Director Davis
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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 1063 MAY 24, 1955

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ITEM

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

BULLETIN 1063 MAY 24, 1955

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (FEMALE IMPERSONATORS) - ALLOWING PREMISES TO BE CONDUCTED AS A NUISANCE - EMPLOYING FEMALE BARTENDER IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against Adele Kaczka & Angelina C. Trobiano, t/a N. Y. Bar, 20 Cross Street, Paterson 2, New Jersey, Holders of Plenary Retail Consumption License C-281, issued by the Board of Alcoholic Beverage Control for the City of Paterson. (see Note below)	CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On September 20, 1954, the following charges were preferred against defendants:

"1. On March 18, 19, 20, June 2, 18, 25 and September 16 and 17, 1954, you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On all the occasions aforesaid, you allowed, permitted and suffered lewdness and immoral activity on your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, in that you permitted numerous persons who appeared to be homosexuals to frequent and congregate on your licensed premises and there conduct themselves in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20.

"3. On March 19, 20, June 2, 18, 25 and September 16 and 17, 1954, you had in your employ a female bartender who was not the licensee or the wife of the licensee, in violation of Section 7 of a Resolution adopted by the Board of Aldermen of the City of Paterson on June 28, 1935, as amended December 5, 1938."

On December 15, 1954, the following supplemental charges were preferred against defendants:

Note: During the pendency of these proceedings, the local Board, after receipt of notice that the partnership had been dissolved, continued the license in the name of Adele Kaczka, t/a N. Y. Bar.

"1. On December 8, 9 and 10, 1954, you allowed, permitted and suffered female impersonators in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On all the occasions aforesaid, you allowed, permitted and suffered lewdness and immoral activity on your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, in that you permitted numerous persons who appeared to be homosexuals to frequent and congreate on your licensed premises and there conduct themselves in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20.

"3. On all the occasions aforesaid, you had in your employ a female bartender who was not the licensee or the wife of the licensee, in violation of Section 7 of a Resolution adopted by the Board of Aldermen of the City of Paterson on June 28, 1935, as amended December 5, 1938."

On October 11, 1954, defendants, through their then attorney, pleaded non vult to all charges. However, following a substitution of attorney, defendants withdrew their plea of non vult to Charges 1 and 2 of each set of charges and entered pleas of not guilty. They pleaded non vult to Charge 3 of each set of charges.

At the hearing on the contested charges, six ABC agents appeared and testified. In the following summary of their testimony and the comment thereon, each will be designated "Investigator" and will be referred to by the first initial of his last name, namely, "C", "G", "K", "H", "T" and "M". Their testimony, taken together, may be summarized as follows:

On all of the dates mentioned in the charges, one or more of the investigators visited the barroom of defendants' licensed premises. These visits were made at night and varied in duration from a half-hour to several hours. From time to time the following persons were tending bar, either alone or together: a man called "Riley", a woman referred to as "Ester", and a man called "Joe." The number of patrons varied from time to time, ranging from a half-dozen in the early part of the evening to approximately 50 later on, the vast majority of them being dressed in male attire.

The investigators, testifying with respect to their observations, stated that a large percentage of these male patrons, variously estimated at 60% to 90%, conducted themselves in an effeminate manner, walking, talking and moving their arms and bodies in a manner common to women, puckering their lips and speaking in high-pitched voices. These patrons gathered in small groups either at the bar, where one would stand behind another who was seated and would drape his arms around the latter in a caressing manner, or at the tables where they would sit in pairs holding hands. Many of them from time to time went to the "ladies' room" rather than the "men's room".

There is a juke box in the rear of the licensed premises and a small cleared space for dancing. The investigators observed male patrons (frequently those seated at the tables) dancing together in the manner customarily engaged in by a "couple" consisting of a male and a female and commonly known as "ballroom

dancing", where one of the partners (usually the male) "leads" and the other partner (usually the female) "follows". On only one occasion did the investigators see a couple consisting of a male and a female dancing on the licensed premises. During these dances, particularly those at slow tempos, the "partners" danced "cheek to cheek" with their bodies close together. On occasion, the "leader" (assuming the role of the male partner) would run his hand up and down the back of his partner (assuming the female role) and would place his leg between his partner's legs. The number of such male "couples" dancing at any one time was as high as 15. At the conclusion of the dance, the "partners" would return to the bar or to the table, as the case may be, where they would resume their intimate attitudes, frequently with their heads close together, caressing and giggling together. Frequently, the one who would assume the "lead" or male role in dancing was particularly attentive toward and waited on his "partner". On several occasions male patrons seated or standing at the bar were seen to hug and kiss each other and to whisper into each other's ears. On other occasions male patrons would greet other male patrons with expressions like "How are you, honey?", accompanied by a hug or kiss on the cheek or neck. All of this conduct took place in full view of the bartenders and, on many occasions, they watched and talked to the dancers. On one occasion, when defendant Adele Kaczka was present, a male patron performed a "solo" dance after which other male patrons swarmed around him and kissed him on the cheek. Thereafter, another male performed a modified "strip tease" during which he removed his shirt so that he was bare from the waist up. Some of the patrons dared him to take off his trousers but, after another male told him to stop, he discontinued his dance and put on his shirt.

At no time during the incidents hereinbefore related did anyone connected with defendants' licensed premises do anything or say anything in connection therewith. Indeed, both "Riley" and "Joe", the bartenders, themselves walked and acted in much the same manner as their effeminate male patrons and, although they spoke normally to the investigators, they used a high-pitched, effeminate voice when conversing with the groups of male patrons hereinbefore mentioned and "Ester", when asked by the agents whether these male patrons dancing together and hugging and kissing each other were "queers" or "fairies" or were "in love", ignored the questions. On one occasion, when the licensed premises was crowded with male patrons who behaved in the manner hereinbefore described, "Ester" asked "Joe", "Where do they all come from?" Some of the patrons referred to "Joe" as the "barmaid".

On March 20, 1954, while Investigators "C" and "M" were at the bar, a heavy-set male patron leaned against Investigator "M" and placed one arm around him and, with his other hand, rubbed the latter's thigh, meanwhile "groaning or moaning" something into his ear. The man used the word "love" and asked where he could meet the investigator and said that he would like to take him out. Unable to persuade the man to desist, Investigator "M" asked "Ester", "What's going on here?" "Ester" spoke to "Riley" and then told the man to stop bothering the patrons or to leave.

On September 17, 1954, while there were approximately

40 male patrons in the barroom (at least 30 of whom were conducting themselves in an effeminate manner), the investigators saw one young man withdraw from one of the groups and join another group at the bar saying, "I just had to leave that crowd. They were talking about ---s (a foul word for the phallus). They were talking about little ones and big ones. I don't care what size they are as long as they have the stuff."

On this same night, a male patron approached another male patron who was at the bar near Investigator "H" and asked him to dance. After the dance was concluded, the male patron last mentioned returned to his place at the bar and said to his companion in the presence of "Joe", the bartender, "I like to dance with Georgie. He puts it right up close to me."

On December 10, 1954, while "Joe" and "Ester" were tending bar, one male patron was standing facing another male patron who was seated on a chair near the dance floor. The latter had his arms around the former's waist and had his face near the former's privates, rubbing his cheek against them. This continued for fifteen minutes, after which the two males danced together and returned to their former position where they resumed their former attitude and activity.

After observing the aforementioned conduct of defendants' male patrons for several hours on December 10, 1954, the investigators asked "Ester" what was wrong and adverted to the fact that male patrons were hugging and kissing each other. She did not answer them but went over and spoke to several of these patrons who continued their activities until they started to dance. The investigators then identified themselves to "Ester" and "Joe", who declined to answer their questions. "Ester" admitted seeing males dance together but "Joe" denied seeing it. However, when the investigators pointed to males who were still dancing together, "Joe" said that he would rather wait for the licensees before talking further. Both he and "Ester" denied seeing male patrons hugging and kissing each other.

Defendant Adele Kaczka came to the licensed premises but, beyond saying that she saw nothing wrong with males dancing together and, claiming that some of them were dancing instructors, declined to say anything.

Defendant Adela Kaczka, "Ester", and a psychiatrist testified on behalf of defendants. "Ester" denied that she knew that Investigator "M" had been molested at the licensed premises and also denied that she either had a conversation with him or heard him talking with any male patron, as claimed by the investigators.

Defendant Adele Kaczka denied that any immoral activities were permitted on the licensed premises. She admitted that male patrons had danced together but again claimed that dancing teachers frequent the licensed premises. She admitted that they "get close together" but said that they teach each other different steps and practice dancing. She denied that she had seen any men kissing each other at the licensed premises.

The psychiatrist defined a homosexual as one who "has

not progressed to the so-called mature level of sexual adjustment in our society, namely, the heterosexual level". He testified that no single physical manifestation is conclusive proof that a person is a homosexual and that there is "no direct correlation between a man's psychological makeup and his physical makeup". He expressed the opinion that homosexuality is not contagious and that seeing a group of homosexuals would not harm the average or normal person but that, in order for it to affect people, they have to have either abnormal upbringing or factors that cause the development of homosexuality in them or, in the case of children, if they are exposed to that kind of behavior over a long period of time, it would affect their behavior. He further testified that behavior only suggests or raises the suspicion of homosexuality but is not conclusive and that detection would be difficult for an untrained person. He also testified that the mere fact that men danced together would not necessarily indicate homosexuality. He explained the bi-sexual theory according to which every individual has some elements of the male sex and some elements of the female sex, and expressed the opinion that a man having a preponderance of female characteristics is more likely to be a homosexual. On cross-examination, he was asked a hypothetical question which embodied a summary of the testimony of the investigators with respect to the actions and conduct of some of the male patrons, as hereinbefore set forth, at the conclusion of which he was asked whether, given those facts, he would conclude that they were "apparent homosexuals or apparent female impersonators or both". He answered that, assuming those facts, if he personally saw and heard all of those things, he would be suspicious that those persons were a group of homosexuals. He reiterated his belief that the average normal adult would not be adversely affected by contact with a homosexual.

At his request, counsel for defendants appeared before the Director in oral argument. He contended that, because none of the male patrons was dressed in female attire or imitated the opposite sex, guilt on Charge 1 had not been established. There is ample proof that these patrons conducted themselves and acted like females, despite the lack of conventional female garb. Such apparel is not essential to a finding of guilt on Charge 1. Re One Thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Counsel further contended that the investigators were not qualified to testify that these persons were homosexuals. The agents testified to their observations with respect to these patrons. Counsel's contention is unsound, in the light of the answer to the hypothetical question, hereinbefore set forth, given by defendants' own expert witness.

Counsel further contended that homosexuals are not a menace to society and cannot be barred from licensed premises. From the testimony of defendants' own expert witness, it is clear that homosexuals may well have a harmful effect on some members of the public. Furthermore, where they congregate and conduct themselves in the manner hereinbefore related, they are a threat to the safety and morals of the public. As Judge Freund, speaking for the Appellate Division of the Superior Court, said in Benedetti v. Trenton (decided April 5, 1955; Docket A-131-54; not yet officially reported):

> "In the public interest, the right to prescribe the conditions under which intoxicants may be sold is practically limitless."

Counsel also contended that he had assumed that the charges involved only the fact that the licensees had permitted these people to congregate on the licensed premises and that he was surprised to find that the Division's case involved specific acts of indecency. He further contended that the acts related by the investigators in their testimony did not, in fact, take place upon the licensed premises but were developed by the investigators to build up their case. I am not impressed with this contention, in view of the explicit nature of the testimony and the number of investigators who testified and, more particularly, in view of the fact that counsel, although afforded opportunity to request a continuance (if he was surprised) to permit further preparation of the defense, did not avail himself of such opportunity.

After considering, most carefully, all of the evidence in this matter, I find that the events and conversations related in the testimony of the agents in fact took place at defendants' licensed premises.

Of course, even in the absence of actual knowledge, the licensees cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on their licensed premises. They are responsible, in disciplinary proceedings, for violations committed in their absence or by their agents, servants or employees, even if they did not personally participate in the violations or if they were committed contrary to instructions. Rule 31 of State Regulations No. 20; Re Paton, Bulletin 898, Item 3. See also Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct.1947); Greenbrier, Inc. v. Hock, 14 N.J.Super. 39 (App.Div. 1951).

I find defendants guilty on Charges 1 and 2. They have pleaded non vult to Charge 3.

I have given much thought to the penalty to be imposed in this case. The situation disclosed by the record cannot be tolerated. As I pointed out in Re Polka Club, Inc., Bulletin 1045, Item 6, and Re Lloyd, Bulletin 1045, Item 7, "rigid enforcement of the regulations, the violation of which forms the basis of the charges herein, is essential to the preservation of decency and the protection of the public morals which demand a severe penalty in this case", and "degradation and depravity which constitute so serious a threat to the public welfare and morals, will not be tolerated upon the licensed premises and ... such premises cannot be permitted to become havens for deviates or persons of low morality".

Under all the circumstances in this case, including the number and type of charges, and particularly since the original charges in the instant case were pending when I announced my intention to impose more serious penalties in cases of this kind (Re Heavier Penalties, Bulletin 1041, Item 9), I shall suspend defendants' license for 180 days. Re Manzo, Bulletin 1051, Item 1. See also Re Polka Club, Inc., supra.

Accordingly, it is, on this 21st day of April, 1955,

ORDERED that plenary retail consumption license C-281, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Adele Kaczka & Angelina C. Trobiano, t/a N. Y. Bar, for premises 20 Cross Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3 a.m. April 30, 1955; and it is further

ORDERED that, if any license be issued to said licensees or to any other person for the premises in question for the 1955-56 licensing year, such license shall be under suspension until 3 a.m. October 27, 1955.

WILLIAM HOWE DAVIS,
Director.

2. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAX-PAID ALCOHOLIC BEVERAGES WITHOUT COMPLIANCE WITH STATE REGULATIONS NO. 18 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - LIEN CLAIM AGAINST MOTOR VEHICLE RECOGNIZED.

In the Matter of the Seizure on December 11, 1954, of a quantity of whiskey, two cartons of cigarettes and a Pontiac sedan, on the north-bound lane of the New Jersey Turnpike, at the 34 Mile Post, in Mount Laurel Township, County of Burlington and State of New Jersey.

Case No. 8778

On Hearing

CONCLUSIONS and ORDER

James Logan, Jr., Esq., Attorney for Marcus Felton.
George Brooks, Esq., by Edward Horne, Esq., Attorney for General Motors Acceptance Corporation.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of whiskey, two cartons of cigarettes, and a Pontiac sedan, described in a schedule attached hereto, seized on December 11, 1954 on the northbound lane of the New Jersey Turnpike, at the 34 Mile Post, in Mount Laurel Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Marcus Felton appeared and sought return of the Pontiac sedan and the alcoholic beverages seized in the case. An appearance was also entered on behalf of General Motors Acceptance Corporation, which sought recognition of its alleged lien on the motor vehicle.

The Hearer's Report setting forth the facts presented at the hearing in the case and his recommendations thereon was mailed to the above-named counsel for the claimants. No objection or exception to such report was filed within the time limited therefor.

I have given careful consideration to the complete record in the case and have reviewed the Hearer's Report, and find the following to be established by the evidence presented:

On December 11, 1954 a New Jersey State Trooper stopped the Pontiac sedan while on traffic duty on the highway. The motor vehicle was being driven by Marcus Felton, its registered owner. The trooper discovered 18 one-half gallon bottles, 24 four-fifth quart bottles, 120 pint bottles, 49 half-pint bottles and four one-quart bottles of various brands of tax-paid whiskey

in the rear, and in the trunk, of the car. The trooper detained Felton, the motor vehicle, and the whiskey, pending investigation to determine whether the whiskey was being transported legally.

The Division of Alcoholic Beverage Control was notified and the motor vehicle and whiskey were turned over to ABC agents. The agents ascertained that Marcus Felton did not have any license or permit issued by the Division of Alcoholic Beverage Control authorizing the transportation of such alcoholic beverages in this state, and that he did not have in his possession a bona fide authentic and accurate waybill or similar document stating the bona fide names and addresses of the consignee and consignor, the nature and quantity of the alcoholic beverages being transported and the place of origin and destination.

The alcoholic beverages were therefore transported in this state in violation of R.S. 33:1-2, and Regulations No. 18, Rule 2. Such alcoholic beverages therefore are illicit alcoholic beverages and together with the motor vehicle in which they were transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66.

Marcus Felton resides in New York City. He claims to have purchased the alcoholic beverages in Washington, D. C., and that he intended to transport them to New York City.

Mr. Felton does not give any clear account of the intended use of the alcoholic beverages. He offers a vague, contradictory, confusing and evasive explanation. However, throughout his recital, the definite fact appears that at least part of the alcoholic beverages were intended for delivery for use by persons other than Felton. At one point in his testimony he states that he purchased the alcoholic beverages for a group of 40 fellow employees, who individually requested him to make such purchases; at another point he testified that only two men made such request and were to pay him for the whiskey. He also claims that a considerable portion of the whiskey was for a christening party to be held by him, and for other personal use. He states that he paid $732.00 for the whiskey, representing his savings for a past number of years, and that about $600.00 worth of such whiskey was for his own use. Such an expenditure appears far and above the amount a person in his economic circumstances would be likely to spend for such purpose.

Such alcoholic beverages may be so imported, under the pertinent law of New York, only in the event that they are intended for Felton's personal use. Seizure Case No. 8632, Bulletin 1043, Item 5. The evidence indicates the probability that the alcoholic beverages were intended for resale, either by Felton or other persons to whom he intended to deliver such alcoholic beverages. Even if intended for personal consumption of such other persons, the alcoholic beverages may not be brought into New York. Hence, the alcoholic beverages cannot be returned, but must be forfeited.

With respect to Marcus Felton's request for return of the Pontiac sedan, I must be guided by the provisions of R.S. 33:1-66(e) which furnishes me with discretionary authority to return property subject to forfeiture to a person who has acted in good faith and has unknowingly violated the law. Such discretion is not exercised in favor of a person who obviously is not telling the truth. Seizure Case No. 8234, Bulletin 979, Item 2.

The various explanations offered by Marcus Felton do

not appear to be truthful, for the reasons above outlined, therefore he has not established to my satisfaction that he purchased the alcoholic beverages for a legitimate purpose and unknowingly violated the laws of this state and those of New York. His application for return of the Pontiac sedan is denied.

General Motors Acceptance Corporation has presented a conditional sales contract, which it holds by assignment. This contract is dated July 29, 1953, signed by Marcus G. Felton and Margaret A. Felton, covers the Pontiac sedan in question, and secured an unpaid balance of $2236.32. The present balance due thereon after rebate for prepayment is $588.75.

Prior to accepting such contract, the finance company was furnished with information that Marcus Felton resided at a New York City address, was employed by an industrial concern, and that his wife was employed as a telephone operator. The names of personal and business references were also furnished to the finance company.

The finance company verified the residence and employment of the Feltons, and checked with a bank which has extended credit to Mr. Felton, and was informed that he had a good credit rating. Marcus Felton does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that General Motors Acceptance Corporation acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be transported in the motor vehicle. I shall therefore recognize its lien to the extent of $588.75. R.S. 33:1-66(f).

The Director of the Division of Purchase and Property has notified this Division that the State of New Jersey is not interested in retaining the Pontiac sedan for the use of any state agency upon payment of the lien claim. There is a strong likelihood that the proceeds of the sale of such motor vehicle may exceed the lien claim.

Accordingly, it is DETERMINED and ORDERED that the Pontiac sedan, described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it shall be offered for sale at public sale, pursuant to terms to be announced hereafter, and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained, otherwise the motor vehicle will be returned to the General Motors Acceptance Corporation upon payment of the costs of its seizure, storage, and sale; and it is further

ORDERED that if the Pontiac is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second; out of the balance, if any, there shall be paid to the General Motors Acceptance Corporation its lien claim, recognized to the extent of $588.75; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

DETERMINED and ORDERED that the balance of the seized property listed in the aforesaid Schedule "A" constitutes unlawful property, and the same be and is hereby 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

Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS,
Director.

Dated: April 29, 1955.

SCHEDULE "A"

18 - one-half gallon bottles of whiskey
24 - 4/5 quart bottles of whiskey
120 - pint bottles of whiskey
49 - one-half pint bottles of whiskey
4 - quart bottles of whiskey
2 - cartons of cigarettes
1 - Pontiac sedan, Serial & Engine No. P6XS11477, 1954 N.Y. Registration C-86-10.

3. SEIZURE - FORFEITURE PROCEEDINGS - UNREGISTERED STILL AND MOTOR VEHICLE SEIZED THEREWITH - LIEN CLAIM RECOGNIZED - PADLOCKING WAIVED - STILL AND APPURTENANT EQUIPMENT ORDERED FORFEITED.

In the Matter of the Seizure on September 2, 1954 of a still, appurtenant equipment, a quantity of alcoholic beverages, and a Pontiac sedan, on premises occupied by Mary Brown, located on the west side of Atsion Road in Waterford Township, County of Camden and State of New Jersey.	Case No. 8700 On Hearing CONCLUSIONS and ORDER

Joseph Adamo, Esq., Attorney for Mary Brown.
Chivian & Chivian, Esqs., by Louis Chivian, Esq., Attorney for General Motors Acceptance Corporation.
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2, Revised Statutes of New Jersey, to determine whether a still, appurtenant equipment, a quantity of alcoholic beverages, and a Pontiac sedan, described in a schedule attached hereto, seized on September 2, 1954 on premises occupied by Mary Brown, located on the west side of Atsion Road, Waterford Township, New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

Mary Brown has requested that padlocking should be waived, and General Motors Acceptance Corporation has requested that its alleged lien on the Pontiac sedan should be recognized. Forfeiture of the balance of the property seized is not opposed by any person.

After hearing pursuant to R.S. 33:2-4, the Hearer submitted his suggested Conclusions and Order (Hearer's report) to the attorney for General Motors Acceptance Corporation. Exceptions to the Hearer's report were filed by such attorney and oral argument on such exceptions was heard by me.

After careful consideration of the complete record in the case, including such exceptions and oral argument, I find

the following to be established by the evidence presented:

On September 2, 1954, ABC agents went to a one-family dwelling at the above location on information that an illicit still was there. They found a copper still, copper coils, and 12 one-gallon jugs of illicit alcohol in the attic. Six one-gallon jugs of illicit alcohol were found in the closet of a bedroom on the first floor, and four 50-gallon barrels of mash were found concealed underneath the dining room floor.

Mary Brown arrived in the yard of the premises in her Pontiac sedan while the above agents were making arrangements for the removal of the seized still and alcoholic beverages. She stated that she was the owner of the dwelling and still. There were two 60-lb. bags of sugar and 54 packages of dried yeast in the car.

The still was not registered with the Director of the Division of Alcoholic Beverage Control as required by R.S. 33:2-1. Such still, appurtenant equipment, illicit alcohol, the Pontiac sedan, and the sugar and yeast, constitute unlawful property and are subject to forfeiture. R.S. 33:2-2, R.S. 33:2-5.

Mrs. Brown is 42 years of age. She has resided at the Atsion Road premises for about two years. She formerly resided in Philadelphia. She is employed as manager of a laundry in Philadelphia, at a weekly wage of $45.00. She has expended a considerable amount of money for the purchase and improvements of the Atsion Road premises. Her monthly mortgage payments thereon are $41.20. Since the seizure she has resided in Philadelphia because her automobile has been unavailable for her transportation to and from her place of employment. She has no assets other than the property and the motor vehicle. Padlocking will seriously impair her ability to pay the carrying charges of the property. The premises are located in an isolated area, subject to possible vandalism if left unoccupied. She intends to again make her residence there if the place is not padlocked. Mrs. Brown was twice convicted in 1951 in Philadelphia for violations of the liquor laws of that state.

General Motors Acceptance Corporation acquired, by assignment, a conditional sales contract dated July 23, 1954, signed by Mary Brown, covering the Pontiac sedan, evidencing its loan of $1998.30 on the security of such motor vehicle. The unpaid balance due thereon is $1713.39 after rebate for prepayment.

Before accepting such assignment and extending credit to Mary Brown, it received her application for credit wherein Mary Brown represented that she resided at the above Atsion Road address; was the owner of such premises; formerly resided at 1423 North 21st Street, Philadelphia, Pa., and was employed at the Philadelphia address as manager of a laundry and had been so employed for about 14 years; and gave the names of various business and personal references.

It is frankly admitted by the finance company, aside from a cursory unsuccessful attempt to check with two business references, that it made no independent investigation of the representation made by Mary Brown in her application as to her ownership of the premises and employment or any other investigation of her character and background, or criminal record. In extending credit to Mary Brown it relied entirely on the fact that the dealer who sold the car and submitted her application for credit was an important source of such loans, and for that reason the finance company accepted the information furnished to it by the dealer at face value without any independent investigation because it did not want to risk the possibility that the borrower would take her application elsewhere.

I am in accord with the Hearer's view that to deprive Mrs. Brown of the use of her dwelling would inflict a hardship upon her under the circumstances. In arriving at this conclusion, I am mindful of the fact that she was twice convicted of violating liquor laws. However, it does not appear that any illicit still was involved in either case. While padlocking would inflict a forceful lesson that dabbling in illicit stills or illicit alcoholic beverages is unwise, I am hopeful that she will have learned the lesson even if the place is not padlocked. I shall assume that such is the fact, and in consideration of the obvious hardship that padlocking will impose, the padlocking penalty will be waived.

In considering whether to recognize a lien in favor of General Motors Acceptance Corporation, I must be guided by the provisions of R.S. 33:2-7, which furnishes me with the discretionary authority to recognize such lien if the finance company presents evidence which satisfies me that it acted in good faith and has unknowingly violated the Alcoholic Beverage Law. This provision is in many respects similar to R.S. 33:1-66(f), which sets forth the requisite that the claimant establish to my satisfaction that he has acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. The Division has consistently applied these provisions interchangeably.

The Division has uniformly ruled that under the above provisions it is incumbent upon a finance company seeking recognition of its lien to establish that it had made an adequate investigation of the person to whom the finance company advanced money upon the security of such lien. Re U-Drive-It-Co., Bulletin 157, Item 10; Seizure Case No. 4968, Bulletin 384, Item 8. Cf. Seizure Case No. 6898, Bulletin 687, Item 1.

Where the borrower has a prior criminal record for violating any liquor laws, the finance company must establish that it made an adequate investigation of the character and background of such person and failed to discover such record. Indeed, General Motors Acceptance Corporation was recently denied recognition of its lien on a motor vehicle for such a failure to investigate. See Seizure Case No. 8604, Bulletin 1037, Item 4. The necessity for an adequate independent investigation as a prerequisite of any such claim is hereby reaffirmed.

The finance company asserts that subsequent to the seizure it made inquiry of the Philadelphia police authorities which failed to uncover Mary Brown's criminal record, and that this should be accepted as evidence that if an investigation had been made prior to the seizure it would have developed a like result, and hence its claim should not be denied.

It is self-evident that an investigation made as an afterthought after a seizure cannot be accepted in substitution of an original, independent, and adequate investigation. The reasons are obvious. Reasonably prudent conduct means seeking to discover the antecedents of a person before dealing with, not afterwards. In homely language, a belated inquiry is equivalent to locking the barn door after the horse has been stolen. It reflects the self-interest of the one making the inquiry to minimize or omit entirely damaging information and to magnify favorable

information in order to obtain recognition of his claim. The facts allegedly developed by such inquiry would not have the inherent integrity of an inquiry made in the normal course of business solely for the purpose of extending credit, and not for the purpose of avoiding forfeiture.

It is contended that these considerations should not be applied to the instant case because there can be no doubt that any inquiry, whether made before or after the seizure, would not have revealed Mary Brown's criminal record. If such is the actual fact, and so appears beyond question, by clear and unassailable evidence, as a logical conclusion, it would be manifestly unfair to deny the claim of an otherwise innocent lienor. The possibility that the inquiry after the seizure was contrived for an ulterior motive would thus be eliminated. It would be implicit from the facts themselves, even though obtained after the seizure, that no reasonable investigation would have revealed the criminal record, and hence as if no such record existed.

An assistant branch manager of the finance company reports that on September 27th or 28th, 1954, (after the seizure) he contacted a Philadelphia police sergeant, at the Philadelphia City Hall, and requested information regarding any previous violations by Mary Brown in 1951; that the sergeant had a search made of the police records, and could not find anything against a Mary Brown of 1423 North 21st Street, Philadelphia; (the address given by Mary Brown to the finance company); that they had records for approximately 200 Mary Browns for various violations and it would be impossible for him to check out the correct one without a great deal of additional information, such as perhaps her age. It has since developed that the records of the Philadelphia Police Department list 2013 Sharswood Street as the address of the particular Mary Brown here involved. The assistant branch manager further reports that he visited the Federal Alcoholic Beverage Control Board in Philadelphia (sic), which checked their records, and did not find any record against Mary Brown; that he had a similar experience at the office of the Pennsylvania Liquor Control Board in Philadelphia.

These inquiries of the various authorities definitely and positively demonstrate that the criminal record of the Mary Brown in question would not have been revealed thereby. Other positive facts are that Mary Brown actually resided in New Jersey for over two years prior to the transaction, owned her own home, was legitimately employed, all as represented by her application for credit, and enjoyed a good credit rating. Under these special circumstances, I am reluctant to reject the finance company's claim merely on the unlikely possibility that if it had sought to confirm by independent investigation whether such were the actual facts, it would have been incidentally advised by the persons from whom it sought information that Mary Brown had a criminal record.

The particular facts in the case convince me that in the exercise of my discretion I should recognize the claim of General Motors Acceptance Corporation and such will be the Order.

The Director of the Division of Purchase and Property

has advised that the State of New Jersey is not interested in retaining the Pontiac sedan for the use of any state agency upon payment of the lien claim. The retail value of such vehicle does not appear to exceed the amount of such lien and the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 4th day of April, 1955, General Motors Acceptance Corporation pays the costs incurred in the seizure and storage of the Pontiac sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to such finance company; and it is further

DETERMINED and ORDERED that the balance of the seized property as listed in the aforesaid Schedule "A", constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5, 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 Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS,
Director.

Dated: March 25, 1955.

SCHEDULE "A"

18 - one-gallon glass jugs of alcohol
8 - one-pint bottles of alcohol
24 - bottles of beer
1 - cooler
1 - set of copper coils
1 - cooker
1 - gooseneck
108 - packages of yeast
120 - lbs. of sugar
4 - 50-gallon barrels of mash
2 - 50-gallon empty barrels
1 - funnel
1 - Pontiac sedan, Serial & Engine No. W8ZA7536, 1954 N. J. Registration ACN30.

WILLIAM HOWE DAVIS,
Director.

4. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1954 to MARCH 31, 1955 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption No. Issued	Plenary Retail Consumption Fees Paid	Plenary Retail Distribution No. Issued	Plenary Retail Distribution Fees Paid	Club No. Issued	Club Fees Paid	Limited Retail Distribution No. Issued	Limited Retail Distribution Fees Paids	Seasonal Retail Consumption No. Issued	Seasonal Retail Consumption Fees Paid	Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
Atlantic	489	$ 208,750.00	71	$ 25,575.00	18	$ 1,750.00						578	$ 236,075.00
Bergen	813	303,195.00	299	84,912.00	92	8,829.11	55	$ 2,586.25	6	$ 1,497.36	5	1260	401,019.72
Burlington	185	76,440.00	34	9,250.00	41	5,842.74	1	50.00				261	91,582.74
Camden	454	217,338.08	82	31,925.00	70	6,713.70			1	375.00	2	605	256,351.78
Cape May	133	73,550.00	11	4,000.00	18	2,150.00						162	79,700.00
Cumberland	80	39,375.00	14	3,850.00	31	4,182.58						125	47,407.58
Essex	1375	775,210.00	351	205,700.00	103	14,123.84	30	1,500.00	2	1,500.00	2	1859	998,033.84
Gloucester	108	34,350.00	13	2,750.00	18	1,691.23						139	38,791.23
Hudson	1550	672,549.66	298	117,810.00	76	9,004.53	67	2,900.00				1991	802,264.19
Hunterdon	79	26,200.00	7	2,050.00	6	700.00						92	28,950.00
Mercer	426	258,641.10	51	21,000.00	53	7,500.00			1	95.00	2	529	287,236.10
Middlesex	633	307,903.42	74	22,995.00	85	7,474.89	4	200.00				796	338,573.31
Monmouth	549	277,358.40	120	42,210.00	39	4,322.16	10	435.00	27	11,718.85	27	718	336,044.41
Morris	355	122,465.00	98	31,000.00	51	4,548.08	14	700.00	6	1,468.29	7	517	160,181.37
Ocean	197	106,421.20	47	19,313.00	21	2,248.63						265	127,982.83
Passaic	875	358,338.60	167	50,690.00	38	4,653.27	11	525.00				1091	414,206.87
Salem	51	19,700.00	8	1,600.00	16	1,425.00						75	22,725.00
Somerset	186	79,250.00	40	11,007.49	26	2,658.08						252	92,915.57
Sussex	169	46,105.00	20	3,955.00	9	535.00	1	50.00	1	225.00	1	199	50,870.00
Union	548	291,386.30	144	59,500.00	72	8,001.04	33	1,750.00			1	796	360,637.34
Warren	148	43,155.00	18	4,232.29	30	3,130.00			2	289.53	2	196	50,806.82
TOTAL	9403	4,337,681.76	1967	755,324.78	913	101,483.88	226	10,696.25	46	17,169.03	49	12506	5,222,355.70

William Howe Davis
Director

April 14, 1955.

5. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - AIDING AND ABETTING UNLAWFUL SALE OF ALCOHOLIC BEVERAGES - SOLICITOR TRANSPORTING ALCOHOLIC BEVERAGES NOT IN COURSE OF EMPLOYER'S BUSINESS - PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against

SIDNEY MINSTER,
436 East 32nd Street,
Paterson, New Jersey,

Holder of Solicitor's Permit No. 1424, issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Sidney Minster, Defendant-permittee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) he aided and abetted the illegal sale of alcoholic beverages, in violation of R.S. 33:1-52; and (2) he transported alcoholic beverages in an unlicensed vehicle, contrary to R.S. 33:1-2, in violation of R.S. 33:1-50.

An examination of the file discloses that at intervals between November 6, 1953 and October 1, 1954, the defendant herein placed orders with his employer for large quantities of alcoholic beverages to the value of $2,494.08, in the name of a retail distribution licensee on his route. The merchandise was released from the warehouse to other salesmen who, at defendant's solicitation, delivered it at or near said retailer's licensed premises and unloaded it on the sidewalk. It was picked up later by defendant and transported in his unlicensed vehicle to New York where he disposed of it and diverted the proceeds to his own use. After each purported delivery to the retail licensee, defendant forged the retailer's name to the acceptance invoice and surreptitiously filed a copy thereof among the unpaid bills of the retailer who unsuspectingly paid the charges. In November 1954 the retailer, learning of the fraud, contacted defendant who admitted the defalcation and prevailed upon his victim to accept, by way of restitution, twelve signed personal checks, one to be cashed in each successive month in the sum of $200, until the retailer was fully reimbursed. Shortly thereafter, defendant paid $1,113.07 on account and while making a routine tour of his route with his supervisor, informed him of his indebtedness to the retailer and was persuaded by that official to make good the balance due within a week's time. As a result, defendant sold his home to raise the required sum and on December 6, 1954 he paid off his obligation in full.

Defendant has no prior adjudicated record. The illegal activities participated in by the defendant indicate a complete disregard of the conditions and restrictions of his solicitor's permit and justify a penalty commensurate with the offense. Re Papirnik, Bulletin 1032, Item 9. Under the circumstances, the solicitor's permit issued to and presently held by defendant, but now in the possession of this Division, will be revoked.

Accordingly, it is, on this 13th day of May 1955,

ORDERED that Solicitor's Permit No. 1424, issued by the Director of the Division of Alcoholic Beverage Control to Sidney Minster, 436 East 32nd Street, Paterson, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS,
Director