STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2114

September 6, 1973

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2114 September 6, 1973

1. COURT DECISIONS - THE CAJE INC. v. DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR REVERSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3297-71

THE CAJE INC.
t/a The Caje, Inc.,

Appellant,

v.

ROBERT E. BOWER, DIRECTOR
Division of Alcoholic Beverage
Control, State of New Jersey Division
of Alcoholic Beverage Control,
Respondent.

Argued June 12, 1973 - Decided July 2, 1973

Before Judges Kolovsky, Matthews and Crahay.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Herman Osofsky argued the cause for appellant.

Mr. William P. Schey argued the cause for respondent Municipal Board of Alcoholic Beverage Control of the City of Passaic (Mr. Joseph F. Scancarella, attorney).

Mr. George F. Kugler, Jr., Attorney General, filed a statement in lieu of brief on behalf of respondent Division of Alcoholic Beverage Control (Mr. David S. Piltzer, Deputy Attorney General, of counsel).

PER CURIAM

(Appeal from the Director's decision in Re The Caje, Inc. v. Passaic, Bulletin 2063, Item 2. Director reversed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - RE HILLCREST, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1323-72

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

Hillcrest, Inc.
t/a Hillcrest
189A-191 Avenel St.
Avenel, N. J.

Holder of Plenary Retail Consumption
License C-68, issued by the Municipal
Council of the Township of Woodbridge.

Argued June 11, 1973 - Decided July 2, 1973.

Before Judges Carton, Mintz and Seidman.

On appeal from Division of Alcoholic Beverage Control.

Mr. Donald T. Joworisak argued the cause for appellant (Mr. Thomas W. Sharlow, attorney).

Mr. David S. Piltzer, Deputy Attorney General, argued the cause for respondent, Division of Alcoholic Beverage Control (Mr. George F. Kugler, Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from the Director's decision in Re Hillcrest, Inc., Bulletins 2089, Item 4 and 2105, Item 3. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

3. NOTICE TO LICENSEES - PRE-MIXED COCKTAIL STORAGE CONTAINERS DESCRIBED; RESTATEMENT OF RULE; CLOSED CONTAINERS PERMITTED.

TO ALL RETAIL CONSUMPTION LICENSEES:

Under the Alcoholic Beverage Law retail licensees are prohibited from bottling alcoholic beverages (R.S. 33:1-2). While the Division has permitted plenary or seasonal retail consumption licensees to prepare pre-mixed cocktails to be used for immediate service, it has required that cocktails be placed only in open pitchers or decanters because of this provision of the law and has not permitted them to be stored in any kind of enclosed bottle or jug.

Should cocktails mixed in quantities and stored in enclosed jugs or bottles be served and consumed at some indeterminate time in the future, this would constitute bottling in violation of the law.

However, Division experience has disclosed certain problems which result from the strict interpretation of the law. Open pitchers and decanters are difficult to pour from and foreign substances may drop into them.

Accordingly, I have determined that retail consumption licensees, utilizing the privilege of pre-mixing cocktails, may keep such cocktails in enclosed containers (capped or corked) and not be deemed to be in violation of the Alcoholic Beverage Law, provided the following conditions are adhered to:

1. All pre-mixed cocktails must be consumed during the day they are pre-mixed.

2. All pre-mixed cocktails not used during the period specified in Condition #1, must be destroyed prior to the commencement of the licensee's next business day.

3. Containers used for temporary storage of pre-mixed cocktails may be of any type, including enclosed bottles or jugs, except that they may not be containers previously used to hold any type of alcoholic beverage.

It is to be understood that my position with respect to this change in policy will be reviewed from time to time in the light of experience gained in observing the practices of licensees. Should such experience show abuses, resulting in undue control or enforcement problems, I shall have no hesitancy in taking appropriate remedial action.

ROBERT E. BOWER
DIRECTOR

Dated: August 6, 1973

4. NOTICE TO ALL LICENSEES - DATE LIMITATIONS OF WHOLESALE OR MINIMUM CONSUMER RESALE PRICE LISTS - CURRENT PRICE LISTS TO BE FULLY EFFECTIVE SUBSEQUENT TO AUGUST 13, 1973.

TO ALL LICENSEES:

By my ruling of July 6, 1973, prices in the Division's Wholesale and Minimum Consumer Resale Price Lists, effective July 9, 1973, were superseded in part because of the President's price freeze order of June 13, 1973. Specifically, I ordered that prices in these price lists which were higher than the price in the previous lists of April 9, 1973 were not to be effective but, instead, the lower prices in the April 9, 1973 price list were to prevail until my further order.

It has been announced that new federal regulations will be adopted, effective August 13, 1973, as part of the President's Phase IV economic policies. These new federal regulations will no longer require the continuance of any of the prices in the Division's April 9, 1973 Wholesale or Minimum Consumer Resale Price Lists on and after August 13, 1973. Accordingly, I hereby order that all of the prices in the Wholesale and Minimum Consumer Resale Price Lists of July 9, 1973 shall be in effect and prevail effective August 13, 1973 and until the expiration of these lists at the close of September 30, 1973.

This means that on and after August 13, 1973 the current price pamphlets of July 9, 1973 will no longer be partially in effect, but they will be fully in effect.

ROBERT E. BOWER
DIRECTOR

Dated: August 6, 1973

5. APPELLATE DECISIONS - PARAMOUNT WINES & LIQUORS v. PATERSON.

Paramount Wines & Liquors, a corporation, t/a Paramount Wines & Liquors,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Board of Alcoholic Beverage Control for the City of Paterson,	)	
Respondent.	)	

Noonan and Flynn, Esqs., by John W. Noonan, Esq., Attorneys for Appellant
Adolph A. Romei, Esq., by Ralph L. DeLuccia, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, the corporate plenary retail consumption licensee for premises 291 Market Street, Paterson, was found guilty in disciplinary proceedings by respondent of a charge alleging that on May 8, 1971 it allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the "numbers game", to be sold and offered for sale in and upon its licensed premises, in violation of Rule 6 of State Regulation No. 20, resulting in a suspension of its license for ninety days, effective February 10, 1973.

Appellant challenges the said conviction alleging that (1) there was no gambling being "condoned" by the appellant; (2) that there was insufficient evidence to "maintain a finding that gambling was being conducted or condoned" by the appellant; and (3) the suspension is not "in the best interest of the public good and welfare."

The respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) filed an answer in which it denies the substantive allegations of the petition, and also denies that there were any irregularities in the conduct of the hearing before it.

Upon the filing of this appeal an order was entered by the Director on February 14, 1973 staying the Board's order of suspension pending the determination of the appeal and the entry of a further order herein.

The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings before the Board was received in evidence, and additional testimony was presented by both parties, pursuant to Rule 8 of the said Regulation.

The Board's presentation was made by Police Officer Raymond Zdanis whose testimony both before the Board and this hearing de novo may be distillated as follows: On the date charged herein, this witness, accompanied by Detectives Trifari and Colon, entered the premises pursuant to a specific assignment to conduct an investigation of alleged gambling activity. They informed the bartender on duty (later identified as Julio Benitez) that they intended to conduct a search of the premises and during the search behind the bar found a "slip of green paper denoting 13 numbers bets". They also found, underneath the bar on one of the shelves, programs of official "Mets cards", on which there were several numbers bets with the amounts wagered.

Continuing their search in the office which was adjacent to the bar and was part of the licensed premises, they found an "Aqueduct scratch sheet" which contained numbers pertaining to "illegal lottery". They also found a slip of yellow paper behind the counter which had several numbers bets on it and a long sheet of white paper which also contained "numbers bets".

This police officer who served for two years as a member of the vice squad has had expertise in conducting about one thousand investigations and searches relating to gambling paraphernalia, was familiar with gambling bets and identified the inscriptions on the various sheets of paper as being "numbers bets". This search was conducted under his supervision and, while he did not personally find all of the documents he was present when these documents were found and they were immediately turned over to him. As a result of the search, the bartender was placed under arrest and Robert Pendergast, the principal officer of the corporate licensee, who responded to a call to the premises was also arrested.

Although the slips were not actually produced at the hearing before the Board since, as explained by the witness they were in the Prosecutor's office, they were actually produced at this de novo hearing and admitted into evidence.

On cross examination, the witness readily admitted that patrons are required to go behind the bar in order to get to the

bathroom on the premises. He also acknowledged that he did not see anyone engaging in any gambling activity in his presence. He noted that there were about eight or nine patrons in the bar and that there was only one bartender, Julio Benitez, on duty at that time.

Julio Benitez, the bartender employed on the date and time herein charged, gave the following account: He went on duty on that date at 12:30 p.m. relieving John Gagis, who served as bartender up to that time. He categorically denied any knowledge of the slips containing "numbers bets" or engaging in "numbers bets" activity, nor did he know of anybody else who was taking "numbers bets" on that day.

Upon being shown the documents containing the "numbers bets" found in the office, he asserted that he did not recall seeing them and, in fact, stated that the handwriting was not his. When the police arrived at 1:00 p.m. another bartender, named Gus Gagin, the bartender who was due to begin working at 2:00 p.m. was then also behind the bar.

He explained that it was quite customary for patrons to go behind the bar, even though the cash register was there and these patrons often went into the rear office because they would occasionally answer the telephone when he was busy.

Robert J. Pendergast, the principal officer of the corporate appellant, testified that he received a telephone call shortly after 1:00 p.m. on the date herein, summoning him to the premises. When he arrived he found Benitez, Gus Gagis and the three police officers. He was arrested, but was never shown any of the alleged betting slips. In fact, the first time he saw the slips was when the related criminal matter was tried in "court".

On cross examination, he stated that he never saw any betting activity take place on these premises, nor was he aware of the betting slips which were found by the police officers. He insisted that the officers did not tell him why the bartender had been arrested. Also, he was not informed why he was being arrested. He was told to just "Get in the car and come downtown". However, the officer never showed him any of the slips or evidence which they had confiscated. Finally, he admitted that no one would have reason to go underneath the bar other than the bartenders and himself.

Police Officer Zdanis, called in rebuttal at the de novo hearing asserted that, at the time that Pendergast was placed under arrest, all of the betting slips recovered by the police officers were shown to him and the bartender, and he advised them of their "rights". Both men denied any knowledge of the slips at that time.

In order to meet the burden required by Rule 6 of State Regulation No. 15 appellant must show manifest error, that the action of the respondent was clearly against the logic and effect of the presented facts. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken et al, 135 N.J.L. 502 (1947); Cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970).

We are dealing with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). Proof is required by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). Thus, it must be established that the relevant evidence herein does not adequately support the conclusion reached by the Board. Hornauer v. Div. of Alcoholic Beverage Control,40 N.J. Super. 501 (App. Div. 1956).

The charge is based upon alleged violation of Rule 6 of State Regulation No. 20 which sets forth in pertinent part as follows:

> "No licensee shall engage in or allow, permit or suffer in or upon the licensed premises the conduct of any lottery, or any ticket or participation right in any lottery to be sold or offered for sale; nor shall any licensee possess, have custody of, or allow, permit or suffer any such ticket or participation right, in or upon the licensed premises ....".

It is undisputed, and the record clearly manifests that the "numbers" slips were found both under the bar and on the desk in the office. A private telephone in the office was available, and it seems proper to infer that such bets could have been taken from that telephone and inscribed on the pads which were admitted into evidence. In view of the quantity of the "numbers bets" seized, it can be also logically inferred that the appellant's employees were engaged in the conduct of a lottery and sold or offered for sale "numbers bets" in and upon the licensed premises on the date charged herein. Thus, the violation charged comes within the proscription of the said regulation.

Benitez, the bartender, and Pendergast, the principal officer and stockholder, both denied that there was such activity in these premises.

I have had occasion to observe the demeanor of the witnesses as they testified at this de novo hearing and I am satisfied that the account given by Police Officer Zdanis was

forthright, factual and believable. On the other hand, I find that the testimony of the appellant's witnesses was contradictory in several respects and, indeed, incredible. For example, both appellant's witnesses testified that the police officers did not show them the slips which they retrieved from below the bar and Pendergast stated that although he was not shown any of the evidence at the time of his confrontation, he was, nevertheless, placed in custody and taken to police headquarters. This was not only contradicted and denied by Zdanis but, in fact, does violence to common experience.

Further, the explanation offered by the appellant's witnesses that these slips were probably placed under the bar and on the desk in the office of the premises by patrons is most improbable and impersuasive. Cf. Spagnuolo v. Bonnet, 16 N.J. 546.

Moreover, the officer testified that at the time he entered the premises, Benitez was the only bartender on duty behind the bar. The appellant's witnesses now say that, in fact, another bartender, Gus Gagis, was also on duty behind the bar. However, Gagis, who presumably is presently available as a witness, was not called to testify. The failure to call him and the bartender who was on duty earlier that day, as witnesses may give rise to an adverse inference, namely, that if they were called to testify, they could not deny the allegation contained herein, and their testimony, if given, would have been unfavorable to the appellant. Hickman v. Pace, 82 N.J. Super. 483 (1964); O'Neil v. Bilotta, 18 N.J. Super. 82, aff'd 10 N.J. 308 (1952); Re Soto Pruna, Bulletin 1713, Item 1.

The attorney for the appellant maintains that the appellant had no knowledge of the slips or any alleged illegal activity as set forth in the charge. However, it is well established that a licensee is responsible for the misconduct of persons employed on licensed premises, and is fully accountable for their activity during such employment. In re Olympic, Inc., 49 N.J. Super. 299 (App. Div. 1958); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates the explicit instructions of the employer. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961).

In the consideration of this matter the Board also had the opportunity to observe the demeanor of the witnesses as they testified. It was apparently convinced that the truth resided in the testimony of the Board's witness, and that the appellant committed the violation as charged herein.

From my evaluation of the testimony, I am satisfied that the Board could reasonably have reached the conclusion that it did, after assessing the credible evidence presented. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way, could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented. Hudson-Bergen, &c., Assn. v. Hoboken, supra; Cf. Nordco, Inc. v. State, supra. I find that they could have reached such determination.

My examination of the facts and the applicable law generates no doubt in my mind that this charge was established by a fair preponderance of the credible evidence. I have also considered the other matters alleged in appellant's petition of appeal and find them devoid of merit.

Therefore, I conclude that the appellant has failed to sustain the burden of establishing that the Board's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that an order be entered affirming the Board's action, dismissing the appeal, and fixing the effective dates for the suspension of license imposed by the Board and stayed by order of the Director.

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 transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of June 1973,

ORDERED that the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated February 14, 1973 staying the Board's order of suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that any renewal of Plenary Retail Consumption License C-77, which may be granted by the Board of Alcoholic Beverage Control for the City of Paterson for the 1973-74 licensing period to Paramount Wines & Liquors, a corporation, t/a Paramount Wines & Liquors, for premises 291 Market Street, Paterson, be and the same is hereby suspended for ninety (90) days commencing 3:00 a.m. on Thursday, July 12, 1973 and terminating 3:00 a.m. on Wednesday, October 10, 1973.

ROBERT E. BOWER
DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - CLAIM FOR RETURN OF AUTOMOBILE IN WHICH ALCOHOLIC BEVERAGES WERE DISCOVERED - CAR RETURNED TO INNOCENT LIENOR - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on November 1, 1972 of a quantity of alcoholic beverages and a 1970 Cadillac sedan on Fellowship Road, in the Township of Mt. Laurel, County of Burlington, State of New Jersey.)	Case No. 12,833 On Hearing CONCLUSIONS and ORDER

Darnell and Scott, Esqs., by Emerson L. Darnell, Esq., Attorneys for Claimant
Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether a quantity of alcoholic beverages and one 1970 Cadillac sedan, described in Schedule "A" attached hereto and made part hereof, seized on November 1, 1972 on Fellowship Road, Mount Laurel Township, Burlington County, New Jersey constitutes unlawful property and should be forfeited.

The seizure was made by ABC Agents in cooperation with officers of the Mt. Laurel Township Police Department.

At the hearing the claimant Arthur J. Thomas appeared with counsel and sought the return of the motor vehicle.

The Division file was admitted into evidence which contained, in addition to the Agents' reports, an affidavit of publication, and an analysis of the alcoholic content of the beverages seized as sample, indicating that such content was of such extent to be alcoholic bever-

ages within the proscribed limits of the applicable statute. There was further contained a certification by the Director that no special transport permit or insignia had been issued either to the claimant or for the vehicle.

Two Patrolmen of the Mt. Laurel Police Department, Officers Dugan and Holmes, together with ABC Agent D, testified on behalf of the Division and recounted the following incident:

On the afternoon of November 1, 1972, the said officers were riding in a patrol car and observed a 1970 Cadillac car enter the roadway from the driveway of a home in their community. The area was residential and the car appeared to be heavily laden. The load appeared so heavy that the rear of the car almost touched the ground. Upon "checking out" the vehicle, paper bags with what appeared to be bottles of liquor covered the back seat area. The trunk compartment was equally filled with bags of liquor bottles. 285 quart bottles of alcoholic beverages containing whiskey were found in the vehicle. Upon placing the driver and passenger under arrest, Agents of this Division then were summoned and seized the car when it appeared that no permit or insignia for alcoholic beverage transport existed.

The driver and owner of the car, the claimant Arthur Thomas and his passenger Raymond Dix gave the following account:

Both live and work in Philadelphia. Dix planned a party to be held in New Jersey and prevailed upon Thomas to drive him into New Jersey, to buy liquor for that purpose. The party was scheduled to take place in this State the day following, and his (Dix's) car was in disrepair, Thomas's car was used. They visited the licensed premises in Camden of Best Liquor Store from which premises they were directed to the home of one of the salesman in that establishment. The wife of that salesman led them into the garage from which they emerged with the quantity of liquor discovered in the car. Their destination was the plaza of Ben Franklin Bridge where they were supposed to meet a female guest who would direct them to the site of the party in Lawnside, New Jersey. The arrest intervened.

The seized alcoholic beverages constitute illicit alcoholic beverages because the quantity intended for transport without permit was in excess of the amount prescribed under the statute, N.J.S.A. 33:1-2,66.

The claimant's major contention is that he was totally unaware of the regulatory requirements in reference to transport of alcoholic beverages in this State, hence N.J.S.A. 33:1-66(e) should apply. That section of the statute is as follows:

> (e)"The Director upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this section has acted in good faith and has unknowingly violated the provisions thereof, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the Director."

Upon the direct examination of the claimant, it appeared, for the first time, that the car was encumbered by a lien of the First National Bank of Marlton (New Jersey) which, to that point had been undisclosed. In consequence of that non-disclosure, the named bank had not been made party to the proceedings. Opportunity was thus afforded at a subsequent hearing for the bank to establishe its claim in support of its lien.

Evidence, to be believed, must proceed from the mouths of credible witnesses and must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The test in this, and similar matters involving the issue of credibility is the reasonableness and likelihood of the account. Hence, reasonable probability must exist and reasonable probability has been defined as "the standard of persuasion, that is to say, evidence in quality sufficient to generate a belief that the tendered hypothesis is, in all human likelihood the fact; the measure of weight of the evidence is the feeling of probability which it engenders." Ciuba v. Irvington Varnish & Insulator Co., 27 N.J. 127 (1958).

The passenger Dix was in apparent control of the plan to buy the liquor and have a party. Thomas was obviously the innocent dupe who permitted his car to be used for what Dix must have known to be a flagrant disregard of the law. The plans for a party at an unknown location somewhere in the municipality of Lawnside, to be later identified by a prospective passenger to be picked up after the purchase of 285 bottles of liquor, creates a conclusion that the story was completely manufactured as a cover to Dix's real intentions to carry the liquor back into Pennsylvania. The purchase itself, occurring as it did from the garage of a liquor salesman a dozen or more miles away from the liquor store itself colors the whole operation with the bright hue of illegality.

Thomas's poignant assertion that he would not have put his 1970 Cadillac in jeopardy had he had any notion that what was being done was illegal carries little ring of truth. The sheer quantity of the haul belies the logic of the claim. In short, no credence is placed in the version of either Dix or Thomas.

At a subsequent hearing, an officer of the First National Bank of Marlton testified that, although the bank had a primary lien on the vehicle, such lien had to be recorded in the Motor Vehicle Department of the State of Pennsylvania at Harrisburg. While the loan was properly recorded, the complete title papers were not received until after the seizure had taken place. The loan was originally in the amount of $5,000.00 and has been in default for several months. The bank presently has a lien approximating $5,828.25 on the car which has a retail value of $3,300 and a wholesale value of $2,600.

It is recommended, therefore, that the claim of Arthur J. Thomas for the return of the 1970 Cadillac be denied, but the claim of the First National Bank of Marlton be recognized to the extent of its lien, since it appears that the lien is in excess of the value of the car, it is recommended that the vehicle be returned to it, upon payment to this Division of seizure and storage charges.

It is further recommended that the seized alcoholic beverages be forfeited.

Conclusions and Order

Written exceptions to the Hearer's Report were filed by claimant, Arthur J. Thomas within the time permitted by Rule 4 of State Regulation No. 28.

The exceptions contended that no unlawful purpose in the transport of alcoholic beverages by claimant was proven. Unlawful alcoholic beverage activity is determinable by the application of N.J.S.A. 33:1-2 which permits personal transportation of alcoholic beverages in amounts not exceeding "...2 cases containing not in excess of 24 quarts in all of beer, ale or porter and 5 gallons of wine and 12 quarts of other alcoholic beverages..." The 89 containers of alcoholic beverages far exceeded the maximum quantity permissible under the aforesaid statute, and comes under the definition of unlawful alcoholic beverage activity as defined in N.J.S.A. 33:1-1(x).

Claimant further contends that under the principles enunciated in State v. Hatch, 118 N.J.Super.96 (Law Div. 1972) he should not be chargeable for knowledge of regulations of a State not his own and should not be penalized thereby. The Division of Alcoholic Beverage Control has long followed a similar principle as is found in Rule 3(b) of State Regulation No. 28, which provides that an application may be made for the return of seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law by presenting evidence to that effect at the hearing. The key expression in such provision is "good faith". The Hearer determined that such was absent in the instant matter.

After carefully considering the entire matter herein, including the transcript of the testimony, the exhibits, the Hearer's Report and the exceptions filed thereto, I find that there was an obvious absence of good faith on the part of the claimant, as a consenting party to a patently illegal transportation. His claim is accordingly, rejected. I shall, however, recognize the lien claim of the First National Bank of Marlton. I, therefore, concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 9th day of July, 1973

DETERMINED and ORDERED that the alcoholic beverages seized in claimant's vehicle, as set forth herein in Schedule "A" constitutes unlawful property and the same be and are hereby forfeited in accordance with law; and the said alcoholic beverages be and the same shall be retained for the use of hospitals, State, county or municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the claim of Arthur J. Thomas for the return of the said 1970 Cadillac be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the seized Cadillac sedan, as described in Schedule "A" attached hereto, be turned over to the First National Bank of Marlton, whose lien is in excess of the value of said vehicle, and is hereby recognized, upon payment to this Division of the lawful costs of seizure and storage thereof.

Robert E. Bower,
Director

SCHEDULE "A"

285 - containers of alcoholic beverages
1 - 1970 - four door Cadillac, Pennsylvania license 717673.

7. STATE LICENSES - NEW APPLICATION FILED.

Parliament Import Company
3303 Atlantic Avenue
Atlantic City, New Jersey
Application filed August 30, 1974 for limited wholesale license.

Robert E. Bower
Director