Mr. Gosswiler

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

BULLETIN 1380 March 14, 1961.

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ITEM

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

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1. APPELLATE DECISIONS - WHITLEY v. KENILWORTH (Case No. 2).

Case No. 2- Walter Andrew Whitley, t/a Maple Inn,	)	
Appellant,	)	On Appeal
v.	)	Conclusions
Mayor and Council of the Borough of Kenilworth,	)	and
Respondent.	)	Order

Calvin J. Hurd, Esq., Attorney for Appellant
Earl Pollack, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from an action of respondent which resulted in a suspension of appellant's License C-5, issued for premises at 429 Monroe Avenue, Kenilworth. After a contested hearing in disciplinary proceedings, respondent found appellant guilty, on October 4, 1960, of a charge alleging that he allowed, permitted and suffered in and upon his licensed premises the consumption of an alcoholic beverages by Marcia ---, a minor, in violation of Rule 1 of State Regulation No. 20. As a result, respondent suspended appellant's license for forty-five days effective at 7 a.m. December 1, 1960.

"The petition of appeal alleges that the finding of guilt was contrary to the law and the evidence.

"Upon the filing of the appeal, an order dated November 3, 1960, was entered by the Director staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

"At the hearing held herein Marcia --- testified that she was born on October 25, 1942; that on the evening of July 31, 1960, she, accompanied by two young ladies and three young men, drove from East Orange to Kenilworth where all of them entered the basement portion of appellant's premises at about 11:40 p.m.; that she ordered from Thomas Lloyd (a bartender) a Tom Collins for herself and an orange-and-gin for one of the young ladies; that the bartender subsequently placed the orders on the table near the place where they were seated, and that she consumed part of her Tom Collins and one of the young men consumed the balance of her drink. She further testified that she paid $1.25 for the two drinks to the bartender, who did not question her as to her age. Marcia's mother corroborated Marcia's testimony as to the date of her birth.

"On behalf of appellant, Thomas Lloyd testified that he is employed as a bartender by appellant; that on the evening in question he was working in the basement portion of the premises from 9 p.m. to 11 p.m. and on the main floor of the premises from

11 p.m. to 1 a.m. He further testified that he did not serve any drinks to Marcia and, in fact, did not see her on the premises. It appears from his testimony that appellant also employs Isaac Tucker as a bartender, and that he and Tucker alternate as bartenders between the basement and the main floor. It was stipulated between the attorneys that the testimony given at the hearing below by Isaac Tucker, who did not appear at the hearing herein, should be read into the record herein. In substance, Isaac Tucker testified at the hearing below that he was serving drinks in the basement between 11 p.m. and 1 a.m. on the evening in question; that he went to the table where Marcia --- was sitting; that two of the fellows called him over and ordered two drinks which he subsequently placed on the table and that Marcia did not pay for the drinks.

"The testimony given by Isaac Tucker establishes that Marcia and her companions were in appellant's premises on the evening in question. The testimony of Marcia that she purchased and consumed a drink of alcoholic beverages was not shaken on cross-examination. Having observed her on the stand, I believe her testimony. Even if she were mistaken in identifying Lloyd instead of Tucker as the person who served the drinks, such a mistake would not be fatal in disciplinary proceedings. Catts v. Lower Penns Neck, Bulletin 1344, Item 2. I find as a fact that Marcia consumed a drink of alcoholic beverages which was placed on the table by a bartender. Since the licensee is charged merely with permitting consumption by the minor, it is immaterial whether the drink was served by Lloyd or Tucker and it is immaterial whether the drink was purchased by Marcia or some of her companions. Re Morganstern and Oliner, Bulletin 292, Item 9.

"After reviewing all the evidence and the brief submitted by appellant's attorney, it is recommended that an order be entered affirming the action of respondent, vacating the order dated November 3, 1960, and fixing the effective dates for the forty-five-day suspension imposed by respondent."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of testimony, the brief filed by appellant's attorney and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Appellant's license is now under suspension for a period of thirty days terminating at 2:00 a.m., Thursday, February 23, 1961. Whitley v. Kenilworth (Case No. 1), Bulletin 1376, Item 5.

Accordingly, it is, on this 30th day of January 1961,

ORDERED that the action of respondent Board whereby it suspended appellant's license for forty-five days, be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the order entered by me on November 3, 1960 be vacated at 2:00 a.m., Thursday, February 23, 1961, and that the forty-five-day suspension heretofore imposed by respondent be and the same is hereby reimposed against appellant's license to commence at 2:00 a.m., Thursday, February 23, 1961 and to terminate at 2:00 a.m., Sunday, April 9, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - MAHR v. LACEY.

Karl C. Mahr,

Appellant,

v.

Township Committee of the Township of Lacey,

Respondent.

On Appeal

CONCLUSIONS and ORDERS

George C. Tartar, Esq., Attorney for Appellant.
Haines & Schuman, Esqs., by Harold A. Schuman, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent on July 1, 1960, whereby it, in effect, denied appellant's application for a plenary retail consumption license for premises located at U.S. Route #9 and Railroad Avenue, Forked River, Lacey Township.

It appears from the evidence that said application was first considered by the three members of the Township Committee at a meeting held on June 17, 1960; that it was then laid over until July 1 for further investigation and that, at the meeting held on July 1, Committeeman Kofoet made a motion to grant the application but said motion was not seconded by Mayor Wilbert or Committeeman Holmes, the other members of the Township Committee. Although this constituted an effective denial, the minutes, naturally, do not contain any reason why the application was effectively denied. However, from the testimony given herein, I find that the reasons, in substance, for refusing to grant the application were (1) that appellant did not present proper proof that he operates or intended thereafter to construct and establish a new hotel containing at least fifty sleeping rooms (R.S. 33:1-12.20); (2) that a written objection had been filed, and (3) that appellant had improperly conducted premises for which he formerly held a license.

The Hearer who presided at the hearing held herein recently retired before he had an opportunity to prepare a Hearer's Report, and the attorneys for both parties have consented to waive the filing of a Hearer's Report as required by Rule 14 of State Regulation No. 15.

The evidence herein establishes the following facts: Appellant formerly held a plenary retail consumption license for the Greyhound Hotel (a large three-story structure located upon the same land as his present premises). He operated under successive licenses issued to him for the Greyhound Hotel from August 1954 until December 8, 1957, when a disastrous fire destroyed the entire building except a small portion in one corner thereof. The destruction of the premises did not "revoke" the license which remained in effect until June 30, 1958. Re Raupp, Bulletin 200, Item 8. Appellant thereafter reconstructed part of the premises on the ground floor level and applied for renewal of his license for the 1958-59 year, which application was denied. He again applied for renewal of his license for the 1959-60 year and said application was denied. Appellant testified that he did not file an appeal in either case because his building was not sufficiently completed.

When appellant filed his application for the 1960-61 year (the subject of this appeal), he filed with respondent plans indicating that his premises would contain fifty sleeping rooms. This was necessary because his present application cannot be considered as a renewal of the license which expired June 30, 1958. R.S. 33:1-12.13 and 96. Hence his application must be considered as an application for a new license, and a new license may be granted in the Township only under R.S. 33:1-12.20 which provides:

> "Hotel operator, new license to. Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms or who may hereafter construct and establish a new hotel containing at least fifty sleeping rooms."

There is a sharp difference of opinion as to the condition of appellant's premises on July 1. Councilman Kofoet testified that he inspected the premises prior to the meeting held on June 17 and found fifty rooms, only eleven of which were then furnished as sleeping rooms, and that, when he so reported at said meeting, the matter was laid over to July 1. Appellant submitted to respondent an affidavit dated June 16, 1960, setting forth that "the establishment consists of a hotel having fifty rooms available for occupancy by guests, a restaurant and bar." At any rate, it is clear that, up to the date of the last hearing on October 25, no member of the Township Committee inspected the premises except as aforesaid. Appellant must afford the members of the Township Committee full right of inspection of the premises to see that they comply with the plans and specifications, and it is the duty of the Councilmen to make such inspection. R.S. 33:1-24.

As to reasons (2) and (3) set forth above, the written objection referred to the condition of the premises and the evidence given by Mayor Wilbert as to alleged improper conduct concerned chiefly complaints of noise outside the premises and is not convincing as a reason for denial.

There is one other point in the case which is material. The advertised notice of application for the license did not include the statement that "Plans and specifications of building to be constructed may be examined at the office of the Municipal Clerk." Appellant must file specifications in addition to the plans already filed, and must properly readvertise before respondent can pass upon the pending application. Klein and Tucker v. Fairlawn et al., Bulletin 1175, Item 3.

Since respondent took no formal action, I cannot, at this time, enter an order affirming or reversing its action. Hence I shall remand the case to respondent for further action in accordance with the opinion entered herein.

Accordingly, it is, on this 31st day of January 1961,

ORDERED that the matter be remanded to respondent for further action in accordance with this opinion; and it is further

ORDERED that, upon the presentation of proof by appellant that he has properly readvertised, the members of the Township Committee shall, as promptly as possible, inspect the premises sought to be licensed and adopt a resolution granting the application if satisfied that the premises comply with the plans and specifications filed or denying the application for failure to comply with the plans and specifications filed.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - MITCHELL et al v. PATERSON, ABOYOUN AND NASSANEY.

G. Malcolm Mitchel, III; James R. Mitchell, and Paterson Market Corp., Appellants, v. Board of Alcoholic Beverage Control for the City of Paterson, Anthony Aboyoun, Edward Aboyoun and Charles R. Nassaney, Respondents.	On Appeal CONCLUSIONS and ORDER

Melvin N. Fine, Esq., Attorney for Appellants
No Appearance for Respondent Board
Sylvan G. Rothenberg, Esq., Attorney for Respondents Anthony Aboyoun, Edward Aboyoun and Charles R. Nassaney.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from various actions of respondent Board, on August 25, 1960, which resulted in the denial of an application to transfer a plenary retail consumption license to G. Malcolm Mitchell, III (hereafter Mitchell) for 243 Market Street, and the granting of an application to transfer said license to respondent Charles R. Nassaney, and from 243 Market Street to 182 Mill Street, Paterson. The transfer to Nassaney was granted subject to the special condition that the proposed premises at 182 Mill Street be completed in accordance with recommendations stipulated by the Fire and Health Department of Paterson.

"The evidence herein shows that Mitchell caused to be incorporated on February 9, 1959, a corporation known as 'Paterson Market Corp.'; that Mitchell owned 599 shares of the 600 shares issued by the corporation and that the plenary retail consumption license in question was thereafter transferred to said corporation.

"On August 6, 1959, Mitchell, as seller, and Anthony Aboyoun and Edward Aboyoun, as purchasers, entered into an agreement whereby the seller agreed to sell all the stock of the aforesaid corporation to the purchasers for the sum of $3750. The sum of $750 was paid in cash and the purchasers delivered to the seller a series of sixty monthly notes for $50 each, the first of which was due October 15, 1959. Paragraph 3 of said agreement reads as follows:

> 'The stock of said Corporation together with resignations of the Purchasers and assignments in blank shall be placed in escrow with Melvin N. Fine, Esq, of 45 Church Street, Paterson, New Jersey, until all monies due under this agreement are paid in full; and in the event of a default of more than thirty (30) days on any payment hereinabove referred to, the entire balance due shall immediately become due and payable, the Purchasers right in the stock of the Corporation

shall cease, and the Seller may sell said stock at public or private sale under such terms and conditions as he may desire, without notice to the Purchasers and the Purchasers shall be liable for any and all costs, expenses and unpaid balance.'

"On August 18, 1959, Mitchell's present attorney wrote a letter to the License Division, City Hall, Paterson, the pertinent portion of which is as follows:

'Please be advised that I represent the stockholders of Paterson Market Corp. who have transferred their stock in the corporation to Anthony Aboyoun and Edward Aboyoun of #490 River Street, Paterson, New Jersey, and #406 E. 18th Street, Paterson, New Jersey, respectively. Anthony Aboyoun is the new President of the corporation and Edward Aboyoun the Secretary, and the stock is being held in escrow until full payment to the seller, to wit: G. Malcolm Mitchell, III.'

"Actually, the stock was not transferred to the Aboyouns but remained at all times in the name of Mitchell (except one share in the name of his brother, James R. Mitchell). Actually, there were no "resignations of the purchasers and assignments in blank", as set forth in Paragraph 3 of the agreement. In fact, up to that point the corporation had held no meeting except the organization meeting held on February 10, 1959. The entire procedure indicates that Mitchell attempted to keep an unlawful control of the license held by the corporation despite the fact that the Aboyouns operated the licensed business, as apparent officers of the corporation, from August 1959 until early in 1960, and filed the necessary Beverage Tax Reports until the date of hearing. Liquor licensees should hold their licenses free from any device which would subject them to the control of other persons. Rawlins v. Trevethan, 139 N.J. Eq. 226.

"On July 15, 1960, an application for renewal of the Paterson Market Corp. license was filed with respondent Board and was signed by Mitchell as President and his brother as Secretary of said corporation. On the same day Mitchell filed with the Board an application to transfer the renewed license to himself. This application bore a consent to transfer signed by Mitchell as President and his brother as Secretary of Paterson Market Corp. On July 29, 1960, another application for renewal of the Paterson Market Corp. license was filed with the Board and was signed by Anthony Aboyoun as President and Edward Aboyoun as Secretary of said corporation. This application bore a facsimile of the corporate seal. On August 12, 1960, an application was filed with the Board by Charles R. Nassaney for a transfer of the renewed license to himself and from 243 Market Street to 182 Mill Street. This application bore a consent signed by Anthony Aboyoun as President and Edward Aboyoun as Secretary of Paterson Market Corp.

"Respondent Board held a hearing on August 25, 1960. At said hearing the present attorney for Mitchell called attention to his letter dated August 18, 1959, and his subsequent letter, dated August 24, 1960, wherein he stated that the Aboyouns had paid none of the notes and that Mitchell had taken over the stock and requested a change of officers of the corporation. He also referred to a copy of a resolution (enclosed with his letter dated August 24, 1960) adopted at a special meeting of Paterson Market Corp. on June 20, 1960, consenting to a transfer of the renewed license to Mitchell. This resolution was signed by Mitchell as President and his brother as Secretary. After hear-

ing argument, the Board granted the application for renewal filed by Paterson Market Corp. on July 29, 1960, and signed by the Aboyouns as officers of the corporation, and the application filed by Nassaney for transfer of the renewed license. The Board took no action upon the application for renewal filed by Paterson Market Corp. on July 15, 1960, and signed by the Mitchells as officers of the corporation, or upon the application to transfer the renewed license to Mitchell. The Board also found that a crime of which Anthony Aboyoun was convicted (and which he disclosed in the application for renewal) did not involve moral turpitude.

"It has been held, from the earliest days to the present time, that, where a consent to transfer is defective on its face or has been declared invalid by a court of competent jurisdiction, it should be disregarded but that, otherwise, any attempted withdrawal by the transferor of his duly filed consent is of no effect in so far as the jurisdiction of the municipal authority is concerned. It has been further ruled that any contrary view would raise difficult questions of administration and would involve consideration of private issues inter partes which should rest entirely within the determination of the courts. Re Roberts, Bulletin 129, Item 5. See also Mancini v. West New York et al., Bulletin 253, Item 10; Kirschoff v. Millville et al., Bulletin 254, Item 8; Martin v. Clifton et al., Bulletin 484, Item 2. The same rule should apply to any attempted changes as to the officers of a corporation where, as in this case, the issuing authority has been advised that the stock of the corporation has been transferred to other persons and that said persons have become the officers of the corporation. The Board evidently relied upon the information furnished to it in the letter dated August 18, 1959, and it was justified in so doing. I conclude, also, that the Board was justified in finding that the crime (maintaining a disorderly house involving gambling) did not involve moral turpitude.

"This case shows the wisdom of the Division's policy whereby it requires that, where the stock of a corporation is sold to other persons, the stock must be placed in the names of the purchasers, who shall retain all voting rights thereon and the right to receive all dividends until there is a default, if the stock is pledged to the seller to secure part of the purchase price. Mitchell failed to comply with this policy and he cannot be heard to complain as to the actions of respondent Board so far as the liquor license is concerned. The Aboyouns deny they are in default. Mitchell's remedy, if any, against them must be sought in a court of competent jurisdiction. To the date of hearing, Mitchell had instituted no proceedings of any kind against the Aboyouns in any court.

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

Pursuant to the provisions of Rule 14 of State Regulation No. 15, the attorney for appellant filed with me exceptions to the Hearer's Report and written argument referring thereto.

After carefully considering the transcript of the testimony, exhibits, briefs filed with the Hearer by the attorney for appellant and attorney for the individual respondents, the Hearer's Report and exceptions and written argument thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I shall accept the recommendation of the Hearer.

Accordingly, it is, on this 31st day of January 1961,

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - ALCOHOLIC BEVERAGES, FURNISHINGS, FIXTURES AND EQUIPMENT AND CASH RECEIPTS ORDERED FORFEITED.

In the Matter of Seizure on February 14, 1960 of a quantity of alcoholic beverages, $16.80 in cash, and various fixtures, furnishings and equipment at the Venice Italian Restaurant, at 214 Bloomfield Avenue, City of Newark, County of Essex and State of New Jersey.	Case No. 10,222 On Hearing CONCLUSIONS AND ORDER

James Del Mauro, Esq., Attorney for Louis Salamone.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 and further pursuant to a stipulation dated February 26, 1960 signed by Mary Milkowski to determine whether a quantity of alcoholic beverages, $16.80 in cash and various fixtures, furnishings and equipment, described in a schedule attached hereto, seized on February 14, 1960 at the 'Venice Italian Restaurant' located at 214 Bloomfield Avenue, Newark, New Jersey, constitute unlawful property and should be forfeited.

"On February 15, 1960, pending seizure hearing in the case, John Ruoto deposited $2,000 under protest, pursuant to R.S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the fixtures, furnishings and equipment, and thereupon obtained return of the property seized, excepting the alcoholic beverages and $16.80 in cash. On February 26, 1960 Mary Milkowski signed a stipulation that such Director should determine, in the present proceedings, whether such sum shall be forfeited or returned to her. On April 7, 1960, James Del Mauro wrote to the Division advising that he represented Louis Salamone, the actual owner of the seized property; that it was his money that was deposited, and requested the amendment of the Certificate of Payment under protest to substitute the name of Louis Salamone for that of John Ruoto.

"When the matter came on for hearing pursuant to R.S. 33:1-66 and the aforesaid stipulation, an appearance was entered on behalf of Louis Salamone, who requested return of the deposit of $2,000. No one appeared to oppose forfeiture of the $16.80 in cash or the alcoholic beverages.

"The established facts are that on February 7, 1960 an ABC agent was at the above restaurant, where two waiters and a waitress were on duty and John Ruoto was acting as cashier, and that the

agent purchased from the waiter a drink of 'coffee royal', a combination of coffee and whiskey.

"On February 14th the agent in question and another agent entered the restaurant where the aforesaid employees were on duty; that the agents purchased a number of drinks of 'coffee royal' and one drink of whiskey and paid John Ruoto for such drinks and the food which they had consumed. After making such payment, the agents revealed their identity.

"The agents recovered marked money which they had used to pay for their drinks and seized 24 bottles of various brands of alcoholic beverages, the $16.80 in cash, and the furniture, fixtures and equipment in the restaurant, because neither John Ruoto nor Mary Milkowski held any license authorizing either of them to sell alcoholic beverages and the premises were not licensed for that purpose.

"The seized alcoholic beverages, obviously intended for sale without a license, constitute illicit alcoholic beverages. R.S. 33:1-1(i). Such illicit alcoholic beverages, the $16.80 in cash and all other personal property seized in the restaurant constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"The fundamental issue in the case is whether actually the money deposited was that of Louis Salamone and, if so, whether he is the owner of such fixtures, furnishings and equipment and did not know or have any reason to suspect that alcoholic beverages were being sold in the restaurant without a license.

"John Ruoto apparently did not have funds available to make the deposit and obtained them elsewhere. His attorney questioned the insertion of the name of John Ruoto on the Certificate of Payment, evidently because it was not Ruoto's funds. Mary Milkowski, his sister, who ostensibly was operating the restaurant, ultimately signed the aforesaid stipulation concerning the disposition of the money deposited.

"Thereafter, at the seizure hearing, Louis Salamone presented a lease for the restaurant premises dated September 20, 1958 for the term of two years ending October 1, 1960 at the monthly rental of $100. He also presented a bill of sale dated September 23, 1958 covering all of the personal property in such restaurant and a closing statement wherein it appears that he paid $2,000 for the business and fixtures.

"Louis Salamone testified substantially as follows: that he operated a restaurant from September 1958 until March 1959 at which time his wife being ill and advised to go to Florida and business being unprofitable, he closed the establishment; he sought to sell the equipment and sublease the premises; eventually in May or June 1959 Mary Milkowski and John Ruoto expressed an interest in operating the restaurant and stated that they did not have any money; that Salamone and Mary Milkowski and/or John Ruoto agreed that the latter should operate the restaurant and pay the rent and, if they made any money, they would buy the restaurant for the price of $2500. No formal documents evidencing the transaction were executed because Salamone was anxious to have someone else undertake to pay the monthly rent.

"Thereafter, in September or October 1959, Salamone began to operate a luncheon concession in a bowling alley on a cash basis, the gross income averaging $600 a week. He has been acquainted with Ruoto for a year or more, visited the Venice Restaurant on

about three occasions and did not know or suspect that alcoholic beverages were being sold there.

"The above recital is set forth as a background helpful in determining whether such deposit was actually made on behalf of Louis Salamone as principal, or whether it was merely money loaned to John Ruoto or Mary Milkowski, in which event the source of the money is of no concern to the Division.

"The account given by Louis Salamone on such subject is to the following effect: on Sunday, February 14th, Louis Salamone received a telephone call from John Ruoto informing him that ABC agents were at the restaurant and had seized the equipment thereof and intended to remove the same unless $2,000 in cash was deposited. Salamone only had $1,000, including receipts of his business, available in cash and gave this sum to Ruoto on Monday, February 15th, under instructions from Ruoto's lawyer and Ruoto, in turn deposited the money with the Division. On the same day Salamone requested a loan of $1,000 from Salvatore Tobia, his friend of long standing, who operated a meat market and told Tobia it was needed for deposit to save Salamone's equipment. Tobia did not have the money on hand that Monday and told Salamone to come back the next day and he would have the money for him. On the following day Tobia gave Salamone $1,000 in cash. Salamone handed it to Ruoto who then completed the deposit of $2,000. Ruoto's attorney told Salamone that if he did not deposit the money he would lose the furniture. Salamone did not insist upon any document evidencing the deposit but depended on the assurance of Ruoto's attorney that he was proceeding properly.

"Tobia testified that Salamone is a good customer who he has known for twenty years and to whom he has frequently loaned sums of money; that when Salamone requested the loan of $1,000 on February 15th, he had cash on hand with which he intended to pay his bills, spoke to his suppliers to ascertain whether he could defer payment to them and, receiving a staisfactory reply, loaned the $1,000 to Salamone the next day.

"Ruoto's version of the deposit of $2,000 is in substantial accord with that of Salamone, including that the method and manner of making deposit was in accordance with the advice of his attorney. This attorney, at the invitation of the Hearer, testified that when confronted with the necessity of making the deposit of $2,000, Ruoto mentioned that Salamone would produce that sum of which $1,000 was produced on one day and the other $1,000 the next; that he did not personally arrange the details of the deposit but, in conversation with Division personnel, insisted that the receipt was only to show that the money was deposited by Ruoto but in no way was it intended that the money belonged to Ruoto; that he has no recollection of when he became aware that Salamone was the actual owner of the restaurant and equipment because he was not the attorney in the prior transaction, hence did not know whether Salamone was advancing the money as a loan or on his own behalf.

"Naturally, the claim of Louis Salamone that he was the undisclosed principal on whose behalf Ruoto acted in making deposit is subject to close scrutiny. I do not believe that the evidence submitted is sufficient to overcome the presumption arising from the delivery of the money by Ruoto and the written receipt issued to him that the money deposited was made on his behalf and that of Mary Milkowski, whatever the source of the funds may have been. In other words, I do not believe the account given by Salamone and his witnesses that the money was actually deposited on his behalf because a person advancing such a comparatively large amount of money, considering his financial condition, would not have waited

from February to April to bring to the attention of this Division that the money deposited was actually deposited on his behalf.

"Since I am of the opinion that the account given by Louis Salamone is not definitive of satisfactory evidence that actually it is his money which was deposited, no purpose will be served in determining whether or not he knew or should have known of the unlawful alcoholic beverage activity at the restaurant. I therefore recommend that his application to amend the Certificate of Payment under protest, issued by the Division to John Ruoto by substituting his name, be denied.

"I further recommend that an order be entered forfeiting the alcoholic beverages and $16.80 in cash and that the deposit of $2,000 likewise be forfeited and disposed of in accordance with law."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the claimant, Louis Salamone, pursuant to Rule 4 of State Regulation No. 28.

Said exceptions and argument raise two points: (1) that I no longer have jurisdiction to determine the disposition of the deposit of $2,000 and (2) the Hearer's recommended finding of fact that the $2,000 deposited was not Salamone's money is against the weight of the evidence adduced at the hearing herein.

With respect to the first point raised, the claimant is correct in stating that under the Alcoholic Beverage Law (R.S. 33:1-66(a)) he had the right to institute suit in a court of competent jurisdiction to recover the monies paid to me under protest, within one year of the date of such payment. However, such right is not exclusive, as contended, for the claimant may still elect to submit to my concurrent jurisdiction to determine the disposition of the seized property and any monies deposited in lieu thereof. Here, this in fact was done both by the submission of the aforementioned letter of April 7, 1960, in which claimant applied to have "the matter proceed in the name of Louis Salamone", and by participation in the hearing held herein, at which claimant made no jurisdictional objection. See R.S. 33:1-66(e) and Rule 1(c) of State Regulation No. 28, the latter of which specifically provides for such procedural election.

Having once elected to submit the matter for my determination, it is hardly within claimant's rights to withdraw from the proceeding upon the filing of a Hearer's Report adverse to his interest. Furthermore, it should be noted that the only issue that may be litigated in a direct court proceeding of this nature is whether the claimant's property was "unlawful property" within the meaning of the Alcoholic Beverage Law. But, at the instant hearing, Salamone expressly admitted that illegal alcoholic beverage activity had taken place at the premises from which the property was seized and, therefore, said property constituted "unlawful property" as aforesaid. R.S. 33:1-1(e), (y); R.S. 33:1-2; R.S. 33:1-66(b). It may thus be seen parenthetically, that the opportunity afforded Salamone to reclaim his seized property from me in a proceeding in which he may succeed in spite of the admitted unlawful character of the property (by showing he has acted in good faith without knowledge of the unlawful use to which the property was put) is much broader and more liberal to claimant than a direct judicial proceeding.

Consequently, I must reject the jurisdictional question raised by claimant.

As to the merits of this case, I have carefully considered the entire record herein, including the trial transcript and

exhibits, the Hearer's Report and the written exceptions and argument thereto and, as a result, I find that aside from the question of whose $2,000 was deposited, I am not satisfied that the seized property was in fact owned by Salamone on the date of the seizure. In Seizure Case No. 8410, Bulletin 1006, Item 3, I stated:

> "The normal presumption is that equipment in a commercial business establishment used in furtherance of the business is owned by the proprietor of such establishment. Consequently, clear and convincing evidence must be presented to overcome that presumption, and to establish that such equipment is actually the property of another person stored in the establishment merely for convenience."

See also Seizure Case No. 8424, Bulletin 1006, Item 4, dealing with the claim of an owner of articles who permitted a speakeasy operator to use the articles over a long period of time as if they were his own.

The explanation proferred by Salamone is just not believable. It is very unusual for one to permit another to take possession of his only business and the personal property connected thereto without any definite agreement, as here contended. For Salamone to allow this to continue for approximately nine months, during which period he admitted he visited the restaurant on only two or three occasions, without taking any action to consummate the sale, is highly unlikely. Also, if the facts are as claimed, it would have been natural for Salamone to obtain a receipt from Ruoto of the monies allegedly given him for Ruoto or Salamone to have advised the Division representatives that the seized property and the money were not Ruoto's or his sister's and for Salamone to have communicated with this Divison much sooner than April 7, 1960 for return of the money deposited, which was a substantial sum in view of his apparent financial circumstances. In this connection, it appears that the change in the certificate of payment by Ruoto was made to avoid an admission by Ruoto that he was the proprietor of the Venice Restaurant, rather than to indicate that the funds deposited did not belong to Ruoto.

Considering the fact that Salamone knew Ruoto and his sister for a comparatively short time, it is more reasonable to assume that Salamone actually sold the business and property to them at the time they took possession thereof, with, perhaps, a partial down payment and an agreement to pay out the balance of the purchase price over a period of time, and that Ruoto deposited the $2,000 to protect his own interest, although he may have obtained the money as a loan from other sources. This is the more normal type of transaction under the circumstances here present. The assertion of Salamone's ownership of the property seems to be an afterthought, supported by neither clear nor convincing evidence. Especially is this so when it is observed that the testimony of claimant and his witnesses is at times confused and contradictory.

Once such finding is made concerning the ownership of the property in question, it becomes unnecessary to determine whose money was deposited to take the place of such property since no one has come forward to establish ownership of such property and good faith in connection therewith. However, it may be well to note that Salamone and his witnesses testified that the total amount of $2,000 was not raised and deposited with this Division

until the afternoon of Tuesday, February 16, 1960. The testimony concerning this date is detailed, leaving no room for any possible mistake as to the day or date in question. Yet, Division records admitted in evidence disclose the fact that the $2,000 was received on Monday, February 15, 1960, thus refuting Salamone's version of what occurred and casting doubt on the claim that his money, rather than someone else's, was deposited with this Division. In addition, the record discloses that the seized property, for which the deposited money was substituted, includes many items to which Salamone makes no claim of ownership.

I will therefore adopt the Hearer's recommendation that Salamone's claim to return of the $2,000 in question be denied and that same be forfeited together with the alcoholic beverages and $16.80 in question.

Accordingly, it is, on this 24th day of January 1961,

DETERMINED and ORDERED that the alcoholic beverages and the sum of $16.80 in cash listed in the aforesaid Schedule "A" attached hereto, constitute unlawful property and the same be and hereby is forfeited, in accordance with the provisions of R.S. 33:1-66, and the $16.80 in cash turned over to the State Treasurer in accordance with the law and the alcoholic beverages 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 sum of $2,000 representing the appraised retail value of the other items of personal property listed in said Schedule "A", paid under protest to the Director of the Division of Alcoholic Beverage Control in order to obtain return of said items of personal property, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be turned over to the State Treasurer in accordance with the law.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

24 - bottles of various brands of alcoholic beverages
1 - juke box
8 - booth type seats
20 - tables
40 - chairs
1 - air conditioner
8 - candle holders and shades
1 - cash register
1 - phonograph
1 - showcase
1 - cigarette machine
5 - refrigerators
1 - dispenser
1 - coffee brewer
1 - television set
1 - gas stove
1 - steam table
1 - pizza oven
1 - scale
3 - fans
1 - freezer
1 - mixer
1 - hot plate
1 - wall clock
8 - mirrors
Assorted pots, pans, foodstuffs, glasses
$16.80 in cash

5. **ACTIVITY REPORT FOR JANUARY 1961**

ARRESTS:

Total number of persons arrested - - - 22
- Licensees and employees - - - 9
- Bootleggers - - - 13

SEIZURES:
- Stills - 50 gallons or under - - - 2
- Mash - gallons - - - 300.00
- Distilled alcoholic beverages - gallons - - - 9.63
- Wine - gallons - - - 201.18
- Brewed malt alcoholic beverages - gallons - - - 1.87

RETAIL LICENSEES:
- Premises inspected - - - 627
- Premises where alcoholic beverages were gauged - - - 577
- Bottles gauged - - - 9,483
- Premises where violations were found - - - 63
  - Violations found - - - 138
    - Unqualified employees - - - 87
    - Application copy not available - - - 13
    - Reg. #38 sign not posted - - - 12
    - Prohibited signs - - - 3
    - Other mercantile business - - - 3
    - Disposal permit necessary - - - 2
    - Other violations - - - 18

STATE LICENSEES:
- Premises inspected - - - 34
- License applications investigated - - - 9

COMPLAINTS:
- Complaints assigned for investigation - - - 283
- Investigations completed - - - 317
- Investigations pending - - - 110

LABORATORY:
- Analyses made - - - 170
- Refills from licensed premises - bottles - - - 24
- Bottles from unlicensed premises - - - 30

IDENTIFICATION:
- Criminal fingerprint identifications made - - - 10
- Persons fingerprinted for non-criminal purposes - - - 195
- Identification contacts made with other enforcement agencies - - - 148
- Motor vehicle identifications via N. J. State Police teletype - - - 1

DISCIPLINARY PROCEEDINGS:
- Cases transmitted to municipalities - - - 9
  - Violations involved - - - 9
    - Sale during prohibited hours - - - 6
    - Sale to minors - - - 3
- Cases instituted at Division - - - 19
  - Violations involved - - - 25
    - Possessing liquor not truly labeled - 7
    - Sale to minors - - - 4
    - Sale during prohibited hours - - - 3
    - Hindering investigation - - - 3
    - Permitting immoral activity on prem. - 2
    - Sale below minimum resale price - - - 2
    - Permitting female impersonators on prem. - 1
    - Possessing contraceptives on premises - - - 1
    - Employing female bartender (local reg.) - - 1
    - Failure to afford view into premises during prohibited hours - - - 1
- Cases brought by municipalities on own initiative and reported to Division - - - 19
  - Violations involved - - - 25
    - Failure to close premises during prohibited hours - - - 5
    - Sale to minors - - - 5
    - Hindering investigation - - - 4
    - Conducting business as a nuisance - - 3
    - Permitting brawl on premises - - - 2
    - Failure to afford view into premises during prohibited hours - - - 2
    - Sale during prohibited hours - - - 1
    - Permitting bookmaking on premises - - - 1
    - Sale outside scope of license - - - 1
    - Permitting persons of ill repute on prem. - 1

HEARINGS HELD AT DIVISION:

Total number of hearings held - - - 28
- Appeals - - - 3
- Disciplinary proceedings - - - 13
- Eligibility - - - 7
- Seizures - - - 4
- Applications for license - - - 1

STATE LICENSES AND PERMITS ISSUED:

Total number issued - - - 993
- Licenses - - - 2
- Solicitors' permits - - - 60
- Employment " - - - 156
- Disposal " - - - 74
- Social affair " - - - 355
- Wine permits - - - 4
- Miscellaneous permits - - - 116
- Transit insignia - - - 214
- Transit certificates - - - 12

OFFICE OF AMUSEMENT GAMES CONTROL:
- Licenses issued - - - 29
- Enforcement files established - - - 8

WILLIAM HOWE DAVIS
Director of Alcoholic Beverage Control
Commissioner of Amusement Games Control

Dated: February 3, 1961

6. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - CONDUCTING BUSINESS AS A NUISANCE (HOSTESS ACTIVITIES - INDECENT LANGUAGE) - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Mello-D-Club, Inc. t/a Mello-D-Club 606 Livingston Street Elizabeth, N. J. Holder of Plenary Retail Consumption License C-82, issued by the City Council of the City of Elizabeth.	CONCLUSIONS AND ORDER

Defendant-licensee, by Joseph Oliveri, President.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On December 17, 1960, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On December 17, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered customers and patrons and persons employed on your licensed premises to make overtures to and solicitation of and to consume, on your licensed premises, at the expense of the above referred to actually or apparently intoxicated person, numerous drinks of alcoholic beverages for consumption by them and others; allowed, permitted and suffered females employed on your licensed premises to accept and consume drinks of alcoholic beverages at the expense of or as a gift from customers and patrons; allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; 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."

On Saturday, December 17, 1960 between 9:20 p.m. and 11:00 p.m., ABC agents observed a barmaid (Clara Ciambruschini) serve three rum and coke highballs to an intoxicated male patron. The last highball was served by the barmaid to this man although she and Joseph Oliveri, president of defendant corporate-licensee must have been fully aware at the time that the man was actually or apparently intoxicated. The man continuously used filthy and indecent language (a repetition of which would serve no useful

purpose) without any of defendant's employees making any attempt to stop him from doing so.

On one occasion the agents observed Joseph Oliveri take a quarter of the intoxicated person's money from the bar and insert it in the juke box. The barmaid aforementioned and a waitress each served several drinks to two other patrons, to themselves and to Oliveri, and took payment therefor from the money belonging to the intoxicated man without his consent or acquiescence.

Defendant in attempted mitigation of penalty has given his version of what took place on the evening in question. However, after careful consideration thereof, nothing appears which would warrant anything less than the usual penalty for the type of violations committed in the licensed premises.

Defendant has a prior adjudicated record. Effective February 3, 1958 I suspended defendant's license for ten days for permitting indecent recordings to be played on the licensed premises. Bulletin 1213, Item 6. On Charge 1, I shall suspend defendant's license for fifteen days (Re LaRocca, Bulletin 1364, Item 10) and for an additional twenty days on Charge 2 (Re Blanker, Bulletin 1107, Item 10). In view of the past dissimilar record of defendant occurring during the past five years, I shall add another five days, making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on the 23rd day of January 1961,

ORDERED that Plenary Retail Consumption License C-82, issued by the City Council of the City of Elizabeth to Mello-D-Club, Inc., t/a Mello-D-Club, for premises 606 Livingston Street, Elizabeth, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m., Monday, January 3, 1961 and terminating at 2:00 a.m., Monday, March 6, 1961.

William Howe Davis
Director