

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

BULLETIN 1570

July 21, 1964

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1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
PRIOR RECORD OF SIMILAR VIOLATION - PRIOR RECORD OF PRINCIPAL
STOCKHOLDER - LICENSE SURRENDERED DURING PENDENCY OF
PROCEEDING - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)
CLUB TEQUILA, INC.)
t/a Club Tequila)
49 Pennington St.)
Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-292, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
-----)

Irving J. Zwillman, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 19 and 22, 1964, it conducted the licensed place of business as a nuisance, viz., permitting the congregation of apparent female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates mentioned, the licensed premises was patronized by a comparatively large number of apparent female homosexuals, viz., approximately 50% of the female patronage on each occasion.

Licensee has a previous record of suspension of license by the Director for one hundred eighty days effective March 12, 1964, for similar violation (Re Club Tequila, Inc., Bulletin 1557, Item 1) and by the municipal issuing authority for thirty days "to become effective when and if this corporation attempts to show any future interest in an alcoholic beverage license", for permitting a brawl, act of violence, disturbance and unnecessary noise on the licensed premises and permitting the licensed business to be conducted as a nuisance.

In addition, Anthony Faliveno, its president and 80% stockholder, was actively involved, as manager of the licensed business, in violations which resulted in suspension of license of 32 Club, Inc. for premises 47 Pennington Street, Newark (next door to the instant licensed premises) by the Director for one hundred ten days effective July 23, 1962, for permitting apparent homosexuals on the licensed premises, failure to possess copy of license application, and hindering investigation. Re 32 Club, Inc., Bulletin 1471, Item 2. Likewise, he was actively involved, also as manager, in violations which resulted in previous suspension of license of 32 Club, Inc. by the Director for forty-five days effective March 5, 1962, for permitting apparent homosexuals and hostess activity on the licensed premises. Re 32 Club, Inc., Bulletin 1444, Item 3. Further, he was secretary-treasurer and 50% stockholder of 17 Club, Inc., whose license for premises 17 William Street, Newark, was revoked by

the Director, effective November 24, 1952, for permitting solicitation for prostitution and conducting a fight pool on the licensed premises. Re 17 Club, Inc., Bulletin 949, Item 2; affd. In re 17 Club, Inc., 26 N.J. Super. 43 (1953), reprinted in Bulletin 970, Item 1.

Following imposition of the one hundred eighty-day suspension of license effective March 12, 1964, the licensee surrendered its license to the municipal issuing authority effective March 18, 1964, subsequent to the institution of the instant proceeding (by charges dated March 5, 1964) and prior to the imposition of the thirty-day municipal suspension (by resolution dated April 8, 1964). Notwithstanding the surrender of the license, the instant proceeding is not barred or abated. State Regulation No. 16, Rule 1.

Under all of the circumstances and particularly considering the prior record of the licensee and its principal stockholder, Anthony Faliveno, the only proper penalty is outright revocation of the license so as to bring into effect the provision of the Alcoholic Beverage Law set forth in R. S. 33:1-31, fourth paragraph, that:

"A revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10% of the stock of a corporate licensee ineligible to hold or receive any other license, of any kind or class under this chapter, for a period of 2 years from the effective date of such revocation and a second revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10% of the stock of a corporate licensee ineligible to hold or receive any such license at any time thereafter." (Emphasis supplied)

and the provision of R.S. 33:1-26, sixth paragraph, that:

"No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee..."

Accordingly, it is, on this 1st day of June, 1964,

ORDERED that Plenary Retail Consumption License C-292, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Club Tequila, Inc., t/a Club Tequila, for premises 49 Pennington Street, Newark, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - ALLEGED MITIGATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM M. NORTON)
t/a Norton's Cork 'n Bottle)
650 Memorial Parkway)
Phillipsburg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-1036, issued by the Director of the Division of Alcoholic Beverage Control.)
-----)

Licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 17, 1964, he sold two cases and four quart bottles of beer to a minor (age 17), in violation of Rule 1 of State Regulation No. 20.

In alleged mitigation, the licensee points out that the sale was made in reliance on false identification produced by the minor at the time. As to this, it has long been held that reliance on false identification, in the absence of obtaining requisite written representation of age as contemplated by R. S. 33:1-77, constitutes no defense and very little mitigation since the public impact of the violation is the same. At best it bespeaks the imposition of the established minimum penalty in age-similar cases, perhaps without possible increase for aggravating circumstances. Re Bilow, Inc., Bulletin 1514, Item 4.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Schachel, Bulletin 1556, Item 7.

Accordingly, it is, on this 26th day of May, 1964,

ORDERED that Plenary Retail Distribution License D-1036, issued by the Director of the Division of Alcoholic Beverage Control to William M. Norton, t/a Norton's Cork 'n Bottle, for premises 650 Memorial Parkway, Phillipsburg, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Tuesday, June 2, 1964, and terminating at 9:00 a.m. Wednesday, June 17, 1964.

JOSEPH P. LORDI
Director.

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

In the Matter of Disciplinary)
Proceedings against)

TEN PIN LOUNGE, INC.)
t/a Llewellyn Recreation Center)
28-32 Lincoln Avenue)
Orange, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-42, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Orange.)

James A. Palmieri, Esq., Attorney for Licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on
February 19, 1964, it possessed alcoholic beverages in four
bottles bearing labels which did not truly describe their
contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
twenty days, with remission of five days for the plea entered,
leaving a net suspension of fifteen days. Re Homoky, Bulletin
1547, Item 14.

Accordingly, it is, on this 1st day of June, 1964,

ORDERED that Plenary Retail Consumption License C-42,
issued by the Municipal Board of Alcoholic Beverage Control of
the City of Orange to Ten Pin Lounge, Inc., t/a Llewellyn
Recreation Center, for premises 28-32 Lincoln Avenue, Orange,
be and the same is hereby suspended for fifteen (15) days, com-
mencing at 2:00 a.m. Monday, June 8, 1964, and terminating at
2:00 a.m. Tuesday, June 23, 1964.

JOSEPH P. LORDI
Director.

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CAESAR CAMPANA)
T/a A-Bar Restaurant)
822-824-826 Locust Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 13, 1964, he sold a $\frac{4}{5}$ quart bottle of wine for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective February 27, 1939, for hours violation, and by the Commissioner for ten days effective November 20, 1939, for sale below minimum price. Re Campana, Bulletin 299, Item 6; Bulletin 362, Item 1.

The prior record of dissimilar violation occurring more than five years ago disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Bun, Bulletin 1556, Item 10.

Accordingly, it is, on this 1st day of June, 1964,

ORDERED that Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Caesar Campana, t/a A-Bar Restaurant, for premises 822-824-826 Locust Street, Camden, be and the same is hereby suspended for ten (10) days, commencing *at 2:00 a.m. Monday, June 8, 1964, and terminating at 2:00 a.m. Thursday, June 18, 1964.

JOSEPH P. LORDI
Director.

*By order dated June 5, 1964, penalty deferred to commence at 2:00 a.m. Monday, July 6, 1964 and terminate at 2:00 a.m. Thursday, July 16, 1964.

5. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against SALVATORE BRACCHITTA t/a Ridge Liquors 31 Henry St. Bernards, PO Basking Ridge, N.J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of Bernards Township.

Licensee, Pro se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 12, 1964, he sold six quart bottles of whiskey at less than filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Merit Liquor Stores, Inc., Bulletin 1549, Item 6.

Accordingly, it is, on this 1st day of June, 1964,

ORDERED that Plenary Retail Distribution License D-2, issued by the Township Committee of Bernards Township to Salvatore Bracchitta, t/a Ridge Liquors, for premises 31 Henry Street, Bernards, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. Monday, June 8, 1964, and terminating at 9:00 a.m. Saturday, June 13, 1964.

JOSEPH P. LORDI Director.

6. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of New Brunswick to ALEXANDER SANDY, JR. & MARGARET SANDY t/a Sandy's Bar & Grill 164 Easton Avenue New Brunswick, N.J.

ON PETITION ORDER

Petitioners, by Margaret Sandy, Pro se.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on May 15, 1964, Alexander Sandy, one of the licensees-petitioners, was fined \$50.00 and \$10.00 costs in the New Brunswick Municipal Court after pleading guilty

to a charge of sale of alcoholic beverages to a minor on May 8, 1964, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' license for the balance of its term. R. S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensees because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioners after such disciplinary proceedings have been concluded. In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Luchejko, Bulletin 1552, Item 7.

Accordingly, it is, on this 3rd day of June, 1964,

ORDERED that the aforesaid automatic suspension of License C-82 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI
Director.

7. DISQUALIFICATION REMOVAL PROCEEDINGS - ATROCIOUS ASSAULT AND BATTERY - ASSAULT WITH INTENT TO ROB - ORDER REMOVING DISQUALIFICATION - DEFERRED EFFECTIVE DATE OF ORDER.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to R.S.)
33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 1760.)
-----)

Vincent P. Torppey, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

Petitioner's criminal record discloses that on May 10, 1933, he was convicted in the Essex County Court for assault and battery; on March 1, 1939, for atrocious assault and battery, and on March 8, 1939, for possession of concealed weapons and for assault with intent to rob; that on his first conviction he was placed on probation for three years; that on his second conviction he was sentenced to New Jersey State Prison for a term of two to three years; that on his third conviction he received a suspended sentence, and on his fourth conviction he was sentenced to New Jersey State Prison for a term of five to eight years and was paroled on August 29, 1942. Thereafter, on June 19, 1946, and on August 20, 1946, he was convicted in a local magistrate's court for violation of a municipal ordinance (maintaining a gambling house) and was fined \$200.00 on his first conviction and was sentenced to serve sixty days in the Essex County Penitentiary on his second conviction.

Since the crimes of atrocious assault and battery and assault with intent to rob involve the element of moral turpitude (Re Case No. 1743, Bulletin 1511, Item 6; Re Case No. 1446, Bulletin 1280, Item 8), the petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this state. R.S. 33:1-25, 26. In view of this it is unnecessary

to determine whether or not petitioner's other convictions on May 10, 1933 and March 8, 1939 (concealed weapons), outlined above, involve that element.

Petitioner's convictions under the municipal ordinance are not convictions of crime.

At the hearing held herein, petitioner (56 years old) testified that he has lived all his life in the same municipality where he now resides; that between 1949 and 1951 he had been employed as a truck driver by the holder of a brewery license; that, ever since 1951, he has been employed in the same capacity by a brewery licensee which had absorbed the business of his former employer; that he has no interest in the alcoholic beverage industry with the exception of being the holder of a chattel mortgage in the sum of \$25,000.00 on a retail consumption licensed business conducted by Village Tap Room, Inc.

Petitioner further testified that in 1948 or 1949 in a Division questionnaire submitted to him by the predecessor of his present employer he had admitted his convictions of crime, following which he appeared at the office of the Division; that he was interviewed by a receptionist; that he was advised that an investigation would be made of his record and he would be notified of its results; that he received no communication with respect thereto and he therefore had assumed that he was not ineligible for aforesaid employment. The Division has no record of this visit to its office.

Petitioner further testified that on May 21, 1953, in a Division questionnaire submitted to him by his present employer, he had denied that he had ever been convicted of a crime; that he concealed his convictions because he felt it would militate against his chances of continuing his employment.

Three witnesses (a superintendent of recreation, a municipal clerk, and a building inspector) testified that they have known petitioner for more than five years last past and that in their opinion he is now an honest, law-abiding person with a good reputation. A fourth witness (the traffic manager of petitioner's employer) testified that petitioner is one of the company's good drivers and that it has no complaints with reference to his conduct.

In disciplinary proceedings decided on January 23, 1964 (Re Village Tap Room, Inc., Bulletin 1551, Item 1), in which petitioner was a witness, the Director suspended the license of the aforementioned Village Tap Room, Inc. for ninety days for acting as a "front" for the petitioner between March 1963 and January 23, 1964, for making false statements in its license application filed with the municipal issuing authority upon which it obtained its current plenary retail consumption license by transfer from Marie A. Mulligan, for employing a criminally disqualified person (petitioner) and for employing an employee of a brewery licensee (petitioner).

The transcript of the aforesaid disciplinary proceedings and the Conclusions and Order entered in the case were admitted into evidence at the within hearing over the objection of petitioner's attorney. In a memorandum filed by the attorney he contends, among other things, that, since the petitioner was not a party to the disciplinary proceedings, the transcript and Conclusions and Order should not be considered in determining whether the petitioner's request to remove his disqualification should be granted.

The evidence contained there shows that between February 1960 and March 1963 petitioner was the undisclosed owner of the aforesaid retail licensed business when conducted by Marie A. Mulligan and that ever since March 1963 he was the undisclosed owner of Village Tap Room, Inc., her successor in interest; and that for a number of years he worked as a truck driver for a brewery licensee while interested in the retail licensed business.

Since I find there is ample evidence, exclusive of the aforesaid transcript and Conclusions and Order, in the within hearing upon which I can make a determination, I deem it unnecessary at this time to pass upon the questions raised in the memorandum.

Aside from the transcript and Conclusions and Order, petitioner admits (1) that he knowingly denied under oath that he had ever been convicted of crime because he felt it would militate against his chances of continuing in his present employment as a truck driver (for more than ten years last past); (2) that he had an interest (as chattel mortgagee) in a retail licensed business while employed by a brewery licensee, contrary to R.S. 33:1-43, and (3) that, although disqualified, he had performed services for a brewery licensee and a retail licensee in connection with their licensed businesses, contrary to R.S. 33:1-25, 26. By reason thereof I hesitate to grant the relief sought herein.

However, petitioner's present predicament could have been avoided if he had applied for removal of his disqualification about twelve years ago. From the facts herein it appears that such application, in all probability, would have been granted.

Considering all of the aforesaid facts and circumstances, including the fact that petitioner's criminal record shows that he has not been convicted of any crime since his parole (September 29, 1942) about twenty-one years ago, the favorable testimony of his character witnesses, his regular employment as a truck driver in the industry for the past fourteen years, his present attitude and the fact that a denial of the petition without some relief would presently work a hardship on the petitioner, I shall grant his application but shall withhold relief until forty-five days from the date hereof. Cf. Re Case No. 1701, Bulletin 1470, Item 7; Re Case No. 1721, Bulletin 1488, Item 10.

Accordingly, it is, on this 3rd day of June, 1964,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2, effective July 18, 1964; provided, however, that petitioner shall not in the interim be associated with the alcoholic beverage industry in this State in any manner whatsoever.

JOSEPH P. LORDI
Director.

8. DISCIPLINARY PROCEEDINGS - ORDER LIFTING SUSPENSION FOR BALANCE OF TERM UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against VILLAGE TAP ROOM, INC. t/a Village Tap Room 442 Valley Road West Orange, N. J.,

ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Town Council of the Town of West Orange.

William J. McCormack, Esq., Attorney for Licensee. David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On January 23, 1964, Conclusions and Order were entered herein suspending the license for the balance of its term, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation (undisclosed interest of criminally disqualified person in the license and employment of such person on the licensed premises) for lifting of the suspension on or after April 29, 1964, after the license had been suspended for ninety days. Re Village Tap Room, Inc., Bulletin 1551, Item 1.

Upon appeal to the Appellate Division of the Superior Court, temporary stay was granted until February 17, 1964, on which date further stay was denied by the court. Accordingly, on February 25, 1964, Supplemental Order was entered suspending the license for the balance of its term commencing on March 3, 1964, with leave to apply for lifting of the suspension on or after 2:00 a.m. Monday, June 1, 1964. Re Village Tap Room, Inc., Bulletin 1556, Item 4.

It appearing from verified petition submitted by the licensee that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension, effective immediately.

Accordingly, it is, on this 2nd day of June, 1964,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective 2:00 a. m. June 2, 1964.

JOSEPH P. LORDI Director.

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

EMILE FOUR'S, INC.)
14-03 Saddle River Road)
Fair Lawn, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Fair Lawn.)
-----)

Boyle & Boyle, Esqs., Attorneys for Licensee.
David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 29, 1964, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Chance, Bulletin 1557, Item 6.

Accordingly, it is, on this 8th day of June, 1964,

ORDERED that Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Fair Lawn to Emile Four's, Inc. for premises 14-03 Saddle River Road, Fair Lawn, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, June 15, 1964, and terminating at 3:00 a.m. Saturday, June 20, 1964.

JOSEPH P. LORDI
Director.

10. SEIZURE - FORFEITURE PROCEEDINGS - ALLEGED SPEAKEASY - SEARCH AND SEIZURE WITHOUT SEARCH WARRANT HELD INVALID - PERSONAL PROPERTY INCLUDING ALCOHOLIC BEVERAGES ORDERED RETURNED TO CLAIMANTS.

In the Matter of the Seizure on February 3, 1964 of a quantity of alcoholic beverages and various fixtures, furnishings and equipment at the premises of Club Royal, 8 Railroad Avenue, in the City of Paterson, County of Passaic and State of New Jersey.)
-----)

Case No. 11,202

ON HEARING
CONCLUSIONS AND ORDER

Harry Zax, Esq., appearing for Genaro Colon Nieves and Club Royal.
Serafin Nieves, 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:

Hearer's Report

This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and State Regulation No. 28, to determine whether 2 bottles of beer, 216 cans of beer, 1 bottle of creme de menthe, 1 bottle of champagne, various fixtures, furnishings and equipment, more particularly described in an inventory set forth in the schedule annexed hereto, made part hereof and marked "Schedule A", seized on February 3, 1964 at the premises of the Club Royal, 8 Railroad Avenue, in the City of Paterson, County of Passaic, 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 the Club Royal which sought the return of all of the property, with the exception of the juke box, described in the schedule herein. Serafin Nieves, appearing pro se, claimed the ownership of the said juke box and sought its return.

Counsel for the Club Royal challenges the legality and propriety of the said seizure, and because I consider that issue to be crucial and dispositive of the within matter, I shall review briefly, those established facts which have pertinency to that particular inquiry.

At approximately 4:00 a.m. on February 3, 1964, 2 female juveniles, ages 13 and 14, were stopped and questioned by Paterson police officers because they were acting suspiciously near premises of the Club Royal. Upon questioning, they stated that they had just left the Club Royal where they were from about 11:00 p.m. until 4:00 a.m.; that they were seated at a table with 2 males who purchased beers for them; that they refused to drink the beer; that they actually witnessed the cash transactions with respect to these alcoholic beverages.

Immediately upon questioning these juveniles, the police apprehended Genaro Colon Nieves, the president of the Club Royal, who was about to enter his motor vehicle which was parked about a block away from the said premises. He was questioned at police headquarters and, according to the testimony of the police officers, orally admitted that alcoholic beverages were sold at the club. It was stipulated that the Club Royal has no license or permit authorizing the sale of alcoholic beverages.

However, in a signed, voluntary statement to police which was supported by his testimony before me, Nieves denied that there were any sales of alcoholic beverages. He explained that the members of the club would contribute toward the purchase of beer and whiskey and these were distributed to and consumed only by members of the club. He was thereupon released from custody.

However, on the afternoon of February 3, 1964 after written statements were obtained from the 2 juveniles, Nieves was arrested and charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50(a), and possession of alcoholic beverages with intent to sell same without a license, in violation of R.S. 33:1-50(b).

The police thereupon brought him back to the premises of the Club Royal, searched the said premises and seized the

property listed in the annexed schedule. The officers admitted that no search warrant was obtained and that they acted solely upon direction of their commanding officer. Counsel for claimant challenges said seizure as being in violation of the existing State laws and the regulation of this Division.

New Jersey Statute R.S. 33:1-66 provides as follows:

- "a. Any officer knowing, or having reasonable cause to believe, that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property...."

A forfeiture cannot be based on a seizure where the government lacked the power to seize. Cook v. U.S., 53 S. Ct. 305, 288 U.S. 102, 77 L. ed. 641. Forfeiture proceedings are "within the reason of criminal proceedings" for all the purposes of the constitutional guaranty against unreasonable searches and seizures. Boyd v. U.S., 6 S. Ct. 524, 116 U.S. 616, 29 L. ed. 746. If a search and seizure is illegal at its inception it cannot be legalized by what it brings to light. Thus, if a search is illegal initially it is not justified by the discovery of unlawful property. 79 C.J.S. Sec. 51 at p. 809 and cases cited therein.

Forfeiture proceedings under this section may be instituted by this Division upon property which has been lawfully seized, where a reasonable belief or probable cause for believing that an offense is being committed or has been committed in a certain building or on certain premises will justify an arrest therefor, it will also justify, as incident to the arrest, a search of the building or premises without a search warrant. U.S. v. Martin, 176 F. Supp. 262. However, where such reasonable belief or probable cause for belief does not exist, such as where an officer acts on mere suspicion, an entrance and search without a warrant are illegal. 79 C.J.S. Sec. 69, p. 849.

With respect to dwelling houses (the club is considered within that orbit), it seems to be clear that no amount of probable cause to believe that contraband articles are being kept therein will justify the entrance, without consent, of an officer without a search warrant. Agnello v. U.S., 46 S. Ct. 4, 269 U.S. 20, 70 L. ed. 145. The only exception to the requirement of a search warrant with reference to a dwelling house is that of a search incident to an arrest therein. Thus, any attempt to justify an entrance if one made to effect an arrest, where the officer has no reason to believe that the accused was therein, will not be sustained.

A search without a warrant as an incident of a lawful arrest has always been permitted. However, the "true rule" with respect to the reasonableness of searches and seizures of structures by a government officer without a search warrant who is attempting to enforce the liquor laws, is that an officer must have direct, personal knowledge, through one or more of his 5 senses (sight, hearing, smell, or a combination of the senses) that the persons whose premises are to be searched or whose property is to be seized, are committing the suspected offense in his presence.

Such search and seizure must be justified and supported by other concrete facts and circumstances surrounding the situation. 79 C.J.S. Searches and Seizures, Sec. 69, p. 850 and cases therein cited.

A search warrant can be issued only on information obtained prior to its issuance and cannot be based upon evidence obtained after the seizure of the property. 79 C.J.S. at p. 851. A forfeiture cannot be predicated on a seizure which violates the constitutional provisions against unreasonable search and seizure. U.S. v. Plymouth Coupe, 182 F. 2d 180. The process of forfeiture of goods seized is subject to strict construction and rigid compliance with the formalities prescribed by law is required. State v. Spirituous Liquors, 40 A. 398, 68 N.H. 47.

In the instant matter the police officers re-arrested Nieves at least 10 hours after the time of the offenses charged, and while he was in custody, brought him to the premises. It is argued permission for admittance to the premises was voluntarily given to them by Nieves prior to their search and seizure. However, this is a non-sequitur because it cannot be convincingly asserted that such consent was voluntary, where the person is under arrest and in police custody. But even if it were voluntary, it would still not justify a search and seizure without a warrant lawfully obtained, under these circumstances.

It is undenied that the police officers had ample opportunity to obtain a search warrant; and since the offenses were not committed in their presence, it could not be reasoned that such seizure was an incident of lawful arrest. This is specifically proscribed by the first sentence in R.S. 33:1-66 which provides that where there is reasonable cause to believe that a person is engaged in unlawful alcoholic beverage activity "It should be his duty to investigate under proper search warrant when necessary, which it should be his further duty to apply for." (Emphasis supplied.)

At this point it should be further observed that there is no affirmative evidence in this case to support the apparent assumption by the police officers that the alcoholic beverages seized by the police officer were actually the same beverages which were the subject of the offenses charged. It may very well be that the seized alcoholic beverages were, in fact, delivered after the juveniles left the premises or, in any event, after the time of the alleged offenses. The fundamental constitutional protection against unreasonable searches and seizures is grounded in the Fourth Amendment to the United States Constitution, which provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

As the court pointed out in U.S. v. Macri, 185 F. Supp. 144, 146:

"The protection under this provision of the Constitution reaches all citizens, whether accused of crime or not and it is the duty of all those enforcing the

federal laws to recognize this right of the citizen. If the rights of the citizen under this constitutional safeguard are violated through an unreasonable search and seizure, any evidence so obtained for use against the citizen in a criminal prosecution in a federal court may be suppressed."

This constitutional guaranty extends to a place of business or as, in this case, to a social club. State v. Cardinale, 73 N.J. Super. 168, 171 (County Court 1962).

As pointed out hereinabove, the evidence seized by the officers without a warrant, under the facts and circumstances in this case, could not be used in a criminal prosecution, since it is undisputed that it was not an incident to a lawful arrest (U.S. v. Rabinowitz, 339 U.S. 56, 70 S. Ct. 430, 94 L. ed. 653 (1950)). This principle was delineated and fully enunciated in Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L. ed. 2nd 1081, which established the doctrine that the use of illegally seized evidence is prohibited not because such use itself violates the Constitution but rather as a deterrent against future lawlessness. Thus, as Chief Justice Weintraub pointed out in State v. Smith, 37 N.J. 48, at p. 486:

"In the long debate before Mapp, most of the disputants agreed the constitutional wrong was in the invasion of privacy by an illegal search rather than in the use of the product of the search. The quarrel revolved about the need of a rule of exclusion as a deterrent to official misconduct. The advocates of the exclusionary rule contended that other remedies were illusory, that the right of privacy could be protected only by denying government the fruit of the invasion. Thus in Elkins v. United States, 364 U.S. 206, 217, 80 S. Ct. 1437, 1444, 4 L. Ed. 2d 1669, 1677 (1960), Mr. Justice Stewart said:

'Yet, however felicitous their phrasing, these objections hardly answer the basic postulate of the exclusionary rule itself. The rule is calculated to prevent, not to repair. Its purpose is to deter -- to compel respect for the constitutional guaranty in the only effectively available way -- by removing the incentive to disregard it. See Eleuteri v. Richman, 26 N.J. 506, 513, 141 A. 2d 46, 50.' (Italics added.)"

It should be particularly emphasized that the search and seizure herein by local police officers was not participated in by ABC agents, although the matter was adopted in due course by this Division so that disposition of the seized property might be made by the Director as required by R.S. 33:1-66(a).

I therefore find as a fact that the seizure of the property set forth in Schedule "A" herein was unreasonable and, hence, invalid and unlawful, and therefore, the forfeiture proceedings must fail. I am, accordingly, imperatively compelled to recommend that an Order be entered directing the return of the seized property to the claimants herein.

Conclusions and Order

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 Hearer's findings and conclusions and adopt them as my conclusions herein.

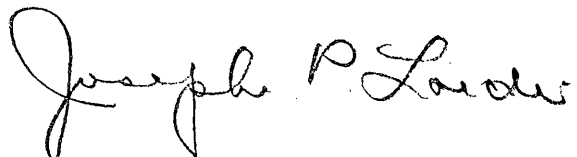
Accordingly, it is, on this 5th day of June, 1964,

DETERMINED and ORDERED that the juke box referred to in the Hearer's Report be returned to Serafin Nieves; and it is further

DETERMINED and ORDERED that the balance of the personal property, including the alcoholic beverages, more particularly described in Schedule "A", attached hereto, be returned to the Club Royale.

SCHEDULE "A"

- 2 - bottles of beer
- 216 - cans of beer
- 1 - bottle of creme de menthe
- 1 - bottle of champagne
- 23 - glasses
- 1 - wall speaker
- 1 - microphone
- 1 - amplifying unit
- 1 - pool table, with 16 balls and 2 pool cues
- 1 - tape recorder
- 1 - juke box
- 2 - refrigerators
- 1 - bar
- 1 - typewriter



Joseph P. Lordi
Director