

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

BULLETIN 1642

October 28, 1965

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South Broadway, South Amboy, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Wednesday, September 22, 1965, and terminating at 9:00 a.m. Thursday, October 7, 1965; and it is further

ORDERED that in view of the penalty of suspension imposed herein, the statutory automatic suspension of said license resulting from the conviction of Beatrice Gershon, be and the same is hereby lifted effective at 9:00 a.m. Thursday, October 7, 1965.

JOSEPH P. LORDI,  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - POSSESSION OF PINBALL MACHINE ON LICENSED PREMISES - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against )

Bowlero, Inc. )  
1137-1165 Route 46 )  
Clifton, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-133, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton )

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Cole, Berman & Garth, Esqs., by Morrill Cole, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On March 23 and 25, 1965, and for a period of two weeks prior thereto, you allowed, permitted and suffered a machine or device commonly known as a bagatelle or pinball machine named 'Midway's Flying Turns' in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The Division offered the testimony of Agents B, M and K in attempting to substantiate the charge.

Agent P testified that during the course of his participation in the investigation which culminated in the preferring of the charge he, on March 25, 1965, took two photographs of a game called Midway Flying Turns. They were admitted into evidence as D-2 and D-3.

D-2 depicted the horizontal play board and the upright or vertical board. D-3 showed the inclined horizontal play board or surface which is also referred to as the face-board of the game. The vertical board serves as a scoreboard.

The machine was located in the promenade section of the licensed premises. The licensee maintains bowling alleys

at the premises in question. The machine (an electrical machine) was not plugged in and had a sign on it which read "Out of Order." The licensee stipulated that the machine had been in operable condition and had been used.

Agent M. testified that he is employed as an inspector by the Division and among other duties he is assigned to investigate prohibited equipment. Pursuant to his duties, he entered the licensed premises on March 25, 1965 at about 12:45 P.M. and noticed the aforesaid Midway Flying Tunns machine in the promenade area. He advised Mr. Fred Schmidt (president of the licensee corporation) that he believed the machine to be "an illegal pinball machine" and he would report it as a violation. He and Schmidt tried to play the machine and they ascertained it was inoperable at the time. Schmidt admitted that he had heretofore seen the machine in operation.

On crossexamination the agent described a pinball machine generally or commonly as a machine which has a coin slot in the center or to the left and a spring activated plunger or pin or a button which strikes a ball on the right hand side of the machine causing it to be propelled through a channel to the top of the playing surface or board. The ball then starts rolling down the playing surface striking obstructions or bumpers (which stud the playing area or surface) causing the ball to deflect from side to side, the contacts causing various scores to register on the vertical scoreboard. The agent conceded that there are machines which are not classified or designated as pinball machines. It was the witness' opinion that a distinctive feature of a pinball machine is the fact that the player loses all control of the ball, it being deflected from side to side by bumpers or activated springs on the playing field which cause a score to register. Flippers can be moved to reactivate the ball to strike the bumpers. The player may have control over the speed of the ball but not its direction. He admitted that a shuffleboard bowling machine is not classified as a pinball machine. In a shuffleboard bowling game the player has the ability to aim the projectile. The ability to aim distinguished it from a pinball game. Also, he did not classify a rifle range wherein a steel ball is shot at a target to register a score as a pinball game. Again, the ability to aim and the fact that the ball is not deflected on the playing surface by pins or other electrically impulsive instruments distinguished it from a pinball machine. He stated in a pinball machine "deflections are the chief thing."

It was the witness' opinion that, although the Midway Flying Turns machine, sub judice, had the element of aiming and contained no obstructions in the middle of the playing and had flippers on each side, the machine was a pinball machine.

On direct examination Agent K testified that he was employed by the Division as an administrative inspector. He expressed an opinion that any machine, where a ball is activated onto a playing field and during the course of the play the ball is deflected by obstructions, would constitute a pinball or bagatelle machine regardless of the ability on the part of the player to aim.

The witness stated that he had played a Midway Flying Turns machine during the course of an investigation on February 20, 1965. He described the machine as being an electrically operated coin activated machine. A ball can be aimed to the top of the playing field towards certain pockets or holes separated

by five separators. If a separator is struck, the ball starts a downward descent and if it goes to the left or right side of the machine it can strike bumpers or flippers to render a score. It was his opinion that this was a pinball machine.

On cross-examination the witness testified that, to the best of his recollection, all of the other machines he played in the course of his duties contained a plunger on the right hand side of the machine activated by a spring which propelled a ball up a track or a chute at the right side of the machine.

The witness expressed an opinion that any machine wherein the ball is deflected on the playing field is what is commonly known as a pinball or bagatelle machine.

Further, he could not recall any machine other than the Midway Flying Turns machine, where a ball could be aimed, that was charged with a violation as being a pinball machine. He admitted that the primary purpose of the Midway Flying Turns game was to aim the ball so that it would go into a hole at the top of the machine and stay there and not roll down the face of the machine.

On recross-examination the following testimony was elicited:

"Q And if the ball missed going into the hole, Mr. K, there were no obstructions in the middle of this machine, were there?

A No, sir.

Q There were no obstructions, because if there were, the whole point of being able to aim the ball at the holes up at the top would be defeated, wouldn't it?

A Yes.

Q In effect you aimed the ball at the target, the holes at the top, and that was the preliminary objective, wasn't it?

A Yes, sir.

Q And that is not so with respect to any other pinball machine you have ever seen, is that correct?

A Yes, sir."

On further redirect examination the witness stated that it was still his opinion that the machine in question was a pinball machine.

In rebuttal of the Division's case, the licensee called Edward J. Lettieri as a witness. He testified that he has been employed for a period of 11½ years as a route supervisor and sales representative by a firm that is engaged in the vending machine business, including coin-operated amusement machines of all kinds. He testified that there are various categories of amusement machines, such as music machines, pinball games, shuffle alleys, arcade equipment, etc. He described a pinball game as a machine with a plunger, tension spring, a channel on the right hand side that directs the flow of the ball, contains obstructions

that block the ball on its downward passage throughout the center of the playing area, and is lacking in any aiming device. He classified the Midway Flying Turns game as an arcade game. In an arcade game, the player directs the object towards the score. The skill in aiming the ball or device would provide an area of competition between players.

The March 27, 1965 issue of Billboard, a weekly publication which caters to the coin-operated machine trade, including various types of music, vending and amusement machines, was received in evidence. Included therein was a listing of pinball machines and arcade machines or games. The Midway Flying Turns game was listed under "Arcade Equipment."

Finally, on direct examination, the witness testified, as follows:

"Q And if a machine has an aiming device such as Flying Turns and if the preliminary object of the machine is to aim the ball at a target area to get it through a hole for a better score, does that machine fall within the category of pinball game just because if you miss the hole, it would come down an incline?

A No, sir.

Q Or just because if you miss, it would come down the side and hit a bumper?

A. No, sir

Q Is the absence of bumpers in the middle of the Flying Turns machine of any interest to you in the determination that Flying Turns is not a pinball machine?

A Yes, sir, because it would prevent the direction of the ball going into its target.

Q And therefore defeat the preliminary objective of the game?

A Yes, right.

Q All right. In your opinion, Mr. Lettieri, based upon your experience in dealing with the machines in the trade and in dealing with those who handle them or put them in, retail establishments of various kinds, is Flying Turns a pinball machine or a bagatelle machine if those two words are synonymous?

A No, sir, it is not, sir.

Q What kind of machine is it, within the various categories of the trade?

A It's an arcade piece of equipment for the obtaining of a score by directing a ball through a target, to hit a target.

Q What would happen when the ball is successfully put through the target area?

A The ball is lost at this point, which differentiates it from a pinball where at no time is the ball lost. In other words, with the Midway Flying Turns, if you hit

your target, it is dropped in the hole and your score is made and there is no--well, that's it, against the pinball, where the ball is always on top of the playing area, coming down by gravity."

On cross-examination the witness admitted that his employer furnished the machine in question to the licensee.

Upon questioning he stated that he had operated the Midway Flying Turns machine. By the insertion of a coin, a ball comes up on the machine. The object is to aim the ball into 1 of 4 scoring holes at the top of the playing board. If the player is successful a score has been made and the player goes to the next ball. If the score is not made, the ball may roll down to the left or right side of the board or down the center thereof. In a pinball game it is impossible for a ball to roll down without striking an obstruction or a bumper. However, there are bumpers or flippers on each side of the board and at the bottom which may activate the ball. The flippers may be manipulated so that the ball may be aimed at the scoring holes at top.

It was the witness' opinion that the game in question, the Midway Flying Turns, was not a pinball game.

Rule 7 of State Regulation 20 provides as follows:

"No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, or any machine or device commonly known as a bagatelle or pinball machine, in or upon the licensed premises; provided, however, that bingo and raffles may be permitted in or upon the licensed premises to the same extent as is set forth in Rule 6 hereof." (Underscoring mine).

The Rules and Regulations adopted by the Division do not define what is "commonly known as a bagatelle or pinball machine."

This is a case of novel impression. I have found no reported case in the bulletins of this Division wherein the meaning of the phrase "commonly known as a bagatelle or pinball machine", is construed or defined.

Webster's Third New International Dictionary 1961 Edition defines "pinball" as follows: "any of various forms of bagatelle in which pins or upright posts are set in the board or table, esp.: any of various games that are played on pinball machines." Further, a pinball machine or pinball game is defined thusly: "an amusement device often used for gambling that consists of a glass topped cabinet in which a ball propelled by a plunger rolls down a slanting surface among an arrangement of pins and targets with each contact between ball and target scoring a number of points indicated by a system of electric lights."

An illuminating general description as to the construction and operation of a pinball machine was given at the hearing by Division Agents M and K and by the licensee's witness, Mr. Lettieri. It is interesting to note that all of these descriptions,

in the main, coincided with the general description of pinball machines given by Justice Perskie in the case of Hunter v. Teaneck Township, 128 N.J.L. 164 (Sup. Ct. 1942), at pp 166-167 wherein the proof disclosed that the pinball machines involved consisted of two cabinets:

"... the other upright and the front part thereof is the scoreboard. Although the set-up of each playing board varies with each named machine, each in principle, is alike. The playing board is studded with obstructions and set up at an incline. A metal ball is propelled to the top of the playing board after it is struck by a plunger operated by the player. The ball then rolls down the playing board passing through certain spaces thereon or striking certain obstructions thereon, some of which have marked scoring value, some free game value, and some no value. As the ball rolls down the playing board it is accompanied by a succession of lights flashing on, or going out, bells or buzzers ringing and buzzing and numbers changing on the score board: and unless the ball on its downward course is lodged at some planned scoring point it finally reaches the trough at the end of the board provided for its reception.

"The game is begun by the player (adult and minor) depositing a nickel in the slide of the machine. The slide is then pushed into the machine with the result that five metal balls are released. The playing of five balls constitutes a game. The player then pushes a lever which operates a rocker arm that lifts the balls, one at a time, into a narrow run-way at the right edge of the playing board and against the front end of the plunger. The player then draws back the plunger which compresses a spring so that when the plunger is released it forces or drives the metal ball up the run-way to the top of the playing board whence it takes the course first stated...."

In the Hunter case (supra) the Township of Teaneck passed an ordinance prohibiting

"the 'keeping' of any 'game of chance' or 'gambling device' in any place of 'business' within the Municipality...

"Section 1 of the ordinance provides that any 'game, machine, apparatus or device such as is commonly called bagatelle, pinball, or roulette, and any game, machine \*\*\* of like nature by whatever name known should be deemed and regarded as a game of chance or gambling device.'"

Hunter denied that "pinball machines per se" may be properly "deemed and regarded as a game of chance or as a gambling device", and argued that they are devices used as innocent games of amusement depending upon the skill with which the machines are operated. Justice Perskie had to determine as to whether or not, in the light of stated proofs, is a pinball game a game of chance and are pinball machines gaming devices. In applying the principles enunciated in the line of cases, of which "People v. Lavin (1904), 179 N. Y. 164; 71 N. E. Rep. 753; 66 L. R. A. 601, and Commonwealth v. Plisner (1936), 295 Mass. 457; 4 N. E. Rep. (2d) 241, are typical, holding that the test of the character of the game is not whether it contains the element of

chance or the element of skill, but which is the dominant element that determines the result of the game", Justice Perskie held that he had no hesitancy in factually and legally stamping the pinball game as a game of chance and that the pinball machines involved are nothing but ingeniously designed and purposely constructed mechanical gaming devices to appeal to, induce, lure and encourage the gaming instincts in the public generally.

Judge Haneman (now Justice Haneman) in the case of O'Brien v. Scott 20 N. J. Super. 132 (Chanc. Div. 1952), was confronted with the question as to whether a game called "Skilo" "was one of skill and therefore legal" or a game of chance. He held that the evidence established that the game of "Skilo" which involved the ability of a player to lodge a ball in a given hole, the number of which corresponded with the number of given player's card or cards, was predominantly a game of skill and not a game of chance, and therefore not a "gambling" game within the purview of the statute prohibiting keeping of a place for gambling.

Judge Haneman, in the case of O'Brien v. Scott, supra, went a step further than the court in Hunter v. Teaneck Township, supra, by furnishing a guide as to what elements determine whether a game be one of chance or one of skill. At pp 137, 138 he quoted from 38 C.J.S., Gaming p. 35, sec. 1, thusly:

"Game of chance. The phrase "game of chance," it has been said, is not one long known in the law and having therein a settled signification. It is a game determined entirely or in part by lot or mere luck, and in which judgment, practice, skill, or adroitness have honestly no office at all, or are thwarted by chance; a game in which hazard entirely predominates; one in which the result as to success or failure depends less on the skill and experience of the player than on purely fortuitous or accidental circumstances incidental to the game or the manner of playing it or the device or apparatus with which it is played, but not under the control of the player.\*\*\*

\*\*\*Games of skill are usually lawful, while gambling by any species of games of chance is generally considered unlawful. The test of the character of the game is, not whether it contains an element of chance or an element of skill, but which is the dominating element that determines the result of the game, or, alternatively, whether or not the element of chance is present in such a manner as to thwart the exercise of skill or judgment. It is the character of the game, and not the skill or want of skill of the player, which determines whether the game is one of chance or skill. A game of chance does not cease to be such because it calls for the exercise of skill, nor does a game of skill cease to be such because at times its result is determined by some unforeseen accident."

At page 138 he quoted from 24 Am. Jur., p. 410, sec. 18, as follows:

"A 'game of chance' is said to be such a game as is determined entirely or in part by lot or mere luck, and in which judgment, practice, skill, and adroitness have no office at all or are thwarted by chance. \* \* \* Games of cards do not, however, cease to be games of chance because they call for the exercise of skill by

the players, nor do games of billiards cease to be games of skill because at times, especially in the case of tyros, their result is determined by some unforeseen accident, usually called 'luck'. The test of the character of the game is not whether it contains an element of chance or an element of skill, but which of these is the dominating element that determines the result of the game."

Guided by the foregoing authority, it is apparent that the character of the game, as to skill or chance, is determined by which of those two elements is the dominating factor in determining the result of the game.

Applying the foregoing guide lines, our inquiry is reduced to resolving the problems as to whether the Midway Flying Turns game is a pinball machine in which the score or the result is determined by "chance" or "luck" or is the element of skill the predominant factor.

This necessitates a review of the pertinent parts of testimony.

On cross-examination Agent M testified that a distinctive feature of a pinball machine is that a player loses control of the ball, it being deflected by bumpers on the playing field which cause a score to register. The player may have control over the speed of the ball but not its direction. He stated that in the game of shuffleboard bowling the player has the ability to aim the projectile and in that respect it is different from a pinball game. The ability to aim a steel ball at a target in a rifle range game and register a score sets it apart from a pinball game. He stated in a pinball machine "deflections are the chief thing." Deflections on the playing field are lacking in a shuffleboard bowling game and in a rifle range game. It was the witness' opinion that, although the Midway Flying Turns game had the element of aiming and had no obstructions in the middle of the playing surface and had flippers on each side, the machine was a pinball machine.

It will be recalled that Agent K expressed an opinion that any machine where a ball is activated onto a playing field and during the course of the play the ball is deflected by obstructions would constitute a pinball machine regardless of the ability on the part of the player to aim. The agent declared that in the operation of the Midway Flying Turns game a ball can be aimed to the top of the playing field towards certain holes separated by several separators. If the ball struck a separator it started a downward course and if it went to the left side or to the right side of the machine it could strike bumpers or flippers to render a score. He admitted there were no obstructions in the middle of the machine because if such obstructions were contained thereon the whole point of being able to aim the ball at holes on top would be defeated. The preliminary objective was to aim at the holes at the top of the playing board.

The testimony of Edward J. Lettieri indicated that he was a sales representative for a firm that sold various types of machines including pinball and arcade equipment. He appeared to have acquired ample experience in the workings and operation of machines of various types.

In brief, he described a pinball game as a machine with a plunger, tension spring, a channel on the right hand side that

directs the flow of the ball, contains obstructions that block the ball on its downward passage throughout the center of the playing area and is lacking in any aiming device. He classified the Midway Flying Turns game, sub judice, as an arcade game wherein the player directs the object towards the score. The skill in aiming the ball or device was the paramount feature. If the ball enters the hole the score is made and the ball does not roll down the incline striking bumpers and registering scores on the downward passage as in a pinball game. There are no obstructions or bumpers in the middle of the machine to defeat purpose of aiming the ball at the holes.

Inasmuch as I find it unnecessary in my deliberations of the issues involved, I make no recommendation as to what weight, if any, should be given to the listing of the game in question in the Billboard magazine.

A careful evaluation of the evidence hereinabove set forth impels me to conclude that in the Midway Flying Turns game the dominating element or the integral feature thereof is skill and not luck or chance. Hence, it is not a pinball game or bagatelle game which is proscribed in the Division's rules and regulations.

It must follow, and I so recommend, that the licensee be found not guilty and that the charge be dismissed.

#### Conclusions and Order

No exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendation except in so far as the Hearer relies upon the "dominating element or the integral feature thereof (the game) is skill and not luck or chance", to determine that the machine is not one proscribed by the cited rule. Sufficient it is to determine that, as described in the Hearer's report, the "Midway Flying Turns" is not a bagatelle or pinball machine prohibited on licensed premises by Rule 7 of State Regulation No. 20, as charged.

Accordingly, it is, on this 16th day of September, 1965,

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

JOSEPH P. LORDI,  
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - APPLICATION OF CLAIMANT FOR RETURN OF COMMINGLED CASH AND OTHER PERSONAL PROPERTY DENIED - DEPOSIT POSTED IN LIEU OF RETAIL VALUE OF FURNISHINGS AND EQUIPMENT ORDERED FORFEITED.

In the Matter of the Seizure )  
on March 20, 1965 of a quantity )  
of alcoholic beverages, fixtures, )  
furniture and equipment and )  
\$54.90 in cash at Tony's Seafood )  
and Restaurant located at 40 )  
Bergen Street, City of Newark, )  
County of Essex and State of )  
New Jersey. )

Case 11,452

On Hearing

CONCLUSIONS  
AND ORDER

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Herbert H. Tate, Esq., appearing for Milton Eugene Melvin.  
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 April 20, 1965 signed by Milton Eugene Melvin to determine whether two bottles of whiskey, \$54.90 in cash, various fixtures, furniture and equipment, more particularly described in an inventory hereinafter referred to and set forth in Schedule "A" herein, seized on March 20, 1965 at premises known as Tony's Seafood and Restaurant, located at 40 Bergen Street, Newark, New Jersey, constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$500.00, representing the retail value of said fixtures, furniture and equipment, exclusive of the alcoholic beverages and \$54.90 in cash, paid under protest by Milton Eugene Melvin upon said stipulation, should be forfeited or returned to him.

At the said hearing, Milton Eugene Melvin, represented by counsel, appeared and sought the return of the money deposited by him on the basis of the stipulation herein signed. The established facts as reflected in the testimony of the ABC agents who participated in the said seizure are as follows: Acting upon a specific assignment to investigate the alleged unlawful sale of alcoholic beverages at the above premises, ABC agents arrived in the vicinity of the premises at approximately 2:30 a.m. on Saturday, March 20, 1965, fortified with "marked" bills, the serial numbers of which had been previously recorded.

Agent M, accompanied by his wife, entered the premises and seated himself at a table. He then ordered two cups of black coffee from a waitress, (later identified as Gloria Coleman) and said, "Put something strong into it." She informed him that the costs of these two cups of beverages would be \$1.70, and he paid her with the aforesaid "marked" dollar bills.

A slip setting forth that amount was presented to the agent, and upon payment, Miss Coleman took the money and the slip and went into the kitchen. She returned, almost immediately, with thirty cents in change, which she handed to the agent.

By pre-arrangement, Agent M's wife, therupon left the premises and the three other ABC agents, who were waiting outside the said premises, immediately entered and upon being informed that the cups of coffee contained liquor, identified themselves and arrested Miss Coleman, charging her with the sale of alcoholic beverages without a license, in violation of R.S. 33:1-50(a). They proceeded to the kitchen, opened the cash register wherein they found the "marked" bills, and alongside the register found the slip with a notation "\$1.70." Melvin, the claimant herein, was observed in the Kitchen at that time. Upon interrogation, he denied any knowledge of alcoholic beverages being sold and he was, also, placed under arrest for possession of alcoholic beverages with intent to sell the same in violation of R.S. 33:1-50(b).

Agent S. interrogated Miss Coleman at the time of confrontation in the restaurant, and she stated that she thought that Agent M "... was a friend of Tony's, Melvin, and that if she knew he wasn't, if she knew who he was, she wouldn't have sold it to him." and she went on to say "...she only sells whisky to friends of Melvin's and someone must have got jealous and squealed."

The agents further questioned Miss Coleman after she arrived at police headquarters, and she admitted that she served the alcoholic beverages because she thought the agent "...was a friend of Tony's, the way she expressed it". However, she later changed the story and stated that the reason she was serving drinks was that they were celebrating the fact that this restaurant had now become a successful money-making operation.

The two bottles of alcoholic beverages, which admittedly belonged to Melvin, were seized. Melvin and Miss Coleman were thereafter arraigned on the above charges in the Newark Municipal Court.

The affidavits of mailing and publication, the original stipulation, signed by the claimant, and the certification that no license had been issued by the State or local authority to the claimant or for the premises herein, authorizing the sale of alcoholic beverages, were admitted into evidence.

Milton Eugene Melvin, the claimant herein, testified that he is employed by the Newark Housing Authority and operates this restaurant in order to supplement his income. Miss Coleman is his manager and is in direct charge of the operation in his absence. She handles the money in the cash register and he imposes full trust in her. He admitted ownership of the whiskey and stated that he keeps it on the premises for his own consumption because he drinks every day. He denied any knowledge of any sale by Miss Coleman of alcoholic beverages and states that Miss Coleman admitted to him later that she had been selling liquor on these premises.

On cross-examination, he stated he pays Miss Coleman a salary of \$35.00 a week and that she puts in long hours. He further acknowledged that the business is not being operated profitably at the present time and that, in fact, he had been putting part of his salary made on his other employment, into the business.

Gloria Coleman, testifying on behalf of the claimant, corroborated Melvin's testimony to the effect that he did not know of her illegal liquor activity. She stated that she had

some difficulty making ends meet because she was the sole support of her four children and that she sold the whiskey without Melvin's knowledge. These sales were made to her friends and to Melvin's friends. Her explanation for selling to Melvin's friends was that "...he would realize I wasn't trying to get him in trouble".

On cross-examination, she was further asked whether Melvin saw her serve the whiskey. Her answer: "During the time I went in there he was cooking and the whisky was in the back on a shelf, and his back was turned, and he couldn't see."

The evidence herein clearly and convincingly supports the Division's contention that the claimant possessed alcoholic beverages, intended the same for unlawful sale and that they were, in fact, sold by his employee in his presence without the statutory requisites. Hence, such alcoholic beverages are illicit, R.S. 33:1-1(i). From the totality of the circumstances herein, including the fact that the whiskey was taken from a shelf near where Melvin was standing in the kitchen on this occasion, I am convinced that Melvin knew or must have been aware that this whiskey was being used for illicit sales. Miss Coleman's assertion that Melvin's "back was turned" and therefore he did not see her take the whiskey for such purpose is fantastic and utterly unbelievable.

Clearly this was not an isolated sale, for Miss Coleman, herself, admits that she has made a number of sales to friends of Melvin as well as to her own friends. It taxes credulity and ordinary experience to believe that Melvin was totally unaware of these transactions.

Further, the conflicting stories given by Miss Coleman put her testimony generally in a less credible light than that of the agents who have given a straightforward, forthright and believable account of what transpired. Melvin is, of course, responsible for the acts of his agents, especially, as in this case, when these were committed at the time that he was in the premises and presumably, in his presence. Seizure Case No. 11,095, Bulletin 1563, Item 1; Cf. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39.

Therefore, such illicit alcoholic beverages, the fixtures, furniture and equipment, including the commingled cash, constitute unlawful property and are subject to forfeiture. Seizure Case No. 10,898, Bulletin 1500, Item 2; Seizure Case No. 10,985, Bulletin 1516, Item 6.

Particularly with respect to the cash, the evidence is uncontroverted that the "marked" one-dollar bills were clearly commingled with the other cash found in the cash register. Such cash is similarly subject to forfeiture. Seizure Case No. 10,557, Bulletin 1419, Item 3; Seizure Case No. 10,646, Bulletin 1435, Item 5; R.S. 33:1-2; R.S. 33:1-66.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith and that he did not know or have any reason to believe that the property would be used for unlawful liquor activity. R.S. 33:1-66(f). In the absence thereof, the Director has no authority to relieve the claimant of forfeiture. R.S. 33:1-66 (e); Seizure Case No. 11,059, Bulletin 1533, Item 8.

Since I am persuaded that Melvin knew or should have known of such activity and has thereby failed to satisfy the statutory requisites, I conclude that the preponderance of the believable evidence imperatively requires a recommended finding that the claimant's application for the return of the deposit be denied. I further recommend that an order be entered forfeiting the \$54.90 in cash and the alcoholic beverages; and that the sum of \$500.00 deposited by this claimant, under protest, upon stipulation, pursuant to R.S. 33:1-66 likewise be forfeited and disposed of in accordance with law. Seizure Case No. 10,557, supra; Seizure Case No. 10,898, supra; R.S. 33:1-1 (y); R.S. 33:1-2.

#### 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 I adopt them as my conclusions herein.

Accordingly, it is on this 16th day of September, 1965,

DETERMINED and ORDERED that the seized property, including the \$54.90 in cash, more fully described in Schedule "A", attached hereto, constitutes unlawful property; and that the sum of \$500.00 (representing the retail value of such fixtures, furnishings and equipment, exclusive of the alcoholic beverages and \$54.90 in cash, as set forth herein, which were returned to Milton Eugene Melvin) paid under protest to the Director of the Division of Alcoholic Beverage Control by the said Milton Eugene Melvin, together with \$54.90 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 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"

- 2 - bottles of whiskey
- 1 - 3 burner coffee counter
- 7 - tables
- 28 - chairs
- 1 - juke box
- 1 - cigarette machine
- 1 - coat rack
- 4 - lamps
- assorted dishes, pots, etc.
- 3 - refrigerators
- 1 - freezer
- 1 - hot chocolate urn
- 1 - slicing machine
- 1 - electric toaster
- 1 - radio
- 2 - cash registers
- \$54.90 in cash

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF PENALTY.

In the Matter of Disciplinary Proceedings against )  
 )  
 Anchorage Tavern, Inc. )  
 t/a Anchorage Tavern, Inc. )  
 823 Bay Avenue )  
 Somers Point, New Jersey )  
 Holder of Plenary Retail Consumption License C-5, issued by the Common Council of the City of Somers Point )  
 )

CONCLUSIONS and ORDER

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 Augustus S. Goetz, Esq., Attorney for Licensee.  
 Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 20, 1965, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Le Jem Bar-Liquors, Inc., Bulletin 1625, Item 7.

Report of investigation discloses that the licensed business is customarily discontinued in October and resumed in April of the following year, the premises being known locally as "strictly a summer spot." Hence, the imposition of the penalty to take effect at the present time would be substantially ineffective and therefore the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the business under the license or any renewal thereof shall have been fully resumed on a substantial basis.

Accordingly, it is, on this 15th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-5, issued by the Common Council of the City of Somers Point to Anchorage Tavern, Inc. for premises 823 Bay Avenue, Somers Point, be and the same is hereby suspended for ten (10) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI,  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against Oscar Garrigues t/a Wildwood Manor Hotel 2400-2410 Surf Avenue North Wildwood, New Jersey Holder of Plenary Retail Consumption License C-18, issued by the Mayor and Common Council of the City of North Wildwood

CONCLUSIONS and ORDER

Kay & Corino, Esqs., by Robert E. Kay, Esq., Attorneys for Licensee. Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 2, 1965, he possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Sachse, Bulletin 1630, Item 9.

Admittedly, the licensed business has been discontinued and will not be resumed until the Memorial Day weekend of next year. Hence, the imposition of the penalty to take effect at the present time would be nugatory and therefore the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the business shall have been fully resumed on a substantial basis.

Accordingly, it is, on this 20th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-18, issued by the Mayor and Common Council of the City of North Wildwood to Oscar Garrigues, t/a Wildwood Manor Hotel, for premises 2400-2410 Surf Avenue, North Wildwood, be and the same is hereby suspended for five (5) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI, DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Walter S. Driskill, t/a Dribeck Importers 70 Dewey Avenue, Little Falls, N. J. Application filed October 22, 1965 for place-to-place transfer of Limited Wholesale License WL-3 from 50 Broad Street, New York, New York.

New Jersey State Library

Handwritten signature of Joseph P. Lordi, Director