

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

Mrs. Dora P. Rothschild

October 18, 1957

BULLETIN 1192

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1. APPELLATE DECISIONS - SCHAEFER, RECEIVER OF PETER SERRATELLI'S COLONIAL INN v. OCEAN TOWNSHIP (MONMOUTH COUNTY) - PANNULLO v. OCEAN TOWNSHIP (MONMOUTH COUNTY).

MARVIN E. SCHAEFER, Receiver of  
Peter Serratelli's Colonial Inn  
(A Corporation of the State of  
New Jersey), Bankrupt,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP  
OF OCEAN (Monmouth County),

Respondent.

ON APPEAL

-----  
GORDON PANNULLO,

Appellant,

CONCLUSIONS  
AND  
ORDER

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP  
OF OCEAN (Monmouth County),

Respondent.

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Kleinberg, Moroney & Masterson, Esqs., by Jack L. Cohen, Esq.,  
Attorneys for Appellant Marvin E. Schaefer, Receiver.  
Charles B. Klitzman, Esq., by Jack L. Cohen, Esq., Attorney  
for Appellant Gordon Pannullo.  
Richard R. Stout, Esq., by Sidney Hertz, Esq., Attorney for  
Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Both of the above appeals are taken from the action of respondent on June 24, 1957, whereby it denied an application filed by Gordon Pannullo for the renewal of a plenary retail consumption license which had previously been transferred to him. The premises in question are located at 301 Bingham Avenue, Ocean Township.

"In order to understand the reason why two appeals were filed it is necessary to recite the history of the license in question. The premises have been licensed for more than twenty years. In 1952 the license was transferred to Peter Serratelli's Colonial Inn which thereafter obtained renewals for each subsequent year to and including the 1956-57 licensing year. On December 28, 1956, said corporation consented in writing to a transfer of its license to Gordon Pannullo and, on January 21, 1957, the local issuing authority transferred the license to Gordon Pannullo. Apparently the corporation's consent to transfer was given during the course of negotiations between the interested parties concerning a written contract previously entered into between the corporation and Peter Serratelli and Grace Serratelli (owners of the property) as parties of the first part, and Gordon Pannullo as a party of the second part. This single contract involved

the sale of the business and the real estate in which the business was conducted. The terms of that contract were never carried out because of the amount of obligations owed by the corporation and certain liens against the real estate. However, it does not appear that said contract has ever been cancelled by mutual consent or that Pannullo has ever obtained return of a substantial deposit made at the time the contract was signed. Shortly after the local issuing authority transferred the license to Gordon Pannullo, a complaint was filed in the New Jersey Superior Court by creditors against Peter Serratelli's Colonial Inn, and Marvin E. Schaefer was appointed receiver for said corporation. Thereafter an involuntary petition in bankruptcy was filed in the Federal Court by creditors, and Marvin E. Schaefer was appointed as receiver in bankruptcy. The receiver then made application in the Federal Court to require Gordon Pannullo to execute and deliver an appropriate consent addressed to respondent for the transfer of the license in question from Pannullo to said receiver because the contract had never been consummated and, by order dated June 20, 1957, the referee in bankruptcy entered an order granting the receiver's request subject to the preservation of Pannullo's right to be reimbursed for the renewal fee paid by him and the amount deposited by him under the aforesaid contract. Pannullo did not immediately comply with this order but it does appear that he executed such a written consent on July 17, 1957, and that said consent was filed with respondent. However, the consent is ineffectual because the license expired on June 30 (Re Madden and Goldstein, Bulletin 198, Item 1). Pannullo did file within time an application for renewal of the license for the 1957-58 licensing year. This application was denied by respondent on June 24, 1957. Thereafter these appeals were filed.

"As to the merits: It appears that on June 24, 1957, the members of the Township Committee, after hearing objectors, adopted a resolution denying renewal for the following reasons:

1. Loud and continuous noise and nuisance in the premises.
2. Loud and abusive language around the premises both during the hours the premises are open and after the premises are closed with no effort on the part of the operators to control said noise.
3. Numerous disturbances on the premises requiring Police Officers of the Township of Ocean to investigate and control the situations.
4. Premises are located in a populated residential area and create an annoyance and disturbance by the manner in which the premises are conducted.
5. Customers of the premises leaving the premises ride through Colonial Terrace at a high rate of speed creating a hazardous condition dangerous to children and occupants of Colonial Terrace.
6. Failure on the part of the owners of premises to comply with the health code and to install sufficient septic tanks and disposal laterals creating a nuisance and a health hazard.

"The evidence presented by appellants herein discloses that the premises have not been operated since the latter part of 1956. The Township Clerk testified that no disciplinary proceedings had ever been instituted against Peter Serratelli's Colonial Inn. Mr. and Mrs. Delisa, whose home is located about 140 feet from the premises in question, testified that they have

never been annoyed by the operation of the licensed premises. There appears to be only one other home in the immediate neighborhood. Chief of Police Garrity testified that it is 'more or less the average restaurant and bar, except that it might be a little quieter and with a little less activity than the normal one we have there.' He also testified that 'there were disturbances the same as any other bar.' Officer Slocum testified he had been called there 'as to minor things outside' but both he and the Chief of Police testified that the licensee's agents had always cooperated with them. Health Officer Gorman testified that in 1954 additional drainage facilities were installed which, in his opinion, meet the needs of that particular building. On the evidence presented, the action of respondent is unreasonable and should be reversed.

"Under the circumstances it is recommended that an order be entered in the appeal filed by Marvin E. Schaefer, Receiver, dismissing said appeal upon the ground that he is not the proper party to file an appeal from the denial of an application filed by Gordon Pannullo. It is further recommended that an order be entered in the appeal filed by Gordon Pannullo reversing respondent's action and directing respondent to renew appellant's license in accordance with his application. If the Receiver hereafter files an application with respondent for a transfer of the renewed license to him as Receiver, the application must bear the consent in writing of Gordon Pannullo to such transfer. R. S. 33:1-26."

There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

I have carefully considered the record in these cases. This is a trial de novo and I am bound by the testimony presented at the hearing of the appeals. No objectors appeared at said hearing, although it appears that they were notified of the date of hearing by the Township Clerk. The Township Clerk, called by appellant, also testified that a transcript of the proceedings below had been made, but this transcript, including, I assume, the testimony of the objectors, was not presented at the hearing herein despite the fact that such transcript could have been presented in evidence by either party by complying with Rule 8 of State Regulation No. 15. No member of the Township Committee appeared at the hearing. The Chief of Police, the Police Officer and the Health Officer appeared and testified, not on behalf of respondent but on behalf of appellants. The record is barren of any testimony justifying the action of respondent. A resolution unsupported by evidence cannot overcome clear, convincing evidence of witnesses, all of whom were subject to cross-examination. Since the transcript of the proceedings below was not introduced into evidence, I cannot assume that the testimony of the objectors would have sustained the resolution of respondent. Under all the circumstances I shall adopt the conclusions of the Hearer as my conclusions herein and shall accept his recommendations. This does not mean that the objectors are without any source of relief. If the premises are hereafter operated in an improper manner, they may request the local issuing authority to institute disciplinary proceedings and may object to any renewal of the license. If unsanitary conditions are permitted, they may file a complaint and may object to renewal of the license if the unsanitary condition is not corrected.

Accordingly, it is, on this 17th day of September, 1957,

ORDERED that the appeal filed by Marvin E. Schaefer, Receiver, be and the same is hereby dismissed upon the ground that he is not a proper party to file an appeal; and it is further

ORDERED that, in the appeal filed by Gordon Pannullo, the action of respondent be and the same is hereby reversed and respondent is directed to renew the license of Gordon Pannullo, in accordance with his application.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - WILLNER'S LIQUORS v. IRVINGTON.

WILLNER'S LIQUORS, a corporation ) of the State of New Jersey, ) Appellant, )	ON APPEAL
-vs-	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE ) TOWN OF IRVINGTON, ) Respondent. )	

-----  
Samuel W. Lucas, Esq. and Max Mehler, Esq., Attorneys for Appellant.

John J. Gaffey, Esq., Attorney for Respondent.  
Carl J. Yagoda, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on May 28, 1957 it denied appellant's application for transfer of a plenary retail distribution license from Seco Foods & Liquors, Inc. to appellant, and from premises 945 Clinton Avenue to premises 12 Mill Road, Town of Irvington.

"In its petition of appeal appellant alleges, in substance, that respondent's action was erroneous in that it was arbitrary, capricious and an abuse of discretion and for that reason its action should be reversed and the license should be transferred pursuant to the application filed in the matter.

"The five members of respondent Board voted unanimously to deny the application for transfer.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"The record herein discloses that appellant's proposed premises are to be erected contiguous to a building presently used as a supermarket; that the immediate neighborhood might be properly classified as business or commercial in character; that among various types of business establishments there is a liquor licensed premises (plenary retail consumption license) at 21 Mill Road, which is across the street from the proposed premises.

"Samuel Aidekman, president of the supermarket adjacent to which appellant's building is to be erected,

testified that the section wherein the proposed premises are located may be described as a large shopping district; that, although it contains stores of many varieties, it was his opinion that 'we lack in our area a package liquor store. We do have these two bars or taverns' and that surveys conducted in the supermarket indicated that 'People have mentioned the fact that they are hesitant to shop for beer or for their needs, party needs, namely, alcoholic beverages, in a bar or in a tavern, since many of our customers do shop with their children.'

"Robert A. Seco, president of Seco Foods & Liquors, Inc. which held the license in question during the 1956-57 licensing period, testified that the lease for premises 945 Clinton Avenue expired on April 30, 1957 and that for a two-year period prior thereto an attempt was made by him to dispose of the licensed business but no person financially responsible was interested in the purchase thereof; and that the latter part of March or early April 1957 an agreement was reached with appellant for consent by Seco Foods & Liquors, Inc. to transfer of its license.

"Appellant called as witnesses four of the five members of respondent Board (the fifth member being unavailable at the time of the hearing) whose testimony disclosed that, among other reasons, they were of the opinion that sufficient liquor outlets presently exist in the vicinity of the proposed premises.

"Other reasons given by the said members of the respondent Board were that the permission for a liquor outlet at the proposed site would aggravate the already existing traffic congestion; that objection to the transfer was received from a church located at not too great a distance; and that there were petitions filed which contained 633 names of persons objecting to the transfer.

"Lillian A. Smith, Acting Assistant Town Clerk, testified that the distance between the premises wherein the license in question was formerly located and the proposed premises is 'about a mile and a half roughly.' Charles J. Gross, License Clerk, testified that the distance between the former premises and the proposed premises to which the transfer of the license was sought is 'Approximately two and a half miles.' Gross further testified that a plenary retail distribution license is presently located about 1800 or 2000 feet distant from the proposed premises and that there are two additional plenary retail distribution licenses within a half mile of the proposed site.

"The holder of a plenary retail consumption license has the privilege of selling alcoholic beverages in original containers for off-premises consumption. Appellant's contention that the transfer should be granted because people prefer to buy bottled goods at a 'package store' is without merit. Thompson v. Mount Olive, Bulletin 986, Item 1. To the same effect, see Colonna v. Montclair, Bulletin 39, Item 8.

"The transfer of a liquor license is not a right inherent in the license but is rather a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. When the transfer is denied on reasonable grounds, such action will be affirmed. Drucker v. Trenton, Bulletin 474, Item 9.

"The question whether a license should be transferred to a particular location is a matter confided to the sound discretion of the issuing authority. The burden of showing that the issuing authority abused its discretion rests with appellant. Segal et als. v. Clifton et al., Bulletin 732, Item 5, and cases cited therein.

"It has consistently been held by this Division that the Director's function on appeals is not to substitute his judgment for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et als. v. Maplewood et al., Bulletin 658, Item 4.

"The members of the respondent Board who were present at the meeting when the matter was originally heard were of the opinion that the best interests of the general public would be served by denying the application to transfer the license. Although the premises to which transfer of the license is sought are located in a business section of Irvington, the appellant has not established that there are not sufficient liquor outlets in that vicinity to adequately supply any demand for alcoholic beverages from the people who may live in that particular area, as well as those who may do their shopping there.

"There appears to be no evidence that any of the members of the respondent Board acted in an arbitrary, capricious or unreasonable manner in reaching their determination.

"The burden of establishing that the action of the respondent Board is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. This burden has not been sustained.

"In view of the fact that the recommendation hereinafter made is predicated on the merits of the case, it is unnecessary to consider the question whether the plans for the erection of the proposed premises filed with the application for transfer in the matter was sufficient compliance with the rule applicable thereto.

"Under the facts and circumstances appearing herein, I recommend that the action of the respondent Board be affirmed."

Written exceptions to the Hearer's Report pursuant to Rule 14 of State Regulation No. 15, together with within argument in substantiation thereof, were filed with me by the attorneys for appellant.

After careful consideration of the entire record herein, including the transcript of testimony, the memoranda filed with the Hearer by the attorneys for the respective parties to this appeal prior to the Hearer's recommendation in the matter, the Hearer's Report and the exceptions and written argument submitted by the attorney for the appellant in furtherance thereof, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein. I shall affirm the action of the respondent Board.

Accordingly, it is, on this 23rd day of September, 1957,

ORDERED that the action of respondent Board of Commissioners of the Town of Irvington be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of Seizure on	)	Case No. 9472
April 22, 1957 of a quantity	)	
of alcohol and a Mercury Station	)	
Wagon in the vicinity of 26	)	ON HEARING
Arlington Road, Township of	)	CONCLUSIONS AND ORDER
Cranford, County of Union, State	)	
of New Jersey.	)	

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Harlowe Jones, Pro se.  
Henry Gottfried, Esq., Attorney for Franklin Discount Co.  
I. Edward Amada, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66 to determine whether 30 bottles of alcoholic beverages and a Mercury Station Wagon described in the schedule attached hereto seized on April 22, 1957 in the vicinity of 26 Arlington Road, Cranford, New Jersey, constitute unlawful property and should be forfeited.

"Harlowe Jones appeared and sought return of the Mercury station wagon seized in the case. An appearance was also entered on behalf of Franklin Discount Co. which sought recognition of its alleged lien on the motor vehicle. No one opposed forfeiture of the 30 bottles of alcohol which were seized.

"Reports of ABC agents and other documents in the file admitted in evidence with the consent of the respective claimants established the following facts:

"On April 22, 1957 local police officers were summoned to a gas station located at 26 Arlington Road, Cranford, by reason of a commotion caused by the explosion of fireworks by some person at that address. Upon their arrival at the premises they found the aforesaid Mercury station wagon unattended and parked in front thereof. While searching the car to ascertain whether there were any more fireworks there, they discovered 29 two-quart jars of alcohol and a 4/5 quart bottle of alcohol, some on the front and some on the rear seats thereof. There were no stamps indicating payment of tax of alcoholic beverages on any of the bottles. The police officers thereupon took possession of said alcohol and the motor vehicle which they later turned over to the ABC agents.

"Thereafter the contents of two of the jars and of the 4/5 quart bottle were analyzed by the Division chemist who reports that all of such contents consist of alcohol and water fit for beverage purposes with an alcoholic content by volume respectively of 45.5, 35. and 34. per cent.

"The alcohol is illicit because of the absence of a tax stamp on any of the jars. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"Harlowe Jones seeks return of the motor vehicle mainly on the basis that he cooperated fully with the ABC agents and further on his claim that a number of people requested him on numerous occasions to try to get them some of this corn liquor and he refused for four years and finally through persuasion of a few of his customers with whom he has legitimate business, he finally agreed to bring them back some 'corn liquor', purchased the alcohol in question in North Carolina and transported such alcohol to Cranford for delivery in Newark to various unspecified persons.

"Even if Jones was an otherwise law-abiding person (although actually he has a criminal record and was on parole at the time) his purchase of bootleg corn whiskey must result in denial of any relief from forfeiture. The Division has uniformly held that a person who purchases bootleg or moonshine alcoholic beverages cannot be regarded as having acted in good faith and to have unknowingly violated the law and hence, cannot obtain return of property subject to forfeiture for violation of the Alcoholic Beverage Law. Seizure Case No. 9156, Bulletin 1143, Item 7.

"It appears from the testimony of Harlowe Jones that he was released from State Prison on parole on September 13, 1955 and was still on parole at the time. He obtained employment with General Motors at its Linden plant, purchased the station wagon in November 1955, and was discharged from his job in December 1955. Thereafter he was employed by a retail concern until January 1957. He claims that when purchasing the station wagon he informed the manager of the automobile concern that he was on parole.

"Franklin Discount Company presented in evidence a conditional sales contract dated November 22, 1955 signed by Harlowe Jones, assigned to the finance company and representing the sale of the station wagon in question with an unpaid balance of \$2,835.00. The present balance due thereon after rebate for prepayment, is \$1,453.71.

"Before accepting the contract and extending credit to Harlowe Jones, the finance company received information that he was 45 years of age, married, resided at an address in Cranford and was employed by General Motors and had been so employed for 2 1/2 years; that his wife was also employed; and that both owned the premises where they resided, the value of which was stated as \$12,500.00, subject to a mortgage of \$2,500.00. The finance company was also furnished with various bank references, and a personal reference.

"The manager of the finance company testified that he personally approved acceptance of the contract after various checks were made of the information. He testified that they addressed a letter to General Motors to check Jones' employment, but it developed that he was probably in error on that score, and that no such letter was written. The personnel of the finance company checked with the bank reference and received favorable information concerning Jones' credit. A check was also made with the Savings and Loan Association which held the

mortgage on the property in question and it confirmed that Jones and his wife were owners of such property and stated that the actual amount of the mortgage was \$3,700.00. During the course of the hearing the finance company discovered and presented a report dated November 18, 1955 from an independent investigating agency which set forth a favorable report as to Jones' credit and background, and stated that he had been employed by General Motors for some months.

"The evidence presented indicates that the finance company made an adequate independent investigation of Harlowe Jones' background and activities, even though it failed to correlate and make a more thorough check of the period of his employment by General Motors. It evidently relied heavily on his ownership of his residence, and it is not fair to speculate that General Motors might have informed it that Jones was with them a few months and not 2 1/2 years, and that further inquiry as to where he had been prior thereto, would have disclosed that he had been in prison.

"The finance company did not check to determine whether Jones had a criminal record, but the facts within their knowledge were not of such character as to lead a reasonably prudent person to suspect that he might have such a record, hence, it was not required to make inquiry of any law enforcement officers. Seizure Case No. 9448, Bulletin 1176, Item 9. Whatever knowledge the dealer had concerning his criminal record should not, in fairness, be chargeable to the finance company as assignee where, as here, there is no evidence that such dealer acted as agent for the finance company delegated to check the purchaser's credit.

"Accordingly, I recommend that Harlowe Jones' application for return of the motor vehicle be denied; and that the lien claim of Franklin Discount Company against the Mercury station wagon to the extent of \$1,453.71 should be recognized.

"It appears likely that the amount realized at public sale of the motor vehicle will exceed the costs of seizure and amount of the lien. I further recommend that the motor vehicle be ordered sold.

"Lastly, I recommend that the alcoholic beverages be ordered forfeited and disposed of in accordance with law."

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

After carefully considering the facts and circumstances herein, I concur in the recommended Conclusions in the Hearer's Report and I adopt them as my Conclusions herein, except as to the recommended sale of the car.

Subsequent to the aforesaid Report, an official appraisal was obtained of the motor vehicle wherein it appears that the retail value thereof is estimated at \$1,525.00. It, therefore, appears that such sum does not exceed the amount of the lien claim and the costs of the seizure and storage of the motor vehicle. The Mercury station wagon will, therefore, be returned to Franklin Discount Co. upon the payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 16th day of September, 1957, Franklin Discount Co. pays the costs incurred in the seizure and storage of the

Mercury station wagon, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; 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 hereby are 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: September 4, 1957.

SCHEDULE "A"

- 29 - two-quart "Mason" jars of alcohol
- 1 - 4/5 quart bottle of alcohol
- 1 - Mercury station wagon, Engine 5SME58422M, Serial 8422M, N. J. Registration EH5A5

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL SALE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE RECOGNIZED AND TO BE SATISFIED FROM PROCEEDS OF SALE OF MOTOR VEHICLE.

In the Matter of the Seizure on )  
April 22, 1957 of sixteen 4/5 )  
quart bottles of whiskey and a )  
Chevrolet sedan at or near the )  
intersection of Main Avenue and )  
Voorhis Place in the City of )  
Hackensack, County of Bergen and )  
State of New Jersey. )  
-----)

Case No. 9473

ON HEARING  
CONCURRENCE AND ORDER

David A. Gelber, Esq., Attorney for Robert Meschel.  
William I. Rodier, Jr., Esq., Attorney for Chemical Corn Exchange Bank.  
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66 to determine whether 16 four-fifth quart bottles of whiskey and a Chevrolet sedan, described in a schedule attached hereto, seized on April 22, 1957 at or near the intersection of Main Avenue and Voorhis Place, Hackensack, New Jersey, constitute unlawful property and should be forfeited.

"Robert Meschel, the registered owner of the Chevrolet sedan, appeared and sought its return. An appearance was also entered on behalf of Chemical Corn Exchange Bank, which sought recognition of its alleged lien on the motor vehicle. No one appeared to oppose forfeiture of the 16 bottles of whiskey.

"Reports of ABC agents and other documents in the file, including a signed sworn statement of Robert Meschel,

admitted in evidence with the consent of the respective claimants, established the following facts:

"The Division of Alcoholic Beverage Control received a complaint that Robert Meschel was transporting Canadian Club Whisky in his automobile and soliciting the sale of such whiskey although he had no license to sell or transport alcoholic beverages. On April 22, 1957, during the course of investigating the complaint, ABC agents had under surveillance the motor vehicle in question while it was parked at the above location. They observed Meschel enter a nearby store, return to his car, open the trunk and prepare to remove twelve bottles of whiskey therefrom. Four other bottles of whiskey were in the car. All of the whiskey was labeled Canadian Club Whisky, of Canadian manufacture, but none of the bottles bore any stamps evidencing payment of federal and state tax on alcoholic beverages.

"Meschel admitted that he had transported the 12 bottles of whiskey from New York City to New Jersey for the purpose of selling them for \$5.00 a bottle and had previously sold 5 bottles of such whiskey to various persons in New Jersey and had likewise transported that whiskey from New York into this state.

"There cannot be, and there is not, any dispute that such activities of Meschel were in clear violation of the Alcoholic Beverage Law. The seized bottles of whiskey constitute illicit alcoholic beverages, primarily because they were intended for sale without a license, and secondarily because of the absence of any Federal or State tax stamp on any of such bottles. R. S. 33:1-1(i); R. S. 33:1-88. Such illicit alcoholic beverages and the motor vehicle in which they were 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.

"Meschel seeks to excuse his conduct and obtain return of the motor vehicle on his assertion that he is a law-abiding person who was misled by a very close friend residing in New York into the belief that he was merely accommodating such friend to dispose of whiskey in excess of the friend's personal needs and did not realize that such conduct was unlawful.

"According to Meschel's testimony he is 28 years of age, married, has no previous criminal record, and has been employed for about two years as a salesman for a sewing supply house with average earnings of about \$85.00 per week. Meschel has a close boyhood friend, Morty Tolman, who is employed as a printer and resides on Long Island. They recently had under consideration a joint venture, which did not materialize, wherein they would purchase men's jewelry direct from a factory in Rhode Island and resell it (presumably at retail).

"While visiting Morty recently he told Meschel that he had some Canadian Club Whisky which he could not afford to hold and Meschel undertook to sell it. Meschel was to obtain \$5.00 a bottle, or \$55.00 a case. Meschel did not ask Tolman where he obtained the whiskey, how much whiskey he had, how it came about that he had an excess quantity, why Tolman could not return the whiskey to the person from whom he obtained it or why Tolman could not dispose of the whiskey to other friends residing in New York. Meschel claimed that he did not owe Tolman any special favor and that the latter did not state any reason why he mentioned the matter to Meschel.

"Meschel took 9 bottles of the whiskey and sold 5 to friends and acquaintances. He gave the full amount collected to Tolman. He kept the 4 remaining bottles in his car for about a month. He did not offer to return these bottles to Tolman -- he 'just wanted them in case I met somebody who would want it.'

"Shortly before April 22d he solicited the owner of a confectionery store to purchase whiskey. Meschel had in mind the 4 bottles but the owner of the store indicated that he might purchase a case of such whiskey. Meschel called Tolman who told him he could get it. Meschel spent considerable time carrying on negotiations with the proposed purchaser and in arranging for delivery of the case of whiskey, without any thought of personal profit or advantage. On April 21st, by prearrangement, he met Tolman on a New York street 'just a place they picked out to meet' and transferred the case of whiskey from Tolman's car to Meschel's car, in the vicinity where both were visiting.

"At the Hearer's suggestion that it would appear natural and logical for Tolman to be eager to testify on Meschel's behalf and corroborate his account of what transpired, Meschel and some of his relatives spoke with Tolman and his parents after the hearing was adjourned for that purpose and were informed that Tolman's father had purchased 4 cases of the whiskey from an acquaintance and the transaction had taken place in the father's place of business; that he gave his son 2 cases of such whiskey; and that Morty would not be permitted to appear to aid Meschel for fear of incriminating himself or his father. Obviously if the whiskey were legitimate in origin and lawfully acquired there would be no such fear.

"A fair evaluation of Meschel's above account of his activities leaves considerable doubt that Meschel actually is as innocent or was as gullible as he seeks to maintain. There is an equal likelihood that he sought to earn additional income by the sale of such whiskey.

"In any event, a person who sold or attempted to sell alcoholic beverages (even if taxpaid) without a license has not acted in good faith and unwittingly violated the law. This has been the uniform and consistent ruling of the Division. No person has heretofore been relieved of the forfeiture penalty under such circumstances. Seizure Case No. 9382, Bulletin 1179, Item 5 and cases cited therein. To accept the excuse that a person innocently sold alcoholic beverages without a liquor license would seriously impair enforcement of the liquor law. I, therefore, recommend that Robert Meschel's application for return of the Chevrolet sedan be denied.

"Chemical Corn Exchange Bank presented in evidence a chattel mortgage, dated June 21, 1956, signed by Robert Meschel, evidencing a debt of \$1104.00 on the security of the Chevrolet sedan in question. The present balance due on said debt, after rebate for prepayment, is the sum of \$615.54. The bank also presented a New Jersey certificate of registration of the automobile on which the lien of the bank is noted.

"Before extending credit to Robert Meschel and accepting such chattel mortgage, the bank received information that he was 27 years of age, married, resided at an address in Hackensack, New Jersey, was employed by the sewing supply concern as a salesman for the past year and earned about \$75.00 a week. The bank was also furnished with various business references.

"The bank made an independent investigation of the information submitted to it, found it to be correct, and did not develop any derogatory information concerning Robert Meschel's background or financial responsibility.

"Accordingly, I recommend that the lien claim of the Chemical Corn Exchange Bank upon the Chevrolet sedan to the extent of \$615.54 should be recognized.

"It appears likely that the amount realized at public sale of the motor vehicle will exceed the costs of seizure and amount of the lien. I further recommend that the motor vehicle be ordered sold.

"Lastly, I recommend that the alcoholic beverages be ordered forfeited and disposed of in accordance with law."

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

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

I am therefore satisfied that the bank acted in good faith and did not know or have any reason to suspect that Robert Meschel would use his Chevrolet sedan in unlawful alcoholic beverage activity. Consequently, I shall recognize the lien of the bank to the extent of \$615.54. R. S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that the Chevrolet 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 the Chemical Corn Exchange Bank upon payment of the costs of its seizure, storage, and sale; and it is further

ORDERED that if the Chevrolet sedan 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 Chemical Corn Exchange Bank its lien claim, recognized to the extent of \$615.54; 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 16 - 4/5 quart bottles of whiskey 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: September 10, 1957.

SCHEDULE "A"

16 - 4/5 quart bottles of whiskey  
1 - Chevrolet sedan, Engine 0207249T56F,  
Serial No. VB56T153456, N. J.  
Registration KC7649.

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - STOCK OF ALCOHOLIC BEVERAGES AND OTHER PERSONAL PROPERTY ORDERED FORFEITED - MUSIC MACHINE AND CIGARETTE VENDING MACHINE RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on ) Case No. 9505  
June 8, 1957 of a quantity of )  
alcoholic beverages, a music )  
machine, a cigarette machine and )  
\$17.00 in cash on premises desig- ) ON HEARING  
nated as House No. 12, located in ) CONCLUSIONS AND ORDER  
J. Beilinson's Camp in Millstone )  
Township, County of Monmouth and )  
State of New Jersey. )

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Isidore Pearlberg, t/a Automat Music, Pro se.  
Frank Joseph Mandia, t/a Majestic Cigarette Service, 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 a quantity of alcoholic beverages, soda, a music machine, \$17.00 in cash, and a cigarette vending machine, described in a schedule attached hereto, seized on June 8, 1957 in a building described as House No. 12, J. Beilinson's Camp, in Millstone Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, the above named claimants entered their appearances, and sought return of the music machine and cigarette vending machine respectively. No one opposed forfeiture of the alcoholic beverages, soda, or cash.

An ABC agent testified that the building, to outward appearances, is a dwelling, but the interior was equipped with a makeshift counter, a stove, refrigerator, soda box, benches, and the two machines, and various foodstuffs; that he visited the premises on May 25th and then purchased beer from one Thelma Williams, at which time he observed the sale of sandwiches; that he returned on June 1st, and again purchased beer from Thelma Williams; that he again returned late in the evening of June 7th and remained there until the early morning hours of June 8th, during which time he purchased beer from Thelma Williams; that on June 1st and 8th, he observed other persons purchase beer; and that on June 8th other agents entered the premises and made the seizure. The tenant of the premises was Azel Lee Evans.

Neither Thelma Williams nor Azel Lee Evans held any license authorizing either of them to sell alcoholic beverages and the premises were not licensed for that purpose.

The seized beer, and probably the wine seized, were intended for unlawful sale and hence are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages, and all personal property, including the \$17.00 in cash seized in the place, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

On June 2, 1957, Isidore Pearlberg placed the music machine in the establishment, designated on his records as Evans Restaurant, after placing a pool table there for Evans.

Pearlberg personally delivered the pool table, observed that it was a makeshift enterprise typical of the economic circumstances of its owner and patrons, and then received a call by telephone for the placement of the music machine. Although he did not observe any sales of alcoholic beverages, nor were there any such beverages visible, he made specific inquiry and was assured that alcoholic beverages were not sold there.

On June 23, 1957 Frank Joseph Mandia arranged to place the cigarette vending machine in Evans' premises, and the person who serviced the machine reported that it was some sort of a little store; that there were no activities at the place when he was there.

A reasonably prudent person could conclude that Evans was conducting a small commercial enterprise. His fingerprint record does not disclose any previous criminal record for violating any liquor laws.

I am satisfied from the evidence presented that each of the claimants acted in good faith and did not know, or have any reason to suspect that alcoholic beverages were being sold in the place. I shall therefore recognize their claims. R.S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that if on or before the 19th day of September, 1957, each claimant pays the respective costs, as allocated by the Director, of the seizure and storage of the items each seeks to have returned, the Seeburg music machine will be returned to Isidore Pearlberg, and the cigarette vending machine will be returned to Frank Joseph Mandia, such items being listed on Schedule "A" attached hereto; and it is further

DETERMINED and ORDERED that the balance of the personal property, including the \$17.00 in cash, likewise listed in the above Schedule "A", constitute unlawful property and that the same be and hereby are 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

Dated: September 9, 1957.

Director.

SCHEDULE "A"

- 13 - cans of beer
- 3 - pint bottles of wine
- 18 - bottles of soda
- 1 - Seeburg Music Machine and currency therein
- 1 - cigarette vending machine and currency therein
- \$17.00 in cash

6. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY DIVISION - APPLICATION TO LIFT GRANTED EFFECTIVE AT A FUTURE DATE.

Auto. Susp. #140 )  
In the Matter of a Petition by )

JOSEPH RUSSO )  
T/a IDLE HOUR )  
Lincoln Blvd. at Kopp Street )  
Lincoln Park, N. J., )

ON PETITION  
O R D E R

to Lift the Statutory Automatic )  
Suspension of Plenary Retail )  
Consumption License C-3, issued )  
by the Mayor and Council of the )  
Borough of Lincoln Park. )

-----)  
William P. Westling, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

The petition herein discloses that on August 6, 1957, Joseph Russo (the licensee) received a suspended sentence of six months in the County Jail and was fined \$250.00 after he had pleaded non vult in the Morris County Court to two indictments charging him with selling alcoholic beverages to minors, in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R. S. 33:1-31.1. The petition requests the lifting of the automatic suspension.

By order dated March 11, 1957, I suspended the license then held by petitioner for forty days (less five for the plea) after he pleaded non vult in disciplinary proceedings to a charge alleging that he sold alcoholic beverages to the same minors. This suspension was effective from 2:00 a.m. March 18, 1957, to 2:00 a.m. April 22, 1957 (Re Russo, Bulletin 1163, Item 1).

It further appears that thereafter the local issuing authority suspended petitioner's license from 2:00 a.m. April 22, 1957, to 2:00 a.m. October 1, 1957, after he had pleaded guilty in disciplinary proceedings to a charge alleging the sale of alcoholic beverages to another minor. Petitioner filed an appeal with me from said action and I denied a stay. On June 10, 1957, I entered an order affirming the action of the local issuing authority (Russo v. Lincoln Park, Bulletin 1177, Item 7). This suspension is now in effect and will terminate at 2:00 a.m. October 1, 1957. I shall grant the requested relief, effective at the termination of said suspension.

Accordingly, it is, on this 9th day of September, 1957,

ORDERED that the statutory automatic suspension referred to herein will be lifted, effective at 2:00 a.m. October 1, 1957, at which time petitioner's license will be restored to full force and operation. Until that time the statutory automatic suspension remains in effect.

  
WILLIAM HOWE DAVIS  
Director