

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1932

September 22, 1970

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STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - HEDWIG FIORY v. RIDGEWOOD.

HEDWIG FIORY,)
t/a Fleur de Lis,)
Appellant,) ON APPEAL
vs.) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE) AND ORDER
VILLAGE OF RIDGEWOOD,)
Respondent.)

Joseph D. Donato, Esq., Carmine T. Vigorito, Esq., of Counsel
Attorney for Appellant.
Charles C. Collins, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Commissioners of the Village of Ridgewood (hereinafter Board) whereby it denied appellant's application for renewal of her plenary retail consumption license for 1969-70 for premises 51 Godwin Avenue, Ridgewood, or in the alternative to grant a place-to-place transfer of her said license from the aforesaid premises to premises 8 Wilsey Square, Ridgewood.

The facts essential to the adjudication of this matter were stipulated by the attorneys for the respective parties.

It appears that appellant, in order to protect her security interest in the license, re-acquired it by purchase in bankruptcy proceedings in April 1966. The Board issued the license to the appellant for the year 1966-67 for the basement of and at premises 51 Godwin Avenue, Ridgewood, a dwelling house located in a residential zone, upon the agreed condition that the license would not be activated at the said premises due to zoning restrictions. The appellant applied for and the Board granted renewals of the license for the years 1967-68 and 1968-69 with the same condition that the license could not be activated at the aforesaid premises.

The resolution unanimously adopted by the Board at its meeting held on August 13, 1968 (R-2 in evidence) reads as follows:

"WHEREAS, application has been made on June 19, 1968 to renew plenary retail consumption license No. C-6, issued to Hedwig Fiory t/a 'Fleur De Lis' at 51 Godwin Avenue, Ridgewood, New Jersey, and

"WHEREAS, the said application was filed and the required advertising in a public newspaper was completed within the time limit required by the statutes of New Jersey, and

"WHEREAS, it was represented on behalf of the applicant that the purpose of the renewal application was to keep the license in good order and in effect subject to certain terms and conditions and it is further represented on behalf of the applicant that no operations at the said address at 51 Godwin Avenue, Ridgewood, New Jersey, were contemplated or intended by the applicant, and

"WHEREAS, the applicant furnished proof of right to possession of the premises for the purposes of said license renewal, and

"WHEREAS, a report of the Zoning Officer of the Village of Ridgewood indicated that the said premises at 51 Godwin Avenue was now occupied additionally by tenants for residential purposes, and

"WHEREAS, all other matters including the payment of a fee of \$500.00 have been complied with by the applicant,

"NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, that the Village Clerk be and he is hereby directed to issue, sign and deliver plenary retail consumption license C-6 for the year July 1, 1968 to June 30, 1969 to Hedwig Fiory t/a 'Fleur De Lis' at 51 Godwin Avenue, Ridgewood, New Jersey, more particularly for the basement thereof, for a fee of \$500.00 and subject to the terms and conditions that no operation will or shall take place or be conducted under the said license at said address or any other address by said applicant without the further approval of this Issuing Authority."

It further appears that at the meeting of the Board held on August 13, 1968, Mayor Robert K. Schell (who was also a member of the Board) stated:

"---However, in the issuance of it [the license] the Commissioners feel that a liquor license for on premises consumption sale of liquor should not be something that in perpetuity is held without being actively used. Therefore, this license is being issued again, as it has in prior years, with the stipulation that it be put to active use within the next fiscal year, or one year from the date of its issuance, or from the date of its initial validity, which I believe would be July 1, 1968."

This was followed up by a letter dated August 14, 1968, sent by Deputy Village Clerk to appellant and to appellant's then attorney which reads as follows:

"Dear Mrs. Fiory:

Enclosed herewith please find your Plenary Retail Consumption License No. C-6 renewed for the year 1968/1969.

This is to inform you that the Board of Commissioners has agreed to this renewal for 1968. However, if this license is not made active by the end of the licensing year (June 30, 1969) they will not renew it for the year 1969/1970."

In this connection it should also be noted that appellant in paragraph 7 A in the First Count of her petition of appeal asserts:

"In July, 1968, respondent granted appellant's application for renewal of said License at said premises for the period expiring June 30, 1969, but simultaneously with said renewal by said respondent, certain members of the issuing authority of the respondent stated in the public press that appellant must 'activate' said License no later than June 30, 1969, and that, in the event appellant failed to do so, respondent would refuse to renew said license at said premises."

Thereafter, appellant made timely application for renewal of said license for the year 1969-70 for the said premises 51 Godwin Avenue, Ridgewood or in the alternative to transfer the license to a restaurant known as Terry's Restaurant at 8 Wilsey Square, Ridgewood, where the appellant would maintain or operate the license as a concession in the restaurant premises and pay a fixed monthly charge for the privilege of maintaining the concession. The aforesaid application is marked R-1 in evidence. The consent of the restaurateur is attached to the application.

The refusal by the respondent to renew the said application or to grant the place-to-place transfer forms the basis of the present proceeding.

At the hearing held herein appellant testified that she had paid in excess of \$25,000.00 in order to re-acquire the license in April 1966 and that she had tried diligently to arrange for a sale or transfer of the license.

The dispositive issues are, did the respondent err in its refusal to (1) grant the place-to-place transfer, (2) grant the renewal of the license for the 1969-70 period.

In adjudicating the first issue, I note that, although it has been the long-standing policy of the Division to permit a licensee in possession of licensed premises to grant a concession for the carrying on of a restaurant business therein (cf. R.S. 33:1-12), the Division has never permitted a restaurateur or a hotelkeeper to grant a concession to a licensee for the sale of alcoholic beverages.

The basic intentment of alcoholic beverage law is that a license is issued to a licensee for licensed premises wherein the licensee is entitled to exclusive possession and control thereof. In Re Haneman, Bulletin 449, Item 4, it was held that "It is only with such an interest in the premises that the licensee can exercise adequate control. Without it he can do nothing to stop a trespasser, or even the lessor, from coming on the premises and doing as he pleases. In such circumstances, how can he fairly be held responsible for what goes on in his place? I fear the result would be the inability to carry out our theory

of full responsibility, a disposition on the part of municipal governing bodies and excise boards to excuse and dismiss in disciplinary matters, and the concomitant breakdown of enforcement.. It is necessary that the licensee be able to exercise sufficient control to prevent violations, to put a stop to improper conduct, and to govern his people and his place;" and further "the licensee must be lord and master, the absolute boss, and that is not possible unless he has an interest in the premises which gives him exclusive possession and control, for control shared with another or divided, is no control at all."

The acting commissioner further observed that "it is permissible, as a general rule, for one person to hold a liquor license and conduct a liquor business and for another person to operate a hotel or restaurant on the same premises, provided the holder of the liquor license has such possession of the licensed part of the premises that he has exclusive control. See Re Sebold, Bulletin 326, Item 7; Re Fedner, Bulletin 329, Item 5; Re Handler, Bulletin 334, Item 14 and Bulletin 366, Item 6; and rulings therein cited.

"To illustrate: A restaurant man may have a concession to sell and serve food in the premises of a liquor licensee, or a hotel man may be given the management of the hotel business conducted on the premises of a liquor licensee; but a liquor licensee may not have a concession to sell or serve alcoholic beverages in someone else's restaurant or hotel. That is the substance of the ruling in Re Kashner, Bulletin 199, Item 12. The point is that a concession agreement gives the concessionaire nothing more than a mere license to come on the premises and do certain things, subject to and at the will of the owner or lessee. But, as aforesaid, a liquor license cannot be issued unless the applicant has such possession of the premises to be licensed that it gives him exclusive control."

In the case of Re Fedner, Bulletin 329, Item 5, Commissioner Burnett denied an application for permission to operate a concession on a boat to serve liquor on the ground that the concessionaire lacked the requisite possession and control. See also Bennett v. Eatontown, Bulletin 409, Item 10. Therefore, I deem this contention to be without merit.

Likewise, I find appellant's contention that respondent erred in refusing to grant a renewal of her license for the year 1969-70 lacking in merit.

A municipal issuing authority should not be required to renew a license under which no business has been conducted over a protracted period. It is apparent that the appellant was aware or should have been aware that it was the sense of the local authorities that the license had to be activated.

In the case of Kalman & Prickett v. Southampton, Bulletin 1484, Item 2, affirmed, id nom. (App.Div. 1963), not officially reported, reprinted in Bulletin 1527, Item 1, it was held that the test is not the applicant's financial condition but whether the public good justified the renewal of the license in view of her failure to exercise the privilege conferred thereby. In connection therewith it could well have concluded from the failure to use the license that the necessity for it no longer existed.

Generally mere non-user will not of itself void a license. See Re Tarantola, Bulletin 570, Item 5. However, a

municipal issuing authority should not be required to renew a license under which no business has been conducted for a protracted period unless convincing evidence in explanation and justification of non-user is adduced. Hall v. Mt. Ephraim, Bulletin 786, Item 2. See also Re Smith, Bulletin 784, Item 5, wherein (the fact being a six-year non-use of the license) the then Commissioner said:

"This practice of non-user over a substantial length of time does violence to the paramount principle underlying the issuance of licenses, to wit, that licenses shall be issued only in the interest of the public necessity and convenience."

In considering the instant appeal it is well to re-state the applicable principles pertinent hereto. To be successful on said appeal, appellant herein must show that the Board abused its discretion in disapproving the said applications. No one has a right to the issuance, renewal or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949). The decision as to whether or not a license shall be issued rests within the sound discretion of the local issuing authority in the first instance. In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco, 59 N.J. Super. 306, 322, the following general principles were stated:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications. . . . And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the Fanwood case, supra, it was stated at p. 321:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof ' [On application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511. . . ."

As Mr. Justice Jacobs pointed out in Fanwood v. Rocco, 33

N.J. 404, 414:

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him.... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App.Div. 1965).

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadly v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1; Central Jersey Package Stores Association et als. v. Pohatcong and Falk's etc., Bulletin 1768, Item 2.

Appellant's contention that the proceedings below were defective for the reason that she was not given an opportunity to be heard is rejected. There is no provision in the Alcoholic Beverage Law or the rules and regulations of this Division which requires a local issuing authority to conduct a hearing under the circumstances appearing in the instant matter. Therefore, the action taken by the respondent constituted no error since no such hearing was required. Lipman v. Newark, Bulletin 356, Item 6, and cases cited therein. See also Charlie's Capri, Inc. v. East Newark, Bulletin 1901, Item 1.

Rule 8 of State Regulation No. 2 provides:

"No hearing need be held if no such objections shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

See also Rule 10 of State Regulation No. 6.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Board and dismissing the appeal.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof were filed by the attorney for appellant, and answer to the said

exceptions, with supportive argument, was filed by the attorney for respondent.

I have fully analyzed and considered the exceptions, and I find that they have either been answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, written exceptions filed thereto and answer to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of July, 1970,

ORDERED that the action of respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - EASON v. PATERSON.

CHARLES EASON)	
t/a C & J Liquors & Bar,)	
)	ON APPEAL
Appellant,)	CONCLUSIONS
)	AND ORDER
v.)	
)	
BOARD OF ALCOHOLIC BEVERAGE)	
CONTROL FOR THE CITY OF)	
PATERSON,)	
)	
Respondent.)	

Emil Weisser, Esq., Attorney for Appellant.
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appeal herein is from the unanimous action of respondent whereby, after a finding of guilt, it imposed a suspension of appellant's plenary retail consumption license for fifteen days for premises 102 Park Avenue, Paterson.

Appellant had pleaded not guilty to the following charge:

"On Monday, December 23, 1968, at approximately 2:35 a.m., you allowed, permitted and suffered your place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered a brawl, act of violence or other disturbance initiated by your employee, one Irving Lee, 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."

An order dated December 16, 1969 was entered by the Director staying the suspension imposed until further order herein.

The transcript of the proceeding held before respondent on December 10, 1969 was made part of the record in the appeal and, in addition, the attorneys for the respective parties thereto presented legal argument in this matter.

The issue to be resolved is whether the person in question retained his status as an employee of appellant although at the time the incident occurred he was off duty and was a patron of appellant.

There is no dispute that he was employed by the appellant as a bartender and the only question is, did his employment cease during the time he was on vacation and off duty when he obtained the gun from behind the bar which resulted in the charge against the appellant.

Rule 33 of State Regulation No. 20 provides as follows:

"In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings."

There is no indication that Irving Lee had been laid off or discharged by the appellant. Thus an inference could be drawn that he was to return to work after the short vacation granted by his employer had terminated. This being so, I am satisfied that, although off duty at the time, he was still in the employ of appellant when he instigated the act of violence for which the charge for the violation of Rule 5 of State Regulation No. 20 against appellant resulted.

I recommend that appellant be found guilty of the charge herein and that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective dates for the fifteen-day suspension stayed by the Director pending the entry of the order herein.

Conclusions and Order

Exceptions to the Hearer's report have been filed by appellant, pursuant to Rule 14 of State Regulation No. 15.

I have analyzed the exceptions and find that they were either satisfactorily answered or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Hearer's report, the exceptions filed thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 23d day of July, 1970,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-320, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Charles Eason, t/a C & J Liquors & Bar, for premises 102 Park Avenue, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Thursday, August 6, 1970, and terminating at 3:00 a.m. Friday, August 21, 1970.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - UNLAWFUL STORAGE - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

TRIONFETTI CLUB (A CORPORATION))
t/a Trionfetti Club)
600 Chestnut Avenue)
Trenton, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-243 issued by the City Council of the City of Trenton)

Henry F. Gill, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging (1) that on May 25, 1969, it stored alcoholic beverages (approximately 252 cases, each containing twenty-four 12-ounce bottles, of beer) except at its licensed premises or a licensed public warehouse or at other premises pursuant to special permit first obtained from the Director of the Division of Alcoholic Beverage Control, in violation of Rule 25 of State Regulation No. 20, and (2) that in the investigation by agents of the Division of Alcoholic Beverage Control to determine the facts and circumstances of such storage and the source of the alcoholic beverages, viz., from on or about May 27 to on or about September 19, 1969, it failed to produce and make available to said agents, on demand, its books, records and invoices, and otherwise failed to facilitate and hindered the investigation, in violation of Rule 35 of State Regulation No. 20.

Reports of investigation disclose that at about 2:30 a.m. on Sunday, May 25, 1969, officers of the Hamilton Township Police Department observed a tractor-trailer backed up to a garage in the rear of a residence at 1739 Exton Avenue, Hamilton Township, with three men unloading cases of beer from the trailer into the garage. The three men identified themselves as Salvatore A. Campo, president and holder of 98 per cent of the corporate stock of the licensee corporation; Frank M. Nucera, vice-president, director and stockholder of Nucera Beverage Transportation Co., holder of a transportation license issued to it by the Director for premises 57 Edgewood Road East, Bordentown; and John J. Nucera, a brother

of Frank M. Nucera, an employee of Nucera Beverage Transportation Co. Investigation further disclosed that 1739 Exton Avenue, Hamilton Township, was the residence of Salvatore A. Campo; that no alcoholic beverage license or special permit of any kind or nature whatsoever had been issued under the Alcoholic Beverage Law, either by the State Director or by the municipal issuing authority, to anyone for said premises; that, in all, there were two hundred fifty-two (252) cases of beer (twenty-four 12-ounce bottles in each case); that the tractor-trailer had been leased by Nucera Beverage Transportation Co. to make deliveries in connection with business conducted under its alcoholic beverage license but on the day in question did not have any transit insignia affixed thereto or inscription painted thereon as required by state regulation; that Campo admitted that the beer had been obtained for sale at the retail premises of the licensee corporation; that Frank M. Nucera admitted making the delivery to the unlicensed private residence of Campo; and that neither Campo nor Nucera produced any delivery slip, invoice, manifest, waybill or similar document to identify the alcoholic beverages or the names and addresses of the sellers or purchasers. In due and regular course, the alcoholic beverages were seized by this Division as alleged unlawful property and the matter scheduled for hearing for determination as to whether such alcoholic beverages constituted unlawful property and should be forfeited. Although requisite notice was given, no one appeared at the hearing to oppose forfeiture of said alcoholic beverages.

In the subsequent investigation by Division agents, although Campo made claim he had obtained the alcoholic beverages from an authorized source, he failed to produce, on verbal demand and by subpoena duces tecum served on him, records of the licensee corporation including invoices, copies of beverage tax reports, checks and check stubs, with respect to and covering the delivery in question, being the subject of the second charge herein. To date no proof has been offered to establish that the alcoholic beverages were purchased or obtained by the licensee corporation in a lawful manner. In the absence thereof, and in view of all the facts and circumstances detailed herein, a permissible inference may be drawn that the licensee corporation purchased or obtained the alcoholic beverages in other than a lawful manner, including that such beverages may have been stolen and that Campo either knew or suspected they had been stolen. I so find.

Absent prior record, the license will be suspended for seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days. Cf. Re Lacey, Bulletin 1923, Item 3.

Accordingly, it is, on this 15th day of July 1970,

ORDERED that Plenary Retail Consumption License C-243, issued by the City Council of the City of Trenton to Trionfetti Club (A Corporation), t/a Trionfetti Club, for premises 600 Chestnut Avenue, Trenton, be and the same is hereby suspended for seventy (70) days, commencing at 2:00 a.m. Thursday, July 23, 1970, and terminating at 2:00 a.m. Thursday, October 1, 1970.

RICHARD C. McDONOUGH
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN DWELLING - CLAIM OF OWNER FOR RETURN OF PERSONAL PROPERTY REJECTED ABSENT GOOD FAITH - PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)	Case No. 12,259
on October 4, 1969 of a)	
quantity of alcoholic beverages,)	ON HEARING
miscellaneous personal property)	CONCLUSIONS
and \$43.85 in cash in a dwelling)	AND ORDER
at 1010 Flora Street, in the City)	
of Elizabeth, County of Union and)	
State of New Jersey.)	

 Roger Whitted, claimant, Pro se.
 Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether a quantity of alcoholic beverages, miscellaneous personal property and \$43.85 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on October 4, 1969 at a dwelling at 1010 Flora Street, Elizabeth, New Jersey, constitute unlawful property, and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, Roger Whitted, the occupant of the said premises, appeared and sought the return of the seized property. The file of this Division was admitted into evidence by stipulation of the said claimant, and included the affidavit of mailing, the affidavit of publication, the Division chemist's report certifying to the alcoholic content of the seized alcoholic beverages, and the inventory of the seized property.

Reports of ABC agents and other documents in the file establish the following: On Saturday, October 4, 1969 at about 2:00 A.M., ABC Agent M, in possession of "marked" money entered the basement of the said premises. He observed a male behind a makeshift bar, later identified as Roger Whitted, the claimant herein. Six males were on the premises, four of whom were playing cards, and another two were seated at a bar consuming what appeared to be alcoholic beverages.

Agent M ordered and was served a double scotch alcoholic beverage by Whitted, who received from the agent a "marked" twenty-dollar bill, for which he returned to Agent M \$18.80 in change, charging him \$1.20 for said sale. Shortly thereafter, the agent ordered a second drink of alcoholic beverages, and paid him \$1.20 for the same.

At 3:15 A.M., by pre-arrangement, Agent Ma, accompanied by local police officers, entered the premises and identified themselves. The "marked" bill was confiscated from an unidentified male patron who had given Whitted change for the said bill. Thereupon, Whitted was arrested and charged with the unlawful sale of alcoholic beverages, and with intent to sell the same, in violation of R.S. 33:1-50.

A search and seizure of the premises were made; 10 bottles of assorted alcoholic beverages, 39 cans of beer, \$43.85 in cash, including the "marked" bill and other personal property, as set forth in the inventory, were seized.

On October 7, 1969 samples of the contents of several of the seized bottles of scotch whiskey were analyzed by the Division chemist, who certified that they were an alcoholic beverage, fit for beverage purposes, with an alcoholic content by volume of 42.25%.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages, issued to Roger Whitted or for the premises where the violations took place. The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, personal property, and the cash, as set forth in Schedule "A" constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 11,913, Bulletin 1776, Item 4.

Roger Whitted, appearing pro se, sought the return of the seized property. He admitted selling the alcoholic beverages to the agent but denied selling alcoholic beverages to the other patrons who, he asserted, were members of a little social club called "It's Your Thing Social Club". He thought the agent was a person who was interested in joining the club, and, for that reason, he served him these alcoholic beverages. He acknowledged that the personal property, including the television set, and the radio and the record player and the amplifiers were located at or near the bar. However, he states that the movie projector and screen were in the adjacent bin which he opened for the agents, and that they were not found in the barroom.

My examination of the testimony leads me to the conclusion that this claimant was engaged in the unlawful sales of alcoholic beverages. I further find that all of the seized property was located in the speakeasy premises, and are, therefore, unlawful property subject to forfeiture. Seizure Case No. 11,156, Bulletin 1557, Item 5. I disbelieve this claimant's testimony that he sold alcoholic beverages to the agent because he thought he wanted to join the "social club".

I, therefore, recommend that this claimant's claim be rejected, and that an Order be entered forfeiting the claimed property, alcoholic beverages and the cash, as set forth in the annexed Schedule "A". R.S. 33:1-1(i); R.S. 33:1-2; R.S. 33:1-66.

Conclusions and Order

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

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

Accordingly, it is on this 9th day of July, 1970

DETERMINED and ORDERED that the claim of Roger Whitted for the return of certain personal property and cash in the sum of \$43.85 be and the same is hereby denied; and it is further

DETERMINED and ORDERED that the said personal property and cash in the sum of \$43.85 and the alcoholic beverages referred to in the aforesaid Schedule "A", constitute unlawful property, and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and State, county and municipal institutions or destroyed, in whole, or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

RICHARD C. McDONOUGH
DIRECTOR

SCHEDULE "A"

- 49 - containers of alcoholic beverages
- Miscellaneous personal property
- \$43.85 - cash

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - MOTOR VEHICLES AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

No. 12,318)
 In the Matter of the Seizure)
 on March 27, 1970 of a quantity)
 of alcoholic beverages and a 1962)
 Pontiac sedan at 381 Ellison)
 Street, in the City of Paterson,)
 County of Passaic and State of)
 New Jersey,)
 and)

ON HEARING
CONCLUSIONS
AND ORDER

No. 12,319)
 In the Matter of the Seizure)
 on March 27, 1970 of a quantity of)
 alcoholic beverages and a 1962)
 Ford Van truck at 563 Lafayette)
 Avenue, in the Borough of Hawthorne,)
 County of Passaic and State of New)
 Jersey.)

Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

These two matters are interrelated, involve the same person and will be the subject of a single Conclusions and Order.

These matters come before me pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28 to determine whether 70 containers of alcoholic beverages and a Pontiac sedan seized on March 27, 1970 at 381 Ellison Street, Paterson, and 315 containers of alcoholic beverages and a Ford Van truck seized at 563 Lafayette Avenue, Hawthorne, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, no one appeared to seek the return of the seized property.

The records of this Division established that at 1:30 p.m. on March 27, 1970 a local police officer observed the aforesaid

Pontiac automobile illegally parked in front of 381 Ellison Street, Paterson and obstructing traffic and called for the towing truck to remove the same; that in the course of removing the motor vehicle; its trunk sprung open and the officer observed it contained "moonshine whiskey" following which the local police officer seized the motor vehicle and the "moonshine whiskey". The motor vehicle bore New Jersey Registration SBR-780, owned by Donald Miller.

The aforesaid motor vehicle and the alcoholic beverages were turned over to the Division. Donald Miller, the owner of the seized property, was subsequently arrested and charged with the possession of illicit alcoholic beverages with intent to sell in violation of R.S. 33:1-50. He was held for arraignment in the Municipal Court of Paterson.

The records of this Division further established that at about 7:30 P.M. on March 27, 1970, local police, armed with a search warrant, entered a garage located in the rear of 563 Lafayette Avenue, Hawthorne and seized 315 containers of "moonshine whiskey" and a Ford Van truck which were later turned over to the Division.

Donald Miller, the owner of the seized property, was subsequently arrested and arraigned in the Municipal Court of Hawthorne on April 2, 1970 and charged with the possession of illicit alcoholic beverages with intent to sell, in violation of R.S. 33:1-50.

The report of chemical analysis by the Division chemist indicates, in part, that in Seizure Case No. 12,318, a sample of the contents of a six-ounce bottle of alleged alcoholic beverage was analyzed on April 13, 1970 and his report states that it is an alcoholic beverage fit for beverage purposes with alcoholic content by volume of 47.89%; and in Seizure Case No. 12,319, a sample of the contents of a six-ounce bottle of alleged alcoholic beverage was analyzed on April 13, 1970 and his report states that it is an alcoholic beverage fit for beverage purposes with alcoholic content by volume of 48.74%.

The seized alcoholic beverages are illicit because of the absence of tax stamps on any of the containers. R.S. 33:1-1(i). Such illicit alcoholic beverages and the Pontiac automobile and Ford Van truck, in which they were transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-66.

Accordingly, it is on this 21st day of July, 1970

DETERMINED and ORDERED that the seized property, including the alcoholic beverages, more fully described in Schedules "A" and "B", attached hereto, constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance

with State Regulation No. 29, or 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.

RICHARD C. McDONOUGH
DIRECTOR

SCHEDULE "A"

- 70 - containers of alcoholic beverages
- 1 - 1962 Pontiac Sedan, Serial No. 36-2K-6770, N.J. Registration SBR-780.

SCHEDULE "B"

- 315 - containers of alcoholic beverages
- 1 - 1962 Ford Van truck, Serial No. 14SH23812, Engine No. 406891, N.J. Registration X8F-256.

6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FANNIE L. HEARNS)
t/a Fannie's Bar)
2001 Arctic Avenue)
Atlantic City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-121 (for licensing period 1969-70 and C-13 for licensing period 1970-71), issued by the Board of Commissioners of the City of Atlantic City.)

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers days in February 1970, she permitted the acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspensions of license (1) by the Director for two days, effective September 26, 1949, for possession of a mislabeled beer tap (Re Hearn, Bulletin 854, Item 4), and (2) by the municipal issuing authority (a) for five days, effective June 1, 1953, for sale of alcoholic beverages in violation of State Regulation No. 38, and (b) for twenty days, effective January 6, 1958, for sale of alcoholic beverages to minors.

This record of prior suspensions for dissimilar violations occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Kochmar & Openshaw, Bulletin 1899, Item 12.

Accordingly, it is, on this 13th day of July 1970,

ORDERED that Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Atlantic City to Fannie L. Hearn, t/a Fannie's Bar, for premises 2001 Arctic Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7:00 a.m. Tuesday, July 28, 1970, and terminating at 7:00 a.m. Monday, September 21, 1970.

RICHARD C. McDONOUGH
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

POOLE'S RESTAURANT, INC.)
t/a Sparta Inn)
15 Main St.)
Sparta, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Council of Sparta Township.)

Cammarano & Cammarano, Esqs., by Peter J. Cammarano, Esq.,
Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on May 18, 1970, it possessed 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.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Charcoal Hearth, Inc., Bulletin 1908, Item 9.

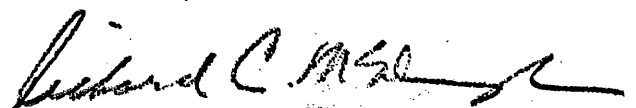
Accordingly, it is, on this 6th day of August 1970,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Council of Sparta Township to Poole's Restaurant, Inc., t/a Sparta Inn, for premises 15 Main St., Sparta Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, August 24, 1970, and terminating at 2:00 a.m. Saturday, August 29, 1970.

RICHARD C. McDONOUGH
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Cruise Brands, Inc., 364 Franklin Avenue, Wyckoff, N. J.
Application filed September 18, 1970 for wine wholesale license.


Richard C. McDonough
Director