

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

BULLETIN 1414

OCTOBER 13, 1961

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

BULLETIN 1414

OCTOBER 13, 1961

APPELLATE DECISIONS - POWELL v. NEWARK.

DOUGLAS W. POWELL AND MARY
POWELL, t/a THE NOOK,

Appellants,

v.

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY OF
NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

Alexander J. Menza, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., by Richard Walsh, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on May 10, 1961, whereby it suspended appellants' plenary retail consumption license for thirty days, effective at 7 a.m. May 22, 1961. The suspension was imposed after respondent heard testimony in disciplinary proceedings as a result of which it found appellants guilty of the following charges:

- '1. On Friday, January 20, 1961 at approximately 10:15 p.m. and on diverse prior dates, you sold and delivered, and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, directly or indirectly, at your licensed premises to a person under the age of 21 years, viz: Ronald ---, age 18; in violation of Rule 1 of State Regulation #20.
- '2. You sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage at retail, in its original container for consumption off the licensed premises, and allowed, permitted and suffered the removal of such alcoholic beverage, in its original container from the licensed premises after 10:00 p.m., on Friday, January 20, 1961; in violation of Rule 1 of State Regulation No. 38.'

"Appellants' premises are located at 89 Magazine Street, Newark.

"Upon the filing of the appeal the Director entered an order dated May 22, 1961, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

"The petition of appeal alleges, in substance, that the finding of guilt was against the weight of the evidence and that appellants were denied the right of cross-examination of the complaining witness.

"At the hearing herein the attorney for respondent, in accordance

with the provisions of Rule 8 of State Regulation No. 15, offered in evidence a transcript of the testimony taken at the disciplinary proceedings heard by respondent and a birth certificate and a photograph introduced into evidence during the course of said proceedings. The attorney for appellants objected to the introduction of the transcript and the exhibits upon the grounds that appellants did not have independent legal advice at that time and that appellants were afforded no real right of cross-examination of the complaining witness. In the absence of any other objections thereto, the transcript and exhibits were admitted into evidence in accordance with the aforesaid Rule. The attorney for appellants then requested a continuance of the hearing to subpoena the alleged minor, and I ruled that decision upon said request would be made after the evidence herein was presented. As hereinafter set forth, the attorney for appellants then presented additional evidence by Douglas W. Powell.

"It appears from the transcript of the testimony taken at the disciplinary proceedings heard by respondent that Douglas W. Powell appeared at said hearing, without an attorney, and pleaded not guilty to the charges. He made no request for an adjournment and stated that he couldn't afford to hire an attorney. Ronald --- was then called by respondent as a witness. He testified that he was born on February 22, 1942, and gave his father's name and his mother's maiden name. He further testified that on the evening of Friday, January 20, 1961, he drove his car, in which Barbara --- was a passenger, to the vicinity of appellants' premises and stopped 'right in front of the door;' that at some time between 10:15 p.m. and 10:30 p.m. he, alone, entered and was waited on by Douglas W. Powell, whom he identified; that he purchased a glass of beer and a package of cigarettes for himself; a glass of beer for a friend who was there, and a drink of some kind for Douglas W. Powell; that he then purchased from Powell a pint bottle of Fleischmann's whiskey and left the premises with the bottle. He further testified that he had spent about five dollars in the licensed premises, but was unable to state the exact amount he spent. The attorney for respondent then introduced into evidence a certified copy of a birth certificate verifying Ronald's evidence as to the date of his birth and the names of his parents. Douglas W. Powell cross-examined Ronald. Barbara --- was then called as a witness by respondent. She testified that on the evening of January 20, 1961, she rode with Ronald in his car, which he parked in front of appellants' premises; that 'around ten or ten-thirty', she observed Ronald as he entered said premises alone and empty-handed, and that she later observed him as he came out with a package which contained a bottle of liquor. She identified a photograph of appellants' premises as the place she saw Ronald enter and the photograph was then introduced into evidence. Douglas W. Powell cross-examined Barbara.

"It further appears from the transcript of the testimony taken at the disciplinary proceedings that Douglas W. Powell then testified that he was tending bar in the premises on the evening in question and that Ronald did not purchase any drinks or a bottle of whiskey from him. He stated that, in fact, Ronald had not entered the premises until, at a late hour on that evening, he was brought in by a detective and identified Powell as the person who sold alcoholic beverages to him. Robert Glazder, a patron of appellants' premises, then testified that at about 9:30 p.m. on January 20, 1961, he tried to purchase a pint bottle of Fleischmann's whiskey from Powell, who told him that he had none in stock. Respondent reserved decision and then adopted a resolution and order suspending appellants' license for fifteen days on each charge.

"As indicated above, Douglas W. Powell presented additional evidence at the hearing held herein. The additional evidence consisted of invoices to support his contention that appellants did not have any pint-bottles of Fleischmann's whiskey in stock on January 20, 1961. The invoices were marked as an exhibit in the case. Upon renewal of the

request made by appellants' attorney for a continuance to subpoena Ronald --- for further cross-examination, I ruled that the request was denied because Douglas W. Powell had been given full opportunity to cross-examine and, in fact, had cross-examined both Ronald --- and Barbara --- at the hearing below.

"A review of the invoices introduced into evidence herein reveals the following purchases of pint-bottles of Fleischmann's whiskey by appellants: on December 16, 1960, 2 pints; on December 20, 1960, 2 pints; on December 27, 1960, 2 pints; on January 10, 1961, 3 pints; on January 17, 1961, 1 pint. Despite the testimony offered on behalf of appellants, there is a strong possibility that appellants had at least one of these pint-bottles in stock on January 20, 1961.

"I have carefully reviewed all the evidence. No reason appears why Ronald --- should have testified falsely and Powell admitted at the hearing below that he knew of no reason why Ronald should put him in trouble. The testimony of Barbara --- was unshaken on cross-examination below and tends to corroborate Ronald's testimony. On the other hand, the testimony given on behalf of appellants is negative in character. Hence I conclude that appellants have failed to sustain the burden of proof in establishing that the action of respondent was erroneous. It is recommended, therefore, that an order be entered affirming respondent's action and fixing effective dates for the thirty-day suspension imposed by respondent."

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

Having carefully considered the record herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 21st day of August 1961,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the thirty-day-suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored against License C-850, held by Douglas W. Powell & Mary Powell, t/a The Nook, to commence at 2 a.m. Monday, August 28, 1961 and to terminate at 2 a.m. Wednesday, September 27, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD -
 LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against)

ALEXANDER PIERETTI)
 t/a CLUB 31)
 31 Hensler Street)
 Newark 5, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-124, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Newark.)

 Defendant-licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of guilty to the following charges:

- "1. On July 12 and 13, 1961, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.
- "2. On July 12 and 13, 1961, you 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 your licensed premises; in violation of Rule 6 of State Regulation No. 20."

At 11:20 a.m., Wednesday, July 12, 1961, ABC Agents S and C entered defendant's licensed premises. At 12:20 p.m., a man, later identified as Stanley Grosinski, entered the tavern and seated himself at the bar in front of Al, the licensee-bartender, who handed him \$1.50. When Grosinski recorded something on a slip of paper, Agent S asked Al, "Is this your number man?" and receiving an affirmative reply, he placed two "numbers" bets with Grosinski. Agent S then inquired if Grosinski paid off and Al said, "I wouldn't play with him if he didn't pay off. Anyway, I know his boss and they always pay off." At 11:15 a.m., Thursday July 13, 1961, Agents S and Sc entered defendant's premises and seated themselves at the bar which Frank Morris was tending. At 12:10 p.m. Grosinski arrived and Morris handed him \$1.50 saying, "That's for Al for the usual numbers." Grosinski was about to record the bet when Agent S walked over to him and placed two numbers bets with him, paying him with two marked dollar bills. Agent S then left the premises, signaled his supervisor and two local police detectives and the four entered the tavern and identified themselves. A search of Grosinski revealed several numbers slips, the marked money and other money. Morris verbally admitted that he knew the agents played numbers with Grosinski and that he was instructed by the licensee to place numbers with Grosinski for him. Grosinski was placed under arrest and admitted that he took the bets from Agent S and those placed by and for the licensee.

Defendant has a prior adjudicated record. Effective June 12, 1961, I suspended his license for five days for a "refilling" violation, Bulletin 1400, Item 3. The minimum suspension for the violation charged herein, where the licensee or his employees are involved, is twenty-five days. Re Kaup, Bulletin 1394, Item 4. Because of the dissimilar violation which occurred within a five-year period, an additional five days is warranted. I shall suspend defendant's license for thirty days and remit

five days for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 16th day of August 1961,

ORDERED that Plenary Retail Consumption License C-124, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Alexander Pieretti, t/a Club 31, for premises 31 Hensler Street, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, August 28, 1961 and terminating at 2:00 a.m., Friday, September 22, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH & JOHN'S TAVERN INC.)
384 Monmouth Street)
Jersey City 2, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-123, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Walter E. McInerney, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On May 3 and 4, 1961, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On May 3 and 4, 1961, you 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 your licensed premises and you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On May 3, 1961, at about 11:15 a.m., an ABC agent entered defendant's premises where Ralph Faccone (president of defendant corporation) was tending bar. The agent remained on the premises about one hour and, during that period, observed the bartender accepting number bets for small amounts of money from twelve patrons. The agent then placed with the bartender a fifteen-cent bet on a number and left without identifying himself.

On May 4, 1961, at about 11:30 a.m., the same ABC agent entered the premises where Faccone was again tending bar. About an hour later the agent placed with the bartender two fifty-cent bets on numbers and, shortly thereafter, placed with the bartender a dollar-bet on another number. As pre-arranged, other ABC agents and Jersey City Police officers

then entered and identified themselves to Faccone. Subsequently twenty-one number bet slips and about thirty-five dollars were found in a rear room and Faccone was arrested by the local police officers.

Defendant has a prior record. Effective January 9, 1956, I suspended defendant's license for thirty days after it pleaded non vult to charges of selling alcoholic beverages at places other than its licensed premises and for selling alcoholic beverages during prohibited hours. Bulletin 1094, Item 4. As appears from the case cited, Faccone was an officer and stockholder of a license held by Old Spot Clambroth Tavern, Inc., when said license was suspended for twenty days, effective February 13, 1952, for selling during prohibited hours and for false answers in its license application. Bulletin 927, Item 3. However, since both dissimilar violations occurred more than five years ago, they will not be considered in fixing the penalty herein. I shall suspend defendant's license for twenty-five days, the minimum suspension in a case where a licensee or his employee is involved. Re Buttaci, Bulletin 1397, Item 7. Five days will be remitted for the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 22nd day of August 1961,

ORDERED that Plenary Retail Consumption License C-123, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ralph & John's Tavern Inc., for premises 384 Monmouth Street, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, August 29, 1961, and terminating at 2 a.m. Monday, September 18, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS * ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
HARPER'S BAR, INC.
t/a HARPER'S BAR
601 So. Warren Street
Trenton 8, N. J.
Holder of Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS
AND ORDER

Defendant-licensee, by Paul Harper, President.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of guilty to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On May 23, 1961, an ABC agent gauged and tested defendant's open stock of alcoholic beverages and seized several bottles for further analysis by the Division's chemist. The chemist's report shows that the contents of one bottle, labeled "Canadian Club Blended Canadian Whisky" were short in proof, high in solids and too dark in color; that the contents of one bottle, labeled "Seagram's V.O. Canadian Whisky a Blend" were high in solids and darker in color; and that the contents of two

bottles labeled, "Seagram's Seven Crown American Blended Whiskey" were high in solids, low in acids and lighter in color when compared with samples of the genuine products.

Defendant has no prior adjudicated record. I shall suspend its license for twenty days, the minimum penalty imposed in "refill" cases involving four bottles. Re Grower, Bulletin 1263, Item 6. Five Days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 21st day of August 1961,

ORDERED that Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Trenton to Harper's Bar, Inc., t/a Harper's Bar, for premises 601 So. Warren Street, Trenton, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Monday, August 28, 1961, and terminating at 2:00 a.m., Tuesday, September 12, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT OWNER - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)	Case No. 10,526
on March 5, 1961 of a two-quart)	
"Mason" jar of alcohol and a)	ON HEARING
Mercury sedan on a public highway,)	CONCLUSIONS
Route 40 in the Township of Pilesgrove,)	AND ORDER
County of Salem and State of New Jersey.)	

Gerard J. Di Nicola, Esq., Attorney for claimant.
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 a two-quart 'Mason' jar of alcohol and a Mercury sedan, described in a schedule attached herewith, seized on March 5, 1961 on Route 40, a public highway in Pilesgrove, New Jersey, constitute unlawful property, and should be forfeited.

"Lloyd Wayne Hartsell, the registered owner of the Mercury sedan, represented by counsel, appeared at the hearing, and sought its return.

"No one appeared to oppose forfeiture of the alcohol.

"The facts as they appear from reports of ABC agents and other documents in the file presented in evidence with the consent of Hartsell are as follows: on Sunday, March 5, 1961, at about 4:00 a.m. a New Jersey State trooper observed the motor vehicle in question parked in front of the Cowtown Rodeo, Route 40, Pilesgrove, N.J., and, upon questioning the occupants, ascertained that the motor vehicle was owned and operated by Hartsell. Hartsell was accompanied by one Clyde Price. An inspection of the interior disclosed a two-quart 'Mason' jar under the front seat of the said car. This 'Mason' jar did not have affixed to it any stamps indicating payment of tax on alcoholic beverages.

"The trooper thereupon took into custody the alcoholic beverages and motor vehicle both of which were later turned over to agents of this Division.

"A sample of the contents of the said jug was analyzed by the Division chemist on March 9, 1961, who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 52 percent.

"The seized alcohol is illicit because of the absence of a tax stamp on the said jug. R.S. 33:1-1(i); R.S. 33:1-88.

"Such illicit alcohol and the Mercury sedan in which it was 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.

"Neither Shanks nor Price signed statements at the time of the arrest but Shanks verbally denied to the police, and to the ABC agents any knowledge of the presence of this alcohol. He was thereupon arraigned in the Municipal Court of Pilesgrove Township, pleaded not guilty to a charge under R.S. 33:1-50, and was held under bail, for action by the Salem County Grand Jury.

"At the hearing herein, Lloyd Hartsell presented the following defense. He had been at the home of Price, who was a casual friend of his. They were playing cards and Price had been drinking but Hartsell stated that he had not been drinking any alcoholic beverages. Sometime early that morning, Price asked him, as a personal favor, to drive him to a nearby town so that he could purchase some wine. They both then got into his car, stopped at Cowtown to get some gas and he then discovered the heater of his car was not working. 'So I went checking and found loose wires under the dash --- I started pulling them back together and the trooper pulled up.' The trooper recognized Price and said, 'I know him. He is a lot of trouble.' He then ordered them out of the car, and upon inspection, found the jar of moonshine whiskey, which was two-thirds full. Upon cross-examination Hartsell denied that he knew of the presence of this alcohol and asserted that he was 'suspicious of Pricey putting it in on me'. The reason ascribed for that suspicion was that some time during that night Price said to him, 'There is some moonshine out there. Do you want a drink,' and he said, 'No.' He was further asked whether he did not think it unusual for a person to attempt to purchase wine at that time in the morning, to which his answer was 'I just tried to be neighborly.'

"I have had an opportunity to observe the defendant's demeanor on the stand and also the answers given by him. I am satisfied that the claimant has a very limited intelligence, a lack of awareness and a rather naive attitude in his relations to other people. I am persuaded from the testimony and from the comments of counsel regarding Price that he most likely was dominated by Price and did really act as ingenuously as his testimony would reflect. It is of significance that Price would not testify in these proceedings because there is a criminal complaint pending against him. However, there is some evidence that Price did have access to the automobile a short time prior to the time that Hartsell re-entered the vehicle, and, according to the claimant, might have placed the alcohol therein at that time.

"The defendant is married, has two children, and came to New Jersey from Tennessee about five years ago, and was employed for the past five years on a farm, earning \$45.00 a week plus free rent. The motor vehicle was purchased by him by trading another car in and he has been paying the regular financing charges and making regular payments thereon. His record is absent of any alcoholic beverage law violations.

"In view of all of the circumstances, especially his good background, I recommend that Lloyd Hartsell be given the benefit of the doubt and that his claim that he was entirely unaware that he possessed and transported bootleg alcohol be accepted. The facts in this case are similar to those in the case of State vs. Washington, (La. App.), 172 Southern 195.

In that case, a pint and a half of untaxed alcoholic beverages were found in an auto owned by the defendant, and the Court held that this motor vehicle was not subject to forfeiture where the owner, who was a teetotaler, was unaware that one of his passengers had the liquor in the rear of the auto. I am persuaded from the evidence in the instant case and the reasonable inferences drawn therefrom, that the alcoholic beverages were placed in the car by Price without the knowledge of the claimant. Accordingly, I recommend that the alcohol be forfeited, and the motor vehicle be returned to him upon payment of the costs of seizure and storage, R.S. 33:1-66(e), Cf. Seizure Case No. 7179, Bulletin 930, Item 7; Seizure Case No. 7204, Bulletin 797, Item 13."

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.

Accordingly, it is, on this 23rd day of August, 1961,

DETERMINED and ORDERED that if on or before the 5th day of September, 1961, Lloyd Wayne Hartsell pays the costs of the seizure and storage of the Mercury sedan, such motor vehicle will be returned to him; and it is further

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

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 1 - two-quart "Mason" jar of alcohol
- 1 - Mercury coupe, Serial No. 54WA5667, New Jersey
Registration BKN-127.

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN STORE - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES, FURNISHINGS AND EQUIPMENT AND \$5.00 IN CASH ORDERED FORFEITED - CLAIM OF OWNERS OF MUSIC AND NUT AND GUM VENDING MACHINES REJECTED IN ABSENCE OF GOOD FAITH.

In the Matter of the Seizure on)	CASE NO. 10,552
April 7, 1961 of a quantity of)	
alcoholic beverages, furnishings,)	ON HEARING
equipment and \$5.00 in cash at 29)	CONCLUSIONS
Center Street, in the Borough of)	AND ORDER
South Toms River, in the County of)	
Ocean and State of New Jersey.)	

Coast Cigarettes, Inc., by Nathan E. Becker, Secretary and Manager. Sampson Horrocks, Pro se.

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 the provisions of R.S. 33:1-66 and State Regulation No. 28, to determine whether a quantity of alcoholic beverages, \$5.00 in cash, furnishings and equipment described in a schedule attached hereto, seized on April 7, 1961 at premises 29 Center Street, South Toms River, N.J. constitute unlawful property and should be forfeited.

"Coast Cigarettes, Inc., a corporation, appeared, through its representative, and sought the return of a cigarette vending machine. Sampson Horrocks also appeared and sought return of two vending machines, one of which was a nut dispenser, and the other a chewing gum dispenser on a stand.

"No one appeared at the hearing to oppose forfeiture of the alcoholic beverages, or the other personal property set forth in the said schedule, annexed hereto.

"The reports of ABC agents, and other documents in the file presented in evidence, with the consent of the claimants show the following: on March 10, 1961 at about 11:00 p.m. an ABC agent visited the premises in question, pursuant to a complaint that alcoholic beverages were being sold without a license. These premises are located on the first floor of a two-story frame building, and consist of a large front room, in the rear of which is a kitchen and small room. The front room is apparently the operative part, and contained all of the seized chattels, except the cooler, sofas, juke box and a large card table in the center. The front of the premises has the appearance of a store with curtains drawn across its front windows. The agent observed 10 people standing around in this room. He then proceeded to the kitchen, where he observed an unidentified male pouring whiskey into three glasses for himself and another couple also in the kitchen.

"On March 24, 1961 at about 11:20 p.m. the ABC agent returned to the said premises and found 12 patrons in this front room, and six male patrons sitting at a table in the kitchen playing cards. Included among those persons in the kitchen were two females, Martha Banks, the proprietress, and Dollie Byford. Miss Byford was a niece of Martha Banks, acted as a waitress for all of the patrons and the agent observed her serve alcoholic beverages to four customers. The agent ordered and was served with a can of beer and a pint of wine by Miss Byford for off-premises consumption for which he paid thirty-five cents for the beer and thirty-five cents for the wine.

"On April 7 at about 10:45 p.m. this agent returned with a five-dollar bill in his possession, the serial number of which had been previously recorded. He observed four male customers consuming alcoholic beverages in the front room while Martha Banks was playing cards with three male patrons at the kitchen table. He ordered and was served a can of beer, then ordered and was served a pint of Thunderbird Wine, and paid for both the beer and the wine with the 'marked' Five-dollar bill. The waitress left the table, obtained five one-dollar bills for the 'marked' five-dollar bill from a male, later identified as James Callaway, and gave the agent \$3.80 in change.

"At about 10:55 p.m., by pre-arrangement, other ABC agents and State troopers entered the premises. Martha Banks admitted that all of the alcoholic beverages, which were then seized after a search was made of the premises, belonged to her, and the five-dollar bill was surrendered by Callaway.

"The records of this Division do not disclose any license authorizing the sale of alcoholic beverages for the premises where the violation took place or as having been issued to either Martha Banks or Dollie Byford. The records of this Division further disclose that on April 25, 1956 the premises in question, when occupied by Martha Banks, were raided by ABC agents and a State trooper, for selling alcoholic beverages; that on May 29, 1960 State troopers returned to the above described premises and seized a large quantity of alcoholic beverages, and arrested Martha Banks for selling alcoholic beverages without a license in violation of R.S. 33:1-50(a). (Seizure Case No. 10,306).

"Dollie Byford was arrested for selling alcoholic beverages without a license in violation of R.S. 33:1-50(a). Martha Banks was arrested for possession of alcoholic beverages with intent to sell same without a license in violation of R.S. 33:1-50. Both Miss Byford and Miss Banks executed written statements admitting the facts as set forth hereinabove.

"From the evidence presented, it is clear that alcoholic beverages were sold at these premises without a license and that therefore the seized alcoholic beverages are illicit R.S. 33:1-1(i). Such illicit alcoholic beverages, and all other personal property seized therewith in the premises, including the \$5.00 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.

"Coast Cigarettes, Inc., a claimant, was represented by Nathan Edward Becker, its general manager and secretary, and sought return of a cigarette vending machine seized on the premises. He testified that this company had been in this business since February, 1959 at which time it purchased the machine on this location together with machines on other locations from a vending machine operating company. He did not personally service the machine but had a regular salesman service the same. It was serviced according to his records weekly during the period prior to the raid, and regularly thereafter. On cross-examination, he testified that the collections were made by his men at the premises on May 3, 1960, May 10th, May 17th, May 24th, May 30th, June 6th, June 13th and so forth. There was a raid of these premises, according to the evidence on May 29th. He stated that no one reported this information to him although he admitted that, according to his records, there was a raid of the premises and a large quantity of alcoholic beverages was seized. He also admitted that a representative of his company appeared in a prior case where a cigarette machine was seized.

"This claimant did not produce either the serviceman for the machine at this premises or the shop foreman who would be more directly informed with reference to the service and collections on this machine.

"I am persuaded that this claimant knew, or should have known that alcoholic beverages were being served, and failed, deliberately or otherwise, to ascertain whether or not these premises were authorized and licensed for that purpose. The testimony of ABC agents indicates that on many occasions alcoholic beverages were served freely to numerous patrons, openly and notoriously. It seems patent that a casual observation by any of the claimant's employees would have brought forth that fact in sharp focus. In addition to this, these premises had been raided on two prior occasions, one of which occurred during the tenure of this corporation. Claimant's employees visited these premises weekly, before and after the raid in 1960 and I am convinced that they knew of the incident and undoubtedly the reason for such seizure. When this claimant left this machine in the premises after this raid in May, 1960 I believe that it was not acting in good faith, and did not make such investigation of the premises as is required. Such investigation would have manifestly disclosed the continuing illegal activity in these premises. Under these circumstances, it is recommended that its application for return of the cigarette machine be denied Seizure Case No. 9919, Bulletin 1283, Item 8; Seizure Case No. 8634, Bulletin 1056, Item 4; Vide United States vs. Orton (D.C. Wash.) 43 Fed. 2nd 259.

"Sampson Horrocks sought the return of a nut machine and a gum machine. According to his testimony, these machines were placed on these premises three years ago and he personally serviced these machines approximately once every two months. The machines were continued here after these premises were raided in 1960. This claimant further testifies that the machines have a total value of about \$15.00 and he would not be interested in redeeming these machines, if it involves the payment of costs for seizure and storage which are necessarily incidental to such recovery.

"It would therefore seem that the legal result herein would be largely commanded by realities, that the application for the return of these machines should be denied. It was clearly indicated that even if it were granted the claimant would not redeem them. However, I believe that this claimant, as a matter of principle, did not act in good faith in continuing these machines on these premises, when he knew or should have known of the open and notorious use of the said premises by the operator and the flagrant violation of the Alcoholic Beverage Laws committed therein. Since this claimant has failed, deliberately or otherwise, to ascertain the use to which these premises were being put which could have been done on mere observation in view of the continuous illicit activity therein, I feel constrained to recommend that his application for the return of the nut vending machine and the chewing gum ball vending machine be denied. See Seizure Case No. 7014, Bulletin 735, Item 8; Seizure Case No. 9919, supra.

"I also recommend that the other personal property in the schedule herein, including the alcoholic beverages and the \$5.00 in cash be ordered forfeited."

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.

Accordingly, it is on this 23rd day of August 1961,

DETERMINED and ORDERED that the seized property, including the \$5.00 in cash, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained for the use of hospitals and state, county and municipal institutions, or

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

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 1 - Seeburg music box and currency therein
- 1 - Rowe cigarette machine
- 1 - soda dispenser
- 1 - peanut and gum ball dispenser
- 2 - 1/2 gallon bottles of gin
- 5 - 4/5 quart bottles of whiskey
- 8 - pint bottles of wine
- 35 - 12 oz. cans of beer
- Assorted shot glasses
- \$5.00 in cash

7. STATUTORY AUTOMATIC SUSPENSION - SUSPENSION STAYED PENDING ACTION BY LOCAL ISSUING AUTHORITY IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #198)
 In the Matter of a Petition to)
 Lift the Automatic Suspension)
 of License D-8, issued by the) ON PETITION
 Mayor and Council of the Borough) ORDER
 of East Paterson, to)
)
 THOMAS AND ROSALIE BRUNOSKI)
 238 Broadway)
 East Paterson, N. J.)
)

John J. Greco, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

The petition herein discloses that on August 7, 1961, Thomas Brunoski (one of the petitioners herein) was fined the sum of \$50 after being adjudged guilty in the Municipal Court of the Borough of East Paterson of a charge alleging that he sold alcoholic beverages to a minor, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by Thomas and Rosalie Brunoski. R.S. 33:1-31.1. Because the Division was informed that the licensees intended to apply for a stay of said suspension, the license has not yet been pickédup.

Disciplinary proceedings have not yet been instituted against the licensees because of the said sale of alcoholic beverages to a minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioners after the disciplinary proceedings have been decided. In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Faessler, Bulletin 920, Item 15.

Accordingly, it is, on this 18th day of August 1961,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - THIRD SIMILAR VIOLATION - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CELTIC BAR, INCORPORATED
559 Jackson Avenue
Jersey City, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-332, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-licensee, by Richard W. Sheehan, President
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that it sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Between 10:30 and 10:50 p.m. on Thursday, July 20, 1961, two ABC agents observed the bartender (Thomas Lyons) make separate sales of alcoholic beverages for off-premises consumption to nine patrons. At 10:50 p.m. one of the agents ordered "six cans of beer to go" and (after Lyons obtained the beer and placed the cans in a paper bag) he inquired of the agent whether or not he knew him. A man seated by the agent as the bartender that he had seen the agent on a prior occasion. The bar then handed the bag containing the beer to the agent who made payment therefor and left the premises. He and his fellow-agent returned and, after identifying themselves, Lyons admitted the violation.

In attempted mitigation of penalty Richard W. Sheehan (president of defendant corporate licensee) alleged that his regular bartender was sick and that Lyons had substituted for him and had acted contrary to instructions in selling alcoholic beverages during prohibited hours. However, violations occurring in licensed premises cannot be excused because the licensee had no personal knowledge of them. Rule 33 of State Regulation No. 20. Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 138 N.J.L. 28. Furthermore, the licensee cannot escape the consequences of the acts of his agents or employees. Re Dressler, Bulletin 1189, Item 3.

Defendant has a prior adjudicated record. Effective May 18, 1959, its license was suspended for ten days by this Division for a similar violation as that now being considered. Bulletin 1281, Item 9. Again its license was suspended for thirty days effective August 1, 1960, to September 2, 1960 (August 6 to 7 and 13 to 14 excepted) for a similar violation. Bulletins 1352, Item 7, and 1354, Item 6. In addition, when John E. Dunne and Richard Sheehan (officers, directors and shareholders of the corporate licensee herein) held the license as partners, such license was suspended for five days, effective January 15, 1951, by the local issuing authority; also for an "hours" violation. Since the last mentioned violation occurred more than ten years ago, it will not be considered in arriving at the penalty in this case. The minimum penalty for the violation herein is a suspension of the license for fifteen days Re Royal Room, Inc., Bulletin 1388, Item 8. However, this is the third of a series of similar violations committed within a period of five years which might well warrant the revocation of the license.

Under the circumstances, I shall suspend defendant's license for a period of sixty days, less five days remission for the plea entered herein, leaving a net suspension of fifty-five days. Re Sada, Bulletin 1360, Item 6.

Accordingly, it is, on this 24th day of August 1961,

ORDERED that Plenary Retail Consumption License C-332, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Celtic Bar, Incorporated, for premises 559 Jackson Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, September 5, 1961, and terminating at 2 a.m. Monday, October 30, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ASBURY MAIN TAVERN, INC.)
t/a ASBURY MAIN TAVERN)
808 Main Street)
Asbury Park, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the City Council of the City of Asbury Park.)

Philip Newman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of non vult to a charge alleging that it sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

Acting upon information transmitted to this Division by the Ocean Township Chief of Police, an ABC agent, on Friday, June 23, 1961, obtained signed, sworn statements from Garrett ---, age 18; Richard ---, age 18, and John ---, age 19, in which they state that on Monday evening, June 19, 1961, they consumed beer served to them in defendant's licensed premises by a bartender who required no written representation as to their ages. Garrett further states that on Thursday evening, June 22, 1961, he, Richard and John proceeded to defendant's licensed premises which he and Richard entered and that he ordered and was sold a six-pack of canned beer without being questioned as to his age. Upon completion of the statements, the minors directed the agent to defendant's tavern and identified it as the place where they had purchased and consumed some of the beer. None of the minors could identify the bartender who sold the beer on June 19th, but Garrett identified a man named Anton Lukin as the person who sold him the six-pack. When questioned by the agents, Lukin denied serving Garrett and stated that he was the only bartender working on the premises from 6:00 p.m. to 3:00 a.m. on Monday, June 19, and Thursday, June 22, 1961.

Defendant has no prior adjudicated record. I shall suspend its license for twenty days, the minimum penalty for a sale of

alcoholic beverages to three minors, all of whom are 18 years of age or over. Re White Top Inn, Inc., Bulletin 1312, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of August 1961,

ORDERED that Plenary Retail Consumption License C-30, issued by the City Council of the City of Asbury Park to Asbury Main Tavern, Inc., t/a Asbury Main Tavern, for premises 808 Main Street, Asbury Park, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., Tuesday, September 5, 1961 and terminating at 3:00 a.m., Wednesday, September 20, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

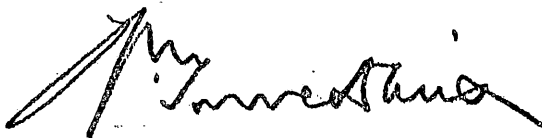
10. STATE LICENSES - NEW APPLICATION FILED.

Harrison Beverage Co.

Southeast corner Delaware & Mediterranean Aves.

Atlantic City, New Jersey

Application filed October 11, 1961 for place-to-place transfer of Additional Warehouse License AW-25 on State Beverage Distributor's License SBD-67 from 121 Walnut Avenue, North Wildwood, New Jersey, to North Jersey Avenue and 3rd Street, North Wildwood, New Jersey.



William Howe Davis
Director