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

BULLETIN 1619 June 21, 1965

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1. APPELLATE DECISIONS - EAGLE FUELS, INC. v. CLIFTON and MILANESE.

EAGLE FUELS, INC., Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CLIFTON, and RAYMOND MILANESE, t/a Bertlin's Restaurant, Respondents.	)	On Appeal CONCLUSIONS AND ORDER

Feder and Rinzler, Esqs., by Lewis B. Rothbart, Esq., Attorneys for Appellant.
Nicholas G. Mandak, Esq., Attorney for Respondent Municipal Board.
Joseph M. Keegan, Esq., Attorney for Respondent Licensee.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the refusal of the respondent Municipal Board (hereinafter Board) to institute, pursuant to appellant's written complaint, disciplinary proceedings against respondent licensee (hereinafter licensee) for permitting and suffering the licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20.

R.S. 33:1-31 provides, among other things, that upon a local issuing authority's receipt of a written complaint against a licensee specifying charges and requesting that proceedings be instituted to revoke or suspend the license, it declines to take such action, any person may appeal to the Director from the local issuing authority's refusal to revoke or suspend such license or from other action taken by it in connection therewith.

It appears from the testimony presented herein and from the minutes of meetings of the Board that appellant filed written charges against the licensee. Donald E. Flaster (hereinafter Flaster), secretary of appellant corporation, appeared before the Board on several occasions, the last of which being on October 14, 1964. After hearing various complaints from Flaster and Margaret Green, a neighbor, the Board, by a motion duty adopted, expressed the opinion that insufficient evidence was presented to warrant a formal hearing in the matter.

At the instant hearing, Flaster testified that appellant operates a gasoline business at premises adjoining the licensee's property; that, among other things, between April and October 1964, the following incidents occurred on appellant's

service station: a hard plastic sign was shattered, a sign offering a reward "For information leading to the arrest and conviction of the person or persons defacing this sign" was removed from its location underneath the plastic sign, a number of shrubs were removed, tools were stolen from a truck and the telephone booth located at the gas station was damaged. On several occasions when he went to the gas station at night, Flaster stated that he observed crowds of people congregated in the parking lot owned by the licensee. On April 10 or 12, he saw the Clifton police in the process of removing people from the parking lot.

On cross examination, Flaster failed to attribute any of the vandalism aforementioned to persons patronizing the licensee's establishment. It was also established that Flaster stated to the Board that he did not wish formal proceedings to be instituted against the licensee. He had suggested at the time of the hearing with reference to the damage done to appellant's property that chains be installed to prevent cars being driven into the licensee's parking lot after the premises had been closed at night. He also admitted that he had proposed that additional lighting be installed outside the licensee's premises.

Two attendants employed at appellant's gas station testified as to damage done to appellant's property but neither could be specific with reference to those who had caused the damage in question.

Captain Stanley T. Novak, of the Clifton Police Department, testified that on November 28, 1964, as a result of an anonymous telephone call received by the police department that a disturbance was taking place, officers were dispatched to the licensee's premises but they were unable to locate anyone involved in the alleged disturbance. Prior thereto, on April 4, police officers had been dispatched to the licensee's premises, at which time they found two youths in an automobile in the licensee's parking lot, one of whom appeared to have been drinking alcoholic beverages. It was ascertained, however, that the beverages in question had not been obtained from the licensee but from a liquor establishment in another county. Again on August 29, according to Captain Novak, as a result of an anonymous telephone call reporting a gang fight in the vicinity of the licensee's premises, police were dispatched to the scene and found approximately twenty-five cars parked on River Road near the licensee's premises but no fight taking place at the time.

Captain Novak also testified with reference to notification received on April 18, 1964 by the police department from Flaster complaining that the glass on a large electric sign belonging to Hy-Grade Oil Company had been broken. Thereafter, on August 8, 1964, another notification was received from Flaster reporting the theft of tools from one of his trucks parked on appellant's premises. Captain Novak testified that prior to March 1962, the police records disclosed complaints of vandalism on appellant's property although at that time the licensee had not operated his licensed business at the present location.

Margaret Green testified that her property adjoins that of the licensee and that she had appeared at a hearing

before the Board with reference to the operation of the licensee's premises. She agreed that at said hearing she had indicated to the Board that things would be satisfactory if a chain were put across the entrance to his parking lot to prevent parking in the lot after the premises were closed.

Lincoln Milanese, son of the licensee and manager of the premises, testified that lights have been installed around the building and also that chains have been placed across the drive-ways leading into the parking lot which prevents parking of cars after the licensed premises close at night. Mr. Milanese stated that this was voluntarily done for the purpose of preventing any disturbance to neighbors residing in the area.

After careful examination of the evidence presented in the instant case, I am satisfied that the Board was justified in refusing to institute formal disciplinary proceedings against the licensee. There was no indication whatsoever that any of the acts of vandalism were in any way attributed to persons who used the facilities and patronized the licensee's establishment. Moreover, it is apparent that, in effect, the licensee has followed the suggestions made by Flaster, speaking on behalf of appellant, by installing increased lighting on the exterior of the premises and also in placing chains at the drive-ways to prevent entrance into the parking lot.

Based on the evidence herein and under the facts presented, there appears to be no reason for reversal of the Board's action in declining to prefer formal disciplinary charges. It is recommended that the action of the Board be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument in support thereof were filed by the attorneys for the appellant. Answers to the exceptions and written argument in support thereof were thereupon filed by the attorneys for the respective respondents.

I have carefully considered all the facts and circumstances herein, including the entire record and exhibits introduced into evidence at the hearing of this appeal, as well as each exception and supporting arguments taken to the Hearer's Report by the appellant's attorneys. The various exceptions and arguments are without merit, and hence no change in the result recommended by the Hearer is warranted. Accordingly, I concur in the Hearer's findings and conclusions and adopt his recommendation.

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

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Clifton be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION - HOSTESS ACTIVITY - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against Charle's Tavern, A Corporation 124 Hudson Street Hoboken, New Jersey Holder of Plenary Retail Consumption License C-29, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.	CONCLUSIONS AND ORDER

Stephen Mongiello, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On Wednesday night July 22 into early Thursday morning July 23, 1964, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

"2. On Saturday, July 18 and Wednesday night July 22 into early Thursday morning July 23, 1964, you allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

To substantiate the allegations in the charges preferred herein, the Division produced as witnesses Agents C, S and Sc who participated in the investigation of the licensee's premises. Agent C's testimony discloses that he and Agent S entered the licensee's premises at approximately 12:50 a.m. July 18, 1964, and "took seats at the center of the bar." About forty patrons were present and he observed three persons tending bar who were subsequently identified as Grace Cutillo, Eileen Kelly (the holder of 50% of the capital stock of the corporate licensee) and Clifford Crooks. Hereafter the aforesaid persons will be referred to by their first names.

Agent C further testified that he and Agent S remained in the premises for about one hour, during which time "on different occasions" he saw Eileen serve drinks to patrons and "set up a drink for herself," taking the payment therefor from the patrons served. Eileen's drinks consisted of 7-ounce bottles (known as "nips") of Rheingold beer. On each occasion

she poured about three ounces of the contents of the bottle "into a goblet glass" and then placed the bottle with the remaining beer into an empty carton located "underneath the bar." Thereafter Eileen consumed the beer from the goblet. Grace, while on the bartender's side of the bar, consumed a glass of soda purchased by and at the agents' expense.

Agent C testified that at approximately 11:15 p.m. on July 22, 1964, he and Agents S, Sc and O (another agent) arrived in the vicinity of the licensed premises and he and Agent S entered and took seats at the bar; that Clifford and Eileen were tending bar at the time. As Eileen served drinks to them she asked, "Am I in?" and, when Agent S said it was all right, she served herself a bottle of beer and took payment therefor in the amount of twenty cents. Every time she served them drinks thereafter, "she included herself." During the evening Eileen had seven bottles of beer at Agent C's expense.

Agent C's testimony continued that Clifford conversed with the agents and, when the agents inquired about two females they had met on a prior visit, Clifford said they "will probably be in later." Clifford asked him (Agent C) what he was looking for, and he answered that he was looking for a female to engage in sexual relations. Clifford then stated, "As soon as something comes in, I'll steer it over to you guys." A short time thereafter, referring to a girl seated at the bar, Clifford said (without using the gutter language expressed by him) that she was a good person to engage in sexual intercourse and that "I'll introduce her to you two guys." Clifford then engaged in conversation with the female (hereinafter Nona), and he walked toward the agents on the bartender's side of the bar while Nona walked parallel with him on the other side of the bar. As Nona stepped between the agents, Clifford introduced her to them. Agent S then moved over one stool and Nona occupied his stool situated between the agents. Agent C inquired of Clifford what Nona charged, and he answered, "Don't worry. The price will be right." He (Agent C) then repeated to Nona what Clifford had said concerning her prowess for sexual relations, and she told him "for you alone it's twenty dollars. And I want the money in advance because I have been sucked in before." He gave her two ten-dollar bills (the serial numbers of which had been previously recorded) and she placed the bills "inside her brassiere." At this point a male patron asked Nona to dance and she accepted his invitation.

Thereafter, according to Agent C, the agents ordered drinks from Clifford who asked, "How youse making out?" Agent S answered, "Charlie here is all set up for twenty dollars" and Clifford said, "That's too much money", to which Agent S replied, "Well, I can't help it now. She's already got the money and she put it in her brassiere."

Agent C stated that Grace came into the premises that evening and, while behind the bar, directed Clifford and Eileen to do various chores.

The testimony of Agent C further discloses that, in response to a telephone call by Agent Sc, several officers arrived at which time the agents identified themselves as ABC agents by displaying their credentials to Clifford and Eileen. After Nona took the two bills from her brassiere, Officer Romano, upon comparison of the serial numbers thereof, found them to

correspond with two of the serial numbers on the list which had been given the officer by Agent Sc. Subsequently, at police headquarters, Eileen said she owned fifty per cent of the stock in the licensee-corporation and also admitted that she was drinking with the agents and other people. According to Agent C, Clifford stated, "I don't even know you guys. I don't even remember you guys being in the place tonight."

The licensee's attorney cross examined Agent C at length concerning the testimony already given. However, he failed in any material way to change the agent's version of the events which occurred on the licensee's premises at the times in question.

Agent S (who had accompanied Agent C on the two occasions) gave similar testimony to that of Agent C. Although Agent S was subjected to extensive cross examination, he adhered to his direct testimony concerning the activities of Grace on the licensed premises, the acceptance of drinks by Eileen from and at his expense and at the expense of other patrons, and Clifford's introduction of Nona to himself and Agent C for the express purpose of arranging for sexual relations. Moreover, he repeated the discussion had with Clifford and Nona with reference to price for the contemplated illicit intercourse.

Agent Sc testified that he arrived in the vicinity of the licensee's premises at 11:15 p.m. on July 22, 1964, but remained outside thereof. At 1:20 a.m. on July 23 Agent S spoke to him and then re-entered the premises. Thereafter he and Agent O entered and took seats near the end of the bar where he observed Agents C and S at the bar seated with Nona. Eileen and Clifford were tending bar. At approximately 1:40 a.m. members of the local Police Department entered the premises, when the agents identified themselves. He further testified that, upon Officer Romano's request to Nona, "She took from inside her brassiere two ten-dollar bills and placed them on the table." Agent Sc then gave Officer Romano the list of serial numbers of the bills and, after comparison with the ten-dollar bills, it was ascertained that the serial numbers of the said bills were on the list.

At police headquarters Eileen admitted owning fifty per cent of the capital stock of the corporate licensee and drinking at the expense of the agents. Clifford, however, denied seeing the agents in the premises.

Grace testified that she is a police matron in Hoboken and that on the dates in question she was in the licensed premises. She further stated that the stockholders and officers of the corporation were her sister Camille Morris, her brother-in-law Clyde Morris, and Eileen Kelly. She also testified that she saw Agents C and S in the premises on July 18; that, although she remembered Clifford tending bar, she had no recollection of Eileen doing so. Furthermore, to her knowledge she said Eileen never accepted drinks at the expense of the agents; that she never introduced any female to the agents but on July 18, in response to a question of Agent C as to the name of a female who had gone to the ladies' room, she (Grace) mentioned the person's name. Grace contended that on July 22, when Agent C inquired of her about the female whose name she had mentioned to him on the prior visit, she

told him that the female only occasionally comes to the licensed premises. The witness also stated that on the agents' last visit she observed Nona (known to her as Jean) seated between the agents at the bar and, when it appeared to her that Agent C "was trying to feel her", she asked a man called Hank to invite Nona to dance. As Hank got up to dance with Nona, Agent S shouted to Agent C "Grab Gracie" but, instead, Agent S grabbed her by the arm, injuring the same. Grace further testified that there never was any solicitation for prostitution in the premises, and the place was always conducted in a proper manner.

Clifford testified that on July 18, 1964 he alone was on duty as bartender, and during the evening he did not see Eileen accept any drinks from or at the expense of the agents. On July 22 he began his duties as bartender at approximately "six or seven" and worked until "two in the morning." He remembered Agents C and S coming into the premises and recalled that Nona was there when he began work. When Agent C inquired about girls to engage in sexual intercourse, he told him he "knew who he was and nothing like that goes on." He contended that toward the latter part of the evening one of the agents said to him, "My buddy just gave $20. Is she worth it?" He said that he asked, "$20 for what?" and further remarked, "I don't know what you're doing; ain't my money. Do what you want. You want to give the girl money, I don't care."

Clifford admitted observing the agents talking to Nona and she appeared as if she "didn't want to be bothered;" that at about 1:30 or a quarter-to-two, there was a little commotion, the door opened and police officers entered. Prior to the entrance of the police officers he saw the agents "fumbling around" but he "couldn't definitely say what part of the body. I didn't actually see their hands go in any particular place that I could pinpoint it." He also stated that he noticed at the time they were closing that Agent S had Grace by the arm.

During cross examination Clifford testified that Agent S did not assault Grace, push her around or squeeze her in any way. He said that, although Eileen may have been in the licensed premises when the agents came in on Friday, July 17, at approximately 10 p.m., he had no recollection of Grace going behind the bar or accepting a drink of soda. Neither had he any recollection of Grace talking to two women at the end of the bar as he had not taken any particular interest in anyone. He denied discussing with the agents the matter concerning arrangements for the agents and Nona to engage in sexual relations. He also stated that he was very busy on July 22 and had no recollection of Eileen drinking that evening.

Agent S, called in rebuttal, denied grabbing Grace by the arm or Clifford's stating that he knew he and Agent C were ABC agents. Agent C corroborated the rebuttal testimony of Agent S.

I have recited in detail the testimony adduced at the hearing for the purpose of demonstrating what occurred at the licensed premises on the occasions in question. At this juncture I might state that Grace, employed as a municipal police matron, not only was actually working on the licensed

premises but, by her own admission, she signed the checks for the payment of salaries to the licensee's employees.

Because of the seriousness of the charges I have made a searching study of the record in this case. The testimony given by the agents was clear, concrete and convincing. The testimony of Grace and Clifford, who were on the premises on the occasions in question, lacks the ring of truth. One would have to be naive indeed to place any credence in Clifford's testimony because of his evasiveness and lapse of memory with reference to the pertinent facts alleged to have occurred in the licensee's premises.

It has long been held that solicitation for immoral purposes and the making of arrangements for illicit sexual intercourse cannot and will not be tolerated upon licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2; aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App. Div. 1953). It also must be emphasized what was said in Re Paton, Bulletin 898, Item 3:

> "Licensees must learn and remember that their liquor license is not a license to engage in activities detrimental to the public welfare."

I find as a fact from the evidence presented herein that Clifford procured Nona to engage in sexual relations with the agents. Furthermore, I am convinced that Grace accepted a drink (soda) at the expense of the agents and that Eileen, employed on the licensed premises, accepted drinks not only from and at the expense of the agents but also from other patrons in the establishment.

Licensee has a prior adjudicated record. Its license was suspended by the local issuing authority for thirty days effective July 15, 1963, for sale of alcoholic beverages to a minor.

I conclude that the preponderance of the believable evidence produced sufficiently discloses that the licensee is guilty of both charges herein. Thus the only proper and justifiable penalty is revocation of the license, and I so recommend. Re Merjac Corp., Bulletin 998, Item 1 and cases cited therein; Re Shaw, Bulletin 1028, Item 1; Re Carsella, Bulletin 1348, Item 1; Re Tabatneck, Bulletin 1463, Item 1; Re Monkey Club, Inc., Bulletin 1511, Item 1; Re Caprio, Bulletin 1540, Item 1.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, licensee filed written exceptions to the Hearer's Report and written argument in substantiation thereof. Answering argument to the exceptions was filed on behalf of the Division.

Licensee contends that (a) "The penalty imposed was not fair and reasonable" and cites Olympic, Inc. v. Division of Alcoholic Beverage Control, 49 N.J. Super. 299, in support thereof; (b) the defense of entrapment was not taken into consideration; (c) and (d) the evidence presented was not sufficient to establish that the licensee allowed, permitted or suffered the violations charged upon its licensed premises,

and (e) if the Hearer's recommendation is adopted by the Director, the licensee will lose its investment in the business.

(a) In the Olympic case there was no procurement on the part of the bartender of females for prostitution at any time. The bartender, in conversation with the agents and gestures connoting intercourse, held out "the lure of sexual entertainment, whether or not in good faith, in order to foster continued patronage by the agents." The court ruled that such behavior by the bartender was sufficient to find that the licensee permitted its place of business to be conducted in such manner as to constitute a nuisance. The Olympic case and the case sub judice are not subject to comparison, and thus I find no merit in this contention. The extent of the penalty to be imposed rests within the sound discretion of the Director of the Division of Alcoholic Beverage Control. Butler Oak Tavern v. Division of Alcoholic Beverage Control et al., 36 N.J. Super. 512, aff'd 20 N.J. 373. Considering the seriousness of the violations, the penalty recommended by the Hearer does not appear unreasonable or excessive.

(b) In the defense of entrapment now alleged on behalf of the licensee, claim is made that the licensee is innocent of the violations contained in the charges preferred herein, and asserts that, if any activity took place on the premises, it was initiated and contrived on the part of the agents. However, Clifford denied any implication whatsoever in procuring or introducing Nona to the agents for the purpose of sexual intercourse. In Rodriguez v. United States (1955), 227 Fed. 2nd 912, the court stated, with reference to entrapment, as follows:

> "It is true that this defense may be raised even though the defendant pleads not guilty, but it 'assumed that the act charged was committed', and where the defendant insists, as she did here, that she did not commit the acts charged, one of the bases of the defense is absent."

Also see United States v. Kaiser, 138 Fed. 2nd 219, certif. denied 320 U.S. 801, 88 L. ed. 483. Furthermore, an analysis of the testimony of the agents, which I am satisfied is truthful, discloses that, in response to their inquiry about two females whom they had met in the licensed premises on a prior visit, Clifford asked what they were looking for; that Agent C said he was looking for a female to engage in sexual relations; that Clifford then stated that, if something comes in, he would "steer" it over to them. Thereafter Clifford indicated a female in the premises who would engage in sexual intercourse, engaged her in conversation and introduced her to the agents. Agent C inquired of Clifford as to what the female charged and was told "Don't worry. The price will be right." Subsequently Clifford asked how the agents were making out with the female and, when Agent S told him the price paid her to engage in the illicit sexual relation, Clifford commented that it was too much. It can readily be seen that the agents neither resorted to nor practiced any trickery, persuasion or fraud in their dealings with Clifford with reference to the female in question. Thus there was no entrapment in the matter now under consideration. See State v. Rosenberg, 37 N.J. Super. 197, and cases cited therein.

(c) and (d): I am satisfied that the believable evidence preponderates in favor of the Division and that the licensee is guilty of the charges preferred herein.

(e) The fact that, if the license is revoked, the licensee will suffer loss of its investment is immaterial, as the interest and welfare of the public are always paramount.

Having carefully considered the entire record herein, including the transcript of the proceedings, the Hearer's Report and the written exceptions thereto, I concur in the findings and conclusion of the Hearer and adopt his recommendations.

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

ORDERED that Plenary Retail Consumption License C-29, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Charle's Tavern, A Corporation, for premises 124 Hudson Street, Hoboken, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED SALE OF ALCOHOLIC BEVERAGES TO CO-WORKERS - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT CLAIMANT - COMMINGLED CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on December 10, 1964 of a quantity of alcoholic beverages, $181.63 in cash and an Oldsmobile sedan at a parking lot in the rear of National Biscuit Company, Route 208, in the Borough of Fair Lawn, County of Bergen and State of New Jersey.	)	Case No. 11,378 ON HEARING CONCLUSIONS AND ORDER

Peter Daghlian, Esq., appearing for claimant, Pasquale Lemorrocco.
Chivian & Chivian, Esqs., by Louis Chivian, Esq., appearing for claimant, General Motors Acceptance Corporation.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28 to determine whether 55 bottles of alcoholic beverages, $181.63 in cash and an Oldsmobile sedan, more particularly described in an inventory hereinafter referred to, attached hereto, made part hereof and marked Schedule "A", seized on December 10, 1964 at a parking lot in the rear of National Biscuit Company, Route 208, Fair Lawn, New Jersey, constitutes unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Pasquale Lemorrocco, represented by counsel, appeared and sought the return of the seized monies.

General Motors Acceptance Corporation, represented by counsel, made a claim upon its lien for the motor vehicle herein. No one opposed forfeiture of the alcoholic beverages.

The Division's case was presented through the testimony of two ABC agents and may be summarized as follows: The agents were assigned to a specific investigation of a complaint that an unidentified male was selling alcoholic beverages from a car parked in back of the National Biscuit Company at the above-named location. On their visit, made on December 3, 1964 they observed Pasquale Lemorrocco open the trunk of his Oldsmobile automobile, more particularly described in the inventory herein, and remove therefrom several brown bags containing alcoholic beverages, which he handed to several males.

They returned to this location on December 10, 1964 at about 2:00 p.m. and again observed Lemorrocco open the trunk of the said vehicle and remove what appeared to be a case of alcoholic beverages. Shortly thereafter, he took two or three brown paper bags and handed them to several males who had approached the motor vehicle. They further observed various brands of alcoholic beverages in the trunk of this motor vehicle. Agent V then went up to Lemorrocco and asked for two bottles of scotch. Lemorrocco told him that he couldn't give it to him because "These are all orders". However, he assured him that "You can have them tomorrow. We are here about the same time every day". As the agent was about to leave, Lemorrocco called him back and told him that he could have a bottle of J and B Scotch at a cost of $6.25. The agent purchased the same with a five dollar bill and two single dollar bills, the serial numbers of which had been previously recorded. The bills and the bag containing this liquor were admitted into evidence.

Lemorrocco was immediately placed under arrest, taken to police headquarters, and the contents of the trunk were seized and adopted by agents of this Division. A search of Lemorrocco's person revealed the "marked" bills which were commingled with other monies in the possession of Lemorrocco. An examination of the car further disclosed two sheets of paper containing a list of names and prices of various brands of liquor. Lemorrocco was questioned at headquarters and stated that he didn't think he was doing anything wrong by bringing liquor from New York City, and he had been selling alcoholic beverages from his car for at least six months prior thereto.

Lemorrocco was thereupon charged with selling and transporting alcoholic beverages without a license and in violation of R.S. 33:1-50(a) and possession of alcoholic beverages with intent to sell. R.S. 33:1-50(b) and R.S. 33:1-2. He was subsequently arraigned on these charges in the Fair Lawn Municipal Court.

An examination of the records of this Division discloses that no license or permit was issued to Lemorrocco or for the premises hereinabove described authorizing the sale of alcoholic beverages.

Pasquale Lemorrocco, claimant of the cash seized herein, testified that he is employed at the National Biscuit Company at Fair Lawn and earns a salary of $115.62 net pay each week, the

last pay of which he received on Thursday, December 10, 1964; and he produced a pay slip dated December 6, 1964. This slip apparently was not produced at the time of the seizure nor was it disclosed to the ABC agents at the date of said seizure. This claimant states that he cashed his pay check and kept this money together with all other monies which he received from the sale of alcoholic beverages on this date. He readily admits that he sold alcoholic beverages to his fellow employees from which he made a small profit.

It appears that he had an arrangement with a retail liquor licensee and had been selling alcoholic beverages from his motor vehicle at the above-named location for the past six months, and had intended to sell at this time approximately 60 or 70 bottles of alcoholic beverages. On cross-examination, he admitted that when he was arrested and asked to empty his pockets, he took all of the money out of his left trouser pocket and the "marked" bills were commingled with the said monies. He contends that the money which was taken from his left pocket consisted of his salary, other personal monies as well as receipts from the sale of alcoholic beverages. He further admitted that although he was thoroughly searched, the pay slip was not disclosed and he first discovered that he had it in his possession on his way home. In fact "To tell you the truth, I don't know whether in the car or my pocket. I couldn't tell you".

Finally, he admitted that the money that he made from the sale of whiskey was used for expenses incurred in transportation and the use of his car, gasoline, bridge tolls, etc.

The seized whiskey is illicit because it was intended for unlawful sale. R.S. 33:1-1(i). It is unlawful even for a licensee to sell alcoholic beverages from an unauthorized parked vehicle. Seizure Case No. 11,164, Bulletin 1565, Item 5. Such illicit whiskey, personal property, commingled monies and the motor vehicle in which such whiskey was found constitutes unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 10,759, Bulletin 1469, Item 5.

With particular reference to the cash, the evidence clearly shows that the "marked" money received by this claimant from Agent V was commingled with the other monies obtained through unlawful sales of alcoholic beverages, and no satisfactory proof was offered to demonstrate that the money seized came from any source other than that of unlawful sales. Thus, all of the money is subject to forfeiture. Seizure Case No. 10,009, Bulletin 1391, Item 4; Seizure Case No. 10,646, Bulletin 1435, Item 5; R. S. 33:1-2; R.S.33:1-66.

My examination of the testimony convinces me that the Division has established its case by clear and convincing evidence, and I therefore recommend that the alcoholic beverages and cash be declared to be unlawful property, and that they be ordered forfeited. R.S. 33:1-1(x & y); R.S. 33:1-2; Seizure Case No. 10,759, supra; Seizure Case No. 10,918, Bulletin 1504, Item 3.

Richard Strand, called as a witness in behalf of the claimant, General Motors Acceptance Corporation, testified

that he is employed by the said claimant in its credit department and is familiar with the account of Lemorrocco. This claimant holds a conditional sales contract dated April 2, 1963 signed by Lemorrocco covering the sale of the Oldsmobile described in the schedule herein. A complete investigation was made of Lemorrocco which satisfied them that he was an excellent account. The investigation further disclosed that Lemorrocco was married, lived with his wife who was also employed and he had been employed for the past 18 years with the National Biscuit Company. The investigation did not disclose any liquor law violations.

I am satisfied, on the basis of the evidence presented, that this claimant appears to have made a reasonable investigation; that it did not have any reason to believe that Lemorrocco was engaged in illicit alcoholic beverage activity or that the motor vehicle might have been used in connection therewith. Accordingly, I recommend that the lien claim of General Motors Acceptance Corporation against such motor vehicle should be recognized to the extent of the present outstanding balance in the sum of $1793.28.

It appears likely that the amount realized at public sale of the motor vehicle will not exceed the amount of seizure and storage and the amount of the lien claim. Since this lien claimant has set forth its willingness to accept the return of the car upon payment of the costs of the seizure and storage in full satisfaction of its claim, I, therefore, recommend that the said motor vehicle be returned to the General Motors Acceptance Corporation upon payment of such costs.

Conclusions and Order

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

Upon receipt of the Hearer's Report I called for and conducted oral argument specifically with respect to the lien claim of General Motors Acceptance Corporation.

The Hearer's Report recommended that such lien claim should be recognized to "the extent of the present outstanding balance in the sum of $1793.28". He further recommended that since it appears likely that the amount realized at public sale of the motor vehicle will not exceed the amount of seizure and storage and the amount of the lien claim, and since the lien claimant has set forth its willingness to accept the return of the car upon payment of the costs of the seizure and storage in full satisfaction of its claim, that said motor vehicle be returned to it upon payment of such costs.

In its argument before me, which was supported by a letter dated April 13, 1965 by Mr. Louis Chivian, counsel for the said lien claimant, it was established that, as of May 1, 1965, there would be a rebate credited to the said lien claim amount in the sum of $63.09, leaving a net balance due to claimant, of $1730.19.

The claimant further advises that, according to the "Galves Auto List", the present market value of the aforesaid automobile is in the sum of $1300.00, which valuation estimate is supported by its representative in charge of the sale of repossessed motor vehicles.

Immediately prior to the date of the oral argument, I ordered another independent appraisal of the said motor vehicle, and such appraisal has fixed the net cash appraisal value thereof at $1775.00. I am further advised that the costs of seizure, storage, etc. payable to this Division by this lien claimant will be in the approximate sum of $135.36.

My consideration of the facts as hereinabove set forth satisfy me and I concur with the Conclusions of the Hearer that the amount realized at public sale of the motor vehicle will not exceed the cost of seizure and storage and the amount of the lien. Therefore, after careful consideration of the facts and circumstances herein, including the transcript and the exhibits, I concur in the recommended conclusions in the Hearer's Report as supplemented, and adopt them as my conclusions herein.

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

DETERMINED and ORDERED that if, on or before the 10th day of May, 1965, the General Motors Acceptance Corporation pays the costs of the seizure and storage of the said 1963 Oldsmobile coupe, more particularly described in the schedule attached hereto, said motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, including $181.63 in cash, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that the alcoholic beverages 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"

55 - bottles of alcoholic beverages
$181.63 in cash
1 - Oldsmobile sedan, Serial No. 632-LI-9220
N.Y. Registration Q-7378

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

In the Matter of Disciplinary Proceedings against)

Dina Angioletti
t/a Brass Rail)
14 So. Warren Street
Trenton, New Jersey) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-81, issued by the City Council of the City of Trenton.)

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Sido L. Ridolfi, Esq., Attorney for Licensee.
Morton B. Zemel, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 12, 1965, she possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifty-five days effective August 11, 1959, for conducting the licensed place of business as a nuisance. Re Angioletti, Bulletin 1298, Item 3.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re McEvoy, Bulletin 1594, Item 8.

Accordingly, it is, on this 3d day of May, 1965,

ORDERED that Plenary Retail Consumption License C-81, issued by the City Council of the City of Trenton to Dina Angioletti, t/a Brass Rail, for premises 14 So. Warren Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, May 10, 1965, and terminating at 2:00 a.m. Saturday, May 15, 1965.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against John Velicka t/a Club 168 168 First Street Elizabeth, New Jersey Holder of Plenary Retail Consumption License C-191, issued by the City Council of the City of Elizabeth.	CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 14-15, 1965, he permitted gambling (wagering on pool games) on the licensed premises, in violation of Rule 7 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 Conrad's Wines & Liquors, Inc., Bulletin 1587, Item 4.

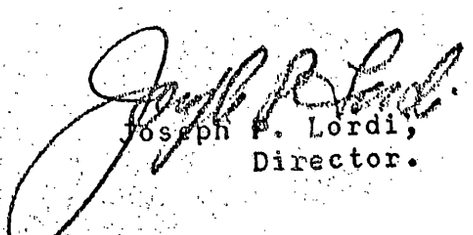
Accordingly, it is, on this 3d day of May, 1965,

ORDERED that Plenary Retail Consumption License C-191, issued by the City Council of the City of Elizabeth to John Velicka, t/a Club 168, for premises 168 First Street, Elizabeth, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, May 10, 1965, and terminating at 2:00 a.m. Thursday, May 20, 1965.

JOSEPH P. LORDI
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Modern Beverage Co.
1037 Bangs Avenue (rear)
Asbury Park, N. J.
Application filed June 16, 1965 for a State Beverage Distributor's License.



Joseph P. Lordi,
Director.