

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 5, N. J.

September 4, 1956

BULLETIN 1129

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 5, N. J.

September 4, 1956.

BULLETIN 1129

1. APPELLATE DECISIONS - FOOD FAIR STORES OF NEW JERSEY, INC.  
v. UNION.

FOOD FAIR STORES OF NEW	)	
JERSEY, INC.,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF UNION,	)	
Respondent.	)	

-----  
Stein, Stein & Engel, Esqs., by Theodore C. Baer, Esq. and  
Nicholas J. LaRocca, Esq., Attorneys for Appellant.  
Kein & Scotch, Esqs., by Julius R. Pollatschek, Esq.,  
Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby on June 13, 1955, it denied unanimously appellant's application for a place-to-place transfer of Limited Retail Distribution License DL-13 from Safeway Stores, Inc., located at 595 Chestnut Street, to Food Fair Stores of New Jersey, Inc., located at 1201 Stuyvesant Avenue, both locations being in the Township of Union (County of Union).

In its petition of appeal filed July 18, 1955, appellant alleges, in substance, that the action of respondent was arbitrary and capricious and an abuse of its discretion.

Respondent in its answer alleges that its action was based upon a determination that the public convenience and necessity is adequately served by existing licenses in the area.

At the hearing held on January 17, 1956, appellant introduced evidence tending to show the nature of its business, the accessibility of its premises to residents of a populous and still growing section of the Township, the availability of parking facilities on its property, that but two "warm beer" licensees serve the area, and that each week about forty or fifty customers make inquiries as to why they have to go elsewhere for their beer.

The evidence submitted on behalf of respondent discloses that the Township's population, according to the 1950 Federal census, was 38,000; that forty-six plenary retail consumption licenses, sixteen plenary retail distribution licenses and fourteen limited retail distribution licenses have been issued and are outstanding in the Township; that the distance between appellant's premises and that of the Safeway Store is approximately one mile; that only one plenary retail distribution license and two plenary retail consumption licenses serve the area of the Safeway Store; and that within an area of approximately 1500 feet of appellant's premises there are five plenary retail distribution licenses, seven plenary retail consumption licenses and one limited retail distribution license. One of the Township Committeemen testified that the Committee "felt that there was ample places in that area to satisfy the needs

of the people" and a licensee, as spokesman for other licensees in the area, testified that "all liquor stores deliver, parking space doesn't mean a thing. A can of beer is as close to a person as their telephone."

I made a personal inspection of the area in question and thereafter, on April 17, 1956, counsel for the respective parties appeared before me on oral argument, at which time respondent's attorney questioned appellant's eligibility to hold a limited retail distribution license, contending that its merchandising operations are not in conformity with the provisions of R. S. 33:1-12(3)b. Additional testimony was taken on June 7, 1956, to ascertain appellant's status in that respect and the facts elicited indicate that appellant merchandises a wide variety of nonfood products as well as food products and pose a question as to whether or not the merchandising of the kind and quantity of such nonfood products precludes appellant from holding a license under the cited statute. I find it unnecessary to determine that question since my conclusions hereinbelow are otherwise dispositive of the appeal.

It has long been established that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority and that the function of the Director on appeal therefrom is not to substitute his opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its action and, if so, to affirm, irrespective of his personal views. Rothman v. Hamilton, Bulletin 1091, Item 1.

Under the facts and circumstances appearing in the instant case, the burden resting upon appellant to establish that respondent acted in an unreasonable or abusive exercise of its discretionary authority has not been sustained. I shall, therefore, affirm the action of the Township Committee.

Accordingly, it is, on this 26th day of July, 1956,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - THE GREAT ATLANTIC & PACIFIC TEA COMPANY v. WEST NEW YORK AND RITE-WAY FOODS, INC.

THE GREAT ATLANTIC & PACIFIC TEA )  
COMPANY, a New Jersey Corporation, )  
Appellant, )

--vs-- )

ORDER OF DISCONTINUANCE.

BOARD OF COMMISSIONERS OF THE TOWN )  
OF WEST NEW YORK, HUDSON COUNTY, NEW )  
JERSEY, and RITE-WAY FOODS, INC., a )  
New Jersey Corporation, )  
Respondents. )

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BY THE DIRECTOR:

The appellant requests leave to withdraw its appeal, filed July 31, 1956, from the denial of its application for a person-to-person and place-to-place transfer of a limited retail distribution license for the 1955-56 licensing year. Since no cause appears to the contrary,

It is, on this 6th day of August, 1956,

ORDERED that the within appeal be and the same is hereby discontinued.

WILLIAM HOWE DAVIS  
Director.

3. APPELLATE DECISIONS - MESSINGER ET AL. v. POMPTON LAKES AND BERTELLI'S LIQUOR INC. NO. 3.

ALBERT J. MESSINGER, ET AL., )

Appellants, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH  
OF POMPTON LAKES, and BERTELLI'S  
LIQUOR INC. NO. 3, )

Respondents. )

-----)  
Green and Yanoff, Esqs., Attorneys for the Appellants.  
Herbert W. Irwin, Esq. and Isenberg and Joseph, Esqs., by  
G. Gerson Isenberg, Esq., Attorneys for the Respondent  
Bertelli's Liquor Inc. No. 3.

BY THE DIRECTOR:

This is an appeal from the action of respondent Borough Council whereby it approved a person-to-person and place-to-place transfer of a plenary retail consumption license held by Harry P. Klomp, Jr. and Joseph Calandra to Bertelli's Liquor Inc. No. 3 and from premises 70 Wanaque Avenue to 29 Wanaque Avenue, Pompton Lakes, New Jersey. Four members of the Borough Council voted for the granting of the transfer and three members voted to deny the application.

Appellants contend that the action of the respondent Council was erroneous and should be reversed on the following grounds:

- "(a) The names and addresses of, and the amount of stock held by, all stockholders holding one or more percent of any of the stock of the respondent applicant, Bertelli's Liquor Inc. No. 3, and the name and addresses of all officers and of all members of the Board of Directors were not stated in the application.
- (b) The respondent applicant, Bertelli's Liquor Inc. No. 3, while applying for the transfer to it of a Plenary Retail Consumption License intends to operate as under a Plenary Retail Distribution License.
- (c) The answer to Question No. 23 in the application made by respondent applicant was not true.

[Question No. 23 above referred to reads: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders? \_\_\_\_\_ If answer is "Yes", state details \_\_\_\_\_ .']

- (d) The answer to Question No. 30 in the application made by respondent applicant was not true.

[Question No. 30 above referred to reads: 'Has any individual, partnership, corporation or association other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license? \_\_\_\_\_  
If so, state names, addresses and interest of such individuals, partnerships, corporations or associations \_\_\_\_\_.']

By letter dated March 22, 1956, Arthur T. Riedel, Borough Clerk, advised this Division "that the Borough will not defend this appeal".

At the hearing on appeal, the Resolution approving the transfer in question was marked in evidence without objection as Exhibit A-1. The Resolution reads as follows:

"WHEREAS, application has been made for approval of transfer of plenary retail consumption license No. C-4 from Harry P. Klomp, Jr. and Joseph Calandra T/A Golden Eagle, 70 Wanaque Ave., Pompton Lakes, N. J. to Bertelli's Liquor Inc. No. 3 T/A Same, 29 Wanaque Avenue, Pompton Lakes, N. J., and

WHEREAS, objections to said transfer have heretofore been filed and a hearing held on Monday, February 20th, 1956 and Thursday, February 23rd, 1956 as provided by law, and

WHEREAS, the Council has heard and duly considered the evidence presented by the Objectors and Applicant, and

WHEREAS, the transfer has been attacked on two general grounds, to wit:

- (1) Allegation by Objectors that the Corporate Applicant is not the real party in interest
- (2) Allegation by Objectors that Applicants do not intend to operate the premises as a bar or tavern but rather as a package store only, and

WHEREAS, the Council finds that:

- (1) Corporate Applicant and the stockholders listed on the application are the real parties in interest
- (2) The plans and specifications as filed for the premises comply with the standards fixed by R. S. 33:1-12.23.

NOW, THEREFORE, BE IT RESOLVED that the transfer of License C-4 be approved in accordance with the provisions and plans of the application, subject to the following terms and conditions:

- (1) Transfer shall not be effective until completion of the premises in strict compliance with the plans and specifications as filed and in compliance with the pertinent local ordinances and regulations.

- (2) Inspection and approval of the premises after completion by the Building Inspector, Plumbing Inspector, Health Officer and Chief of Police.
- (3) The condition that the premises shall be operated in a manner so as to insure visibility of the public bar at all times from any point in the barroom, and particularly in this connection, that no case, appurtenance or obstruction of any kind shall be placed in the open floor area which is more than 36 inches in height."

The testimony of Angelo Bertelli, president, and Cornelia DeVries, vice-president and treasurer, respectively, of respondent corporate-licensee called as witnesses by the appellants, disclosed that Bertelli is the holder of fifty shares of the issued and outstanding stock of the corporation; that Cornelia DeVries is the holder of forty-nine shares of said stock and that one share thereof is held by Phyllis Reindle, secretary of the corporation. Both witnesses testified that each obtained a personal loan of money from one Steve Dudek to be used as part payment for the capital stock in the respondent corporate-licensee. Both also testified that no person other than the stockholders mentioned above has any interest whatsoever in the corporation. The members of the respondent Borough Council who voted in favor of the transfer of the license according to the Resolution approved by them were satisfied that the three stockholders disclosed in the application were the real parties in interest. After careful examination of the testimony relating thereto, I am in agreement with the conclusion of the respondent Borough Council that such is the case. Therefore, grounds (a), (c) and (d) appear to be without merit.

Considering ground (b) of the Petition of Appeal, I note that the plans submitted to respondent Borough Council by respondent Bertelli disclose that the bar has an over-all length of twenty feet, with a sink, a ten-foot back bar and eight bar stools, all of which are located in front of a large refrigerator. The plans indicate shelving on both walls to be used for display of alcoholic beverages in original containers commencing from the entrance of the premises and extending to the bar; also, a photograph marked in evidence as Exhibit A-7 shows some cartons and bins containing alcoholic beverages in original containers in the center of the floor. The appellants contend that respondent licensee, although applying for the transfer of a plenary retail consumption license, intends to operate a package goods store. This is not the first time I have been called upon to decide the issue as to whether or not the plans depicting a layout along the general lines of that submitted herein comply with the requirements of a "public barroom" as defined in R. S. 33:1-12.23, which provides in part:

"Such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises \* \* \* \*"

In the case of Passaic County Retail Liquor Dealers' Association v. Paterson and Bertelli's Liquor Store, Inc., Bulletin 1043, Item 3, determination made by me that the floor plans of licensed premises somewhat similar to those now under consideration did not violate R. S. 33:1-12.23 was, on appeal, upheld by the Superior Court of New Jersey. Passaic County

Retail Liquor Dealers' Association v. Board of Alcoholic Beverage Control for the City of Paterson et al., 37 N. J. Super. 187.

The burden of establishing that the action of respondent Borough Council is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15. Under the circumstances appearing in this case I am satisfied that the appellants have failed to meet the burden imposed upon them as a consequence of which the action of the respondent Borough Council will be affirmed.

While I am affirming the grant of license transfer there are unpleasant and disturbing circumstances, past and current, which call for further treatment herein.

I am convinced by the record that respondent corporation's design has been from the inception to skirt or (if possible) to circumvent the minimal requirements of the 1948 statute. "As used in that statute, the term 'public barroom' means a bona fide public barroom, not a room, however public and containing whatever equipment, which is not in fact a public barroom." (Re Krystyniak, Bulletin 1021, Item 2). Respondent corporation may lawfully have shelves of bottle goods along the side walls but it may not clutter up the room's center floor area with bins or displays or cases of bottle goods. In that regard respondent Council's third special condition is not fully adequate in its prohibition of any "case, appurtenance or obstruction...which is more than 36 inches in height." The special condition, as worded, would appear to permit all sorts of obstructions in the center floor area so long as the top of the bar remained visible, yet such obstructions, although no greater than 36 inches in height, could well have, in real and practical result, the effect of obscuring the bar and bar area and of separating the bar and bar area from most of the package goods area. There must be free and open access from the entrance door back to the bar with no separating obstructions to such free and open access.

Furthermore, when the statute says "facilitate" its meaning is perfectly clear. "Facilitate" means "to make easy or less difficult; to free from difficulty or impediment." (Webster's New International Dictionary, Second Edition, Unabridged.) An early-taken photograph of respondent corporation's bar (introduced in evidence on behalf of appellant) shows bottle goods and other items of display on the bar. Such a practice, crystal clear in evasive design, cannot be resumed. The bar must be kept clear of package goods and displays and other impediments to the bar's use in facilitating sale and dispensing by the drink.

Furthermore, the large neon sign outside respondent corporation's premises must come down at once. The sign says "LIQUORS", "COLD BEER", "BAR" AND "WINES". The letters for "COLD BEER" AND "WINES" are about twice the size of the "BAR" letters; and the letters for "LIQUORS", featured at the top of the sign, are about four times the size of those for "BAR". Rule 2 of State Regulations No. 26 reads as follows:

"No licensee of any class shall use any corporate name, trade name, or other name, sign or symbol, which is calculated to or may mislead the general public to believe the licensee is conducting any operations or business pertaining to alcoholic beverages other than the operation or business actually being conducted by the licensee."

Within the meaning and intendment of R. S. 33:1-12.23, the existing sign is manifestly in contravention of Rule 2 of State Regulations No. 26. On any sign hereafter erected to replace the present sign, the word "BAR" must be given at least equal prominence in size and general appearance to the words "LIQUORS" or "COLD BEER" or "WINES" or other words denoting package goods.

Accordingly, it is, on this 1st day of August, 1956,

ORDERED that the action of the respondent Borough Council be and the same is hereby affirmed, in keeping with the Conclusions hereinabove set forth, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director.

4. APPELLATE DECISIONS - ATLANTIC COUNTY TAVERN OWNER'S ASSOCIATION, INC. ET AL. v. EGG HARBOR CITY AND DeCLEMENTI.

ATLANTIC COUNTY TAVERN OWNER'S )  
ASSOCIATION, INC., ET AL., )

Appellants, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

COMMON COUNCIL OF THE CITY OF )  
EGG HARBOR CITY, and BESSIE )  
ELIZABETH DeCLEMENTI, )

Respondents. )

-----  
William T. Cahill, Esq., Attorney for Appellants.

S. Paul Ridgway, Esq., Attorney for Respondent Bessie Elizabeth DeClementi.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Council in approving a place-to-place and person-to-person transfer of a plenary retail consumption license from Virginia Pearl Moss to Bessie Elizabeth DeClementi and from premises 658 Cincinnati Avenue to 2 Philadelphia Avenue and 603 Atlantic Avenue, Egg Harbor City, New Jersey. The eight members of the respondent Council who were present at the time voted unanimously in favor of the transfer.

The appellants in their Petition of Appeal set forth various grounds upon which they rely for reversal of respondent Council's action, viz.,

- "(a) A voluntary consent from the present holder of the plenary retail consumption license was not obtained by the transferee.
- (b) The premises to which the license is sought to be transferred are not suitable or proper for the purposes intended.
- (c) There are already in existence in the immediate area to which the license is sought to be transferred, a sufficient number of licenses to satisfy public need and necessity.
- (d) There did not exist any public need or necessity for the transfer of license to the premises in question.
- (e) The respondent City of Egg Harbor did not consider at the time of granting said transfer, the objections made to said transfer, but acted arbitrarily, capriciously and in disregard of the regulations of the Division of Alcoholic Beverage Control and the laws of the State of New Jersey."

Although an Answer was filed by the attorney for respondent Council, there was no appearance for the said issuing authority at the time of the hearing on the instant appeal.

Margaret Craig and Herman Jacobson, holders of plenary retail consumption licenses, respectively, testified that they operate their establishments on the other side of the street from the proposed licensed premises. Margaret Craig estimated that her licensed premises is approximately 400 feet from the location of respondent DeClementi's premises. They also testified that there are two other plenary retail consumption licenses, one a bowling alley with a liquor license, on Philadelphia Avenue between White Horse Pike and Atlantic Avenue and because of this, they were of the opinion that there was no need or necessity for another liquor outlet in the vicinity. John Mason, a person who operates an upholstery business on the opposite side of the street from the place for which the transfer is sought and 350 feet therefrom, testified that in his opinion there were enough licensed premises in the neighborhood.

John Schuster, City Clerk of Egg Harbor City, testified that "there is no other street that compares in volume of business to Philadelphia Avenue in Egg Harbor City"; that Margaret Craig's liquor establishment "is approximately five hundred feet" from the proposed premises; that a school was recently erected at a distance of "approximately three hundred feet" from the site of the premises from which the license was transferred; that in his opinion, if a bar is erected and other pertinent equipment is installed, it would be suitable as a licensed premises.

Respondent Elizabeth DeClementi testified that she intends to improve the premises and to operate the business herself. There was some testimony presented by two witnesses to the effect that respondent Elizabeth DeClementi had stated that she obtained the liquor license for the premises in question so that the premises might be more readily saleable. She denied making such statement.

I have carefully considered the testimony adduced herein and the memoranda filed by the respective counsel for the parties who appeared at the within hearing and there appears to be no dispute that the street on which the proposed licensed premises is located is the main street of the City. The evidence indicates that there are various business establishments in the neighborhood including other licensed premises. The existence of liquor outlets in the vicinity does not necessarily mean that another liquor license may not be issued or transferred to that area. Guarino v. Newark et al., Bulletin 1069, Item 2, and cases cited therein. The determination as to whether or not a license will be transferred to a particular location is a matter within the sound discretion of the local issuing authority. The State Director's function on appeal of this type is not to substitute his personal opinion for that of the local issuing authority but rather to determine whether reasonable cause exists for its opinion and, if so, to affirm its action. Guarino v. Newark et al., supra.

Under the circumstances, I am satisfied that the members of respondent Council did not abuse their discretionary power in granting the transfer of the license to respondent Bessie Elizabeth DeClementi. Therefore, I cannot hold that the action of said respondent issuing authority is so unreasonable as to require a reversal of its action.



sale of alcoholic beverages to a sixteen-year-old minor subsequent to January 16, 1956 is twenty-five days, to which five days will be added because there were three minors involved. Re Janbert, Inc., Bulletin 1119, Item 3. I shall suspend defendant's license for thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 26th day of July, 1956,

ORDERED that Plenary Retail Consumption License C-158, issued for the 1956-57 licensing year by the Board of Commissioners of the City of Passaic to Rosario Elmo, t/a Club 296, 296 Passaic Street, Passaic, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. August 7, 1956, and terminating at 3:00 a.m. September 1, 1956.

WILLIAM HOWE DAVIS  
Director.

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT  
VARIOUS ITEMS RETURNED TO INNOCENT OWNER - STOCK OF ALCOHOLIC  
BEVERAGES AND BALANCE OF FIXTURES AND FURNISHINGS ORDERED  
FORFEITED.

In the Matter of the Seizure on	)	Case No. 9114
February 4, 1956 of a quantity	)	
of alcoholic beverages and other	)	
articles, at premises located at	)	ON HEARING
129 Hudson Street, in the City of	)	CONCLUSIONS AND ORDER
Hoboken, County of Hudson and State	)	
of New Jersey.	)	

-----  
Stewart in-fra-red Commissary, by Robert Morris MacDonald,  
President.

Playit Amusement, Inc., by John Michael Cappiello.

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, and other personal property, described in a schedule attached hereto, seized on February 4, 1956 at 129 Hudson Street, Hoboken, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Stewart in-fra-red Commissary, which sought return of a broiler, and an appearance was entered on behalf of Playit Amusement, Inc., which sought return of a music machine, a cigarette vending machine, and a pinball machine. No one appeared to oppose forfeiture of the alcoholic beverages, or the balance of the property seized.

It is established by the testimony of ABC agents that on February 4, 1956 at about 2:10 a.m. one of such agents entered an ostensible restaurant conducted by Ferdinand Pisani under the name of "Cider Bar" located at 129 Hudson Street, Hoboken, to investigate a complaint that alcoholic beverages were being sold there without a license. The agent observed therein an "L" shaped bar and bar stools of the type usually found in a tavern. The agent asked Ferdinand Pisani who was behind the bar, for a double shot of whiskey. Pisani thereupon handed the agent a

beer jug or mug containing whiskey, which Pisani obtained from underneath the bar. The agent paid \$1.00 to Pisani for the drink of whiskey. About 15 minutes later two fellow agents entered the premises. Pisani first served these agents with two bottles of non-alcoholic beer, and then served them with two drinks of whiskey. After Pisani accepted payment for the drinks, the agents disclosed their identity, whereupon Pisani verbally admitted the aforesaid sales of drinks of whiskey to the agents.

The agents searched the premises and discovered underneath the bar a beer bottle containing an alcoholic beverage, and also found four beer bottles and a 4/5 quart bottle containing alcoholic beverages on a fire escape adjacent to a window in the restaurant. The agents seized these alcoholic beverages, as well as the stock of non-alcoholic beverages, the equipment of the restaurant and \$82.10 in cash.

The seized alcoholic beverages in the six bottles were analyzed by the Division chemist, who reports that each of the beer bottles contained alcohol, water, color and flavor, fit for beverage purposes, with an alcoholic content averaging 43 per cent by volume, and that the 4/5 quart bottle contained Scotch whisky fit for beverage purposes with an alcoholic content by volume of 43.5 per cent. The chemist also analyzed portions of the drinks served to the agents and retained by them, and reports that such drinks consist of whiskey and carbonated water with an alcoholic content by volume averaging over five per cent.

Ferdinand Pisani did not hold a license authorizing him to sell alcoholic beverages, and the premises were not licensed for that purpose. The seized alcoholic beverages are illicit because they were intended for unlawful sale, and further, the alcoholic beverages in the beer bottles were not properly labeled and did not have affixed thereto any stamps indicating the payment of tax on alcoholic beverages. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcoholic beverages, and all personal property seized therewith on the premises, including the \$82.10 in cash, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Applications for return of property subject to forfeiture are addressed to my discretionary authority, as provided for by R.S. 33:1-66(f). Thereunder an applicant must establish to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use.

In considering the conduct of the claimants herein in placing their equipment in the premises, it should be noted that the establishment was openly advertised as the "Cider Bar" and a tavern type bar was part of the equipment therein, and in addition, it appears that on October 15, 1955 a similar seizure was made at the premises from Ferdinand Pisani because of his unlawful sale of alcoholic beverages therein and Pisani was arrested on charge of violating the Alcoholic Beverage Law. He has a lengthy record of previous arrests, although his only conviction is for operating a lottery.

Robert Morris MacDonald testified that he is president of the Stewart in-fra-red Commissary and that a bartender employed in Hoboken, who is also a part-time salesman for his concern, made the arrangements whereby the equipment was placed in Pisani's establishment. MacDonald had no contact with Pisani; never visited his place of business, and sandwiches supplied by

his concern to Pisani were delivered at other premises. The bartender told MacDonald that he was placing the equipment in the "Cider Bar", which MacDonald assumed meant a beer or soft drink bar, -- that he never questioned whether it was a saloon or soda bar. MacDonald further testified that he has no facilities for checking the background or character of the person to whom his equipment is loaned, and that he did not make any such check concerning Ferdinand Pisani.

Michael Borrelli, General Manager of Playit Amusement, Inc., testified that he was formerly a Commissioner of the City of Hoboken, and therefrom was aware that Ferdinand Pisani formerly held a liquor license at other premises, and was in and out of trouble for misconduct of such licensed business. John Michael Cappiello testified that Ferdinand Pisani requested that the machines in question be placed in his establishment, and told Cappiello that he would not sell any liquor and intended to attract business from transients and travellers after the closing hour of licensed taverns. Cappiello was aware that Pisani formerly conducted a tavern; had seen the newspaper account of the raid in October 1955 at the Cider Bar; and stated that the Cider Bar looked like a tavern. Pisani told Cappiello that most of his patrons were "pickled" and thought they were getting beer, although he was actually serving near-beer to them.

It has been uniformly held that where the establishment has a past record or reputation as the scene of speakeasy activities, a claimant seeking the benefit of the Director's discretionary authority must present convincing evidence that he made an earnest effort to ascertain the background and activities of the person with whom he left his property, and did not discover such record, or reputation, or the likelihood that unlicensed sales of alcoholic beverages would be carried on at the premises. Re Seizure Case No. 8634, Bulletin 1056, Item 4.

Moreover, where, as here, a mere glance would disclose that the place where claimants' property was located is equipped as a place for the service or sale of alcoholic beverages, such claimants must produce evidence that they inspected the place and sought to ascertain whether the establishment was licensed to sell alcoholic beverages. Re Seizure Case No. 8187.

The Hearer, in his report, concluded from the above facts and cited principles that neither claimant complied with these requirements, in that the Stewart concern did not make any investigation whatsoever, and that the Playit concern was aware of such facts as would have led a reasonably prudent person to conclude that there was a likelihood that Pisani was selling or intended to sell alcoholic beverages without a license, and hence recommended that both claims should be rejected.

Counsel for Playit filed exceptions to the Hearer's report, and appeared before me on oral argument thereon. Stewart did not file any such exceptions within the time limited therefor, and as to its application I adopt the Hearer's report that the application of Stewart in-fra-red Commissary be denied, for the reasons stated.

However, in so far as Playit is concerned, the above cited principles are not controlling by reason of other circumstances in the case. The record or reputation of the establishment is based primarily on the previous seizure in October 1955, since Pisani personally, while having a reputation for arrests, had no previous record of unlawful beverage activity, such as operating a speakeasy, operating an illicit still, or being involved in any bootleg liquor activities. Hence the single element relied upon

to bring home knowledge to Playit of Pisani's speakeasy activities is the above mentioned seizure in October 1955.

It appears that Playit installed its machines on April 21, 1955 prior to such incident. Thereafter its personnel was at the establishment from time to time and observed that its machines remained there. It had no knowledge that Pisani had substituted cash for the seized property, permissible under the Alcoholic Beverage Law, and thereby retained such property. It is therefore reasonable to assume that Playit concluded that if the first seizure did not result in forfeiture of its property any subsequent seizure would likewise not jeopardize its property. Nevertheless, after October 1955 it made some attempt to remove its machines because the location was unprofitable, but was unable to accomplish such removal because the establishment did not open until after midnight.

While Playit is in error as a matter of law in its assumption that its machines could remain with Pisani without being subject to forfeiture, it is sufficiently evident that it acted in good faith, and did not deliberately continue to furnish equipment to a speakeasy operator. Under the special circumstances in the case, I shall modify the Hearer's report to the extent that the three machines will be returned to Playit.

Accordingly, it is DETERMINED and ORDERED that if on or before the 26th day of July, 1956, Playit Amusement, Inc. pays the costs incurred in the seizure and storage of the music machine, cigarette vending machine and a pinball machine, described in Schedule "A" attached hereto, such machines will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property (including \$82.10 in cash), 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 Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS

Dated: July 16, 1956.

Director.

SCHEDULE "A"

- 5 - beer bottles containing whiskey
- 1 - 4/5 quart bottle of whiskey
- 54 - bottles of soda
- 216 - bottles of near beer
- 1 - music box and currency therein
- 1 - cigarette machine and currency therein
- 1 - pinball machine and currency therein
- 1 - Infra red machine
- 4 - booths
- 3 - tables
- 1 - fan
- 4 - lamps
- 10 - bar stools
- 1 - bar
- 1 - compressor
- 1 - beer cooler
- 1 - cash register
- 1 - scale
- 1 - slicing machine
- 1 - Pizza pie oven
- 1 - Crosley Refrigerator
- Dishes and glassware
- \$82.10 in cash

7. SEIZURE - FORFEITURE PROCEEDINGS - STOCK OF ALCOHOLIC BEVERAGES AND EQUIPMENT OF SPEAKEASY IN RESTAURANT ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT CLAIMANTS.

In the Matter of the Seizure on ) Case No. 9133  
 March 7, 1956 of a quantity of )  
 alcoholic beverages, furniture, )  
 fixtures and equipment and \$29.00 )  
 in cash, at "Jimmie's Restaurant", ) ON HEARING  
 located at 265 Walker Street, in ) CONCLUSIONS AND ORDER  
 the Borough of Fairview, County of )  
 Bergen and State of New Jersey. )

-----)  
 Arthur Gentilella, Esq., Attorney for San Paolina Society.  
 Moe Victor and Martin Victor, trading as Metropolitan Music Co.  
 (Division of Momar Music Co.), by Moe Victor.  
 Jersey Sales Service Co., by Ruben Hirshorn, General Manager.  
 General Electric Credit Corp., by Frank Gunda, Collection Manager.  
 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, \$29.00 in cash, and various furnishings, fixtures and equipment, described in a schedule attached hereto, seized on March 7, 1956 in "Jimmie's Restaurant" located at 265 Walker Street, Fairview, 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 appearance and sought return of various items hereinafter more specifically set forth. No one opposed forfeiture of the alcoholic beverages or the balance of the seized property.

An ABC agent testified that he visited the above restaurant on March 6, 1956. He described the premises as a ground floor store with inscriptions on the window reading "Jimmie's Restaurant" and "Societa San Paolino". The interior consisted of a dining room and kitchen, equipped with tables, chairs, a television set, cigarette vending machine, and a music machine. Carmine Porzio, also known as "Jimmie", was in the restaurant. The agent ordered food and two bottles of beer from Porzio, was served therewith, and paid Porzio therefor. The agent then left the restaurant.

This agent returned to the restaurant on March 7th and again purchased from Porzio food and three bottles of beer, for which he paid Porzio with three \$1.00 bills identified by serial numbers. Two other ABC agents also entered and purchased from Porzio sandwiches and two bottles of beer. Thereupon all of the agents disclosed their identity to Porzio who admitted the sales of beer to the agents, claiming that he only sold to club members.

Carmine Porzio did not hold any license authorizing him to sell alcoholic beverages and the premises were not licensed for that purpose. Accordingly, the agents seized 33 bottles of beer, two bottles of whiskey, two bottles of cordials, \$29.00 in cash including the marked money, which was in a drawer, and the furnishings, fixtures, and equipment in the restaurant.

The seized beer, and probably the other alcoholic beverages, were intended for unlawful sale and hence are illicit. R. S. 33:1-1(1). Such illicit alcoholic beverages, and all personal property, including the \$29.00 in cash, seized in the

restaurant, 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 March 5, 1956 Metropolitan Music Co. (Division of Momar Music Company) loaned the seized Seeburg music machine to Porzio on a profit-sharing basis. Its representative testified that its personnel did not know that alcoholic beverages were being sold in the restaurant, and did not observe any alcoholic beverages therein.

On or about June 5, 1956 Jersey Sales Service Co. loaned the seized cigarette vending machine to Porzio. Its service men did not see any alcoholic beverages being sold, or in the premises when servicing the machine.

Societa San Paolino, whose members met at the premises on occasion, is the owner of the television set which was seized. The president of the organization represents under oath that such organization had no knowledge that Porzio was selling alcoholic beverages there.

General Electric Credit Corporation holds, by assignment, a conditional sales contract dated November 28, 1955, evidencing the conditional sale of the Frigidaire refrigerator to Carmine Porzio for the sum of \$320.00, on which there is a present balance due of \$211.25. Prior to extending credit to Porzio it checked his information that he was employed by a dress concern, and found such report to be correct. The balance due on the refrigerator, and the costs of its seizure and storage, exceed the retail value of such item.

The establishment had the outward appearance of a legitimate commercial restaurant. Carmine Porzio's fingerprint records do not disclose any previous criminal record.

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 restaurant without a license. I shall therefore recognize their claims. R. S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that if on or before the 23rd day of July, 1956 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 Metropolitan Music (Division of Momar Music Company); the cigarette vending machine will be returned to Jersey Sales Service Co.; the television set will be returned to Societa San Paolino and the Frigidaire refrigerator will be returned to General Electric Credit Corporation, as such items are listed in Schedule "A" attached hereto; and it is further

DETERMINED and ORDERED that the balance of the personal property including the \$29.00 in cash, and the seized alcoholic beverages, more fully described in attached 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  
Director.

Dated; July 11, 1956.

SCHEDULE "A"

- 2 - bottles of whiskey
- 2 - bottles of cordial
- 33 - bottles of beer
- 40 - bottles of Coca Cola
- 11 - tables
- 20 - chairs
- 1 - cigarette machine and currency therein
- 1 - music box and currency therein
- 1 - clock
- 1 - Frigidaire
- 1 - television set
- 1 - radio
- 1 - coat hanger
- \$29.00 in cash
- Assorted silverware, dishes, cups and foodstuffs.

8. MALT ALCOHOLIC BEVERAGES - MINIMUM CONSUMER RESALE PRICES - PUBLIC HEARING - NOTICE.

A public hearing on certain aspects of fixing minimum consumer resale prices for beer and other malt alcoholic beverages, pursuant to Section 5 of Chapter 110 of the Laws of 1956, will be held on Wednesday, August 22nd between the hours of 10:30 a.m. and 1:00 p.m. in the Essex House, 1050 Broad Street, Newark, N. J.

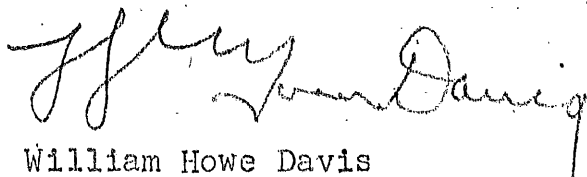
It should be particularly noted that prices are not to be fixed by the Director of Alcoholic Beverage Control, since the law requires the Director to make and promulgate rules and regulations in connection with the establishment by the brewer, importer or owner of the brand, of minimum prices below which beer and other malt alcoholic beverages may not be sold to the consumer.

Among the matters to be considered at the hearing will be the location of recognized trading areas within which minimum prices for beer and other malt alcoholic beverages will be effective, private labels and exclusive brands, filing procedures and other matters which may be the proper subject of inquiry.

The purpose of the hearing is not to consider whether rules and regulations should be promulgated since the law requires their promulgation. Instead, the purpose is to afford affected persons opportunity to submit suggestions, supported by proof if necessary, with respect to the scope and content of the rules and regulations which must be promulgated.

All persons wishing to be heard are invited to attend. It would be helpful if those who desire to be heard would send written notice of such desire to Director, Division of Alcoholic Beverage Control, 1100 Raymond Blvd., Newark, N. J., immediately.

Dated: August 13, 1956.



William Howe Davis  
Director.