

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

August 3, 1949.

BULLETIN 850

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 850

August 3, 1949.

1. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

A. M. MUCCI POST #2685, VFW
512 Clinton Street
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-30 for the 1948-49 licensing year and Club License CB-42 for the 1949-50 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads not guilty to the following charge:

"On Sunday, March 20, 1949, you sold, served, delivered and suffered and permitted the sale, service and delivery of alcoholic beverages on your licensed premises after 2:00 a.m., in violation of Section 5 of an ordinance concerning alcoholic beverages, adopted by the Board of Commissioners of Camden on December 27, 1934, which prohibits such activity between 2:00 a.m. on Sunday and 7:00 a.m. the following Monday."

"B...", a Camden City police detective, testified, on direct examination, that on Sunday, March 20, 1949, he and a fellow detective investigated defendant's premises; that they looked the place over from about midnight to 4:00 a.m.; that between 2:00 a.m. and 4:00 a.m. "over a dozen" persons entered the licensed premises; that the detectives, after so observing the premises from the outside, entered therein between 4:10 a.m. and 4:30 a.m.; that they found one "N..." in charge; that "N..." told them he was the principal owner of the defendant Post; that twenty-five patrons were in the premises, some sitting at the tables and some standing near the bar; that it appeared some of the patrons had beer before them and some had small glasses of liquor; that some of the beer was in bottles and some was in glasses; that everyone in the place was arrested and taken to police headquarters where the detectives obtained a signed statement from "N..."

A duplicate original of the signed statement (hereinafter to be referred to in detail) was offered and admitted in evidence, without objection.

"B...", who revealed his identity and acted promptly after entering the licensed premises, testified that he did not see any sale, service or delivery of alcoholic beverages, and did not see "any money laying around" or see anyone "flash any money for any purpose at all there".

The person hereinabove referred to as "N...." testified for defendant, on direct examination, that he held the position of Vice Commander of defendant Post and that he was tending bar at defendant's premises on March 20, 1949. On direct examination "N...." was asked: "And will you tell us until when you were tending bar?" He answered: "Well, it was my turn to take the bar on Saturday. So I went ahead and started at 6:30 that night. It was the time we opened the Club. I worked until 2:00 and people had so much beer before them that they had. I told them to get out of the place." Still on direct examination, "N...." was asked: "Now, did you sell, serve, or deliver any beer after two o'clock or any other alcoholic beverage?" He replied: "No sir." Asked: "At two o'clock was there a lot of beer left over?" he stated: "Yes. There was a lot of beer people had bought back and forth." Asked: "At two o'clock there was still a lot of beer on the bar and on the tables, is that right?", "N...." answered: "That's right."

It is timely to return, here, to "N....'s" signed statement obtained by the city's detectives.

The pertinent and probative portions of that statement are as follows:

(1) "Q Who served the patrons the drinks from 2:00 a.m. to 4:30 a.m. when the officers came in and made the arrests?"

"A I was."

(2) "Q Did you charge the regular price or were the prices boosted after 2:00 a.m.?"

"A I did not charge no prices after 2:00 a.m."

(3) "Q In other words, between 2:00 a.m. and 4:30 a.m. you gave the drinks free?"

"A Yes."

At the hearing defendant's attorney read Item (1) to "N...." and asked: "What did you mean by that?" "N...." replied: "I was in the building when they were drinking beer."

The attorney read the question and answer from Item (2) and asked: "Is that correct?" "N...." answered: "That's right."

The attorney then read the question and answer from Item (3) and asked: "Now, what do you mean by that?" "N...." replied: "Well, that was beer that they had there. I thought that that meant that they were drinking free." Then the attorney said: "Drinks they already had there, is that what you meant?", and "N...." said: "Yes sir." "N...." stated, further, that no money was in the cash register after 2:00 a.m.

On cross-examination "N...." was asked: "Did any patrons enter the premises between 2:00 a.m. and 4:00 a.m.?" He answered: "I don't know." When asked: "Did you see anybody leaving the premises during that time?", "N...." replied: "No." When asked: "What were you doing from 2:00 a.m. to 4:00 a.m.?", "N...." answered: "Well, I kept saying, 'Let's go', and whenever anybody got through with the beer and left, I would take the bottles off and try to get the rest of them, and I tried to hand people their hats and give them a little hint to leave."

Further, on cross-examination, "N...." testified that the statement obtained by the city detectives was his statement. Then he was asked: "Now, did you read the statement before you signed it?" He

answered: "I glanced over it." When asked: "And the questions were asked you and you answered them as Detective 'C...' asked the questions, is that right?", "N..." replied: "That's right." When asked: "Did you understand the question 'Who served the patrons the drinks from 2:00 a.m. to 4:30 a.m. when the officers came in and made the arrests?'" "N..." replied: "No, I didn't. I meant who were drinking beer." To the question: "Did you also think that when you read the statement?", "N..." replied: "I didn't read the question so clearly. I just glanced over it and signed it."

In the light of the circumstances and specific details of the record herein, I have been constrained to give that full record an especially careful, minute examination. Such examination makes it clear to me, beyond reasonable question, that although the testimony of this Division's witnesses did not directly prove sale, service and delivery of alcoholic beverages, defendant's guilt is abundantly evident. The bartender's signed statement, given on the very morning of the indicated occurrences and not after a period of studied reflection, speaks for itself. I am not impressed by the testimony designed to explain away the statement; indeed, I am convinced from the whole record that such testimony is altogether unworthy of credence. I am convinced, from the record before me and with particular consideration to the bartender's statement taken together with uncontroverted circumstances, that defendant is guilty of the charge of selling and serving alcoholic beverages in violation of the ordinance.

Principal and most significant of the uncontroverted circumstances adverted to are these: Over a dozen persons entered the licensed premises between 2:00 a.m. and 4:00 a.m., and the bartender saw no one leave the premises during that time. When the detectives entered, after 4:00 a.m., twenty-five patrons were in the premises (over a dozen of these having entered between 2:00 a.m. and 4:00 a.m.) Of these twenty-five, some had beer before them and some small glasses of liquor, and some of the beer was in bottles and some in glasses. In the face of the bartender's statement taken by the detectives and despite the indicated circumstances, defendant would have it believed that the patrons sat there for more than two hours drinking beer and liquor all of which was sold, served and delivered before 2:00 a.m.

Defendant's testimony stresses the fact that no money was in evidence when the detectives entered, and the bartender's signed statement emphasizes the point that between 2:00 a.m. and 4:30 a.m. the drinks were given free. Of course, a gift of alcoholic beverages by a licensee is a "sale". (Revised Statutes 33:1-1(w)).

I believe that the evidence is sufficient to establish defendant's guilt beyond a reasonable doubt -- as required in criminal proceedings. In these civil disciplinary proceedings, however, the required proof, to support a finding of guilt, must establish guilt by a preponderance of the evidence. (See Re Gahr, Bulletin 377, Item 7.) I find, pursuant to the overwhelming preponderance of the believable evidence, that defendant is guilty of selling and serving alcoholic beverages after 2:00 a.m. in violation of the city's ordinance.

The minimum suspension for a first violation arising from the sale of alcoholic beverages during prohibited hours is fifteen days. Re Italian American Citizen's Columbus Circle, Inc., Bulletin 834, Item 11. However, effective June 23, 1938, defendant's license was suspended for three days by the local issuing authority for permitting the sale of alcoholic beverages to non-members, and effective September 13, 1943, defendant's license was suspended for eighteen days by the State Commissioner of Alcoholic Beverage Control for permitting the sale of alcoholic beverages during prohibited hours on

Sunday and falsely answering a question in its application for renewal of its license (Bulletin 585, Item 7). Although both of the aforesaid violations occurred more than five years ago, the latter included a violation similar to that charged in the instant case. Under all of the circumstances I shall suspend the defendant's license for a period of twenty (20) days.

Although these proceedings were instituted during the 1948-49 licensing period, they do not abate but remain fully effective against the renewal license for the licensing year 1949-50. State Regulations No. 16.

Accordingly, it is, on this 21st day of July, 1949,

ORDERED that Club License CB-42, heretofore issued for the 1949-50 licensing year to A. M. Mucci Post #2685, VFW, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, for premises located at 512 Clinton Street, Camden, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. July 26, 1949, and terminating at 2:00 a.m. August 15, 1949.

ERWIN B. HOCK
Director.

- 2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES - INDECENT DANCE - HOSTESSES - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EUGENE J. & GERALD FERDINAND
T/a HOWDY CLUB
404 Washington Street
Newark 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-137 for the 1948-49 and 1949-50 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Saul C. Schutzman, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants plead non vult to charges alleging they (1) allowed, permitted and suffered lewdness and immoral activities in and upon their licensed premises, in that entertainers performed in a lewd, indecent and immoral manner, in violation of Rule 5 of State Regulations No. 20, and (2) allowed, permitted and suffered a female employee to accept beverages at the expense of and as a gift from customers, in violation of Rule 22 of State Regulations No. 20.

The file in the instant case discloses that, on Thursday night, June 2, 1949, on Friday night, June 3, 1949, and during the early morning hours of Saturday, June 4, 1949, two "entertainers", a man and a woman, respectively, danced in a suggestive manner. The male performer, attired in short "shredded" pants with a sash around his waist,

a bandana around his hair, and a straw hat on his head, did a dance referred to by the Master of Ceremonies as the "Huckle Buck". This dance consisted of bumps, grinds, the using of his hands on the private parts of his body in a suggestive manner and moving his body in close proximity to some drums in such a fashion as to simulate sexual intercourse. The female performer did a dance similar to that of the male performer, at one point getting down on the floor on all fours and moving her body in simulation of sexual intercourse.

These performances were executed in such a manner as to appeal to, arouse and inflame the passions of both male and female spectators and, as such, are lewd and immoral within the meaning and intentment of Rule 5 of State Regulations No. 20.

As I stated in Re Di Angelo, Bulletin 753, Item 4, wherein a "strip tease" and "fan dance" were performed by a female entertainer, "Entertainment, if presented upon licensed premises, must be of such character as not to be inimical to the public welfare and morals or to the best interest of the industry".

On June 3, 1949, the female entertainer aforementioned accepted drinks at the expense of the ABC agents.

Defendants have no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for a period of thirty days on Charge 1 (Re Di Angelo, supra), and twenty days on Charge 2 (Re Garman, Bulletin 582, Item 8). Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Although this proceeding was instituted during the 1948-49 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1949-50. State Regulations No. 16.

Accordingly, it is, on this 25th day of July, 1949,

ORDERED that Plenary Retail Consumption License C-137, issued for the 1949-50 licensing period by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Eugene J. & Gerald Ferdinand, t/a How'dy Club, 404 Washington Street, Newark, be and the same is hereby suspended for a period of forty-five (45) days, commencing at 2:00 a.m. August 1, 1949, and terminating at 2:00 a.m. September 15, 1949.

ERWIN B. HOCK
Director.

July 21, 1949

	1st Quarter			2d Quarter			3d Quarter			4th Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
ARRESTS:													
Total number of persons arrested	68			55			56			63			242
Licenses and employees	5			7			21			16			49
Bootleggers	61			47			35			47			190
ABC agent impersonator	2			1			-			-			3
SEIZURES:													
Motor vehicles - cars	3			1			1			1			6
- trucks	-			-			-			1			1
Still - over 50 gallons	1			1			-			1			3
- 50 gallons or under	2			2			6			13			23
Alcohol - gallons	1.16			25.00			-			665.08			691.24
Distilled alcoholic beverages - gallons	40.30			72.04			27.87			34.16			174.37
Mash - gallons	150.00			1,533.00			1,900.25			2,140.50			5,723.75
Wine - gallons	112.51			576.47			488.89			457.59			1,635.46
Brewed malt alcoholic beverages - gals.	92.31			215.27			36.37			152.67			496.62
RETAIL LICENSEES:													
Premises inspected	1,845			2,592			2,515			2,373			9,325
Premises where alcoholic beverages were gauged	1,851			2,864			2,837			2,438			9,990
Bottles gauged	30,778			47,201			49,603			42,118			169,700
Premises where violations were found	99			66			117			89			371
Violations found	123			71			155			189			538
Type of violations found:													
Unqualified employees	41			24			67			123			255
Other mercantile business	16			15			20			10			61
Probable fronts	14			5			10			12			41
Regs. #38 sign not posted	4			11			6			9			30
Gambling devices	13			2			7			3			25
Prohibited signs	3			2			5			9			19
Improper beer taps	11			1			-			5			17
Disposal permit necessary	1			5			3			2			11
Other violations	20			6			37			16			79
STATE LICENSEES:													
Premises inspected	20			112			82			32			246
License applications investigated	57			30			44			69			200
COMPLAINTS:													
Complaints assigned for investigation	902			875			945			940			3,662
Investigations completed	1,059			990			963			940			3,952
Investigations pending	-			-			-			136			136
LABORATORY:													
Analyses made	365			361			388			359			1,473
"Shake-up" cases (alcohol, water and artificial color) - bottles	19			23			30			28			100
Liquor not genuine as labeled - bottles	65			29			44			31			169
IDENTIFICATION BUREAU:													
Criminal fingerprint identifications made	73			47			53			54			227
Persons fingerprinted for non-criminal purposes	745			503			492			617			2,357
Identification contacts made with other enforcement agencies	633			404			434			591			2,062
Motor vehicle identifications via N. J. State Police teletype	28			29			29			25			111
DISCIPLINARY PROCEEDINGS													
Cases transmitted to municipalities	52			34			31			26			143
Violations involved:													
Sale during prohibited hours	23			18			10			7			58
Sale to minors	16			8			9			18			51
Permitting bookmaking on premises	3			2			2			2			9
Permitting brawls on premises	4			-			3			-			7
Sale to intoxicated persons	3			-			4			-			7
Sale to non-members by clubs	1			1			4			-			6
Mislabeled beer taps	3			-			-			-			3
Sale outside scope of license	1			-1			-			1			3
Permitting hostesses on premises	-			3			-			1			4
Permitting gambling (cards)	-			2			-			1			3
Permitting lottery activity (numbers)	-			2			-			1			3
Failure to afford view into premises during prohibited hours	-			1			1			-			2
Possessing contraceptives on premises	-			-			2			-			2
Permitting gambling (prize fight bets)	-			-			1			-			1
Licensee working while drunk	-			-			1			-			1
Permitting slot machines on premises	-			-			1			-			1
Permitting gambling (numbers writing)	-			-			-			1			1
Cases instituted at Division	47			65			45			37			194
Violations involved:													
Possessing illicit liquor	7			11			14			7			39
Fraud and front	5*			12*			5**			5			27
Sale during prohibited hours	6			7			5			7			25
Sale under Fair Trade price	6			6			5			3			20
Sale to minors	1			6			9			-			16
Permitting immoral activity on premises	2			7			2			2			13
Conducting business as a nuisance	2			4			2			1			9
Permitting hostesses on premises	1			3			1			3			8
Permitting pin ball machines on premises	2			1			0			5			8
Mislabeled beer taps	4			2			-			-			6
Sale to intoxicated persons	1			2			1			2			6
Hindering investigation	2			1			1			1			5
Sale outside scope of license	2			2			-			1			5
Transportation in unlicensed vehicle	4			1			-			-			5
Delivery without accompanying invoice	3			-			4			3			10
Sale on credit to retailer in default	1			5			-			-			6
Unqualified employees	-			1			1			3			5

DISCIPLINARY PROCEEDINGS (Cont'd) Cases instituted at Division (Cont'd)	1st Quarter		2d Quarter			3d Quarter			4th Quarter			Total
	July	Aug. Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
<u>Violations involved:</u>												
Delivery by wholesaler not supported by order	3		1									4
Failure to report retailer in default	1		2						1			4
Purchase from improper source	1		2									4
Sale to non-members by clubs	1		3									4
Furthering illegal activity	2											2
Permitting brawls on premises	1								1			2
Serving women at the bar	1								1			2
Failure to file notice of change in application	1								1			2
Solicitor giving inducement with sale to retailer	2											2
Delivery without bona fide order	1											1
Failure to afford view into premises during prohibited hours												1
Licensee working while drunk												1
Permitting bookmaking on premises												1
Permitting lottery activity (wheel of chance)	1											1
Permitting slot machines on premises												1
Sale by wholesaler under listed price	1											1
Wholesaler furnishing free goods to retailer	1											1
Wholesaler furnishing inducement with sale to retailer	1											1
Aiding and abetting unlicensed transportation	1											1
Failure to affix transportation insignia to vehicle	1											1
Transporting alcoholic beverages without accompanying invoice	1											1
Violation of special condition	1											1
Failure to report retailer off default	1		1									2
Failure of wholesaler to retain copies of orders												1
Failure to file contract of employment of solicitor												1
Employing solicitor without permit												1
Solicitor employed by retailer												1
Retailer participating in wash sale												1
Solicitor aiding and abetting sale by one retailer to another												1
Solicitor aiding and abetting wash sale												1
Solicitation beyond scope of permit												1
Permittee convicted of crime involving moral turpitude												1
Peddling alcoholic beverages from vehicle												1
Sale of alcoholic bevs. off licensed premises												1
Advertising below Fair Trade price												3
Employee working while drunk												2
Permitting gambling (cards)												1
Sale at combination price												1
Sale at discount												1
Displaying oversize price placards												1
Permitting lottery activity (raffle)												1
Sale contrary to conditions of permit												1
*2 include cancellation proceedings												
**1 includes cancellation proceedings												
Cases brought by municipalities and reported	11		13			15			13			52
<u>Violations involved:</u>												
Sale to minors	2		4			8			4			18
Permitting brawls on premises	4		4			3			5			16
Sale during prohibited hours	3		1			1			3			8
Conducting business as a nuisance	2		1									3
Permitting bookmaking on premises									3			3
Permitting gambling on premises						2			1			3
Sale to intoxicated persons						1						2
Failure to afford view into premises during prohibited hours						1			1			2
Violation of special condition	1											1
Permitting persons of ill repute on premises												1
Permitting hostesses on premises												1
Permitting solicitation for immoral activity												1
Permitting females to tend bar												1
Unqualified employees												1
Permitting noise on premises												1
Conviction of crime involving moral turpitude						1						1
Permitting immoral activity on premises									1			1
CANCELLATION PROCEEDINGS INSTITUTED AT DIVISION:	2											2
<u>Violations involved:</u>												
Issuance of license in excess of quota	1											1
Issuance of license to non-resident	1											1
HEARINGS HELD AT DIVISION:												
Total number of hearings held	132		120			99			110			461
Appears	52		43			12			15			122
Disciplinary proceedings	37		74			45			46			202
Eligibility	23		19			22			22			86
Seizures	10		8			8			17			43
Application for license	6		4			7			3			20
Tax revocation	1		1			3			6			11
Hearings on petition	3		1			2			1			7
PERMITS ISSUED:												
Total number of permits issued	7,914		3,904			2,236			2,350			16,404
Employment	2,118		331			318			337			3,104
Solicitors	3,038		359			367			273			4,037
Disposal of alcoholic beverages	511		332			329			205			1,377
Social affairs	1,181		1,137			921			1,227			4,466
Special wine	161		1,388			42			0			1,591
Miscellaneous	875		357			259			308			1,799

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN RESTAURANT - ALCOHOLIC BEVERAGES AND RESTAURANT FIXTURES AND EQUIPMENT ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on April 24, 1949 of a quantity of alcoholic beverages and various fixtures, furnishings, equipment and merchandise in a restaurant located at 346 Hawthorne Avenue, in the City of Newark, County of Essex and State of New Jersey.

Case No. 7425

ON HEARING CONCLUSIONS AND ORDER

- Herman C. Silverstein, Esq., Attorney for Max Kay and Charles Grossman.
James E. Masterson, Esq., Attorney for David Silverman.
Larry Zwillman, t/a Standard Amusement Co.
Newark Hotel and Restaurant Supply Co., by Bernard Greenberg.
American Mineral (Soda) Water Co., by Rubin Perlman.
Atlas Linen Service, Inc., by Eugene Dwyer.
New Jersey Candy Co., by Bernard Spitzer.
Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and pursuant to the terms of a bond hereinafter referred to, and further pursuant to the provisions of a stipulation entered into on April 29, 1949 by Max Kay and Charles Grossman, partners trading as Kiel's Model Bakery. The matter to be determined is whether a quantity of alcoholic beverages and various fixtures, furnishings, equipment and merchandise, itemized in a schedule attached hereto, seized on April 24, 1949 in David Silverman's restaurant located at 346 Hawthorne Avenue, Newark, N. J. constitute unlawful property and should be forfeited.

The property was seized by ABC agents after an alleged sale of alcoholic beverages to the agents in the restaurant by Silverman. Silverman did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

Pending seizure hearing in the case, part of the seized property, consisting of cake boxes, honey, cinnamon and coca, was returned to Max Kay and Charles Grossman, trading as Kiel's Model Bakery, upon payment by them of the sum of \$435.00, the retail value thereof, under protest, to the Director of Alcoholic Beverage Control, pursuant to R. S. 33:1-66. Max Kay and Charles Grossman have stipulated that the Director shall determine in these proceedings whether the money so deposited by them should be forfeited or returned to them.

Similarly, pending seizure hearing in the case, a music box which had been seized was returned to Larry Zwillman, trading as Standard Amusement Co., on posting in its stead, pursuant to R.S. 33:1-66(a), a surety bond made by Larry Zwillman, as principal, and New Amsterdam Casualty Company as surety. Under the terms of such bond, I am to determine in this proceeding whether or not the obligation of the bond should be enforced.

At the hearing in the case, appearances were entered by Max Kay, Charles Grossman and Larry Zwillman, and by the other claimants hereinbefore mentioned. David Silverman opposed forfeiture on the contention that he did not sell alcoholic beverages to the agents.

Two ABC agents testified to numerous visits they made to the restaurant to check a complaint that alcoholic beverages were being sold there unlawfully. They say that on practically every occasion they observed patrons with alcoholic beverages in front of them. On various occasions "Sam", otherwise unidentified, one of Silverman's employees, supplied these beverages, some of which he obtained from a licensed liquor store next door. The first time the agents purchased alcoholic beverages there was on March 29th, when they asked the waitress for a bottle of wine. The waitress spoke with "Sam", who came to the table, asked what the agents wanted, and then obtained a bottle of wine for them from the liquor store. The agents paid the waitress for the wine. Silverman was present in his restaurant on all of these occasions.

Continuing their story, the agents say that they were at the restaurant on April 23rd and April 24th, but "Sam" was not there. On April 23rd the agents asked a waitress for a bottle of wine after ordering a meal. She spoke with Silverman, who came over to the agents' table, discussed the wines available, and brought them a bottle of wine which he obtained somewhere in the restaurant. On April 24th the agents followed the same procedure, except that on this occasion Silverman came from a rear room with a bottle of wine, handed it to the waitress, who in turn brought it to the agents' table. The agents paid the waitress for the wine on both occasions.

It appears that five - one-gallon jugs of wine, three - one-half gallon jugs of wine, 34 - 4/5 quart bottles of wine, two pint bottles of wine, two - 4/5 quart bottles of whiskey, one pint of whiskey, and 24 cans of beer were in the restaurant, some in a steel cabinet in a rear room and some on ice in the kitchen.

This evidence is more than ample to establish that there was a practice of selling alcoholic beverages at the restaurant; that the ABC agents purchased alcoholic beverages there; and that the seized alcoholic beverages were intended for unlawful sale.

In defense, Silverman testified that while it is true that his patrons drank alcoholic beverages while seated in his restaurant, these patrons brought in their own liquor and were permitted to do so to encourage their patronage; that on some occasions "Sam" would purchase the liquor for a patron as an accommodation, and that such was his transaction with the agents on March 29th. It appears that Silverman's waitress served the accessories to the drinks, such as seltzer and glasses. As to the incidents on April 23rd and 24th, Silverman says that he treated the agents to a bottle of wine with their meals without additional charge.

The proprietor of a restaurant not licensed for the sale of alcoholic beverages may not sell, serve or traffic in alcoholic beverages under any pretext, directly or indirectly. For such a proprietor or his employees to do any of these is a misdemeanor. Furthermore, such a proprietor and his employees are prohibited from mixing, preparing or servicing any alcoholic beverages for customers even though the customers "bring in their own from outside". Re Todd, Bulletin 356, Item 11, Seizure Case No. 4919, Bulletin 363, Item 2; Re Cavallo, Bulletin 676, Item 4.

It seems unlikely that Silverman kept such a large stock of alcoholic beverages in his restaurant for his own personal use. The agents' testimony concerning their purchase of alcoholic beverages there is clear and detailed, and supported by surrounding circumstances. Moreover, even if Silverman's statement that he served the agents the wine without charge with their meals is accepted at face value, it constitutes a sale of alcoholic beverages. R.S. 33:1-1(w), Re Amato, Bulletin 726, Item 8, and cases cited therein.

The evidence establishes that Silverman not only permitted alcoholic beverages to be brought in from outside and served and serviced in his restaurant, but also sold alcoholic beverages to his patrons from his stock on hand in the restaurant. Hence, I find as a fact that the seized alcoholic beverages were intended for unlawful sale and constitute illicit alcoholic beverages. R.S. 33:1-1(i).

Such illicit alcoholic beverages and all personal property seized therewith in the restaurant constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. Silverman's practice of violating the liquor laws in the conduct of his business bars him from obtaining the return of any part of the property seized. Seizure Case No. 7383, Bulletin 845, Item 2.

The other claimants stand on a different footing. Silverman's establishment had the outward appearance of, and was actually a restaurant. Mr. Silverman apparently has no previous criminal record. The claimants placed their property in the restaurant in the routine normal course of business. Such claimants, or their employees, who visited the premises in the course of their duties, testified that at the time of day they generally were at the restaurant, they did not see any alcoholic beverages, nor anything else to indicate that alcoholic beverages were being sold there. I am satisfied that none of the claimants knew, or had any reason to suspect the unlawful liquor activities at the restaurant.

I am authorized to recognize the claim of such persons as have a bona fide and valid lien upon, or interest in the property seized. R. S. 33:1-66(f).

The New Jersey Candy Co. and American Mineral (Soda) Water Co. do not appear to have any lien or specific interest in the property which they seek to have returned. The candy company sold and delivered an order of cigars, cigarettes and playing cards to Silverman. This was an ordinary business transaction on credit. The candy company is merely a general creditor. Similarly, the soft drink concern is a general creditor. It delivered seltzer and soda to Silverman for which it charged him with the price of the beverages and a deposit on the empty bottles. If the bottles were not returned, it was either accepted as a hazard of the trade or else the company terminated its dealings with the customer. It has no specific lien on or interest in the empty bottles.

Hence, the application of the New Jersey Candy Co. for return of the cigars, cigarettes and playing cards and the application of the American Mineral (Soda) Water Co. for return of the empty bottles is denied. See Seizure Case No. 7397, Bulletin 846, Item 2.

The other claimants each have a lien on, or an interest in, the specific items which they seek to have returned. The bakery items are owned by Max Kay and Charles Grossman and were stored for their convenience in a part of the building not leased to Silverman. The music box is owned by Larry Zwillman. A six burner gas stove and a coffee vaculator were sold by Newark Hotel and Restaurant Supply Co. on a conditional sales contract with a reservation of title until payment was completed. The balance of the purchase price due on these items exceeds their present retail value. The table linen in the place was supplied and owned by the Atlas Linen Service, Inc. I shall recognize each of these claims, and afford them the appropriate relief from forfeiture.

Accordingly, it is DETERMINED and ORDERED that if on or before the 4th day of August, 1949, Newark Hotel and Restaurant Supply Co. pays the costs of the seizure and storage of the six burner gas stove and coffee vaculator, and the Atlas Linen Service, Inc. pays the costs

of the seizure and storage of the table linens, such items will be returned to them respectively; and it is further

DETERMINED and ORDERED that if on or before the 4th day of August, 1949, Larry Zwillman pays the costs of seizure and storage of the music machine, both Larry Zwillman, as principal, and New Amsterdam Casualty Company, as surety, will be released from liability to the Director of the Division of Alcoholic Beverage Control (except as to their indemnification of the Director against suits or claims of third persons) on their joint bond herein of April 26, 1949; and it is further

DETERMINED and ORDERED that the costs of seizure and storage of the bakery supplies be deducted from the \$435.00 paid by Max Kay and Charles Grossman and that the balance thereof be returned to them; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, including the cash, and the currency in the music machine, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it 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 State Director of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: July 25, 1949.

SCHEDULE "A"

- 5 - 1-gal. jugs of wine
- 3 - 1/2-gal. jugs of wine
- 34 - 4/5 qts. of wine
- 2 - 4/5 pts. of wine
- 2 - 4/5 qt. bottles of whiskey
- 1 - pint of whiskey
- 24 - cans of beer
- 12 - cases of small bottles of soda
- 18 - large bottles of soda
- 18 - bottles of seltzer
- 1 - Seeburg music machine #136673, currency therein and a wall speaker
- 87 - bundles of cardboard cake boxes
- 34 - 5-gal. cans of honey
- 1 1/2 - barrels of cinnamon
- 3 - barrels of cocoa
- 1 - Super Cold Frigidaire
- 1 - Conservador electric box
- 1 - deep freeze
- 1 - Garland gas range
- 1 - flat top gas range
- 1 - gas stove (Angliron)
- 1 - steam table and bowls
- 1 - G.E. electric fan, Model 5 KH 45 AB 1622B
- 16 - bundles of napkins and cloths
- 1 - Pepsi-Cola cooler
- 1 - steel cabinet
- 3 - Mirrors
- 1 - National cash register #2981977 and \$22.30 in currency therein
- 2 - electric fans

SCHEDULE "A" (Cont'd)

- 8 - Venetian blinds
- 6 - fluorescent lights
- 1 - show case
- 2 - coat racks and hangers
- 17 - bundles paper towels
- 1 - electric clock
- 1 - galvanized sink
- Miscellaneous chairs, tables, dishes, merchandise and other restaurant equipment as more specifically itemized in the inventory of property seized.

5. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENT - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALDO MARCIANI and RAYMOND MARCIANI)
T/a AL RAY FOOD & BEVERAGE CO.)
46 Moonachie Road)
Moonachie, N. J.,)

CONCLUSIONS AND ORDER

-----)
Holders of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Moonachie.)

Chandless, Weller, Kramer & Frank, Esqs., Attorneys for Defendant- licensees.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

"1. On Saturday, June 25, 1949, you used your licensed vehicle bearing transportation insignia to deliver alcoholic beverages without the driver having in his possession bona fide invoices or manifests stating the name of the purchaser of each item of alcoholic beverages and the kind and quantity of alcoholic beverages being delivered in said vehicle to each of said purchasers; in violation of Rule 3 of State Regulations No. 17.

"2. On the occasion aforesaid, you transported in your above mentioned licensed vehicle, while making deliveries, alcoholic beverages other than the amounts shown in invoices or manifests as aforesaid; in violation of Rule 3 of State Regulations No. 17."

On June 25, 1949, an inspector of the Division of Alcoholic Beverage Control observed a truck bearing transportation insignia which was being driven by Aldo Marciani, one of defendant-licensees. When the truck stopped to make a delivery, the inspector asked the driver for a case of beer, but was told by the driver that he could not sell from the truck. The inspector then identified himself and asked the driver for his invoices. The driver had in his possession a clip-board containing seventy-five invoices, but a complete check of the contents of the truck disclosed that there were four more gallons of wine and more whiskey on the truck than the invoices covered. It appeared also that one of these invoices, bearing a customer's name, did not set forth the correct quantity of beer delivered to said customer. The driver gave a statement to the inspector wherein he says that the orders covered by the seventy-five invoices were received by telephone, but that he could not explain how the excess amount of wines and whiskey were placed upon the truck because the truck was loaded by employees, and not by either of the partners.

Defendants have no previous adjudicated record. Under the circumstances I shall suspend the license for a period of ten days, less five days' remission for the plea entered herein, leaving a net suspension of five days. Re Notkin, Bulletin 838, Item 12.

Accordingly, it is, on this 1st day of August, 1949,

ORDERED that Plenary Retail Distribution License No. D-1, issued by the Borough Council of the Borough of Moonachie to Aldo Marciani and Raymond Marciani, t/a Al Ray Food & Beverage Co., for premises 46 Moonachie Road, Moonachie, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. August 8, 1949, and terminating at 9:00 a.m. August 13, 1949.

ERWIN B. HOCK
Director.

6. STATE LICENSES - NEW APPLICATIONS FILED.

Jacobi & Gallo Inc.
16th & Madison Sts.
Hoboken, N. J.

Application for Transportation License filed July 25, 1949.

Joseph Jacobitti
c/o "Johnny Landing"
Highlands, N. J.
SS "Flash King"

Application for Plenary Retail Transit License filed August 1, 1949.

ERWIN B. HOCK
Director.

STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1060 Broad Street Newark 2, N. J.

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1948 TO JUNE 30, 1949 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club	Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered	Number Licenses in Effect	Total Fees Paid	
	No. Issued	Fees Paid	No. Issued	Fees Paid		No. Issued	Fees Paid	No. Issued	Fees Paid				
Atlantic	488	\$199,004.79	69	\$ 23,216.80	16	\$ 1,433.08					573	\$ 223,654.6	
Bergen	820	296,248.59	295	77,722.55	57	5,653.56	57	\$ 2,265.07	11	\$ 2,943.84	7	1,233	384,833.6
Burlington	186	72,325.00	30	8,343.84	38	5,316.71	1	25.00				254	86,010.5
Camden	455	217,650.00	83	29,925.00	57	5,400.61			2	750.00	1	596	253,725.6
Cape May	133	65,750.00	11	3,700.00	15	1,383.83						159	70,833.8
Cumberland	81	35,300.00	13	3,500.00	29	3,872.20						123	42,672.2
Essex	1,376	759,313.91	349	203,608.00	99	13,033.15	32	1,650.00				1,857	977,605.0
Gloucester	107	33,950.00	14	3,300.00	14	1,391.30						135	38,641.3
Hudson	1,563	677,830.00	298	117,810.00	78	9,325.06	77	3,195.54			2	2,014	808,160.6
Hunterdon	79	22,820.00	6	1,637.50	5	600.00						90	25,057.5
Mercer	425	255,000.00	51	20,557.88	42	5,654.93	2	39.73	1	140.00	2	519	281,392.5
Middlesex	636	296,450.00	70	21,095.00	57	5,121.18	5	225.00				767	322,891.1
Monmouth	552	271,420.31	109	37,014.00	31	3,501.04	9	350.00	58	24,118.46	30	729	336,403.8
Morris	355	116,775.00	96	29,539.84	36	3,744.02	6	131.99	12	2,475.00	8	497	152,665.8
Ocean	187	104,936.04	44	17,824.49	12	1,300.00					2	241	124,060.5
Passaic	884	362,160.00	164	50,790.00	33	4,089.80	11	500.00			3	1,089	417,539.8
Salem	50	18,900.00	7	1,300.00	10	834.18						67	21,034.1
Somerset	187	78,016.21	33	8,900.00	20	2,083.80						240	89,000.0
Sussex	170	44,055.00	15	3,005.00	6	353.70			2	395.24	1	192	47,808.9
Union	546	291,100.00	142	56,900.00	61	6,993.29	20	987.50				769	355,980.7
Warren	148	41,370.46	17	3,307.50	26	2,574.04			4	485.96	2	193	47,737.9
Totals	9,428	\$4,260,375.31	1916	\$722,997.40	742	\$83,659.48	220	\$9,369.83	89	\$31,308.50	58	12,337	\$5,107,710.5

ERWIN B. HOCK, Director.

Respectfully submitted,
 John H. Michelson
 Deputy Director.

August 1, 1949

8.

ACTIVITY REPORT FOR JULY 1949

ARRESTS:		
Total number of persons arrested - - - - -		16
Licensees and employees - - - - -	1	
Bootleggers - - - - -	15	
SEIZURES:		
Still - 50 gallons or under - - - - -		2
Alcohol - gallons - - - - -		.12
Distilled alcoholic beverages - gallons - - - - -		3.75
Wine - gallons - - - - -		44.22
Brewed malt alcoholic beverages - gallons - - - - -		61.65
RETAIL LICENSEES:		
Premises inspected - - - - -		758
Premises where alcoholic beverages were gauged - - - - -		723
Bottles gauged - - - - -		12,618
Premises where violations were found - - - - -		19
Violations found - - - - -		21
Type of violations found:		
Unqualified employees - - - - -	6	
Probable front - - - - -	3	
Improper beer taps - - - - -	3	
Reg. #38 sign not posted - - - - -	1	
Other mercantile business - - - - -	1	
Disposal permit necessary - - - - -	1	
Other violations - - - - -	6	
STATE LICENSEES:		
Premises inspected - - - - -		16
License applications investigated - - - - -		22
COMPLAINTS:		
Complaints assigned for investigation - - - - -		273
Investigations completed - - - - -		282
Investigations pending - - - - -		140
LABORATORY:		
Analyses made - - - - -		105
"Shake-up" cases (alcohol, water and artificial color) - bottles - - - - -		2
Liquor found to be not genuine as labeled - bottles - - - - -		8
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made - - - - -		11
Persons fingerprinted for non-criminal purposes - - - - -		349
Identification contacts made with other enforcement agencies - - - - -		326
Motor vehicle identifications via N.J.State Police Teletype - - - - -		6
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		4
Violations involved:		
Sale during prohibited hours - - - - -	3	
Permitting brawls on premises - - - - -	1	
Employing female bartender - - - - -	1	
Cases instituted at Division - - - - -		15
Violations involved:		
Possessing illicit liquor - - - - -	3	
Delivery without bona fide invoices - - - - -	2	
Sale during prohibited hours - - - - -	2	
Fraud and front - - - - -	1	
Permitting bookmaking on premises - - - - -	1	
Permitting female impersonator on premises - - - - -	1	
Permitting brawls on premises - - - - -	1	
Permitting immoral activity on premises - - - - -	1	
Sale to minors - - - - -	1	
Sale to non-members by clubs - - - - -	1	
Sale under Fair Trade price - - - - -	1	
Solicitor employed by retailer - - - - -	1	
Cases brought by municipalities on own initiative and reported to Division - - - - -		4
Violations involved:		
Sale during prohibited hours - - - - -	2	
Hindering investigation - - - - -	1	
Permitting bookmaking on premises - - - - -	1	
Permitting lottery activity (numbers) - - - - -	1	
Permitting noise on premises - - - - -	1	
Sale to minors - - - - -	1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		29
Appeals - - - - -	6	
Disciplinary proceedings - - - - -	9	
Eligibility - - - - -	8	
Seizures - - - - -	6	
PERMITS ISSUED:		
Total number of permits issued - - - - -		5,789
Employment - - - - -	1,722	
Solicitors - - - - -	2,765	
Disposal of alcoholic beverages - - - - -	151	
Social affairs - - - - -		337
Special wine - - - - -		90
Miscellaneous - - - - -		724

ERWIN B. HOCK, DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FLORENCE HOLMES T/a RIVERVIEW INN Moorestown-Centerton Road Mt. Laurel Township P. O. Centerton, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7 for the 1948-49 licensing year and License C-6 for the 1949-50 licensing year, issued by the Township Committee of the Township of Mt. Laurel.

Benjamin Marmer, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she possessed illicit alcoholic beverages, namely, two quart bottles labeled "Seagram's Seven Crown Blended Whiskey", which bottles bore labels which did not truly describe their contents, in violation of Rule 28 of State Regulations No. 20.

On May 12, 1949, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined thirty-three bottles of alcoholic beverages on defendant's premises and seized the two bottles in question when field tests indicated the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist of the contents of the seized bottles confirmed the field tests.

Defendant denies tampering at any time with the contents of the seized bottles. Nevertheless, a licensee is responsible for any "refills" found in her stock of liquor.

Defendant has no prior record. I shall suspend defendant's license for the minimum period of fifteen days, less five days' remission for the plea, leaving a net suspension of ten days. Re Smith, Bulletin 827, Item 3.

Although this proceeding was instituted during the 1948-49 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1949-50. State Regulations No. 16.

Accordingly, it is, on this 1st day of August, 1949,

ORDERED that Plenary Retail Consumption License C-6, issued for the 1949-50 licensing period by the Township Committee of the Township of Mt. Laurel to Florence Holmes, t/a Riverview Inn, Moorestown-Centerton Road, Mt. Laurel Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. August 8, 1949, and terminating at 3:00 a.m. August 18, 1949.

Ernest T. Hoop

Director.