

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

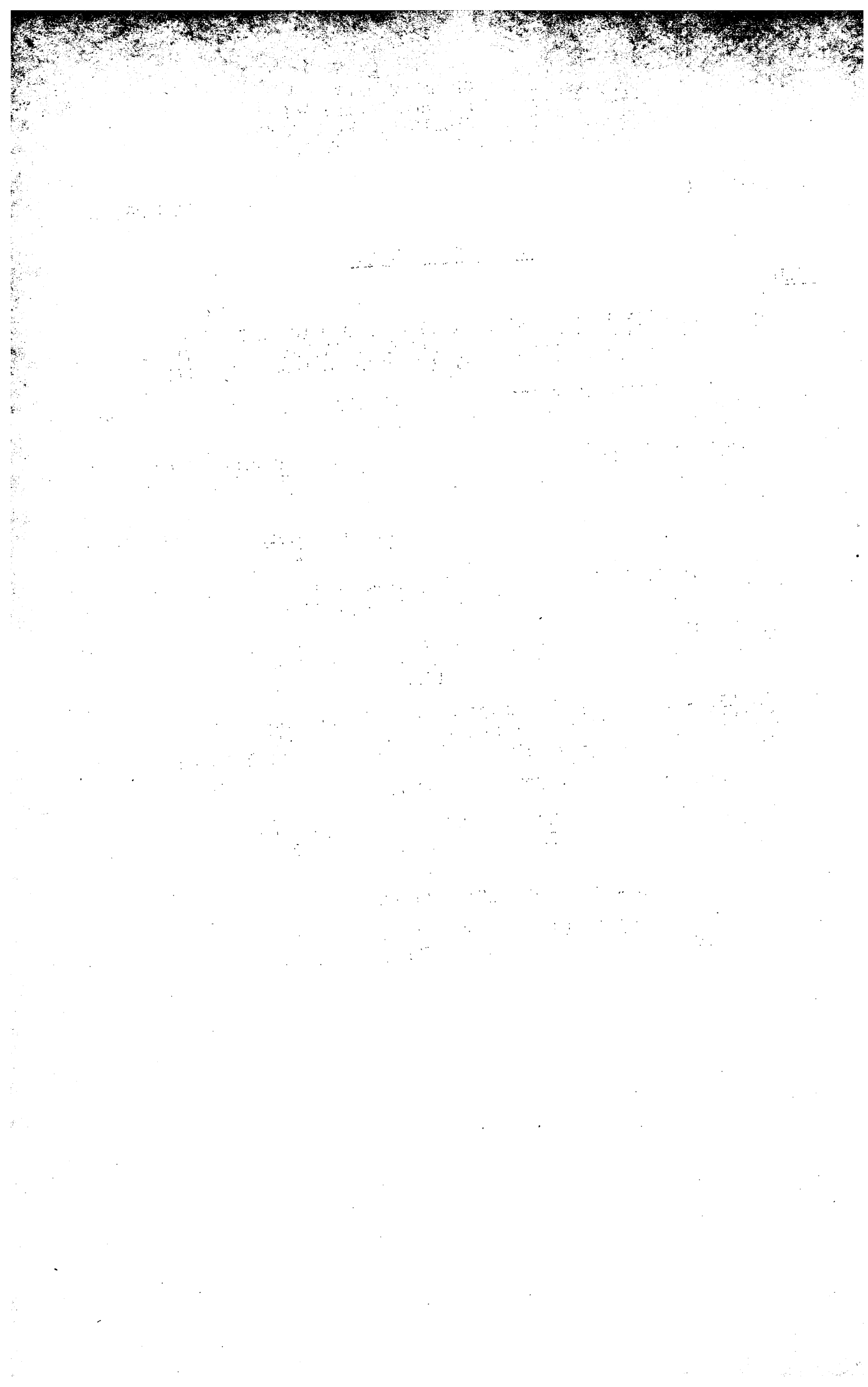
BULLETIN 854

SEPTEMBER 28, 1949.

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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 854

SEPTEMBER 28, 1949.

1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND FURNISHINGS IN SPEAKEASY IN RESTAURANT ORDERED FORFEITED - MUSIC MACHINE AND ICE CREAM CABINET RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on ) Case No. 7460  
June 18, 1949, of a quantity of )  
beer, soda, various fixtures and )  
furnishings and a music machine, ) ON HEARING  
at a restaurant located on Girard ) CONCLUSIONS AND ORDER  
Avenue, near Inman Avenue, Potters )  
Section, in the Township of Raritan, )  
County of Middlesex and State of )  
New Jersey. )

-----  
Samuel Adler, Esq., Attorney for William Brown and Millie Lattimor.  
Benjamin J. McFarland, t/a McFarland Music Co., Pro Se.  
Renee Ice Cream Company, Inc., by Fred J. Marchbank, Vice-President.  
Harry Castelbaum, 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 beer and soda, \$28.37 in cash, a music machine and various other fixtures and furnishings, itemized in a schedule attached hereto, seized on June 18, 1949, in William Brown's restaurant located on Girard Avenue, near Inman Avenue, Potters Section, Raritan, N. J., constitute unlawful property and should be forfeited.

It appears that the property was seized by ABC agents pursuant to a search warrant issued upon the basis of a complaint by an ABC agent that he purchased drinks of alcoholic beverages for himself and three companions from William Brown on June 12, 1949, in Brown's restaurant. Brown did not hold any license authorizing him to sell or serve alcoholic beverages and the restaurant was not licensed for the sale of alcoholic beverages.

When the matter came on for hearing pursuant to R. S. 33:1-66, Millie Lattimor appeared and sought return of the seized property. Appearances were also entered by Benjamin J. McFarland, who sought return of the music machine; and for Renee Ice Cream Company, Inc., which sought return of an ice cream freezer.

The ABC agent testified that he was at the restaurant on June 12th to investigate a complaint that alcoholic beverages were being sold there without a license; that he was there with three companions, and that when the group entered the place, it was crowded with patrons eating and drinking beer and other beverages; and that Brown sold and served to his group one bottle of beer, three drinks of "moonshine" whiskey, poured from a bottle which did not bear a tax stamp, and some sandwiches. One of the agent's companions testified to like effect.

One of the ABC agents who made the seizure testified that when he entered the restaurant on June 18th, there were 12 or 14 persons there; and that a case of beer was found on ice in a cooler in the kitchen, and another case of beer was found in an outbuilding.

William Brown denies every detail of the testimony of the agent and his companion as to what occurred on June 12th. Confronted at the hearing by both the agent and his companion, Brown testified that he did not see either of these men on that day, did not sell the agent any alcoholic beverages, and did not have any "moonshine" whiskey.

Brown further claimed that the restaurant equipment is owned by Millie Lattimor; that one case of the beer belongs to him and the other belongs to an unnamed ball club; and that his case of beer was found in the living quarters on the second floor and not in the kitchen.

It is immaterial whether William Brown or Millie Lattimor (also known as Millie Brown or Braun) is the actual owner of the seized property, because it appears from their testimony that the restaurant was a joint business venture. Millie Lattimor cannot, therefore, avoid any forfeiture of the restaurant equipment for a violation of the Alcoholic Beverage Law on the claim that any such violation was without her knowledge. Seizure Case 7161, Bulletin 784, Item 3.

Brown's uncorroborated denial that the agent and his companion were in his restaurant on June 12th, and that he sold alcoholic beverages to the agent, is in absolute contradiction to the detailed story of the agent and his companion. One or the other is not telling the truth. Brown is naturally anxious to avoid forfeiture and his testimony is, of course, influenced thereby, whereas the agent and his companion have no personal interest in the case. I am satisfied from the evidence, and find as a fact, that Brown sold alcoholic beverages to the agent and his companion on June 12th.

The unlawful sale of alcoholic beverages to patrons in Brown's restaurant in the general course of the business, although witnessed by the ABC agent only on June 12th, is a highly pertinent factor in determining whether the beer found in the cooler in the restaurant kitchen a few days later was intended for like unlawful sale. Cf. State v. Best, 8 N. J. Misc. 271, State v. Cooper, 9 N. J. Misc. 342, Wilson v. United States, 149 F. 2d 780, Schechter v. United States, 7 F. 2d 881, State v. Gastonguay, 118 Me. 31, 105 Atl. 402, Commonwealth v. Vincent, 165 Mass. 19, 42 N. E. 332.

Under these circumstances, the presence of the beer, unexplained, creates a strong inference that such beer was intended for unlawful sale. No explanation is offered, other than the general statement by Brown which may perhaps be understood to mean that at some time or another he possessed beer for his own use. This does not convincingly indicate that the seized beer was not intended for sale, aside from the generally unsatisfactory nature of Brown's testimony as a whole. I therefore find that the beer seized in the restaurant on June 18th was intended for unlawful sale and, hence, is illicit. R.S.33:1-1(i).

Since I have determined that the seized bottles of beer are illicit alcoholic beverages, such beer, 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.

However, I am authorized to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and did not know or have any reason to suspect that alcoholic beverages were being sold unlawfully at the place where his property was kept. R. S. 33:1-66(f).

Mr. Marchbank, a representative of the Renee Ice Cream Company, Inc., presented documents which tend to establish that on April 22, 1949 an eight-hole ice cream freezer owned by the company was placed

in Brown's restaurant under a loan agreement. The cabinet is identified by a serial number and the company's name plate. Another witness for the company testified that he actually placed the freezer in the restaurant and that he did not observe anyone drinking alcoholic beverages there or see any display of alcoholic beverages.

Benjamin McFarland presented documents evidencing that he is the owner of the music machine seized in Brown's restaurant, and that he had a machine in Brown's restaurant since November 1945. McFarland says that he was at the restaurant only on a few occasions, and he did not see anyone drinking alcoholic beverages, or any alcoholic beverages on display. His employee, who was at the restaurant about every two weeks to service the machine, testified that he usually was there in the morning, at which time, as a general rule, there were no customers there, that he did not see any alcoholic beverages on display, and that he did not know that any alcoholic beverages were being sold there.

The place was actually a restaurant, a business establishment, and the freezer and music machine appear to have been placed there in the normal course of business. William Brown's fingerprint records do not disclose any previous violation of the liquor laws. Under the circumstances, I am satisfied that the Renee Ice Cream Company, Inc. and Benjamin McFarland did not know or have any reason to suspect that Brown was operating a speakeasy. The freezer and music machine will, therefore, be returned to them upon the payment of the costs of seizure and storage of such freezer and music machine respectively.

Accordingly, it is DETERMINED and ORDERED that if on or before the 26th day of September, 1949, Renee Ice Cream Company, Inc. and Benjamin McFarland pay the costs of the seizure and storage of the freezer and music box respectively, such items will 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 currency in the machines, 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: September 14, 1949.

SCHEDULE "A"

48 - bottles of beer  
264 - bottles of soda  
8 - restaurant tables  
22 - chrome steel chairs  
1 - Rockola Music Box Serial No. 641-12AD  
and currency therein  
1 - glass showcase  
2 - kitchen tables  
1 - kitchen stool  
1 - Admiral Electric Refrigerator  
1 - 8-hole ice cream freezer  
1 - gas range  
\$28.37 in cash

2. SEIZURE - FORFEITURE PROCEEDINGS - UNREGISTERED STILL PART AND OTHER ARTICLES STORED IN GARAGE ORDERED FORFEITED.

In the Matter of the Seizure )  
on March 29, 1949, of a still part, )  
other items of personal property )  
and various items of furniture and )  
house furnishings at 477 Hoboken )  
Road, in the Borough of Carlstadt, )  
County of Bergen and State of New )  
Jersey. )

Case No. 7415

ON HEARING  
CONCLUSIONS AND ORDER

----- )  
Samuel Carbone, Pro Se. )  
Harry Castelbaum, 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 part of a still, empty five-gallon cans, furniture, house furnishings and fixtures, and other articles, itemized in a schedule attached hereto, seized on March 29, 1949 in one of a series of one-car garages located in the rear of 477 Hoboken Road, Carlstadt, New Jersey constitute unlawful property and should be forfeited.

It appears that all articles stored in the garage were seized by ABC agents because of the presence therein of an unregistered still part, discovered by the agents while investigating a complaint that unlawful alcoholic beverage activities were being carried on at the place.

When the matter came on for hearing pursuant to R. S. 33:2-4, Samuel Carbone, the tenant of the garage, appeared, claimed that he did not know that the still part was there, and was not responsible for its presence, and sought return of the articles seized.

ABC agents testified that in the garage there were 50 new empty five-gallon cans, two boxes and a bag of valves and pipe fittings, a funnel about 12 inches in diameter, three new rolls of manila cord, and a still part, known as a copper column, about 50 inches high and 14 inches in diameter. A local volunteer police official testified that he saw the still part there.

The function of the copper column, according to the ABC agents, is to conduct alcoholic vapors from cooking mash to a condenser, whereby the vapors turn into a liquid alcoholic beverage. The still part was not registered with the Director of the Division of Alcoholic Beverage Control, as required by R. S. 33:2-1. The agents further testified that the five-gallon cans are of the type used by illicit still operators to remove the finished product of an illicit still.

The copper column was stolen after it had been seized by ABC agents, and while temporarily guarded by the local volunteer police officer. The details of such theft are not pertinent to this decision, other than to state that while the item was not recovered, the person accused of committing the theft was identified, apprehended, and is now awaiting the outcome of criminal proceedings in the case. This person is alleged to be a friend of Carbone. Carbone does not deny that the copper column was there but says that he did not place it there. The theft of the column cannot result in any advantage to Carbone.

The unregistered still part, and all other personal property seized therewith in the garage, is subject to forfeiture. R.S. 33:2-5. Carbone cannot obtain return of any part of the seized property unless he establishes to my satisfaction that he acted in good faith and unknowingly violated the law. R. S. 33:2-7.

There are various significant highlights in Carbone's testimony to be considered in determining the truthfulness of his claim that he merely stored his household furniture in the garage when compelled to vacate his apartment, and was unaware that the copper column was there.

The new five-gallon empty cans, the cord, and the valves and pipe fittings, acknowledged by Carbone to be his property, are not items of household furniture.

According to Carbone, a work bench and acetylene tank in the garage are owned by his friend, the person who is accused of stealing the column.

Concerning the cans, Carbone says that he was passing on a highway, observed some person unknown to him transporting a large number of cans, and purchased from him, on the highway, the 50 cans for resale at a higher price, but never sold the cans; that the valves and pipe fittings were parts from jobs he was on, although it appears that he was unemployed for the past two or three years, and gave a vague and unsatisfactory account of his means of livelihood and employment on any such jobs. Carbone further says that he paid \$10.00 for the cord a week before the seizure, intending to wrap and tie up in paper the furniture, yet, although unemployed, he did not find time to do so. The cord was similar to cord with which the cans were tied. It appears that in addition to his arrest in the instant case, Carbone is awaiting the outcome of a pending criminal case in the same county involving an illicit still.

According to Carbone's testimony, the furniture seized is of little value to him in that he carried no insurance thereon, left the garage doors unlocked, and took little, if any, precautions for its safeguard.

The evasive nature of Carbone's testimony in general is far from convincing evidence of his good faith. Hence, I am not satisfied that he acted in good faith or unknowingly violated the law and, accordingly, his request for return of the seized property is denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A", attached hereto, constitutes unlawful property, and that 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 State Director of Alcoholic Beverage Control.

ERWIN B. HOCK  
Director.

Dated: September 15, 1949.

SCHEDULE "A"

- 50 - 5-gal. empty cans
  - 1 - copper column
  - 3 - containers with assorted valves and pipe fittings
  - 1 - galvanized funnel
  - 1 - scale
  - 2 - boxes containing assorted tools
  - 1 - acetylene tank
  - 1 - work bench
- Various items of furniture and house furnishings at premises, itemized in an inventory made thereof in the case and which is referred to as if incorporated at length.

3. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND FURNISHINGS AND EQUIPMENT OF SPEAKEASY IN RESTAURANT ORDERED FORFEITED - REFRIGERATOR RETURNED TO INNOCENT LIEN CLAIMANT.

In the Matter of the Seizure on June 18, 1949 of a quantity of alcoholic beverages, soda and various fixtures and furnishings, at premises located on Virginia Avenue, Potters Section, in the Township of Raritan, County of Middlesex and State of New Jersey. ) Case No. 7462 ) ON HEARING ) CONCLUSIONS AND ORDER )

Samuel Adler, Esq., Attorney for Thomas Lemon, Edith Lemon, and Lacey Carter. Franklin E. Pellegrin, Esq., Attorney for the National Newark and Essex Banking Co. Harry Castelbaum, 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 of the Revised Statutes of New Jersey, to determine whether a quantity of beer and soda, and various fixtures and furnishings, itemized in a schedule attached hereto, seized on June 18, 1949 in a small restaurant operated by Thomas Lemon and Edith Lemon, located on Virginia Avenue, Potters Section, Raritan, New Jersey, constitute unlawful property and should be forfeited.

It appears that the property was seized by ABC agents pursuant to a search warrant issued upon the basis of a complaint by an ABC agent that he purchased drinks of whiskey and beer at the restaurant for himself and three companions, from one "Buddy" Williams, on Saturday, June 11th, at about 11:30 p.m. According to the ABC agent, he first spoke with Thomas Lemon when he entered the restaurant, asked him for drinks of alcoholic beverages, and Lemon told him he would be waited upon. "Buddy" Williams then asked the agent what he wanted, obtained the drinks from the kitchen of the restaurant, and served the drinks to him.

Thomas Lemon did not hold any license authorizing him to sell or serve alcoholic beverages and the restaurant was not licensed for the sale of alcoholic beverages.

It further appears that the ABC agents who made the seizure on June 18th claim that when they entered the restaurant and asked for Thomas Lemon, they were directed to a room in the rear of the restaurant; that when they announced their identity to Lemon, he picked up a jug, ran towards, and opened, a door, and threw the jug upon a concrete pavement; that one of the agents tasted some of the liquor which poured from the jug, and identified it as whiskey.

Fourteen cans of beer were found in a refrigerator in the restaurant kitchen and 66 cans of beer were elsewhere on the premises.

These ABC agents say that they talked with Mrs. Lemon, who told them that beer was purchased for service to the patrons of the place, not as a gift, but in return for whatever the patrons chose to pay.

When the matter came on for hearing pursuant to R.S. 33:1-66, Lacey Carter appeared and sought return of a refrigerator and radio. Edith Lemon appeared and sought return of the balance of the seized property. An appearance was also entered on behalf of the National Newark and Essex Banking Co. which sought recognition of a lien claim upon the refrigerator.

Mr. Lemon denies that he directed "Buddy" Williams to sell drinks of alcoholic beverages to the agent; indeed, he says that he knows of no such occurrence, and did not himself sell any alcoholic beverages in the place. Confronted by the agent, and one of the persons who accompanied the agent on June 11th, Lemon claims that he did not see either of them on that day. As to the jug which he threw to the pavement, he says that this was an accident and that the jug only contained water.

Thomas Lemon paid a fine of \$100.00 in criminal proceedings in the case in police court, upon charge of unlawfully selling alcoholic beverages in violation of the local ordinance.

I am satisfied from the evidence that alcoholic beverages were sold unlawfully in the restaurant to the ABC agent on June 11th. Such unlawful sale, apparently in the general course of the restaurant business, although observed by the ABC agent only on the one occasion, is a highly pertinent factor in determining whether the beer found a few days later in the refrigerator in the restaurant kitchen was intended for like unlawful sale. See Seizure Case No. 7460 and cases cited therein.

Under these circumstances there is a strong inference that any alcoholic beverages found in the restaurant premises were intended for unlawful sale.

The only evidence to the contrary is that of Mrs. Lemon who claims to be the owner of the restaurant furniture, equipment, and the beer. She says that it was her custom to buy beer for consumption for herself and friends, and not for sale, and that usually the beer was paid for by contributions from the various friends and acquaintances, who came to the place on social visits; and that the beer seized on June 18th was acquired in that manner and intended for such purpose. She denies that she told the agents that beer was purchased for the patrons of the restaurant and served to them in return for whatever they chose to pay, although admitting that the agents correctly quoted her statements in the same conversation concerning the source of the beer, the date of its purchase by her, the price she paid for it, the place where her husband purchased whiskey and the price she charged for barbecue sandwiches. In short, she agrees that the agents quoted her correctly in everything except the one vital item of whether there was a practice in the restaurant of selling or serving beer.

Concerning any such practice, the ABC agents testified that on the night of the seizure they talked with Lacey Carter, who resided on the second floor of the building, and is a nephew of Mr. Lemon, and asked him what they were getting for beer downstairs, to which he replied, "25¢ a bottle", and asked him how much they were getting for shots of whiskey, to which he replied, "35¢ a shot". Although Carter, at the hearing, denied making any such statements, I am satisfied that the agents have quoted him correctly.

The hurried destruction by Mr. Lemon of what appears to have been illicit alcoholic beverages, and Carter's description of the practice concerning the sales of alcoholic beverages in the restaurant, is forceful evidence of illegal liquor activities at the place, and indicates that Mrs. Lemon's original statement that beer was sold and served to her patrons is to be believed, and not her statement to the contrary at the hearing. I therefore find that the beer seized in the restaurant on June 18th was intended for unlawful sale and hence is illicit. R. S. 33:1-1(i). Such illicit beer, 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.

It is immaterial whether Mr. Lemon or Mrs. Lemon was the actual owner of the restaurant equipment since, in any event, it appears to have been a family business venture, with both fully aware of the illegal alcoholic beverage activities therein. Under such circumstances, neither of them can obtain return of any part of the property seized. See Seizure Case No. 7460, supra. Accordingly, Edith Lemon's request for the return of the seized property is denied.

Lacey Carter cannot escape forfeiture of whatever seized articles are owned by him unless he can establish that he acted in good faith and had no knowledge of the unlawful use to which his property was put, or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f).

The refrigerator and radio were in the restaurant, available for use in connection with such business, and beer was actually stored in the refrigerator. While Carter does not appear personally to have participated in the speakeasy activities at his uncle's restaurant, nevertheless it is evident that he was fully aware thereof, and this compels me to deny his request.

The refrigerator was recently purchased by Lacey Carter and his wife under a conditional sales agreement held by the National Newark and Essex Banking Co. The purchase price was \$401.15 and there is an unpaid balance of \$239.20. The Carters resided in Newark at the time of the purchase, and I am satisfied that the bank did not know or have any reason to believe that the refrigerator had been moved and placed in a speakeasy. Accordingly, I shall recognize its lien claim.

Inquiry has disclosed that there will not be any apparent advantage to the State to retain the refrigerator for use by a State agency conditioned upon the payment of the lien claim. The amount of the lien claim and the costs of seizure and storage of the refrigerator appear to exceed what is likely to be realized at a public sale thereof. Hence, the refrigerator will be returned to the bank upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 26th day of September 1949, the National Newark and Essex Banking Co. pays the costs of its seizure and storage, the refrigerator seized in this case will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, 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.

Dated: September 15, 1949.

ERWIN B. HOCK  
Director.

SCHEDULE "A"

- 80 - bottles of beer
- 30 - bottles of soda
- 11 - steel chairs
- 4 - tables
- 1 - piano and stool
- 1 - Admiral combination radio and victrola and a quantity of records
- 1 - GM Frigidaire
- 1 - De Luxe deep freezer
- 1 - stove
- Quantity of empty bottles

4. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

FANNIE L. HEARNS )  
T/a FANNIE'S BAR )  
2001 Arctic Avenue )  
Atlantic City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-146, issued by the Board of Commissioners of the City of Atlantic City. )

----- )  
Fannie L. Hearns, Defendant-licensee, Pro Se. )  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control. )

BY THE DIRECTOR:

The defendant pleaded non vult to the charge that, on August 10, 1949, she possessed a mislabeled beer tap in her tavern, in violation of Rule 1 of State Regulations No. 22.

An ABC agent, on routine inspection of the defendant's licensed premises on the day in question, found that beer was being drawn from a barrel marked "Holland Premium" through a spigot labeled "R. & H."

Defendant claims that her sister had the half-barrel of beer tapped while the sister was on duty the previous night. Nevertheless, defendant is responsible for the violation since she possessed a mislabeled beer tap on her licensed premises.

Defendant has no previous adjudicated record. The license, therefore, will be suspended for a period of three days, less one day's remission because of the plea entered herein, or a net suspension of two days. Re Badya, Bulletin 797, Item 5.

Accordingly, it is, on this 16th day of September, 1949,

ORDERED that Plenary Retail Consumption License C-146, issued by the Board of Commissioners of the City of Atlantic City to Fannie L. Hearns, t/a Fannie's Bar, 2001 Arctic Avenue, Atlantic City, be and the same is hereby suspended for a period of two (2) days, commencing at 7:00 a.m. September 26, 1949, and terminating at 7:00 a.m. September 28, 1949.

ERWIN B. HOCK  
Director.

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

In the Matter of Disciplinary Proceedings against JOSEPH ORTEPIO and CHAS. HELFIN T/a CLUB TRIO Highway #26 South Brunswick Township P.O. Monmouth Junction, N.J.,

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of South Brunswick.

----- Joseph Ortepio and Chas. Helfin, Defendant-licensees, Pro Se. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 28 of State Regulations No. 20.

On May 26, 1949, an Inspector of the United States Treasury Department, Internal Revenue Service, Alcohol Tax Unit, during an inspection of defendants' licensed premises, seized one 4/5 quart bottle labeled "Seagram's Seven-Crown Blended Whiskey" because it was found at variance with label requirements. Subsequent analysis by a chemist employed by that Department disclosed that the contents of the seized bottle varied substantially in color and solids from the contents of a genuine bottle of the same product.

Defendants allege that they never intentionally violated any law. Nevertheless, licensees are responsible for any "refills" found in their stock of liquor. Cedar Restaurant and Cafe Co. v. Hock, 135 N.J.L. 156.

Defendants have no prior record. I shall suspend defendants' license for a minimum period of fifteen days, less five days for the plea, leaving a net suspension of ten days. See Bulletin 827, Item 3.

Accordingly, it is, on this 19th day of September, 1949,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of South Brunswick to Joseph Ortepio and Chas. Helfin, t/a Club Trio, for premises on Highway #26, South Brunswick Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 26, 1949, and terminating at 2:00 a.m. October 6, 1949.

ERWIN B. HOCK Director.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

TOM'S TAVERN, INC., )  
51 Cross Street )  
Paterson 1, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-170, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

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Tom's Tavern, Inc., Defendant-licensee, by Anthony Alois, Vice-Pres. and Treas.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging it sold and served alcoholic beverages on its licensed premises during hours when such sale and service are prohibited by a local ordinance, in violation thereof.

On Sunday, August 21, 1949, two agents of the State Division of Alcoholic Beverage Control entering defendant's licensed premises, then open, observed some 18 persons consuming alcoholic beverages. Each agent purchased and was served a glass of beer by a bartender working on said premises, at about 12 o'clock noon.

A local ordinance, adopted by the Board of Alcoholic Beverage Control of the City of Paterson prohibits, among other things, such sale and service on Sunday between 3:00 a.m. and 1:00 p.m.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period of 15 days. Re Carrigan, Bulletin 773, Item 15. Remitting 5 days because of the plea will leave a net suspension of 10 days.

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

ORDERED that Plenary Retail Consumption License C-170, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Tom's Tavern, Inc., for premises 51 Cross Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. September 26, 1949, and terminating at 3:00 a.m. October 6, 1949.

ERWIN B. HOCK  
Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND FIXTURES AND EQUIPMENT OF SPEAKEASY IN CONFECTIONERY STORE ORDERED FORFEITED - VARIOUS ARTICLES RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on )	Case No. 7482
July 24, 1949 of a quantity of )	
alcoholic beverages, a music )	
machine, a cigarette vending )	ON HEARING
machine, and other fixtures, fur- )	CONCLUSIONS AND ORDER
nishings and merchandise at )	
205 Court Street, in the City of )	
Newark, County of Essex and )	
State of New Jersey. )	

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Public Service Tobacco Company, by Lewis R. Albert, Sales Manager.  
 Larry Zwillman, trading as Standard Amusement Co., Pro Se.  
 Isadore Kaplan, Pro Se.  
 Harry Castelbaum, 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, and pursuant to the provisions of a stipulation entered into on July 27, 1949 by Larry Zwillman, to determine whether a quantity of alcoholic beverages, a music machine, a cigarette vending machine, \$5.35 in cash, and various furnishings, fixtures and merchandise, itemized in a schedule attached hereto, seized on July 24, 1949 at 205 Court Street, Newark, New Jersey constitute unlawful property and should be forfeited.

It appears that the seizure was made by Newark police officers after they apprehended two men who had purchased bottles of wine at Hulit Adams' confectionery and bootblack store at the above address. One of the men identified Adams as the person who sold him the wine, while the other identified Harvey Harris, employed by Adams, as the person who sold him the wine.

The police authorities notified the Division of Alcoholic Beverage Control and ABC agents seized 92 bottles of wine, two bottles of whiskey and the other merchandise, furnishings and fixtures in the store, inasmuch as neither Adams nor Harris held a license authorizing either of them to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

Pending seizure hearing in the case, the music machine was returned to Larry Zwillman upon payment by him of the sum of \$100.00, the retail value thereof, under protest, to the Director of Alcoholic Beverage Control, pursuant to R. S. 33:1-66. Larry Zwillman has stipulated that the Director shall determine in these proceedings whether the money deposited by him shall be forfeited or returned to him.

When the matter came on for hearing pursuant to R. S. 33:1-66, Hulit Adams did not appear to contest forfeiture of the property seized. Larry Zwillman appeared and sought return of the money deposited by him, and Isadore Kaplan appeared and sought return of a Kelvinator ice cream cabinet. An appearance was also entered on behalf of Public Service Tobacco Company which sought the return of a cigarette vending machine. These claimants did not dispute the accuracy of the facts concerning the unlawful sale of alcoholic beverages at the place.

It is clear, from the facts in the case, that the seized alcoholic beverages were intended for unlawful sale and hence are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and all personal property seized therewith in the store constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Public Service Tobacco Company, Larry Zwillman, and Isadore Kaplan each presented documentary evidence which established, by serial number identification, that the seized cigarette vending machine, music machine and Kelvinator ice cream cabinet are owned by each respectively. Evidence was presented that the machines were placed in the restaurant on a profit-sharing basis and that the cabinet was loaned to Adams.

The establishment had the outward appearance of a small, legitimate business enterprise and each claimant placed his equipment there in accordance with his usual business practice. Adams does not appear to have any previous criminal record for violating any liquor laws. The persons who placed and serviced the machine, and Kaplan, who delivered the ice cream, testified that when they were there, no alcoholic beverages were visible; that there were no persons purchasing or drinking alcoholic beverages, and that they did not know, or have any reason to suspect, that alcoholic beverages were being sold.

I am satisfied from the evidence presented that each of the claimants acted in good faith and had no actual knowledge, or reason to suspect, that alcoholic beverages were being sold unlawfully at the place. Hence, I shall recognize each of their claims.

Accordingly, it is DETERMINED and ORDERED that if on or before the 3rd day of October, 1949, Public Service Tobacco Company pays the costs of the seizure and storage of the cigarette vending machine, and Isadore Kaplan pays the costs of the seizure and storage of the Kelvinator ice cream cabinet, such items will be returned to them respectively; and it is further

DETERMINED and ORDERED that the costs of seizure and storage of the music machine be deducted from the \$100.00 paid by Larry Zwillman and that the balance be returned to him; 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 vending and music machines, 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: September 21, 1949.

SCHEDULE "A"

92-bottles of wine	2 - gum vending machines and
2 - bottles of whiskey	currency therein
12 - cases of small bottles of soda	1 - Challenger Pistol Machine and
9 - cases of large bottles of soda	currency therein
1 - Royal Music Machine #6955 and	1 - cash register
currency therein	1 - cigarette vending machine and
1 - bootblack stand and chairs	currency therein
2 - glass show cases	1 - Coca Cola cooler
1 - electric heater	1 - pin ball machine and currency
1 - foot locker	therein
2 - oil heaters	1 - electric fan
1 - electric clock	1 - Kelvinator Ice Cream Box
2 - chairs	1 - electric sign
1 - table	\$5.35 in cash
1 - radio	

8. APPELLATE DECISIONS - KOTZAS v. DOVER.

BYRON KOTZAS, trading as )  
BAY BRIDGE INN, )

Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF DOVER, )

Respondent. )

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Joseph A. Citta, Esq., Attorney for Appellant.  
Percy Camp, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent whereby it refused to include as part of the licensed premises, in addition to the main hotel structure, a detached building known as the clam bar and the adjacent grounds, pursuant to the renewal application filed by appellant for the current licensing year.

The effect of respondent's order, limiting appellant's license for the 1949-50 licensing period so as to exclude the clam bar and adjacent grounds, was stayed by my order pending determination of the appeal.

Appellant alleges that the privilege of selling and serving alcoholic beverages was permitted at his clam bar and on his adjacent grounds under his previous license and that the action of the respondent Township Committee in refusing to permit this privilege to continue for the 1949-50 licensing period was arbitrary and unreasonable.

Respondent Township Committee contends that it has adopted a policy in the municipality limiting all licensed premises for the sale and service of alcoholic beverages to the main structure wherein the bar is located.

There appears to be no dispute that notice of the limitation policy aforementioned was given to all liquor licensees before renewal applications were filed. Appellant, who has a clam bar and cabins on grounds adjacent to his hotel, is the only licensee who filed an appeal. The sole question, therefore, to be decided in the instant appeal is whether the respondent issuing authority, by adopting its policy, and, subsequently, by deleting in appellant's renewal license the privilege to sell and serve alcoholic beverages in the clam bar and adjacent grounds, exceeded the authority vested in it by law or acted in an arbitrary or unreasonable manner.

Appellant is not entitled to renewal of his license as a matter of right. Malone v. Bordentown, Bulletin 129, Item 8. Zicherman v. Newark, Bulletin 647, Item 5. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion, this Division will not interfere with the actions of the constituted authorities. Allen v. Paterson, 98 N.J.L. 661; Fornarotto v. Public Utility Commissioners, 105 N.J.L. 28; Zicherman v. Driscoll, 133 N.J.L. 586. Since it has been established that the local issuing authority is vested with discretion in renewal of licenses, no reason appears why the issuing authority may not limit in the license itself the

extent of the premises which shall constitute the licensed premises. If the members of the local issuing authority decide that it is desirable and for the best interests of the community and its inhabitants to permit sale and service of alcoholic beverages only in the main structure and to prohibit such sale and service in adjacent stands, the municipal issuing authority has the inherent power to establish a policy to regulate the liquor traffic so as to accomplish the desired end.

After careful consideration of all of the evidence presented, I am satisfied that the respondent Township Committee did not exceed its power or act arbitrarily or unreasonably in not permitting the sale and service of alcoholic beverages in any other place but the main structure wherein the bar is located. I might add that the policy in question, promulgated by the respondent Township Committee, applies with equal force and vigor to all licensed premises located in the municipality.

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

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the stay entered herein, which in effect permitted appellant to include as part of the licensed premises the clam bar and adjacent grounds pending disposition of this appeal, be and the same is hereby terminated; and that appellant be limited to exercise the privilege of his license in the main structure wherein the bar is presently located.

ERWIN B. HOCK  
Director.

9. DISCIPLINARY PROCEEDINGS - ORDER OF SUSPENSION STAYED - EFFECTIVE DATES OF SUSPENSION TO BE FIXED AFTER LICENSEE RESUMES BUSINESS.

In the Matter of Disciplinary Proceedings against

PINE HILL LODGE, INC.  
T/a PINE HILL LODGE  
Brookside Road  
Randolph Township  
P.O. Mt. Freedom, N. J.,

ORDER

Holder of Plenary Retail Consumption License C-16, issued by the Township Committee of Randolph Township.

BY THE DIRECTOR:

An order was entered herein on the 8th day of September, 1949, suspending the license held by defendant herein for a period of ten days, commencing at 2:00 a.m. September 19, 1949, and terminating at 2:00 a.m. September 29, 1949.

Prior to the date in said order when the suspension was to be effective, an investigation by agents of this Division on two separate days, viz., a Friday and a Sunday, between 9:00 and 10:00 p.m., disclosed that on both occasions the defendant's licensed premises were closed and that no alcoholic beverage business was being conducted therein. An officer of the defendant-licensee admitted that during this season of the year only sporadic operation of the licensed business is conducted. Thus, no effective suspension can be imposed at the present time. The effective date of the suspension herein will therefore be postponed until a later date and entry of my further order. The fact that defendant may have served a part of its suspension will be considered at that time.

Accordingly, it is, on this 10th day of September, 1949,

ORDERED that the operation of the order of suspension heretofore entered and herein referred to be and hereby is stayed and suspended pending my further order.

ERWIN B. HOCK  
Director.

10. STATE LICENSES - NEW APPLICATION FILED.

Schreiber Trucking Co., Inc.  
604 Union St., Brooklyn, N. Y.  
Application filed September 20, 1949 for Transportation License.

ERWIN B. HOCK  
Director.

11. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAPS - PRIOR RECORD - LICENSE SUSPENDED FOR 5 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

PHILIP WOLOSZ )  
433 Grove Street )  
Jersey City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-367, issued by the Board of Commissioners of the City of Jersey City. )  
- - - - - )

Philip Wolosz, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that the dispensing apparatus attached to a barrel of beer in his licensed premises did not bear the true name of the manufacturer thereof, in violation of Rule 1 of State Regulations No. 22.

On August 16, 1949, an agent of the State Division of Alcoholic Beverage Control found "Krueger" beer being drawn and dispensed through a tap labeled "Schaefer".

Defendant has a prior record. By order of a local issuing authority his license was suspended for five days, effective September 10, 1945, after conviction of a violation of selling during prohibited hours.

Ordinarily the minimum suspension in a case of this kind is three days, with a remission of one day in the event of a plea of guilty or non vult. However, in view of the above mentioned prior record I shall suspend the license for a period of five days and remit one day, leaving a net suspension of four days.

Accordingly, it is, on this 22nd day of September, 1949,

ORDERED that Plenary Retail Consumption License C-367, issued by the Board of Commissioners of the City of Jersey City to Philip Wolosz, 433 Grove Street, Jersey City, be and the same is hereby suspended for a period of four (4) days, commencing at 2:00 a.m. October 3, 1949, and terminating at 2:00 a.m. October 7, 1949.

New Jersey State Library

*Erwin B. Hock*

Director.