

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 2045

May 10, 1972

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 2045

May 10, 1972

1. APPELLATE DECISIONS - G & J LOUNGE, INC. v. PATERSON.

G & J Lounge, Inc., t/a)	
G & J Lounge, Inc.)	
Appellant,)	On Appeal
v.)	CONCLUSIONS
Board of Alcoholic Beverage)	and
Control for the City of)	ORDER
Paterson,)	
Respondent.)	

-----)
William J. Rosenberg, Esq., Attorney for Appellant
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent Board of Alcoholic Beverage Control for the City of Paterson (Board) whereby it suspended the plenary retail consumption license issued to appellant for premises 138 Fifth Avenue, Paterson, for fifteen days on each charge hereinafter set forth or a total of forty-five days, effective December 20, 1971, upon finding appellant guilty of the following charges:

- "1. On Sunday, October 10, 1971, at approximately 4:16 a.m., it failed to have its entire premises closed; in violation of Section 2:4-2, Title 2, Chapter 4 of the Revised Ordinances of the City of Paterson.
2. On Sunday, October 10, 1971, and divers dates prior thereto it employed on its licensed premises a person under the age of twenty-one (21) years, viz., Patrick --, age 15; in violation of Rule 3 of State Regulation No. 13.
3. On Sunday, October 10, 1971, it allowed, permitted and suffered lewdness and immoral activity in and upon its licensed premises, viz., in that it allowed, permitted and suffered a female person to act in a lewd and indecent manner and to offer to engage in an unnatural

sex act, in violation of Rule 5 of State Regulation No. 20."

Appellant contends that the Board's action was erroneous in that its findings were contrary to the weight of the evidence, was the result of a mistake of law, and of prejudice.

The Board filed no written answer but, at the hearing, orally denied the substantive matters contained in the petition of appeal.

Upon the filing of the appeal, an order was entered by the Director on December 16, 1971, staying the Board's order of suspension pending the determination of this appeal.

The appeal was heard de novo and was based upon the transcript of the proceeding held before the Board, supplemented by additional testimony adduced at this de novo hearing on behalf of appellant, pursuant to Rules 6 and 8 of State Regulation No. 15.

The transcript of the hearing before the Board reflects that Harold Pegg, a local police officer, testified that on October 10, 1971 (pursuant to a call from headquarters) he arrived at the licensed premises, a tavern, at 4:15 a.m. Through the front window, he observed some people in the rear room, he knocked on the door which was locked, in order to gain admittance. A male, later identified as Patrick -- age 15, opened the door. Entering the rear room, he observed five males (all minors) and one female. The female was nude from the waist down. The males were fully dressed. All appeared to be sober except the female. The female shouted obscenities. Patrick locked up the tavern and all were taken to police headquarters.

On cross examination the police officer testified that no charges were preferred against the males. The female was charged with impairing the morals of a minor. Upon questioning Patrick in the tavern concerning what was taking place, the officer testified as follows:

"...he told me he was in the tavern cleaning up. Then he also informed me -- I asked him about the girl who was there, and who was in the nude, and he informed me that she forced her way into the tavern and told the other four men if they didn't let her submit to unnatural acts for \$5 that she was going to call the police and say that she was forced in there and was raped."

The officer further testified that Patrick informed him that:

"...he was there to clean up the tavern for the next day, which he said that he does frequently, almost every day. And the rest of the youths were supposed to be there waiting for him to get done."

Patrick further asserted that it was normal routine for him to do this. He said that his working hours are "...sometimes at 5:00 and sometimes at 6:00 and sometimes at 4:00, to sweep up."

William Villalobos, a local detective, testified that he reported for duty on October 10, 1971 at 7:15 a.m. He interviewed the five youths and the female on that morning and took a statement from Patrick. In the statement Patrick asserted that he cleans up the licensed premises which is owned by his father. On weekdays he goes there at approximately 5:50 a.m., on weekends he

reports there later. On the night of October 9th, he went to the house of a friend, Jimmy --, in Hawthorne, to sleep. Jimmy and he proceeded to a location in Glen Rock at 3:00 a.m. to meet for a newspaper route. While walking away from that location (the routes having been already filled by others) another male friend, Tom --, who was in a car with two other males asked them where they were going. Upon informing Tom that he was going to his father's tavern to clean up, Tom drove them to the tavern. Upon arriving at the tavern he observed an ambulance and a police car in close proximity to the tavern and a police officer talking with a woman who appeared to be intoxicated. The police officer then asked if they would take the female home. In his statement Patrick then continued with his narrative:

"So we drove not even a half a block with the woman in the car and she said that she wanted to get out, that she wanted to kill herself. Then we let her out and we rode around for about five minutes and then we came back to the tavern. I was the only one going in the tavern. I opened the door to the tavern and went in the tavern. The woman had been sitting in front of a house next to the tavern. As soon as I opened the door, the woman came running and entered the tavern and she was screaming that she wanted to kill herself. All she had on was her pantyhose and underwear and a blouse. She was carrying a pair of hot pants in her hands with her pocketbook. I told her: Would she please leave, and she started scratching me and then she hit me right here (indicating the right side of his face) and she threw a glass from the bar at me. She missed me and then she threw another one at me and missed me again."

The female then offered to engage in an act of unnatural intercourse with the youths for \$5 each. While on the stage she took off her clothes and proceeded into the rear room at which time he went to the door to respond to the police officer's knock on the door. His companions were in the back room with her because she was "acting like crazy". They had entered when the female was on the stage. None of the youths touched her in any manner. He didn't call the police after the woman entered the tavern because:

"Everything happened so fast. The police came there about five minutes after she entered the tavern."

His friends entered the tavern because:

"...they saw the girl coming in and screaming like mad, and they came in to help me get rid of her, to pull her off me."

Upon questioning the female involved, Detective Villalobos ascertained that she had visited several taverns ending up at the subject licensed premises; that she had taken some pills for a physical ailment and the combination of the liquor and pills had an adverse effect on her and she did not recall anything that had occurred.

The detective added that at 7:15 a.m. the female still appeared to be in an intoxicated condition or under the influence of some drug.

Patrick testified that he was fifteen years of age at the time of the alleged occurrence and that everything contained in the statement which he gave to Detective Villalobos was true. Additionally, the witness testified that the door contained a lock which would automatically lock the door unless a knob was turned. Upon entry, he did not turn the knob to keep the door open. However, the door wasn't closed until the four males entered the premises.

On cross examination, Patrick corroborated the details contained in the statement given by him to Detective Villalobos.

In response to questions propounded by a member of the Board, the witness testified that he helped his father since he started in the tavern business; that he stays in to help no more than forty-five minutes to an hour; and that, on the morning in question, he was going there to clean up the place.

On redirect examination, the witness testified that the female didn't get in the car in which he was a passenger; that she had entered a car with some other youths and jumped out after it had proceeded a half a block; that he rode around for five minutes and upon returning he saw the female on the porch next door to the tavern; and upon opening the door to the tavern the female rushed in. The police car and the ambulance had left the vicinity of the tavern.

John Chiricello testified that he was employed as a security guard, and was acting as such at a printing plant located across the street from the tavern. He commenced working at approximately 1:00 a.m. on October 10th. At approximately 3:05 a.m. saw a car pull up in front of the tavern with some youths in it. One of the males (whom he identified as Patrick) got out of the car and opened the door of the tavern. At that time he observed a female who was on the porch a few feet away dash out and run into the tavern. He then saw three males run into the tavern. Police arrived approximately three minutes thereafter and took all of them away in a police vehicle. Thereafter he informed the tavern owner of his observation.

John Brownlee, father of Patrick, and an officer and stockholder of the corporate licensee testified that he worked at the tavern from approximately 8:45 p.m. on October 9th to approximately 3:20 a.m. on October 10th. The female herein referred to entered the tavern accompanied by a male at approximately 12:30 a.m. After having consumed one drink she was asked to leave at 1:30 a.m. because she was getting boisterous. She departed with the male. After closing the tavern at 3:20 a.m. he saw the female on the porch next to the tavern. The female was alone, it appeared that she was sleeping. He went straight home and he next saw the female and his son when he arrived at the Detective Bureau pursuant to a call later that morning.

The witness insisted that neither he nor anyone else gave his son permission to go in the tavern in the early hours of the morning. He has taken his son to the tavern in the summertime mostly on a Sunday between 10:00 a.m. and 11:00 a.m. The keys to the tavern were taken without his permission by his son from his dresser.

At the hearing de novo Patrick's testimony mainly corroborated the testimony he offered at the hearing held before the Board. He testified that the keys which he used to gain admittance to the tavern was an extra set of keys that were on his father's dresser. He had, on occasions previous to October 10, 1971 gone with his father to help clean the tavern. He received no payment therefor. He received an allowance whether he helped out or not.

In considering the second charge, namely, of employing a minor in violation of Rule 3 of State Regulation No. 13, I find the minor's admission that he performed cleaning services on numerous occasions in the licensed premises (of which his parents were the major stockholders) to be credible and factual. The fact that he was not paid for his services is of no consequence.

In Re Jacobs, Bulletin 935, Item 3, it was held that salary or compensation is not a requisite to employment. This holding was followed in the recent case of Re Neim, Bulletin 1772, Item 2, wherein it was held that the question of compensation is irrelevant to the determination of employment.

In Kravis v. Hock, 137 N.J.L. 252, the court considered this very issue. In that case it was alleged that certain females employed on licensed premises were engaged as independent contractors. In considering the matter of employment the court stated (p.255):

"Webster defines the word 'employ': 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.' The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts. Mr. Justice Perskie has emphasized this judicial interpretation in Cino v. Driscoll, (Supreme Court, 1943), 130 N.J.L. 535, 540, where he said:

'Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N.J.L. 329, 22 Atl. Rep. (2d) 523.'

I therefore find that Patrick was a person employed within the intendment of the Division rules and regulations.

However, after considering the facts relative to Charge No. 1, I am persuaded that under the peculiar circumstances prevailing, Patrick did make reasonable efforts to comply with the closing hour ordinance. The testimony of Officer Pegg corroborates that the female was shouting obscenities and it, therefore, can be presumed that she was unmanageable.

Furthermore, the evidence is uncontroverted that the male youths who had accompanied Patrick to the tavern did not enter therein until the female dashed in. In view of the fact that there is nothing in the record to contradict Patrick's assertion that his companions rushed in in an attempt to assist him, I must accept his version as being factual.

Further, after considering the factual complex herein, I find that Charge No. 3 has not been established by a fair preponderance of the credible evidence. The proof is insufficient

to establish that the licensee allowed, permitted and suffered the female to act in the indecent manner charged.

It is, therefore, recommended that an order be entered affirming respondent's action with respect to its finding of guilt as to the second charge and fixing the effective dates for the suspension of fifteen days imposed by respondent Board and stayed pending the entry of a further order herein.

It is further recommended that the action of respondent with respect to the first and third charges be reversed, and that the aforesaid charges be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including transcript of the testimony and the recommendations in the Hearer's report. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of April 1972,

ORDERED that the action of respondent in finding appellant guilty of the first and third charges preferred herein and suspending its license be and the same is hereby reversed, and the aforesaid charges be and the same are hereby dismissed; and it is further

ORDERED that the action of respondent with respect to the second charge be and the same is hereby affirmed and that the appeal herein relative thereto be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-257, issued by the Board of Alcoholic Beverage Control for the City of Paterson to G & J Lounge, Inc., t/a G & J Lounge, Inc., for premises 138 Fifth Avenue, Paterson, with respect to the second charge, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Monday, May 1, 1972, and terminating at 3 a.m. Tuesday, May 16, 1972.

Robert E. Bower,
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 Middletown Enterprises, Inc.)
 t/a Junction Bar & Liquors)
 544 Main Street)
 Middletown Township)
 PO Belford, N.J.,)
)
 Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Middletown.)

CONCLUSIONS and ORDER

 Weiner, Weiner & Glennon, Esqs., by Gerald T. Glennon, Esq.,
 Attorneys for Licensee
 Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On September 3, 1971, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., John H. M---, age 17; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, ABC agent B testified that on September 3, 1971, pursuant to specific assignment to investigate an allegation of sales of alcoholic beverages to minors, and accompanied by agent O, he stationed himself at a post of observation at the front of the licensed premises. At approximately 8:10 p.m. his attention was directed to a youthful appearing male, later identified as John ---, who, in his opinion, appeared to him to be approximately sixteen or seventeen years of age, enter the package goods area of the licensed premises. He observed a clerk, identified as George Spears, hand John a brown paper bag. This was accompanied by an exchange of money from the youth to the clerk. The agents confronted the youth after he emerged from the premises. John showed the agents the bag which contained four bottles of Boone's Farm Apple Wine, an alcoholic beverage. He then identified himself and stated he was seventeen years of age.

The agents, accompanied by John, entered the licensed premises and confronted Spears. Spears asserted that John had shown identification on prior visits and that he had signed a written representation of age form. Spears could not produce the representation form at the time.

On cross examination agent B testified that Spears informed him that John had patronized the premises on prior occasions; that John had signed an affidavit relative to his age, and that he had produced identification verifying that he was over twenty-one years of age.

It was stipulated that the testimony of agent O would be corroborative of the testimony elicited from agent B.

John testified that he is seventeen years of age and was born on April 22, 1954. On September 3, 1971, at approximately 8:00 p.m. he entered the licensed premises, proceeded to the counter and requested the clerk, George Spears, to give him four bottles of Boone's Farm Apple Wine. Spears placed the four bottles in a bag and John left the premises with his purchase after making payment therefor.

Outside the premises, John was confronted by ABC agents B and O and after showing the agents the wine, he was requested to furnish identification. John showed his own driver's license.

He asserted that on September 3 he was not requested by anyone connected with the licensed premises to furnish proof of age or identification and was not requested to make a written representation of age. Prior to September 3, he patronized the licensed premises approximately a dozen times and was usually requested to produce identification and proof of age. On the occasions that he produced identification he was served. When he failed to produce identification he was not served. The identification he furnished was a driver's license that had been issued to his deceased brother Carl.

On cross examination the witness testified that in June 1971, he signed his brother's name to an affidavit stating that he was twenty-two years of age.

In defense of the charge, George Spears, who is employed by the licensee as a part-time clerk testified that he recalled serving John in the licensed premises for the first time in June 1971. He identified himself as Carl instead of John. However, John did furnish his true surname. He furnished a driver's license bearing the given name "Carl" and also bearing his true surname. The license indicated the age to be twenty-two years. John signed an affidavit using the given name "Carl" and his true surname, stating that he was twenty-two years of age. He has been unable to find the affidavit.

Spears asserted that he waited on John on at least four occasions prior to September 3rd. He requested John to produce identification on each occasion except September 3rd. In the event that a patron's age was questionable, it was his normal procedure to obtain identification and if he was still not satisfied he would secure a written representation. Spears further asserted that he relied upon the genuineness of the credentials showed to him by John; upon John's written representation, and further because John appeared to him to be of statutory age. Having been engaged in numerous youth activities, the witness felt that he was qualified to judge John's age.

Finally, the witness testified that on the occasions that John patronized the licensed premises he was "...a little more heavily bearded."

On cross examination Spears testified that on the first occasion that he served John, he requested proof of age because "...the man looked to be about 21 but I couldn't say he was exactly 21."

Richard E. Burke, who has had a proprietary interest in the corporate licensee since 1963 testified that realizing the sensitive nature of the alcoholic beverage business, he gave both written and oral instructions to the clerks in the conduct of the business. He instructed his clerks that where the age of the patron was in question, all doubts were to be resolved in favor of the licensee. He considered Spears a "prudent" individual.

During the course of the hearing, it was stipulated, on behalf of the Division that the licensee had received a written representation from the patron that he was of statutory maturity.

N.J.S.A. 33:1-77 provides that in order to provide a complete defense in the event of a sale of an alcoholic beverage to a minor, the licensee must show all of the following:

(a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over; and

(b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over; and

(c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over.

In adjudicating this matter, we are guided by the long established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A G.J.S. Evidence, sec. 1042.

It is apparent to me that Spears must have felt that the age of the purchaser of alcoholic beverages was subject to inquiry because he did challenge the minor's age on previous occasions.

The agents testified that John had a youthful appearance, that he appeared to be approximately sixteen or seventeen years of age.

Inasmuch as John's appearance was a major point of inquiry I carefully observed his appearance.

At the conclusion of the hearing held herein I stated for the record, and, I am still of the opinion, that an ordinary prudent person would not believe him to be at least twenty-one years of age. It is my view that the male appeared to be not more than eighteen years of age. I conclude and I find that an ordinary prudent person would not believe this minor to be of age.

The prevention of sales of intoxicating liquor to a minor not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Mazza v. Cavicchia, 15 N.J. 498 (1954); Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra; Guill v. Hoboken, 21 N.J. 574 (1956).

It is, therefore, recommended that the licensee be found guilty of said charge.

Absent prior record, it is further recommended that the license be suspended for fifteen days. Re Bembas, Bulletin 1984, Item 10.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the memorandum in summation submitted by counsel for the licensee, the Hearer's report and the exceptions with supportive argument filed with reference thereto, I concur in the findings and recommendations of the Hearer with respect to the findings of guilt and adopt them as my conclusions herein.

However, I disagree with the Hearer's recommendation with respect to the length of suspension as not being consonant with precedent, which in the case of seventeen year old minors the penalty is suspension of license for twenty days. Re Druda, Bulletin 2033, Item 4.

It is apparent, furthermore, that the Hearer's recommendation of a penalty of suspension of fifteen days was inadvertent, since the citation in support of his recommendation (Re Bembas, Bulletin 1984, Item 10) supports a twenty day suspension. In that matter, the licensee pleaded non vult to a charge alleging the sale to a seventeen year old minor. The license was suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Since in the matter sub judice, no plea was entered, the licensee would not be entitled to such remission. I shall, therefore, suspend the subject license for twenty days.

Accordingly, it is, on this 17th day of April 1972,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Middletown to Middletown Enterprises, Inc., t/a Junction Bar & Liquors, for premises 544 Main Street, Middletown Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, May 2, 1972, and terminating at 2:00 a.m. Monday, May 22, 1972.

Robert E. Bower
Director

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT TRANSIT INSIGNIA - ALCOHOLIC BEVERAGES FORFEITED - APPLICATION FOR RETURN OF DEPOSIT POSTED AS RETAIL VALUE OF AUTOMOBILE GRANTED TO INNOCENT OWNER.

In the Matter of the Seizure : Case No. 12,444
on March 23, 1971 of 396 :
containers of alcoholic bev- : On Hearing
erages and a 1964 Dodge Dart :
automobile seized at 900 Park : CONCLUSIONS and ORDER
Avenue, in the City of Hoboken, :
County of Hudson and State of :
New Jersey. :

.....
Emil Maisano, Pro Se.
Philip D. Mecca, Pro Se.
Harry D. Gross, Esq., appearing for the Division.

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 N.J.S.A. 33:1-66 and State Regulation No. 28 and further, pursuant to a stipulation dated May 27, 1971 signed by Phillip D. Mecca, owner of a 1964 Dodge Dart automobile, to determine whether 396 containers of alcoholic beverages and the aforesaid vehicle, as set forth in an inventory attached hereto and marked Schedule "A" seized on March 23, 1971, immediately in front of the licensed premises of Emil Maisano, t/a Grogan's Wines & Liquors, 900 Park Avenue, Hoboken, constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$150.00 representing the appraised retail value of the aforesaid automobile, deposited by Phillip D. Mecca, with the Director, under protest, should be forfeited or returned to him.

When the matter came on for hearing, Emil Maisano appeared and sought return of the alcoholic beverages, and Phillip D. Mecca appeared to seek return of the \$150.00 deposited by him pursuant to the aforesaid stipulation.

The Division file was admitted into evidence with the consent of all parties. Reports of Division agents in the file established that on March 23, 1971 at approximately 2:00 P.M. Agent M observed the licensee and another adult male arrive in front of the premises in a vehicle, subsequently determined to be unlicensed for the transportation of alcoholic beverages and owned by Phillip D. Mecca.

Agent M was unable to ascertain who was driving the vehicle but did observe numerous cases of beer in the back seat. Upon being questioned by Agent M, Maisano reluctantly admitted the purchase of the beer from several different retailers. It should be noted that Division records disclose that the licensee herein was placed on the Division's official "non-delivery list", prior to the date hereof, pursuant to the provisions of State Regulation No. 39. Further inspection of the trunk of the vehicle disclosed seven cases of assorted bottles of wine in addition to the beer. It was subsequently learned from Maisano that he was driving and the owner, Mecca, was the passenger. The motor vehicle and also the alcoholic beverages were thereupon seized.

being questioned by Agent M, Maisano reluctantly admitted the purchase of the beer from several different retailers. It should be noted that Division records disclose that the licensee herein was placed on the Division's official "non-delivery list", pursuant to the provisions of State Regulation No. 39. Further inspection of the trunk of the vehicle disclosed seven cases of assorted bottles of wine in addition to the beer. It was subsequently learned from Maisano that he was driving and the owner, Mecca, was the passenger. The motor vehicle and also the alcoholic beverages were thereupon seized.

The Division file also included the Director's certification that no alcoholic beverage license or permit of any kind, including employment permit, solicitor's permit, transportation permit, or alcoholic beverage license, had ever been issued to Phillip D. Mecca, owner of the vehicle herein, at premises 10 Church Towers on 900 Park Avenue, Hoboken, N.J. The file also included an inventory of the items seized, affidavits of mailing, notice of hearing and publication of notice of hearing.

Emil Maisano testified that, on the date of the seizure herein, he was the holder of a plenary distribution alcoholic beverage license in the City of Hoboken. He had been placed on the Division "non-delivery" list prior thereto and on this date he did purchase 396 containers of alcoholic beverages at retail from sources which he refused to disclose.

He borrowed Mecca's automobile to transport the beverages from their undisclosed source to his liquor store. He was aware that the beverages herewin were rendered illegal by this act and candidly admitted that his purpose was to sell the beverages at his store.

He borrowed Mecca's car, proceeded alone to pick up the beverages and then returned to his store, picking up Mecca on the way. Mecca had no knowledge of the illegal character of this transaction and was in the vehicle for only three or four blocks of the trip back to the store. He had borrowed Mecca's car on prior occasions, but never for this purpose.

He identified the seized alcoholic beverages as being that which was found in the vehicle by the agents and admitted that no transportation permit had ever been acquired for this delivery. He has, since the date of the seizure herein, surrendered his license to the City.

Philip Mecca testified that he had loaned his car to Maisano on the date of the seizure as he had on five or six occasions in the past. He, on occasion, had borrowed Maisano's car. He had no idea what Maisano had planned to do with the car, and even after seeing the alcoholic beverages in the car, was not aware that a licensee was required to have a special permit to transport in this manner.

Rule 2 of State Regulation No. 17 provides that:

"No licensee shall transport alcoholic beverages in any vehicle unless it is owned or leased or contracted for by the licensee and unless the vehicle, while so used, shall have a transit insignia affixed thereto..."
(emphasis added)

N.J.S.A. 33:1-66(c) provides that:

"All alcoholic beverages....transported in violation of rules and regulations, together with any vehicle containing the same, are hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section." (emphasis added)

It has long been established that alcoholic beverages being transported in violation of the Rules and Regulations of this Division are subject to seizure and storage. Re Seizure Case No. 11,601, Bulletin 1674, Item 4; N.J.S.A. 33:1-1(x & y); N.J.S.A. 33:1-2; See also Re Betzel, Bulletin 1350, Item 2.

The Director has discretionary authority to return property subject to forfeiture to a party who establishes to the satisfaction of the Director that he has acted in good faith and did not know or have any reason to suspect that his property would be used in violation of the Alcoholic Beverage Law. N.J.S.A. 33:1-66(e); Rule 3(c) of State Regulation No. 28.

Based upon the applicable principles of law, it is apparent that the claim of Maisano must be denied. The alcoholic beverages are clearly illicit. They are, therefore, subject to seizure and forfeiture. Maisano, a licensee, is charged with knowledge of the Rules and Regulations of the Division, and cannot be said to have exercised the good faith element necessary, as contemplated, under Rule 3(c) of State Regulation No. 28. Hence, his claim must fail.

With respect to Mecca, however, a different situation arises. I have observed the demeanor of this witness and am satisfied that he genuinely was not aware of the use to be made of his automobile when he loaned it to Maisano.

Having thereafter learned of it during the subsequent three-block ride to the premises, he had no reason to assume that a licensee could not legally transport the alcoholic beverages in this manner.

It is, therefore, recommended that the claim of Maisano for the return of the alcoholic beverages be denied; and that an order be entered recognizing the claim of Mecca for the return of the \$150.00 posted by him with the Director, under protest, representing the appraised retail value of the 1964 Dodge automobile.

Conclusions and Order

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

Having carefully considered the entire matter 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 17th day of April, 1972

DETERMINED and ORDERED that the claim of Philip Mecca is hereby recognized, and that the sum of \$150.00 deposited with the Director, under protest, by the said claimant, representing the appraised retail value of one 1964 Dodge Dart automobile be returned to him; and it is further

DETERMINED and ORDERED that the claim of Emil Maisano is denied, and the 396 containers of alcoholic beverages as set forth in Schedule "A", attached hereto, constitute unlawful property, and are hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and they shall be retained for the use of hospitals and 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.

Robert E. Bower,
Director

SCHEDULE "A"

- 396 - containers of alcoholic beverages
- 1 - 1964 Dodge Dart automobile, Serial No. 7442507232, N.J. Registration SRV-490.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS GAME) - LICENSE SUSPENDED FOR 90 DAYS, LESS 18 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)
)
 George Casale)
 t/a Casale's Bar & Grill)
 540- 55th Street)
 West New York, New Jersey,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
 License C-22, issued by the Board of)
 Commissioners of the Town of West)
 New York.)
 -----)

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 16 and 23, 1971 he permitted gambling on the licensed premises, viz., "numbers game," in violation of Rule 6 of State Regulation No. 20.

Absent prior record, the license will be suspended for ninety days, with remission of eighteen days for the plea entered, leaving a net suspension of seventy-two days. Re X.P.Y. Corp., Bulletin 2033, Item 2 .

Accordingly, it is, on this 12th day of April 1972,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Commissioners of the Town of West New York to George Casale, t/a Casale's Bar & Grill, for premises 540 - 55th Street, West New York, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, commencing at 3 a.m. Wednesday, April 26, 1972; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Friday, July 7, 1972.

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - FRONT - FAILURE TO KEEP TRUE BOOKS OF ACCOUNT - LICENSE SUSPENDED FOR BALANCE OF THE TERM WITH LEAVE TO LIFT AFTER 25 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL ACTIVITY.

In the Matter of Disciplinary Proceedings against)

M & P Liquor, Inc.)
t/a Paddock Cafe)
1137 Nottingham Way)
Hamilton Township (Mercer County))
PO Trenton, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-47, issued by the Township)
Committee of the Township of Hamilton.)
-----)

Harry J. Diamond, Esq., Attorney for Licensee
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to three charges alleging that in its application for a plenary retail consumption license dated June 6, 1971 it failed to disclose a change of corporate stockholders or otherwise indicated that others there unnamed, i.e., Paul F. Woldanski and Elizabeth Ann Woldanski, exercised the beneficial control of the licensed premises and derived the benefits conducted thereunder, in violation of N.J.S.A. 33:1-25; to a fourth charge alleging that it aided the said persons to exercise the rights of a licensee under such license, in violation of N.J.S.A. 33:1-52, and to a fifth charge alleging that from January 8, 1970 to date it failed to keep true books of account, in violation of Rule 36 of State Regulation No. 20.

Absent prior record, the license would normally be suspended for twenty days (Re Ciccone, Bulletin 2021, Item 4) on the first four charges, and ten days on the fifth charge (Re New Ritz Lounge, Inc., Bulletin 2032, Item 4), making a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Although efforts are underway for sale of the licensed premises, the unlawful situation has not to date been corrected. Hence the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than twenty-five days from the commencement of the suspension herein.

Accordingly, it is, on this 11th day of April 1972,

ORDERED that Plenary Retail Consumption License C-47, issued by the Township Committee of the Township of Hamilton to M & P Liquor, Inc., t/a Paddock Cafe, for premises 1137 Nottingham Way, Hamilton Township, be and the same is hereby suspended for the balance of its term, i.e., midnight June 30, 1972, commencing at 2 a.m. Monday, April 24, 1972, with leave to the licensee or any bona fide transferee of the license to apply to the Director by verified petition for lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than twenty-five (25) days from the commencement of the suspension herein.

Robert E. Bower
Director

6. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against)
)
 Otnas Holding Company, Inc.)
 247 Highway 18) AMENDED ORDER
 East Brunswick, N. J.,)
)
 Holder of Plenary Retail Consumption License C-17, issued by the Township Council of the Township of East Brunswick.)
 -----)
 Taria and Gelzer, Esqs., by Seymour Gelzer, Esq., Attorneys for Licensee)
 Edward F. Ambrose, Esq., Appearing for Division)

BY THE DIRECTOR:

On February 22, 1972, I entered Conclusions and Order suspending the subject license for twenty days, commencing March 7, 1972, after finding the licensee guilty of charges that from on or about February 17, 1969 to date, it failed to have and keep true books of account in connection with its licensed business, as required by and in violation of Rule 36 of State Regulation No. 20. (Re Otnas Holding Company, Inc., Bulletin 2035, Item 5.)

Prior to the effective date of that suspension, I deferred the suspension herein in order to consider an application by the licensee for the imposition of a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971.

Having favorably considered the said application I have determined to accept an offer in compromise by the licensee to pay a fine of \$2,300. in lieu of suspension.

Accordingly, it is, on this 12th day of April 1972,

ORDERED that the payment of a fine of \$2,300. by the licensee is hereby accepted in lieu of a suspension of license for twenty (20) days.

ROBERT E. BOWER
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

The Hawthorne Beverage House, Inc., 550 Lafayette Ave. Hawthorne, N.J. Application filed May 8, 1972 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-112 from Carmine M. Prato, t/a Fischer Blvd. Beer & Soda Distributors, 1133 Fischer Blvd., Dover Township, N.J.

Robert E. Bower
Robert E. Bower
Director