

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

March 28, 1969

BULLETIN 1844

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - BIELEFELDT v. ASBURY PARK.
2. APPELLATE DECISIONS - DAVIDSON LIQUORS, INC. v. RED BANK and THE LIQUOR CLOSET, INC.
3. SEIZURE - FORFEITURE PROCEEDINGS - SUPPLEMENTAL ORDER - CLAIM OF ALLEGED OWNER OF MOTOR VEHICLE REJECTED UPON FAILURE TO FILE SUPPLEMENTAL PETITION FOR REHEARING AS STIPULATED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.
4. CANCELLATION PROCEEDINGS (Union City) - LICENSE IMPROVIDENTLY ISSUED - ORDER TO SHOW CAUSE DISCHARGED ON PROOF OF CORRECTION OF UNLAWFUL SITUATION.
5. DISCIPLINARY PROCEEDINGS (Seaside Heights) - GAMBLING (HORSE RACE BETS) - LOTTERY ("50-50" CLUB) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Lakewood) - SALE BELOW FILED PRICE - UNLAWFUL TRANSPORTATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Burlington) - SALE ON ELECTION DAY - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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

March 28, 1969

BULLETIN 1844

1. APPELLATE DECISIONS - BIELEFELDT v. ASBURY PARK.

#3329 and #3348  
Kurt H. Bielefeldt, t/a Hide-A- )  
Way, )  
Appellant, ) On Appeal  
v. ) CONCLUSIONS  
City Council of the City of ) AND ORDER  
Asbury Park, )  
Respondent. )  
-----

Harry L. Shure, Esq., Attorney for Appellant  
James M. Coleman, Jr., Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals as from denial by respondent City Council of the City of Asbury Park (hereinafter Council) which failed to act on his separate applications for place-to-place transfer of his plenary retail consumption license (which carries the "broad package privilege") from premises 24 Main Street to premises 707 Mattison Avenue for the license year 1967-68 and the renewal thereof at the new premises for the current license year. He states that the applications were "denied without reason."

The Council did not file an answer in either of these matters but, instead, sent a letter through its attorney which set forth that a motion to approve the transfer, offered by a member of the Council at its regular meeting on June 25, 1968, was not seconded and, therefore, was not acted upon. No further action was taken by the Council. This letter was accepted as and for an answer in these proceedings.

The Council's attorney read into the record at the outset of this hearing a letter which he sent to the Council on August 30, 1968, which stated in pertinent part as follows:

"Ordinarily the procedure is that the City must file an answer giving the reasons for the denial, but in this case there were no reasons because the matter did not get to a vote. If there had been a denial by vote, it is permissible for the members of the governing body who voted 'no' to testify at the hearing on appeal. In this particular matter then, in my opinion the members of the council can appear either for or against the application. If you do take this action, please let me know as soon as possible."

The minutes of the meeting of June 25, introduced in evidence (Exhibit A-1), set forth in pertinent part:

"City Clerk, Mary V. Martin, submitted application of Kurt H. Bielefeldt, License C-55 to transfer premises from 24 Main Street to 707 Mattison Ave. License carried the 'Broad Package Privilege.'

"Councilman Albarelli offered resolution to grant license, with conditions same as License C-13.

"There was no second to the motion."

In view of the fact that the Council has failed or refused to act upon these applications, such failure or refusal will be considered as a denial of the said applications. Bradford v. Paulsboro, Bulletin 419, Item 11. See also Higgins v. Elizabeth, Bulletin 1081, Item 5. Since I consider the Council's inaction to be tantamount to a denial, fairness dictates that this appeal be entertained. Clemencich v. Manalapan, Bulletin 1465, Item 1.

This is an appeal de novo with full opportunity to the parties to present evidence and cross-examine witnesses. The central issue is whether, under all of the evidence now presented, the license should be transferred and renewed. See Lethe, Inc. v. North Bergen, Bulletin 1537, Item 2; Ritter v. North Bergen, Bulletin 546, Item 2.

In the course of the hearing herein, Council's attorney stated, "I can represent, I think fairly, that the City of Asbury Park has no objection to a renewal" for the same premises. The only question is whether or not the denial (in effect) of the application for a transfer was erroneous.

Kurt H. Bielefeldt, the appellant, testified that he filed an application for transfer of his license from 24 Main Street to 707 Mattison Avenue, Asbury Park, the proposed location being about one and one-half blocks from his former location in the same business area of the municipality. He desired to make this change because at his former location his rent is too high and he found it uneconomic to continue operation there. Also, "I am always getting all sorts of shady characters down there."

Joseph R. Mattice, a member of the Council, testified that at the June 25 meeting, he served as acting mayor and, in that capacity, was unable to second the motion for grant of the transfer. It was his opinion that if this matter were remanded, no member of the Council would second a motion either to grant or deny the application. Objections were made at that meeting by the Asbury Park liquor dealers' association. Two members of the Council voiced their disapproval; one "did not choose to vote one way or the other."

In the witness' opinion, grant of the transfer was warranted because conditions at the former location are such that "it is beginning to become undesirable." He

further noted that the transfer was to the same general area, that the applicant had never had any complaints against his operation, and that the transfer would be in the best interests of the community. He added that the transfer would neither increase nor aggravate the number of taverns already existing in that area.

George Howard, representing the Asbury Park Licensed Beverage Association, testified that the organization is not opposed to renewal of the license but is opposed to its transfer for the reason that four taverns and one package store are located within one block of the proposed transfer site.

On cross examination, it was pointed out to him that appellant expressly agreed, as a condition to the transfer, that he will operate merely as a package liquor store (lawful since the license carries the "broad package privilege"). Under those circumstances, this witness stated that neither he nor his association would have any objection to the transfer.

Peter D. Baselici, who operates a tavern near the proposed transfer site, stated that he had no objection to renewal of the license but was opposed to the transfer because the proposed premises would be in direct competition with him and the other tavern owners in the area. He admitted that his objection is primarily economic in nature.

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary and unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Bomwell v. Newark, Bulletin 1639, Item 1.

From my evaluation of the testimony, it is evident that appellant's premises were a short distance away from the proposed premises and thus there will be no increase in the number of liquor licenses in the area. Tagliaferro v. Newark et al. Bulletin 1710, Item 1; cf. L. Kubisky, Inc. v. Paterson, Bulletin 1662, Item 2. The proposed transfer would not increase or aggravate the existing concentration of licenses in that area. Both premises are located in a rather small and limited area of Asbury Park. As the then Commissioner pointed out in Costa v. Verona, Bulletin 501, Item 2:

"Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained."

See Kubisky v. Paterson, supra; cf. Bivona v. Hock et al., 5 N.J. Super. 118.

The attorney for appellant has expressly represented that appellant will operate subject to the special condition that he conduct only a package store operation under the said license.

I am influenced by the testimony of Councilman Mattice that the license had been located in a less desirable part of the business section and that it would be in the best interests of the community to approve the transfer applied for.

The objection of the neighboring tavern owner was grounded upon the possible economic loss to his business if such application were granted. However, it has consistently held that the mere fact that a competitor might suffer loss in business by the transfer of a license is not a proper reason to deny the application. Knast and Krause v. Camden et al., Bulletin 810, Item 2.

The thesis has been generally accepted that a licensee acquires through his investment in the license and licensed business an interest which is entitled to some measure of protection in connection with a transfer. R.S. 33:1-26. Lakewood v. Brandt, 38 N.J. Super. 462.

Under the facts and circumstances appearing herein, it is my opinion and I conclude that the Council's failure to act was tantamount to denial of appellant's applications for place-to-place transfer and renewal of his license which, being without reason stated or implicit, was unreasonable, arbitrary and an abuse of its discretion. I therefore recommend that its action be reversed; that the application for transfer be granted; and that the application for renewal for the current licensing year be granted, subject to the special condition that operation under the license shall be limited to the sale of package goods for off-premises consumption.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript of the proceedings, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 24th day of January, 1969,

ORDERED that the action of the respondent City Council of the City of Asbury Park be and the same is hereby reversed; and it is further

ORDERED that said respondent grant appellant's application for a place-to-place transfer of his plenary retail consumption license from premises 24 Main Street to premises 707 Mattison Avenue for the license year 1967-68.

and issue a renewal of the said license for the new premises for the current license year, subject to special condition that the operation of the licensed business under the said license shall be limited to the sale of alcoholic beverages in original containers for off-premises consumption.

JOSEPH M. KEEGAN  
DIRECTOR

2. APPELLATE DECISIONS - DAVIDSON LIQUORS, INC. v. RED BANK and THE LIQUOR CLOSET, INC.

Davidson Liquors, Inc.,	)	
Appellant,	)	
v.	)	On Appeal
Borough Council of the Borough of Red Bank, and The Liquor Closet, Inc. of Red Bank, t/a The Liquor Closet,	)	CONCLUSIONS AND ORDER
Respondents.	)	

-----

Wilentz, Goldman & Spitzer, Esqs., by Harold A. Kuskin, Esq.,  
Attorneys for Appellant  
Reussille, Cornwell, Mausner & Carotenuto, Esqs., by Samuel Carotenuto, Esq., Attorneys for Respondent Council  
Doremus, Russell, Fasano & Nicosia, Esqs., by Benedict R. Nicosia, Esq., Attorneys for Respondent The Liquor Closet, Inc. etc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent in granting a person-to-person and place-to-place transfer of a plenary retail distribution license (theretofore issued to Costa's Grocery & Liquor Store for premises 62 West Bergen Place) to respondent The Liquor Closet, Inc. of Red Bank for premises 143 Broad Street, Red Bank.

Four of the six councilmen voted to approve transfer of the license; one member was absent and the other disqualified himself in the matter.

The petition of appeal alleges that the action of the respondent Borough Council (hereinafter Council) was erroneous because it failed to consider the needs of the population in the southwest portion of the Borough where the license was formerly located. Moreover, the petition states that there are now at least seven package outlets plus two plenary retail consumption licenses with broad package privileges in the vicinity of the proposed location. Furthermore, appellant maintains that the Council abused its discretion in restraining counsel for appellant in his cross examination of a relative of Councilman

O'Hern, which relative is interested in the license in question.

The Council in answer filed denied the allegations set forth in the appellant's petition of appeal.

This matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with ample opportunity for counsel for appellant to present testimony under oath and cross-examine witnesses.

The stenographic transcript of the hearing below was submitted herein and was supplemented at this hearing by testimony of witnesses on behalf of the respective parties to this appeal.

At the hearing before the Council J. Arthur Fell testified that he is executive director of the Monmouth County Package Stores Association and is familiar with the various liquor licenses located in the municipality in question. His testimony both before the Council and at this appeal hearing was to the effect that in his opinion there are sufficient liquor outlets in the vicinity of the proposed location to adequately supply the needs of those who wish to purchase alcoholic beverages for off-premises consumption.

LeRoy Davidson testified that he is the manager of appellant corporate licensee and is familiar with the various locations of liquor licenses in the municipality. He stated that within the area of the proposed location there are too many liquor outlets and thus there is no need for the operation of another liquor establishment in the vicinity of the new location.

Irving Richmond (proprietor of a liquor establishment) testified that he objects to the proposed transfer to the new location because in his opinion by adding another liquor business on Broad Street the best interest of the public would not be served.

Sanders Cohen (also a liquor proprietor for premises on Monmouth and Broad Streets) testified that his objection is that there are too many liquor outlets there already and "We are making like a rum row, seven licenses all in a row."

Jerry Witterschein (who holds a financial interest in the respondent licensee) was called as a witness by the appellant's attorney. Mr. Witterschein testified that he is the brother-in-law of Daniel J. O'Hern who presently is a member of the respondent Council, but that Councilman O'Hern does not have any financial interest, direct or indirect, in the corporation known as The Liquor Closet, Inc. Mr. Witterschein further stated that, although Councilman O'Hern was the legal representative when The Liquor Closet, Inc. was incorporated and also prepared the contract for the purchase and sale of the liquor license in question, he (O'Hern) did not have any interest in the corporation.

Milton Heller testified that he is a real estate broker and a professional appraiser, having his place of business in Red Bank for a period of forty-two years. He

stated that he is familiar with the business areas in the Borough. Mr. Heller further said that the proposed location of the license is one of several stores which has adequate off-street parking in the area and that parking is permitted in the front of the store, limited, however, to one hour. Mr. Heller further stated that, although not an expert in the retail liquor business, he is of the opinion that the proposed site of the liquor license would be a good location.

Lieutenant George Clayton, Jr., of the local police, testified that he is familiar with the west section where the license was formerly located and that the major portion of the incidents concerning disorderly complaints, criminal violations, indictable offenses and complaints of drunks and so forth occurs on the west side of the Borough. He stated that to his knowledge there have been a great number of complaints from the residents in the vicinity of West Bergen Place because of empty bottles and beer cans having been thrown on vacant lots close to the former liquor store. By reason thereof Lieutenant Clayton stated that, as a police officer, "it would help us if the license was at a different location."

Raymond Costa (the transferor of the license in question) testified that the volume of business during the past six years has steadily declined. He also stated that his store was damaged in April, May and June 1968 when broken into by thieves and that his alcoholic beverages were stolen.

Thomas F. Oakley testified that he has been councilman in the Borough during the past twenty years and is familiar with the business establishments in the Borough. He stated that, after the application was submitted to the Council for consideration of the transfer, he considered the applicants as to "whether they are of reputable character and whether they have been good businessmen in the community or whatever community they came from." Thereafter he took into consideration at the public meeting the number of residents who were in favor of or against the transfer. Moreover, he considered the location and the type of license in question. Councilman Oakley stated that, since the proposed location was "well over five hundred foot away from the nearest license", he was of the opinion that there is no saturation of liquor establishments in the area. Moreover, Councilman Oakley said that, in addition to serving the neighborhood, the establishment, being on a very busy street going through town, people from other neighborhoods would purchase alcoholic beverages from the store. In addition thereto, he took into consideration that there were no objections from residents and that the objections came solely from competitors. In fact, he stated that one resident spoke in favor of the transfer. Furthermore, Councilman Oakley said that he resides within five hundred feet of the proposed location and that he had no personal objections to the transfer to the proposed site. On cross examination Councilman Oakley stated that he was acquainted with a Mr. McFadden (one of the parties interested in The Liquor Closet, Inc.) but, in so far as Mr. Witterschein and Mr. Mangarelli are concerned, he has only a speaking acquaintance with them.

The police report presented in this matter, according to the testimony of Councilman Oakley, disclosed nothing concerning those who had an interest in the corporate licensee. He stated that, knowing Mr. McFadden, he was "pretty sure he wouldn't be associated with anyone who wasn't a good character."

The burden of establishing that the action of the Council in granting the transfer was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. It has been consistently ruled that no one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests in the first instance within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Dealers Assn. v. North Bergen et al., Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954). A local issuing authority has been held to possess wide discretion in the transfer of a liquor license subject, of course, to review by this Division in the event of any abuse thereof. Passarella v. Atlantic City et als., 1 N.J. Super. 313. In Fanwood v. Rocco, 33 N.J. 404, 414, Justice Jacobs stated:

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him .... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See also Essex County Retail Liquor Stores Assn. v. Newark, et al., 77 N.J. Super. 70 (1962).

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Larion, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In other words, the action of the municipal issuing authority may not be reversed by the Director unless he finds the "act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502. Cf. Fanwood v. Rocco, supra.

In Fanwood, the case of Ward v. Scott, 16 N.J. 16 (1954) was cited, wherein the Supreme Court dealt with an appeal from a zoning ordinance and set forth the following general principle:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for

variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' *Graham v. United States*, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

There is no dispute that the area of the proposed premises is used mainly for business purposes.

I am satisfied from the record that the Council was not improperly motivated and acted in accordance with its best judgment and in the interest of the community. The appellant contends, as a reason for reversal, that it was improper for Councilman O'Hern to prepare the necessary papers for the incorporation of the respondent licensee as he is a brother-in-law of one of the parties interested in the corporation applying for the liquor license, alleging in effect that there arose a conflict of interest. However, the record is clear that Councilman O'Hern disqualified himself when this matter was being considered and did not participate in any manner whatsoever in the deliberations that took place with reference to the application of the respondent licensee for transfer of the license to it.

Under the circumstances I do not believe that the relationship between Councilman O'Hern and Jerry Witterschein is sufficient to invalidate the action of the respondent Council. I am satisfied that the evidence presented by the appellant is insufficient to warrant a reversal of the action of the respondent Council. Therefore, for the reasons aforesaid I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the argument of counsel in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 27th day of January, 1969,

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

JOSEPH M. KEEGAN  
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SUPPLEMENTAL ORDER - CLAIM OF ALLEGED OWNER OF MOTOR VEHICLE REJECTED UPON FAILURE TO FILE SUPPLEMENTAL PETITION FOR REHEARING AS STIPULATED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure :  
on December 15, 1967 of a quantity : Case No. 11,989  
of alcoholic beverages and a 1965 :  
Ford van truck at the New Jersey : On Hearing  
State Police Barracks on Route 130, :  
in the Borough of Hightstown, County : SUPPLEMENTAL  
of Mercer and State of New Jersey. : CONCLUSIONS AND  
. . . . . ORDER

Schrager, Schragger & Lavine, Esqs., by Bruce M.  
Schrager, Esq., appearing for Arcoa, Inc., claimant.  
David S. Piltzer, Esq., appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Supplemental Hearer's Report herein:

Supplemental Hearer's Report

On July 1, 1968 Conclusions and Order were entered in the above matter which determined that the seized property as set forth in the Schedule annexed thereto, constituted unlawful property and should be forfeited; and denied the claim of Arcoa, Inc. for the return of the seized Ford Van Truck for the reason that the said claimant, Arcoa, Inc., had not established that it is the owner of the said vehicle, that it "had acted in good faith and did not know or have any reason to believe that the said vehicle would be used in unlawful liquor activity." Re Seizure Case No. 11,989, Bulletin 1805, Item 6.

Subsequent to the entry of the said order the Director received a letter dated July 16, 1968 from Bruce M. Schragger, Esq., of the firm of Schragger, Schragger and Lavine, Esqs., asking "leave to re-open the hearing in order to produce Gus Rodrigues, the owner and operator of the agency from which the above vehicle had been rented." In support of the said application, it submitted an affidavit signed by one Gus Rodrigues which sets forth the following:

"1. My wife, Virginia, and I are the owners and operators of 'Gus's U-Haul Jamaica,' located at 112-05 Sutphin Boulevard, Jamaica, New York.

"2. It has been brought to my attention that a 1965 Ford Van truck was rented from my station by the American Travelers Club and that the same was picked up in New Jersey and charged with illegal transportation of alcoholic beverages.

"3. The policy of Arcoa, Inc., the clearing house for all U-Haul rentals, is to instruct its dealers to advise lessees of all the conditions of a U-Haul rental agreement.

"4. In accordance with this custom, we advised the employees of the American Travelers Club to review the conditions appearing on the back on the rental contract, and particularly advised the lessee that no equipment could be used for any illegal purpose.

"5. We had no indication or knowledge that said truck was to be used for an illegal purpose. If we had such knowledge, we would not have rented the vehicle."

Another supporting affidavit executed by Robert W. Suter, general counsel of the Eastern Division of Arcoa, Inc., set forth in part, that "said Rodrigues was not produced at the original hearing because U-Haul did not have a copy of the rental contract and was unaware of Rodrigues until after the hearing".

Although the Director stated that this evidence could have been produced by reasonable diligence prior to the original hearing, he, nevertheless, in the interests of fairness to this claimant, authorized a supplemental hearing which was held on September 3, 1968.

At this hearing, counsel stated that Rodrigues informed him that, upon examining his records, he ascertained that his agency was not involved in this transaction and did not, in fact, lease the aforementioned vehicle to the American Travelers Club.

Rodrigues, who was present at the hearing herein, but was not produced as a witness, also advised counsel that he has no recollection of this particular transaction, and was in error when he set forth in his affidavit hereinabove referred to, that neither he nor any of his employees advised the American Travelers Club to whom this vehicle was rented "that no equipment could be used for any illegal purpose".

Robert W. Suter, called as a witness on behalf of this claimant, testified that because of the large number of rental transactions, he was unable to identify the specific agency "who had actually rented this vehicle..." The attorney for the claimant then requested a continuance of this matter for one month from the date of the hearing in order to enable the claimant to make a further search of its records and a complete investigation in support of its claim. He acknowledged that Rodrigues was not the actual lessor and was not involved in the said transaction.

Accordingly, the claimant was given one month within which to file a supplemental petition setting forth such new facts as would have entitled it to further hearing in support of its claim.

As of the date of this report, no such supplemental petition has been submitted nor has there been any indication that the said petition will be forthcoming.

It is, therefore, recommended that, for the reasons expressed in the Conclusions and Order heretofore entered in this matter, a supplemental order be entered denying the said

claim, forfeiting the said property and requiring payment of the sum secured by bond posted by the said claimant herein.

Supplemental Conclusions and Order

Exceptions to the Supplemental Hearer's Report, with supportive argument, were filed by the attorney for the claimant, Arcoa, Inc., pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the entire record herein, including the transcript of the testimony, the exhibits, the Supplemental Hearer's Report and the exceptions, which I find to be without merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is on this 24th day of January 1969,

DETERMINED and ORDERED that the seized property, as set forth in Schedule "A", attached hereto, constitutes unlawful property, and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66; and it is further

DETERMINED and ORDERED that the claim of Arcoa, Inc. shall be and the same is hereby rejected; and that the sum of \$500.00 secured by the surety bond in the penal sum of \$1,000.00, representing the appraised retail value of the 1965 Ford Van Truck owned by Arcoa, Inc. (which was returned to Arcoa, Inc.) deposited under protest with the Director of the Division of Alcoholic Beverage Control, be and the same is hereby forfeited in accordance with law; and it is further

DETERMINED and ORDERED that the said claimant, Arcoa, Inc. and the Hartford Accident and Indemnity Co., surety, forthwith pay to the Director of the Division of Alcoholic Beverage Control the aforementioned sum of \$500.00 as secured by the said bond; and it is further

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

JOSEPH M. KEEGAN  
DIRECTOR

SCHEDULE "A"

- 375 - containers of alcoholic beverages.
- 1 - Ford Van Truck (1965), Serial No. E16JH678647, Colorado Registration AA-138.

4. CANCELLATION PROCEEDINGS - LICENSE IMPROVIDENTLY ISSUED - ORDER TO SHOW CAUSE DISCHARGED ON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Cancellation )  
Proceedings against )  
Anna & Charles Mussara )  
731 - 32nd Street )  
Union City, N. J. )  
Holders of Plenary Retail Consumption )  
License C-190 issued by the Board of )  
Commissioners of the City of Union )  
City )

CONCLUSIONS  
AND ORDER

-----  
Mario M. Polcari, Esq., Attorney for Licensees  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Licenses do not contest an order to show cause why their license should not be cancelled because improvidently issued in violation of R.S. 33:1-25 in view of the fact that Charles Mussara was ineligible for license by reason of his conviction on May 7, 1964 of the crime of possession of lottery paraphernalia, a crime involving moral turpitude.

The fact of the conviction was set forth in the current application for license and was not concealed by any false statement therein.

During the pendency of the proceeding, the licensee partnership was dissolved and the license certificate endorsed to show continuance of the license in the name of Anna Mussara, individually. Hence the unlawful situation no longer exists and the order to show cause will be discharged. Cf. Re Wally's Tavern, Inc., Bulletin 1813, Item 5.

Accordingly, it is, on this 27th day of January, 1969,

ORDERED that the order to show cause herein be and the same is hereby discharged.

JOSEPH M. KEEGAN  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LOTTERY ("50-50" CLUB) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

J. K. M. Corporation )  
t/a Castaways )  
518-520 Boulevard )  
Seaside Heights, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-1 issued by the Mayor and Council of the Borough of Seaside Heights. )

-----

Rogers, Sim, Sinn, Gunning & Serpentelli, Esqs., by  
Thomas J. Gunning, Esq., Attorneys for Licensee  
Louis F. Treole, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between August 1 and 22, 1968, it permitted acceptance of horse race bets, and on August 22, 1968, possessed tickets in a "50-50" lottery, on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Marinaccio, Bulletin 1831, Item 2; cf. Re Cantore's Bar & Grill, Inc., Bulletin 1716, Item 2.

Accordingly, it is, on this 5th day of February, 1969,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Seaside Heights to J. K. M. Corporation, t/a Castaways, for premises 518-520 Boulevard, Seaside Heights, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Wednesday, February 12, 1969, and terminating at 2:00 a.m. Tuesday, April 8, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - UNLAWFUL TRANSPORTATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Sallar, Inc. )  
t/a Lakewood Liquors )  
139 E. 4th Street )  
Lakewood, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-1 issued by the Township Committee of the Township of Lakewood )  
-----

Harold Lipsky, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on October 22, 1968, it (1) sold four bottles of wine below filed price, in violation of Rule 5 of State Regulation No. 30; and transported the wine in a vehicle (2) without the driver being in possession of requisite delivery slip, in violation of Rule 3 of State Regulation No. 17, and (3) such vehicle bearing no transit insignia, in violation of Rule 12 of State Regulation No. 17.

Absent prior record, the license will be suspended on the first charge for ten days (Re Lincoln Engine Company #2, Bulletin 1799, Item 3), on the second charge for ten days (Re Jakenwes, Inc., Bulletin 1728, Item 6) and on the third charge for ten days (Re Oakley, Bulletin 1715, Item 4), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 3d day of February, 1969,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Lakewood to Sallar, Inc., t/a Lakewood Liquors, for premises 139 E. 4th Street, Lakewood, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a.m. Monday, February 10, 1969, and terminating at 9:00 a.m. Friday, March 7, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

