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

BULLETIN 1564 June 17, 1964

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - NORTH ORANGE BAPTIST CHURCH v. ORANGE and GREEN & BRANDWEIN.

NORTH ORANGE BAPTIST CHURCH, Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE, AND MORRIS GREEN & JOSEPH BRANDWEIN, t/a GREEN'S TAVERN, Respondents.	)	ON APPEAL CONCLUSIONS AND ORDER

L. Bruce Puffer, Jr., Esq. Attorney for Appellant.
Felix J. Verlangieri, Esq., Attorney for Respondent Board.
Alfonso C. Viscione, Esq., Attorney for Respondent Licensees

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the grant by a vote of two-to-one of the members of respondent Municipal Board of Alcoholic Beverage Control (hereinafter Board) of a place-to-place transfer of respondent licensees' plenary retail consumption license (with broad package privilege) from premises 261 Dodd Street to premises 155-157 Main Street, Orange.

Appellant's petition of appeal alleges that the action of the Board was erroneous for the following reasons:

"The premises to which said license has been transferred are located within 200 feet of Appellant's church, in violation of R.S. 33:1-76;

"The premises to which said license has been transferred are in close proximity to three other churches and would be detrimental to the public welfare;

"The premises to which said license has been transferred are close to the Orange YMCA and would be deterimental to the public welfare;

"Several retail liquor outlets presently are located within a short distance of the premises to which said license has been transferred and, thus, there is no need and necessity for another consumption license in this area; and

"The area in question is amply serviced by existing licensed premises."

Respondents' answers deny the allegations set forth in appellant's petition of appeal.

There appears to be no dispute that Main Street, where the proposed premises are located, is a business area.

Rev. Richard B. Andersen, the minister of appellant church, testified that he objects to the transfer to the premises in question because he is of the opinion that it is within two hundred feet of the church. In addition thereto, he is of the opinion that there are enough taverns and package stores in the particular area. Furthermore, he testified that respondent licensees' premises would have a detrimental effect on the young members of the church who participate in the church functions and activities and use the Common or park when walking to or leaving the church.

Rev. Jacob B. Meyer, pastor of William Street Presbyterian Church located two blocks away from the premises in question, testified that he objects to the transfer because he has observed parishioners, particularly children, from his church passing the corner where respondent licensees' premises are located.

Rev. Richard H. Schoolmaster, affiliated with Grace Church which is located on Main Street approximately four hundred feet east of the proposed establishment, testified that he objects to the location sought by respondent licensees. He also stated that he is in the neighborhood of the proposed premises many times a day and there is a good deal of pedestrian traffic across the Common to Main Street and in the opposite direction.

Clarence R. Mease, general secretary of the YMCA located at 125 Main Street, testified that the YMCA is approximately three hundred feet away from respondent licensees' premises. He stated that on three nights each week, members of the Association use appellant's gymnasium and pass the proposed premises en route thereto.

John P. Tucker, president of the Board of Trustees of appellant, voiced objections similar to those advanced by the clergymen.

Robert P. Rubin, a realton who negotiated the lease for the proposed premises, testified that he is familiar with the area wherein the premises are located and that he is of the opinion that the establishment will be advantageous rather than detrimental to the neighborhood.

Joseph Brandwein, one of the respondent licensees, testified that he has operated a tavern for seventeen years at 261 Dodd Street but was compelled to vacate because the Housing Authority condemned the premises.

Ernest Di Rocco, president of the Orange Tavern Owners Association when the application for transfer was filed, testified that the area wherein the premises in question are located is suitable for a liquor license.

William Largey and Philip Manelli, members of the Board, testified that they voted in favor of the transfer after being satisfied that the premises sought by respondent licensees were in excess of two hundred feet from the church. Moreover, they were of the opinion that the site desired on Main Street was in a business area and thus the transfer of the license should be granted. They also considered the record of the respondent licensees in that for seventeen years of operation of a licensed premises at the former site, there was no indication that they had operated their business other than in a proper manner.

A petition submitted to the Board containing fifteen names of persons, some of whom are conducting businesses in the area, indicates that the signers favor the transfer.

Notwithstanding that other reasons have been advanced by appellant in its petition of appeal why the action of the Board should be reversed, it will be necessary to consider first the reason of paramount importance, viz., that the nearest entrance to respondent licensees' premises is within two hundred feet of the nearest entrance to appellant's premises. If this be so, the grant of the transfer herein by the Board would violate the provision of R.S. 33:1-76, which provides as follows:

> "...no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church...Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church...to the nearest entrance of the premises sought to be licensed."

It is apparent that the words "properly walk" were inserted in the law to emphasize the fact that the measurement requirement in all respects be consistent with safety.

Appellant's edifice is located on the south side of South Main Street near Hickory Street and faces South Main Street. Adjacent to the church structure and running parallel to the east side thereof is a driveway and also a strip of land enclosed by a metal fence erected along the west side of Hickory Street. On the said east side of the church proper and leading from the driveway, there is an entrance to the church situated about twenty feet from the sidewalk on the south side of South Main Street. On the north side of South Main Street opposite the church is a park known as Military Common, across which are several cement walks leading to Main Street, which walks are provided for the use of pedestrians.

In Presbyterian Church of Livingston v. Div. of Alcoholic Beverage Control et als., 53 N.J. Super. 271, Judge Freund, speaking for the Appellate Division of the Court, stated:

> "For many years...the Director has given R.S. 33:1-76 a practical construction, i.e., that the measurement should be, not between the actual entrances, but between points on the sidewalk intersecting any walk which a person would use in entering the properties in question." (Emphasis mine)

At the invitation of the attorneys for the respective parties herein, I personally inspected the area.

Bearing in mind the practical construction attributed to the State Director aforementioned, in order to attain the shortest distance that a pedestrian would properly walk, the beginning point would be where the driveway meets the sidewalk on the south side of South Main Street. Thence, as indicated by the course marked A-F on Exhibit R-1 in evidence, a pedestrian would properly walk north-easterly along the sidewalk on South Main Street to the corner of Hickory Street, a distance of 21 feet; cross South Main Street in a northerly direction to the concrete walk at Military Common, a distance of 24 feet; thence along the said walk and across the said Common to the intersecting concrete walk on the south side of Main Street, a distance of 62.4 feet; thence along the said concrete walk and parallel with Main Street, a distance of 22.6 feet to the crosswalk located at Park and Main Streets; thence along the said crosswalk, a distance of 58.5 feet to the curb on the northerly side of Main Street and thence 18 feet to the entrance of respondent licensees' premises. Taking this route, I find as a fact that a pedestrian would properly walk from the beginning point at the nearest entrance to the church to the nearest entrance of the premises sought to be licensed a distance of 206.5 feet.

The method of measurement used by appellant, whereby it achieved a distance of 189.5 and 194.5 feet, respectively, is inapposite for the reason that it improperly ignored the lawful crosswalk at Hickory and South Main Streets. Although unmarked, such a crosswalk has been held to be lawful for pedestrian traffic. See Hopkins v. Newark et al., 4 N.J. Super. 484 and cases cited therein.

It has been consistently held that the number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the local issuing authority. DiGioacchino v. Atlantic City, Bulletin 1030, Item 3. In cases of the kind now under consideration, the Director's function on appeal is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et al. v. Maplewood, Bulletin 658, Item 4; Krogh's Restaurant, Inc. et als. v. Sparta, Bulletin 1258, Item 1.

I have considered the other reasons advanced by appellant for reversal of the Board's action but fail to find any facts which would warrant the reversal of said action. There is absolutely no evidence presented which might indicate in any way whatsoever that the members of the said Board who voted in this matter were improperly motivated. I am satisfied that in all respects ample and proper consideration was given by the members of the Board before action was taken in the case. I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was arbitrary, unreasonable or constituted an abuse of discretion. Rule 6 of State Regulation No. 15. I recommend, after careful examination of all the evidence adduced herein, that the action of the respondent Board, in approving the transfer of the license to respondent licensees for the premises in question, be affirmed and that the appeal filed herein be dismissed.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written

argument thereto were filed with me by the attorney for appellant.

After carefully considering the testimony, exhibits, Hearer's Report, and exceptions thereto and written argument filed in behalf of appellant, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22d day of April, 1964,

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

JOSEPH P. LORDI
DIRECTOR

2. OPINION OF ATTORNEY GENERAL - LIMITATION OF NUMBER OF LICENSES TO BE HELD PURSUANT TO P.L. 1962, C. 152 (R.S. CUM. SUPP. 33:1-12.31 et. seq.) - HEREIN OF "PERCENTAGE LEASES" AND CHANGES IN EXTENT OF STOCKHOLDINGS IN RELATION TO PROHIBITED ACQUISITION OF BENEFICIAL INTEREST IN LICENSE.

May 6, 1964

FORMAL OPINION 1964 - NO. 3

We have been asked for an interpretation of Chapter 152, Laws of 1962, as it applies to specific situations hereinafter described. Chapter 152 generally limits the direct or indirect ownership of alcoholic beverage retail licenses to no more than two per person.

The first question posed is whether a landlord who is the owner of more than two alcoholic beverage retail licenses may make a lease with a tenant who operates a retail liquor store with rent based in part upon a percentage of gross sales. The question is whether such a lease gives the landlord a beneficial interest in an additional license contrary to the provisions of Chapter 152.

The second question posed is whether a corporation which is the holder of an alcoholic beverage retail license acquired prior to the effective date of Chapter 152 may thereafter purchase and retire the shares of stock held by some stockholders having a 50% interest in the corporation, thereby giving the remaining group of stockholders complete control of the corporation.

Subject to the qualifications expressed below, for the reasons hereinafter stated we find in general that neither of these transactions is prohibited by Chapter 152, Laws of 1962.

Section 1 of the Act provides that after the effective date of the Act, with certain exceptions, no person shall acquire a beneficial interest in more than two alcoholic beverage retail licenses. The same section provides that no person who holds a beneficial interest in more than two such licenses on the effective date of the Act shall be required to give up his interest in any or all of such licenses.

Section 2 of the Act provides that the Act shall not apply

to the acquisition of "an additional license or licenses or an interest therein" when such license is issued in connection with a hotel containing at least 50 sleeping rooms.

Certain other exceptions and limitations are set forth in the remainder of the Act. For example, section 6 provides generally that nothing in the Act shall affect the right of any person having a beneficial interest in a retail license or licenses to hold or acquire an interest of not more than 10% of any corporation whose shares of stock are publicly traded.

The constitutionality of the Act has been upheld in Grand Union v. Sills, 81 N.J. Super. 65 (Law Div. 1963), appeal pending. In the course of that opinion the purpose of the Act was explained as follows, at 67:

> "Briefly put, the statute in question limits the number of retail alcoholic beverage licenses that may be held by any one person to two. The curb is prospective only. Plaintiffs and those similarly situated will not be disturbed in their present multiple license holdings, but they are prohibited from acquiring additional licenses."

The first question is whether a landlord who is the owner of more than two alcoholic beverage retail licenses may enter into a "gross sales lease" with a tenant who operates a retail liquor store without thereby acquiring a "beneficial interest" in another license contrary to the statutes. A specific lease proposal has not been submitted. Therefore, it is necessary to answer this question in a general manner.

"Percentage leases" are those in which the amount of rent is based on a percentage of gross sales, or gross or net profits of the lessee's business, usually with a stipulated minimum. Percentage leases are used frequently in order to fix the landlord's return in proportion to the value of the store's location, and to adjust for fluctuations in economic conditions and dollar values. Note: "The Percentage Lease--Its Functions and Drafting Problems", 61 Harv. L. Rev. 317, 318 (1948); Silverstein v. Keane, 19 N.J. 1, 12 (1955). For examples of such leases, see also Farber v. Shell Oil Co. 47 N.J. Super. 48 (App. Div. 1957) and Plassmeyer v. Brenta, 24 N.J. Super. 322 (App. Div. 1953).

Leases calling for the payment of rent based upon gross receipts have been commonly used in the past in connection with licensed premises subject to the jurisdiction of the Division of Alcoholic Beverage Control. In fact, the Division has previously considered whether such leases give a landlord an interest in the license. This question has arisen because N.J.S.A. 33:1-26 contains a provision which has been part of the Alcoholic Beverage Law since 1933:

> "Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor."

The same section of the law contains the following provision:

> "No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee * * *."

Accordingly, licensing officials have always sought to determine whether any person other than the licensee has an interest in the license. See: The Boss Co., Inc. v. Board of Commissioners of Atlantic City, 40 N.J. 379, 388 (1963). In Matter of Club Parsippany, Inc., Bulletin 411, Item 8, decided June 20, 1940, Acting Commissioner E. W. Garrett considered a lease which provided that the licensee should pay as rent 10% of the annual gross receipts from the sale of alcoholic beverages up to $15,000, and 15% of all gross receipts in excess of that sum, but in no event less than $1200 per year. The Acting Commissioner held that because of this arrangement the landlord "is so interested in the license applied for and the business to be conducted thereunder that its interest must be disclosed" by the applicant for the license. The Acting Commissioner said:

> "Normally, rental agreements provide for the payment of a fixed sum by the tenant to the landlord. Such agreements give the landlord no interest (within the contemplation of Question 28) in the licensed business since the rent is due and payable without reference to the receipts of the business. Hence applicants who lease premises, paying a fixed rent, need not disclose in answer to Question 28 the rental agreement as an interest of the landlord.
>
> "On the other hand, where the rent is computed with reference to the receipts of the licensed business, disclosure of the arrangement must be made so that the issuing authority may determine whether the leasing agreement is bona fide, or a mere subterfuge to conceal either an actual partnership of the landlord and tenant in the licensed business or a situation where the tenant is a mere front for the landlord."

See also Weston & Co., et al. v. Municipal Board of A.B.C. of Newark, et al., Bulletin 719, Item 2, decided June 28, 1946 where it was held that a sub-landlord does not have an unlawful interest in the licensed business by virtue of his receipt of 4% of the gross sales in consideration for the sub-lease.

An agreement to pay by way of rent, salary or otherwise a portion or percentage of the gross or net profits or income from the licensed business must be disclosed in response to Question 31 of the application for municipal retail licenses, as promulgated in Bulletin 996 dated January 4, 1954. On a number of occasions since that time the Division of Alcoholic Beverage Control has stated in reply to inquiries that the payment of a substantial percentage of receipts by way of rent due a landlord would in effect give the landlord an interest in the licensed business in violation of N.J.S.A. 33:1-26. The Division has taken the position, however, that if the leasing arrangement is bona fide and not a subterfuge to conceal a partnership of the landlord and tenant, or an arrangement whereby the tenant is a mere "front" for the landlord, an agreement to pay as rent a reasonable percentage, generally not more than 6% of the gross receipts, would not be considered unlawful.

The mere receipt of a share of gross sales, "unless coupled with such factors as sharing the losses, right of control, community of interest, and the use of partnership terms in the instrument" will not create a partnership. Note, supra, 61 Harv. L. Rev., at 320, fn. 21. This has been the law of New Jersey since the decision in Perrine v. Hankinson, 11 N.J.L. 181 (Sup. Ct. 1829), which held that an agreement to pay as rent a portion of the profits of a farm and tavern did not constitute the parties partners so as to disable one from suing the other at common law. See also: Austin, Nichols & Co. v. Neil, 62 N.J.L. 462 (Sup. Ct. 1898); United States ex rel. Kessler et al. v. Mercur Corp. et al., 83 F. 2d 178, 182 (2 Cir. 1936); Annotation, "Lease or tenancy agreement as creating partnership relationship between lessor and lessee," 131 A.L.R. 508, 536 (1941).

In the United States ex rel Kessler case, supra, the court reviewed several cases which held that the sharing of gross receipts did not convert a landlord-tenant relationship into a partnership or joint venture. In other cases cited therein, however, courts had found that various factors, such as control over earnings and the treatment of assets as jointly owned property, justified treating the relationship as one of joint venture rather than of landlord-tenant. But it is not necessary to find that a partnership or joint venture relationship exists before determining that Chapter 152 has been violated. Other elements short of a partnership or joint venture may combine to establish the acquisition by the landlord of a beneficial interest in a new license contrary to the provisions of Chapter 152.

As stated above, by virtue of N.J.S.A. 33:1-26, a liquor license in New Jersey must be free "from any device which would subject it to the control of persons other than the licensee." The Boss Co., Inc. v. Board of Commissioners of Atlantic City, supra, 40 N.J. at 388. See also: Mannion v. Greenbrook Hotel, Inc., 138 N.J. Eq. 518, 520 (E. & A. 1946); Lachow v. Alper, 130 N.J. Eq. 588, 590 (Chan. 1942); Walsh v. Bradley, 121 N.J. Eq. 359, 360 (Chan. 1937). Similarly, where a lease entitles the landlord to a share of gross receipts the relationship of the parties and all conditions of the transaction should be scrutinized to determine whether a normal, arms-length landlord-tenant relationship has been established or whether the landlord's interest or control has been carried so far as to give him a beneficial interest in an additional license contrary to the proscription of Chapter 152.

There are many factors that could be considered. These include the extent of participation in gross receipts, pre-existing relationships of the parties, whether or not the landlord has any right to control the manner of conducting the business and how the lease compares with other leases for similar premises. In an arms-length transaction it would be expected that a fluctuating rent provision would be of benefit to the tenant as well as the landlord under varying conditions. However, if the percentage lease provides a minimum, inflexible, guaranteed rent equal to the full fair rental value of the property, the lease would give the landlord additional rent if gross receipts are high but gives the tenant no relief if business is bad. See: Note, "The Percentage Lease", supra, 61 Harv. L. Rev. at 323, fn. 36. Thus, if the landlord is guaranteed what would clearly be considered the maximum fair rental value of the property, any additional rent by way of a percentage of gross receipts might be considered a share in the value of the licensed business.

Without seeing a specific lease and knowing all the facts of the transaction, we can go no further than to indicate the care with which each leasing arrangement must be examined by the Division. It would not be unreasonable for the Division to establish, as has been done in the past, a standard that limits the share in gross receipts that can be paid to the lessor, even where the relationship of the parties suggest no intent to use the lease arrangement as a means of evading the effect of Chapter 152, Laws of 1962.

If the rental agreement considered as a whole, represents an acceptable landlord-tenant arrangement, not entered into for the purpose of circumventing the provisions of Chapter 152, such an agreement would not constitute a "beneficial interest" within the meaning of the statute. The test should be whether the agreement represents solely a reasonable method of compensating the landlord for the use of the premises or whether it is a device whereby the landlord can also derive benefits equivalent to a participation in the business conducted therein.

The second question involves a corporation which is the holder of a number of alcoholic beverage retail licenses acquired prior to August 3, 1962, the effective date of the aforesaid Act. The shares of the corporation are held by two families, each family having 50% of the outstanding stock. The corporation now proposes to purchase and retire all shares of stock held by one of the families if such a transaction is permissible under the law. This would result in the remaining family members becoming the sole stockholders of the corporation.

In the instant situation, the corporation does not contemplate acquiring additional licenses or interests in additional licenses. It merely proposes to redistribute among some of the existing stockholders the extent of ownership of its stock, and, indirectly, of the licenses already held by it, through the repurchase of outstanding shares of stock. The proposed action does not constitute the acquisition of an additional license by the corporation; nor is it the acquisition by any stockholder of a beneficial interest in a new or different license not held by the corporation on the effective date of the Act. Therefore, this transaction is not prohibited by the Act. This opinion in no way attempts to deal with the situation that would exist if a person holds not more than 10% of a publicly traded corporation and thereafter seeks to increase his stockholdings in that corporation above the 10% level.

Therefore, you are advised that where a closed corporation, before the effective date of the Act, was the holder of two or more licenses, the Act does not prevent the corporation from buying and retiring the shares of stock held by some of the stockholders even if the effect is to increase the control by the remaining stockholders of the outstanding shares of stock of the corporation.

Very truly yours,

ARTHUR J. SILLS
Attorney General

By_____
Theodore I. Botter
First Assistant Attorney General

3. SEIZURES - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES AND BOTTLING EQUIPMENT - CLAIM FOR RETURN OF PERSONAL PROPERTY TO LANDLORD REJECTED FOR FAILURE TO ESTABLISH GOOD FAITH AND INNOCENCE - PERSONAL PROPERTY AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on January 6, 1964 of a quantity of alcoholic beverages and miscellaneous personal property at dwelling of Leon Sacharow, 154 Lake Shore Drive, White Meadow Lake, in the Township of Rockaway, County of Morris and State of New Jersey.	))))	Case No. 11,178 ON HEARING CONCLUSIONS and ORDER

Leon Sacharow, Pro Se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether a considerable amount of alcoholic beverages and miscellaneous personal property, more particularly described in an inventory hereinafter referred to, made part hereof, and marked "Schedule A", seized on January 6, 1964 at the premises of Leon Sacharow, 154 Lake Shore Drive, White Meadow Lake in Rockaway Township, N.J., constitute unlawful property and should be forfeited.

When the matter came on for hearing, pursuant to R.S. 33:1-6 an appearance was entered by Leon Sacharow, who sought the return of the freezer, the washing machine and the 2 ladders.

No one appeared to oppose forfeiture of the alcoholic beverages.

It was stipulated by claimant that the Division file herein be admitted into evidence; said file also contained the affidavit of mailing affidavit of publication, notice of hearing, inventory, copy of search warrant and the Division chemist's report, duly certified by the Director.

The file, buttressed by the testimony of ABC Agent F, established the following facts: Information was received by this Division from the Rockaway Township Police Department that alleged illicit alcoholic beverage bottling activity was taking place at the premises owned by Leon Sacharow, at 154 Lake Shore Drive, White Meadow Lake, Rockaway Township, N.J. The agents were also informed that a local public works employee, while shutting off the main water line at these premises, observed large quantities of whiskey bottles bearing no tax stamps, and gallon jugs containing what appeared to be alcohol.

On January 6, 1964 ABC agents obtained a search warrant, entered the basement of the said premises and observed numerous cartons containing 4/5 bottles of amber colored fluid bearing

a label reading "Imported Canadian Reserve Gold Label Blended Whiskey". Said bottles were sealed and did not bear any tax stamps. A count disclosed that there were 510 full 4/5 bottles of alleged whiskey; in another portion of the basement, the agents further observed numerous empty and new 4/5 bottles totaling 1536 bottles.

There were also numerous empty and full gallon jugs of what appeared to be alcohol; also a jug containing caramel coloring. On the work table were numerous labels bearing the same legend as were affixed to the bottles. There was also a can of glue and paper cement, white and red plastic bottle seals in jars, and other equipment used for mixing and blending alcohol prior to being bottled. Also confiscated were 3 bottles of Old Overholt Straight Rye Whiskey and a cardboard container for 5000 labels reading "Imported Canadian Reserve Gold Label".

Later that afternoon, James Chieppa and Salvatore Napurano were apprehended by local police authorities and questioned with respect to the said illicit liquor activity at these premises. Chieppa orally stated that he had leased the said property from an agent of Sacharow but that he had no knowledge of illicit liquor activity; and, indeed, denied knowing Napurano. On his person were found several notations, particularly one indicating ingredients for the manufacture of 86.6% proof whiskey. He further admitted that he had served 2 years in the Federal penitentiary on an illicit still activity charge.

On the same date, Mrs. Rita Gottesman, secretary of the Schwartz Realty Co., the leasing agent for the owner of these premises, identified Chieppa and Napurano, as the persons who on November 30, 1963 signed a lease for 7 months for the said premises. Chieppa and Napurano were charged with possession of alcohol not bearing any indicia tax stamp in violation of R.S. 33:1-2 and R.S. 33:1-50(b) and (e), were arraigned in the Rockaway Township Municipal Court and held in bail for action by the Morris County Grand Jury.

The records of this Division show that no license for the manufacture, or bottling or storing or distributing of alcoholic beverages was issued to Sacharow, Chieppa, or Napurano or to any one at the premises in question.

The report of the Division chemist shows, in part, that a sample of one 4/5 quart bottle, sealed, labelled "Imported Canadian Reserve Gold Label Blended Whiskey, 86.18 proof is an alcoholic beverage fit for beverage purposes, with alcohol by volume of 36.1%". Another sample of a one gallon jug containing 124 ounces of alcohol "is an alcoholic beverage fit for beverage purposes when properly diluted, with alcohol by volume of 88.1%".

Leon Sacharow, claimant herein, sought the return of certain personal property which he claimed belonged to him. He stated that he owned the freezer but could not identify the same by either make or model, nor did he have any bill of sale or other indicia of ownership. He was then asked the following:

"Where did you buy it? A In New York

Q Where in New York? A On St. Nicholas Avenue. I don't know the store.

Q You don't know the name of the store? A No."

He also claimed the return of the washing machine which he thought was a Westinghouse; his claim was based on his contention that the washing machine was on the premises when he purchased the house 6 or 7 years ago. A similar claim was made for the 2 ladders. In no case, did he present any verification of his claim of ownership to these items. He further testified that he was on a European trip at the time that these premises were rented to Chieppa and Napurano but that the Schwartz Realty Co. was the managing agent for this property.

No representative of the said realty company appeared at this hearing to corroborate Sacharow's claim, and no other witnesses were produced in Sacharow's behalf.

The alcohol is illicit because it was clearly illegally manufactured and did not contain any tax stamps on any of the bottles. R.S. 33:1-1(i); R.S. 33:1-50 (b and e); R.S. 33:1-88. Such illicit alcohol and all other personal property seized on the premises 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.

Since it has been clearly established that the alcoholic beverages are illicit for the reasons above stated, it is recommended that an Order be entered forfeiting the same.

The Director has the discretionary authority to return property subject to forfeiture to a person who has established to his satisfaction that he has acted in good faith and did not know or had any reason to believe that the property would be used for unlawful liquor activity. R.S. 33:1-66(f). However, in addition to this, there must be affirmative proof to support the claim of ownership.

From the evidence presented, I find, as a fact, that the claimant has failed to meet these two tests. It is significant that the managing agent of these premises failed to testify at these proceedings and thus, claimant has not introduced the slightest scintilla of evidence to support his claim that he did not know or have any reason to believe that these premises were to be used for illicit liquor activities. This was his obligation because one of the lessees has a prior record of conviction for illicit liquor activity, and had served two years in the Federal penitentiary.

It is also necessary to establish by clear and convincing evidence that the personal property claimed is actually the property of the claimant. Here the claimant has failed to produce any evidence of his ownership; he does not even know the make, model, purchase price, date of purchase or any substantive facts on which to base his claim. Under these circumstances, I am imperatively compelled to recommend that an Order be entered denying the demand of claimant, Leon Sacharow, for the return of the personal property, and that instead, the said property be forfeited. Cf. Seizure Case No. 8410, Bulletin 1006, Item 3; Seizure Case No. 8667, Bulletin 1051, Item 9; Seizure Case No. 8518, Bulletin 1037, Item 5; Seizure Case No. 8460, Bulletin 1009, Item 2; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Conclusions and Order

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

After carefully considering the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt them as my conclusions herein.

Accordingly, it is on this 22nd day of April, 1964,

DETERMINED and ORDERED that 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 shall be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Joseph P. Lordi,
Director

SCHEDULE "A"

513 - 4/5 quart bottles of whiskey
21 - gallon jugs of alcohol
1 - gallon of alleged whiskey
1 - gallon jug of caramel coloring
1536 - empty bottles
2 - ladders
2 - jars of bottle top seals
2 - funnels
1 - ½ gallon of glue
3000 - labels
30 - paint strainers
1 - gallon can of paper cement
1 - empty cardboard carton
1 - RCA Whirlpool Freezer
1 - Westinghouse Laundromat

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN APPLICATION FOR LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 20 DAYS UPON PROOF OF CORRECTION

In the Matter of Disciplinary Proceedings against	)
Broadway Lounge, Inc. t/a Bamboo Room 36 Broadway Passaic, N.J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-130, issued by the Board of Commissioners of the City of Passaic	)

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

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

"1. In your application dated June 5, 1963, filed with the Board of Commissioners of the City of Passaic, upon which you obtained your current plenary retail consumption license, in answer to Question No. 22 you listed Jean Malec as the holder of 50 shares (50%) of your issued and outstanding stock, and by amendment to your answer to Question No. 22, filed with said Board by notice dated January 9, 1964, you listed Jean Malec as the holder of 98 shares (98%) of your issued and outstanding stock, and, in answer to Question No. 23 thereof, you falsely stated that no one other than said stockholder had any beneficial interest, directly or indirectly, in the stock held by said stockholder, whereas in truth and fact Frank Malec on June 5, 1963 was the true and beneficial owner of 25 shares of your stock, listed in the name of Jean Malec, and on January 9, 1964 he was the true and beneficial owner of 49 shares of your stock, also listed in the name of Jean Malec; said false statements, misrepresentations and evasions and suppression of material facts being in violation of R.S. 33:1-25.

"2. From on or about June 30, 1963 to date, you knowingly aided and abetted Frank Malec to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52."

The facts are sufficiently set forth in the quoted charges when it is added that reports of investigation disclose that the apparent motivation for concealment of interest of Frank Malec (husband of Jean Malec) was the fact that at the time of making application for license, there was pending against him a complaint in the United States District Court for failing to

pay special wagering occupational tax and to obtain necessary tax stamp in connection with his alleged bookmaking activity.

To date, no correction of the unlawful situation has been accomplished.

Absent prior record and considering the plea entered herein, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply for lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than twenty days from the date of the commencement of the suspension. Re Carlton, Bulletin 1535, Item 5.

Accordingly, it is, on this 29th day of April, 1964,

ORDERED that Plenary Retail Consumption License C-130, issued by the Board of Commissioners of the City of Passaic to Broadway Lounge, Inc., t/a Bamboo Room, for premises 36 Broadway, Passaic, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. Wednesday, May 6, 1964, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 3:00 a.m. Tuesday, May 26, 1964.

Joseph P. Lordi
Director

5. DISCIPLINARY PROCEEDINGS - ORDER TERMINATING SUSPENSION FOR BALANCE OF TERM UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against)

Broadway Lounge, Inc.,)
t/a Bamboo Room
36 Broadway)
Passaic, N.J. ORDER
)

Holder of Plenary Retail Consumption License of C-130, issued by the Board of Commissioners of the City of Passaic.)

Harry Kampelman, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On April 29 1964, I entered an order suspending the license herein for the balance of its term, commencing on May 6, 1964, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation (undisclosed interest in the license) for lifting of the suspension on or after 3 a.m. Tuesday, May 26, 1964, after the license had been suspended for twenty days. Re Broadway Lounge, Inc., Bulletin 1564, Item 4.

It appearing from verified petition submitted by the licensee that the unlawful situation has been corrected, I shall grant the petition requesting termination of suspension.

Accordingly, it is, on this 13th day of May, 1964,

ORDERED that the suspension heretofore imposed herein be and the same is hereby terminated, effective 3 a.m. Tuesday, May 26, 1964.

Joseph P. Lordi,
Director.

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

In the Matter of Disciplinary Proceedings against	)	
Nello Rossi t/a Washington House Bar 233 Farnsworth Avenue Bordentown, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the City of Bordentown.	)	

Kessler and Tutek, Esqs., by Henry B. Kessler, Esq., Attorneys for Licensee
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 26, 1964 he possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Pal, Bulletin 1546, Item 11.

Accordingly, it is, on this 4th day of May, 1964,

ORDERED that Plenary Retail Consumption License C-2, issued by the Board of Commissioners of the City of Bordentown to Nello Rossi, t/a Washington House Bar, for premises 233 Farnsworth Avenue, Bordentown, be and the same is hereby suspended for five (5) days, commencing at 6:00 a.m. Monday, May 11, 1964, and terminating at 6:00 a.m. Saturday, May 16, 1964.

JOSEPH P. LORDI
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Jersey National Liquor Co., 209-227 McLean Boulevard, Paterson, N.J. Application filed June 16, 1964 for Additional Warehouse license covering premises at 4576 Crescent Boulevard, Camden, N. J. in conjunction with Plenary Wholesale License W-37.

Joseph P. Lordi
Director