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

BULLETIN 845 JUNE 14, 1949.

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 845 JUNE 14, 1949.

1. APPELLATE DECISIONS - BANIC v. GALLOWAY TOWNSHIP.

ANDREW BANIC,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF GALLOWAY,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Harry Souchal, Esq., Attorney for Appellant.
Enoch A. Higbee, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the denial of an application for a plenary retail distribution license for premises 1272 White Horse Pike, Township of Galloway.

The Township Committee, consisting of three members, was unanimous in its vote to deny the application filed by appellant.

The denial was predicated, in the main, upon the ground that there already exists in the municipality a sufficient number of licensed establishments to cater to the needs and neeessities of the residents. Respondent also claimed that appellant's proposed premises are located within 500 feet of an existing licensed premises and the issuance of a liquor license would therefore be contrary to Section 2 of an ordinance adopted by the respondent Township Committee on June 19, 1937, which ordinance is still in effect.

According to the last Federal census, Galloway Township has a population of 3,457. There are outstanding 27 plenary retail consumption licenses, or one such license for every 128 persons residing there. The mere recital of these figures amply supports the reasonableness of the respondent's policy against the issuance of any additional licenses in the township.

The appellant contends, however, that the issuance of a distribution license for his premises, where he operates a grocery store, will serve the convenience of his customers. In support of this contention he has produced a petition signed by 89 persons favoring the issuance of a license to him. Several witnesses appeared on behalf of the appellant and testified that a package goods license would be a convenience to the people living in the community.

The three Township Committeemen who voted against the issuance of the license testified that it was their opinion that, in view of the large number of plenary retail consumption licenses outstanding, there was no need for an additional license of any kind in the municipality. Committeeman Harold Booth testified that within a mile and two-tenths on the White Horse Pike, near the proposed premises of appellant, there are now located seven liquor licensed establishments.

There is no plenary retail distribution license issued and outstanding at the present time in Galloway Township. In fact, the Township Committeeman testified that no new license whatsoever has been issued since 1937. While it is true that an issuing authority may recognize and be guided by the differences between a distribution

and a consumption license (cf. Bambo v. Belleville et al., Bulletin 353, Item 6, Rappaport v. Union et al., Bulletin 664, Item 2), it is fundamental that it rests within the sound discretion of the issuing authority to determine in the first instance whether those differences warrant the issuance of an additional license when considered in the light of the public interest and the need and necessity of the inhabitants of the municipality as a whole. Fogolson v. Montville, Bulletin 780, Item 10. The respondent issuing authority concluded in its discretion that there was not a sufficient public necessity to be served by the granting of the present application. Upon an examination of the entire record, I do not find that the appellant has sustained the burden of proving that the respondent has abused such discretion or that its determination is arbitrary or unreasonable.

For the reason aforesaid, I deem it unnecessary in this case to pass upon the validity of Section 2 of the ordinance referred to herein.

The action of the respondent is therefore affirmed.

Accordingly, it is, on this 2nd day of June, 1949,

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

ERWIN B. HOCK
Director.

2. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF HOMEMADE WINE MANUFACTURED WITHOUT PERMIT - WINE AND EQUIPMENT FOR ITS MANUFACTURE ORDERED FORFEITED.

In the Matter of the Seizure on February 10, 1949 of a quantity of homemade wine, a grape press and grape masher at 17 Park Avenue, City of Summit, County of Union and State of New Jersey.

Case No. 7383

ON HEARING
CONCLUSIONS AND ORDER

Charles C. Giffoniello, Esq., Attorney for Damiona and Anthony Schipani.

Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 180 gallons of homemade wine, a grape press and a grape masher, seized on February 10, 1949 at 17 Park Avenue, Summit, New Jersey, constitute unlawful property and should be forfeited.

It appears that the seizure was made at the home of Anthony Schipani and Damiona Schipani, his wife, after she sold a gallon of the wine to an ABC agent. The ABC agent was there to investigate a complaint that either Mr. or Mrs. Schipani had previously sold wine. The wine had been manufactured without a permit obtained from this Division. In any event, it is unlawful to sell homemade wine since it can only be manufactured pursuant to a permit for personal consumption in the home. R. S. 33:1-75.

When the matter came on for hearing pursuant to R. S. 33:1-66, counsel appeared for Mr. and Mrs. Schipani and admitted that the facts are as above stated. The wine, the press and the masher are, therefore, subject to forfeiture. R.S. 33:1-1(i), R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Counsel sought return of all or part of the seized property. He stated that Mrs. Schipani was too ill to appear, and, hence, presented a statement of the facts which he represented he was prepared to establish by competent evidence if the Director deemed such facts sufficient to warrant relieving the Schipanis from forfeiture.

While this is a practice not to be encouraged, nevertheless, under the circumstances in the case, I have reviewed the statement to determine whether I would be authorized to waive forfeiture if the facts are as represented by counsel.

Counsel says that Mr. Schipani and his wife have resided in Summit for over twenty-five years; that they are reputable, law-abiding and have an industrious background; and that the wine was manufactured by Mr. Schipani for family consumption without any knowledge that a permit was required. It is represented that an acquaintance, named Rosiello, came to the Schipanis' home and told them that he was not well; that he preferred homemade wine to commercial wine and persuaded them to sell him a gallon at a time on two or three occasions as a favor; that when the ABC agent approached Mrs. Schipani and asked her to sell him a gallon of wine and mentioned Rosiello's name she sold the agent the wine, again as a favor; and that the Schipanis did not make a business of, or earn a living by, selling wine.

I am only authorized to return property subject to forfeiture if the person seeking such return establishes to my satisfaction that he acted in good faith and unknowingly violated the law. R.S.33:1-66(e).

It has been pointed out repeatedly that, at this late date, many years after Repeal, everyone knows or should know that it is unlawful to sell any alcoholic beverages without a license. Seizure Case No. 7247, Bulletin 842, Item 6. Hence, a person who sells alcoholic beverages without a license cannot be considered as unknowingly violating the law in good faith, irrespective of whether the sale took place in a large-scale commercial speakeasy or at home on infrequent occasions.

The Schipanis apparently displayed a complete disregard for the liquor laws. In addition to their unlawful activities with wine, there was seized a jug of anisette which Mr. Schipani says he purchased at a liquor store, and a jug which he said contained wine but which upon analysis was actually found to be alcohol, water, color and flavor. These alcoholic beverages are, prima facie, illicit because the jugs did not bear any labels, tax stamps or anything else to indicate that they were of legitimate origin. While the alcoholic beverages may possibly have been legitimately purchased, on the other hand, there is a strong inference that it was homemade anisette and whiskey.

Therefore, even if established, the facts do not warrant return of any portion of the seized property to the Schipanis, and their application is hereby denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal

institutions, or destroyed in whole or in part, at the direction of the State Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: June 1, 1949.

SCHEDULE "A"

2 - 50-gal. bbl. red wine full
1 - 25-gal. bbl. red wine full
1 - 15-gal. bbl. red wine full
3 - 10-gal. stone jugs full of red wine
1 - ½-gal. glass jug, ½ full of anisette
1 - 1-gal. glass jug of whiskey 1/10 full
3 - 1-gal. glass jugs of white wine, 2 are full, 1 is 9/10 full
8 - 1-gal. glass jugs of red wine, 7 are full, 1 is ½ full
1 - wine press
1 - grape masher

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN RESTAURANT - ALCOHOLIC BEVERAGES AND RESTAURANT FIXTURES AND EQUIPMENT ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on February 14, 1949, of alcoholic beverages and various items of fixtures, furnishings and equipment, at a restaurant located at 243 Bloomfield Avenue, in the Town of Montclair, County of Essex and State of New Jersey.

Case No. 7385

ON HEARING
CONCLUSIONS AND ORDER

Jack Wildman, Esq., by David Adelman, Esq., Attorney for Theodore Fletcher.
Seymour Bodner, Esq., Attorney for Super-Cold New York Co., Inc.
Acme Vending Co., Inc., by Ernest Krauter.
Dierickx Vending Co., by Ray Keyes, Sales Manager.
Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, $32.79 in cash, and various fixtures, furnishings and equipment, itemized in a schedule attached hereto, seized on February 14, 1949, at Theodore Fletcher's restaurant located at 243 Bloomfield Avenue, Montclair, New Jersey, constitute unlawful property and should be forfeited.

It appears that the property was seized because, according to an ABC agent, he purchased a drink of whiskey there on the above date, while investigating a complaint that speakeasy activities were being carried on at the restaurant.

Theodore Fletcher did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

When the matter came on for hearing pursuant to R. S. 33:1-66 Theodore Fletcher appeared with counsel, denied that he had sold any alcoholic beverages to the agent and sought return of his property. Appearances were also entered by counsel for Super-Cold New York Co., Inc., which sought return of a refrigerator; by Ernest Krauter, on behalf of Acme Vending Co., Inc., which sought the return of a music machine; and by Ray Keyes, on behalf of Dierickx Vending Co., which sought return of a cigarette vending machine.

The evidence presented at the hearing established that the ABC agent was actually served with a double shot of whiskey, at the counter, by Fletcher's employee, at Fletcher's direction, and that the agent paid the counterman for the whiskey. Fletcher admits that such is the fact.

Fletcher's defense rests entirely upon his contention that he told his employee to give the drink to the agent, and that instead, the employee, without Fletcher's knowledge or consent, accepted payment therefor. Fletcher's story is that the agent cultivated his acquaintance during the course of a number of visits to the restaurant, recommended a treatment for a cold which bothered Fletcher at the time, and that, hence, as a token of appreciation, when the agent was there on the day in question and asked him for a drink of whiskey, Fletcher told his employee to give it to the agent.

The ABC agent testified that he asked Fletcher whether he could buy a drink. He denies that Fletcher offered to give him a drink, or that there was any discussion or suggestion to that effect between them. The agent says that the money which he paid for the whiskey was placed in the cash register by the employee and that at this time Fletcher was seated at a table in the restaurant.

There has not been any suggestion that the ABC agent has any reason to make an unjust accusation against Fletcher. Indeed, the agent testified frankly that having made a number of visits there, he had made up his mind that he was going to ask Fletcher to sell him a drink of whiskey and if refused, close the case.

I do not believe that Fletcher told his employee to give the agent the drink of whiskey without any charge therefor. On the contrary, I am satisfied that Fletcher expected the agent to pay for the drink. It seems more probable that Fletcher seeks to magnify the actions of the ABC agent in cultivating his acquaintance in order to lend color to his claim that he felt so friendly toward the agent that he wanted to treat him to a drink.

The fact that there was a specific complaint that speakeasy activities were being carried on in the restaurant indicates at least a probability that the sale of whiskey to the agent was not an accidental incident. There were ten cans of beer in a cooler underneath a counter in the restaurant and two pint bottles of whiskey in the kitchen, where the employee obtained the agent's drink.

Speakeasy activities are always more or less surreptitious. Evidence of such activities often can be developed only by the slow process of becoming a familiar figure in the place. The operator of the speakeasy cannot complain on that account when he is finally caught.

I therefore find as a fact that Fletcher knew or should have known that the ABC agent paid for the drink of whiskey served to him. It should be further noted that even if the employee had been instructed by Fletcher to give the drink of whiskey without charge to the agent and instead such employee accepted payment therefor it does not absolve Fletcher from liability for the violation.

In forfeiture proceedings under the Alcoholic Beverage Law, Fletcher is responsible for a violation of such law committed, with or without his knowledge, by his employee or a person left in charge of his restaurant.

As I said in Seizure Case No. 7002, Bulletin 731, Item 2, to relieve the owner of a speakeasy from forfeiture under such circumstances would seriously undermine the legislative intent to forfeit

the stock in trade and equipment found in a speakeasy, since many speakeasy proprietors would probably attempt to avoid such penalty by adopting the simple expedient of personally abstaining from selling alcoholic beverages at their establishments, meanwhile professing ignorance of such sales by their employees.

The evidence justifies the conclusion that the alcoholic beverages seized in Fletcher's restaurant were intended for unlawful sale and hence are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and all personal property seized therewith in the restaurant are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S.33:1-66. Cause for forfeiture has, therefore, been established, and hence Fletcher's application for return of the seized property is denied.

The claim of Super-Cold New York Co., Inc. was presented by its sales manager, who testified that on March 25, 1947 the refrigerator seized in the place was sold by the company to one Ellsworth Corum for $954.00 by a conditional sales contract. The original contract was placed in evidence. The amount presently due to the company is $93.50.

According to the sales manager's testimony, Corum operated the restaurant when he purchased the refrigerator. The company was aware that the place had changed hands, but did not have any dealings directly with Fletcher. Fletcher apparently has no previous criminal record.

It is obvious that the refrigeration company did not know or have any reason to suspect that Fletcher was unlawfully selling alcoholic beverages at the restaurant. Hence, I shall recognize its claim.

The music box appears to be the property of Acme Vending Co., Inc. Mr. Krauter, who operates the company, testified that when first placing the machine there in September 1947, he dealt with a woman, and the place was known as "Al's Restaurant". It appeared to him to be a hamburger stand or luncheonette.

The collections from the machine were average. Krauter was there occasionally, the last time being about six months before the seizure. He says that he did not at any time observe anything to indicate that alcoholic beverages were being sold there. Nothing to the contrary has been developed. I shall, therefore, recognize the claim of the Acme Vending Co., Inc. and return the machine to it.

The cigarette vending machine appears to be the property of Dierickx Vending Co. Its sales manager testified that the machine was placed in Fletcher's restaurant on August 10, 1948 and was serviced once a week. The sales manager says that he did not know that alcoholic beverages were being sold there. It seems to be a routine placement of the machine in the normal course of business, and there is nothing in the case to indicate that the company should have known of the unlawful activities at the place. I shall recognize its claim and return the machine to the claimant.

Inquiry has disclosed that apparently it would not be to the advantage of the state to retain the refrigerator for use by a state agency conditioned upon the payment of the lien claim. The amount of the lien claim and the costs of seizure and storage of the refrigerator appear to exceed what can be realized at a public sale thereof. Hence, it will be returned to the claimant upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 13th day of June, 1949, Super-Cold New York Co., Inc. pays the costs of its seizure and storage, the refrigerator seized in this case will be returned to it; and it is further

DETERMINED and ORDERED that if on or before the 13th day of June, 1949, Acme Vending Co., Inc. and Dierickx Vending Co. pay the costs of the seizure and storage of the music box and cigarette vending machine, respectively, the music box will be returned to Acme Vending Co., Inc., and the cigarette vending machine will be returned to Dierickx Vending Co.; and it is further

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

ERWIN B. HOCK
Director.

Dated: June 2, 1949.

SCHEDULE "A"

2 - pint bottles of whiskey
10 - cans of beer
6 - cases of soda
4 - cases of empty soda bottles
1 gum vending machine and currency therein
10 - stools
3 - tables
8 - chairs
1 - Westinghouse electric fan No. 1073848
1 - National cash register No. 4249623
$32.79 cash
1 - toaster
1 - Coca Cola cooler
1 - show case
2 - clocks
1 - grill
2 - gas plates
1 - gas range
1 - lunch counter
1 - table top
1 - metal rack
1 - steam table
1 - metal sink
1 - barber's chair
miscellaneous restaurant equipment and supplies
1 - cigarette vending machine and currency therein
1 - music machine and currency therein
1 - refrigerator Model No. 32G No. D18406

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN RESTAURANT - ALCOHOLIC BEVERAGES AND RESTAURANT FIXTURES AND EQUIPMENT ORDERED FORFEITED - REFRIGERATOR RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on March 11, 1949 of a quantity of alcoholic beverages and various articles of furniture and fixtures at 27 Avenue C, in the Borough of Freehold, County of Monmouth and State of New Jersey.	Case No. 7398 ON HEARING CONCLUSIONS AND ORDER

Thomas F. Shebell, Esq., Attorney for Mrs. Willie Williams.
Abe Steinberg, appearing for Freehold Furniture Exchange.
Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and various articles of furniture and fixtures, itemized in a schedule attached hereto, seized on March 11, 1949 at 27 Avenue C, Freehold, New Jersey, constitute unlawful property and should be forfeited.

It appears that Mrs. Willie Williams conducted a small restaurant on the first floor of the building at the above address. On March 3, 1949 an ABC agent, investigating a complaint that Mrs. Williams was carrying on speakeasy activities there, entered the place and purchased food and two bottles of beer from her.

On March 11th this agent returned with a companion and purchased from Mrs. Williams bottles of beer and drinks of whiskey for himself and his companion. Other ABC agents who had remained outside then entered the restaurant and disclosed their identity. According to these agents, Mrs. Williams admitted that she had sold alcoholic beverages to the first agent.

Mrs. Williams did not hold any license authorizing her to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages. Mrs. Williams was arrested on charge of violating the liquor laws.

The agents found four quart bottles and one 12-ounce bottle of beer in a cooler in the kitchen; a gallon jug of port wine, a gallon jug of sherry wine and a pint bottle of whiskey in a closet in one of the rooms, and a pint bottle of wine elsewhere on the premises. The agents seized these alcoholic beverages together with the fixtures, furnishings and equipment in the restaurant.

According to one of the agents, he asked Mrs. Williams if she had not learned a lesson from a previous raid at the place and she said, "Well, I have to do something for a living. I can't do anything else." The records of this Division disclose that On November 13, 1943 ABC agents arrested Mrs. Williams for selling alcoholic beverages without a license at the same address and that she pleaded <u>non vult</u> on June 25, 1945 and was fined $100.00.

The circumstances in the case amply justify the conclusion that the seized alcoholic beverages were intended for unlawful sale and hence are illicit. R.S. 33:1-1(i). Such alcoholic beverages and all personal property seized therewith in the restaurant constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R. S. 33:1-2 and R.S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66 counsel entered an appearance for Mrs. Willie Williams and sought return of the property seized. Abe Steinberg, who, with his brother Jack Steinberg, do business as the Freehold Furniture Exchange, also appeared and sought return of an Admiral refrigerator.

At the conclusion of the testimony by the ABC agents concerning what occurred at Mrs. Williams' restaurant on March 3rd and March 11th as above outlined, counsel for Mrs. Williams stated that in view of the fact that there was an indictment pending against her he did not intend to have her testify in her own behalf.

Nevertheless, counsel urged that it was established that Mrs. Williams actually operated a restaurant, and represented that she needs the furnishings and equipment to continue such business; that many of the items were not specifically used for any unlawful purpose, and that despite her past record clemency should be extended to her in order that she should be able to earn a legitimate livelihood.

The contention that only such property as was actually used or intended for use in the unlawful sale of alcoholic beverages can legally be forfeited has been consistently rejected, and is not in accord with the law. See Seizure Case No. 7263, Bulletin 812, Item 2.

Thus, all of the seized property is subject to forfeiture. Only a person who has innocently violated the law may be relieved from forfeiture. R.S. 33:1-66(e) affords me the limited authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law.

In view of Mrs. Williams' arrest in 1943 and conviction in 1945 for selling alcoholic beverages unlawfully, it is obvious that she knew that it was unlawful to operate a speakeasy and hence she cannot be considered as having acted in good faith or unknowingly violated the law in the present instance. Consequently, for the reasons above expressed, Mrs. Williams cannot obtain return of any part of the seized property.

Abe Steinberg presented a conditional sales contract dated November 26, 1948 covering an Admiral refrigerator sold to Willie Williams. The purchase price was $400.00 and the balance due is $326.48.

Abe Steinberg testified that he has known Mrs. Williams for about three years, when she became his customer for tanks of household gas and purchased a gas range. In 1948, when purchasing the refrigerator, he obtained a written statement from her in which she asserted that she owned her own home and operated a boarding house. He swears that he did not know that Mrs. Williams had been previously arrested for violating the liquor laws or had any other criminal record.

Mr. Steinberg says that he has lived in Freehold for 36 years and it is possible that he should have known of Mrs. Williams' record. However, it is understandable that a person who sells household furniture may perhaps consider it impertinent to pry into his customers' personal affairs.

Under the circumstances, I shall give Mr. Steinberg the benefit of the doubt and accept his statement that he did not know or have any reason to suspect that Mrs. Williams was engaged in speakeasy activities at her home. Accordingly, I shall recognize his claim of $326.48 against the refrigerator. R.S. 33:1-66(f).

I am satisfied that the amount of the lien claim and the cost of seizure and storage exceed what can be realized at a public sale of the refrigerator. Hence, it will be returned to the claimants upon payment of the costs of seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 13th day of June, 1949 Abe Steinberg and Jack Steinberg, partners trading as the Freehold Furniture Exchange, pay the costs of its seizure and storage, the Admiral refrigerator will be returned to them; and it is further

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

ERWIN B. HOCK
Director.

Dated: June 2, 1949.

SCHEDULE "A"

3 - bottles of wine
1 - bottle of whiskey
5 - bottles of beer
3 - cases of soda
1 - Kalamazoo Range and hot water boiler
1 - cabinet with dishes
1 - wicker stand
1 - RCA Radio Serial #B32467
1 - wall cabinet
21 - chairs
6 - tables
1 - stool
2 - oil heaters
1 - mirror
1 - couch
1 - settee
1 - rocker
1 - Admiral Refrigerator
1 - gas stove
1 - cabinet
1 - Pepsi-Cola Cooler
Miscellaneous articles

5. COURT DECISIONS - SCHIFANO v. HOCK - ORDER OF FORFEITURE REVERSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-162-48 September Term, 1948.

SAM SCHIFANO,
Appellant,
-vs-
ERWIN B. HOCK, State Commissioner of The Department of Alcoholic Beverage Control of the State of New Jersey,
Respondent.

Argued April 4, 1949. Decided May 23, 1949.

On Appeal from an order of the Commissioner.

Before McGeehan, Donges and Colie.

Mr. Thomas F. Meehan argued the cause for appellant.

Mr. Samuel B. Helfand argued the cause for respondent.

(Theodore D. Parsons, Attorney General of New Jersey.)

The opinion of the court was delivered by

COLIE, J.

The appellant seeks on this appeal to set aside an order of the Alcoholic Beverage Commissioner declaring forfeit a White truck and its contents. The facts are as follows: At about 2:30 a.m. on October 22, 1948 a White truck owned by appellant and driven by one Palmeri was stopped by the Hudson County police because it "had no name on the side of it; and the truck looked dilapidated, the truck did. It looked kind of heavy. The truck looked suspicious." The officers conversed with the driver who told them that he did not know the contents of the truck; that he was driving from New York to Paterson; that the truck carried a "hot" load of sugar which he was to deliver to a man by the name of Freddie in Paterson, where "they are going to cook it up and make alcohol out of it." Palmeri was arrested and taken with the truck to headquarters where a search revealed that it contained 110 hundred-pound bags of sugar. In the course of his interrogation, it came out that Palmeri had been arrested in New York State in connection with the seizure of an unregistered still.

When the matter came on for hearing before the commissioner, the evidence upon which the commissioner entered the order forfeiting the seized property was as outlined above.

The procedure was had by virtue of the provisions of R.S. 33:1-1(y) and R. S. 33:1-66(d) and authorizes the seizure, forfeiture and disposition of "any *** substance *** intended for use in the manufacture of alcoholic beverages" and any "vehicle *** used *** with intend to use the same in the manufacture *** of illicit beverages." The procedure is of a civil and not of a criminal nature, and the burden of proof therefore is upon the state to establish its case by a preponderance of the evidence, and they are not held to proof beyond a reasonable doubt. The essential element in order to warrant the entry of the order under review is a finding that the sugar and the vehicle were intended for use in the manufacture of illicit alcoholic beverages. The commission based its case upon the existence of a still in

Paterson operated by a man named Freddie, to which the seized articles were destined to go. Credible proof of this essential element must be found in the statements of the driver, Palmeri, for there is no other evidence in the record on this point, excepting only the negative testimony of two investigators of the Alcoholic Beverage Commission that they knew of no illegal still in Paterson nor of anyone by the name of Freddie operating such a still. The driver, when interrogated by the Hudson County police and later by the agents of the Alcoholic Beverage Commission, gave conflicting and irreconcilable versions in explanation of his presence on the road at the time of his arrest. The respondent recognized this for in the brief filed in this case it is said: "The driver gives varying and conflicting versions of the business he is then engaged in and his destination. He first denies any knowledge of the contents of the truck. He says he is bound for Paterson. Later he changes his intended destination to New York. He then relates that he is transporting a stolen load of sugar. He finally admits that he is carting the sugar to a still where "Freddie" intends to use it in the unlawful manufacture of alcoholic beverages.

"Several hours later, after opportunity for reflection, he gives a weird and unbelievable tale of borrowing the truck from a Sam Schifano for the purpose of carting an unknown cargo for two men whom he has met in the street and whose names he does not know. As the story unfolds at greater length, it becomes more incredible and weird and is intertwined with a girl, some drinks and a craps game."

The case presents the anomalous situation of the entry by the commissioner of an order, the justification for which is dependent upon a belief in the credibility of a single witness, and in the brief filed in support of the commissioner's ruling, the story of that witness is characterized as varying, conflicting, weird and unbelievable. We are in accord with that characterization of the witness, Palmeri's, story and we are of the opinion that this evidence does not meet the burden of establishing by a preponderance of the evidence, the essential requisite that the truck and the sugar were intended for use in the manufacture of alcoholic beverages.

Our attention has been drawn to the cases of Patrick v. Driscoll, 132 N.J.L. 478 (Sup. Ct. 1945) and Commonwealth v. One 1936 Ford Truck, 7 Atl. 2d. 532 (Super. Ct. Pa. 1939). We point out that in each one of these cases the existence of an illicit still, at or in close proximity to the point where the articles were seized, was either admitted or proved. It is the absence of that fact that prompts us, in the instant case, to reverse the finding below, under Rule 3:81-13. The disposition of the case on the ground that the evidence did not sustain the commissioner's finding that the goods were constituted unlawful property makes unnecessary a discussion of the other points raised by appellant.

The order under appeal is reversed and set aside.

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6. STATE REGULATIONS NO. 17 - RULE 3 GOVERNING TRANSPORTATION CONSTRUED - INTERPRETATION HEREIN APPLICABLE TO STATE BEVERAGE DISTRIBUTOR LICENSEES ONLY.

TO ALL STATE BEVERAGE DISTRIBUTOR LICENSEES:

In view of the nature and purpose of the state beverage distributor license, which traditionally was designed to permit the operation of a "beer route", it has been determined that the requirement of Rule 3 of State Regulations No. 17 (requiring bona fide invoices or manifests to accompany deliveries of alcoholic beverages to consumers) will be satisfied, so far as state beverage distributor licensees are concerned, if there is carried (with respect to alcoholic beverages then being delivered to regular customers who desire periodic deliveries on standing orders) a route card bearing the name, address and standing order of the customer and having space thereon in which may be entered at the time of delivery (1) the date of delivery, (2) the quantity delivered, (3) size of container delivered, (4) brand delivered, and (5) price charged. Such route card may make provision for additional entries as, for example, payment made, balance due, credit allowed, etc., as the licensee may desire. Sample form of route card which will meet these requirements is set forth below.

In addition to route cards aforesaid, there must be carried in the vehicle while delivering to consumers a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container.

It is to be borne in mind that the route cards above described will be accepted as and for bona fide invoices and manifests required by Rule 3 of State Regulations No. 17 only in so far as they relate to customers with standing orders. As to merchandise delivered to customers on special order, such merchandise must be accompanied by a separate bona fide invoice or manifest stating the name of the purchaser and the kind and quantity of merchandise being delivered to such special order purchaser.

Peddling, bartering or other sale of alcoholic beverages from a vehicle in violation of Rule 3 of State Regulations No. 17, and the house-to-house solicitation of the purchase of alcoholic beverages in violation of Rule 3 of State Regulations No. 20 are prohibited as heretofore.

Dated: April 11, 1949.

ERWIN B. HOCK
Director.

Route No._____

XYZ BEVERAGE CO.
123 Main St.
Anytown, N. J.

Name_____

Address:_____
No. and Street

_____
Municipality

Standing Order_____

(Space for optional information)_____

DELIVERIES

Date	Quantity	Size	Brand	Price

(Space for optional information)

7. APPELLATE DECISIONS - REINHARDT v. CLIFTON.

JEROME REINHARDT, trading as ALLWOOD CONFECTIONERY STORE, Appellant,	)	
-vs-	)	ON APPEAL CONCLUSIONS AND ORDER
MUNICIPAL COUNCIL OF THE CITY OF CLIFTON, Respondent.	)	

Louis J. Razen, Esq., Attorney for Appellant.
John G. Dluhy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the revocation of appellant's plenary retail distribution license. The license issued for premises at 118 Market Street, Clifton, was revoked by respondent after appellant, in disciplinary proceedings instituted by respondent, had pleaded guilty to a charge of violating Rule 9 of State Regulations No. 20.

The testimony herein shows that on March 10, 1949, two ABC agents found ten packages, each containing three contraceptives, in the bottom drawer of a showcase on appellant's premises.

Appellant testified that he has held the license in question since September 1946, and that he had no knowledge that the contraceptives were on the licensed premises. His father, who was in charge of the premises on March 10, 1949, testified that he knew they were there but that they had been left there by the former licensee. In view of the above facts and the plea of guilty, there is no doubt that appellant was guilty as charged.

The question to be decided herein is whether the penalty imposed is excessive. Appellant has no prior record, and there is no evidence that contraceptives were sold or distributed on the licensed premises. I dislike to moderate any penalty imposed by any issuing authority and will do so only in those cases where it clearly appears that the penalty is excessive. A suspension of the license for twenty days would appear to be ample for a first offense of this kind. Conklin v. Bridgewater, Bulletin 809, Item 7.

The revocation imposed by respondent was to become effective on May 10, 1949. On May 4, 1949, I entered an order staying respondent's order of revocation pending determination of the appeal. This order was entered after the appeal herein had been heard. I shall vacate said order and enter an order herein modifying the revocation to a suspension of the license for twenty days.

Accordingly, it is, on this 3rd day of June, 1949,

ORDERED that the revocation of Plenary Retail Distribution License D-37 be and the same is modified to a suspension of said license for a period of twenty days; and it is further

ORDERED that the order dated May 4, 1949 is vacated, effective at 9:00 a.m. June 11, 1949, and License D-37, now held by appellant, Jerome Reinhardt, trading as Allwood Confectionery Store, for premises 118 Market Street, Clifton, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. June 11, 1949, and terminating at midnight June 30, 1949.

ERWIN B. HOCK
Director.

8. CLUB LICENSES - INDIAN LAKE COMMUNITY CLUB, INC. - OBJECTIONS CONSIDERED - APPLICATION GRANTED.

In the Matter of the Application of)
INDIAN LAKE COMMUNITY CLUB, INC.) CONCLUSIONS
for a Club License for premises located on the East Shore Road, Indian Lake, Denville, N. J.)

David Young, 3rd, Esq., Attorney for Applicant.
John Grossman, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This application for a club license was made to the Commissioner (now Director) of Alcoholic Beverage Control because two of the Township Committeemen are members of the applicant organization. R. S. 33:1-20. The record indicates that the club in question has 435 members.

Applicant produced a copy of the resolution of the Township Committee of the Township of Denville, stating that the Committee did not oppose the granting of the license. All other statutory prerequisites have been complied with.

The premises sought to be licensed are located in a one-story frame building which is about 100 feet long by 30 feet wide. The building is located on the east short of Indian Lake and is a club house which is owned by the applicant. The building consists of a room used for dancing, a room wherein soft drinks, ice cream and sandwiches are served, and two small living rooms. There is also a large sitting and lounge room where no food or drinks are permitted to be served. At the north end of the building there is a glass-enclosed porch and a small storeroom, which rooms are intended to be used for the service and storage, respectively, of alcoholic beverages.

At the hearing several objectors appeared to oppose the granting of the license.

The objections voiced by the witnesses were (1) that there is no need for another license in the community, and (2) that the premises in question are used for religious purposes -- thus constituting a church within the meaning of R. S. 33:1-76.

As to (1): "This objection would carry great weight if the application was for a consumption or distribution license. The object of a club license, however, is not to supply the needs of the neighborhood. The holder of such a license cannot lawfully serve the public. The stated objection carries no weight so far as a club license is concerned. Irish American v. Kearny, Bulletin 293, Item 11." (Re Branch 13, American Federation of Hosiery Workers, Bulletin 523, Item 5.) I so conclude in the instant case.

As to (2): The testimony adduced herein represented that Sunday School is regularly held in the building, on Sunday mornings, under the supervision of a Superintendent. There are no denominational requirements in connection with attendance at those classes. There is evidence, further, that occasionally, on Sunday evenings, persons gather at the club house for religious purposes. The club's President testified that at Sunday evening services no ordained Minister of the

Gospel is in attendance but, rather, that a short sermon is delivered by designated persons and then folksongs and hymns are sung.

Within the meaning and intendment of our Alcoholic Beverage Law (R. S. 33:1-76) a "church" is a recognized edifice devoted permanently to the worship of God. (Bulletin 5, Item 3.) Hence, being a religious body is not of itself sufficient to invoke the benefit of the statute. (See The Quality House Wine and Liquor, Inc. v. New Brunswick, Bulletin 249, Item 4.) I find that the premises in question do not constitute a "church" within the meaning and protection of R. S. 33:1-76. (Cf. Manning v. Trenton, Bulletin 247, Item 1.) Thus, the second objection is found to be without merit.

The club has, since 1939, received numerous special permits from the State Commissioner to permit the sale of alcoholic beverages on the club premises. There have been no complaints made, according to the testimony, relative to the manner in which the club activities were conducted at the times when alcoholic beverages were sold. There is nothing to indicate that the applicant, if granted a club license, will conduct the business improperly on the licensed premises.

On the evidence presented herein, no reason appears why the applicant should not be granted a club license.

Accordingly, I shall issue the license.

Dated: June 7, 1949.

Director.