

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

BULLETIN 1306

November 2, 1959

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

BULLETIN 1306

November 2, 1959

1. APPELLATE DECISIONS - LARIJON INC. v. ATLANTIC CITY.

LARIJON, INC.,	)	
	)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
	)	
BOARD OF COMMISSIONERS OF THE	)	
CITY OF ATLANTIC CITY,	)	
	)	
Respondent.	)	

-----  
Thomas W. Rauffenbart, Esq., Attorney for Appellant.  
Chaim H. Sandler, Esq., Attorney for Respondent.  
Edward I. Feinberg, Esq., Attorney for Package Store Dealers  
of Atlantic City, Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it denied an application for the transfer of plenary retail distribution license D-16 from Beach Liquors, Inc. to appellant, and from premises at 1314 Atlantic Avenue to premises at northwest corner of Maine and Caspian Avenues, Atlantic City. The premises from which the transfer is sought are at least one mile from the premises to which the transfer is sought.

"Written objections having been received, respondent held a public hearing on April 23, 1959, and thereafter, by unanimous vote, adopted the following resolution.

'WHEREAS, Larijon, Inc., a corporation of the State of New Jersey, under date of March 30, 1959, filed an application for a transfer of Plenary Retail Distribution License #D-16 from premises 1314 Atlantic Avenue to premises designated as Northwest Corner Maine and Caspian Avenues, Atlantic City, New Jersey, and further, for the transfer of said license from Beach Liquors, Inc. to Larijon, Inc. as aforesaid for the conduct of a package liquor store at premises Northwest Corner Maine and Caspian Avenues, Atlantic City, New Jersey; and

'WHEREAS, written protests were filed with the City Clerk of the City of Atlantic City, objecting to the proposed transfer of said Plenary Retail Distribution License; and

'WHEREAS, in view of said protests, a public hearing was held by the Board of Commissioners at the regular meeting of the said Board on Thursday, April 23, 1959; and

'WHEREAS, the applicant was represented by counsel and the protestants were likewise represented by counsel; and

'WHEREAS, after the presentation of their respective cases by counsel and argument thereon, the matter was duly considered by the said Board of Commissioners;

- 'NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Atlantic City that the said Board of Commissioners is of the opinion that the welfare and convenience of the public at large will not be benefited by the proposed transfer, in view of the fact that the neighborhood to which the Plenary Retail Distribution License #D-16 is proposed to be transferred is presently adequately and amply serviced by existing licensed establishments and that the public benefit and welfare will not be served by adding an additional licensed premises in this particular area; and
- 'BE IT FURTHER RESOLVED that the said Board of Commissioners, in the exercise of its sound discretion, after considering all of the facts presented in this case, is of the opinion that the denial of this application for transfer is in the public interest; and
- 'BE IT FURTHER RESOLVED that the Board of Commissioners of the City of Atlantic City gave due consideration and weight to the petition protesting the transfer of the said Plenary Retail Distribution License; and
- 'BE IT FURTHER RESOLVED that the Board of Commissioners find that the location of the proposed licensed premises is within 300 feet of an already established licensed premises. Accordingly, the proposed transfer is prohibited under the terms and provisions of the ordinances of the City of Atlantic City; to wit, Ordinance #8 of 1956 and the amendments thereof and supplements thereto; and
- 'BE IT FURTHER RESOLVED by the Board of Commissioners of the City of Atlantic City that the said application to transfer Plenary Retail Distribution License #D-16 from Beach Liquors, Inc. to Larion, Inc. and the transfer of the said distribution license from premises 1314 Atlantic Avenue, Atlantic City, New Jersey to Northwest Corner Maine and Caspian Avenues, Atlantic City, New Jersey, be and the same is hereby DENIED.'

"The petition of appeal alleges, in effect, that the action of respondent was arbitrary and unreasonable in that the members of said Board abused their discretion by denying the application.

"At the hearing held herein the attorney for appellant stated that 'at the Commission hearing the City Commission at that time denied the application of the appellants on the ground that they felt the petition was enough to warrant a denial' and argued in his brief filed herein that this is sufficient to show that respondent abused its discretion. Of course, a determination cannot be sustained solely upon the basis of petitions favoring or opposing. Tompetrini v. Hawthorne, Bulletin 1193, Item 3. Apparently, the attorney bases his statement upon an alleged remark made by the Mayor at the termination of the hearing and before the resolution was adopted. He contends, in his brief, that the ruling that 'parole evidence cannot be invoked to alter or supplement the written records of a municipality', as stated in Campbell v. Hackensack, 115 N.J.L. 209 (Ct. E. & A. 1935) and cited in respondent's brief, has been modified in Anshelewitz v. Belmar, 137 N.J.L. 617 (Sup. Ct. 1948); affirmed 2 N.J. 178 (Sup. Ct. 1949). However, the evidence presented herein is not sufficient to overcome the presumption of completeness of the record as set forth in the written resolution. At the hearing herein Commissioner O'Donnel, Director of the Department of Revenue and Finance, testified that at

the termination of the hearing below the four Commissioners and the Mayor considered the number of licenses in the immediate area of Maine and Caspian Avenues, the distance between the premises to which the transfer was sought and existing licenses and the petition objecting to the transfer, and unanimously agreed that the pending application should be denied. He further testified that he thinks the Mayor simply stated at the termination of said hearing that the transfer was refused. Under the circumstances, there is no evidence to overcome the presumption of completeness of the record and, hence, the resolution should be considered as setting forth the reasons why respondent denied the application.

"The resolution adopted by respondent Board, in effect, sets forth three reasons for denial, namely, (1) the area is adequately serviced; (2) the petition protesting transfer, and (3) alleged violation of Ordinance 8 of 1956, as amended and supplemented.

"On behalf of respondent, Bernard F. Murphy (Supervisor of Alcoholic Beverage Licensing in Atlantic City) testified that there are seventeen plenary retail consumption licenses and two plenary retail distribution licenses now in existence for premises in the vicinity of Main and Caspian Avenues; that three of said consumption licenses are in close proximity to appellant's proposed premises, and that all of said consumption licensees deliver alcoholic beverages. He further testified that the distribution licenses are located, respectively, five and six blocks from the intersection of Maine and Caspian Avenues. The evidence on behalf of appellant shows that its proposed premises would be located in a shopping center established 'at the dead end of two streets' about two years ago and known as 'Garwood Mills Shopping Center.' Much stress is placed by appellant upon the large number of customers who visit the shopping center (over 87,000 in August 1958 and over 51,000 in April 1959) as indicating need and necessity. However, it is admitted that the vast majority of these customers come to the shopping center by bus or auto from other municipalities. The modern trend towards shopping centers raises a problem in many municipalities as to whether a geographical distribution of licenses, satisfactory to a local issuing authority, must be disturbed when an application is made to transfer a license to a shopping center. It appears to me that the fear that this trend may result in the disappearance of licensed premises catering to neighboring trade, as it has resulted in the virtual disappearance of the corner grocery store, presents a problem for careful consideration by a local issuing authority. There is nothing in the Alcoholic Beverage Law which forbids the transfer of a license to a shopping center but, on the other hand, the mere fact that a shopping center may attract crowds of customers from distant points does not necessarily require a local issuing authority to disturb its existing distribution of licenses in various sections of the municipality. The needs of the residents of the municipality may be considered, rather than the needs of the residents of other municipalities. Cf. Sam Karpf Co. v. Somers Point, Bulletin 137, Item 4.

"The question whether or not there is a need or necessity for a liquor outlet at a particular location is within the sound discretion of the issuing authority. In cases of the kind now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et als. v. Maplewood et al., Bulletin 658, Item 4; Krogh's Restaurant Inc. et als. v. Sparta et al., Bulletin 1258, Item 1.



"Appellants, in their petition of appeal, contend that such action was erroneous for the following reasons:

- a. On the basis of the evidence presented, the application should not have been granted as a matter of law.
- b. The application sought was not in the public interest.
- c. The area in question is adequately serviced by other taverns and liquor stores.
- d. The establishment of a liquor outlet at the premises in question will create a traffic and parking hazard.
- e. Similar applications have been denied on previous occasions and there have been no changes in the circumstances attendant upon those denials.
- f. The granting of the proposed license and the transfer thereof was in violation of the zoning ordinances of the City of Paterson.
- g. The date upon which the transfer was approved by Respondent, Alcoholic Beverage Control Board of the City of Paterson, was a special meeting date and appellants together with other people who objected to the transfer were not given an adequate opportunity to appear at a meeting in order to voice their objections to the transfer of said license. A petition was actually signed by other persons who objected to the proposed transfer which was intended to be presented at the meeting wherein this matter was to be considered and the application was granted at the special meeting without any knowledge of the objectors and without their having had an opportunity to properly present their objections.
- h. There are at least seven licensees at the present time in the immediate vicinity of the address in question which adequately serve the area so that there is absolutely no public necessity for another tavern to be located in that area and at the address in question.'

"Respondent Board in its answer alleges that aforesaid determination was valid and legal and within its discretionary authority and power in accordance with the statute in such case made and provided. The respondent licensee filed no formal answer but apparently has joined with the respondent Board in its answer.

"By consent of the parties hereto, certified copies of the transcripts of the proceedings (on March 12, 1958, March 26, 1958, May 13, 1959 and May 18, 1959) before the respondent Board, a certified copy of application to transfer the license in question as aforesaid, an affidavit of publication of notice of application for transfer of said license and a copy of resolution passed by respondent Board on May 18, 1959 granting aforesaid application

were marked as exhibits. Two petitions (one objecting to the aforesaid transfer of the license and the other objecting to a renewal thereof) were admitted into evidence by consent of the attorneys upon the understanding that they had not been received by the respondent Board prior to its special meeting on May 18, 1959. The respondents thereupon rested their case and supplemental testimony was presented by the appellants.

"One of the contentions of the appellants is that the respondent Board in granting the aforesaid transfer at its meeting on May 18, 1959 acted prematurely, illegally and denied them an opportunity to file objections to the same (a). A summary of the facts relative to this point is as follows: On or about April 8, 1959 the respondent licensee filed an application with the Board to transfer her license to premises 432 East 31st Street. On May 6, 1959, she authorized the Board to withdraw her pending application and, simultaneously, filed another application to transfer her license to premises 593 River Street. At its meeting on May 13, 1959 the local Board approved the licensee's request to withdraw her first application and decided to act on her second application at a special meeting on May 18, 1959 (in advance of its next regular meeting on May 27, 1959) because the licensee was being dispossessed from her premises. Notice of this application to transfer was duly published in a local newspaper on May 8 and May 15, 1959; on May 18, 1959 (two whole days following the aforesaid second publication) the Board granted respondent licensee's application with certain reservations unrelated to the issues herein. Aforesaid Joseph Miles, immediately after reading the first insertion in the newspaper on May 8th aforesaid, circulated a petition objecting to the transfer and either failed to file the same or filed it some time after May 18, 1959 (the record is not too clear on this point).

"This contention of the appellants is without merit. The action taken by the respondent Board was proper and legal. Cf. Leppert v. New Brunswick et al., Bulletin 760, Item 9, and Rule 18 of State Regulation No. 6. In addition, the aforesaid publication sets forth that objections, if any, should be made immediately in writing which appellants failed to do. See Rule 4 of State Regulation No. 6.

"As to the question of public convenience and necessity (reasons b, c and h) the only testimony in this regard was that of Mr. Miles (the only appellant to testify) who stated that there are five plenary retail consumption licenses and one plenary retail distribution license within a two block radius of the respondent licensee's proposed site (593 River Street); that he formerly held a liquor license at 593 River Street which is diagonally across the street from his present licensed premises (a distance of about 100 feet) and that the area is adequately served by these licensees. This witness further testified that he was opposed to the transfer in question because it may adversely affect his business. The number of licensed premises to be permitted in any particular area has been held to be a matter confided to the sound discretion of the issuing authority. Carriell et al. v. Newark et als., Bulletin 1043, Item 2, and the judgment of the local Board in determining the number of liquor stores in a given area must be given considerable weight on appeals. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105.

"Appellants' contention that a liquor outlet at the proposed site will create a traffic and parking hazard in the area (reason d) is not convincing. The only testimony on this point is the unsupported statement by Mr. Miles that the area is presently congested because of the traffic created by the industries in the neighborhood.

"Appellants' contention that the action of the respondent Board was in violation of the local zoning ordinances (f) was not touched upon by appellants and, therefore, will be considered as abandoned by them.

"Appellants further contend that similar applications have been denied on previous occasions and there have been no changes in the circumstances attendant upon these denials (e). In support of this reason for reversal, the appellants rely upon (1) transcripts of the proceedings (on March 12, 1958 and March 26, 1958) before the respondent Board dealing with an application to transfer a license held by one Nicholas J. Ellia from 93 Ward Street to 74 East 13th Street and (2) a statement listing the distances between the respondent licensee's proposed site and the premises of thirteen other licensees.

"An examination of the minutes of aforesaid two meetings discloses that the local Board took no formal action on Ellia's application; that a petition objecting to Ellia's application and containing 38 names, a great majority of whom were residents in the area, had been filed with the Board and that Mr. Ellia withdrew his application at the suggestion of one of the members of the Board who stated, 'If the people don't want you there you will have trouble'. At the hearing held herein the appellants produced a representative of a single resident in the area. This witness, Martin Marsolla, testified that his mother is the owner of property at 595 River Street; that is managed by his brother; that he spends very little time in the area and that he is objecting to the transfer because it would decrease the value of his mother's property. Mr. Marsolla is not a real estate expert, nor does he appear to be qualified to appraise the situation. The aforesaid petition bearing the names of the 38 objectors (for whom Mr. Miles was the spokesman before the local Board) sets forth there were seven licensed premises in the area in question in March of 1958. At the within hearing, Mr. Miles testified there are now six.

"An examination of the aforesaid distance statement shows that there are five licensed premises in the area which measure from 120 to 910 feet from the proposed site of respondent licensee; the nearest of the other eight is 1290 feet from said site and the farthest is 4,430 feet from the same. Appellants, in paragraph (h) of their petition of appeal, state there are at least seven licensees in the immediate area of 593 River Street.

"It is implicit that with these facts before them the members of the respondent Board must have considered that the transfer of the license to the location in question did not create an aggravated concentration of licenses.

"The Director's function on an appeal is not to substitute his opinion for that of the issuing authority, but rather to determine whether cause exists for its opinion and, if so, to affirm irrespective of his personal views. DeStefano et als. v. Jersey City et al., Bulletin 1289, Item 4, and cases cited therein.

"After considering all the evidence herein, the brief filed on behalf of appellants and the oral arguments on behalf of respondents, I conclude that appellants have failed to sustain the burden of establishing that the action of the local Board was erroneous, arbitrary or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."



asked the bartender if Betty would go out with more than one "guy" at a time, the bartender replied "I wouldn't be surprised." After the bartender told the agents that Betty was on the premises all the time, the agents said they would return on a later date.

On their second visit Rinaldi was tending bar. Betty was present but left with another female. The agents asked the bartender about another female in the premises and he told them that they might get a venereal disease if they fooled around with her.

On their third visit Rinaldi was tending bar. Betty came in shortly after the agents entered. One of the agents told the bartender to send a drink to Betty who was seated at another part of the bar. The agents asked the bartender to send Betty to them but he replied "Call her down and talk to her, she's all right." Later Betty joined the agents and, after she agreed to have sexual intercourse with them for a stated sum, the agents promised to meet her at the premises on a later date. During this visit the bartender and Betty engaged in filthy conversation.

On their fourth visit Betty entered the premises with another female shortly after the agents arrived. She motioned the agents to stay away from her and she and the other female entered the dining room. When the females returned to the bar and would have nothing to do with the agents, Rinaldi (the bartender) said to them "Ah, what are you going to do." The agents then identified themselves to the bartender and Betty, and later to the licensee who then said to the bartender "What do you do these things for."

Defendant has a prior record. Effective March 23, 1952, the local issuing authority suspended his license for five days for an "hours" violation and, effective August 23, 1953, the local issuing authority suspended his license for fifteen days for gambling. However, since these dissimilar violations occurred more than five years ago, they will not be considered in fixing the penalty herein. While it does not appear that defendant was present when the violations occurred, nevertheless he is responsible for the acts of his employee. Re O'Neill, Bulletin 1286, Item 3. Under the circumstances of this case, I shall suspend defendant's license for fifty days. Re Al & Betty Klipfel's Tavern, Inc., Bulletin 1290, Item 5. Five days will be remitted for the plea, leaving a net suspension of forty-five days.

Accordingly, it is, on this 24th day of September 1959,

ORDERED that Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the City of Union City to Philip Mastellone, for premises 519-25 Paterson Plank Road, Union City, be and the same is hereby suspended for forty-five (45) days, commencing at 3 a.m. Monday, October 5, 1959, and terminating at 3 a.m. Thursday, November 19, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN LUNCHEONETTE - STOCK OF ALCOHOLIC BEVERAGES AND OTHER PERSONAL PROPERTY SEIZED THEREIN ORDERED FORFEITED - MUSIC MACHINE RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on	)	Case No. 10,049
July 22, 1959 of a quantity of	)	
alcoholic beverages, furnishings,	)	ON HEARING
fixtures, and equipment at a	)	CONCLUSIONS
luncheonette operated by Helmut C.	)	AND ORDER
Frank located on Garrison Avenue in	)	
Fortescue, Dover Township in the	)	
County of Cumberland and State of	)	
New Jersey.	)	

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Lipman & Casella, Esqs., by Charles Casella, Esq., Attorneys for Anthony De Bruno.

I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$10.00 in cash, and various furnishings, fixtures and equipment, described in a schedule attached hereto, seized on July 22, 1959 at a luncheonette operated by Helmut C. Frank, located on Garrison Avenue, Fortescue, Dover Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Anthony De Bruno appeared and sought return of a music machine. No one opposed forfeiture of the balance of the property seized.

An ABC agent testified as follows: He visited the luncheonette on July 20, 1959, at which time other persons were there consuming alcoholic beverages, and he purchased beer from Helmut C. Frank, and left without revealing his identity. He returned on July 22nd at which time he again observed other persons consuming alcoholic beverages, and he again purchased alcoholic beverages from Mr. Frank on two visits the same day. Shortly after purchasing beer from Mr. Frank on his second visit on July 22nd other ABC agents entered the premises, revealed their identity, and seized a quantity of beer and other alcoholic beverages, ten dollars in cash, and the furnishings and equipment. Helmut C. Frank does not hold any license authorizing him to sell alcoholic beverages and the premises were not licensed for that purpose.

The seized alcoholic beverages obviously were intended for sale without a license and hence are illicit. R.S. 33:1-1(i). The illicit alcoholic beverages and all other personal property seized in the premises, including the \$10.00 in cash, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

It appears from the evidence submitted that some time in June 1959 Anthony De Bruno placed the seized music machine in Frank's restaurant after Frank spoke with the driver of one of De Bruno's trucks while servicing other equipment located nearby, and requested that a machine be placed in his restaurant which he was about to open. De Bruno then visited the location, inspected the premises, and spoke with Frank, who told him he intended to operate a restaurant. Thereupon he arranged to place the machine in the premises. De Bruno or

his employee were at the premises on three occasions thereafter to service the machine. De Bruno did not observe any sales of alcoholic beverages, nor were there any such beverages visible on the occasions when he was there. Nevertheless, because De Bruno had some four years ago placed a machine in the premises for some other persons who sold alcoholic beverages there without a license, he informed Frank of the fact, to which Frank replied that he was not going to have anything like that, that De Bruno was not to worry, Frank was going to conduct just a restaurant.

Helmut C. Frank does not appear to have any previous criminal record. The agent testified that on his visits to the restaurant there were no stock of alcoholic beverages visible. I am satisfied that De Bruno acted in good faith and did not know or have any reason to believe that alcoholic beverages were being sold in the restaurant in question. I shall therefore return the music machine to him upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 2nd day of October, 1959 Anthony De Bruno pays the costs of seizure and storage of the music machine, it will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the ten dollars in cash, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the state in accordance with State Regulation No. 29, or 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.

Dated: September 22, 1959

WILLIAM HOWE DAVIS  
DIRECTOR

SCHEDULE "A"

- 7 - bottles of various alcoholic beverages
- 212 - 12 ounce bottles of beer
- 60 - 7 ounce bottles of beer
- 6 cases of soda
- 1 - music machine and currency therein
- 1 - cigarette vending machine and currency therein
- 2 - coca cola ice boxes
- 1 - ice box
- 1 - meat slicer
- 1 - cash register
- 15 - bar and counter stools
- 1 - table
- 5 - chairs
- \$10.00 in cash

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - PRINCIPLES APPLICABLE TO "PARTING GIFT" OF SUCH ALCOHOLIC BEVERAGES DEFINED - APPLICATION OF TRANSPORTER FOR RETURN OF MOTOR VEHICLE DENIED - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on July 6, 1959 of a Cadillac convertible and a quantity of alcohol on the New Jersey Turnpike at the 36 Mile Post in the Township of Mount Laurel, County of Burlington and State of New Jersey. ) Case No. 10,028 ) ON HEARING ) CONCLUSIONS ) AND ORDER )

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Robert F. Grenhart, Esq., Attorney for Le Roy Johnson.  
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether five one-gallon jugs of alcohol, and a Cadillac convertible, described in a schedule attached hereto, seized on July 6, 1959 on the New Jersey Turnpike, at the 36 Mile Post, Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

"Le Roy Johnson, the registered owner of the Cadillac convertible, appeared at the hearing and sought its return. No one opposed forfeiture of the alcohol.

"It appears from the evidence presented that a New Jersey State Trooper halted the Cadillac convertible on the above date and location during his routine patrol of traffic on the highway. The trooper ascertained that Johnson was operating the car, and discovered the five one-gallon jugs of alcohol in the trunk of the car. None of the jugs had affixed thereon any stamp indicating the payment of tax on alcoholic beverages. Thereupon the trooper took into custody the alcohol and car and arrested Johnson. Later the alcohol and car were turned over to ABC agents.

"A sample of the contents of one of the jugs was analyzed by the Division chemist, who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 41.3 percent.

"At the time of the seizure Le Roy Johnson, in a signed statement, asserts that while he was visiting an uncle in Georgia, he asked his uncle whether he could get him some 'moonshine' corn whiskey, and the uncle obtained five gallons for him, but did not ask for payment thereof.

"At the seizure hearing Johnson testified that when he was ready to return to his home in Brooklyn, New York, his relatives gave him the alcohol and foodstuffs, blankets, a revolver, and other articles; that he doesn't drink whiskey, and intended to give the alcohol to his friends; that he is married, resides with his wife and two children, and has been steadily employed for ten years, and has no previous criminal record.

"The seized alcohol is illicit because of the absence of a tax stamp on any of the jugs. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"It has been stated that while the transportation of moonshine corn whiskey, however obtained, is condemned, that obtained as a parting gift does not have the same significance as instances where the transporter purchased bootleg whiskey; that the purchaser of bootleg whiskey creates an illegal market for such beverages and is not considered an unwitting violation of the law, and hence such person cannot obtain relief from forfeiture. Re Case No. 9227, Bulletin 1140, Item 5. However, the exception to the rule in the 'parting gift' case is to be strictly limited to instances where it clearly establishes that the transporter has a law-abiding background; that the gift of moonshine liquor in a misguided demonstration of family affection; and that a minimum quantity of alcoholic beverages is involved.

"In the instant case five gallons of illicit alcohol transported by a person who does not drink such alcoholic beverages is far in excess of what may be considered a parting gift. It has connotation of a commercial character, and since relief from forfeiture is discretionary with the Director (R.S. 33:1-66-e), I recommend that the general rule denying relief to those apprehended transporting bootleg alcohol be applied, and that the request of Le Roy Johnson for return of the Cadillac convertible be denied.

"I further recommend that an order be entered forfeiting the alcohol and Cadillac convertible."

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

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

Accordingly, it is on this 24th day of September, 1959,

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS  
DIRECTOR

SCHEDULE "A"

- 5 - one gallon jugs of alcohol
- 1 - Cadillac convertible, Engine No. 5362-90656,  
New York Registration 2K-6971.

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - FALSE ANSWER IN APPLICATION (AS TO PRIOR SUSPENSION) - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

VICTOR J. JASINSKI  
t/a VETERAN'S TAVERN  
265 Grand Street  
Jersey City 2, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-310, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

-----  
Victor J. Jasinski, Defendant-licensee, Pro se.  
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to Charge 1 which alleged that:

"1. On Sunday, August 23, 1959 at about 4:20 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., one pint bottle of Seagram's 7 Crown American Blended Whiskey and three 12-ounce cans of Ballantine Beer, at retail, in their original containers for consumption off the licensed premises and allowed, permitted and suffered the removal of such alcoholic beverages from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

Defendant pleaded guilty to Charge 2 which alleged that:

"2. In your license application dated June 8, 1959, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 41, which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other State which was ... suspended ...?', whereas in truth and fact a license held by you and Francis Jasinski for the same premises was suspended by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City for ten days, effective December 5, 1955, for sale of alcoholic beverages to minors; said false statement being in violation of R.S. 33:1-25."

On Sunday, August 23, 1959, at about 4:20 p.m., an ABC agent purchased from defendant a pint bottle of whiskey and observed a patron purchase from defendant three cans of beer. The patron left the premises with the beer he had purchased and, shortly thereafter, the agent left with the pint of whiskey and stopped the patron outside. Both returned to the premises with another ABC agent and defendant admitted that he had made the sales.

Subsequent investigation disclosed that in his application dated June 8, 1959, defendant had not revealed the prior suspension set forth in Charge 2.

Defendant's only prior record is set forth in Charge 2. I shall suspend defendant's license for fifteen days on Charge 1 (Re Kupiszewski, Bulletin 1278, Item 9), and for ten days on Charge 2 (Re Melvin, Bulletin 1258, Item 5), to which five days will be added because of the prior dissimilar violation within the past five years (Re Guarino, Bulletin 1259, Item 9), making a total suspension of thirty days. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 28th day of September 1959,

ORDERED that Plenary Retail Consumption License C-310, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Victor J. Jasinski, t/a Veteran's Tavern, for premises 265 Grand Street, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, October 5, 1959, and terminating at 2 a.m. Friday, October 30, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against )

MARTIN BECKER )  
t/a BELL LIQUORS )  
706 Broadway )  
Long Branch, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-5, issued by the Board of Commissioners of the City of Long Branch. )

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Parsons, Labrecque, Canzona & Blair, Esqs., by Edmund J. Canzona, Esq., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charge was preferred against the defendant:

"On June 30, 1959, 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., Robert ---, age 19; in violation of Rule 1 of State Regulation No. 20."

After the Division had rested its case on July 16, 1959, the matter was continued to a subsequent date. Prior to the continuation date, the attorneys for the defendant advised this Division that they had been instructed by the defendant to retract his original plea of not guilty and enter a plea of non vult to the charge.

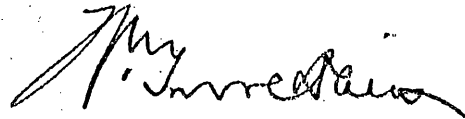
Acting upon information received from the Eatontown Police, an ABC agent obtained a signed, sworn statement from Robert --- (19 years of age) wherein he said that at 7:00 p.m. on the evening of June 30, 1959 he and two companions visited defendant's licensed premises, at which time he purchased, in addition to non-alcoholic items, a 4/5 quart of sloe gin and a 4/5 quart of Calvert Reserve Whiskey. He stated that the clerk who served him did not question

him as to his age at any time while he and his companions were in the licensed premises. It appears further that one of his companions gave the ABC agent who investigated the matter a signed, sworn statement corroborating the information given by Robert concerning the purchase of the alcoholic beverages at the time in question.

Defendant has a prior adjudicated record. Effective June 16, 1950, his license (which he then held at 190 Broadway, Long Branch) was suspended by this Division for five days for a minimum resale price violation. Re Becker, Bulletin 865, Item 1. Inasmuch as the dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. The minimum period of suspension for sale of alcoholic beverages to a 19-year-old minor is fifteen days. Re Stirpe, Bulletin 1294, Item 7. I shall suspend defendant's license for fifteen days. Inasmuch as the plea of not guilty was changed to one of non vult after partial hearing of the instant case, no remission will be permitted herein. Re Kuransky & Ancel, Bulletin 1268, Item 2.

Accordingly, it is, on this 24th day of September 1959,

ORDERED that Plenary Retail Distribution License D-5, issued by the Board of Commissioners of the City of Long Branch to Martin Becker, t/a Bell Liquors, for premises 706 Broadway, Long Branch, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m., Monday, October 5, 1959 and terminating at 9:00 a.m., Tuesday, October 20, 1959.



William Howe Davis  
Director