Director Davis
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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.

11091 – 19

BULLETIN 1071 JUNE 28, 1955.

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TABLE OF CONTENTS

ITEM

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

BULLETIN 1071 JUNE 28, 1955.

1. APPELLATE DECISIONS - GRUBER v. NEWARK.

HARRY GRUBER, trading as Harry's Wines and Liquors, Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	On Appeal CONCLUSIONS and ORDER

Edmond J. Dwyer, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent denying appellant's application to transfer his plenary retail distribution license D-83 from 293 West Kinney Street to 121 Belmont Avenue, Newark.

After appellant filed his application he notified forty-one owners of property within a radius of two hundred feet of the proposed premises as required by a local ordinance. A written objection having been received, respondent scheduled a hearing to be held on March 31. At said hearing one property owner appeared and, when he was told that appellant did not operate a tavern, he admitted that he had no "objection to it as a package store." At said meeting the Clerk of respondent Board read a letter dated March 10 wherein the Pastor of St. Stanislaus Church objected to the transfer, but the Pastor did not appear at the hearing. At said meeting an attorney representing Polish Falcons A.C. #17 stated that, subsequent to March 10, the Pastor of the Church told him that he did not "object" but was not "granting my approval." Respondent adjourned the hearing to April 4 so that a sketch showing the distance between St. Stanislaus Church and the proposed premises might be produced. On April 4 it further adjourned the hearing until April 14 so that its members might examine the sketch. At its meeting on April 14 respondent heard no further testimony but, by a two-to-one vote, adopted a resolution denying the pending application. The resolution sets forth substantially the following reasons for denial:

(a) Your present place of business is located in an area saturated with assorted liquor establishments. Elimination of one from that area would work no hardship on any of the residents. The location that you propose to move to is in the path of the recently projected rehabilitation plan for that section of the city;

(b) Belmont Avenue and abutting streets are fairly littered with various types of licenses;

(c) The Pastor of St. Stanislaus Church most emphatically, in writing, evidenced his opposition because to sanction the transfer would bring it closer to the Church and the adjoining playground.

The petition of appeal alleges that, under all the circumstances, the action of respondent was illegal, arbitrary and capricious.

The evidence herein shows that appellant has conducted his licensed business at 293 West Kinney Street for the past seventeen years, and has a clear record. Many properties in that area, including the property owned by appellant, are about to be taken over for school purposes. Threatened by condemnation proceedings, appellant has agreed to sell his property to the Board of Education of the City of Newark. He seeks herein to move his license a distance of two and one-half blocks to 121 Belmont Avenue, which property is presently owned by Polish Falcons A.C. #17 and which property he has contracted to buy. Nearby are numerous retail establishments, wholesale jobbing places, a garage and a brewery. Nearly opposite is a new housing development. For many years Polish Falcons A.C. #17 has held a club license for 121 Belmont Avenue, and in October 1954 it obtained from respondent consent to transfer its license to 786-94 S. 20th Street subject to completion of premises at said address. Apparently it has not completed its new premises to date, and it is indicated that the completion of its new premises is contingent on the sale of its premises at 121 Belmont Avenue.

As to (a): The evidence herein shows that appellant's present premises are opposite Building 9, and that his proposed premises will be opposite Buildings 8 and 10 in the new housing development. A transfer may not be denied merely to decrease the number of licenses. Kirschoff v. Millville, Bulletin 254, Item 8. The transfer sought herein will in no way aggravate the existing situation so far as the housing development and rehabilitation plan are concerned. Matthews et al. v. Orange et al., Bulletin 936, Item 9; cf. Bivona v. Hock, 5 N.J.Super. 118.

As to (b): The nearest distribution license to 121 Belmont Avenue is located on 17th Avenue and is 1043 feet away and, hence, is not within five hundred feet of premises for which a like license has been issued. There are a number of consumption licenses on Belmont Avenue and abutting streets, but the nearest place licensed for consumption is located at the corner of Belmont Avenue and 18th Avenue and is 643.68 feet away. In the City of Newark there is scarcely any section without a large number of licensed premises, and in hardship cases it is difficult for a licensee, desiring to move more than 750 feet from his present premises, to obtain other premises which are more than the minimum five hundred feet from other similarly licensed premises as required by local regulations. I conclude that in this area, devoted principally to business and industrial purposes, the denial of the transfer to a presently licensed building because of other existing licenses was unreasonable.

As to (c): The distance between the nearest entrance to the proposed premises and the nearest entrance to St. Stanislaus Church is 344.5 feet. The reference to a playground is misleading. Adjoining the Church to the north thereof and nearer the proposed premises is a plot of ground used as a parking area for church purposes. There is no evidence that this area is used as a playground. This case is clearly

distinguished from Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1, wherein the action of respondent in refusing to transfer a consumption license to premises directly opposite to, and less than two hundred feet in a direct line from, the same Church was affirmed. In that case the Pastor and many of his parishioners appeared, and a petition signed by 682 members of the parish was presented at the hearing held before the local Board. In this case the proposed premises are located much further from the Church, the premises must be closed on Sunday, and the letter written by the Pastor was entirely unsupported by any evidence.

After reviewing all the evidence I conclude that the action of respondent herein was unreasonable and must be reversed.

There is a practical difficulty as to the form of an order to be entered in this case. So far as appears, appellant is presently operating at 293 West Kinney Street, although he has entered into a contract to sell his premises to the Board of Education; and Polish Falcons A.C. #17 is presently conducting activity under its club license at 121 Belmont Avenue although it has entered into a contract to sell its premises to appellant. It may be that both licensees can and will decide to retain possession of their present premises until after July 1, 1955, and obtain renewals of the licenses they now hold for their respective premises. I shall enter an order herein reversing the action of respondent and ordering it to transfer appellant's license as requested. However, leave will be given to appellant to apply to me within ten (10) days from the date hereof to amend said order so that it will provide merely for a reversal of the action of respondent. If such amended order is entered and both parties obtain renewals for their present premises, appellant can thereafter apply to respondent for the transfer of his renewed license to 121 Belmont Avenue, and the Conclusions and Amended Order entered herein will be an advisory opinion as to said application.

Accordingly, it is, on this 13th day of June, 1955,

ORDERED that the action of respondent in denying appellant's application to transfer his license to 121 Belmont Avenue, Newark, be and the same is hereby reversed, and respondent is directed to transfer said license in accordance with the application made by appellant.

William Howe Davis,
Director.

2. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against GEORGE SCHROEDER, t/a 677 Ocean Avenue, 677 Ocean Avenue, Jersey City 5, New Jersey, Holder of Plenary Retail Consumption License C-428, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Abe A. Schultz, Esq., Attorney for Defendant-licensee.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On April 24, May 5 and 12, 1955, you allowed, permitted and suffered gambling, commonly known as 'numbers writing', in and upon the licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On April 24, May 5 and 12, 1955, you allowed, permitted and suffered participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon the licensed premises; in violation of Rule 6 of State Reg lations No. 20.

"3. On Friday, April 22, 1955, at about 11:15 P.M. and on Sunday, April 24, 1955, at about 1:55 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38."

As to Charges 1 and 2: The file herein discloses that two ABC agents entered defendant's licensed premises at about 1 a.m., April 24, 1955. During this visit each agent, while at the bar, placed a fifty-cent bet on certain numbers with John Joseph Burke, the bartender. The same agents returned to the premises about 9:15 p.m. on May 5, 1955. On this visit the agents observed the same bartender accept about ten number bets over the bar from other male patrons and each agent then placed a fifty-cent bet on certain numbers with the bartender. The same agents, with marked money in their possession, again entered the premises shortly after noon on May 12, 1955. On this visit each agent placed a dollar-bet on certain numbers with the same bartender, and each gave him a marked dollar-bill. The bartender recorded these bets on a slip of paper. After other ABC agents and members of the Jersey City Police Department, who had been waiting outside, entered the premises, the slip of paper was found in the possession of the bartender and the two marked bills were found in the drawer of the back bar along with $5.30 other money. John Joseph Burke

was arrested by a member of the Jersey City Police Department.

As to Charge 3: On the evening of April 22, 1955, the same two ABC agents referred to above visited defendant's licensed premises. After observing sales made to various patrons for off-premises consumption after 10 p.m., one of the agents, at about 11:15 p.m., purchased from the same bartender a pint of whiskey for off-premises consumption. During their visit on April 24, 1955, the other agent, at about 1:55 a.m., purchased from the same bartender three cans of beer for off-premises consumption.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of twenty days because of the violations set forth in Charges 1 and 2 (Re Disner & Gordon, Bulletin 1051, Item 4) and for an additional period of fifteen days because of the violation set forth in Charge 3 (Re DeLorenzo, Bulletin 1060, Item 7). Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 6th day of June 1955,

ORDERED that Plenary Retail Consumption License C-428, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to George Schroeder, t/a 677 Ocean Avenue, 677 Ocean Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2 a.m., June 13, 1955; and it is further

ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 2 a.m., July 13, 1955.

William Howe Davis,
Director.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against George C. Compton, t/a 4 Acres, St. Hwy. Rt. #130 on E.S. between Windsor and Robbinsville, Washington Township (Mercer County), PO Robbinsville, New Jersey, Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Washington (Mercer County).	CONCLUSIONS and ORDER

David Kelsey, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On April 7, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to a person under the age of twenty-one (21) years, viz., Donald ---, age 19; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein Donald --- testified that he is nineteen years of age; that on the evening of April 7, 1955, he rode in an automobile owned by another minor named John --- to defendant's licensed premises, arriving there between 9 p.m. and 9:30 p.m. Donald further testified that, after the car had been parked to the rear of the premises, he went to the rear door which was opened by a man whom he could not identify; that he asked the man for a half-case of beer and a pint of Seagram's; that he received a box containing twelve cans of beer and a pint of Seagram's whiskey; and that, after he paid $5.90 to the man, he carried the box to the parked car. John --- testified that Donald was riding in his automobile on the evening of April 7; that between 9 and 9:30 p.m. he stopped the car near the back door of defendant's licensed premises; that, after Donald left the car and went to the back door, the witness saw Donald hand some money to a man inside the doorway, after which Donald returned to the car with twelve cans of beer and a pint of whiskey. Both minors testified that they drove away from defendant's premises with the alcoholic beverages in the car.

Each of the aforesaid minors was taken to defendant's premises by ABC agents on subsequent dates and each minor positively identified the premises as the premises in which Donald had made the purchase, but each was unable to identify the person who made the sale.

At the hearing herein defendant testified that he was in his licensed premises on the evening of April 7 but that he left the premises before 9 p.m. and did not return until some time after midnight. Thomas William Cook, his bartender, testified that he was on duty between 9 p.m. and 9:30 p.m. on April 7 but denies that he made the sale to Donald. He does admit that at some time between 7 p.m. and 8:30 p.m. on April 7 he sold one half-case of beer and a pint of Calvert whiskey at the rear door of the premises "to a colored fellow about middle age, 25 or 30 years old."

The testimony of the two minors was not shaken on cross-examination, and I believe that they are telling the truth. Their failure to identify the specific person who sold them the beer is not fatal in disciplinary proceedings. Re LaCorte, Bulletin 469, Item 1; Re Burns, Bulletin 1060, Item 10. This is especially true in the present case because Donald testified that he "wasn't all the way in the door" and that he did not notice any light in the rear part of the licensed premises. Hence I find defendant guilty as charged.

Defendant has a prior record. Effective April 20, 1953, the Washington Township Committee suspended his license for a period of twenty days after he had pleaded guilty to charges

alleging that he sold and permitted the sale of alcoholic beverages to minors. Since this is a second similar violation within a five-year period, I shall double the minimum penalty imposed in a case involving the sale of alcoholic beverages to a nineteen-year-old minor and shall suspend defendant's license for a period of twenty days.

Accordingly, it is, on this 9th day of June, 1955,

ORDERED that plenary retail consumption license C-4, issued by the Township Committee of the Township of Washington (Mercer County) to George C. Compton, t/a 4 Acres, for premises on St. Hwy. Rt. #130 on E.S. between Windsor and Robbinsville, Washington Township (Mercer County), be and the same is hereby suspended for the balance of its term, effective at 2 a.m. June 17, 1955; and it is further

ORDERED that, if any license be granted to this licensee or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 2 a.m. July 7, 1955.

William Howe Davis,
Director.

4. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE SEIZED ON PREMISES WHERE ILLICIT ALCOHOLIC BEVERAGES WERE SEIZED - OWNER'S CLAIM ACCEPTED THAT HIS PRESENCE AT THE TIME OF THE SEIZURE WAS MERELY COINCIDENTAL - MOTOR VEHICLE RETURNED TO OWNER.

In the Matter of the Seizure on December 10, 1954 of a quantity of alcohol, 645 five-gallon empty cans, 16,700 lbs. of sugar, a Ford sedan, a Ford truck and a Reo truck on the farm owned by Sigmund Ciak located on Pleasant Grove-Middle Valley Road, in Washington Township, County of Morris and State of New Jersey.	Case No. 8776 On Hearing CONCLUSIONS and ORDER

Anthony A. Calandra, Esq., Attorney for Charles S. Abrams.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On December 10, 1954 ABC agents seized a quantity of illicit alcohol, a large number of empty five-gallon cans, sugar, a Ford truck, and a Reo truck at what is known as a "drop", located on a farm owned by Sigmund Ciak, on Pleasant Grove-Middle Valley Road, Washington Township, New Jersey. At the seizure hearing in the case, forfeiture of the above mentioned articles was not opposed by any person and such articles were forfeited by my Order entered on January 28, 1955.

The agents seized the Ford truck at about 4:30 P.M. on the day in question, and seized the Reo truck when it entered the farm at about 7:30 P.M. Charles S. Abrams, the owner of a Ford sedan, drove upon the farm at about 8:00 P.M. and his car was likewise seized. He claimed to be

innocent of any complicity in the unlawful activities taking place on the farm; that he was there for a lawful purpose, and hearing on this score was carried, and decision therein reserved by the terms of the aforementioned Order.

When such matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered by Charles S. Abrams, who sought return of the Ford sedan.

There was no illicit alcohol, or other evidence of unlawful alcoholic beverage activity in the Ford sedan. Nevertheless there was a possibility that evidence would be developed implicating Abrams and his car in the unlawful activities being carried on at the farm.

At the hearing Charles S. Abrams testified that he has been in the record business in Brooklyn, New York for 28 years. Apparently he has no previous criminal record. Without reciting in detail the evidence which was available as presented at the hearing, it does not furnish a basis to justify a finding that Charles S. Abrams participated or was implicated in the unlawful alcoholic beverage activities being carried on at the farm. Nothing was developed of sufficient import to contradict Mr. Abrams' sworn testimony that he came to the farm on legitimate business and that it was merely coincidental that he was there when the seizure was in progress.

Although the motor vehicle is technically subject to forfeiture because it was seized on premises where illicit alcoholic beverages were found (R.S. 33:1-1(i), R.S.33:1-66(b)), this penalty obviously would not be inflicted on an otherwise innocent person who happened to drive upon such premises. I shall give Charles S. Abrams the benefit of the doubt and return the Ford sedan to him upon the payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 20th day of June, 1955, Charles S. Abrams pays the costs incurred in the seizure and storage of the Ford sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to him.

William Howe Davis,
Director.

Dated: June 9, 1955.

SCHEDULE "A"

1 - Ford sedan, Serial No. UYEG120681,
1954 N.J. Registration WL32M.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - CLAIM OF INNOCENT LIENOR AGAINST MOTOR VEHICLE RECOGNIZED.

In the Matter of the Seizure on February 16, 1955 of a quantity of alcohol and an Oldsmobile sedan on the White Horse Pike, 900 feet south of Gibbsboro Road, in the Borough of Clementon, County of Camden and State of New Jersey.	Case No. 8812 On Hearing CONCLUSIONS and ORDER

Howard R. Yocum, Esq., Attorney for Girard Trust Corn Exchange Bank.

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 quantity of alcohol, and an Oldsmobile sedan, described in a schedule attached hereto, seized on February 16, 1955 on the White Horse Pike, near Gibbsboro Road, Clementon, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made in the first instance by a New Jersey State Trooper while on routine traffic duty on the highway, after he discovered 15 one-gallon jugs of alcohol in the Oldsmobile sedan. William T. Ayres, the registered owner of the vehicle, and Charles Johnson, were in the car.

There was no label, or stamp indicating the payment of tax on alcoholic beverages on any of the jugs. The alcohol and motor vehicle were turned over to ABC agents. Johnson told the agents that he purchased the alcoholic beverages from a stranger and was transporting the alcoholic beverages for purpose of sale to a stranger. Ayres had been arrested in Lawnside, New Jersey on November 26, 1954 in connection with the seizure of an illicit still in that municipality.

The contents of one of the jugs was analyzed by the Division chemist who reports that it is alcohol and water fit for beverage purposes, with an alcoholic content by volume of 39.4 percent.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of Girard Trust Corn Exchange Bank, which sought recognition of its alleged lien on the Oldsmobile sedan. Forfeiture of the alcohol was not opposed by any person.

Report of ABC agents and other documents in the file, establishing the above recited facts, were admitted into evidence with consent of counsel for the bank.

The seized alcohol is illicit because of the absence of a label or tax stamp on any of the jugs. R.S. 33:1-2, 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.

Girard Trust Corn Exchange Bank has presented a chattel mortgage dated December 30, 1953, made by William T. Ayres to the bank, covering the Oldsmobile sedan, securing the

payment of $1244.89. The present balance due thereon is $474.89.

Prior to accepting such chattel mortgage the bank was furnished with information that William T. Ayres had resided at a Lawnside address for 16 years and was employed as a bartender in the same municipality.

The bank verified the employment of Ayres, and on that basis extended credit to him. Ayres does not appear to have had a criminal record at the time the bank accepted the chattel mortgage in December 1953. From September 1954 until the seizure Ayres' payments on the account were unsatisfactory, and the bank would have repossessed the car if they could have located its whereabouts.

I am satisfied that Girard Trust Corn Exchange Bank 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 its lien to the extent of $474.89. R.S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that the Oldsmobile sedan, 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. 33:1-66, and that it shall be offered for sale at public sale, pursuant to terms to be announced hereafter, and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained, otherwise the motor vehicle will be returned to Girard Trust Corn Exchange Bank upon payment of the costs of its seizure, storage, and sale; and it is further

ORDERED that if the Oldsmobile is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second; out of the balance, if any, there shall be paid to the Girard Trust Corn Exchange Bank its lien claim, recognized to the extent of $474.89; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" constitute unlawful property, and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66, and that they 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: June 7, 1955.

SCHEDULE "A"

15 - one-gallon glass jugs of alcohol
1 - Oldsmobile sedan, Serial No. 519W4382, 1954 N.J. Registration CJY-19.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against CATHERINE BIGGIO, ADMX. of ESTATE OF EUGENE BIGGIO, SR. (deceased), 650 First Street, Hoboken, N. J., Holder of Plenary Retail Consumption License C-26, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.	CONCLUSIONS AND ORDER

Catherine Biggio, Admx., Pro se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that she possessed on her licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

The file herein discloses that on May 7, 1955, an ABC agent, in the course of a routine inspection, tested twenty-seven open bottles of assorted brands of alcoholic beverages. The contents of all of the bottles tested with the exception of one 4/5 quart bottle labeled "Calvert Reserve Blended Whiskey 86.8 Proof" were genuine as labeled. The agent seized the aforementioned bottle and submitted same to the Division Chemist. The latter's analysis of the contents of the bottle disclosed the fact that it was low in proof and high in solids and acids when compared with an analysis of the contents of a genuine bottle of the same brand. Hence it is apparent that the label on the seized bottle did not truly describe its contents.

Defendant has no prior adjudicated record. I shall suspend the license for a period of fifteen days, the minimum suspension for a violation of the kind in question. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Cf. Re Cybulsky, Bulletin 1031, Item 7.

Accordingly, it is, on this 10th day of June 1955,

ORDERED that Plenary Retail Consumption License C-26, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Catherine Biggio, Admx. of Estate of Eugene Biggio, Sr. (deceased), 650 First Street, Hoboken, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. June 20, 1955, and terminating at 2 a.m. June 30, 1955.

William Howe Davis,
Director.

7. DISCIPLINARY PROCEEDINGS -- CHARGE OF SOLICITING BY TELEPHONE IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 20 DISMISSED.

In the Matter of Disciplinary Proceedings against

WESTON & COMPANY,
560 Federsl Street, S/E corner Broadway,
Camden, New Jersey,

Holder of Plenary Retail Distribution License D-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Stoffer & Jacobs, Esqs., by David Stoffer, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"In or about December 1954, you solicited by telephone the purchase of alcoholic beverages and allowed, permitted and suffered such solicitation; in violation of Rule 3 of State Regulations No. 20."

Rule 3 of State Regulations No. 20 provides:

"No licensee shall directly or indirectly solicit from house to house, personally or by telephone, the purchase of any alcoholic beverage, or allow, permit or suffer such solicitation."

At the hearing herein an ABC agent testified that on January 17, 1955, he questioned Philip Bogen, the manager of defendant's store in Camden, concerning the sale of a quantity of alcoholic beverages about two weeks before the previous Christmas. The agent testified that the manager told him that, prior to Christmas, he had telephoned to Runnemede Motors, an old customer; that he was then advised "there had been a change there, it's now LaFlam and Jentsch" and that "we obtained an order for the alcoholic beverages mentioned."

On behalf of defendant Philip Bogen testified that he has been manager of defendant's Camden store since some time prior to Christmas 1952; that defendant's records show that Runnemede Motors Company had been a customer of defendant "for quite a number of years prior to my coming there;" that, in accordance with a request received from a Mr. Wolf of Runnemede Motors, he had telephoned to him "as a reminder" prior to Christmas 1952 and again prior to Christmas 1953 concerning his annual Christmas order. Mr. Bogen further testified that, prior to Christmas 1954, he again called the Runnemede Motors number and asked for Mr. Wolf; that Mr. LaFlam answered the 'phone and told him that Mr. Wolf was no longer there and that the business had been sold to LaFlam and Jentsch. He further testified that Mr. LaFlam inquired as to the nature of his business; said that "perhaps he would be having a Christmas party;" requested Mr. Bogen to get in touch with him in about two weeks, and that Mr. LaFlam placed an order for alcoholic beverages when Mr. Bogen

subsequently called him back.

Max R. Jentsch, who was called as a witness by the Division, testified that he was standing near Mr. LaFlam when the first telephone call referred to above was received. His testimony confirms the change of ownership of the business and corroborates the testimony of Philip Bogen so far as the statements then made by Mr. LaFlam are concerned.

The attorney for defendant has submitted a memorandum and has argued the case before me.

Rule 3 of State Regulations No. 20 has been in effect for more than twenty years. In Bulletin 173, Item 17, Commissioner Burnett said:

> "This rule was made because of frequent complaints received from householders of solicitation of products which they did not wish to buy. There are many who have for liquor a deep-rooted feeling of aversion and dislike. Often the reason is based on principle, or moral or religious scruples. Others, who hold no such antipathy, are opposed because they do not want to be exposed to high pressure sales promotion in their homes. Household interruption and the heightening irritation caused by personal solicitation eventually become maddening whether caused by the ring of the phone or the buzz of the doorbell. Excessive promotion of liquor sales is consciously distasteful to the public.
>
> "The rule does not prevent proper advertising in the newspapers or sending advertising literature through the mail. Nor is it designed to prevent the mere distribution from house to house of handbills or pamphlets or other approved advertising matter provided that such distribution is not accompanied by any direct solicitation. Such handbills or pamphlets may be thrown on the porch, put in the mail box or slid under the door. In no wise, however, may the householder be personally contacted - no door bells may be rung - no sales talk given."

In Bulletin 183, Item 15, Commissioner Burnett said:

> "The State Rules prohibit solicitation from house to house personally or by telephone. See Rule 3 of the Rules Concerning Conduct of Licensees. That means that you can't send out canvassers or salesmen to ring door bells and solicit orders directly from householders or do what amounts to the same thing by telephone."

Referring to the same Rule, Commissioner Burnett, in Bulletin 257, Item 7, said:

> "It was made because of frequent complaints from householders, some of whom objected on principle or scruple, the others because they did not want to be exposed to high pressure sales promotion in their own homes."

In Bulletin 325, Item 16, it was ruled that "low pressure" selling by telephone to prospective customers violates the Rule.

In Re Saul, Bulletin 890, Item 5, Director Hock suspended defendant's license for five days after he had pleaded non vult to a charge of violating Rule 3 of State Regulations No. 20. In that case it appeared that defendant's manager had made telephone calls to various people in a nearby community, asking these

persons if they desired to purchase any alcoholic beverages. It does not appear that these persons had previously requested the manager to telephone to them.

In view of the unusual circumstances of this case I conclude that the evidence herein does not disclose a violation of the Rule in question. Hence I shall dismiss the charge.

Accordingly, it is, on this 13th day of June, 1955,

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

William Howe Davis,
Director.

8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF SUGAR AND MINUTE QUANTITY OF ALLEGED ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ITS CONTENTS RETURNED FOR LACK OF EVIDENCE THAT IT IS IN FACT AN ALCOHOLIC BEVERAGE AND THAT SUGAR WAS INTENDED FOR MANUFACTURE OF ILLICIT ALCOHOL.

In the Matter of the Seizure on March 10, 1955 of a bottle containing a small amount of liquid, dry mash, 500 lbs. of sugar, a shirt, a pair of coveralls, and a Mercury sedan on U.S. Route No. 1, in Edison Township, Middlesex County and State of New Jersey.)	Case No. 8826 On Hearing CONCLUSIONS and ORDER

Frank D. Brown, Pro se.
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 500 lbs. of sugar, a bottle containing a small amount of liquid, a substance described as mash, and a Mercury sedan, described in a schedule attached hereto, seized on March 10, 1955 on U.S. Route No. 1, in the Township of Edison, New Jersey, constitute unlawful property and should be forfeited.

The motor vehicle, operated by its owner Frank D. Brown, was halted on the day in question by local police during a routine patrol of traffic on the aforesaid highway. When the officers discovered the sugar and other articles in the car, they took the car and its contents into custody and notified the Division of Alcoholic Beverage Control. Thereafter, the car and other articles were turned over to ABC agents.

When the matter came on for hearing pursuant to R.S. 33:1-66, Frank D. Brown appeared and sought return of the car and its contents.

An ABC agent testified that when he went to the local police station the Mercury sedan was on a parking lot; that the sugar was in the car; and that the bag of mash and the bottle were handed to him by another ABC agent who obtained it from the Chief of Police. The first agent further testified that Brown told him that he bought the sugar in Brooklyn for use in making

lemonade next summer at a picnic grove. Brown also said that he purchased a bottle of Schenley's Whiskey in a tavern in Manville and that if there was a bag with dry grain poultry mash in the car, it was there without his knowledge.

The Division's chemist testified that the bottle in question had no label, or stamp indicating the payment of tax on alcoholic beverages, and contained about one-eighth of an ounce of liquid which was an insufficient quantity to analyze for alcoholic content; that he tasted the liquid and was of the opinion that it was alcohol and water and had an odor similar to bootleg alcohol.

Frank Brown, testifying in his own behalf, reiterated his statement that he bought the sugar to make lemonade for picnics given by a club during the summer months. He further testified that if there were a bottle in his car, it must have been the bottle of "sealed" whiskey which he purchased at the tavern and that it was empty; that he knows nothing about any "moonshine" being in the bottle; and that according to his recollection, the bottle in the car had a label. He also says he never saw the poultry mash in his car.

Frank Brown states that he is 37 years of age, married, resides with his wife and two children, is employed as an auto mechanic and does mason work but was unemployed at the time of the seizure except for some odd jobs.

His wife was also employed. Apparently, Frank D. Brown has no previous criminal record for violating any liquor laws.

To justify forfeiture evidence must be presented that illicit alcoholic beverages were transported in the motor vehicle or that the sugar being transported in the motor vehicle was intended for the manufacture of illicit alcoholic beverages. R.S. 33:1-1(i), (y), R.S. 33:1-2, R.S. 33:1-66.

Even though a small amount of illicit alcoholic beverages would be a sufficient cause for forfeiture, one of the essential elements which must be established is that such illicit alcohol has an alcoholic content of more than one-half of 1% by volume. Unfortunately, the amount seized was insufficient to definitively determine the alcoholic content thereof. The small amount of dry poultry grain mash by itself does not justify the inference that it was intended for the manufacture of illicit alcohol. The sugar, of course, has many uses aside from the availability for the manufacture of illicit alcohol. In the absence of any evidence that it was intended for such manufacture, no finding can be made that it was so intended to be used, to the exclusion of any other use.

While Brown's purported explanation of his intended use of the sugar is suspect, I cannot substitute such suspicion in place of legal evidence. Hence, I am compelled to return the motor vehicle and its contents to Frank Brown upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 27th day of June, 1955, Frank D. Brown pays the costs incurred in the seizure and storage of the Mercury sedan and its contents, described in Schedule "A" attached hereto, such motor vehicle and its contents will be returned to him.

William Howe Davis,
Director.

Dated: June 17, 1955.

SCHEDULE "A"

1 -- bottle of alcoholic beverages
1 - paper bag with dry mash
1 - set of coveralls
1 - shirt
500 - lbs. of sugar
1 - Mercury sedan, Serial No. 50ME84093M, 1954 N.J. Registration SN41-V.

William Howe Davis,
Director.