

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

BULLETIN 1399

SEPTEMBER 29, 1959

TABLE OF CONTENTS

ITEM

1. STATE REGULATION NO. 23 - RULE CONCERNING HALF-PINTS TO REMAIN UNCHANGED.
2. FEES - AMENDED SCHEDULE OF FEES FOR LISTS OF LICENSES ISSUED.
3. ACTIVITY REPORT FOR AUGUST 1959.
4. DISCIPLINARY PROCEEDINGS (Hoboken) - CONDUCTING BUSINESS AS NUISANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Union City) - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
7. SEIZURE - FORFEITURE PROCEEDINGS - UNREGISTERED STILL AND ILLICIT ALCOHOL ORDERED FORFEITED - PREMISES ORDERED PADLOCKED.
8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - LIEN CLAIM OF INNOCENT LIENOR ON MOTOR VEHICLE RECOGNIZED.
9. DISCIPLINARY PROCEEDINGS (Highlands) - CHARGE ALLEGING SALE TO MINOR DISMISSED.
10. DISCIPLINARY PROCEEDINGS (Newark) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1299

SEPTEMBER 29, 1959

1. STATE REGULATION NO. 23 - RULE CONCERNING HALF-PINTS TO REMAIN UNCHANGED.

TO ALL MANUFACTURERS OF DISTILLED SPIRITS:

On August 11, 1959 this Division conducted a public hearing, the purpose of which was to afford the industry and the public opportunity to express their views on the advisability of amending State Regulation No. 23 so as to change the minimum standard of fill for all alcoholic beverages except wines, champagnes, and malt alcoholic beverages, particularly with respect to the half-pint as a permissible standard of fill.

As was pointed out in the opening statement at that hearing, there has been a wide difference of opinion on this matter. For example, some have favored the reduction of the standard of fill for distilled spirits to a half-pint while others have preferred the elimination of the half-pint as a permissible size for all alcoholic beverages except wines, champagnes and malt alcoholic beverages.

I have carefully reviewed the history of the regulation which, in this pertinent respect, has remained unchanged for a quarter of a century, and have carefully weighed the evidence and expressions of views (both oral and written) gathered and submitted over a period of more than a year.

Before a change is made in a regulation which has remained unchanged for so long a time, it should clearly appear by substantial, competent proof that a strong public reason necessitating such change exists. A careful, impartial analysis of the facts before us fails to reveal any such reason.

A number of suggestions for change have been received. However, while there may be some aspects of the situation as it exists under the present regulation which, as I have indicated in previous releases, leave something to be desired, it is my considered judgment that none of the suggested changes supplies a sound or desirable remedy.

Under the circumstances, I shall retain the regulation unchanged. However, all industry members are placed upon firm notice that I will not tolerate any trade practices which may develop into a fraud upon the public, nor will I countenance any aspect of marketing which may mislead or deceive the public.

Dated: September 10, 1959

WILLIAM HOWE DAVIS  
DIRECTOR

## 2. FEES - AMENDED SCHEDULE OF FEES FOR LISTS OF LICENSES ISSUED.

## NOTICE TO SUBSCRIBERS TO LISTS OF RETAIL LICENSES ISSUED:

For almost twenty-four years the schedule of fees for the lists and supplemental lists of retail licensees, required to be published by R.S. 33:1-23 which were established in Bulletin 91, Item 12 and Bulletin 97, Item 4, have remained unchanged despite rising mailing, paper, salary and other costs in the compilation and distribution of such lists, resulting in substantial loss to the State. Subscribers profiting and benefiting from this service should now reasonably be expected to pay a higher subscription fee to compensate for the increased costs in compiling, collating and publishing these essential lists.

Accordingly, I have determined that commencing with the lists published for the current fiscal year which commenced July 1, 1959, the subscription fee for the complete list (21 counties) shall be \$60.00 and shall include all of the periodical supplements to such lists. The fee for subscriptions to individual county lists shall also be increased proportionately as shown in the following schedule and likewise will include the supplements as issued.

Fees for Individual Counties

Atlantic	\$ 6.00	Middlesex	\$ 6.00
Bergen	15.00	Monmouth	6.00
Burlington	3.00	Morris	4.00
Camden	6.00	Ocean	3.00
Cape May	3.00	Passaic	15.00
Cumberland	3.00	Salem	3.00
Essex	20.00	Somerset	3.00
Gloucester	3.00	Sussex	3.00
Hudson	20.00	Union	8.00
Hunterdon	3.00	Warren	3.00
Mercer	6.00		

The original list contains the names and addresses of license holders arranged according to counties and the municipalities within each county, and are classified as to type of license held.

Supplements covering the entire list issued monthly beginning October and ending June, show the licenses issued, surrendered, revoked and other license changes during that period.

WILLIAM HOWE DAVIS  
DIRECTOR

Dated: September 15, 1959

3.

ACTIVITY REPORT FOR AUGUST 1959

<b>ARRESTS:</b>			
Total number of persons arrested	-----		25
Licensees and employees	----- 14		
Bootleggers	----- 12		
ABC agent impersonator	----- 1		
<b>SEIZURES:</b>			
Distilled alcoholic beverages - gallons	-----		6.03
Wine - gallons	-----		11.50
Brewed malt alcoholic beverages - gallons	-----		14.06
<b>RETAIL LICENSEES:</b>			
Premises inspected	-----		328
Premises where alcoholic beverages were gauged	-----		593
Bottles gauged	-----		10,514
Premises where violations were found	-----		37
Violations found	-----		57
Unqualified employees	----- 33		
Application copy not available	----- 14	Reg. 138 sign not posted	2
Other mercantile business	----- 3	Other violations	5
<b>STATE LICENSEES:</b>			
Premises inspected	-----		47
License applications investigated	-----		15
<b>COMPLAINTS:</b>			
Complaints assigned for investigation	-----		427
Investigations completed	-----		431
Investigations pending	-----		194
<b>LABORATORY:</b>			
Analyses made	-----		416
Refills from licensed premises - bottles	-----		75
Bottles from unlicensed premises	-----		130
<b>IDENTIFICATION:</b>			
Criminal fingerprint identifications made	-----		15
Persons fingerprinted for non-criminal purposes	-----		253
Identification contacts made with other enforcement agencies	-----		202
Motor vehicle identifications via N. J. State Police teletype	-----		14
<b>DISCIPLINARY PROCEEDINGS:</b>			
Cases transmitted to municipalities	-----		17
Violations involved	-----		19
Sale during prohibited hours	----- 12	Act of violence on premises	1
Sale to minors	----- 3	Failure to afford view into premises during prohibited hours	1
Failure to close premises during prohibited hours	----- 2		
Cases instituted at Division	-----		30
Violations involved	-----		59
Possessing liquor not truly labeled	----- 8	Permitting bookmaking on premises	2
Unauthorized transportation	----- 5	Permitting foul language on premises	2
Sale to minors	----- 4	Sale outside scope of license	2
Purchase from improper source	----- 4	Possessing contraceptives on premises	2
Sale to intoxicated persons	----- 3	Unlicensed storage	1
Delivery without bona fide invoice	----- 3	Unlicensed sale by solicitor	1
Sale below minimum resale price	----- 3	Aiding & abetting unauthorized sale	1
Hindering investigation	----- 3	Furnishing unlawful inducements to retailers	1
Possessing indecent matter	----- 3	Solicitor engaging in conduct prohibited to employer	1
Permitting licensed premises to be used in connection w/illegal activity	----- 3	Accepting delivery while in default	1
Aiding & abetting unauthorized transportation	----- 3	Substituting drink other than ordered	1
Permitting lottery activity (numbers)	----- 2		
Cases brought by municipalities on own initiative and reported to Division	-----		13
Violations involved	-----		20
Sale to minors	----- 6	Failure to afford view into premises during prohibited hours	1
Sale during prohibited hours	----- 3	Conducting business as a nuisance	1
Permitting immoral activity on premises	----- 3	Failure to close premises during prohibited hours	1
Permitting prostitutes on premises	----- 2		
Hindering investigation	----- 2		
Permitting brawl on premises	----- 1		
<b>HEARINGS HELD AT DIVISION:</b>			
Total number of hearings held	-----		59
Appeals	----- 6	Seizures	5
Disciplinary proceedings	----- 37	Tax revocations	2
Eligibility	----- 7	Applications for license	2
<b>STATE LICENSES AND PERMITS ISSUED:</b>			
Total number issued	-----		1,151
Licenses	----- 4	Social affair permits	417
Employment permits	----- 253	Miscellaneous "	113
Solicitors' "	----- 35	Transit insignia	250
Disposal permits	----- 60	Transit certificates	19

Dated: September 2, 1959

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS NUISANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ROGERS, INC. )  
88 Garden Street )  
Hoboken, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-160, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken. )

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James F. Ryan, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On divers days between April 22 and June 7, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted and suffered females employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; allowed, permitted and suffered gambling in and upon your licensed premises, viz., playing of pool and card games for stakes of money; allowed, permitted and suffered persons, males impersonating females and females impersonating males, who appeared to be homosexuals in and upon your licensed premises; employed and permitted the employment of a female as a bartender on your licensed premises, contrary to Article VIII, Section 1(g) of an Ordinance adopted by the Mayor and Council of the City of Hoboken on December 7, 1955; employed and allowed, permitted and suffered the employment in and upon your licensed premises of a person not a bona fide resident of the State of New Jersey contrary to Rule 4 of State Regulation No. 13; conducted your licensed business without having a photostatic or other true copy of your application for your current license on your licensed premises available for inspection, contrary to Rule 16(b) of State Regulation No. 20; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

ABC agents were at defendant's licensed premises on eleven occasions between April 22 and June 6, 1959. Sylvia Rogers, the majority stockholder of the corporate-liconsee, was present on each occasion and Dolores Deille, the barmaid, was present on ten occasions. On eight occasions Dolores accepted drinks at the expense of the agents and at times at the expense of other patrons.

On five occasions Dolores and other patrons used most vulgar and foul language. On three occasions a number of apparent lesbians were present. On three occasions the patrons played pool for money stakes and on one occasion Rogers, Dolores, another person and an agent played poker for small stakes. When the agents disclosed their identity on June 6, they ascertained that an out-of-state resident was employed at the premises as an entertainer without the authority of a permit issued by this Division. Further, that there was no copy of the license application available on the premises.

It is clear that, while there was no grave immoral conduct engaged in on the licensed premises, the general atmosphere was one of laxity in the conduct of the licensed business, evidenced by the barmaid's solicitation of drinks, foul language, presence of apparent homosexuals on occasions and other actions not in accord with those to be expected in an orderly and well-conducted licensed premises.

Counsel for the defendant urged in alleged mitigation that it was only a "small" poker game; that the owners are not in position to distinguish a homosexual from a person of normal character (although an ABC agent reports that in a conversation with Sylvia Rogers concerning the lesbians she said: "I don't care if they come in here as long as they don't bother the customers"); that the out-of-state entertainer was merely using a New York address temporarily; that Dolores was corrected and chastised for use of bad language and she does not use such language any more.

Defendant has a prior adjudicated record. Effective January 25, 1954 its license was suspended by the Director for ten days for sale to minors. Re Rogers, Inc., Bulletin 1002, Item 5. Effective April 8, 1956 its license was suspended by the local issuing authority for thirty days for sale to minors. Since the violations appear to arise from lack of proper management rather than deliberate intent to promote or encourage evil conduct on the licensed premises, and taking into consideration the previous record for a dissimilar violation within the past five years, I shall suspend defendant's license for a period of sixty days. Re Siegel, Bulletin 1293, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 18th day of August, 1959,

ORDERED that Plenary Retail Consumption License C-160, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Rogers, Inc., for premises 88 Garden Street, Hoboken, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m., Wednesday, August 26, 1959, and terminating at 2:00 a.m., Tuesday, October 20, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

JOHN AND ELIZABETH LOTZ )  
t/a LOTZ'S TAVERN )  
333 Grand Street )  
Jersey City, N. J. )

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption )  
License C-133, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Jersey City. )

John and Elizabeth Lotz, Defendant-licensees, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On June 30, July 2 and 8, 1959, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On June 30, July 2 and 8, 1959, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

ABC agents visited defendants' licensed premises on the dates set forth in the charges and on each occasion one of the agents placed "numbers" bets with a "bookie", subsequently identified as Joseph Zielinski (hereinafter referred to as Joseph). On at least two occasions Edward Zielinski, the bartender, and brother of Joseph, referred the agent to Joseph in order that he might place "numbers" bets with him. On the last visit the agents placed "numbers" bets with Joseph and paid for same with two one-dollar bills (the serial numbers of which had been previously recorded). A short time after John Lotz, one of the defendant-licensees, and Joseph had entered a storage room, the agent who had placed bets theretofore and another agent followed them and observed John Lotz handing a dollar to Joseph. The agents identified themselves and one of them picked up a slip of paper from a shelf located in front of John Lotz who, when questioned, admitted that the slip had written thereon a "numbers" bet which he had placed with Joseph. Seven slips of paper containing numbers bets were found on Joseph's person. The "marked" money was found on Edward Zielinski who had received same from Joseph in payment of an alleged personal loan.

Defendants have a prior adjudicated record. Effective August 10, 1959 their license was suspended by this Division for fifteen day for an "hours" violation. Bulletin 1297, Item 5. The minimum suspen for violations of the type now under consideration is twenty-five days. Re Sopoligo, Bulletin 1248, Item 6. Inasmuch as the dissimilar violation occurred within the past five years, five

days will be added thereto, making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 20th day of August 1959,

ORDERED that Plenary Retail Consumption License C-133, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John and Elizabeth Lotz, t/a Lotz' Tavern, for premises 333 Grand Street, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Tuesday, August 25, 1959 and terminating at 2:00 a.m., Saturday, September 19, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SALVATORE FREGA & KENNETH CAMPBELL  
1700 Summit Avenue  
Union City, N. J.

)  
) CONCLUSIONS  
) AND ORDER  
)  
)

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Holders of Plenary Retail Consumption License C-215, issued by the Board of Commissioners of the City of Union City.

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Salvatore Frega & Kenneth Campbell, Defendant-licensees, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants entered a plea of non vult to the following charges:

- "1. On June 17 and 24, 1959, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of horse race bets on both dates and the making and accepting of bets in a lottery commonly known as the 'numbers' game' on the latter date; in violation of Rule 7 of State Regulation No. 20.
- "2. On June 17 and June 24, 1959, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises, in violation of Rule 6 of State Regulation No. 20."

At 12:50 p.m., Wednesday, June 17, 1959, ABC agent F visited defendants' licensed premises. The agent asked Salvatore Frega for a newspaper and, after perusing the pages listing the horse races, conversed with the co-licensee concerning certain horses. The agent then handed Frega six dollars, stating that he wanted to bet two dollars across on "Back Log" running at Belmont. Frega recorded the bet on a coaster and went into the phone booth. Emerging therefrom, Frega said: "It's in" and inquired if the horse was a favorite. When the agent informed him of the betting odds, Frega stated: "I never play them, I only take them. Maybe

"I'll play a deuce across on it myself." Shortly thereafter, the agent departed.

At 12:55 p.m., Wednesday, June 24, 1959, Agents F, O and L arrived in the vicinity of defendants' licensed premises and Agents F and L entered. Frega was tending bar and, recognizing Agent F, handed him \$17 that Agent F had won on "Back Log". Agent F then placed two horse race bets with Frega and handed him two marked five-dollar bills. Agent L went out to get some sandwiches. Frega went into the phone booth. Later, Frega informed Agent F that no one answered the phone and that he couldn't place the bets. He then returned to Agent F the two marked five-dollar bills, saying: "I have about \$50 already on horse bets and I don't know what to do with it. I'm not going to get stuck with it. I got enough to do with the numbers." Agent L, who had returned with the sandwiches, asked Frega to pick a number and Frega picked "386". Agent L then produced a marked dollar bill saying: "O.K., give me 386 for a dollar." Frega took the dollar bill, wrote 386 on it and placed it on the back bar. Agent F then played "number 601 in the box for one dollar" saying: "It'll cost me six dollars, right?" Frega wrote six numbers on a coaster, placed the coaster on the back bar and accepted one of Agent F's marked five-dollar bills and an unmarked dollar bill. At 1:35 p.m., Agent O and two local police officers entered and the three agents and the officers identified themselves. A search of the premises was made and the marked money and coaster listing the agents' bets were located and seized and Frega was placed under arrest.

Defendants have no prior adjudicated record. I shall suspend their license for twenty-five days, the minimum suspension imposed in commercialized gambling cases when a licensee or employee is involved. Re Carvin Corp., Bulletin 1288, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of August 1959,

ORDERED that Plenary Retail Consumption License C-215, issued by the Board of Commissioners of the City of Union City to Salvatore Frega & Kenneth Campbell, for premises 1700 Summit Avenue, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, September 1, 1959 and terminating at 3:00 a.m., Monday, September 21, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - UNREGISTERED STILL AND ILLICIT ALCOHOL ORDERED FORFEITED - PREMISES ORDERED PADLOCKED.

In the Matter of the Seizure on ) Case No. 9937  
 April 7, 1959 of a still, appurtenant )  
 equipment, a quantity of alcohol, and ) ON HEARING  
 miscellaneous personal property at the ) CONCLUSIONS AND ORDER  
 premises owned by Michael Curcio and )  
 Catherine Curcio, located at 416 Lanza )  
 Avenue, in the Township of Saddle Brook, )  
 County of Bergen and State of New Jersey. )

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 George Lopusnak, Pro se.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapters 1 and 2, Revised Statutes of New Jersey, to determine whether a still, appurtenant equipment, a quantity of alcohol, and miscellaneous property, described in a schedule attached hereto, and seized on April 7, 1959 at premises owned by Michael Curcio and Catherine Curcio located at 416 Lanza Avenue, Saddle Brook Township, New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

When the matter came on for hearing pursuant to R.S. 33:1-66 and R.S. 33:2-4, no one appeared to oppose forfeiture of the seized property or padlocking of the premises. Later George Lopusnak, one of the tenants of the premises, was permitted to present evidence in support of his request that he be allowed to remain therein.

An ABC agent testified that on the above date he was one of the officers who executed a search warrant at the junk yard operated by Michael Curcio at the above premises, upon which there is a dwelling occupied by the Curcios and various barns and garages, used by Curcio for storage in his junk business except for two garages rented to other persons; that a large still, about 150 gallons of alcohol, 10,000 gallons of mash and about 3,000 lbs. of sugar were found and seized in the barns. The electric current and water used in the operation of the still was furnished by Curcio and the waste material from the still was piped to the sewer in the cellar of his dwelling.

A sample of the seized alcohol was analyzed by the Division chemist, who reports that it is alcohol fit for beverage purposes when diluted with water, with an alcoholic content by volume of 87.2 percent.

The still was not registered with the Director of the Division of Alcoholic Beverage Control as required by R.S. 33:2-1. The alcohol is illicit because it was manufactured illegally, and without payment of the tax on alcoholic beverages. Such illicit still, illicit alcohol, and all personal property seized therewith on the premises constitute unlawful property and are subject to forfeiture and the premises are subject to padlocking. R.S. 33:1-1(i & y), R.S. 33:1-2, R.S. 33:1-66, R.S. 33:2-2,5.

George Lopusnak is the tenant of one of the garages as a monthly tenant. He stores waste material there in the course of his business, which he has been operating for 14 years. He has occupied the building for about three years, installed equipment therein, and is not in economic circumstances which will enable

him to move to other quarters. He has never been accused of any crime, and claims that he did not know or suspect that the still was on the premises because his visits to the premises were of short duration. Under the circumstances, premises occupied by him will not be padlocked. Although neither Mr. nor Mrs. Curcio appeared in the proceedings, since they do not appear to have a previous criminal record for violating any liquor law, I shall not order their home to be padlocked.

Accordingly, it is 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. 33:2-5 and R.S. 33:1-66 and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

ORDERED that all of the buildings, excepting the dwelling occupied by Michael Curcio and Catherine Curcio, and the garage occupied by George Lopusnak, located at 416 Lanza Avenue, in the Township of Saddle Brook, County of Bergen and State of New Jersey, being the premises on which the still was seized, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 21st day of September, 1959.

WILLIAM HOWE DAVIS  
DIRECTOR

Dated: August 21, 1959

SCHEDULE "A"

- 33 - five gallon cans of alcohol
- 410 - empty five gallon cans
- 4 - vats containing 10,000 gallons of mash
- 1 - steam boiler
- 1 - copper cooker
- 1 - dephlegmator
- 6 - sections of copper column
- 3 - tanks
- 5 - pumps
- 1 - oil burner
- 1 - fan
- 300 - lbs. of yeast
- 64 - 60 lb. bags of sugar
- 1 - five gallon milk can
- Miscellaneous pipes, fittings and rubber hose.

8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - LIEN CLAIM OF INNOCENT LIENOR ON MOTOR VEHICLE RECOGNIZED.

In the Matter of the Seizure ) Case No. 9938  
 on April 8, 1959 of a quantity )  
 of alcohol and a Ford sedan on ) ON HEARING  
 the New Jersey Turnpike at the ) CONCLUSIONS AND ORDER  
 45 Mile Post in the Township )  
 of Westampton, County of )  
 Burlington and State of New Jersey. )

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 Newburgh Loan Corporation, by John Fatcheric, Assistant Manager.  
 I. Edward Amada, Esq., appearing for the Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 36 two-quart "Mason" jars of alcohol and a Ford sedan, described in a schedule attached hereto, seized on April 8, 1959 on the New Jersey Turnpike, in Westampton, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered on behalf of Newburgh Loan Corporation, which sought recognition of its alleged lien on the Ford sedan. No one opposed forfeiture of the alcohol.

Reports of ABC agents and other documents in the file, presented in evidence, disclose the following facts:

A New Jersey State Trooper halted the Ford sedan in question on the above date and location during his routine patrol of traffic on the highway. He ascertained that the motor vehicle was being operated by Hassel Ross, its registered owner. When the trooper discovered, in the trunk of the car, the 36 two-quart "Mason" jars of alcohol, without a stamp on any of the jars indicating the payment of tax on alcoholic beverages, he took into custody the motor vehicle and alcohol. Later the motor vehicle and alcohol were turned over to ABC agents.

A sample of the contents of one of said jars was analyzed by the Division's chemist, who reports it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 44.5 percent.

Ross told the agents that he had purchased the "moonshine" alcohol from a man whom he did not know on a highway in the vicinity of Baltimore, Maryland.

The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Newburgh Loan Corporation has presented in evidence a chattel mortgage dated December 22, 1958 signed by Hassel Ross evidencing the loan of \$149.00 on the security of the Ford sedan in question. The present balance due on such mortgage is \$83.27. It appears from the testimony of an assistant manager of the finance company that it has made small loans to Hassel Ross since 1956, on the

security of chattel mortgages on cars owned by Ross. He further testified that during the course of its dealing with Ross it ascertained that he was employed as a laborer by a tile manufacturer that he resided in Newburgh, and it obtained from Ross a number of business references, with which the finance company checked, and were advised that he was a good credit risk. Hassel Ross does not appear to have any previous criminal record.

I am satisfied from the evidence presented that the loan company acted in good faith and did not know or have any reason to suspect that Ross would transport illicit alcohol in the Ford sedan. I shall therefore recognize its lien to the extent of \$83.27.

It appears likely that the amount realized at public sale of such motor vehicle will exceed the costs of seizure and the amount of the lien.

Accordingly, it is on this 21st day of August, 1959,

DETERMINED and ORDERED that the Ford sedan described in Schedule "A" attached hereto constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and that it shall be offered for sale at public sale pursuant to State Regulation No. 29 and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained; otherwise the motor vehicle will be returned to Newburgh Loan Corporation upon payment of the costs of its seizure, storage and sale; and it is further

DETERMINED and ORDERED that if the Ford sedan is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second, out of the balance if any, there shall be paid to the Newburgh Loan Corporation its lien claim, recognized to the extent of \$83.27; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A", constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS  
DIRECTOR

Schedule "A"

- 36 - two-quart "Mason" jars of alcohol
- 1 - Ford sedan, Engine and Serial No. B3EGL73521,  
New York Registration C07778

9. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR DISMISSED.

In the Matter of Disciplinary Proceedings against )  
 )  
 HERB'S PLACE, INC. )  
 t/a HERB'S PLACE )  
 203-205 Bay Avenue and rear )  
 of 48 Valley Street )  
 Highlands, N. J. )  
 )  
 Holder of Plenary Retail Consumption License C-24 (for the 1958-59 and 1959-60 licensing years), issued by the Mayor and Council of the Borough of Highlands. )

CONCLUSIONS AND ORDER

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 Jacob Levin, Esq., Attorney for Defendant-licensee,  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On March 31, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Anthony ---, age 18; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, Anthony testified that on March 31, 1959 he was 18 years of age; that on said date, at about 6:00 p.m., he picked up a friend, Ronald, at his home in Shrewsbury; that they drove to Highlands to purchase some liquor; that between 7:30 and 8:00 p.m., after driving around in Highlands for about a half hour, he parked his car at the defendant's licensed premises; that he and Ronald entered the same and, without being required to make any written representation of his age, purchased a pint bottle of Seagram's Seven Crown whiskey from Herbert E. Mahler, an officer of the corporate licensee; that in payment thereof, he gave Mr. Mahler a ten-dollar bill and received seven dollars in change; that he carried the alcoholic beverage to his car; that except for a few ounces, he and Ronald consumed the contents of the bottle on a side street about a mile from the licensed premises and that about 11:00 p.m. that night he arrived home.

"Anthony further testified that in the afternoon of the following day, he was stopped by a local police officer because the registration date of his automobile had expired (as shown by his sticker on the windshield); that the police officer found aforesaid pint bottle of whiskey in the glove compartment in his car where he had placed it the night before; that in response to questioning by the police officer, he stated that he had purchased the same at the defendant's licensed premises and that he knew the name of the defendant from a large sign which hung over the front of the licensed premises.

"Ronald was called by the Division and corroborated Anthony's

testimony in all respects as to the events which occurred on March 31st aforesaid. In addition, Ronald testified that he is 18 years of age; that he knew the name of the defendant from a large sign which hung over the licensed premises; that he and Anthony had been visiting a soft drink parlor in Highlands a couple of times a week and that prior to March 31st aforesaid, he had not been with Anthony when he (Anthony) purchased any alcoholic beverages.

"An ABC agent testified that on April 6, 1959, he, Anthony, Ronald and another ABC agent drove from Red Bank to defendant's licensed premises to which they were directed by the minors; that upon arrival at the premises Anthony and Ronald identified the same as the place where they obtained the alcoholic beverage; that there was a neon sign bearing the name 'Herb's Place' on the front of the premises; that the four of them entered the licensed premises, the front part of which is used as a package store and in the rear of which is a barroom; that they met Mr. Mahler, Mrs. Mahler and Albert O. Anderson, the bartender, in the package store; that both minors identified Mr. Mahler as the person who sold Anthony the alcoholic beverage as aforesaid and that they pointed to a shelf behind the cash register where Mr. Mahler had obtained the pint bottle of whiskey.

"The agent further testified that he informed Mr. Mahler of the alleged violation and that Mr. Mahler stated that he had questioned Anthony and Ronald about their ages; that they refused to show any identification; that he refused to sell them any alcoholic beverages and that the minors slammed the door as they left the premises. In addition, the agent testified that Mr. Anderson stated he was in the barroom at the time in question and that he did not know what had occurred in the liquor store.

"Herbert E. Mahler, testifying for the defendant, repeated the denials he had made to the agent and further stated that he stocked the brand and size of alcoholic beverage in question on a shelf behind the counter where the same was visible to all patrons; that Anthony and Ronald were in the package store for about two minutes before he entered the same from the barroom where he was playing darts and that about thirty seconds thereafter, they left the premises.

"Benedict Roos, a witness for the defendant, testified that he is a retired printer; that he has been visiting the licensed premises for the past twenty-five years; that between 7:30 and 8:00 p.m. on March 31st aforesaid, he was sitting at the bar at a distance of about seven feet from the archway leading into the liquor store; that he saw two boys enter the same; that he alerted Mr. Mahler of their presence, following which Mr. Mahler walked into the store; that about two minutes later he heard the front door close with a bang and observed the two boys leaving the premises without a package.

"Mr. Roos further testified that he had asked Mr. Mahler what had happened; that Mr. Mahler replied that he had refused to sell some whiskey to 'two kids' because they appeared too young; that he (Mr. Roos) remembered the night in question because of the aforesaid statement made by Mr. Mahler and the slamming of the door by the two boys and that he was unable to identify Anthony and Ronald as the two boys he had seen in the premises on the night in question.

"Albert O. Anderson, testifying for the defendant, stated that for the past four months he has been employed as a bartender by the the defendant; that between 7:30 and 8:00 p.m. on March 31st aforesaid, he was tending bar; that he had heard Mr. Mahler in the liquor store ask for an I.D. card and that he did not know who was there at the time.

"This case presents a clear conflict between the evidence given by the minors and the evidence given by the witnesses for the defendant. Ronald testified that on the date in question, when he accompanied Anthony to the licensed premises, it was the first time he was with him when he purchased alcoholic beverages and that he knew the name of the defendant from its large sign which hung in front of the premises. Anthony testified that on the very next day following the purchase of the aforesaid alcoholic beverage, he informed a local police officer that he had obtained the same from the defendant whose name he knew from a large sign which hung in front of the premises. I am unable to find any inconsistencies or any defects in the testimony of the minors and cannot conceive of any reason why they would deliberately give false testimony. I find that notwithstanding the exhaustive cross-examination of the minors, their testimony remained unshaken and that they gave an accurate and truthful account of what transpired in the case. After carefully examining the testimony of the two minors and the testimony given by defendant's witnesses, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the believable evidence and it is recommended that the defendant be found guilty as charge.

"Defendant has no prior adjudicated record. It is further recommended that an order be entered providing the defendant's license be suspended for a period of fifteen days, which is the minimum penalty imposed for a sale of alcoholic beverages to an 18-year-old minor. Re Accardi, Bulletin 1278, Item 10."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by the attorney for the defendant, pursuant to Rule 6 of State Regulation No. 16. After considering the written argument, I decided to hear oral argument by the respective attorneys and, pursuant thereto, the matter was argued orally before me on August 11, 1959.

I am unwilling to accept the recommendations of the Hearer for the following reasons: Mr. Mahler, when confronted by the boys, readily admitted to the ABC agents (and so testified) that he saw the boys on his premises and testified that they attempted to purchase a bottle of liquor, but when he demanded I.D. cards to prove their ages they left the premises and slammed the door. Roos, a retired union worker and patron, testified that he saw two boys enter the liquor department of the premises on the occasion in question and told Mahler, who was participating in a dart game at the time, of their presence; that Mahler went into the liquor department and returned shortly thereafter, stating that a couple of kids wanted to buy a bottle of liquor but wouldn't produce an I.D. card so he didn't sell them. Anderson, the bartender, likewise remembers the occasion but didn't see the boys.

Standing alone, the evidence might have justified the Hearer in deciding that the State had sustained the burden of proof by a preponderance of the evidence and in recommending a finding of guilt, but I have decided to go outside the record in order to see that justice is done in this case. It appears that within a few days following the hearing (and likely prior thereto), these two minors were engaged in a series of robberies in the Red Bank, Rumson and Shrewsbury areas (by their own admissions to the police), during which time they robbed a liquor store of two cases of whiskey; robbed a snack bar and a paint store and, according to the police report, possibly a number of other places. To accept the testimony of these young admitted criminals against the testimony of Mr. Mahler, a retired contractor,

with no prior record and his two witnesses would, in my opinion, result in a gross miscarriage of justice and justifies a finding of no guilt notwithstanding, as I said before, my decision may appear to be based partly on facts dehors the record. I find defendant not guilty.

Accordingly, it is, on this 19th day of August, 1959,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
DIRECTOR

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

In the Matter of Disciplinary )  
Proceedings against )

FUCCI'S ITALIAN KITCHEN )  
13 Central Avenue )  
Newark 2, N. J. )

CONCLUSIONS )  
AND ORDER )

Holder of Plenary Retail Consumption )  
License C-13, issued by the Municipal )  
Board of Alcoholic Beverage Control )  
of the City of Newark. )

-----  
Defendant-licensee, by Ralph Fucci, President  
David S. Piltzer, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.


On June 26, 1959, an ABC agent tested the defendant's open bottles of alcoholic beverages and seized a quart-bottle of "Seagram's Seven Crown American Blended Whiskey 86 Proof", the contents of which appeared to be off in proof and color. Subsequent analysis by the Division chemist disclosed that, when compared with an analysis of the genuine product, the contents of said bottle varied in solids and acids.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days (Re Meola, Bulletin 1285, Item 12). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 25th day of August, 1959,

ORDERED that Plenary Retail Consumption License C-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Fucci's Italian Kitchen, for premises 13 Central Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, September 7, 1959, and terminating at 2 a.m. Saturday, September 12, 1959.

New Jersey State Library

  
William Howe Davis  
Director