

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 709

MAY 6, 1946.

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STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 709

MAY 6, 1946.

DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY  
RETAIL LICENSEE OTHER THAN FROM A NEW JERSEY MANUFACTURER OR WHOLE-  
SALE, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 -  
LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

WALTER R. KEUPER )  
715 Broadway )  
Newark 4, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion license C-80, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )

Walter R. Keuper, Defendant-licensee, Pro se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic  
Beverage Control.

Defendant pleads non vult to a charge alleging that, on or about  
January 7, 1946, he purchased alcoholic beverages from a person who  
was not the holder of a New Jersey manufacturer's or wholesaler's  
license, in violation of Rule 15 of State Regulations No. 20.

The investigation in the instant case disclosed that defendant  
purchased eight 4/5 quart bottles of Teachers Highland Cream Scotch  
Whiskey from a person who visited defendant's licensed premises.  
Defendant admits that he was aware of the fact that the man from whom  
he purchased the whiskey was not a liquor salesman. A retail licen-  
see's stock of liquor must be legitimate in origin and must be  
purchased from a licensed dealer.

Violations of this kind strike at the very foundation of effec-  
tive liquor control. The shortage of Scotch whiskey is no valid  
excuse. I would be inclined to revoke the license in the instant  
case if it were not for the fact that defendant's prior record is  
clear. He has been a liquor licensee for approximately ten years.  
In addition, there is no evidence that the liquor which the licensee  
purchased from a non-licensee was part of stolen or "hijacked" stock.  
Cf. Jack & Jean Holding Corporation, Bulletin 605, Item 5. Under the  
circumstances, I shall suspend defendant's license for a period of  
forty days, less five days for the non vult plea entered herein, or a  
net suspension of thirty-five days.

Accordingly, it is, on this 22nd day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-80, issued by  
the Municipal Board of Alcoholic Beverage Control of the City of  
Newark to Walter R. Keuper, 715 Broadway, Newark, be and the same is  
hereby suspended for a period of thirty-five (35) days, commencing at  
2:00 a.m. April 30, 1946, and terminating at 2:00 a.m. June 4, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

2. APPELLATE DECISIONS - LLEWELLYN RECREATION CENTER, INC. v. ORANGE.

LLEWELLYN RECREATION )  
 CENTER, INC., )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 MUNICIPAL BOARD OF ALCOHOLIC )  
 BEVERAGE CONTROL OF THE CITY )  
 OF ORANGE, )  
 )  
 Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Goldhor & Friedman, Esqs., by Samuel B. Friedman, Esq.,  
 Attorneys for Appellant.  
 Edmond J. Dwyer, Esq., Attorney for Respondent.

This is an appeal from the alleged denial by respondent of an application for a transfer to appellant of a plenary retail consumption license now held by a partnership consisting of Ernest Winkelman William R. E. Maybee, Joseph Kruse and August Kruse. The premises in question are located at 26-32 Lincoln Avenue, Orange.

The facts are not in dispute. In July 1945 Ernest Winkelman, William R. E. Maybee, Joseph Kruse and August Kruse, partners, trading as Llewellyn Recreation Center, obtained from respondent a plenary retail consumption license for the premises in question. In December 1945 application was duly made to transfer this license to appellant corporation. The four persons now conducting the business as partners are the directors and sole stockholders of appellant corporation. Ernest Winkelman holds 16% of the stock of Llewellyn Recreation Center, Inc.

A hearing upon the application to transfer the license was held by respondent on January 14, 1946, at which time decision was reserved. On February 2, 1946, appellant's attorney requested respondent to act upon the pending application, but no response was received. On February 14, 1946, appellant's attorney addressed a communication to respondent Board advising that, unless a decision was rendered within ten days, an appeal would be taken. When no response was received to the communication and no action taken upon the application, the appeal herein was filed on March 22, 1946.

The answer herein alleges that respondent deferred action thereon pending disposition of an appeal to the Commissioner of Alcoholic Beverage Control by Ernest Winkelman from his conviction by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange on charges relating to the alleged sale of alcoholic beverages to minors. The fact is that no such appeal is pending and Ernest Winkelman has not been convicted of any charges in disciplinary proceedings. Disciplinary proceedings were instituted against Winkelman by the Commissioner of Alcoholic Beverage Control alleging sales to minors, and that case has been heard but not decided. No valid reason appears for deferring action or denying the application for transfer. I find that the failure to reach a determination was unwarranted and the case will be determined on its merits as though an adverse decision had been rendered. Re Salzburg, Bulletin 118, Item 11; Bradford v. Paulsboro, Bulletin 419, Item 11.

It should be pointed out that, even if the license is transferred from the partnership to the corporation, Ernest Winkelman must,

nevertheless, qualify as an individual applicant because he is the owner of more than 10% of the stock of appellant corporation. (R. S. 33:1-25).

No valid reason appearing to the contrary, I conclude that appellant is entitled to obtain the transfer of the license which it seeks.

Accordingly, it is, on this 22nd day of April, 1946,

ORDERED, that respondent transfer the license to appellant as applied for.

ERWIN B. HOCK  
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATE OF SUSPENSION (SEE BULLETIN 707, ITEM 8).

In the Matter of Disciplinary Proceedings against

EDWARD PIETROWSKI  
T/a SEVEN GABLES  
1005 South Stiles Street  
Linden, N. J.,

O R D E R

Holder of Plenary Retail Consumption License C-47 issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden.  
-----

Louis P. Brenner, Esq., Attorney for Petitioner.

An order having been entered herein on the 18th day of April, 1946, suspending Plenary Retail Consumption License C-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Edward Pietrowski, t/a Seven Gables, for a period of fifteen days commencing at 2:00 a.m. April 25, 1946, and terminating at 2:00 a.m. May 10, 1946; and

It appearing in a petition filed herein for postponement of the commencement of suspension of the license that, prior to the entry of the Order of suspension, arrangements had been completed for numerous banquets to be held at the licensed premises between April 26, 1946 and May 1, 1946; and

It appearing further that numerous innocent persons would be inconvenienced by the suspension of the license for the fifteen-day period beginning April 25, 1946;

It is, on this 23rd day of April, 1946,

ORDERED, that the said suspension of fifteen days, instead of being effective commencing at 2:00 a.m. April 25, 1946, shall, in lieu thereof, commence at 2:00 a.m. May 6, 1946, and terminate at 2:00 a.m. May 21, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - NON-RESIDENTS BECAME OWNERS OF MORE THAN 10% EACH OF CORPORATE STOCK, IN VIOLATION OF R. S. 33:1-25 - FAILURE TO GIVE WRITTEN NOTICE OF CHANGE OF FACTS SET FORTH IN LICENSE APPLICATION, IN VIOLATION OF R. S. 33:1-34 - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against )

CLUB BENMAR (a corporation)  
461 Broadway  
Paterson 4, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

Charles S. Silberman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant corporation pleads non vult to charges alleging that (1) on December 17, 1945, Benjamin Shuckman and Moe Shuckman, non-residents of New Jersey, became owners of more than 10% each of the shares of the capital stock, in violation of R. S. 33:1-25; and (2) it failed to file with the Paterson Board of Alcoholic Beverage Control requisite notice of full change of facts as set forth in Questions 22 and 27 of the application, in violation of R.S. 33:1-34.

On or about December 17, 1945, 49 shares of defendant corporation's stock were transferred to Benjamin Shuckman and 49 shares of said stock were transferred to Moe Shuckman. Each of the Shuckman brothers thereby became the owner of 49% of defendant's shares. The Shuckman brothers at that time were residents of Brooklyn, New York, and continued to maintain their residence in Brooklyn, although occasionally one of them spent the night at Fairlawn, N. J. or Paterson, N. J. When questioned by agents, they admitted that they were really residents of Brooklyn, New York. Although a notice of change in stockholders was filed, on December 22, 1945, with the local issuing authority, the notice failed to disclose the number of shares held by Benjamin Shuckman and Moe Shuckman.

In explanation of the violation, the Shuckmans allege that when they purchased the stock they were not too familiar with the New Jersey requirements and that they, through their attorney, had sought an opinion from the Clerk of the Paterson Board of Alcoholic Beverage Control. It was their understanding that they had been advised that if they could acquire a temporary residence in New Jersey, they could later acquire a permanent residence, and that this temporary residence would be sufficient to satisfy the statutory requirement as to residence. The Clerk of the Board denies giving such advice. In any event, the Alcoholic Beverage Law requires that the owners of more than 10% of the capital stock of a corporation holding a retail license must qualify as individual licensees, and, hence, that they must be bona fide residents of New Jersey.

The situation has now been corrected and the two Shuckmans have testified under oath that they have sold all the stock owned by them in the corporation, and that they are no longer interested in said stock. The records produced indicate that the stock previously held by the Shuckmans has been transferred in the following manner: 29 shares to each of the following: James Dodds, George Cummings, Jr.; and 40 shares to the Club Benmar to be held as treasury stock.

In addition, Dodds and Cummings, the present holders of 29 shares of stock each, both testified that they are fully qualified as individual licensees, that they are the bona fide owners of such stock and that neither of the Shuckmans is interested therein. The Department is further advised that none of the shares of stock have been assigned or are held in any way as collateral.

This is not the usual type of "front" case because the interest of the disqualified persons was not concealed. This case does not warrant the imposition of the increased period of suspension referred to in Re Nicomini, Bulletin 686, Item 7. Under all the circumstances, the license will be suspended for ten days.

Accordingly, it is, on this 22nd day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Club Benmar (a corporation), for premises 461 Broadway, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. June 3, 1946, and terminating at 3:00 a.m. June 13, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

5. APPELLATE DECISIONS - NORTON v. UNION TOWNSHIP (OCEAN COUNTY).

HOWARD B. NORTON, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 TOWNSHIP COMMITTEE OF THE )  
 TOWNSHIP OF UNION (Ocean )  
 County), )  
 )  
 Respondent )  
 ----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Edward W. Haines, Esq., Attorney for the Appellant.  
Francis Tanner, Esq., Attorney for Respondent.  
Hon. Percy Camp, specially appearing for Charles Graham, holder of the license in question.

This is an appeal from the denial of an application for the transfer from Charles Graham to appellant of a plenary retail consumption license issued for premises known as Barnegat Tavern, State Highway, Route No. 4, Union Township.

The Answer filed by respondent alleges that the denial was based upon the fact, found as true by said respondent Board, that appellant was not a resident of the State of New Jersey at the time the application was made. At the trial, with the consent of appellant an additional reason for the denial was entered by respondent to the effect that the application did not bear the written consent of the then licensee, the said Charles Graham.

The testimony adduced by the appellant leaves considerable doubt as to whether or not he is or was a bona fide resident of New Jersey

within the intendment of the Alcoholic Beverage Control Law. The evidence herein would apparently warrant a finding that appellant never gave up his long-established legal residence in Philadelphia. For a full discussion of the legal principles determining residence, within the meaning of the Alcoholic Beverage Control Law, see in Re Conover, Bulletin 16, Item 4; Re Gellert, Bulletin 618, Item 1; Re Meyers & Phelan, Bulletin 635, Item 4; Harral v. Harral, 39 N. J. Eq. 279.

It is, however, not necessary to determine the issue of residence. It is undisputed that no consent to the transfer by the then holder of the license, either endorsed on the application for transfer or by separate written stipulation, was filed with the issuing authority. The law respecting transfers of licenses is quite specific. It provides "which application \*\*\* shall bear the consent in writing of the licensee". R. S. 33:1-26. Unless this provision of the law is strictly followed, the local issuing authority has no jurisdiction to grant the transfer. To hold otherwise would involve the local issuing authority in private disputes between the parties to the transfer and necessitate a determination properly left to the courts. Cf. Re Middletown Township, Bulletin 129, Item 5; Grace v. Egg Harbor et als., Bulletin 403, Item 9; Bachman v. Phillipsburg, 68 N. J. L. 552. The agreement between the parties, even if filed with the issuing authority (which was not the case here), cannot be accepted as a substitute for the statutory requirement. Grace v. Egg Harbor et als., supra.

Finding as a fact that no "consent in writing" to the transfer was ever filed with the local issuing authority, I find that said local issuing authority, the respondent herein, had no jurisdiction to grant the transfer requested. Therefore, the appeal will be dismissed.

Accordingly, it is, on this 25th day of April, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against )  
 )  
 CHARLOTTE RULE )  
 Bloomfield Ave. cor. Summit St. )  
 Parsippany-Troy Hills Township )  
 P.O. R.D. 1, Boonton, N. J., )  
 Holder of Plenary Retail Consumption License C-18 issued by the Township Committee of the Township of Parsippany-Troy Hills. )  
 ----- )

CONCLUSIONS AND ORDER

Charlotte Rule, Defendant-licensee, Pro se.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant has pleaded non vult to a charge alleging that she possessed illicit alcoholic beverages at her licensed premises, in violation of R. S. 33:1-50.

On March 12, 1946, an inspector of the State Department of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies" and one 4/5 quart bottle labeled "Seagram's V. O. Canadian Whisky A Blend", when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist established that the contents of the seized bottles were not genuine as labeled.

The defendant states that, while she is personally innocent, she believes a casual employee, not familiar with the law, unwittingly committed the violation. However, defendant is strictly responsible for any "refills" found in her stock of liquor. Re Kurian, Bulletin 517, Item 2.

The usual suspension imposed for violations similar to the instant one is fifteen days. Re Nurse, Bulletin 680, Item 7. Defendant, however, has a prior record. In 1943 she was warned by official letter in reference to an infraction of the law, and in 1945 her license was suspended for five days when she was found guilty by the local licensing authority on a charge of sales to minors. I shall, therefore, suspend the license for twenty days. Re Women's 11th Ward Democrat Club, Bulletin 706, Item 4.

Accordingly, it is, on this 25th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-18, issued by the Township Committee of the Township of Parsippany-Troy Hills to Charlotte Rule, for premises on Bloomfield Avenue cor. Summit Street, Parsippany-Troy Hills Township, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. May 1, 1946, and terminating at 3:00 a.m. May 21, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against  
 THE SYLVAN, INC.  
 T/a THE SYLVAN  
 Sylvan Ave. & Dillingham Place  
 Englewood Cliffs  
 P.O. Coytesville, N. J.,  
 Holder of Plenary Retail Consumption License C-4 issued by the Borough Council of the Borough of Englewood Cliffs.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that it possessed illicit alcoholic beverages at its licensed premises, in violation of R. S. 33:1-50.

On March 8, 1946, an investigator of the State Department of Alcoholic Beverage Control seized a pint bottle labeled "Old Grand-Dad Kentucky Straight Bourbon Whiskey", a 4/5 quart bottle labeled "Old Taylor Kentucky Straight Bourbon Whiskey" and a 4/5 quart bottle labeled "Old Crow Brand Kentucky Straight Bourbon Whiskey", when his field tests disclosed that the contents of said bottles were not genuine as labeled.

Subsequent analysis by the Department chemist verified the findings of the investigator and disclosed that each of said bottles contained an alcoholic beverage approximately six proof over the stated proof of the liquor described on the label, with an acid content much lower and a solid content approximately sixteen times the solid content of the genuine liquor. This leads to the only possible conclusion -- the bottles do not contain genuine liquor as stated on the bottles and are "refills."

The Secretary of defendant corporation states that he knew nothing about the condition of the bottles and assuredly did not himself commit the act of "refilling." He suggests that the "tampering" may have been done by a casual employee or by workmen recently employed to make alterations in the licensed premises. Such explanations, even if true, do not excuse the violation. Cf. Re Vogel, Bulletin 689, Item 7.

The defendant has a prior record. In 1937 it was warned by official letter when diluted liquor was discovered in its licensed premises by agents of the Federal Alcohol Tax Unit. In 1944 its license was suspended for ten days for selling during prohibited hours on an Election Day. Re The Sylvan Inc., Bulletin 622, Item 7. In view of this prior record, I shall suspend the license for twenty-five days. Re Hencinski, Bulletin 706, Item 9.

Accordingly, it is, on this 25th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Englewood Cliffs to The Sylvan Inc., t/a The Sylvan, for premises on Sylvan Avenue and Dillingham Place, Englewood Cliffs, be and the same is hereby suspended for twenty-five (25) days, commencing at 4:00 a.m. April 30, 1946, and terminating at 4:00 a.m. May 25, 1946.

ERWIN B. HOCK  
 Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 TONY LOS  
 T/a SIMPLEX TAVERN  
 55 Hiram Street  
 New Brunswick, N. J.,  
 Holder of Plenary Retail Consumption License C-36 issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS AND ORDER

John A. Lynch, Esq., Attorney for Defendant-licensee.  
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging that on March 23, 1946, and on various occasions during the months of February and March 1946, he sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that Kenneth ---, age twenty years and five months, a soldier then stationed at Camp Kilmer, was in defendant's premises on the afternoon of March 23, 1946. In a statement given to ABC agents, the minor stated that on the afternoon in question he bought two glasses of beer and a "couple of shots" of whiskey from the bartender. The minor in question further stated that he had been in defendant's premises on several previous occasions during the months of February and March 1946, and that on these occasions a few drinks of beer and whiskey had been served to him by the licensee.

In a statement given to ABC investigators, the licensee admitted that he had served two glasses of beer to the minor in question on the afternoon of March 23, 1946, and that he had served beer and whiskey to the minor on previous occasions. He claims that, at the time of the minor's first visit to the licensed premises, the minor told him that he was twenty-three years of age. Even if the minor verbally misrepresented his age, that would constitute no excuse. To establish a defense it is necessary for a licensee to show compliance with all provisions of R. S. 33:1-77.

In passing, it should be noted that this case arose out of an investigation which followed the arrest of the soldier on March 23, 1946, after he had slashed defendant's son with a pen-knife.

Defendant, who has been in the tavern business since 1942, has no prior adjudicated record. Under all the circumstances, I shall suspend the license for a period of ten days, less five days for the plea, making a net suspension of five days. Re Jackson, Bulletin 648, Item 15.

Accordingly, it is, on this 29th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-36, issued by the Board of Commissioners of the City of New Brunswick to Tony Los, t/a Simplex Tavern, for premises 55 Hiram Street, New Brunswick, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. May 6, 1946, and terminating at 2:00 a.m. May 11, 1946.

ERWIN B. HOCK  
 Deputy Commissioner.

9. SEIZURE - FORFEITURE PROCEEDINGS - STOCK OF ALCOHOLIC AND OTHER BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - GOOD FAITH ESTABLISHED BY OWNER OF JUKE BOX; MACHINE AND RECORDS ORDERED RETURNED.

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| In the Matter of the Seizure       | ) | Case No. 6928         |
| on December 8, 1945, of a          | ) |                       |
| quantity of alcoholic beverages,   | ) |                       |
| a music machine, furniture and     | ) | ON HEARING            |
| furnishings, and other personal    | ) | CONCLUSIONS AND ORDER |
| property at 206 East Fourth        | ) |                       |
| Street, in the City of Plainfield, | ) |                       |
| County of Union and State of New   | ) |                       |
| Jersey.                            | ) |                       |

Sol L. Kesselman, Esq., Attorney for Mid-City Amusement Company, Inc.  
Harry Castelbaum, Esq., appearing for the Department of Alcoholic  
Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, a music machine, furniture and furnishings, and other personal property, itemized in a schedule attached hereto, seized at 206 East Fourth Street, Plainfield, New Jersey, constitute unlawful property and should be forfeited.

On December 8, 1945, police officers of the City of Plainfield raided the above premises, pursuant to a search warrant, because they had obtained evidence that it was a speakeasy, although ostensibly operated as a "club". The police officers seized the stock of alcoholic beverages and soda, the bar and other equipment in the club. All of the seized property was thereafter turned over to the State Department of Alcoholic Beverage Control.

Archie Morris Johnson and his brother Gaddis Johnson were arrested on the charge that they owned and operated the speakeasy. Neither Archie Johnson nor Gaddis Johnson held any license authorizing either of them to sell or serve alcoholic beverages. Archie Johnson gave the police a signed statement in which he claims that the club was organized for social purposes, but that about November 1, 1945 he "saw a way of making some money", so he began to dispense whiskey and beer; that he built a bar in the latter part of October 1945. He purchased whiskey and beer, and placed a label with the individual name of some "member" of the "club" on each bottle of whiskey; when a patron or a "member" came to the club, Gaddis would serve him with whatever brand of whiskey he requested, charging forty cents for a drink of whiskey and twenty-five cents for a bottle of beer. Johnson kept the money taken in at the bar, and for the sale of foodstuffs.

The thin disguise of operating as a "club", and marking whiskey bottles with names of "club members" did not change the essential character of the enterprise. It was an unlicensed sale of alcoholic beverages. Cf. Seizure Case No. 6870, Bulletin 704, Item 4.

Gaddis Johnson, in service, was home on a furlough at the time, and was associated with his brother in the speakeasy activities.

Archie Johnson and Gaddis Johnson have since been convicted in the Plainfield Police Court of unlawfully selling alcoholic beverages and possessing alcoholic beverages with intent to sell the same without a license.

It is clear that the seized alcoholic beverages were intended for sale at the speakeasy, and hence are illicit. Such illicit alcoholic beverages, together with the music machine, furniture, furnishings and other personal property, including the receipts of the unlawful enterprise, seized therewith in the building, 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.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered for Mid-City Amusement Company, Inc. which sought return of the music machine and thirty-one music records. No one appeared to oppose forfeiture of the other seized property.

Mr. Samuel Pinn, one of the officers of the amusement company, claims that he placed the machine on the premises after he checked the character and background of Archie Johnson and that, from what he could observe, the place did not have the outward appearance of a speakeasy, but merely appeared to be a social club.

Mr. Pinn testified that he had a casual acquaintance with Archie Johnson for about six or seven years, Johnson being employed as a chef and calling for supplies at an establishment adjoining Mr. Pinn's place of business. About six months prior to the seizure, Johnson told Pinn that he had organized a social club and asked Pinn to place a music machine there. Pinn spoke to Johnson's attorney, and was informed by such attorney that so far as he knew, Johnson was "alright". Pinn also checked with Johnson's employer, who told him Johnson was honorable and could be trusted. Pinn said that he inspected the premises before he placed the machine there and found it to be a place adaptable for use as club quarters.

The premises consisted of a front room "sun parlor", an adjoining room in which there were tables and chairs, and a third room in which Johnson later installed a bar. Pinn says that he visited the premises about every Saturday, but merely went into the "sun parlor" and the adjoining room, where his machine was placed; that he had no occasion to go into the third room and was not aware that a bar was there or that alcoholic beverages were being sold in the club.

The Plainfield Police Department confirms the fact that the bar was not in the same room with the music machine. It is possible that a person more inquisitive than Pinn might have discovered the bar in the third room. Nevertheless, it is apparent that any reasonably prudent person, judging by what was visible to Pinn, would have come to the conclusion that it was nothing more than a social club. Neither Archie Johnson nor Gaddis Johnson has any previous criminal record for violating any liquor laws.

R. S. 33:1-66(e) and (f) affords discretionary authority to return property subject to forfeiture to a person who has satisfactorily established that he 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.

Under the circumstances in the case, I am satisfied that the amusement company acted in good faith and did not know or have any reason to suspect that its music machine was in a speakeasy. Such machine and the thirty-one music records will therefore be returned to it upon payment of the cost of their seizure and storage.

Accordingly, it is DETERMINED and ORDERED that, if on or before the 10th day of May, 1946, the Mid-City Amusement Company, Inc. pays the cost of seizure and storage in the case, the music machine and thirty-one records 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", constitutes unlawful property, and that 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 Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: April 30, 1946.

SCHEDULE "A"

68 - bottles of beer  
26 - bottles of various other alcoholic beverages  
1 - bottle syrup  
1 - bottle Samoa Tropical Mixer  
24 - bottles of soda  
1 - automatic seltzer bottle  
1 - box of poker chips  
1 - lemon squeezer and shaker  
38 - glasses  
1 - corkscrew  
1 - deck of playing cards and wooden box with  
37 cents in coins  
1 - tin box with \$11.25 in currency  
1 - large box with \$19.63 in currency  
1 - music machine and 31 records  
1 - bar and back mirrors  
3 - metal stools  
miscellaneous books and glassware

10. LICENSED PREMISES - ABT "CHALLENGER", HARMLESS SHOOTING GAME BASED WHOLLY ON SKILL, NOT PROHIBITED BY STATE REGULATIONS - BUT MAY NOT BE USED FOR PURPOSE OF GAMBLING.

April 30, 1946

Runyon Sales Company  
Newark 8, N. J.

Gentlemen:

This acknowledges your letter of April 29th concerning the ABT "Challenger", a machine whose method of operation you displayed at the Department on Monday morning.

The machine is about a foot or so wide and several feet long and has a glass panel on the top. Set in one end of the machine is a small gun which can be aimed and whose motivating force is a spring and which shoots a small ball at a moderate speed. At the other end there is a series of disks set up as targets. Insertion of a coin entitles the player to shoot 10 balls, one at a time, at the disks. Each hit on a disk registers and totals up a score. Whether a hit is made or not depends entirely on the accuracy of the player's aim. The balls, which traverse only the several foot range of the machine, which is entirely enclosed, cannot get out or do any damage. There are no free games, or automatic pay-offs, or other prizes connected with the machine.

While Rules 7 and 8 of State Regulations No. 20, adopted by this Department, prohibit any slot machines or devices in the nature of slot machines, or gambling machines per se, or bagatelle and pin ball machines from being on liquor licensed premises, the machine in question does not appear to fall within any of these prohibited categories.

Hence, so far as this Department is concerned, it is permissible for your machine to be used on liquor licensed premises, provided:

- 1. They are not used for gambling and no gambling is permitted in connection therewith.
- 2. Whatever local regulations there may be in any municipality governing these machines are complied with.

Very truly yours,  
ERWIN B. HOCK  
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against  
 JOHN J. (S.) BOYCE  
 T/a WHITE HOUSE RESTAURANT  
 Black Horse Pike, Cecil  
 Monroe Township  
 P. O. Williamstown, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Monroe.

John J. (S.) Boyce, by Mrs. J. J. Boyce, Pro se.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On March 25, 1946, investigators of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Carstairs White Seal Blended Whiskey" and a 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies" when their field tests indicated that the contents of said bottles were not genuine as labeled.

Subsequent analysis by the Department chemist verified that each of said bottles had been partly refilled with another whiskey.

The wife of the licensee, who alleges that she, due to the illness of her husband, has been in sole charge of the licensed business for several months, admitted that she partly refilled one of the bottles but denies all knowledge of the other.

It has been repeatedly pointed out that a retail licensee is not permitted to "refill" bottles and that a customer is entitled to receive what he orders. Re Chapman, Bulletin 701, Item 13. The personal innocence of the licensee and the fact that his wife-manager denies any knowledge of the "refilling" of the one bottle does not excuse the offense. The gravamen of the violation is "possession". Cf. Re Barrale, Bulletin 705, Item 5.

In the absence of any prior adjudicated record, and any other aggravating circumstances, I shall suspend the license for the minimum period indicated in cases of this type, fifteen days. Re Nurse, Bulletin 680, Item 7.

Accordingly, it is, on this 6th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Monroe to John J. (S.) Boyce, t/a White House Restaurant, for premises Black Horse Pike, Cecil, Monroe Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. May 13, 1946, and terminating at 2:00 a.m. May 28, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against )

NAZARENO BANCO )  
45 Cumberland Avenue )  
Penns Grove, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Penns Grove. )  
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Louis F. DiNicola, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On March 14, 1946, investigators of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "100 Proof Dunn's Private Stock Blended Whiskey" when their field test indicated that the contents thereof were not genuine as labeled.

Subsequent analysis by the Department chemist verified the finding of the investigators and leads to the conclusion that the said bottle had been "refilled" or partially "refilled" with another type of alcoholic beverage.

The defendant denies any personal participation in the "refilling" or any knowledge thereof. The gravamen of the offense charged, however, is "possession". A licensee must be held responsible for any "refills" found in his liquor stock. Re Oelschlegel, Bulletin 706, Item 2.

However, an examination of defendant's record of adjudicated violations of the Alcoholic Beverage Law discloses that in 1943 his license was suspended for a period of two days when he was found guilty by the local issuing authority of drawing beer from an unlabeled beer tap. In the absence of any prior record, I would suspend defendant's license for fifteen days. Licensees may expect longer suspensions where they have a prior record. Re Rudolph, Bulletin 680, Item 1. In view of the prior record, I shall suspend the license for twenty days.

Accordingly, it is, on this 6th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Penns Grove to Nazareno Banco for premises 45 Cumberland Avenue, Penns Grove, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 a.m. May 9, 1946, and terminating at 1:00 a.m. May 29, 1946.

ERWIN B. HOCK  
Deputy Commissioner

13. ACTIVITY REPORT FOR APRIL, 1946

|   |   |     |   |     |         |
|---|---|-----|---|-----|---------|
| <u>ARRESTS:</u>                             | Licensees and employees - - - - -   | 4   | Bootleggers - - - - -                     | 8   |         |
|   | Total number of persons arrested- - - - -   |     |   |     | 12      |
| <u>SEIZURES:</u>                            | Total number of stills seized - - - - -   |     |   |     | -2      |
|   | Mash - gallons- - - - -   |     |   |     | -1.6    |
|   | Total number of motor vehicles seized - - - - -   |     |   |     | -1      |
|   | Alcohol - gallons - - - - -   |     |   |     | -111.5  |
|   | Wine - gallons- - - - -   |     |   |     | -28     |
|   | Distilled alcoholic beverages (whiskey, brandy, etc.) - - - - -                           |     |   |     | -67.68  |
| <u>RETAIL LICENSEES:</u>                    | Total number of premises inspected- - - - -   |     |   |     | 1,166   |
|   | Total number of premises where alcoholic beverages were gauged- - - - -                   |     |   |     | 860     |
|   | Total number of bottles gauged- - - - -   |     |   |     | -13,435 |
|   | Total number of premises where violations were found- - - - -                             |     |   |     | 87      |
|   | Total number of violations found- - - - -   |     |   |     | 104     |
|   | Illicit liquor - - - - -  | 16  | Prohibited signs- - - - -                 | 8   |         |
|   | No sign denoting legal sale hours - - - - -   |     | Stock disposal permits necessary- - - - - | 5   |         |
|   | off-premises consumption- - - - -   | -24 | Unqualified employees - - - - -           | -18 |         |
|   | Other mercantile business- - - - -  | -2  | Other types of violations - - - - -       | 7   |         |
|   | Price pamphlet not displayed - - - - -  | -24 |   |     |         |
| <u>STATE LICENSEES:</u>                     | Premises inspected - - - - -  |     |   |     | 3       |
|   | License applications investigated- - - - -  |     |   |     | -37     |
| <u>COMPLAINTS:</u>                          | Investigated, reviewed and closed- - - - -  |     |   |     | 322     |
|   | Investigation assigned, not yet completed- - - - -  |     |   |     | 205     |
| <u>LABORATORY:</u>                          | Analyses made- - - - -  |     |   |     | 162     |
|   | "Shake-up" cases (alcohol, water and artificial coloring)- - - - -                        |     |   |     | 12      |
|   | Liquor found to be not genuine as labeled- - - - -  |     |   |     | 53      |
| <u>IDENTIFICATION BUREAU:</u>               | Criminal fingerprint identifications made- - - - -  |     |   |     | 12      |
|   | Persons fingerprinted for non-criminal purposes- - - - -                                  |     |   |     | 119     |
|   | Identification contacts with other enforcement agencies- - - - -                          |     |   |     | 150     |
|   | Motor vehicle identifications via N. J. State Police Teletype- - - - -                    |     |   |     | 13      |
| <u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u> | Cases transmitted to municipalities- - - - -  |     |   |     | 17      |
|   | Violations involved:  |     |   |     |         |
|   | Brawls - - - - -  | 1   | Prostitutes- - - - -                      | 1   |         |
|   | Fraud in application - - - - -  | 1   | Sale during prohibited hours - - - - -    | 4   |         |
|   | Gambling (cards) - - - - -  | 1   | Sale to intoxicated persons - - - - -     | 1   |         |
|   | Hostesses- - - - -  | 2   | Sale to minors - - - - -                  | 8   |         |
|   | Lewdness - - - - -  | 1   | Sale to non-members by clubs - - - - -    | 1   |         |
|   | Licensee working while drunk - - - - -  | 1   | Unqualified employees- - - - -            | 1   |         |
|   | Cases instituted by Department (1 case also involving cancellation proceedings*)- - - - - |     |   |     | 26      |
|   | Violations involved:  |     |   |     |         |
|   | Fraud and front - - - - -   | 4*  | Purchase from improper source- - - - -    | 1   |         |
|   | Gambling (cards)- - - - -   | 1   | Sale during prohibited hours - - - - -    | 2   |         |
|   | Illicit liquor- - - - -   | 16  | Sale to minors - - - - -                  | 3   |         |
|   | Off-premises sale - - - - -   | 1   | Women served at bar- - - - -              | 1   |         |
|   | Cases brought by municipalities on own initiative and reported to Department - - - - -    |     |   |     | 5       |
|   | Violations involved:  |     |   |     |         |
|   | Brawls - - - - -  | 1   | Sale to minors - - - - -                  | 4   |         |
|   | Hindering investigation- - - - -  | 1   | Sale to non-members by clubs - - - - -    | 1   |         |
| <u>HEARINGS HELD AT DEPARTMENT:</u>         | Total number of hearings held - - - - -   |     |   |     | 65      |
|   | Appeals - - - - -   | 19  | Seizures- - - - -                         | 1   |         |
|   | Disciplinary proceedings - - - - -  | 28  | Applications for license- - - - -         | 6   |         |
|   | Eligibility- - - - -  | 11  |   |     |         |
| <u>PERMITS ISSUED:</u>                      | Total number of permits issued- - - - -   |     |   |     | 668     |
|   | Unqualified employees- - - - -  |     |   |     | 91      |
|   | Solicitors - - - - -  |     |   |     | 62      |
|   | Social affairs - - - - -  |     |   |     | -212    |
|   | Home manufacture of wine - - - - -  |     |   |     | 0       |
|   | Disposal of alcoholic beverages- - - - -  |     |   |     | -172    |
|   | Miscellaneous permits- - - - -  |     |   |     | -131    |

ERWIN B. HOCK  
Deputy Commissioner.

14. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF A LICENSE PRIOR TO ACQUISITION THEREOF, IN VIOLATION OF R. S. 33:1-26 - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against )

SALVATORE LaBARBA )  
T/a ACE BAR & GRILL )  
25 Terhune Avenue )  
Lodi, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Lodi. )  
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Salvatore LaBarba, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to a charge alleging that, between July 1, 1945 and September 19, 1945, he exercised the rights and privileges of a license issued to Albino Nigro, in violation of R. S. 33:1-26.

The file in the instant case discloses that defendant leased the premises in question from Nigro and took actual possession thereof on July 1, 1945. Nigro obtained renewal for the fiscal year 1945-46 of the license he previously held for said premises. On July 19, 1945, defendant applied for the transfer of the license theretofore issued to Albino Nigro, but the transfer was not granted by the local issuing authority until September 13, 1945, effective as of September 19, 1945. During the entire period from July 1, 1945 until September 19, 1945, defendant operated the business for his sole use and benefit under the license issued to and standing in the name of Albino Nigro.

Correction of the illegal situation appears to have been made, as of September 19, 1945. Nevertheless, a suspension must be imposed for violation of the law.

Defendant has no previous adjudicated record. Hence, I shall suspend his license for a period of ten days. Re Hairo, Bulletin 640 Item 11.

Accordingly, it is, on this 6th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Lodi to Salvatore LaBarba, t/a Ace Bar & Grill, for premises 25 Terhune Avenue, Lodi, be and the same is hereby suspended for a period of ten (10) days, commencing at 4:00 a.m. May 13, 1946, and terminating at 4:00 a.m. May 23, 1946.

*Erwin B. Hook*  
Deputy Commissioner.