

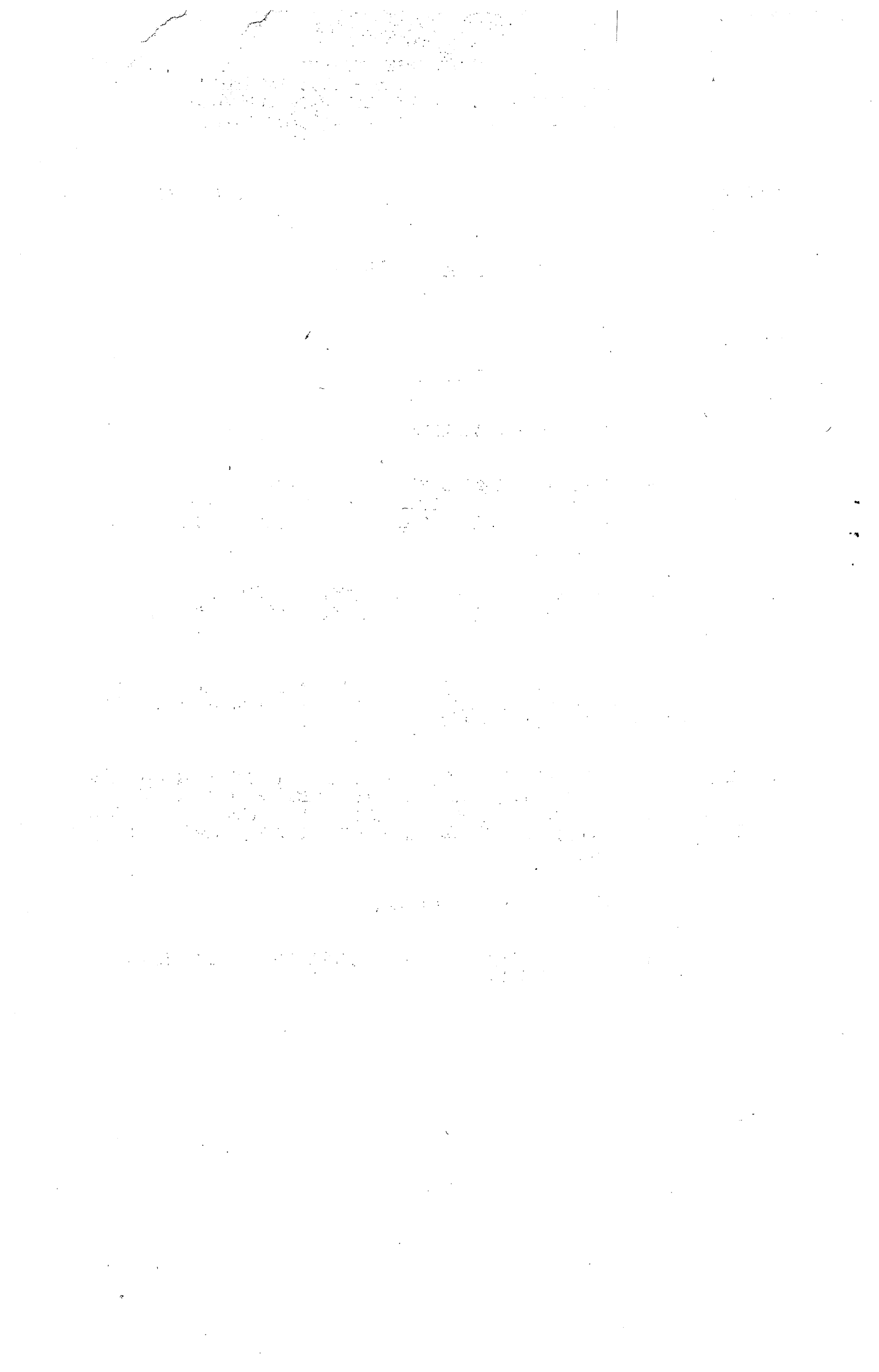
BULLETIN 1049

FEBRUARY 8, 1955.

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

BULLETIN 1049

FEBRUARY 8, 1955.

1. APPELLATE DECISIONS - KLEINBERG v. NEWARK.

PAUL R. KLEINBERG, as Receiver )  
for THE BROAD STREET CORPORATION, )  
INC., )

Appellant, )

-vs-

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
NEWARK, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Allan L. Tumarkin, Esq., Attorney for Appellant.

Vincent P. Torppey, Esq., by Nicholas Albano, Esq., Attorney for Respondent.

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys for Objector Grant Lunch Corporation.

Clancy & Hayden, Esqs., by Joseph A. Hayden, Esq., Attorneys for Objector 218-220 Market Street Corporation.

BY THE DIRECTOR:

This is an appeal from respondent's action, on November 4, 1954, whereby it denied appellant's application for renewal of a plenary retail consumption license for premises 760 Broad Street, Newark, N. J.

In denying the application respondent announced that it had concluded that, after July 2, 1954 (when an order was entered in the Superior Court Law Division), appellant, as Receiver, "had no such possession as would entitle him to a renewal of this license, and under those circumstances the application will be denied."

Appellant contends that he had sufficient possession to entitle him to such renewal.

This appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15. The Receiver and his attorney, and the attorney for appellant's landlord, Azalea Realty Co., appeared and testified. In addition, various exhibits, including several court orders, were received in evidence.

From all of the evidence it appears that The Broad Street Corporation, Inc. held plenary retail consumption license (No. C-796) for premises at 760-762 Broad Street, Newark, the most recent such license being for the 1953-54 license period (July 1, 1953 to June 30, 1954). This license was suspended by the State Director for the balance of its term, effective May 18, 1954 (but the suspension was later deferred to commence June 8, 1954), for certain violations of the Alcoholic Beverage Law. The landlord instituted a suit in the Essex County District Court to evict The Broad Street Corporation, Inc. by reason of said violation. On June 10, 1954, Mr. Kleinberg, the appellant herein, was appointed custodial receiver for The Broad Street Corporation by order of Judge Sullivan of the Superior Court (Chancery Division) and the landlord was restrained and enjoined from prosecuting its eviction suit or taking possession of the assets or property of the insolvent licensee-corporation. On June 18, 1954

Mr. Kleinberg became statutory receiver for said licensee-corporation and Judge Sullivan entered another order which contained the following recitation: "and it having been represented to this Court by said Robert R. Daly that Azalea Realty Co. would not disturb said Paul R. Kleinberg's possession of the premises in question so long as he, as Receiver, required the use of the same for the purpose of the orderly liquidation of the assets of The Broad Street Corporation, Inc. and paid therefor a reasonable amount for such use and occupation of the premises in question (an amount to be fixed by this Court); and dissolved the restraint against the landlord contained in the previous order of June 10; and ordered the Receiver to intervene in the pending eviction suit or renew an application to transfer said eviction suit to the Superior Court (Law Division). On June 25, 1954, an order was entered by Judge Speakman transferring the eviction suit to the Superior Court (Law Division) and substituting the Receiver for the insolvent licensee-corporation. On the same day another order was entered by Judge Sullivan continuing Mr. Kleinberg as Receiver for said corporation.

Meanwhile, the Receiver had applied for an extension of the license to him as Receiver and such extension was granted June 29, 1954.

On July 2, Judge Speakman entered another order denying a motion to dismiss the eviction suit and granting the landlord's application for summary judgment. That order also entered judgment for possession in favor of the landlord and against the Receiver, and continued as follows:

"and it is hereby

"FURTHER ORDERED that the plaintiff is hereby entitled to immediate possession of the premises mentioned and described in the complaint filed herein, subject, however, to the further order of this Court, Chancery Division, Essex County, in a cause entitled, 'Harlem Paper Products Corp., a corporation, Plaintiff, -vs- The Broad Street Corporation, Inc., a New Jersey corporation, Defendant, Docket No. C-2033-53'; and it is

"FURTHER ORDERED that the Sheriff of Essex County as such, or by his deputy, deliver up to the plaintiff possession of the said premises mentioned and described in the said complaint filed herein, and this shall be his authority so to do, all of which, however, shall be subject to the order of this Court, Chancery Division, as stated above."

On July 6, 1954, the Receiver held a sale of the assets of the insolvent licensee-corporation, which sale was confirmed on July 7, 1954. Meanwhile, the Receiver filed with respondent his application, as Receiver, for renewal of the license the denial of which is the basis for this appeal. Such application, the jurat of which is dated July 6, 1954 and which was marked as having been filed July 7, 1954, describes the licensed premises as 760-762 Broad Street, Newark (the same premises for which the 1953-54 license was extended to appellant, as Receiver). The portions of the premises designated are "first floor and basement" and the business to be conducted by the applicant is described as "restaurant."

At the time this application was filed the City of Newark had no Municipal Board of Alcoholic Beverage Control because of a change in its form of government, which became effective July 1, 1954. The new governing body (Mayor and Council) had become the local issuing authority. However, this application was not acted upon until after respondent Board of Alcoholic Beverage Control was created by law and took office in September 1954 and respondent's action denying said application was not taken until November 4, 1954. The events which intervened

between July 2, 1954 and the legal effect thereof are the subject of some dispute and the evidence with respect thereto may be summarized as follows:

The terms of Judge Speakman's order of July 2, the filing of the application, and the sale of the bulk of the assets of the insolvent licensee-corporation on July 6 (confirmed July 7) appear to be undisputed. Nor is it disputed that it took some time for the property of insolvent licensee-corporation to be removed by the purchasers thereof after the sale. The Receiver, who had expected to deliver the keys to the landlord's representative some time earlier, did not do so until the end of July 1954, at which time one of several sets of keys was so delivered. Thereafter, the landlord placed a manager in charge of the premises, cleaned it up and made some physical changes therein and, without the knowledge or consent of the Receiver, changed the locks. Thereafter, the Receiver did not enter the premises and at no time did he endeavor to conduct any business there. The landlord received a number of offers for the sale or lease of the premises but, from the record before me, it appears that none of these offers was accepted. Up to the time of the hearing on this appeal, no further order of the Court was entered after July 2, 1954 and, so far as appears, none has yet been entered.

In addition to his testimony with respect to the matters and things hereinabove recited, the Receiver testified that he had intervened in the eviction suit to avoid being dispossessed; that he knew he had to have right to possession to obtain a renewal of the license; that he believed that, under the Court orders hereinabove referred to, he had possession of the premises for as long as would be necessary to liquidate the assets of the insolvent licensee-corporation, including the license which he intended to dispose of by transfer; that he retained possession of the premises so that he could deliver possession if a transfer were effected; that a consent to transfer the license was actually approved by Judge Sullivan, but, when the renewal was not acted upon, the offer was withdrawn; that he thought he had sufficient right to possession to support the renewal of the license and considered it unnecessary to maintain actual physical possession of the premises; and that he thought he could not be made to surrender possession except by order of the Court. He further testified that he still retained one set of keys and was unaware of the change of locks until the hearing below. He also testified that some of the physical assets of insolvent licensee-corporation remained in the premises a considerable period of time after the bulk thereof had been removed.

Mr. Tumarkin, counsel for the Receiver, testified with respect to exchanges of letters and conferences with Mr. Daly, counsel for the landlord. In effect he claimed that he had an understanding with the landlord's attorney whereby the Receiver's right to possession was protected and continued.

Mr. Daly testified both for appellant and for respondent and the objectors. While he denied that he possessed authority to enter into an agreement with the Receiver with respect to a tenancy and disputed the legal implications asserted by the Receiver and his counsel, he admitted the representations made by him as contained in Judge Sullivan's order of July 18, and reaffirmed the position which he had stated in his letter to Mr. Tumarkin, dated September 30, 1954, in which he had expressed it as his opinion that the Receiver had "some right in or to the premises"; that he had not ascertained exactly "what that right is" but that the landlord recognized it; that he believed that such right did not interfere with the landlord's right to negotiate a sale or lease of the premises but that application to the Court for termination of the Receiver's right must precede consummation thereof and that, ultimately, application would have to be made for a further order of the Court. He

further testified that he had attempted to get the Receiver's counsel to go to Court to have the amount of rent fixed but that the latter refused to do so "until I finish with this ABC business".

In addition to filing memoranda, counsel appeared before the Director in oral argument. On behalf of appellant it is contended that there is but one issue in this case, namely, appellant's right to possession of the premises in question, the necessity for which is admitted. However, claim is made that the evidence discloses that appellant "had such possession as would entitle him to a renewal". Appellant's counsel contends that there is no specific requirement as to the quantum of possession and that a mere tenancy at will is sufficient, citing Rittenger v. Bordentown, Bulletin 547, Item 10. This is coupled with the contention that the landlord cannot oust appellant without leave of Court and that, "hence, in essence, a tenancy at will exists but subject to the action of a Court before the landlord can gain possession".

On behalf of respondent and the objectors it is contended that the evidence shows respondent was without authority to grant the renewal license; that appellant had no right to possession during July 1954, or, at least, since July 6, 1954, citing Eavenson and Town Hall Delicatessen v. South Orange et al., Bulletin 283, Item 8; Montclair Athletic Club v. Montclair, Bulletin 859, Item 1; Terlizzi v. Union City et al., Bulletin 860, Item 2; Minsky v. Woodbridge, Bulletin 882, Item 4; Ways and Witteborn v. Egg Harbor Township et als., Bulletin 951, Item 3. It was further contended that, at any rate, appellant has no right to possession now, citing Socony Vacuum Oil Co., Inc. v. Mount Holly, 135 N.J.L. 112 (Sup. Ct., 1947); Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1; Kitchman v. Mt. Laurel, Bulletin 752, Item 10; Price v. East Rutherford, Bulletin 754, Item 8; cf. Montclair Athletic Club v. Montclair, *supra*.

It is further contended that appellant did not answer the question as to where the business would be conducted and that he should have applied for a Court order to clarify the question of possession.

There is no merit in this last contention since appellant set forth in his renewal application the proper address and merely inserted the words "first floor and basement" in the wrong place in Question No. 7 and, while it might have been helpful if an order had been entered clarifying the question of right to possession, there is sufficient evidence in the record from which a finding can be made.

There can be no doubt that some right to possession of premises is a prerequisite to the grant or issuance of a license or the renewal thereof and the complete absence thereof will deprive the issuing authority of jurisdiction to grant an application or to issue a license. Ways and Witteborn v. Egg Harbor Township et als., *supra*; Terlizzi v. Union City et al., *supra*. However, in the instant case there is no such complete absence of right to possession. On the contrary, on July 1, 1954 and until the entry of the order of July 2, 1954, appellant's right to possession is clear. That order which must be viewed as having been entered against a background of the representations of the landlord's counsel that the landlord would not disturb the Receiver's possession so long as required for the orderly liquidation of the assets of the insolvent licensee-corporation, and which gave possession to the landlord "subject, however, to the further order of this Court", preserved for appellant some right in the premises. This right was necessarily possessory in nature, the physical assets of the insolvent licensee-corporation being there and remaining there for some time after the sale on July 6 which was confirmed on July 7. During that time appellant filed the application for renewal. It was no secret to anyone, including the Court in which the insolvency proceedings were pending, that appellant was seeking to preserve and liquidate, as one of the assets, the liquor license. Although appellant later surrendered a set of keys to the landlord and although physical possession

thereafter made in the premises by the landlord, no further order of the Court was entered either at the time this matter was heard by or decided by respondent or when the hearing on this appeal was held. Indeed, as has been already pointed out, so far as appears, no such order has yet been entered.

The problem posed by this appeal is complex and the legal situation, in the light of the indicated litigation, somewhat involved. Although it is manifest that respondent gave this matter due and full consideration I am impelled, by all of the facts and circumstances revealed by the record, to find that appellant had and still has sufficient right to possession to support and permit the grant of his application for renewal of the license and that respondent's finding to the contrary is not supported by the evidence. Respondent's denial of appellant's application for renewal was erroneous and will be reversed with the reservation and understanding, however, that there shall be no operation by appellant of any alcoholic beverage business under the license so renewed in the absence of appellant's exclusive legal possession and control of the premises.

Accordingly, it is, on this 21st day of January, 1955,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed and ordered to grant appellant's application for renewal of the license, pursuant to the conclusions herein.

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - LLEWELLYN RECREATION CENTRE v. ORANGE.

LLEWELLYN RECREATION CENTRE, )  
a corporation, )  
Appellant, )  
-vs- )  
MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
ORANGE, )  
Respondent. )

ON APPEAL  
O R D E R

-----  
James A. Palmieri, Esq., Attorney for Appellant.  
Felix Verlangieri, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appealed from the action of respondent whereby it suspended its plenary retail consumption license for five days upon its plea of non vult to a charge alleging that it sold alcoholic beverages in original containers for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38. Upon the filing of said appeal I entered an order, dated December 24, 1954, staying respondent's order of suspension pending the entry of a further order herein. R.S. 33:1-31.

The parties have entered into a stipulation wherein it is agreed and stipulated that the appeal be dismissed and that the license be suspended for a period of five days commencing on Wednesday, February 23, 1955, at 7:00 a.m., until Monday, February 28, 1955, at 7:00 a.m., in lieu of the dates fixed for suspension of the license by respondent.

No reason appearing to the contrary, it is, on this 18th day of January, 1955,

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

ORDERED that the five-day suspension imposed by respondent, which suspension was stayed by my order as hereinabove set forth, be hereby restored to become effective at 7:00 a.m. Wednesday, February 23, 1955, and to terminate at 7:00 a.m. Monday, February 28, 1955.

WILLIAM HOWE DAVIS  
Director.

3. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILLS, APPURTENANT PARAPHERNALIA AND ILLICIT ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE FOUND ON PREMISES RETURNED TO INNOCENT OWNER - PREMISES PADLOCKED.

In the Matter of the Seizure on ) Case No. 8764  
November 26, 1954, of two stills, )  
appurtenant equipment, a quantity )  
of alcohol, and a Cadillac sedan, ) ON HEARING  
on premises occupied by William T. ) CONCLUSIONS AND ORDER  
Ayres, located on the north side of )  
East Oak Avenue, in the Borough of )  
Lawnside, County of Camden and State )  
of New Jersey. )

-----  
Peter J. Coruzzi, Esq., Attorney for Robert Williams.  
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, to determine whether two stills, appurtenant equipment, a quantity of alcohol, and a Cadillac sedan, described in a schedule attached hereto, seized on November 26, 1954 on premises occupied by William T. Ayres, located on the north side of East Oak Avenue, Lawnside, New Jersey, constitute unlawful property and should be forfeited; and further, to determine whether the premises should be padlocked.

There is a five-room dwelling at the above location. On November 26, 1954 ABC agents and New Jersey State Troopers entered such dwelling to investigate a complaint that there was an illicit still there. The agents discovered and seized two stills, appurtenant equipment, a considerable quantity of mash, and 15 one-gallon jugs of illicit alcohol, all of which were in the cellar. The Cadillac sedan, parked on the premises about three feet from the dwelling, was also seized.

The stills were not registered with the Director of the Division of Alcoholic Beverage Control as required by R.S. 33:2-1.

William Ayres was apprehended as he sought to escape, and Winfred J. Muckley was apprehended in the dwelling. The keys to the motor vehicle were in the possession of Muckley. Ayres told the agents that he had borrowed the car that day and had driven it to the premises. David Jones and Cleo Jones are the owners of the premises.

When the matter came on for hearing pursuant to R.S. 33:1-66 and R.S. 33:2-4, Robert Williams, the registered owner of the Cadillac sedan, appeared and sought its return. No one appeared to oppose forfeiture of the balance of the seized property or to oppose padlocking of the premises.

Reports of ABC agents and other documents in the file establishing the above recited facts were received in evidence with consent

The unregistered stills, and the appurtenant equipment, mash and illicit alcohol seized therewith on the premises, as well as the Cadillac sedan, constitute unlawful property and are subject to forfeiture, and the premises are subject to padlocking. R.S. 33:2-2, R.S. 33:2-5.

Robert Williams claims that the motor vehicle was loaned to Carl Schrouder as an accommodation, without any knowledge, or reason to suspect, that it would be used in connection with illicit still activities.

The gist of the evidence presented on his behalf is that the motor vehicle was purchased in March 1954 for \$2,000.00 in cash, which represented the savings of Mr. Williams and his wife, but title to the car was taken in the husband's name because Mrs. Williams held title to her home, and desired to equalize their assets by placing such title in her husband's name. Mr. Williams does not drive a car.

Mr. Williams states that he has been a carpenter for about 20 years, with earnings averaging \$60.00 to \$80.00 a week, and that he has no criminal record.

Mrs. Williams has been employed for about five years as a clerk-typist by the Pennsylvania Department of Health. Her salary is about \$50.00 a week. In addition she is a notary public, a licensed real estate broker, and is engaged in other various services, all of which are conducted from her home. She used the car daily to go to and from her employment. She states that her home is of substantial value, that she modernized her kitchen at a cost of \$1700.00, and that she purchased expensive furnishings for her home, all of which were paid for in cash. She explains that she has a small checking account, but the bulk of their savings was in cash, kept in their home for personal reasons.

Mrs. Williams and Mr. Schrouder and his family have been friends for many years. Mr. Schrouder has resided in Philadelphia for about 20 years, has conducted a candy store for about 14 years, and also had a trucking business until last year. He also has real estate investments. He does not drive a car. He used his trucks for personal transportation, and had no active need for a car after he sold the trucks. He borrowed a car occasionally, and borrowed Mrs. Williams' car on three or four previous occasions.

On the morning of November 26th he borrowed Mrs. Williams' car because his brother, who resided in Rochester, New York, came on a visit to Philadelphia. His brother drove the Williams' car. Later in the afternoon of that day, Mr. Schrouder, his brother, and a young lady, went to Camden in the car, on a social visit. While there Schrouder met Ayres, who was known to him. Ayres borrowed the car from Schrouder, ostensibly to pick up some companions who were to accompany Ayres on a hunting trip. Ayres did not return, and Schrouder and his companion were compelled to hire a taxicab to return to Philadelphia. The next day Ayres telephoned Schrouder and told him the car had been seized by ABC agents. Ayres has no previous criminal record for violating any liquor laws.

The details of the above recital were explored at length at the hearing. While it is an odd tale, nevertheless, the background presented of Mr. Williams, Mrs. Williams and Mr. Schrouder, tends to indicate that they have adequate legitimate sources of income and are of law-abiding character, and the motives advanced for the loan of the car are of such a plausible nature as to warrant acceptance of the explanation offered. Accordingly, I find that the parties

acted in good faith, and did not know, or have any reason to suspect that the Cadillac sedan would be used in connection with illicit still activities. Such motor vehicle will therefore be returned to Robert Williams upon payment of the costs of its seizure and storage. R.S. 33:2-7.

Accordingly, it is DETERMINED and ORDERED that, if on or before the 24th day of January, 1955, Robert Williams pays the costs incurred in the seizure and storage of the Cadillac sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property described in the aforesaid Schedule "A" constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control; and it further appearing that the owners of the premises have failed to show cause why the premises should not be padlocked, it is

ORDERED that the dwelling owned by David Jones and Cleo Jones, located on the north side of East Oak Avenue, in the Borough of Lawnside, County of Camden and State of New Jersey, being the building in which the stills were seized, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the 1st day of March, 1955.

WILLIAM HOWE DAVIS  
Director.

Dated: January 14, 1955.

SCHEDULE "A"

- 15 - one-gallon glass jugs of alcohol
- 2 - preheaters
- 5 - cookers
- 4 - goosenecks
- 3 - sets of copper coils
- 4 - receiving tanks
- 1 - funnel
- 2 - electric pumps
- 2 - stove bases with chimneys
- 48 - 50-gallon barrels with mash
- 6 - 50-gallon empty barrels
- 2 - 55-gallon drums
- 1 - dephlegmator
- 20 - one-gallon empty glass jugs
- Miscellaneous pipes, hoses, fittings and buckets
- 1 - Cadillac sedan, Engine No. 526029476,  
1954 Pennsylvania Registration D786B.

4. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND MASH ORDERED FORFEITED - MOTOR VEHICLE SEIZED NEARBY RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on )  
 November 6, 1954, of a Ford coupe, )  
 and the seizure on November 7, 1954, )  
 of a still in the swamp area in the )  
 vicinity of Yellow Brook Road, in )  
 the Township of Howell, County of )  
 Monmouth and State of New Jersey. )

Case No. 8750

ON HEARING  
 CONCLUSIONS AND ORDER

-----  
 Curtis Samuel Mahoney, 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, Chapter 2, Revised Statutes of New Jersey, to determine whether a Ford coupe, and a still, described in a schedule attached hereto, seized in swampland in the vicinity of Yellow Brook Road, Howell Township, New Jersey, constitute unlawful property and should be forfeited.

On November 6, 1954 New Jersey State Troopers were informed that a Ford coupe was mired near the junction of Yellow Brook Road and the Pennsylvania Railroad right of way, and that there were 12 five-gallon cans of alcohol on the ground alongside the coupe. When a trooper arrived at the location, he found the coupe, but no cans of alcohol were there. The trooper took possession of the coupe.

The Division of Alcoholic Beverage Control was notified and the coupe was turned over to its agents. There was a hydrometer, can, and funnel in the coupe. On the following day ABC agents searched the vicinity and came upon a still and a quantity of mash. The agents seized the mash and the still, which was not registered with the Director of the Division of Alcoholic Beverage Control as required by R.S. 33:2-1.

When the matter came on for hearing pursuant to R.S. 33:2-4, Curtis Samuel Mahoney, the registered owner of the Ford coupe, appeared and sought its return.

Reports of ABC agents and other documents in the file which established the above facts were admitted into evidence with Mr. Mahoney's consent.

The unregistered still and the other articles seized therewith at the place where the still was located constitute unlawful property and are subject to forfeiture. The motor vehicle is subject to forfeiture if the evidence establishes that it was used or intended for use in the transportation of raw material used in the operation of the still, or to be used in transporting illicit alcohol. R. S. 33:2-2, R.S. 33:2-5.

If Mr. Mahoney establishes to my satisfaction that he was not involved in any manner with the illicit still activities, I have the discretionary authority to return the Ford coupe to him. R.S. 33:2-7.

Mr. Mahoney is a resident of New York City. He purchased the motor vehicle on October 4, 1954. He testified that he is employed as a painter and as the superintendent of an apartment building. Although he does not drive a car, he purchased the car to transport ladders used in his painting jobs. A young man, his helper, drove the car, for which he received room and board, and a few dollars.

The car was parked in the street, and on Saturday, November 6, 1954, it disappeared. He immediately reported the matter to the police authorities, but was unable to make an official report because he did not know the registration number of the license. Sunday intervened and on Monday, he obtained the registration number from the license bureau, obtained a duplicate of the license, and on Tuesday made a formal report to the police authorities that the car had been stolen. He has not seen the young man since the disappearance of the car.

I am satisfied that the events which occurred are as described by Mr. Mahoney, and hence the Ford coupe will be returned to him upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 28th day of January, 1955, Curtis Samuel Mahoney pays the costs of seizure and storage of the Ford coupe, said coupe will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS  
Director.

Dated: January 18, 1955.

SCHEDULE "A"

- 2 - cookers
- tin pipe
- a quantity of mash
- hydrometer, funnel and empty 5-gallon can.
- 1 - Ford coupe, Engine No. 6017896, 1954 N. Y. Registration No. 9Z98-41.

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - STOCK OF ALCOHOLIC BEVERAGES AND FIXTURES, FURNISHINGS AND EQUIPMENT OF RESTAURANT ORDERED FORFEITED.

In the Matter of the Seizure on October 21, 1954 of a quantity of alcoholic beverages, certain fixtures, furniture, equipment and \$8.76 in cash, at the "Cafe Italia", a restaurant located at 528 Adams Street, in the City of Hoboken, County of Hudson and State of New Jersey.

Case No. 8735

ON HEARING  
CONCLUSIONS AND ORDER

Joseph C. Dunn, Esq., Attorney for Carmine Corrado.  
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 a quantity of alcoholic beverages, \$8.76 in cash, and various fixtures, furnishings and equipment, described in a schedule attached hereto, seized on October 21, 1954 at the "Cafe Italia", a restaurant located at 528 Adams Street, Hoboken, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because alcoholic beverages had been allegedly sold at the premises without a license.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered on behalf of Carmine Corrado, the proprietor of the restaurant.

An ABC agent testified that he purchased a bottle of anisette from Corrado at the restaurant on October 21, 1954, and returned later that day and purchased anisette and a cup of coffee from Corrado. The agent paid Corrado on the second occasion with two one-dollar bills identified by serial numbers.

Shortly after the second purchase other agents entered the restaurant and disclosed their identity. Carmine Corrado did not hold any license authorizing him to sell alcoholic beverages, and the restaurant was not licensed for that purpose. The agents seized six bottles of various brands of alcoholic beverages, which were in a cabinet behind the counter, \$8.76 in cash, which included the two marked dollar bills, and the furniture, fixtures and equipment of the restaurant.

Mr. Corrado's attorney, in Corrado's presence, stated at the hearing that Corrado did not dispute that such were the facts. The attorney stated that the purpose of his appearance was to obtain return of the seized property, excluding the alcoholic beverages and \$8.76 in cash, pending decision in the case, upon deposit in cash of the retail value of such articles. Such attorney further acknowledged on the record that the sum of \$600.00 was the reasonable value of such property, and requested and was granted a period of one week thereafter to make such deposit.

Carmine Corrado deposited such sum of \$600.00 with the Director of the Division of Alcoholic Beverage Control within the time fixed, and thereupon obtained return of all of the seized property excluding the alcoholic beverages and the sum of \$8.76. Contemporaneous with the deposit of such sum Carmine Corrado entered into a signed stipulation that the Director of the Division of Alcoholic Beverage Control should determine, on the basis of the evidence presented at the hearing, whether such sum of \$600.00, deposited in place of the seized property, should be forfeited, or returned to Corrado.

The evidence presented establishes that Carmine Corrado sold alcoholic beverages at the restaurant without a license. His stock of alcoholic beverages, which was seized, was plainly intended for like unlawful sale, and hence these alcoholic beverages are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages, and the furnishings, fixtures, equipment, and all other personal property seized in the restaurant, including the \$8.76 in cash, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. Such forfeiture must follow as of course, since under the circumstances, no acceptable defense could be, or was, presented.

Accordingly, it is DETERMINED and ORDERED that the seized alcoholic beverages, described in Schedule "A" attached hereto, and \$8.76 in cash, constitute unlawful property and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66, and that such property 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

DETERMINED and ORDERED that the balance of the seized property consisting of fixtures, furnishings, equipment and soda, listed in the aforesaid Schedule "A", constitutes unlawful property, and that the sum of \$600.00, representing the retail value thereof, paid under protest to the Director of the Division of Alcoholic Beverage Control by

Carmine Corrado to obtain return of such articles, be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law.

Dated: January 18, 1955.

WILLIAM HOWE DAVIS  
Director.

SCHEDULE "A"

- 6 - bottles of alcoholic beverages
- 459 - bottles of soda
- 47 - chairs
- 12 - tables
- 2 - cabinets
- 1 - player piano
- 1 - Dumont television
- 1 - Ace Freezer
- 1 - Coca Cola cooler
- 2 - showcases
- 1 - coffee maker
- 1 - electric fan
- 1 - Zenith radio
- 1 - scale
- 1 - National cash register
- 1 - Servel refrigerator
- \$8.76 in cash

ebv

7104

ebv

7104

6. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOL, MASH AND BEER IN AND ABOUT DWELLING AND MOTOR VEHICLE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - OWNER OF MOTOR VEHICLE SEEKING ITS RETURN FAILED TO ESTABLISH HIS INNOCENCE - MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on  
October 23, 1954, of a quantity  
of alcohol, 100 gallons of mash,  
and a Chevrolet sedan at premises  
1022 Leesville Avenue, in the City  
of Rahway, County of Union and State  
of New Jersey.

Case No. 8741

ON HEARING  
CONCLUSIONS AND ORDER

-----  
Wilentz, Goldman, Spitzer & Sills, Esqs., by Matthias D. Dileo, Esq.,  
Attorneys for Doy Blackshear.  
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 a quantity of alcoholic beverages, 100 gallons of mash, and a Chevrolet sedan, described in a schedule attached hereto, seized on October 23, 1954 at 1022 Leesville Avenue, Rahway, New Jersey constitute unlawful property and should be forfeited.

On the above date ABC agents, during the course of their investigation of a complaint that unlawful alcoholic beverage activities were being carried on at the aforementioned premises, discovered and seized what appeared to be illicit alcohol and mash in and about the dwelling occupied by Doy Blackshear at the above address. They also seized Blackshear's Chevrolet sedan, parked on the street in front of his dwelling, when they discovered therein a pint bottle with a small quantity of alleged illicit alcohol.

When the matter came on for hearing pursuant to R.S. 33:1-66, Doy Blackshear appeared and sought return of the motor vehicle, on claim that the pint bottle of alcohol was in his car without his knowledge or consent. No one opposed forfeiture of the alcoholic beverages or mash.

A gallon jug with "corn whiskey", 9 one-gallon jugs of what appeared to be home-made wine, and 19 bottles of beer were seized in Blackshear's dwelling. Within a few feet of the dwelling, sunk into the ground, there were two 50-gallon drums of mash, which were also seized. The pint bottle containing about two ounces of alcohol was in the car. The gallon jug of "corn whiskey" did not have thereon any label, or tax stamp indicating the payment of tax on alcoholic beverages. The pint bottle was labeled "Wilson" whiskey.

The alcohol in the jug was analyzed by the Division's chemist, who reports that it is an alcoholic beverage containing alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 52.6 per cent. The chemist's analysis of the contents of the pint bottle discloses that it is an alcoholic beverage containing alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 46.5 per cent. It is not genuine "Wilson" whiskey of the alcoholic content described by the label or by chemical formula. The wine in one of the gallon jugs was analyzed by the chemist who reports that it is wine fit for beverage purposes with an alcoholic content by volume of 13.2 per cent. This jug was labeled "Coca-Cola".

The alcohol in the jug is illicit because of the absence of any label or tax stamp thereon. The alcohol in the pint bottle is illicit because it does not appear to be the original contents -- "Wilson" whiskey. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and the beer, home-made wine and mash found therewith on the premises constitute unlawful property and are subject to forfeiture. The Chevrolet sedan in which the illicit alcohol was found is likewise subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

An ABC agent testified that, at the time of the seizure, Blackshear told him that the owner of the mash was a man who resided in Potters Crossing, who transported a small still in his truck, came to the Blackshear premises usually on Monday nights, distilled the mash in the cellar of the dwelling, left a small quantity of the product for Blackshear's personal use and removed the balance.

At the seizure hearing Blackshear reiterated this claim in further detail. His testimony in summary is that the man, a fellow employee, resided with Blackshear's family in his three-room apartment; that Blackshear discovered or suspected that this man was manufacturing bootleg liquor, and compelled him to vacate; that nevertheless this man returned periodically to the premises, used the still, and gave some of the liquor to Blackshear for personal use. Blackshear gave a rambling and disjointed recital of these events.

Blackshear seeks to disclaim responsibility for the presence of the bottle of illicit alcohol in his car. He asserts that his brother-in-law borrowed the car on the afternoon of the day in question, at which time the bottle was not in the car; that the car was returned after about an hour, but that Blackshear did not inspect the car until after the seizure, when the bottle was found in the car.

Aside from the circumstance that the bootleg liquor in the jug in Blackshear's home was of the same character, and substantially of the same alcoholic content as that in the pint bottle, and that Blackshear, by his own admission, at least countenanced the manufacture and possession of such bootleg liquor in and about his home without notifying any law enforcement agency, the paramount consideration is whether his over-all description of what occurred deserves acceptance. On this score, Blackshear's background is of course a pertinent factor.

During the period of 1933 to 1939 Blackshear was convicted and fined in the City Court of Dublin, Georgia, on three or four occasions

for violation of the revenue (liquor) law of that state. In June 1940 he was sentenced to two months' imprisonment for violation of the Federal liquor laws. In June, 1942 he was sentenced to six months' imprisonment for a similar offense.

Although Blackshear's past violations of various liquor laws, with an intervening lapse of many years, does not necessarily indicate that he is presently inclined to similar conduct, nevertheless it can not be disregarded in evaluating his bizarre and seemingly unlikely explanation. His past experiences should have convinced him that it was unwise to be involved with bootleg liquor in any manner, even though he says that he assumed it was not an offense to have bootleg alcoholic beverages for personal consumption.

To return the Chevrolet sedan to Blackshear, it must appear by satisfactory evidence that he acted in good faith, and unknowingly violated the Alcoholic Beverage Law. R.S. 33:1-66(e). I do not accept Blackshear's claim that he was not responsible for the illicit alcoholic beverage in his car. On the other aspect of the case, I am not satisfied that Blackshear did not participate in the unlawful alcoholic beverage activity being carried on in and about his dwelling. Moreover, if not directly participating, he permitted such activities to be carried on with full knowledge that they were in violation of the Alcoholic Beverage Law. In view of the background of the case, the fact that there was only a small quantity of illicit alcohol in the pint bottle is immaterial. Blackshear is not an innocent victim of circumstances. His application for return of the Chevrolet sedan is denied for the reasons herein expressed.

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. 33:1-66, 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.

WILLIAM HOWE DAVIS

Director.

Dated: January 19, 1955.

SCHEDULE "A"

- 9 - one-gallon jugs of wine
- 1 - one-gallon jar of alcohol
- 1 - one-pint bottle of alcohol
- 19 - bottles of beer
- 2 - 50-gallon drums full of mash.
- 1 - Chevrolet sedan, Serial No. 14EJJ21798,  
1954 N. J. Registration No. JDJ32.

February 3, 1955

7.

ACTIVITY REPORT FOR JANUARY 1955

<b>ARRESTS:</b>		
Total number of persons arrested	-----	12
Licensees and employees	----- 5	
Bootleggers	----- 7	
<b>SEIZURES:</b>		
Motor vehicles - cars	-----	1
Stills - 50 gallons or under	-----	1
Mash - gallons	-----	100.00
Distilled alcoholic beverages - gallons	-----	2.81
Wine - gallons	-----	11.63
Brewed malt alcoholic beverages - gallons	-----	13.50
<b>RETAIL LICENSEES:</b>		
Premises inspected	-----	677
Premises where alcoholic beverages were gauged	-----	713
Bottles gauged	-----	13,352
Premises where violations were found	-----	71
Violations found	-----	122
Type of violations found:		
Unqualified employees	----- 49	Disposal permit necessary ----- 6
Other mercantile business	----- 17	Prohibited signs ----- 2
Reg. #38 sign not posted	----- 6	Gambling devices ----- 1
		Other violations ----- 41
<b>STATE LICENSEES:</b>		
Premises inspected	-----	3
License applications investigated	-----	12
<b>COMPLAINTS:</b>		
Complaints assigned for investigation	-----	475
Investigations completed	-----	409
Investigations pending	-----	202
<b>LABORATORY:</b>		
Analyses made	-----	136
Refills from licensed premises - bottles	-----	2
Bottles from unlicensed premises	-----	12
<b>IDENTIFICATION BUREAU:</b>		
Criminal fingerprint identifications made	-----	7
Persons fingerprinted for non-criminal purposes	-----	116
Identification contacts made with other enforcement agencies	-----	108
Motor vehicle identifications via N. J. State Police teletype	-----	2
<b>DISCIPLINARY PROCEEDINGS:</b>		
Cases transmitted to municipalities	-----	10
Violations involved:		
Sale during prohibited hours	----- 6	
Sale to minors	----- 3	
Permitting brawl on premises	----- 1	
Cases instituted at Division	-----	22
Violations involved:		
Sale to minors	----- 9	Sale during prohibited hours ----- 1
Sale below minimum resale price	----- 3	Possessing indecent matter on premises ----- 1
Permitting brawls on premises	----- 2	Possessing illicit liquor ----- 1
Possessing slot machines on premises	----- 2	Fraud and front ----- 1
Permitting hostesses on premises	----- 2	Employee working while intoxicated ----- 1
Unauthorized transportation	----- 1	Permitting bookmaking on premises ----- 1
Permitting immoral activity on premises	----- 1	
Cases brought by municipalities on own initiative and reported to Division	-----	14
Violations involved:		
Sale to minors	----- 8	Permitting hostesses on premises ----- 1
Sale during prohibited hours	----- 3	Licensee working while intoxicated ----- 1
Permitting brawls on premises	----- 3	Conducting business as a nuisance ----- 1
Permitting immoral activity on premises	----- 1	
<b>HEARINGS HELD AT DIVISION:</b>		
Total number of hearings held	-----	40
Disciplinary proceedings	----- 23	
Eligibility	----- 6	
Seizures	----- 8	
Tax revocations	----- 2	
Applications for license	----- 1	
<b>STATE LICENSES AND PERMITS ISSUED:</b>		
Total number issued	-----	839
Licenses	----- 2	
Employment permits	----- 97	Wine permits ----- 14
Solicitors'	----- 51	Miscellaneous permits ----- 102
Disposal "	----- 101	Transportation insignia ----- 221
Social affair "	----- 227	Transportation certificates ----- 24

WILLIAM HOWE DAVIS  
Director.

8. AUTOMATIC SUSPENSION - SUSPENSION TEMPORARILY LIFTED - REIMPOSED AS OF LATER DATE.

In the Matter of a Petition by )

PANTALEO DiTERLIZZI )  
T/a LEO'S GRANDEVOUS )  
200 Grand Street )  
Hoboken, N. J., )

N 10  
POSE  
O R D E R N 10

To Lift Automatic Suspension of )  
Plenary Retail Consumption License )  
C-64, issued by the Municipal Board )  
of Alcoholic Beverage Control of the )  
City of Hoboken. )

POSE  
N 10

-----  
BY THE DIRECTOR:

It appears from the petition filed herein that the licensee was convicted in the Hudson County Court of the crime of selling alcoholic beverages to minors, and sentenced, on December 21, 1954, to a suspended prison term and fined the sum of \$300.00. Because of the automatic suspension of his license resulting from said conviction, the license was picked up by agents of this Division on December 28, 1954. See R.S. 33:1-31.1.

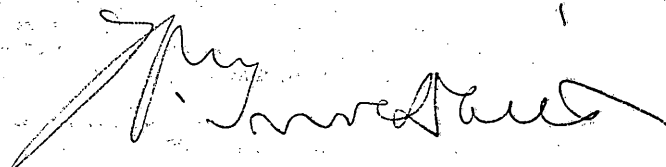
The conviction involved the sale of alcoholic beverages to two minors, each aged twenty years. The usual penalty for a violation of this nature is a suspension of the license for a period of ten days. The automatic suspension would normally not be lifted, therefore, until the licensee had served the ten-day period of suspension.

However, in view of the imminent New Year holiday, I shall lift the suspension immediately and reimpose it to commence on January 10, 1955. Since the licensed premises has already been closed for one day, the net suspension remaining is nine days.

Accordingly, it is, on this 29th day of December, 1954,

ORDERED that the automatic suspension of License C-64, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Pantaleo DiTerlizzi, t/a Leo's Grandevous, for premises 200 Grand Street, Hoboken, be and the same is hereby lifted, effective immediately; and it is further

ORDERED that the aforesaid suspension be reimposed for the balance of the ten-day period, to wit, for a period of nine (9) days, commencing at 2:00 a.m. January 10, 1955, and terminating at 2:00 a.m. January 19, 1955.



William Howe Davis  
Director.