

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

BULLETIN 1516

JUNE 6, 1963

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- (d) No public need or necessity was shown.
- (e) There are sufficient places for the purchase of Alcoholic Beverages in the area.
- (f) The placing of a liquor store in that particular location would tend to decrease the property value.
- (g) The location in question is near a public school and is an area where loitering and abuse by persons using and consuming alcoholic beverages has already been a police problem, which said problem would tend to be increased.'

"The Committee is composed of five members. At a special meeting on January 2, 1963, Philip Katz (one of the members of the Committee) disqualified himself from participating in the hearing because his father-in-law was an objector. Committeemen Brown and D'Zio voted to approve, and Committeemen Gertner and Bartolf voted to deny the transfer. Under substantially similar circumstances it has been held by this Division that, in the event of a tie vote of its members, the action of the local issuing authority constitutes a denial of appellant's application. Pasqua and Vecchione v. Weehawken, Bulletin 1363, Item 1.

"The members of the Committee who had voted on the transfer in question did not appear at the instant hearing. However, the reasons for their respective votes are contained in the resolution adopted by the Committee (Exhibit A-1 in evidence) and are as follows:

'Mr. Brown and Mr. D'Zio voted for the granting of the transfer, stating generally that the relocation was in the same geographical area as the previous location; that this is not a new license, but a transfer of an existing one, and therefore does not increase the licenses in the community; that the plans for the remodeling of the building would be an improvement to the existing area; that Mr. Abramson has always run his business in an orderly manner and that there would be no detriment to the community and in fact the applicant showed a hardship in that he has to give up occupancy in the building in which he is located, so that in any event, it would probably be necessary to transfer said license to some other location in the community.

'Mr. Bartolf and Mayor Gertner objected to the transfer stating generally that they were concerned with the objections of property owners across the street, namely; Mrs. McKelvey and Mr. Perlus; that the area for which the application is made is a somewhat congested area where loitering had been a problem, and that the transfer might increase said problem; that no hardship was shown, as the license could be transferred to other areas; and that no necessity or benefit to the community or to the particular area in question was established by the applicant and the placing of a liquor store in that particular location would tend to decrease the property in the neighborhood; and that it is near a school.....'

"Seymour Abramson (one of the appellants) testified that the proposed location is on the opposite side of Monmouth Avenue

'about 300 feet from the existing liquor store;' that the area is zoned for business; that adjacent to the proposed premises a parking lot will be available for use of appellants' customers. Seymour Abramson, when asked on cross examination about the number of children in the area of the present premises and the proposed premises stated, 'Well, what it is is that there is a candy store located right next to the present liquor store, the Spot, and all the children congregate there. That's a large area for them to congregate. It's a hangout for them. That's what it is. And these children have cars, a good deal of them do today, and they park their cars out there in the street. They removed the parking meters from that area and they remain there after school until they come home, the cars are still there, all the parking spaces are taken and they hang out in front of the place, they hang out on the streets there and there's no parking available. If I was to move in there, there would be no parking for my customers because these things are taken.'

"Philomena McKelvey, residing across the street from the proposed premises, testified that next to her home on Fourth Street there is presently a liquor store, and it is her opinion that there is no need for another liquor outlet in the neighborhood. She also testified that at the present time undesirable 'elements' are attracted into town and that she is consistently complaining to the police about the conditions in the area.

"Stanley E. Brower (Township Clerk) testified that he measured the distance from the Hebrew School on Fourth Street to the proposed location on Mormouth Avenue and that the said distance is 273 feet. The distance from the existing location to the school he found to be 331 feet. He described the proposed premises and the area thusly:

"Well, it's a part of a store and apartment building. The testimony that's already on the record is that it has been a food store for a good many years with a D-license and this particular spot at 410 is at the present time a rundown store that has been used for various businesses in the past few years and is now empty. The rest of the street to the next corner are rooming houses, private dwellings or rooming houses, on the west and there are private dwellings and rooming houses on the east.'

"Brower further testified that, although he had no actual knowledge of complaints made to the police authorities regarding matters in the area involved, he knew of no violations committed by liquor licensees in the area, and that the licenses were renewed yearly without objections being made by the Police Department.

"Under the circumstances appearing herein, wherein the denial of the transfer resulted from a tie vote of the members of the Committee, it would serve no useful purpose to remand the matter to the Committee for further action on its part. Thus it will be necessary to examine the record presented herein and consider the evidence adduced so that a recommendation may be made in conformity therewith.

"One objector appeared at the hearing herein and registered an objection based on the conditions she alleges exist at the present time. If conditions in the area are as bad as Mrs.

McKelvey claims, it is strange that she was the sole objector to appear and voice opposition to the transfer. It is merely conjecture on the said objector's part that, if the transfer was approved, conditions may become worse.

"In view of the lack of substantial evidence regarding conditions alleged to exist, it appears immaterial whether the licensed premises is located at the present site or at the proposed location. The situation in this respect is closely comparable to that in Conn v. Kearny, Bulletin 173, Item 1; Leonia Liquors Inc. v. Leonia, Bulletin 766, Item 1; Grower v. Hackensack, Bulletin 789, Item 1; Costa v. Verona, Bulletin 501, Item 2. In the latter case the Commissioner said:

'Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained'

"In view of the fact that the present location of the license and the proposed location may be considered in the same general area, the transfer thereof would not increase the number of outlets for the sale of liquor to the public in that area. Thus a denial of the transfer appears to be unreasonable.

"It is recommended that the action of the respondent be reversed and, if alterations of the proposed building appear satisfactory to the proper authorities, that the transfer applied for by appellants be granted."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 8th day of May 1963,

ORDERED that the action of the respondent, in effect denying the application for transfer, be and the same is hereby reversed, and the respondent is directed to transfer the license pursuant to the conclusions herein.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. APPELLATE DECISIONS - 737 HIGH STREET CORPORATION v. NEWARK and PINKY'S DELI-LIQUORS, INC.

737 HIGH STREET CORPORATION,)	
ET ALS.,)	
Appellants,)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY OF)	
NEWARK, and PINKY'S DELI-LIQUORS, INC.)	
Respondents.)	

Zucker, Brach & Eichler, Esqs., by William L. Brach, Esq.,
Attorneys for Appellants.

Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for
Respondent Municipal Board.

Samuel Raffaello, Esq., and Harry Castelbaum, Esq., Attorneys
for Respondent Pinky's Deli-Liquors, Inc.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control (hereinafter Board) when, by unanimous vote, it approved an application to transfer respondent licensee's plenary retail distribution license from 118 Spruce Street to 729-735 High Street, Newark.

"The petition of appeal contends that, in approving the transfer, the Board's action was erroneous in that it was arbitrary and contrary to law.

"The Board in its answer neither admitted nor denied the allegations aforementioned and left the appellants to their proof.

"The respondent licensee (hereinafter licensee) denied each and every allegation aforementioned and avers that the Board was justified in its approval of the transfer based on the testimony adduced at the hearing before said Board.

"The hearing was held de novo and the parties hereto agreed to present the appeal upon the transcript of the proceedings before respondent Board, with additional testimony to be offered by appellants pursuant to Rules 6 and 8 of State Regulation No. 15.

"It appears from the evidence herein that, during the past four and one-half years, licensee has operated a delicatessen in conjunction with the sale of package goods at 118 Spruce Street. The latter property has been acquired through condemnation proceedings by the Newark Housing Authority and the licensee had been notified to vacate the premises. Philip Pincus, secretary of the licensee corporation, testified that various efforts were made to obtain a store for use in said business but, for one reason or another, the locations inspected were unsuitable therefor. Finally arrangements were made by the licensee for the occupancy of the proposed premises at 729-735 High Street, located at corner of High Street and Spruce Street, a distance of

two blocks from its former establishment.

"George Oberlander (a witness called on behalf of appellants) testified that he is a professional city planner employed by the City of Newark, and that the area in question 'is for residential use on the west side of High Street as well as on the east side of High Street as part of the South Broad Street Urban Renewal project. Properties are not to be acquired on either side but the intent is to upgrade the properties if they need improvement, in other words, rehabilitate the properties and to keep them within the intent of the zoning scheme which is residential and not any other use.' Oberlander further testified, 'Well, I have no objection to the particular establishment nor the particular business from a planning board of view. We are concerned with locating these establishments in a commercial zone. That's my whole interest in the whole discussion; in other words, locating licenses in commercial areas rather than in residential areas.'

"Several witnesses residing in the area appeared before the respondent Board and made general objections to the proposed transfer of the license to these premises. At the instant hearing Jack White (assistant administrator of St. Barnabas Hospital) testified that his objection to the transfer in question, on behalf of the hospital located less than a block away, was because of the hazard which might be created to the employees of the institution. He further testified that the Hospital is planning to move out of the city and a study is now being made of the possibility of converting the buildings into a nursing home.

"After examining the voluminous testimony of each objecting witness, no valid reason appears sufficient to reverse the action of the Board. The transfer of the license would neither aggravate the number of liquor licenses nor would the license in question be a detriment to the area. The objection by the residents of the dwellings in the section that the patrons would cause disturbances in one way or another is merely conjectural. If the licensed business is properly conducted it should not be more objectionable than any other type of business. If the licensee fails to meet its responsibility, its license would be subject to suspension or revocation by the liquor authorities.

"The appellants contend that the proposed premises are in a residential zone which prohibits the operation of a type business as is to be conducted by the licensee.

"The law is clear that a transfer of a license is not improper or the approval thereof by the issuing authority improper because a zoning ordinance prohibits a liquor licensed premises at the proposed location. The issuance of a license or the grant of a transfer does not permit the licensee to operate without complying with all the applicable statutes and ordinance. Even though a variance be necessary to operate a licensed premises, it is not required to be obtained before the grant of a transfer. Lubliner et al. v. Paterson et al., 59 N.J. Super. 419 (1960).

"There appears to be no contention on the part of the appellants that the members of the Board were improperly motivated. The burden of proof to establish that the action of the Board was erroneous rests with appellants. Rule 6 of State Regulation No. 15. Young Men's and Young Women's Christian Assn. of Newark v. Newark et al., Bulletin 1367, Item 4. The evidence presented

indicates that the Board carefully considered the matter before arriving at its decision. In cases of this kind, the Director's function is to determine whether reasonable cause exists for the Board's opinion and, if so, to affirm its action. Zelenka et als. v. Clifton et al., Bulletin 1361, Item 3; Fanwood v. Rocco, 59 N.J. Super. 306. Aff'd. 33 N.J. 404 (Sup.Ct. 1960).

"After examining all of the evidence and exhibits herein, I conclude that the appellants have failed to sustain the burden of proof in showing that the action of the Board was erroneous. Rule 6 of State Regulation No. 15; Marchi et als. v. Clifton et al., Bulletin 1385, Item 1; Shiloh Baptist Church v. Atlantic City et al., Bulletin 1387, Item 2; Grando v. Buena et al., Bulletin 1447, Item 1.

"Pursuant to the reasons aforesaid, it is recommended that an order be entered affirming the action of the respondent Board and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument in substantiation of the exceptions were filed with me by appellant's attorney pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the transcripts of the testimony, the exhibits, the Hearer's Report and the exceptions and argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 30th day of April, 1963,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PHILLIP R. MITCHELL, SR. t/a MITCHELL'S TAVERN 79 West Central Avenue Wharton, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Wharton.)

Louis Winer, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 7, 1963, he permitted the acceptance of horse race bets, in violation of Rule 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective February 14, 1958, for sale in violation of State Regulation No. 38.

The prior record of suspension within the past five years for dissimilar violation considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Campbell's Cafe, Inc., Bulletin 1432, Item 5.

Accordingly, it is, on this 6th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Wharton to Phillip R. Mitchell, Sr., t/a Mitchell's Tavern, for premises 79 West Central Avenue, Wharton, be and the same is hereby suspended for twenty-five (25) days, commencing at 1:00 a.m. Monday, May 13, 1963, and terminating at 1:00 a.m. Friday, June 7, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp.#228)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Consumption License C-35)
 issued by the Board of Commissioners)
 of the Township of Lyndhurst to)

ON PETITION
 ORDER

PATSY MONTAGNA)
 t/a PADDY'S BAR & GRILL)
 507 Valley Brook Avenue)
 Lyndhurst, N. J.)

 Anthony C. Meola, Esq., Attorney for Petitioner.

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on April 18, 1963, the licensee-petitioner was fined \$50 and \$5 costs in the Lyndhurst Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on March 15, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term, R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the municipal issuing authority has suspended the license for five days commencing May 13, 1963, after confessional plea to a charge in disciplinary proceedings alleging the same sale to the minor. Hence, I shall lift the automatic suspension in anticipation of the service of the municipal suspension. Re Began, Bulletin 1492, Item 4.

Accordingly, it is, on this 7th day of May, 1963,

ORDERED that the statutory automatic suspension of said license C-35 be and the same is hereby lifted, effective immediately.

EMERSON A. TSCHUPP
 ACTING DIRECTOR

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN GROCERY STORE - DEPOSIT POSTED IN LIEU OF RETAIL VALUE OF FURNISHINGS, EQUIPMENT, AND MERCHANDISE ORDERED FORFEITED - CERTAIN PROPERTY RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on)	
January 22, 1963 of a quantity of)	CASE NO. 10,985
alcoholic beverages, \$23.00 in cash,)	
various furnishings, fixtures,)	ON HEARING
equipment, and foodstuffs in a grocery)	CONCLUSIONS
store at 4909 Bergenline Avenue, in the)	AND ORDER
Town of West New York, County of Hudson)	
and State of New Jersey.)	

Abraham Miller, Esq., by Michael H. Hochman, Esq., Attorney for claimants.

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

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 and further pursuant to a stipulation, dated January 24, 1963, signed by John La Rosa, to determine whether a quantity of alcoholic beverages, \$23.00 in cash, fixtures, furnishings, foodstuffs and equipment, described in an inventory hereinafter referred to and marked Schedule 'A' herein, seized on January 22, 1963 in John La Rosa's grocery store and at premises located at 4909 Bergenline Avenue, West New York, N.J., constitute unlawful property and should be forfeited; and further to determine whether the sum of \$2,000.00, representing the retail value of said fixtures, furnishings, equipment and foodstuffs, exclusive of the alcoholic beverages and \$23.00 in cash, paid under protest by John La Rosa, upon said stipulation, should be forfeited or returned to him.

"When the matter came on for hearing pursuant to R.S. 33:1-66, John La Rosa, represented by counsel, appeared and sought the return of the money deposited by him on the basis of the stipulation herein signed.

"William Vargas, a claimant, also appeared and sought the return of two and one-half gallons of wine which was seized by the agents of this Division in the basement of the said premises.

"At the outset of this hearing, counsel for La Rosa made an application to adjourn the same for the stated reason that there were criminal charges pending against his client arising out of his alleged sale and possession of the seized alcoholic beverages. He urged that this matter be adjourned until the claim is disposed of because '...the testimony he gives here could be used against him in that criminal proceeding'.

"This motion was denied for the reason that these proceedings are civil in nature, relating solely to the property in question and are not based on the same issues as are involved in the criminal proceedings. The burden of proof is different, since it is necessary for the Division to prove its case in this action by a preponderance of its evidence, whereas, in the criminal

proceedings against the individual, guilt must be established beyond a reasonable doubt.

"Also, it should be noted that it has been the policy of this agency not to adjourn hearings in forfeiture proceedings because of any pending criminal matter, for the reasons herein stated.

"The established facts, as reflected in the testimony of the ABC agents are as follows: On Sunday, January 13, 1963, Agent C purchased one gallon of homemade wine from Alfino La Rosa, age 74, in the presence of his son, John La Rosa, age 36, who was the proprietor of the subject grocery store located at 4909 Bergenline Avenue, West New York, New Jersey. These premises consist of a two-story brick building. The grocery store is located on the first floor of the said building, and there is a basement used by the grocery store for storage of part of its inventory; the basement has an entrance through a trapdoor in front of the building and another entrance in the rear of the building.

"The agent was charged \$2.40 for the said wine, which he paid to the elder La Rosa.

"On Tuesday, January 22, 1963 Agent C returned to the subject premises and again purchased from Alfino La Rosa a gallon of homemade wine, in the presence of claimant, paying therefor with three single dollar bills, the serial numbers of which had been previously recorded. He again was charged \$2.40; La Rosa placed the bills in the cash register and returned sixty cents in change to the said agent.

"Upon leaving the store, Agent C rejoined Agents S and B and he reentered the premises in the company of these two agents. After identifying themselves, they examined the cash register and found the three above mentioned dollar bills therein. Immediately thereupon, the other two agents left the premises and obtained a search warrant from the Magistrate of West New York Municipal Court; and upon their return in the company of local police officers made a search of the entire premises, including the basement.

"In the basement they found two full sealed gallon bottles labelled Opici and one and one-half gallons of homemade wine. In the kitchen in the rear of the store were found 16 bottles of Cinzano Vermouth, fully sealed; one-half gallon of alleged illicit anisette; a four-fifth quart bottle labelled Grant's Scotch Whiskey; and a four-fifth quart bottle labelled G & D Marsala Wine.

"Alfino La Rosa admitted to the agents that he had sold the gallon of wine. Both La Rosas were arrested by the agents, charged with the sale of alcoholic beverages without a license and John La Rosa was charged with possession with intent to sell in violation of R.S. 33:1-50(a & b). They were released, in bail, pending arraignment in the West New York Municipal Court.

"The agent further testified that an examination of the records of this Division disclosed that no permits were issued to either of the La Rosas or to the premises in question, authorizing the sale of alcoholic beverages.

"A chemical analysis of the seized wine offered under the certification of the Acting Director, as authorized by R.S. 33:1-37, indicates that it is a wine fit for beverage purposes with an alcoholic content by volume of 9.8 percent.

"On cross examination, Agent C stated that he had made three separate visits to the premises and purchased wine on each of those occasions. On the first occasion of his visit, January 13th, he observed a sale of wine to a customer.

"This agent further clarified the position of John La Rosa in the store on January 22nd. It appeared that the agent asked claimant for a gallon of wine and the claimant told the agent to wait for his father who was then occupied in preparing a money order for a customer, a service rendered by the claimant. Thereupon, his father waited upon him and upon ascertaining that he wanted to purchase some wine, proceeded to the basement and returned shortly thereafter with the said wine. Alfino La Rosa, in a conversation with this agent on that day, stated that he had personally made the wine, and kept it in the basement.

"Agent C's testimony was corroborated in all essential details by Agent B with respect to the activities which transpired in his presence on January 22nd. Particularly significant was the corroboration by this agent of the admission made by claimant that this wine was sold to Agent C on that date.

"The affidavit of mailing and affidavit of publication, the original stipulation signed by the claimant, and the certification that no license had been issued by the State or local authorities to the claimant to sell alcoholic beverages were also received in evidence with the consent of counsel for claimant.

"Alfino La Rosa, called as a witness on behalf of the claimant, testified that he had previously been the proprietor of the grocery store and that he sold the same to his son, the claimant herein, about seven years ago. He comes to the store frequently to assist in its operation. His explanation of the transactions is as follows: The agent had come into these premises on three occasions and purchased various groceries and dairy products. The agent told him that he would like to have some homemade wine, and in the spirit of friendship, he gave him a gallon of wine on each occasion as a present without charge, carefully explaining, however, that the wine was not very good, that it was '...like vinegar.'

"On January 22nd the agent came into the premises and obtained the gallon of wine. Explained La Rosa, 'I come in and he take three dollars and threw it on the counter, three single dollar bills, without a reason. I don't know no money. I got trouble. He threw three dollars on the counter and walk out.' He categorically denied that he ever sold wine to anybody.

"On cross examination, this witness reasoned that the \$2.40 may have represented the total sum due for purchases of cheese although he could not state exactly how he arrived at that figure. His explanation for giving the wine to the agent was that he wanted to make a good customer and perhaps encourage him to return again for other purchases.

"John La Rosa, the claimant herein, stated that he was in the store on January 22nd but did not observe the transaction to the agent. He also denied any knowledge of any wine in the basement, or that there was any wine stored behind the counter in the

grocery store.

"On cross examination, the following significant testimony was elicited:

' Q Do you remember on January 22 Agent C came into the premises and he said to you he wanted to buy some wine and you said, "Pop is busy with a money order. As soon as he finishes he will take care of you"? A. Something to that effect, yes.'

"The evidence herein clearly and convincingly supports the Division's contention that the claimant possessed alcoholic beverages, intended the same for unlawful sale and that they were, in fact, sold by his father in his presence without the statutory requisites. Hence, such beverages were illicit. R.S. 33:1-1(i). The large stock of alcoholic beverages found in the grocery store proper, coupled with the assertion by the claimant that he was unaware of the large stock of wine in the store itself, creates a serious doubt as to his veracity and compels me to discredit his entire testimony. On the other hand, the testimony of the agents is convincing and persuasive that both the claimant and his father admitted that they had sold the illicit wine to the ABC agent.

"Therefore, such illicit alcoholic beverages and the furnishings, fixtures and equipment and all of the other property seized in the establishment, including the cash, constitute unlawful property and are subject to forfeiture. Seizure Case No. 10,898, Bulletin 1500, Item 2.

"The testimony further reflects the fact that the marked three one-dollar bills were clearly commingled with the other cash found in the cash register. A preponderance of the believable evidence imperatively requires a recommended finding that the claimant's application for the return of the deposit be denied, and that instead, an order be entered forfeiting the \$23.00 in cash; and that the sum of \$2,000.00 deposited by this claimant under protest, upon stipulation, pursuant to R.S. 33:1-66 likewise be forfeited and disposed of in accordance with law. Seizure Case No. 10,321, Bulletin 1377, Item 3; Seizure Case No. 10,557, Bulletin 1419, Item 3; Seizure Case No. 10,500, Bulletin 1411, Item 6; R.S. 33:1-1(y); R.S. 33:1-2.

"William Vargas appeared at this hearing and claimed the return of two and one-half gallons of wine which were seized in the basement of these premises on the date in question. Vargas occupies an apartment on the upper floor of this building. He states that he had purchased this wine in September 1962, and had stored the same in a separate part of the basement reserved for him. There is a partition between that part of the basement and the part used by the claimant, La Rosa. Two of these bottles were unopened and one had been partially used.

"On cross examination, he admitted that these were the only items stored in the basement and the reason that he stored it there was that he had purchased the items for Christmas and had taken a trip at that time to Puerto Rico to visit his relatives. Consequently, he did not want to leave the wine in his apartment. He asserted that there was an entrance in the rear of the basement leading directly to his apartment and he had no contact or connection with the other part of the basement belonging to La Rosa.

"There is no evidence in this case to suggest that this claimant knew that La Rosa possessed any illicit alcoholic beverages or was engaged in the illicit sale of same. In any event, it is clear that the alcoholic beverages which he claims are his, were stored in another part of the premises, separated by a partition and that he had no connection with the business of the claimant, La Rosa. While I commend the zealousness of the agents in making a thorough search of the entire basement, and seizing this property as well, fairness to the claimant dictates that his claim to the return of this property be recognized.

"Under the circumstances, I am satisfied that this claimant is the bona fide owner of the alcoholic beverages in question and recommend that the same be returned to him. Cf. Seizure Case No. 10,444, Bulletin 1391, Item 5; Seizure Case No. 10,955, Bulletin 1498, Item 10; Seizure Case No. 9919, Bulletin 1283, Item 8."

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 9th day of May, 1963,

DETERMINED and ORDERED that the alcoholic beverages claimed by William Vargas shall be returned to him; and it is further

DETERMINED and ORDERED that the seized property, including the \$23.00 in cash, more fully described in Schedule "A", attached hereto, constitutes unlawful property, and that the sum of \$2,000.00, representing the retail value of such fixtures, furnishings and equipment, (exclusive of the alcoholic beverages and \$23.00 in cash) as set forth herein, which were returned to John La Rosa, paid under protest to the Director of the Division of Alcoholic Beverage Control by the said John La Rosa, together with the \$23.00 in cash be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the 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.

EMERSON A. TSCHUPP
ACTING DIRECTOR

SCHEDULE "A"

- 4 and one-half gallons of wine
- 17 - bottles of wine
- 16 - cases of soda
- 1 - 1/2 gallon of anisette
- 1 - 4/5 quart bottle of whiskey
- Miscellaneous furniture, fixtures, foodstuffs and equipment.
- \$23.00 in cash

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA -
 SUSPENSION LIFTED FOR ONE DAY.

In the Matter of Disciplinary)
 Proceedings against)

SHORT HILLS CLUB)
 9-37 Lake Shore Drive)
 Millburn)
 PO Short Hills, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-1003, issued by the)
 Director of the Division of Alcoholic)
 Beverage Control.)

 John Barker, Esq., Attorney for Licensee.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE ACTING DIRECTOR:


Licensee pleads non vult to a charge alleging that on
 March 13, 1963, it 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.

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 Szymanski, Bulletin
 1505, Item 7.

In connection with the entry of the plea, the licensee
 requested imposition of penalty after May 11th, when a large social
 affair is scheduled, but also requested that the effect of any
 suspension imposed be lifted for one day, viz., Sunday, May 19th,
 to permit the conduct of a previously arranged social affair at
 which alcoholic beverages will be served. Had the request been
 made after the penalty had been imposed, it would normally have
 been granted. For good cause appearing, I shall grant the request
 made in advance. Re Shore Motel, Inc., Bulletin 1513, Item 3.

Accordingly, it is, on this 6th day of May, 1963,

ORDERED that Plenary Retail Consumption License C-1003,
 issued by the Director of the Division of Alcoholic Beverage
 Control to Short Hills Club for premises 9-37 Lake Shore Drive,
 Millburn, be and the same is hereby suspended for ten (10) days,
 commencing at 2:00 a.m. Monday, May 13, 1963, and terminating at
 2:00 a.m. Sunday, May 19, 1963, and again commencing at 2:00 a.m.
 Monday, May 20, 1963, and terminating at 2:00 a.m. Friday, May
 24, 1963,


 Emerson A. Tschupp
 Acting Director