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

BULLETIN 1867 July 15, 1969

TABLE OF CONTENTS

ITEM

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Department of Law and Public Safety
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1. APPELLATE DECISIONS - FELICETTA v. WALLINGTON.

JOSEPH FELICETTA, Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE BOROUGH OF WALLINGTON, Respondent.	)	

Herman Osofsky, Esq., Attorney for Appellant
Robert D. Gruen, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Council of the Borough of Wallington (hereinafter Council) which by a 5-0 vote of its six councilmen suspended appellant's plenary retail consumption license for premises 54 Lester Street, Wallington, for a period of ninety days effective December 2, 1968, after finding him guilty of the following charge:

> "On February 23, 1968, March 19, 1968, May 16, 1968, May 27, 1968, June 3, 1968, June 5, 1968, June 6, 1968, June 14, 1968, July 10, 1968, July 12, 1968, July 13, 1968, July 20, 1968, July 27, 1968, July 29, 1968, August 12, 1968, August 17, 1968, August 18, 1968 and August 22, 1968, you did allow, permit or suffer in or upon the licensed premises obscene language, brawls, acts of violence, disturbances and unnecessary noise and the licensed premises are conducted in such a manner as to become a nuisance, in violation of State Regulation No. 20, Rule 5 of the Rules and Regulations of the Division of Alcoholic Beverage Control."

The appeal herein was filed after appellant had served fourteen of the ninety days suspension, and an order dated December 16, 1968 was entered by the Director staying respondent's order of suspension pending determination of the appeal.

Appellant contends in his petition of appeal that the action of the Council was erroneous because "the evidence does not support the verdict and the penalty is excessive."

In its answer the Council denies the aforesaid allegations in appellant's petition of appeal and contends that the Council's action was proper.

Both parties agreed to present the appeal upon the transcripts of the proceedings held before the Council, pursuant to Rule 8 of State Regulation No. 15. In addition thereto, the attorneys representing the respective parties at the instant hearing made summations.

At the outset I shall discuss the motion made by the attorney for appellant and the contention thereon that the Mayor, who presided at the hearing at the time in question, restricted his cross examination of two police officers by denying him the privilege or right of interrogating the officers concerning the written material used to refresh their memory and upon which a portion of their testimony was based.

At a hearing before an administrative tribunal, technical rules of evidence are not controlling and the erroneous admission of evidence in such a proceeding will not cause a reversal unless the evidence erroneously admitted formed the basis for the decision of the administrative tribunal. Mazza v. Cavicchia, 15 N.J. 498, 509 (1954).

Although the objections by the attorney for appellant were well taken and he should have had the right to inspect the written reports or other memoranda that the officers referred to when testifying, I am satisfied for the following reason that appellant was not prejudiced thereby. The appellant's attorney engaged in lengthy and substantial cross examination of the said witnesses regarding the incidents which allegedly occurred and thus obtained adequate information relative thereto. Thus, under the circumstances, any impedimenta which may have arisen because of the Mayor's ruling in this matter were not detrimental to appellant.

Police Officer Stanley Remaziewski testified concerning appellant's licensed premises with reference to occurrences that allegedly took place, together with specific dates during 1968 which appeared in the charge, and the disposition thereof, to wit: February 23, 1:30 a.m., was told by the licensee's daughter, who was then tending bar, that she sought protection from members of a motorcycle group who were extremely noisy; on May 16 a complaint of loud juke box was registered; on June 15 an argument was in progress and the officer prevailed upon the participants to leave the establishment; on July 12 and 13 the officer was again sent to the tavern because of noise and a loud juke box; on July 20 complaint was made that someone was handing beer out of appellant's tavern and, upon arrival there, he was advised that the people had gone; on August 12, in response to a call from a neighbor that a beer bottle was thrown through her window, the officer went to the licensed premises but apparently could not find who was the person who had caused this incident.

Officer Joseph Susicki testified that he was dispatched to the appellant's premises on June 5, 1968, arriving there at 10:20 p.m., because of noise from motorcycles outside the tavern; that he spoke to the owners thereof who came out of the place; on July 27, at 12:30 a.m., he again went to appellant's premises because of a complaint of loud noise and noise from motorcycles. The same morning, at 1:30 a.m., he again was sent to appellant's premises because of a fight in progress; on August 12 he also had gone to the tavern because of the bottle being thrown though a neighbor's window, and on August 17, at 12 midnight, he again was dispatched to appellant's tavern because of motorcycles racing their motors. At this time he dispersed the people who were sitting outside the premises. During cross examination Officer Susicki stated that the daughter of the licensee, who was in charge of the licensed premises, cooperated with him.

Officer Edward Skorupa testified that on one occasion, in response to a call that a fight was taking place, he went to appellant's premises but, upon arrival, the fight was over. The officer could not recall on what date this incident occurred. Officer Skorupa further testified that he appeared in response to calls and complaints because of parking, loud noises, beer drinking outside, but had never heard any offensive language. Officer Skorupa further said that he had gone to appellant's premises on several occasions to compel appellant to close on time and both the owner and the daughter cooperated.

Officer Joseph Bohnarczyk testified that on August 18, 1968, at about 12:45 a.m., he responded to a call that there was a fight in progress in the licensed premises; that, when he arrived, he was met by one Mr. Stetz outside the premises who said, "I want to sign a complaint about Papa Joe [appellant] and some other kids that's in there;" that he (Officer Bohnarczyk) observed that "his face was swollen, and he had a cut lip; blood all over his shirt; shirt ripped." He further stated that he was grabbed off a chair by the appellant and that "somebody jumped him in there." Upon entering the appellant's premises Officer Bohnarczyk testified that the appellant said that he wanted to sign a complaint against Stetz in this matter and, so far as he knew, both persons signed complaints against one another. The officer also observed that the wife of Stetz was inside the premises when he entered and that she was "becoming hysterical."

Officer Ted Stankiewicz testified that he was called to the appellant's premises at the time his fellow officer Joseph Bohnarczyk was there, and corroborated testimony given by the latter as to what transpired when he arrived at the premises. Thereafter, on August 22 at 12:05 a.m., he again went to appellant's premises "to disperse a noisy group that was in front of the tavern;" that he dispersed the crowd and "chased them home."

Officer Joseph Tencza testified that, although he could not remember the dates, he was dispatched to appellant's premises on a few occasions. The reasons given to him for directing him to go there were that there was drinking outside, a lot of noise and a loud juke box. Moreover, he stated that, when he was working nights, the only calls he ever got were to go down to the appellant's concerning complaints.

Dorothy Sabat (who lives at 50 Lester Street) testified that there is trouble every night of the week. Specifically she stated, "drinking, racing motorcycles, swearing in there, hollering, noise;" that, by reason of the noise, she has been unable to sleep and, as the place remains open until three o'clock in the morning, sometimes at four a.m. it was necessary for her to call the police; that on one occasion she called the licensed premises and the daughter of the licensee answered the phone and berated her by use of foul and indecent language.

Sally Sabat (who lives next to appellant's tavern) testified that there is constant noise coming from the tavern and also from motorcycles and cars outside the premises.

Frank Sabat (who lives at 33 Maple Avenue, in a house which sets back next to appellant's premises) corroborated the constant noise, drinking in front of the tavern, and swearing taking place there.

Gail Stetz testified that she was in the tavern with her husband on August 18 and both had been served a drink by a barmaid; that her husband and his cousin were having a discussion when the appellant came over to them and said to her husband, "finish your drink and get out;" that, before she had an

opportunity to finish her drink, the appellant came from behind the bar and grabbed her husband and then "two guys just jumped out on top of them and that's it. One was hitting him from behind in the back. I pulled that one by the hair."

Sam Catalino testified that on February 23, 1968 he was one of the persons who were involved in an altercation at the licensed premises which had resulted, as far as he could understand, from an argument over a pool game; that, as a result of the brawl, he was hit on the head with a pool stick which caused a deep gash; that, in so far as he could recall, there were six or seven persons engaged in the fight; that thereafter the appellant had warned him to stay out of the licensed premises and he would not serve him even after six months had transpired from the time of the trouble in question.

Gene Sarcinello testified that he also participated in the trouble on February 23 and that he was slugged outside the premises.

Appellant testified that the license was transferred to him in January 1968, and he recalls the fight on February 23, 1968. He testified that he was not there when the fight began but came upon the scene shortly thereafter. As a result of the fight, he was charged by Gene Sarcinello with assault and battery, which complaint was later withdrawn; that, since the trouble on February 23, he refused to serve either Sarcinello or Catalino in his licensed premises; that he has never permitted service of alcoholic beverages outside of the licensed premises and, when instructed by any police officer concerning noise, he "tried to tone it down and keep it quiet;" that he recalls the complaint that on August 12 a beer bottle was thrown through the window of the home occupied by the Sabats but stated he knew nothing concerning the incident; that he remembers the trouble occurring on August 18, 1968, wherein Ronald Stetz was involved, and recalls that on three occasions prior thereto he had told Mr. Stetz that he did not want him coming into his tavern because Mr. Stetz was always getting into an argument with his cousin which might provoke a fight. On August 18, when he observed Stetz seated at the bar, he directed him to leave because he did not want him in the place and, in response thereto, Stetz said "I'll finish my drink" but thereafter both he and his cousin again became involved in an argument; that he again directed Stetz to leave the premises but was ignored by him; that thereafter "I went from behind the bar, maybe I did the wrong thing, and I held him by the armaand I said, 'Stetz, I want you out;'" that Stetz then turned his back to him and said, "in a few minutes." Appellant testified that he "grabbed him once more, and I guess I says, 'I want you to go', a little more firmly, and I wanted him to leave." Appellant denied that he had knocked Stetz off the bar stool and said that Stetz went after him and that he was the one thrown to the floor and Stetz "was on top of me;" that a person known as "Scotty" pulled Stetz off of him and then Scotty grabbed Stetz and a fight ensued. When questioned by his attorney, appellant denied that he ever swore at Dorothy Sabat and did not know whether or not his daughter had done so. Appellant further testified that the only trouble he had with reference to closing the premises was on a Saturday evening when Officer Remaziewski came in and there was a discussion concerning the clock which he (appellant) had set fifteen minutes ahead.

On cross examination appellant admitted the fact that the police had been called to his tavern on many occasions because of the loud sound of the juke box but he said he always tried to

conform with their wishes and turned the volume lower. When asked why he did not turn to the police for help in the event of a fight happening at the licensed premises, appellant stated that the Mayor at one time, because of the complaints, had mentioned that "they didn't want to run a special precinct for me." Also appellant testified that he has a position in a nearby municipality and that he goes to work at 4 p.m. until three o'clock the following morning and on Friday nights perhaps his time of leaving his position was "a little later." His daughter (22 years of age) until recent date was in charge of the licensed premises during the time the appellant was working in his other position. However, appellant stated that, during lunch hour between nine and ten p.m., he comes back to the tavern to see that everything was operating properly.

Robert Mura testified that he was present on August 18 when the altercation took place between appellant and Ronald Stetz, but "the only thing I saw was I saw Joe [appellant] walk from behind the bar, and I didn't see him even grab his arm or anything. I couldn't see that. But I seen them both walking, and all of a sudden I saw Joe on the floor." Thereafter he also saw a man, known to him as Scotty, grab Stetz and they both then started fighting.

The testimony of the police officers appears to be uncontradicted. In fact, the appellant voluntarily admitted the various incidents and took the entire blame for anything that may have occurred on the licensed premises. There was no evidence presented, however, in this matter to substantiate incidents allegedly occurring on the licensed premises on seven of the dates set forth in the complaint against the appellant. The dates referred to are March 19, May 27, June 3, June 6, June 14, July 10 and July 29. As to the remaining eleven dates in the charge, I am satisfied that proper proof of the incidents was presented that appellant allowed, permitted and suffered the activities delineated in the charge to take place both inside as well as outside the licensed premises. Moreover, police officers testified to incidents occurring on the licensed premises but they were unable to remember the dates. All of the incidents happened between January 24, 1968 (when the license was transferred to appellant) and August 22, 1968, inclusive.

Under the circumstances, the question to be resolved is whether or not the factual findings are supported by substantial evidence. In re Larsen, 17 N.J. Super. 564, 576 (App.Div. 1952). The case of Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456 (1951), is generally looked to as authoritatively furnishing the conventional formula for judicial application of the substantial evidence rule: "'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'*** '[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.'" 340 U.S., at page 477, 71 S. Ct., at page 459. Stating that the rule was not intended to negative the function of the Labor Board as one of those agencies "presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect," the opinion continues:

> "*** Nor does it mean that even as to matters not requiring expertise a court may displace the Board's choice between two fairly conflicting views,

> even though the court would justifiably have made a different choice had the matter been before it de novo." 340 U.S., at page 488, 71 S. Ct., at page 465.

To similar effect, see New Jersey Bell Tel. Co. v. Communications Workers, etc., above, 5 N.J., at pages 377-379. See also Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501, 505, at p. 506 wherein it was said:

> "The choice of accepting or rejecting the testimony of witnesses rests, therefore, with the administrative agency. Where such choice is reasonably made, it is conclusive on appeal. The scope of appellate review does not possess such breadth as would permit a disturbance of the administrative finding unless the court is convinced that the evidence permits of no reasonable latitude of choice. The court canvasses the record, not to balance the persuasiveness of the evidence on one side as against the other, but in order to determine whether a reasonable mind might accept the evidence as adequate to support the conclusion and, if so, to sustain it."

It is apparent from the record of proceedings held by the Council that appellant did not have too much knowledge from Monday to Friday, inclusive, concerning what went on at his licensed premises at night and early mornings because of his other position and with the possible exception between nine and ten p.m. and 3 a.m. closing on the following morning. It is quite obvious that, with the unruly conditions existing at the licensed premises, perhaps some person other than his young daughter should have been there during the evening hours.

I am satisifed, because of the conduct of his patrons, that the appellant's premises were permitted to become a nuisance to the neighborhood. As was said in State v. Williams, 30 N.J.L. 102-110:

> "...the habitual perpetration of the prohibited offences in a house kept for the purpose constitutes the house a public nuisance, as it tends in a greater degree to the spread of the evil which was intended to be prohibited."

A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, supra. And, as Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953) said:

> "The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

It is apparent from the record herein that the appellant, through his employee, had not only failed to control the patrons so that they would conduct themselves in a proper manner but on August 18 he himself initiated and participated in a brawl on the licensed premises.

Appellant further contended that the suspension imposed by the Council was unreasonable under the circumstances herein. I am satisfied, however, that, in view of the various violations, such suspension did not constitute an abuse of discretion. As

was said in Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956):

> "The Director is not inalterably bound by any doctrine of stare decisis in the imposition of penalties. The liquor control laws and regulations must be administered in the light of changing conditions. Prior measures of enforcement may have failed their mark. Recurrent instances of particular violations must be dealt with accordingly. The penalty imposed upon appellant may reflect an administrative attitude that more stringent enforcement is necessary."

It has always been the policy of the Director that reduction or modification of penalties imposed by a municipal issuing authority will be sparingly exercised and only with the greatest caution. Chancery Lane, Inc. v. Trenton, Bulletin 1673, Item 1; Russo v. Lincoln Park, Bulletin 1177, Item 7; cf. In re Larsen, supra, and cases cited therein.

In view of the evidence presented herein, it is recommended that an order be entered affirming the Council's action, dismissing the appeal and fixing the effective dates for the seventy-six-day balance of the suspension stayed by the Director pending the determination herein.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcripts of testimony, oral argument in summation presented by the attorneys for the respective parties, and 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 21st day of May, 1969,

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

ORDERED that Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Wallington to Joseph Felicetta for premises 54 Lester Street, Wallington, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1969, commencing at 3:00 a.m. Wednesday, May 28, 1969; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Tuesday, August 12, 1969.

JOSEPH M. KEEGAN
DIRECTOR

2. RETAIL LICENSES - NOTICE REFORWARDED TO MUNICIPAL ISSUING AUTHORITIES RE GRANTING OF LICENSES TO PERSONS CONVICTED OF CRIME OR TO FRONTS FOR UNDISCLOSED BENEFICIAL INTERESTS - HEREIN OF MUNICIPAL RESPONSIBILITY FOR INVESTIGATION OF APPLICANTS.

TO ALL MUNICIPAL LICENSE ISSUING AUTHORITIES:

On April 10, 1969, I forwarded to all municipal license issuing authorities a notice (reprinted in Bulletin 1848, Item 1), containing information concerning the qualifications of retail licensees to insure that criminally disqualified and other unfit persons do not acquire or hold direct or indirect interests in the retail alcoholic beverage industry.

This month more than 12,000 retail licenses will expire and the renewal of these licenses requires approval by the more than 500 municipal license issuing authorities in the State. Since applications for the renewal of these licenses will be presented to you this month for decision, I am taking this opportunity to invite your attention to the contents of the aforesaid notice and to request that you implement its requirements prior to the approval of any license renewals for the 1969-70 licensing year, if you have not already done so.

JOSEPH M. KEEGAN
DIRECTOR

Dated: June 9, 1969

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY OPERATION - CLAIM OF OWNER REJECTED ABSENT GOOD FAITH - MONEY DEPOSITED ON STIPULATION WITH DIRECTOR, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on November 2, 1968 of a quantity of alcoholic beverages, $28.00 in cash, and various furnishings, fixtures, and equipment in the unlicensed premises of the 52 Club located at 605 West Market Street, in the City of Newark, County of Essex and State of New Jersey.	))))	Case No. 12,118 ON HEARING CONCLUSIONS AND ORDER

Carl J. Yagoda, Esq., appearing for claimant, William Roberts.
Harry D. Gross, 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 R.S. 33:1-66 and State Regulation No. 28, and, further, pursuant to a stipulation entered into by William Roberts, dated December 2, 1968 to determine whether 97 containers of alcoholic beverages, a pool table, cigarette machine, adding machine, F & E check protector, two refrigerators, a television set, an amplifier and tuner, 35 wooden chairs, nine cue sticks and eight tables, and $28.00 in cash, as set forth in the inventory attached hereto, made part hereof and marked Schedule "A", seized on November 2, 1968 at premises located

at 605 West Market Street, Newark, New Jersey constitute unlawful property and should be forfeited; and, further, to determine whether the sum of $350.00 deposited, under protest, with the Director by William Roberts under the aforementioned stipulation, representing the appraised retail value of furnishings, fixtures and equipment hereinabove set forth, should be forfeited or returned to him.

The seizure was made by ABC agents in cooperation with local police officers because of alleged unlawful sales of alcoholic beverages at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, William Roberts, represented by counsel, appeared and sought the return of the money deposited under the stipulation aforesaid.

The file of this Division, which included the affidavit of mailing, affidavit of publication, the complete inventory, the chemist's report and the stipulation, was admitted into evidence by stipulation of the claimant herein, except as hereinafter noted. The file contained reports of ABC agents and other documents relevant hereto and reflect the following facts: On November 2, 1968 at about 2:30 a.m. ABC Agents M, Ma and S, fortified with a "marked" five-dollar bill prepared for them and which was in the possession of Agent M, arrived at the 52 Club, which is located on the ground floor of a multi-storied building at 605 West Market Street, Newark.

While Agents Ma and S stationed themselves at a post of observation, Agent M entered the premises. He noted that the premises were divided into three rooms, a kitchen and bathroom, and in the front room he observed approximately 16 males and females drinking what appeared to be alcoholic beverages.

In the middle room, a card game was in progress with males seated or standing around a table, playing for money stakes. A male, later identified as Carl Lee Brown, was preparing food in the kitchen. Another male, later identified as Charles Lewis Ferguson, was selling cans of beer to patrons in the kitchen, which beer was obtained from a refrigerator therein.

At about 2:50 a.m. Agent M asked Brown for a can of Schaefer beer. Brown obtained a can of beer from the refrigerator, gave it to Agent M and received payment therefor with a "marked" five-dollar bill. He noted that both Brown and Ferguson were selling beer to other patrons in the premises.

At about 3:30 a.m. Agents Ma and S, accompanied by local police, entered the premises and, after identifying themselves to Ferguson and Brown as ABC agents and informing them of the violation, placed Brown and Ferguson under arrest. At this point, William Roberts, who was observed by Agent M as one of the persons engaged in playing cards for money, approached the agents, stated that he was the owner of the premises and all the personal property and alcoholic beverages contained therein. He was thereupon arrested, and charged with possession with intent to sell alcoholic beverages without a license in violation of R.S. 33:1-50(b).

Brown was charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50(a). All three men were held in bail for arraignment in the Newark Municipal Court.

On November 19, 1968 samples of two cans of beer seized by the agents were analyzed by the Division chemist and the report of his analysis established that the contents of two cans consist of beer fit for beverage purposes with an alcoholic content by volume, respectively, of 4.35% and 4.50%.

The records of this Division disclose that no license or permit authorizing the sale of alcoholic beverages was issued to Brown, Ferguson, Roberts or for the premises where the alleged violations took place.

The attorney for Roberts stated that while he does not contest the facts "that there were illegal activities on the premises and that there was beer sold...", he does not stipulate the portion in the statement set forth hereinabove to the effect that Roberts advised the ABC agents that he was the sole owner of all the property in the premises and that he was also the owner of the illicit beer.

Accordingly, Agent M. was called as a witness on behalf of the Division to supplement the Division file with respect thereto, and he gave the following account: When Agents Ma and S, accompanied by the Newark police, entered the premises at 3:30 a.m. they found him talking to Brown and Ferguson. At that point Roberts spoke "very excitedly" and wanted to know what they were doing in the premises. Upon questioning him, he stated that he owned the premises, all of the fixtures and furnishings were his and that he owned the beer. At that point the agent said, "In that case you are under arrest for possession of alcoholic beverages with intent to sell".

The witness further asserted that from the time he first entered these premises at 2:30 a.m., he particularly noted that Roberts was one of the participants in the card game which was in progress in the middle room. He was positive about that fact because he made repeated observations from 2:50 a.m. until 3:30 a.m. of the participants in the card game.

Asked, on cross-examination, whether Roberts stated that he owned the beer, this witness answered, "I am certain of it because this is the first question I asked. Whenever a person approaches me in a speakeasy, a place beer is sold without a license, I have a set method of questioning people who I don't observe performing any duties." Roberts insisted additionally, according to this witness, that all of the fixtures and furnishings were his personal property.

William Roberts, the claimant herein, sought the return of the cash deposited upon the aforementioned stipulation, and gave the following account: He is a Newark tavern owner and is the joint owner, with his wife of the premises wherein this club was operating. The premises wherein Club 52 was operating was rented upon the express agreement that the proceeds from the pool table and the cigarette machine were to be applied to the payment of rent and gas and electric. He stated that he owned the pool table the the cigarette machine but that the other personal property belongs to the club. He denied having anything to do with the alcoholic beverages or receiving the profits from the sale of alcoholic beverages at these premises.

At the time hereinabove mentioned, he entered the premises some time after 3:00 a.m., and started to question the agents. He informed them that he was the owner of the premises, whereupon

he was immediately placed under arrest.

On cross-examination, the witness stated that he frequented these premises about once a week, and did participate in the card games. He knew that the patrons of this club were served and consumed beer but he never saw beer being sold and was under the impression the patrons purchased their own beer and brought it in. He further admitted that he also was served and consumed beer on the premises.

He was then questioned about the ownership of the furnishings and equipment, other than the pool table. He explained that he signed the stipulation with the Director (sometime after the date of the seizure) upon his representation that he owned all of the personal property because he didn't want any of it moved, particularly the pool table. He now insisted that some of the other property, including the television set and the adding machine belongs to Louis Clark, the manager of these premises.

Louis Clark testified that he is the manager of the 52 Club under an arrangment as described by Roberts. He stated that he buys the food and the alcoholic beverages and that the 52 Club is the owner of the tables and chairs, the television set and the adding machine. He denied that Roberts received any of the proceeds from the sales of beer.

He identified a ledger (which was included as part of the Division file herein), as the record kept by Carl Ferguson listing the purchase of beer and other items, and the income from cash receipts.

It was stipulated that there were unlawful sales of alcoholic beverages on the premises. The seized alcoholic beverages are illicit because they were intended for sale without a license. Such alcoholic beverages, the personal property and the cash seized therein are illicit and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,431, Bulletin 1644, Item 3. With particular reference to the cash the evidence indicates that the "marked" money was commingled with the seized cash. Thus, all of the money is subject to forfeiture. Seizure Case No. 11,182, Bulletin 1568, Item 5.

I have had an opportunity to observe the witnesses as they testified and to evaluate their testimony. I am persuaded that the accounts given by the witnesses for the Division are credible and forthright. I note particularly, the testimony of Agent M who detailed, with specificity, the occurrences on the date alleged herein, and I am persuaded that he, together with the other agents, acting upon specific assignment to investigate an alleged speakeasy operation, acted without any prejudice or bias against the claimant herein.

On the other hand, the claimant's version is transparent and incredible. In contradiction to Agent M's testimony that he observed him playing cards between 2:50 a.m. and 3:30 a.m., he insists that he first arrived at the premises in the vicinity of 3:30 a.m. However, Agent S, called in rebuttal, corroborated Agent M's testimony to the effect that he observed Roberts in the premises prior to the time stated, and that under Agent M's direction no one was permitted to enter or depart from the premises after he entered.

I am also convinced that Roberts not only must have known that beer was being unlawfully sold at these premises, but that it was being sold over a substantial period of time prior to and including the date alleged herein.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith, and did not know, or have any reason to believe that the property would be used in unlawful liquor activity. In the absence of such showing, the Director is without authority to return such property; nor does the Director, under the compulsion of the Statute and the applicable Regulations, have the authority to return any part of the money deposited under the stipulation executed by the claimant herein. I conclude this claimant did not establish that he acted in good faith, and did now know or have any reason to believe that the property would be used in unlawful liquor activity. R.S. 33:1-66(f).

I also find that there has been no adequate proof to show that any of the seized property belonged to any person other than this claimant. In any event, all of the property remained on the premises, upon deposit of the sum hereinabove referred to.

It is accordingly, therefore, recommended that the claim of William Roberts be rejected; that the claimant's application for the return of the deposit under the aforesaid stipulation be denied; that an Order be entered forfeiting the sum of $350.00 deposited by this claimant with the Director, under protest, pursuant to the aforesaid stipulation; and that the alcoholic beverages and cash similarly be ordered forfeited. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,691, Bulletin 1714, Item 4; Seizure Case No. 11,597, Bulletin 1679, Item 7.

Conclusions and Order

No exceptions were taken to the Hearer's Report pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances set forth in the Hearer's Report, I concur in the recommended conclusions and adopt them as my conclusions herein.

Accordingly, it is on this 21st day of May, 1969

DETERMINED and ORDERED that the claim of William Roberts be rejected; that the sum of $350.00, deposited by the said William Roberts, representing the appraised retail value of certain furnishings, fixtures and equipment which were returned to the said William Roberts, paid under protest to the Director of the Division of Alcoholic Beverage Control under the stipulation as hereinabove set forth be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the cash in the sum of $28.00 constitutes unlawful property, and the same is hereby forfeited; and the alcoholic beverages referred to in Schedule "A" constitute unlawful property and are hereby forfeited in accordance with the provisions of R.S. 33:1-66; and they 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.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

97 - containers of alcoholic beverages
1 - pool table
1 - cigarette machine
1 - adding machine
1 - F & E check protector; 2 refrigerators; 1 television set; 1 amplifier and tuner; 35 wooden chairs; 9 cue sticks; 8 tables; $28.00 - cash

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
KHANKA, INC. t/a Desert Inn Springtown-Warren Glen Road Pohatcong Township PO Phillipsburg, R.D.1, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-2 issued by the Township Committee of the Township of Pohatcong	)

Licensee, by Joseph Melhem, President, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 22, 1969, it allowed the consumption of alcoholic beverages after 2:00 a.m. during hours prohibited by municipal ordinance.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective October 21, 1968, for sale during prohibited hours.

The prior record of suspension for similar violation within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Vinnick, Bulletin 1726, Item 5.

Report of recent inspection discloses that the licensed premises have been completely destroyed by fire and the licensed business is not presently in operation. Thus no effective penalty can be imposed at this time. Hence, the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the licensed business has been fully resumed on a substantial basis by the licensee or any transferee of the license.

Accordingly, it is, on this 2nd day of June, 1969,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Pohatcong to Khanka, Inc., t/a Desert Inn, for premises on Springtown-Warren Glen Road, Pohatcong, be and the same is hereby suspended for twenty-five (25) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ALEXIS MUGIL t/a Crown Point Inn 1102 Crown Point Rd., Verga West Deptford Township PO Westville, N. J. Holder of Plenary Retail Consumption License C-3 issued by the Township Committee of the Township of West Deptford	CONCLUSIONS AND ORDER

Cahill and Wilinski, Esqs., by Robert Wilinski, Esq., Attorneys for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 12, 1969, he sold drinks of beer to three minors, all age 19, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for twenty days effective May 16, 1967, for possession of alcoholic beverages not truly labeled. Re Mugil, Bulletin 1739, Item 7.

The license will be suspended for twenty days (cf. Re Carnevale, Bulletin 1491, Item 9), to which will be added five days by reason of the record of suspension for dissimilar violation within the past five years (Re Yellow Front Saloon, Inc., Bulletin 1842, Item 5), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 3rd day of June, 1969,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of West Deptford to Alexis Mugil, t/a Crown Point Inn, for premises 1102 Crown Point Road, Verga, West Deptford, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, June 10, 1969, and terminating at 2:00 a.m. Monday, June 30, 1969.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
GROPP'S TAVERN, INC. t/a Gropp's Tavern 2694 Nottingham Way Hamilton Township PO Trenton, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Hamilton, Mercer County.	)	

Henry F. Gill, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on March 29 and April 5, 1969, it permitted the acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective August 11, 1957, for sale to minors, and by the Director for twenty days effective April 23, 1968, for possession of alcoholic beverages not truly labeled and false statement in license application. Re Gropp's Tavern, Inc., Bulletin 1794, Item 5.

The prior record of suspension for dissimilar violation occurring more than five years ago disregarded but the record of suspension for dissimilar violation within the past five years considered, the license will be suspended for sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days. Re Sierra, Bulletin 1850, Item 8.

Accordingly, it is, on this 9th day of June 1969,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Hamilton (Mercer County) to Gropp's Tavern, Inc., t/a Gropp's Tavern, for premises 2694 Nottingham Way, Hamilton Township, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1969, commencing at 2 a.m. Monday, June 16, 1969; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Friday, August 15, 1969.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
BOWLOCHEER, INC. t/a Spare Room 1215 Main St. Bradley Beach, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-5 issued by the Board of Commissioners of the Borough of Bradley Beach	)	

Ralph A. Yacavino, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 8, 1969, it sold a mixed drink of an alcoholic beverage to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, 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 Borges, Inc., Bulletin 1805, Item 8.

Accordingly, it is, on this 10th day of June, 1969,

ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Borough of Bradley Beach to Bowlocheer, Inc., t/a Spare Room, for premises 1215 Main Street, Bradley Beach, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, June 17, 1969, and terminating at 2:00 a.m. Friday, June 27, 1969.

Joseph M. Keegan
Director