Federal Constitution is not
absolute at all times and under all circumstances. The conduct of
those who have been granted the special privilege of vending alcoholic

beverages at a designated location "may lawfully be tightly restricted to limit to the utmost the evils of the trade." McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App. Div. 1954). The Director's action herein was a reasonable exercise of the supervisory province entrusted to him by the Legislature. There is no sound basis for our interference therewith.

The Pearl Williams performance on the licensed premises constituted, in part, "lewd activity," and the principal subject matter of her monologue was "foul, filthy and obscene" within the broad construction of that phraseology justified in a liquor licensing context.

Affirmed.

Decision previously recorded as an unpublished opinion in Bulletin 1665, Item 1; recently approved for publication as announced in 90 N.J.L.J. 1, January 5, 1937.

Affirmed by the New Jersey Supreme Court December 21, 1966, id nom, 48 N.J. 359, for the reasons expressed in the judgment of the Appellate Division.

2. COURT DECISIONS - JEANNE'S ENTERPRISES, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPREME COURT OF NEW JERSEY
A-41 September Term 1966.

JEANNE'S ENTERPRISES, INC., t/a
LE BISTRO,

Plaintiff-Appellant,

vs.

48 N. J. 359

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY, etc.,
et al.,

Defendants-Respondents.

Argued December 19, 1966 - Decided December 21, 1966.

On appeal from Superior Court, Appellate Division.

Mr. Morris Brown Argued the cause for appellant (Messrs. Wilentz, Goldman & Spitzer, of counsel).

Mr. Alan B. Handler, First Assistant Attorney General, argued the cause for respondents (Mr. Arthur J. Sills, Attorney General, of counsel).

The opinion of the court was delivered

PER CURIAM.

The judgment of the Appellate Division of the Superior Court is affirmed for the reasons expressed in the Appellate Division opinion.

3. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION AFTER AFFIRMANCE ON APPEAL TO SUPREME COURT.

In the Matter of Disciplinary Proceedings against)

Jeanne's Enterprises, Inc. t/a Le Bistro 2201 Pacific Avenue Atlantic City, N. J.)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-150, issued by the Board of Commissioners of the City of Atlantic City)

Warren W. Wilentz, Esq., Attorney for Licensee. David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On May 10, 1965, I entered Conclusions and Order herein suspending the license for one hundred thirty days commencing May 17, 1965, for permitting indecent entertainment on the licensed premises. Re Jeanne's Enterprises, Inc., Bulletin 1621, Item 1.

Prior to the effectuation of the order of suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The Appellate Division affirmed my action on February 3, 1966. Jeanne's Enterprises, Inc. v. Division of Alcoholic Beverage Control, 93 N.J. Super. 230, recorded in Bulletin 1665, Item 1, reprinted in Bulletin 1714, Item 1.

On subsequent appeal to the New Jersey Supreme Court, the decision of the Appellate Division was affirmed on December 21, 1966. Id nom, 48 N.J. 359 reprinted in Bulletin 1714, Item 2.

Although mandate on affirmance has not yet been received, licensee has advised that no further appeal would be taken and has requested that the penalty be imposed as soon as possible. Hence, the suspension may now be reimposed.

Accordingly, it is, on this 11th day of January, 1967,

ORDERED that the one hundred thirty (130) day suspension of license heretofore imposed, and stayed during the pendency of proceedings on appeal, be reinstated against Plenary Retail Consumption License C-150, issued by the Board of Commissioners of the City of Atlantic City to Jeanne's Enterprises, Inc., t/a Le Bistro, for premises 2201 Pacific Avenue, Atlantic City, commencing at 7:00 a.m. Monday, January 16, 1967, and terminating at 7:00 a.m. Friday, May 26, 1967.

JOSEPH P. LORDI, DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN CLUB - APPLICATION OF CLAIMANT FOR RETURN OF DEPOSIT POSTED UNDER STIPULATION DENIED IN ABSENCE OF GOOD FAITH - DEPOSIT, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)
on April 17, 1966 of a quantity)
of alcoholic beverages, \$6.80)
in cash, various fixtures,)
furnishings and equipment in the)
club room of the Veterans of)
Foreign Wars, Post 2174, located)
at Cedar Avenue and Pine Street,)
in Deptford Township, County of)
Cloucester and State of New)
Jersey.)

On Hearing
CONCLUSIONS
AND
ORDER

Veterans of Foreign Wars, Post 2174, by Raymond J. Robinson,
past commander.

I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28, and further, pursuant to a stipulation dated May 26, 1966 signed by Raymond J. Robinson, then Post Commander of, and on behalf of Post 2174, Veterans of Foreign Wars, to determine whether a quantity of alcoholic beverages, fixtures, furnishings, equipment and \$6.80 in cash, more particularly set forth in an inventory attached thereto, made part hereof, and marked Schedule "A", seized on April 17, 1966 in the club room of the Veterans of Foreign Wars, Post 2174, located at Cedar Avenue and Pine Street, in Deptford Township, Gloucester County, New Jersey, constitutes unlawful property and should be forfeited; and further, to determine whether the sum of \$750.00, representing the retail value of the said fixtures, furnishings and equipment, exclusive of the alcoholic beverages and cash seized, paid under protest by Post 2174, Veterans of Foreign Wars, should be forfeited or returned to it.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, the Veterans of Foreign Wars, Post 2174, appearing pro se sought the return of the sum of \$750.00 deposited by it under the stipulation as aforesaid.

The file of this Division was admitted into evidence by stipulation of the said claimant and contained the affidavit of mailing, the affidavit of publication, notice of hearing, the Division chemist's report, copy of cash receipt, the original stipulation entered into by the claimant and this Division, the inventory, two "marked" one-dollar bills and the recording of same. There was also admitted into evidence a sample of the bottles of beer purchased by the agents as set forth in their reports.

Said file established the following facts: On Sunday, April 17, 1966 at 10:45 a.m. ABC Agent C, in possession of "marked" money, entered the premises in question through a rear open door. He observed Harry L. Rutter tending bar and three males were seated at the bar consuming alcoholic beverages. The agent purchased a bottle of Piels Beer, giving Rutter, in payment therefor, a one-dollar "marked" bill which Rutter deposited in the cash register and returned 85¢ in change to the said agent. The agent made several similar purchases thereafter.

At about 11:20 a.m., Agent J entered the premises and purchased a bottle of beer from Rutter, giving him a "marked" one-dollar bill, which was deposited by Rutter in the cash register, and received 85¢ in change. Shortly thereafter, ABC Agent G, in the company of local police officers, identified himself to Rutter and placed him under arrest on a charge of sale and possession with intent to sell alcoholic beverages without a license contrary to R.S. 33:1-2, and in violation of R.S. 33:1-50. Immediately upon his arrest, the agents seized the alcoholic beverages, the goods and chattels as aforementioned and the \$6.80 in cash from the cash register, which included the two one-dollar "marked" bills.

Before removal of the said seized property, Raymond J. Robinson, the Post Commander, appeared at the premises and posted a cash bond of \$750.00 in lieu of the removal of the various fixtures, furnishings and equipment, as defined in the stipulation.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Harry L. Rutter, Raymond J. Robinson, Veterans of Foreign Wars, Post 2174 or for the premises where the violations took place.

The report of a chemical analysis of a one six-ounce bottle seized herein containing three ounces of Piels Beer shows that it is an alcoholic beverage fit for beverage purposes with alcohol by volume of 4.35%.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages and the personal property and the cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2, R.S. 33:1-66. This applies similarly to the cash which was clearly commingled with the monies obtained from the ABC agents. Thus, all of the money, as well as the fixtures, furnishings and equipment is subject to forfeiture. Seizure Case No. 11,182, Bulletin 1568, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Herbert P. Darby, testifying on behalf of the claimant, stated that he was authorized to represent this claimant at this hearing, and seek the return of all or part of the money deposited with the Division under the stipulation entered into, as aforesaid.

He admitted that "The evidence is all there. We did what was said we did do." He added that the monies for the deposit were raised by members of the Post and partly from the Post treasury, and added that while "We can't deny the case, (A)ll we are doing is seeing if this could possibly be reduced, some of the money returned. It was practically all the money we had in the treasury. We realize we did wrong..." but explained that much of the money raised by this unlawful activity was spent on charitable causes.

Harry L. Rutter, also testifying in support of the claimant, corroborated the fact that the \$750.00 was raised by members and part of it "...came out of the treasury..."

The Director has the discretionary authority to return property subject to forfeiture to a claimant which has established to his satisfaction that it has acted in good faith and did not know, or have any reason to believe that the property would be used in unlawful liquor activity. In the absence of such showing, the Director is without authority to return the said property; nor does the Director, under the compulsion of the Statute and the applicable regulations, have the authority to return any part of the deposit under the stipulation herein where, as here suggested, the claimant has otherwise engaged in charitable or communal causes. The motives of the claimant in engaging in illegal sales of alcoholic beverages, or the ultimate destination of the monies obtained by this unlawful activity are irrelevant and cannot influence the action of the Director under the clear statutory mandate.

The claimant forthrightly admits that it wilfully violated the Alcoholic Beverage Law by knowingly selling said alcoholic beverages without the requisite license or permit. Thus, the absence of good faith on its part has been unmistakably demonstrated.

It is, accordingly, therefore, recommended that its claim be rejected; that the claimant's application for return of the deposit be denied; that an order be entered forfeiting the \$750.00 deposited by this claimant, under protest, under the aforementioned stipulation; and that the alcoholic beverages and cash similarly be ordered forfeited. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,431, Bulletin 1644, Item 3; Seizure Case No. 11,597, Bulletin 1697, Item 7.

Conclusions and Order

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

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

Accordingly, it is on this 9th day of December, 1966,

DETERMINED and ORDERED that the seized property including the \$6.80 in cash, more fully described in Schedule "A", attached hereto, constitutes unlawful property; and that the sum of \$750.00, representing the retail value of such fixtures, furnishings and equipment, exclusive of the alcoholic beverages and \$6.80 in cash as set forth herein, which were returned to the Veterans of Foreign Wars, Post 2174, paid under protest to the Director of the Division of Alcoholic Beverage Control by the said Veterans of Foreign Wars, Post 2174, together with \$6.80 in cash be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages be and the same are hereby forfeited, and shall be retained for the use of hospitals and State, county and municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI,
DIRECTOR

SCHEDULE "A"

- 43 - bottles of alcoholic beverages
- 2 - bottles of ginger ale
- 1 - piano, juke box and pool table
- Cigarette, soda, shuffle machines
- 1 - bar; bar stools; tables; chairs
- 1 - cash register; 1 refrigerator
- 1 - wall clock; 1 fan; 1 radio
- \$6.80 in cash

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALES IN SPEAKEASY - ALCOHOLIC BEVERAGES, EQUIPMENT AND CASH ORDERED FORFEITED - CLAIM OF OWNER FOR RETURN OF POOL TABLE, PINBALL MACHINE AND JUKE BOX DENIED IN ABSENCE OF GOOD FAITH - ICE CREAM MACHINE ORDERED RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on August 24, 1966 of a quantity of alcoholic beverages, various furnishings, fixtures, and equipment and \$44.45 in cash at the club quarters of the Spanish-American Puerto Rican Club located at 68-70 Garside Street, in the City of Newark, County of Essex and State of New Jersey.)	Case No. 11,763
-----))	
)	On Hearing
)	CONCLUSIONS
)	AND
)	ORDER

Marinello, Henkel & Soriano, Esqs., by George B. Henkel, Esq.,
 appearing for Philip Gagliano.
 Joseph Zappulla, Pro Se.
 William Wilson and Son, by William F. Wilson.
 I. Edward Amada, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 51 bottles of alcoholic beverages, 15 cases of soda, \$44.45 in cash, various fixtures, furnishings and equipment, as set forth in an inventory attached hereto, made part hereof, and marked Schedule "A", seized on August 24, 1966 at the club quarters of the Spanish-American Puerto Rican Club located at 68-70 Garside Street, Newark, New Jersey, constitutes unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sale of alcoholic beverages at a speakeasy conducted at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-1-66, Philip Gagliano, represented by counsel, sought return of certain fixtures, furnishings and equipment, cases of soda and cash.

Joseph Zappulla appeared pro se and presented his claim for the return of a pool table, a pinball machine and a juke box.

William Wilson, representing William Wilson and Son, ice cream distributors, appeared pro se, and sought the return of an ice cream box.

The file of this Division which was admitted into evidence by stipulation of the claimants herein, contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory, the Division chemist's report, one "marked" one-dollar bill, the record of the "marked" money and the samples of beer purchased by ABC agents.

The said file established the following facts: On Sunday, August 20, 1966 at approximately 8:30 p.m., ABC agents made their first visit to the subject premises and noted that these premises were located on the ground floor of a five-story brick building at the above address. They consist of two stores with a common passageway between them; the left side of the premises contained a pool table, and chairs; the right side contained a pinball machine and a counter. A sign in the window of the left part of the premises contained the legend "Spanish-American Puerto Rican Club". At the counter in the said premises the agents observed patrons being served by a male bartender referred to as Pop, later identified as Philip E. Gagliano.

Gagliano took the beer from a refrigerator in the candy store section of the premises and after receiving payment for these sales, placed them in a cigar box behind the counter.

At 9:20 the agents observed nine cases of beer being delivered to the premises. Some were placed in the refrigerator and others stacked on the floor in the rear of the said premises. ABC Agent M proceeded to the counter and said to Gagliano, "Take out for two beers, Pop" and placed a one-dollar bill, the serial number of which had been previously recorded, on the counter. Gagliano obtained two cans of beer from the refrigerator, received payment therefor of the "marked" one-dollar bill, which he placed in his wallet, and gave the agent change from the cigar box in the rear of the bar. Thereafter, Gagliano served other cans of beer to patrons in the poolroom.

At 10:00 p.m. other agents, accompanied by local police, entered the premises and identified themselves to Gagliano. He was thereupon arrested, charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50(a) and possession of alcoholic beverages without a license with intent to sell the same, in violation of R.S. 33:1-50(b). He was released in his own recognizance pending arraignment in the Newark Municipal Court.

At the time of his arrest, he was requested to empty his pockets and wallet which contained \$19.00 in bills, one of which was the "marked" one-dollar bill; \$25.45 in change was taken from the cigar box.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Gagliano, the Spanish-American Puerto Rican Club or for the premises where the violation took place.

The report of the Division chemist shows, in part, that a sample of one six-ounce bottle containing three ounces of Schaefer Beer, seized herein, is an alcoholic beverage fit for beverage purposes with alcohol by volume of 4.5%.

Since Gagliano did not have any license authorizing him to sell alcoholic beverages, the alcoholic beverages are illicit and constitute unlawful property subject to forfeiture. R.S. 33:1-1(i); R.S. 33:1-2; R.S. 33:1-66.

The seized alcoholic beverages are illicit because they were intended for sale without a license. Such illicit alcoholic beverages, the personal property and the cash as set forth in Schedule "A" herein, constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,431, Bulletin 1644, Item 3; Seizure Case No. 11,597, Bulletin 1679, Item 7.

With particular reference to the cash, the evidence shows that cash from sales of alcoholic beverages was placed in the cigar box behind the counter; this cash is subject to seizure. In addition, the cash in the wallet and on the person of Gagliano was commingled with the "marked" money obtained from the agent. Thus, all of the money is subject to forfeiture. Seizure Case No. 11,182, Bulletin 1568, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Philip Gagliano entered a claim for the return of the refrigerators, chairs, tables, 15 cases of soda, two fans and a clock. He stated that one of the three refrigerators contained only soda; however, he was unable to identify the specific refrigerator. He did not deny the sale of the alcoholic beverages without a license or the possession of alcoholic beverages with intent to sell the same without a license; nor did he attempt to establish whether he was, in fact, the owner of this property, or whether it was the property of the Spanish-American Puerto Rican Club. No proof of ownership was offered to any of these items.

I conclude that the Division has established its case by clear and convincing evidence, and I, therefore, recommend that the personal property claimed by Gagliano, as well as the alcoholic beverages and cash be declared to be unlawful property; that the claim of Gagliano for the return of his property be denied; and that an order be entered forfeiting the same. R.S. 33:1-66; Seizure Case No. 10,009, Bulletin 1391, Item 4; Seizure Case No. 11,182, *supra*.

Joseph Zappulla, appearing pro se, presented a claim for the return of a pool table, pinball machine and juke box.

He gave the following account: he had been in the vending machine business since 1932. About five or six months prior to the date of the seizure, upon "canvassing" Gagliano's premises, he placed these machines with Gagliano. He entered into an agreement on a percentage basis for such placement. He stated that he didn't make any background investigation of Gagliano or of the Spanish-American Puerto Rican Club to determine whether or not they had ever been guilty of liquor law violations.

Furthermore, he was not concerned with the use to which the machines were put because he was interested only in whether or not this would be a profitable location. He asserted that he merely assumed it was just a candy store operating at these premises although he admitted that he saw the sign on the window stating "Spanish-American Puerto Rican Club". He was then asked the following questions:

"Q I suppose in Mr. Gagliano's store you didn't care who he was or what he was as long as he rented this particular store and you put the machines in.

A That is right."

Q Did you ever discuss with him the nature of his business?

A No, I didn't."

The claimant produced a statement on the letterhead of A.B.C. Distributing Company purporting to show the sale to him of one Seeburg machine and one small pool table, at a total cost of \$250.00. No proof of title to the pinball machine was offered.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction, by affirmative proof, ownership of the property; that he has acted in good faith and did not know or have any reason to believe that the property would be used in unlawful liquor activity.

I am persuaded that this claimant did not act reasonably, in the full discharge of his statutory responsibility, in his operation of his property in the said premises. In view of the fact that this was a social club, it became his obligation to make a background investigation or reasonable inquiry to determine whether or not his property would be used in unlawful liquor activity. His failure to do so demonstrates a careless indifference to the use to which his property was being put. In the absence of establishing good faith as aforesaid, the Director is not authorized to return the said property. R.S. 33:1-66, Seizure Case No. 11,597, supra.

I, therefore, recommend that the application of the applicant, Joseph Zappulla, for the return of his claimed property be denied, and that an order be entered forfeiting the same.

William Wilson and Son, appearing pro se, entered a claim for the return of an ice cream box. William Wilson, testifying in support of this claim, produced evidence indicating ownership of the said ice cream box, and gave the following account: he is the owner and operator of this business which sells ice cream to candy stores, drug stores and supermarkets. He supplies the dispensing machines to those accounts using his products.

He solicited Gagliano because he noted that Gagliano was selling candy which was displayed on the counter, and he felt that this would be a good location for the sale of his product. He made his collections about once a week in the morning, and never noticed any bar, or alcoholic beverages either being stored or sold, or consumed therein.

However, he admits that he did not make any background investigation to determine whether or not any alcoholic beverages were being sold on the premises, or whether Gagliano had been involved in any prior liquor law violations.

I believe that this claim differs from the claim hereinabove resolved because of the kind of machine distributed by this claimant. Where one distributes pool tables, juke boxes and pinball machines, it is the common experience that they are usually distributed in places where alcoholic beverages may be sold. However, where one distributes an ice cream box to a store where candy and similar items are sold, it is understandable that the claimant may well have assumed that this was a candy store.

While he is statutorily obligated to make an investigation of the background and character of the individuals in whose premises his machines are placed, I am, nevertheless, persuaded on the basis of the evidence presented, that this claimant acted imprudently rather than in bad faith. I would therefore resolve any doubt with respect to his good faith in favor of his claim.

Under the circumstances, I conclude that the claimant acted in good faith and did not know, or have any reason to believe that alcoholic beverages were being sold in these premises. I therefore recommend that his claim be recognized. Seizure Case No. 10,416, Bulletin 1384, Item 4; Seizure Case No. 11,622, Bulletin 1693, Item 8; R.S. 33:1-66(f).

Conclusions and Order

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

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

Accordingly, it is on this 9th day of December, 1966,

DETERMINED and ORDERED that the claim of William Wilson, trading as William Wilson and Son, for the return of its said ice cream box be recognized and that if, on or before the 20th day of December, 1966, William Wilson pays the costs of seizure and storage of the said ice cream box, said item will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the \$44.45 in cash as set forth in Schedule "A", attached hereto, constitutes unlawful property and the same be and is hereby forfeited in accordance with State Regulation No. 29 or retained for the use of hospitals and State, county and municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI,
DIRECTOR

SCHEDULE "A"

- 5 - bottles of alcoholic beverages
- 15 - cases of soda
- 46 - cans of beer
- 1 - juke box, 1 pool table, 1 pinball machine
- 3 - refrigerators, 1 ice cream box, 15 cases of soda
- 13 - chairs, 2 tables, 2 fans, 1 clock
- \$44.45 in cash

6. MORAL TURPITUDE - CONVICTION OF BOOKMAKING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

Re: Eligibility No. 752

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of a crime.

Applicant's criminal record discloses that on December 23, 1964, following a plea of guilty in the Morris County Court to an indictment of bookmaking, he was fined \$1000.00. A hearing was held at the Division to inquire into the "underlying facts to determine whether there existed moral turpitude" in the commission of such crime. State v. McNally, 91 N.J. Super. 513 (App.Div. 1966), Cert. denied -- N.J. --.

Reports received by this Division disclose that applicant's conviction followed his arrest on April 15, 1964 in a gambling raid at his residence; that gambling paraphernalia, including horse race bets and money, were found at the premises and that, in the course of the raid, a member of the raiding party had answered the telephone on several occasions and had taken horse racing bets for \$44.00.

At the hearing held herein, applicant (36 years old) verified the aforesaid reports and further testified that he had been engaged in booking horse race bets for about six months previous to his arrest; that he did a gross business of about \$150.00 a week; that his weekly profit averaged \$60.00; that he was not associated with anyone in his gambling activities and that prior to his arrest as aforesaid, he had been employed as a bartender for four years.

Applicant further testified that his modus operandi was to accept all bets at his home by telephone; that on the following day he would meet his players in various places and settle with them accordingly.

Based on the indictment, the guilty plea, the sentence and the sworn testimony of the applicant, it is my opinion that the crime of which applicant was convicted on December 23, 1964 involves the element of moral turpitude. Re: Elig. No. 749, Bulletin 1697, Item 6.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director, he has been convicted of a crime involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him, in any business capacity whatsoever, a person so disqualified.

I. Edward Amada,
Attorney

Approved:

Joseph P. Lordi,
Director

Dated: December 1, 1966

7. DISCIPLINARY PROCEEDINGS - MINOR EMPLOYMENT PERMITTEE CONSUMING ALCOHOLIC BEVERAGES - PERMIT CANCELLED.

In the Matter of Disciplinary Proceedings against)

Flora Thomas)
101 Cottage Street)
Jersey City, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Limited Employment Permit #2216, issued by the Director of the Division of Alcoholic Beverage Control.)

Permittee, Pro se
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Permittee pleaded not guilty to the following charge:

"On July 24, 1966 you, the holder of a limited employment permit for a person failing to qualify as to age, being 18 years of age, consumed alcoholic beverages on the retail licensed premises of your employer, Jacon Bar & Grill, Inc., 413-415 Avenue C, Bayonne, New Jersey; in violation of R.S. 33:1-81(b)."

Testimony relevant to this charge was heard at a consolidated hearing which also involved disciplinary proceedings in Re Jacon Bar & Grill, Inc., Bulletin 1709, Item 5.

ABC Agent M testified that, accompanied by Agent Z, he visited the licensed premises of Jacon (a barroom which contained accommodations for entertainment, a juke box and several tables and chairs) on Sunday morning, July 24, 1966, at "about 1:30 a.m., 1:35." The agents positioned themselves at the bar. Tending bar was a male identified as Jose Delvalle. Also present were a waitress (Gloria Miller), Mrs. Adele Conti (the president of the licensee corporation, who was in active management of the business conducted on the licensed premises), and Flora Thomas (holder of a minor's limited employment permit issued by the Division) indicating that she was eighteen years of age. Subsequently Miss Thomas testified that she was eighteen years of age.

The agent observed Miss Miller being summoned to a table at which three males were seated and converse with them. Miss Miller went to the bar and returned to the table with three bottles of beer. One of the males pointed to an adjoining table. The agent's testimony then disclosed the following:

"... Miss Miller then came back to the bar, and she then hollered, 'VO and 7, a shot of Southern Comfort, and two Schaefers,' whereas the bartender, Delvalle, was

then observed to get a six-ounce glass, place some ice in the glass, and go to the one portion of the bar where there was some draft taps, and he then put liquid into this glass, and he placed this glass on the serving tray. He then got two shot glasses and placed them together, and he got a bottle which stated 'VO Canadian whiskey, and he poured a shot --

Q Where did it state that?

A Right on the label on the bottle.

-- and he poured this liquid into the shot glass. He then got a bottle which was labeled 'Southern Comfort,' which is a liqueur, and he poured -- he also poured this into a shot glass. He then placed all three glasses on the serving tray. He went to the cooler and removed two twelve-ounce bottles of Schaefer beer, opened same, and placed it on the tray also. Miss Miller then took the tray and placed each individual drink in front of the patrons. Miss O-- received a bottle of Schaefer beer. Mary Ann -- received VO and 7. Flora Thomas received a shot of Southern Comfort."

Thereafter the agent testified that Miss Thomas completely consumed the drink of Southern Comfort, which he described as a liqueur and an alcoholic beverage.

In defense of the charge Miss Thomas testified that she did not have anything to drink on the night in question. On cross examination the following testimony was elicited:

"Q Did you have an empty shot glass in front of you at the time? There may have been an empty shot glass in front of you at the time?

A I don't know. It could have been somebody else's drink.

Q So far as your memory is concerned today, would you say you may have had a drink on the night in question?

A I don't know?

Q You don't recall?

A I don't remember anything."

Primarily, it should be noted that we are presently dealing with a disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super 449 (App. Div. 1951). Thus proof must be supported only by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the instant proceeding presents a purely factual question, the credibility of witnesses must be weighed. It is the function of an administrative agency to weigh the evidence, to determine the credibility of witnesses, to draw inferences and conclusions from the evidence, and to resolve the conflicts therein. Cf. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956).

The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

It is my view that the testimony presented by the Division agent was factual and credible. On the other hand, I was not favorably impressed by Miss Thomas' testimony on cross examination, which I have specifically set forth above. It appears that her responses on cross examination qualified her prior denial of imbibing an alcoholic beverage.

I conclude that the Division has proved the truth of the charge by clear and convincing testimony and by a fair preponderance of the credible evidence. Accordingly, I recommend that the permittee be found guilty of said charge. I further recommend that her employment permit be cancelled.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 7th day of December, 1966,

ORDERED that Limited Employment Permit #2216, issued by the Director of the Division of Alcoholic Beverage Control for the year 1966-67 to Flora Thomas, 101 Cottage Street, Jersey City, N. J., be and the same is hereby cancelled, effective immediately.

JOSEPH P. LORDI,
DIRECTOR

8. DISQUALIFICATION REMOVAL PROCEEDINGS - ASSAULT WITH DEADLY WEAPON - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R.S. 33:1-31.2.)
Case No. 2030)
-----)

CONCLUSIONS
AND
ORDER

BY THE DIRECTOR:

Petitioner's criminal record discloses that on January 16, 1959 he was convicted in the Union County Court for assault with a deadly weapon and, as a result thereof, was sentenced to serve three to four years in New Jersey State Prison and Paroled on November 21, 1960.

It further appears that in April and May, 1966 petitioner, while employed as a bartender, was charged with the sale of alcoholic beverages to minors, both of which charges have been dismissed, one by the prosecutor for insufficient evidence and the other by a grand jury.

Since the crime of which petitioner was convicted involves the element of moral turpitude, (Re Case No. 348, Bulletin 431, Item 4) he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (38 years old) testified that he is married and living with his wife and child; that for the past five years he has resided at his present address; that between 1961 and 1966 he was employed as a construction worker and automobile mechanic; that in 1966 he had obtained employment as a bartender in licensed premises and that until May, 1966, when informed by his parole officer, he had no knowledge that he was ineligible for employment by a licensee.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction in 1959, he has not been convicted of any crime.

Petitioner produced three character witnesses (three housewives) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The Police Department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

The only hesitation I have in granting the relief sought herein is based on the fact that the petitioner, although disqualified, worked on licensed premises in this State. I am, however, favorably influenced by three factors, viz.: (a) the testimony of his character witnesses, (b) petitioner's criminal record shows only one conviction which took place about eight years ago and (c) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all of the aforesaid facts and circumstances, I am satisfied that the petitioner has conducted himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is on this 16th day of December, 1966,

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


Joseph P. Lordi
Director