

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

BULLETIN 1644

November 16, 1965

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1100 Raymond Blvd. Newark, N.J. 07102

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November 16, 1965

1. APPELLATE DECISIONS - NEPTUNE BAR, INC. v. LOWER.

Neptune Bar, Inc.,)	
t/a Neptune Bar, Inc.,)	
)	
Appellant,)	On Appeal
)	
v.)	CONCLUSIONS
)	and
Township Committee of the)	ORDER
Township of Lower,)	
)	
Respondent.)	

Nathan C. Staller, Esq., Attorney for Appellant
Morton I Greenberg, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Reports herein:

Hearer's Report

This is an appeal from the action of respondent whereby on December 9, 1964, by a two to one vote of its members, it found appellant guilty in disciplinary proceedings of sale and service of alcoholic beverages to a minor and allowing and permitting said minor to consume such beverages on the licensed premises, in violation of Rule 1 of State Regulation No. 20. As a result thereof appellant's Plenary Retail Consumption License C-13 was suspended by respondent for fifteen days, effective December 14, 1964. Appellant's licensed premises are located at Route 9 and Cape May Harbor Township of Lower.

Upon the filing of the appeal an order was entered by the Director on December 14, 1964, staying respondent's order of suspension until further order herein. R.S. 33:1-31.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing held before the respondent was submitted into evidence by respondent in accordance with Rule 8 of State Regulation No. 15, and was supplemented at the hearing herein by testimony of witnesses called by appellant.

Appellant in its petition of appeal alleges that the action of respondent was erroneous and should be reversed for the following reasons:

"1. It was not proven that the licensee sold, served and delivered an alcoholic beverage to Paul ---, a person under the age of 21 years and allowed, permitted and suffered the consumption of such beverage by said Paul ---.

"2. At the time of the hearing of the disciplinary proceedings and just prior thereto a hearing was held on disciplinary proceedings against the Villas Cafe in Lower Township wherein it was charged that Villas

Cafe had similarly violated Rule 1 of State Regulation No. 20 by selling, serving and delivering alcoholic beverages to the same Paul ---, a person under the age of 21 years and said Paul --- testified that he had been served at Villas just as he had been served at Neptune and the Township of Lower dismissed the charge of sale to a minor as to Villas but suspended the license of the Neptune Bar Incorporated.

"3. The testimony did not establish the truth of said charges against the appellant.

"4. The three members of the Township Committee heard the charge against the Villas Cafe and against the appellant, but only two of the members of said committee voted to suspend the license of the appellant and the third member refused to impose suspension.

"5. The witnesses against the appellant were involved in a larceny of a motor vehicle which the investigating officer of the Township Committee downgraded to a charge under the Disorderly Persons Law and appeared before the Magistrate of the Township and urged leniency in sentence for said Witnesses prior to their testimony in the disciplinary proceedings.

"6. The action of the Township Committee was arbitrary capricious discriminatory and prejudiced against the appellant."

Respondent's answer denied the allegations aforementioned in appellant's petition of appeal and, in defense of its action, stated;

"At the said hearing it was proven that the licensee violated the State Regulation in question, the proceedings with respect to the Villas Cafe are immaterial, the testimony established the truth of the charges, the Township Committee properly acted pursuant to a resolution of a majority of its members, the proceedings with respect to the disorderly persons law were immaterial and the action of the Township Committee was not arbitrary, capricious or discriminatory."

Paul --- testified that he is nineteen years of age, being born on March 31, 1945; that "I guess it was at nine --- I guess it was 8:00 or 9:00 o'clock. It was after dark" when he walked through the restaurant of the appellant's licensed premises and then proceeded to the bar. As he engaged in conversation with some men, he saw Raymond Taylor (hereinafter Taylor) "come in;" that he went to where Taylor was seated and thereafter both he and Taylor went to the rear part of the bar where Taylor ordered "two beers, one for each of us;" that he identified Raymond Velli as the bartender who served them the respective glasses of beer, one of which he consumed; that Taylor then ordered two more glasses of beer and he (Paul) consumed the contents of the glass served to him; that he (Paul) was not questioned at any time as to his age; and that he remained in appellant's premises "between thirty and forty-five minutes."

On cross examination Paul was questioned about an incident when he was apprehended by police and charged with operating an automobile without the owner's consent, he denied that the charge was brought under the Disorderly Persons Law

on the recommendation of the police officer provided he would testify favorably for respondent when the disciplinary proceedings in question were heard.

Taylor testified that on October 13, 1964, while seated at the bar in appellant's premises, he observed Paul enter the barroom from the restaurant door; that Paul walked over to where he (Taylor) was seated and sat alongside of him at the bar; that he ordered two glasses of beer -- one for Paul and another for himself; that thereafter each had another glass of beer prior to leaving the premises; that they remained in the premises "about half an hour or forty-five minutes."

Arthur Johnson testified that he was on duty as a bartender from 8 p.m. to closing time on October 13, 1964, but did not see Paul or Taylor on the licensed premises that night.

Raymond Velli testified that he was tending bar on October 13, 1964 from 7 p.m. to closing time and did not recall seeing Paul at the premises and, although he had seen Taylor in the premises on other occasions, he did not recall whether Taylor was there that evening.

In answer to a question whether he remembered Taylor purchasing beer at the bar for anyone two months ago, he answered "I couldn't tell you because there is a lot of people come in and order two or three beers. What they do after that I don't know. Probably there is somebody sitting in the booth and they take them over a beer. When you are busy it is kind of hard." However, he insisted that he had never seen Paul in appellant's premises because, if he had seen him, he would have checked his age for the reason that "he looks young to me."

James Lowe testified that he tended bar from 7 a.m. until 5 p.m. on October 13, 1964, but came back "about 6:00 or 6:30" as a customer and remained in the premises until 10 p.m., but did not see Paul in the barroom that night.

Russell Favorite (president of appellant corporation) testified that he was on the licensed premises on October 13, 1964 but that he neither saw Paul nor Taylor that night, and if Taylor were there he must have been for only a short time. Favorite further testified that, while Taylor was in appellant's restaurant after the November 25, 1964 hearing, he accused Taylor of giving false testimony before respondent and, although Taylor did not deny that he had testified falsely at the hearing, he said "I ain't going to hurt nobody. I had to get out of jail."

At the hearing herein appellant produced as a witness Raymond Alger (a member of the United States Coast Guard, stationed at Cape May) who testified that during his "off hours" he was employed by the same company as Paul; that he was not at appellant's premises on October 13, 1964, but he knew Paul and, in his opinion, Paul was reckless with "the truth;" that Paul stated to him that "he had gotten off lightly because he testified he had been drinking in the Neptune Bar."

During cross examination Alger, in answer to a question whether Paul stated that he had lied about the Neptune Bar, Alger replied, "No, he never mentioned it."

Appellant's attorney contends that, since Paul testified that he was served with alcoholic beverages at another li-

censed premises, some moths prior to the date of service at the appellant's establishment, and that the respondent dismissed the charge, a dismissal of the charge should have followed in the matter herein.

The appellant offered in evidence the transcript of a proceeding involving the other licensed premises but the transcript was denied admission therein because of lack of materiality. As was stated by Chief Justice Weintraub in State v. Hudson, 38 N.J. 364 (Sup.Ct. 1962), it is discretionary with the judge to "exclude evidence when the probative force is meager at best and its admission will lead to collateral inquiries which will unduly prolong the trial and probably confuse or distract from the issue in the case." Stoelting v. Hauck, 32 N.J. 87, 103, (1960); Schenck v. Griffin, 38 N.J.L. 462, 471 (E. & A. 1875); 2 Wigmore, Evidence (3d ed. 1940), §§ 443-44, pp. 427-31; Rule 45, Uniform Rules of Evidence. Moreover, in the instant case the testimony of Paul was corroborated by Taylor that Paul had been served and consumed two glasses of beer on the date in question.

Each respective case stands or falls on the evidence produced therein, and there was no compulsion on the part of the respondent for the reason advanced by appellant to dismiss a charge when, in its opinion, the proof sustained the allegation therein.

It is the function of an administrative agency to weigh the evidence to determine the credibility of witnesses, to draw inferences and conclusions from the evidence, and to resolve conflicts therein. Cf. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

Although the testimony of Paul and Taylor differed as to which of them preceded the other into appellant's establishment, the testimony of both witnesses was in agreement that Paul had been served and consumed two glasses of beer while they were in appellant's licensed premises at the time in question.

After careful examination of the testimony of the witnesses produced by the parties herein, I find as a fact that Paul was in appellant's licensed premises on October 13, 1964, and was served and consumed two glasses of beer while there.

The testimony of the witnesses produced by appellant, who stated that they were in appellant's establishment on the evening in question but did not recall seeing Taylor or Paul at any time in the licensed premises on October 13, 1964, was merely negative in character. Alger admitted that he was not in the appellant's premises on the night in question and thus had no knowledge of what took place that evening.

The Director should not substitute his judgment to reverse the exercise of judgment and fact-finding of the municipal issuing authority in the absence of a clear indication of abuse of discretion or unwarranted finding of fact or mis- take of law by such authority. In Abad v. Newark, Bulletin 619, Item 8, former Commissioner Driscoll stated:

"The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the 'de novo' character of the appeal, the

Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record 'from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced.' Cf. *Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 106. Under the Rules Governing Appeals, the burden of proving reversible error rests with the appellant."

Under the circumstances in the instant case, and after a thorough review of the evidence presented herein and consideration of the grounds of appeal advanced by appellant, it is recommended that an order be entered affirming the action of respondent, fixing the effective dates of the fifteen-day suspension imposed by respondent, and dismissing the appeal filed herein.

Supplemental Hearer's Report

The original Hearer's Report in this matter, dated April 22, 1965, was filed with the Director and copies sent by certified mail to the attorneys for the respective parties herein. Rule 14 of State Regulation No. 15. Thereafter, written application for supplemental hearing, dated April 27, 1965, was made on behalf of appellant, wherein the said appellant's attorney advised that he was in possession of newly discovered evidence. (Copy of affidavit of Raymond James Taylor was annexed thereto.)

Pursuant thereto, a supplemental hearing was held on May 19, 1965, at this Division. At said hearing, appellant called Raymond J. Taylor (hereinafter Taylor) as a witness for the purpose of substantiating the statements made by him in the affidavit. Taylor admitted appearing at the office of the attorney for appellant and making the statements contained in the affidavit, wherein he denied that he had ever purchased any beer for Paul, the minor, at appellant's licensed premises. However, Taylor testified that the statements in the affidavit were untrue and that the testimony given by him before respondent that he had been on appellant's premises on October 13, 1964 and, while there, had purchased two beers for Paul, was the truth.

In view of the fact that the testimony given by Taylor at the supplemental hearing herein has not altered or changed the testimony formerly given by him before respondent, it is again recommended that an order be entered affirming the action of respondent, fixing the effective dates of the fifteen-day suspension imposed by respondent, and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's reports and answering argument thereto were filed pursuant to Rule 14 of State Regulation No. 15.

I have carefully examined the entire record herein, including the transcript of the proceedings, the exhibits, exceptions and argument relied upon by the attorney for appellant, the answering argument submitted by respondent's attorney. I concur in the findings and conclusions of the Hearer in both reports (original and supplemental) and adopt his recommendations.

Accordingly, it is, on this 27th day of September, 1965,

ORDERED that the action of the Township Committee of the Township of Lower be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Lower to Neptune Bar, Inc., t/a Neptune Bar, Inc., for premises Route 9 and Cape May Harbor, Township of Lower, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, October 4, 1965, and terminating at 2 a.m. Tuesday, October 19, 1965.

JOSEPH P. LORDI,
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - PRIOR SIMILAR AND DISSIMILAR RECORD OF CORPORATION IN WHICH LICENSEE WAS STOCKHOLDER - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Austin V. Baines & Reverta Marie Gray t/a Top Hat 204 Market Street Paterson, N. J.,
Holders of Plenary Retail Consumption License C-296, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS and ORDER

Licensees, Pro se Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging (1) and (2) that on August 28, 1965 they sold drinks of alcoholic beverages after 3 a.m. during hours prohibited by local ordinance.

Although the licensees have no previous record of suspension of license, Division records disclose the following with respect to Austin V. Baines:

1. License then held by Tuck Inn, a Corp., t/a Tuck Inn, for premises 314 River Street, Paterson (in which Baines was president and 95% stockholder), revoked by the Director effective June 9, 1959, for permitting solicitation for prostitution, foul language, undisclosed interest in the license, failure to notify of change of facts in application for license and failure to have copy of license application on licensed premises. Re Tuck Inn, Bulletin 1286, Item 2.

2. License then held by 74 Hamilton Avenue Corp., t/a Joy House, for premises 74 Hamilton Avenue, Paterson (in which Baines was secretary-treasurer and 50% stockholder), suspended by the Director (a) for ten days effective November 20, 1961 and (b) for twenty-five days effective May 14, 1962, both for hours

violations (Re 74 Hamilton Avenue Corp., Bulletin 1428, Item 9; Bulletin 1455, Item 4); (c) by the municipal issuing authority for fifteen days effective June 8, 1962, for permitting a brawl on the licensed premises, and (d) by the Director for one hundred twenty days effective July 30, 1962, for conducting the licensed business as a nuisance, viz., permitting apparent homosexuals, lewdness and immoral activity, and foul language on the licensed premises, sale to intoxicated persons, employment of intoxicated bartender, and sale during hours prohibited by State Regulation No. 38 (Re 74 Hamilton Avenue Corp., Bulletin 1473, Item 1).

The prior record of revocation of license of Tuck Inn for dissimilar violations occurring more than five years ago disregarded but the prior record of suspension of license of 74 Hamilton Avenue Corp. considered (cf. Re Tarlowe, Bulletin 1580, Item 6), since this is the fourth hours violation within the past five years, the license will be suspended for sixty days (cf. Re Barone, Bulletin 1584, Item 4), to which will be added five days for the dissimilar violation of permitting a brawl within the past five years (Re Hauge, Bulletin 1629, Item 3), for a total of sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 27th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-296, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Austin V. Baines & Reverta Marie Gray, t/a Top Hat, for premises 204 Market Street, Paterson, be and the same is hereby suspended for sixty (60) days, commencing at 3 a.m. Monday, October 4, 1965, and terminating at 3 a.m. Friday, December 3, 1965.

JOSEPH P. LORDI,
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN HOTEL - APPLICATIONS OF OWNERS FOR RETURN OF EQUIPMENT DENIED FOR FAILURE TO ESTABLISH GOOD FAITH - ALCOHOLIC BEVERAGES AND PERSONAL PROPERTY AND COMINGLED CASH ORDERED FORFEITED.

In the Matter of the Seizure on)
March 7, 1965 of a quantity of)
alcoholic beverages, various)
fixtures, furnishings and equip-)
ment at the Savoy Hotel, 600)
Monmouth Avenue, in the Township)
of Lakewood, County of Ocean and)
State of New Jersey.)
-----)

Case No. 11,431

On Hearing

CONCLUSIONS
and
ORDER

Victor M. Saez, Pro Se
B & F Amusement Company, by Edwin Rudnitsky, Manager
Pepsi Cola Bottling Company of Asbury Park, by Ronald Devine,
Salesman.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 69 cans of beer, 48 pints of wine, a cigarette machine, a pool table, a soda machine, a candy machine, a juke box and \$88.14 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on March 7, 1965 at the Savoy Hotel, 600 Monmouth Avenue, Lakewood, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sale of alcoholic beverages at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, Victor M. Saez, appearing pro se, sought the return of the alcoholic beverages and the cash.

An appearance was entered by the B and F Amusement Company for the return of the cigarette, candy and pinball machines, the juke box and the pool table.

An appearance was also entered on behalf of Pepsi Cola Bottling Company of Asbury Park which entered a claim for the return of its bottle vending machine.

There was entered into evidence the Division file which contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory and the Division chemist's report duly certified by the Director.

The file, buttressed by the testimony of ABC agents M and Mc, established the following facts: On Sunday, March 7, 1965 ABC agents, in the company of Sergeant Detective Ray Reynolds of the local police department, arrived in the vicinity of the Savoy Hotel. Agent M, fortified with dollar bills, the serial numbers of which had been previously recorded, entered

the hotel and proceeded to a room in the rear of the first floor. He observed a number of males and females drinking from wine bottles while others were drinking from cans of beer. The room contained a pool table, juke box, soda machine, candy machine and a pinball machine.

While playing the juke box, he observed a female (later identified as Verna Lee Hayes) sell a bottle of wine to one of the patrons for which she received payment. He then approached Miss Hayes and said, "I'll take one, too.", and offered her one of the "marked" one-dollar bills. She took the money, went into an adjacent room and returned with two pints of Red Rooster Wine, giving one of the bottles to this agent and the other to the other patron.

Shortly thereafter, the agent purchased a second bottle of wine from Miss Hayes after handing her another "marked" one-dollar bill. She went into the adjacent room but immediately returned empty-handed, saying, "I missed my connection." She then went towards the front of the hotel and returned and went into the kitchen. A few minutes later the agent observed a person (later identified as Victor Saez) enter the kitchen area. Shortly thereafter, Miss Hayes emerged from the kitchen area with the second bottle of wine.

About five minutes later Saez re-entered the recreation room and shouted, "Put all the bottles away! The police are outside!" He then dashed into the kitchen area and repeated the same admonition. These warnings were given by Saez "in well-spoken English", and his language was "very articulate".

When the agents sought to follow Saez, they were informed that he had departed the premises, and they then questioned Miss Hayes. She admitted that Saez was the person from whom she was getting the wine. The agent then entered the kitchen and went into the apartment adjacent to the kitchen, which belonged to Saez. He found a large quantity of wine and a cigar box which contained cash commingled with the "marked" money used by this agent to make the said purchases. Other agents further questioned Miss Hayes who identified Saez as the manager of the hotel and as the one who supervised the activity.

Miss Hayes was thereupon arrested, charged with aiding and abetting the sale of alcoholic beverages without a license, in violation of R.S. 33:1-50(b). She executed a voluntary signed statement in which she admitted that, upon receipt of the monies for the purchase of wine, she handed them over to Saez, who in turn gave her the wine for distribution to the purchaser.

Later that afternoon, Saez was apprehended and questioned. He refused to give a signed statement and claimed that the alcoholic beverages were left over from a party the night before. He was charged with sale of alcoholic beverages without a license in violation of R.S. 33:1-50(a) and possession of alcoholic beverages with intent to sell without a license in violation of R.S. 33:1-50(b); and held under bail for arraignment in the Lakewood Municipal Court.

The records of this Division show that no license for the sale of alcoholic beverages was issued to Victor Saez, Verna Lee Hayes or to anyone in the premises in question.

Report of the Division chemist shows, in part, that a sample of one pint bottle containing 16 ounces of Red Rooster

Wine, seized herein, is an alcoholic beverage fit for beverage purposes, with alcohol, by volume, of 18.8%. Another sample of a seized 12 ounce can, full, sealed, of Schaefer Beer, shows that it is an alcoholic beverage fit for beverage purposes, with alcohol, by volume, of 4.5%.

Victor M. Saez, a claimant herein, sought the return of the alcoholic beverages and the cash. He stated that he could not speak or understand English and enlisted the services of his friend, Reyes Rodrigues, who was duly sworn as an interpreter of the Spanish language for this interrogation. He denied that Miss Hayes had anything to drink on the premises nor did he know how many bottles of alcoholic beverages were located on the premises, because he "wasn't there" at the time of the seizure.

He explained that the reason he had so many cases of wine and beer was that he had had a party the night before, and had stocked a substantial amount of liquor. He further insisted that Miss Hayes lied when she stated to the agents that she handed him money in return for the purchases of bottles of wine. He also refuted the testimony of the agents to the effect that he shouted an admonition to the patrons on the premises to put away their drinks because the police were present.

With respect to the \$88.14 he explained that this was money that he collected for rent and kept for change for people who purchased cigarettes.

He could not, however, explain how the \$2.00 in "marked" bills were found commingled with this cash.

I have observed the demeanor of this claimant and have evaluated his credibility as he testified before me. I noted that he frequently answered the questions put to him by the Division's attorney before the interpreter had an opportunity to translate them to him.

I am convinced, therefore, that the agents were correct when they testified that he not only understood, but articulated English; that his representation that he understood and could speak no English was clearly a sham. I also accept with many grains of salt his version of what transpired, since I am persuaded that his testimony lacks forthrightness and honesty. In addition, it is contrary to human experience and to the unequivocal and believable statements of Miss Hayes and the agents.

I therefore conclude that this claimant was engaged in the sale of alcoholic beverages. Since this claimant did not have any license authorizing him to sell alcoholic beverages, the alcoholic beverages are illicit and constitute unlawful property subject to forfeiture. R.S. 33:1-1(i); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,156, Bulletin 1557, Item 5; Seizure Case No. 10,877, Bulletin 1569, Item 8.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66. Seizure Case No. 11,182, Bulletin 1568, Item 5.

With particular reference to the cash, the evidence clearly shows that the money in the cash box was clearly commingled with the "marked" bills obtained through the unlawful sales. Thus, all of the money is subject to forfeiture, Seizure Case No. 10,646, Bulletin 1435, Item 5; Seizure Case No. 10,009, Bulletin 1391, Item 4. It should be noted here that the money in the wallet which was claimed by the landlord as rent monies was returned at the time of the seizure of the said wallet.

In considering the claims presented for the return of certain identified items of personal property seized herein, it might be well to state applicable legal principles relating to such claims. The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that the claimant 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. R.S. 33:1-66(f). In addition to this, there must be affirmative proof to support the claim of ownership.

In the absence of these essential elements, the Director has no authority to relieve the claimant of forfeiture. R.S. 33:1-66(e); Seizure Case No. 11,059, Bulletin 1533, Item 8; Seizure Case No. 10,695, Bulletin 1444, Item 6.

The credible evidence adduced at this hearing establishes that the claimant, Victor M. Saez, who is the manager of the property, participated in the proscribed liquor activity and commingled the "marked" monies used by the agents for the said purchases with the other monies.

Accordingly, I recommend that his application for return of the alcoholic beverages and the cash be denied.

The B and F Amusement Company presented a claim for the return of a cigarette, a candy and a pinball machine; juke box and pool table, more particularly described in Schedule "A", attached hereto.

Edwin Rudnitsky, its manager, testified that these machines were purchased from the Runyon Amusement Company, and produced, as its only evidence of ownership, a letter from the said company, indicating such purchase. He stated that he visited the premises about once a week, usually in the afternoon, noticed a number of people drinking alcoholic beverages, particularly wine, but never actually witnessed any sales. He knew that no liquor license was issued for these premises but never questioned the drinking because this was a particularly lucrative location, and the fact of their drinking didn't really interest him.

On cross-examination, he stated that he noticed these people going from the lobby to the recreation room while drinking and playing the juke box. He had a 50-50 commission arrangement on the receipts of the pinball and music machines as well as the pool table. He also admitted that neither he nor his company had made any investigation as to the background of Saez or to determine whether illegal liquor activity was actually carried on at the premises.

Questioned closely as to why he didn't investigate the fact that many patrons were drinking whiskey and beer and wine on the premises he answered, "...when I did see them drinking I figured they bought the bottle at the liquor store which was a block away". Further, "In the seven years we had

the machines there I seen them drink there and never had any trouble."

It was further developed that this company had had a previous experience with respect to a seizure but the witness insisted, notwithstanding that experience, he did not feel it necessary to make an investigation.

I am persuaded that the claimant did not act reasonably and in full discharge of its responsibility in the operation of its property in these premises vis-a-vis the provisions of the Alcoholic Beverage Law. It seems clear that it failed to make the requisite investigation of alleged proscribed liquor activity and failed to do so because this was clearly a very profitable location. I conclude that there was an absence of good faith on the part of this claimant; that it has demonstrated a careless indifference to the use to which its property was being put. I therefore recommend that its claim for the return of the property aforesaid be rejected, and an order be entered directing the forfeiture of the same. Seizure Case No. 11,095, Bulletin 1563, Item 1.

The Pepsi Cola Bottling Company of Asbury Park also presented a claim for the return of a Pepsi Cola dispensing machine which was seized at these premises. Ronald Devine, a salesman employed by the corporate claimant, testified that this machine was serviced by a salesman named James Farley, who was not produced as a witness at this hearing. This witness stated this machine was sold under a conditional sales contract to Saez, which was produced in evidence. He further stated that the salesman who serviced the machine "...did see people drinking and didn't know it was being illegally sold at all".

It would seem to be the beginnings of wisdom for this corporate claimant to have had legal representation in the preparation and presentation of its claim, in order to adequately meet the statutory requisites in its presentation. This was not done. In its present posture, the proofs fall short of establishing this claim in compliance with the statutory requirements hereinabove delineated.

As in the claim adjudicated hereinabove, I am persuaded and conclude that there is an absence of affirmative showing of good faith on the part of the claimant or that it did not exercise a careless indifference to the use to which its property was being put. Accordingly, I am constrained to recommend that the claim of the Pepsi Cola Bottling Company of Asbury Park for the return of its said property be denied.

Finally, I recommend that an order be entered directing the forfeiture of all of the personal property seized herein, including the alcoholic beverages and the cash, as set forth in the Schedule annexed hereto.

Conclusions and Order

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

The last day for filing said exceptions herein under the said Rule was August 6, 1965. On August 28, 1965 I received a letter dated August 27, 1965 from Ruben D. Silverman, Esq. of the firm of Silverman and Silverman, Attorneys for B & F Amusement Company, one of the claimants herein, requesting permission

"to offer additional evidence before yourself that was not available at the original hearing in order to aid your final determination in this matter", without any indication of the nature of such evidence.

Such application made for the re-opening of this matter for the purpose therein described cannot be entertained because it is not supported by affidavit, nor does it meet the general requirements for such motion.

As expressed in State v. Puchalski, 45 N.J. 97, at p. 107:

"The guidelines for the consideration of such an application are stated in State v. Artis, 36 N.J. 538, at p. 541 (1962), as follows:

"A motion for a new trial is addressed to the sound discretion of the trial court, and its determination will not be reversed on appeal unless there has been a clear abuse of that discretion. State v. Smith, 29 N.J. 561, 573, (1959). To entitle a party to a new trial on the ground of newly discovered evidence, the new evidence must be (1) material to the issue and not merely cumulative or impeaching or contradictory; (2) discovered since the original trial and not discoverable by reasonable diligence prior thereto; and (3) of the sort which would probably change the jury's verdict if a new trial was granted. State v. Johnson, 34 N.J. 212, 222 (1961); State v. Bunk, 4 N.J. 482, 486 (1950). To sustain a motion for a new trial the proffered evidence must meet all three aspects of the test. State v. Johnson, supra, 34 N.J., at p. 223."

"See also State v. Sullivan, 43 N.J. 209, 232-233 (1964).";

Christie v. Petruccio, 101 N.J.L. 492 (Sup. Ct., 1925); Wilkotz v. Ziss, 137 N.J.L. 3 (Sup. Ct., 1948). The same rule or tests apply in both criminal and civil cases, State v. Bunk, 4 N.J. 482, 487 (Sup. Ct., 1950).

Since this application does not meet the test as set forth hereinabove, it is accordingly denied.

After careful consideration of the facts and circumstances herein, including the transcript and the exhibits, and the Hearer's Report, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 22nd day of September, 1965,

DETERMINED and ORDERED that the seized property, including the \$88.14 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, to be accounted for in accordance with the law; and it is further

DETERMINED and ORDERED that the alcoholic beverages are hereby forfeited, and shall be retained for the use of hospitals and state, county and municipal institutions or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI,
DIRECTOR

Schedule "A"

- \$88.14 - in cash
- 69 - cans of beer
- 48 - pints of wine
- 1 - cigarette machine
- 1 - pool table, etc.
- 1 - soda machine
- 1 - candy machine
- 1 - juke box
- 1 - pinball machine
- 4 - benches

4. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #264)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Distribution License D-29,)
 Issued by the Board of Commissioners)
 of the City of Passaic to)
 Thomas R. Forgione)
 t/a M. & S. Liquors)
 531 Main Avenue)
 Passaic, N. J.)

On Petition
 SUPPLEMENTAL ORDER

 Joseph M. Keegan, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On August 19, 1965, an order was entered temporarily staying statutory automatic suspension of license of licensee-petitioner pending determination of disciplinary proceedings against him.

It now appears from supplemental petition filed herein that in disciplinary proceedings conducted by the municipal issuing authority, the license was suspended for five days effective 3:00 a.m. September 27, 1965, on a charge alleging sale of alcoholic beverages to the same minor, which sale was the subject of the previous criminal conviction. Hence, I shall lift the automatic suspension in anticipation of the service of the currently effective municipal suspension. Re Tom's Cafe & Tavern, Inc., Bulletin 1613, Item 7.

Accordingly, it is, on this 27th day of September, 1965,

ORDERED that the statutory automatic suspension of said license D-29 be and the same is hereby lifted, effective 3:00 a.m. Saturday, October 2, 1965.

JOSEPH P. LORDI,
 DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #266)
 In the matter of the Automatic)
 Suspension of Plenary Retail)
 Consumption License C-19, issued)
 by the Mayor and Council of the)
 Borough of Lodi to)

O R D E R

Nick's Highway 46 Bar and Grill, Inc.)
 t/a La Casa Mia)
 77 Route #46)
 Lodi, N. J.)

BY THE DIRECTOR:

On September 21, 1965, Crescenzo Cutillo, president of the licensee corporation, was fined \$100 and \$5 costs in the Lodi Municipal Court after plea of guilty to a charge that he had sold alcoholic beverages to minors on August 20, 1965, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1.

By order dated September 13, 1965, I suspended the license for twenty-five days commencing at 3:00 a.m Monday, September 20, 1965, and terminating at 3:00 a.m. Friday, October 15, 1965, in disciplinary proceedings based on a charge that the licensee had sold alcoholic beverages to the same minors, which sale was the subject of the criminal conviction. Re Nick's Highway 46 Bar and Grill, Inc., Bulletin 1640, Item 2. Under the circumstances, I shall, on my own motion, enter an order lifting the statutory automatic suspension, effective at the termination of the currently effective suspension. Re Royce, Bulletin 1614, Item 4.

Accordingly, it is, on this 28th day of September, 1965,

ORDERED that the statutory automatic suspension of said license C-19 be and the same is hereby lifted, effective 3:00 a.m. Friday, October 15, 1965.

JOSEPH P. LORDI,
 DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Fred & Mae Bolten 1915 New York Avenue Union City, New Jersey, Holders of Plenary Retail Consumption License C-135, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS and ORDER

Licensees, Pro se Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) on September 1, 1965 they possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20, and (2) in their current application for license failed to disclose their previous suspension of license, in violation of R.S. 33:1-25.

Licensees have a previous record of suspension of license by the Director for twenty days effective June 5, 1962, for permitting acceptance of numbers bets and conducting a drawing for a prize (Re Bolten, Bulletin 1461, Item 4), the subject of the second charge herein.

The license will be suspended on the first charge for fifteen days (Re Le Jem Bar-Liquors, Inc., Bulletin 1625, Item 7) and on the second charge for ten days (Re Scangarello, Bulletin 1631, Item 6), to which will be added five days by reason of the record of suspension of license for dissimilar violation within the past five years (Re J. H. DePalma, Inc., Bulletin 1636, Item 2), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 4th day of October, 1965,

ORDERED that Plenary Retail Consumption License C-135, issued by the Board of Commissioners of the City of Union City to Fred & Mae Bolten, for premises 1915 New York Avenue, Union City, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, October 11, 1965, and terminating at 3 a.m. Friday, November 5, 1965.

Joseph P. Lordi, Director

7. STATE LICENSES - NEW APPLICATION FILED.

Western Grape Products, t/a International Wine Co. 841 Clinton Avenue, Kenilworth, N. J. Application filed November 9, 1965 for Plenary Wholesale License.

Handwritten signature of Joseph P. Lordi