

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2100

May 23, 1973

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2100

May 23, 1973

1. COURT DECISIONS - MELLO-D-CLUB, INC. v. ELIZABETH - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-723-72

Mello-D-Club, Inc.
t/a Joe Oliveri's Niteclub,

Appellant,

v.

CITY COUNCIL OF THE CITY OF
ELIZABETH,

Respondent.

Argued January 23, 1973 - Decided February 8, 1973

Before Judges Labrecque, Kolovsky and Matthews.

On appeal from the Division of Alcoholic Beverage Control.

Mrs. Naomi R. Dower argued the cause for appellant
(Mr. James J. Sheeran, Attorney).

Mr. John R. Weigel argued the cause for respondent
(Mr. Frank P. Trocino, Attorney).

Mr. David S. Piltzer, Deputy Attorney General, filed
Statement in Lieu of Brief for Division of Alcoholic
Beverage Control (Mr. George F. Kugler, Jr., Attorney
General of New Jersey, Attorney).

PER CURIAM

(Appeal from the Director's decision in Re Mello-D-Club,
Inc., Bulletin 2077, Item 7. Director affirmed.
Opinion not approved for publication by the Court
Committee on Opinions).

Mello-D-Club, Inc.,)
t/a Joe Oliveri's Niteclub,)
)
Appellant,)
)
v.)
)
City Council of the City of)
Elizabeth,)
)
Respondent.)

On Appeal
SUPPLEMENTAL
ORDER

BY THE DIRECTOR:

Thereafter by order dated October 26, 1972, the Appellate Division of the Superior Court denied appellant's petition for a rehearing, without prejudice to its right to appeal to this Division for a rehearing.

The appellant then filed an appeal from the said denial, and on February 8, 1973 my order denying a rehearing was affirmed, Id., Superior Court of New Jersey Appellate Division, A-723-72, not officially reported, recorded in Bulletin 2100, Item 1.

Accordingly, it is, on this 16th day of May 1973,

ROBERT E. BOWER
DIRECTOR

3. COURT DECISIONS - ROC-SUM TAVERN, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-450-72

ROC-SUM TAVERN, INC.,

Defendant-Appellant,

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Plaintiff-Respondent.

Submitted April 2, 1973 - Decided April 24, 1973

Before Judges Lewis, Carton and Mintz.

On appeal from Division of Alcoholic Beverage Control.

Mr. Lawrence P. Brady, Jr., attorney for appellant
(Mr. Edward T. O'Connor, Jr., on the brief).

Mr. George F. Kugler, Jr., Attorney General of New Jersey,
attorney for respondent (Mr. David S. Piltzer, Deputy
Attorney General, on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Roc-Sum Tavern, Inc., Bulletin 2078, Item 3 . Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

4. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary)
 Proceedings against)

Roc-Sum Tavern, Inc.)
 t/a Roc-Sum Tavern)
 368 Summit Avenue)
 Jersey City, N.J.,)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption)
 License C-311, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Jersey City.)

 Lawrence P. Brady, Jr., Esq., Attorney for Licensee

BY THE DIRECTOR:

On October 17, 1972 Conclusions and Order were entered suspending the license herein for ninety days commencing Tuesday, October 31, 1972 after licensee was found guilty of a charge alleging that it allowed and suffered gambling in its licensed premises on August 4, 5, 7 and 13, 1971 in violation of Rule 6 of State Regulation No. 20. Re Roc-Sum Tavern, Inc., Bulletin 2078, Item 3.

Prior to the effectuation of the said order of suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the said suspension until the outcome of the appeal.

The court affirmed the action of the Director on April 24, 1973. Re Roc-Sum Tavern, Inc. v. Division of Alcoholic Beverage Control, Sup.Ct. (App.Div. 1972), Docket A-470-72, not officially reported, recorded in Bulletin 2100, Item 3. The attorney for the licensee has advised that the licensee will not further litigate this matter. Therefore, the suspension may now be reimposed.

Accordingly, it is, on this 15th day of May, 1973

ORDERED that the ninety day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be and the same is hereby reinstated against Plenary Retail Consumption License C-311 issued by the Board of Alcoholic Beverage Control of the City of Jersey City to Roc-Sum Tavern, Inc., t/a Roc-Sum Tavern, for premises 368 Summit Avenue, Jersey City, as follows: the license be and the same is hereby suspended for the balance of its term, i.e. midnight, June 30, 1973, commencing at 2:00 a.m. Friday, June 1, 1973; and it is further

ORDERED that any renewal of the said license which may be granted be and the same is hereby suspended until 2:00 a.m. Thursday, August 30, 1973.

Robert E. Bower,
 Director

5. COURT DECISIONS - RED LARK LOUNGE, INC. v. DIVISION OF ALCOHOLIC
BEVERAGE CONTROL - DIRECTOR AFFIRMED.

RED LARK LOUNGE, INC.,
t/a Red Lark Lounge,

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1139-71

Petitioner-Appellant,

v.

RICHARD C. McDONOUGH, DIRECTOR,
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
STATE OF NEW JERSEY,

Respondent-Appellee.

Argued April 10, 1973 - Decided April 27, 1973.

Before Judges Kolovsky, Matthews and Crahay.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Stanley J. Hausman argued the cause for appellant
(Messrs. Horowitz, Bross and Sinins, attorneys; Mr.
Charles M. Schmidt, on the brief).

Mr. David S. Piltzer, Deputy Attorney General, argued
the cause for respondent (Mr. George F. Kugler, Jr.,
Attorney General, attorney).

PER CURIAM

(Appeal from the Director's decision in Re: The Lark Lounge,
Inc., Bulletin 1988, Item 2. Director affirmed. Opinion
not approved for publication by the Court Committee
on Opinions).

6. DISCIPLINARY PROCEEDINGS - FRONT - EMPLOYMENT OF SOLICITOR-PERMITTEE -
 SUSPENSION OF SOLICITOR'S PERMIT FOR 20 DAYS - SUSPENSION OF RETAIL
 LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 30
 DAYS UPON CORRECTION OF UNLAWFUL SITUATION.

S-9208; X-48,773-A)
 In the Matter of Disciplinary)
 Proceedings against)

Lewis Lo Presti)
 Box 149, Mt. Herman Rd.)
 Hope Township, N.J.,)

Holder of Unlimited Solicitor's)
 Permit (No. 3257 for the 1969-70)
 license period and No. 1247 for the)
 1972-73 license period) issued by)
 the Director of the Division of)
 Alcoholic Beverage Control)

CONCLUSIONS
 and
 ORDER

and)

S-9209; X-48,227-A)
 Allamuchy Liquors, Inc.)
 t/a Allamuchy Liquors)
 Main Road, Allamuchy Township)
 PO Hackettstown, N.J.)

Holder of Plenary Retail Distribution)
 License D-1, issued by the Township)
 Committee of the Township of)
 Allamuchy.)

 Malcolm H. Greenberg, Esq., Attorney for Licensee and Permittee
 David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This hearing came on as a result of separate charges preferred against the permittee and licensee, which by their nature were inter-related and will be embodied in a single Hearer's report. The first, against Lewis Lo Presti, the holder of an unlimited solicitor's permit, charged that from November 21, 1969 to the present he had an interest in the business conducted under the plenary retail distribution license issued to Allamuchy Liquors, Inc. and was either employed by it or was connected therewith in a business capacity, all of which was violative of Rule 7 of State Regulation No. 14. The companion charges preferred against Allamuchy Liquors, Inc. alleged that:

- (a) In its license application it failed to reveal that Lewis Lo Presti was the indirect holder of 50% of the corporate stock of the licensee and had an interest in the business conducted under its license, in violation of N.J.S.A. 33:1-25; and
- (b) It permitted a business connection with the holder of an unlimited solicitor's permit, Lewis Lo Presti, in violation of Rule 29 of State Regulation No. 20.

The licensee was further charged with aiding and abetting the said Lo Presti to exercise the privileges of the license in violation of N.J.S.A. 33:1-52. To all of these charges the respective licensees pleaded not guilty.

The following items or documents were accepted into evidence with either stipulation of counsel or without objection:

- (1) Application for plenary retail distribution license for 1970 of Allamuchy Liquors, Inc.
- (2) Renewal applications for said licensee for years 1971 and 1972.
- (3) Copy of closing statement for sale and purchase of the package store business conducted under the Allamuchy licenses.
- (4) Copy of closing statement for the realty in which the said license is located.
- (5) Copies of checks issued at the time of closing of title for the business or property.
- (6) Copy of lease from Allamuchy to Lo Presti covering that portion of the realty used in connection with the said license.
- (7) Copy of corporate income tax return of Allamuchy Liquors, Inc. for fiscal year 1969-1970.
- (8) Copies of two checks used in connection with the purchase of the business.
- (9) Copies of statements made by Mr. and Mrs. Lo Presti given to an agent of the ABC.
- (10) Additional statement made by Juanita Lo Presti.
- (11) Additional statement made by Lewis Lo Presti.
- (12) Additional statement made by Juanita Lo Presti.
- (13) Contract of sale, unexecuted, for the sale of realty.
- (14) Copy of contract of sale, as amended, executed.
- (15) Copy of contract of sale of a farm owned by Lo Presti.
- (16) Copy of Certificate of Incorporation of Allamuchy Liquors, Inc.

Item (15) above (copy of contract of sale of the Lo Presti farm) was accepted into evidence over objection of counsel for the licensees who challenged its relevance; its admission was subject to the understanding that substantial reliance would not be placed upon it in the determination of the matters herein.

ABC agent S testified that on August 31, 1971, he visited the licensed premises where Juanita Lo Presti was in charge and thereafter conducted an investigation that continued from that date to November 26, 1971. During that interval he obtained many of the documents hereinabove listed, including the several signed statements introduced into evidence.

On cross examination agent S conceded that the Lo Prestis cooperated fully in the investigation. His investigation revealed that Lewis Lo Presti received no money or salary from Allamuchy Liquors, Inc.; he did not work there and was not found at the premises conducting any business. He stated, however, that at the time of the opening of the business, Lo Presti was assisting in the renovation of the store and, on another occasion Lo Presti, then in the store, answered the telephone. Once, while the agent was in the premises, Lo Presti walked in but performed no services while he was there.

Edward E. Stover, an attorney-at-law of New Jersey, testified that he represented Lewis and Juanita Lo Presti for several years and particularly when the licensed premises and the realty in which it was located was purchased. Following the instructions of his clients, he prepared and examined contracts concerning the purchase of the licensed premises by Juanita Lo Presti, wife of Lewis Lo Presti. Subsequently, he prepared documents for the formation of Allamuchy Liquors, Inc. the stock of which, in their entirety, was to be held by Juanita Lo Presti.

At the closing of title in November 1969, he obtained a deed by the seller of the realty and business to Lewis Lo Presti and Juanita Lo Presti, his wife, as well as the necessary transfer of business documents to Juanita Lo Presti. At the same time, Lewis Lo Presti and Juanita Lo Presti, as the acquiring owners of the realty, gave a lease to Allamuchy Liquors, Inc., for the use of the ground floor of the building on the premises.

He further testified that funds of Mrs. Lo Presti for the purchase of the business were hers with the exception of a check for \$1,000. of Mr. Lo Presti, which was contributed due to the haste of the closing and the requirement for certified funds. He recalled that both Lewis and Juanita Lo Presti had received \$40,000. from the sale of a part of their farm during the previous year.

Juanita Lo Presti testified that she is president and sole stockholder of Allamuchy Liquors, Inc., and that she is the sole owner of the business. She recounted her interest in purchasing a business which began when she became the recipient of \$20,000. as her interest in the proceeds from the sale of part of the farm. She first thought of acquiring a licensed premises in Hope, New Jersey but, upon learning that a license in Allamuchy was issued, directed her attention to that community.

She indicated to the then-owner of the license in Allamuchy that, if ever he considered selling, she would be interested and thereafter she talked to the owner by telephone and negotiations began. The cost of the building and business was approximately \$52,000. of which the land portion was \$14,000. She had received \$20,000. from her mother-in-law as gifts in recognition of care given over several years. She added that she is a trained nurse and her mother-in-law had suffered a series of strokes requiring constant care for about four years. Hence, when funds were needed for the purchase of the business, her mother-in-law gave the necessary money. She recalled that her husband gave her \$1,000. needed at closing which money was presented to her as a gift.

She denied that her husband, Lewis Lo Presti has anything to do with the business but admitted that she leans upon him for advice because of his fifteen years experience as a permittee. She has been married for twenty-five years and has five children, three at home, the youngest of whom is fourteen years old. She never owned a business before and her entire

business experience was gained during her high-school years when she worked in a confectionery. She knows that her husband can have nothing to do with a licensed business and that is the reason she kept the ownership and management of it to herself. She admitted that all of the family funds came from the labor of her husband and were treated as joint funds.

In the conduct of the business Mrs. Lo Presti has two part-time employees in addition to herself and the corporation pays rental of \$150. monthly to herself and her husband.

The pertinent sections of the applicable regulations are as follows:

Rule 7 of State Regulation No. 14:

"No holder of a Solicitor's Permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, or shall be employed by or connected in any business capacity with any retail licensee."

and:

Rule 29 of State Regulation No. 20:

"No retail licensee shall employ or have connected with him in any business capacity whatsoever any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State nor shall any retail licensee be employed by or connected in any business capacity whatsoever with any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State."

Hence, the crucial issue here is, apart from the failure of notice in the application, did Lewis Lo Presti have such direct or indirect interest in the said license as to be violative of the above rules.

The essential purpose of the applicable statute and regulations "was to prevent control of retail outlets by manufacturers and wholesalers, i.e., a recurrence of "Tied houses which were responsible for many of the social and economic abuses which brought about Prohibition." Re Princeton Memorial Improvement Inc., Bulletin 255, Item 1); Cf. Penguin Club Inn, Inc., Bulletin 613, Item 1.

It has been long held that solicitor-permittees are heavily restricted in their outside activities. They may not be policemen (Re Kennedy, Bulletin 622, Item 3), constables (Re Grande, Bulletin 654, Item 6) or justices of the peace (Re Pagano, Bulletin 446, Item 3). They may not be musicians in a large licensed cabaret (Re Biard, Bulletin 516, Item 7). Of course, direct employment in licensed premises is expressly forbidden (Re Fine, Bulletin 851, Item 8); (Re Jagan, Bulletin 799, Item 8); (Re Kaplan, Bulletin 603, Item 10).

Even a well intentioned solicitor finding one of his licensee customers momentarily overwhelmed by business may not "pitch in" to lend a gratuitous helping hand without being in violation. Re Wasekanes, Bulletin 1207, Item 9; Re LeWinter, Bulletin 1219, Item 10. In addition to being barred from actual

employment therein, the solicitor is forbidden to loan money or to arrange for such a loan to a retailer. Re Schlosser, Bulletin 1550, Item 3; Re Bauman, Bulletin 1550, Item 5. The mere business assistance of aiding a retailer to pay bills and supporting that aid with a transition cash loan was likewise forbidden. Re Cohen, Bulletin 1550, Item 6.

Solicitors whose relatives are licensees often find themselves in difficulty when they attempt to assist in the licensed premises. A father who assisted his son's management of a package store (Re Del Mastro, Bulletin 572, Item 1), and a father who appeared behind the bar to serve patrons (Re Schenkel, Bulletin 936, Item 4), were found to be in violation of the applicable regulations.

In a matter comparable to the case sub judice, a solicitor, husband of the licensee, was held to have been in violation although he claimed "I merely made sure that the store was being operated properly". There, the wife was in the hospital for the delivery of their child who died shortly after birth and the distraught husband the holder of a solicitor's permit, visited the licensed premises and interested himself in its direction. While admitting compassion for the husband, the Director held:

"The law is clear that its strict enforcement must depend upon separation of wholesalers and their solicitors from retailers. I therefore conclude that the Division has established this charge by a fair preponderance of the believable evidence...." Re Gitter, Bulletin 1575, Item 2.

These proceedings are civil in nature, not criminal, and the determination herein is based upon a fair preponderance of the believable evidence. Kravis v. Hock, 135 N.J.L. 259 (1947).

The attorney for the licensee, in a memorandum of law filed in summation, has urged two additional grounds for dismissal of the charges. He first contends that in the determination of the extent of interest of a holder of a solicitor's license in realty housing a retail licensed premises, no standard or criteria is set forth in the regulations and statute; therefore, its absence should inure to the benefit of the licensee. Such contention is groundless. Rule 7 of State Regulation No. 14 which requires that "No holder of a Solicitor's Permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, or shall be employed or connected in any business capacity with any retail licensee," is clear and distinct. This rule proscribes "interested ...indirectly, in any ...business conducted thereunder" (underscore added); the word "any" is total and serves as sufficient standard by which all solicitors may be guided.

A further ground of objection was urged surrounding alleged unconstitutionality of N.J.S.A. 33:1-43 citing Affiliated Distillers Brands Corp. v. Sills, 56 N.J. 251 (1970), modified by 60 N.J. 342 (1972). There is no pertinency to the Affiliated case as applied to the matter sub judice. The constitutionality of acts applicable must be presumed by an administrative agency which has no power to determine such issues. Schwartz v. Essex County Board of Taxation, 129 N.J.L. 129 (1942). Such issues can only be raised by a plenary action in a court of competent jurisdiction. Klein & Tucker v. Fairlawn et al., Bulletin 1175, Item 3. The "grandfather" clause referred to in Affiliated, supra, has no relevancy in the instant matter.

The Division has not established that Lewis LoPresti was an employee of the licensee, Allamuchy Liquors, Inc., and it is recommended that such portion of the charges be dismissed.

Taking the testimony of the solicitor's wife and their attorney, it is apparent that the licensee is a corporation formed for the sole purpose of separating the interest of the wife from that of her unqualified husband. Their attorney, working with the material at hand, prepared the necessary documents openly and without subterfuge. The cooperation of both the wife and husband with this Division indicated an obvious hopefulness that the legalistic separation would overcome the impediment of which they were both aware.

However, the recitation of Mrs. LoPresti leads to the inescapable conclusion that, throughout her married life, the activities of both husband and wife were intertwined and the desire to acquire a package store was a mutual one, resulting from inquiries to that end by the husband. The funds used came from their joint assets assisted by funds of his mother. The ownership of the realty as tenants by the entirety and the giving and taking of a lease from the couple to her solely owned corporation, demonstrate the entire character of the effort as a joint venture. No other reasonable conclusion could result. Lewis Lo Presti has an indirect interest in the licensed premises and that interest is proscribed by the regulations.

Absent prior record, it is recommended that the Unlimited Solicitor's Permit issued to Lewis Lo Presti be suspended for twenty days (Re Sagotsky, Bulletin 2037, Item 4).

It is further recommended that the Plenary Retail Distribution License issued to Allamuchy Liquors, Inc., be suspended for the balance of its term, with leave granted for the lifting of such suspension by the filing of a verified petition by the licensee or any bona fide transferee of the licensee that the unlawful situation has been corrected, which suspension, however, should not be lifted sooner than thirty days after the commencement thereof. (Re G.E.L.L. Corp., Bulletin 1958, Item 2).

Conclusions and Order

Written exceptions to the Hearer's Report were filed within time, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report and exceptions thereto, which I find to be without merit were considered by the Hearer in his report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of April, 1973,

ORDERED that the Unlimited Solicitor's Permit, No. 1247 issued by the Division of Alcoholic Beverage Control to Lewis Lo Presti, Box 149, Mt. Herman Road, Hope Township, be and the same is hereby suspended for twenty (20) days commencing at 7:00 a.m. on Thursday, April 19, 1973 and terminating at 7:00 a.m. on Wednesday, May 9, 1973, and it is further

ORDERED that the Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Hope to Allamuchy Liquors, Inc., t/a Allamuchy Liquors for premises, Main Road, Allamuchy, Hope Township, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1973, commencing 2:00 a.m. Thursday, April 19, 1973, with leave to the licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than thirty (30) days from the commencement of the suspension herein.

ROBERT E. BOWER
DIRECTOR

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES IN AN AUTOMOBILE -
CLAIM FOR RETURN OF AUTOMOBILE RECOGNIZED - ALCOHOLIC BEVERAGES THEREIN
FORFEITED.

In the Matter of the Seizure)
on March 15, 1972 of a quantity)
of alcoholic beverages and a 1966)
Oldsmobile sedan in a parking lot)
adjacent to 430 West Browning Road,)
in the Borough of Bellmawr, County)
of Camden, State of New Jersey.)

Case No. 12,705

On Hearing

CONCLUSIONS and ORDER

Robert H. Finkel, Esq., Claimant, Pro se.
Harry D. Gross, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether a quantity of alcoholic beverages and one 1966 Oldsmobile sedan, described in Shedule "A" attached hereto, seized on March 15, 1972 in a private parking lot adjacent to 430 West Browning Road, Bellmawr, Camden County, State of New Jersey, constitutes unlawful property and should be forfeited.

At the hearing, counsel for the Division advised that the sole witness on behalf of the Division is a police officer attached to the Bellmawr Police Department, who had been requested to appear at the hearing and was neither present nor supplied any information concerning his absence. Counsel further advised that a telephone call instantly made to the Bellmawr Police Department failed to reveal the intention of the officer to appear. A delay of more than one-half hour from the time set for the hearing ensued.

The non-appearance of the officer, the only witness for the Division being established, the claimant moved for a determination recommending the return to him of the seized automobile and the alcoholic beverages.

Request for an adjournment by counsel for the Division was denied in the absence of any information advanced indicating the reason of the non-appearance of the said witness. No formal testimony was thereupon offered.

In the absence of formal testimony and in view of the claimant being a member of the bar of the State of Pennsylvania (and a resident of that state) the factual background giving rise to the seizure was elicited in a colloquy among the claimant, Division's counsel and the Hearer from which the following is a capsulated version:

On March 15, 1972, the claimant's car was parked in a private parking area, not on a public street, in the rear or adjacent to the Country Town Apartments located at 430 West Browning Road, Bellmawr, New Jersey. The trunk of the car was opened, some cases of alcoholic beverages (wine) were in the trunk and others lay alongside. Patrolman Hicks, of the local police department, approached the claimant and inquired what he was doing to which the claimant responded that he was about to transport the wine to Pennsylvania. The claimant was, thereupon, arrested, the vehicle and alcoholic beverages seized.

At the hearing, the claimant candidly admitted that while he is aware of the statutes and regulations of Pennsylvania pertaining to the transport of alcoholic beverages in that state, he is totally unaware of the transport limitations in New Jersey. He claimed that the wines were not his and their transportation, had such occurred, would have been as a favor of a client of his. He further contended that his only concern at that time was the possible infraction of Pennsylvania law and the Delaware Bridge Authority regulations.

While testimony was not advanced in support of any of these contentions, the position of the Division was made abundantly clear by its counsel who, while deprived of the privilege of cross-examination of the claimant, admitted the Division's position could not extend beyond an attack upon the "intention to transport" of the claimant.

Taking the essence of the position of the Division in best light and accepting the claimant's position with the exposition of the basic facts outlined, rejecting, however, his attempt to limit his intentions, it is patently obvious that the claimant was totally unaware at the time of arrest that the "intent" clothed his act with a statutory and regulatory violation. Assuming the full intent to transport and being satisfied that such intent was the result of an unknowing violation, the following section of the statute becomes applicable:

N.J.S.A.33:1-66 (e) "The commissioner upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this section has acted in good faith and has unknowingly violated the provisions thereof, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the commissioner."

Hence, I recommend that the motor vehicle belonging to the claimant, i.e. a 1966 Oldsmobile sedan, Serial No. 336696M429956, Pennsylvania Registration No. D05-415 be returned to claimant, Robert H. Finkel, who resides at 603 East Germantown Pike, Plymouth Valley, Pennsylvania, upon payment of seizure and storage costs as determined by the Director. Seizure No. 12,347, Bulletin 2005, Item 6.

The alcoholic beverages seized were, by claimant's admission, about to be en route to Pennsylvania. Accepting his statement that he had not concluded his thinking respecting those intentions to remove the goods to Pennsylvania, but viewing such statement with skepticism in that the goods were already partially loaded in the vehicle, his basic intention to move the alcoholic beverages in his car to somewhere cannot be denied. Such removal of alcoholic beverages in the quantity contained in the car, despite his unawareness of the restrictions applying to removal, was clearly contrary to both the statute and regulations.

Hence, I find that the alcoholic beverages seized were illicitly about to be transported with ultimate goal into the State of Pennsylvania. Such transport to that state would have been in violation of the regulations applicable there. Article IV D, Sec. 491 (2), act 154, Laws of 1969 of the Pennsylvania Liquor Code, provides that the transportation of spirits into that state, under circumstances described by claimant, would constitute an unlawful act for which the claimant would be subject to fine or imprisonment. Sec. 130 of the Regulations of the Liquor Control Board of Pennsylvania sets forth certain enumerated types of importation, none of which types of permissible importation applies to the instant matter.

Rule 2 of State Regulation No. 18, in this State, governing the transportation of alcoholic beverages from New Jersey for delivery to another state requires the transporter to establish that such alcoholic beverages may be lawfully delivered to its destination. Absent such proof, the transportation of such alcoholic beverages is unlawful and subjects the property to forfeiture. See Seizure Case No. 10,180, Bulletin 1321, Item 5; Seizure Case No. 12,347, supra. However, it should be noted that there is no prohibition with respect to the transportation of the motor vehicle.

The seized alcoholic beverages constitute illicit alcoholic beverages because the quantity intended for transport without permit was in excess of the amount prescribed under the statute. N.J.S.A. 33:1-2, N.J.S.A. 33:1-66.

In sum, therefore, it is recommended that the said motor vehicle be returned to claimant as referred to hereinabove, and it is accordingly recommended that the alcoholic beverages seized herein be forfeited.

Conclusions and Order

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

After carefully considering the entire matter herein, including the transcript of testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of April 1973,

DETERMINED and ORDERED that if, on or before the 15th day of May 1973, the claimant, Robert H. Finkel, pays the reasonable costs of seizure and storage of the 1966 Oldsmobile sedan, more fully described in Schedule "A", attached hereto, the said motor vehicle shall be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, consisting of alcoholic beverages more fully described in Schedule "A", attached hereto constitutes unlawful property, and the same be and is hereby forfeited, in accordance with the provisions of N.J.S.A. 33:1-66; and the same shall be retained for the use of hospitals or State, county or municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Robert E. Bower,
Director

SCHEDULE "A"

- 58 - containers of alcoholic beverages
- 1 - 1966 Oldsmobile sedan, Serial No. 336696M429956, Pennsylvania Registration No. DO 5-415

8. DISCIPLINARY PROCEEDINGS - ORDER.

In the Matter of Disciplinary)
Proceedings against)

Libra, Inc.)
t/a Apple Tree Bar & Liquor Store)
6-8 North Black Horse Pike)
Gloucester Township)
P.O. Blackwood, N.J.)

O R D E R

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

Frank M. Lario, Esq., Attorney for Licensee

BY THE DIRECTOR:

On March 22, 1973, an Amended Order was entered in the within matter staying the imposition of a ten-day suspension of Plenary Retail Consumption License C-1, issued by the Township Committee of Gloucester Township to Libra, Inc., t/a Apple Tree Bar & Liquor Store, for premises 6-8 North Black Horse Pike, Gloucester Township, pending consideration of licensee's application to pay a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971. Re Libra, Inc., Bulletin , Item .

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$400.00 in lieu of suspension.

Accordingly, it is, on this 5th day of April 1973,

ORDERED that the payment of a fine of \$400.00 by the licensee is hereby accepted in lieu of a suspension for ten days.

Robert E. Bower,
Director

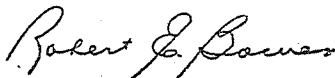
9. STATE LICENSES - NEW APPLICATIONS FILED.

James Barclay & Co. Limited
8325 Jefferson East
Detroit, Michigan
Application filed May 11, 1973
for plenary wholesale license.

Almet, Inc.
Main Street
Bedminster, N. J.
Application filed May 16, 1973
for limited wholesale license.

Carlo C. Gelardi, Corp.
t/a Gelardi Beverage
306 Adamsville Road
Bridgewater Twp., Somerville, New Jersey
Application filed May 16, 1973 for
person-to-person transfer of State
Beverage Distributor's License SBD-51
from Carlo C. Gelardi Inc.

Ruth Orris
t/a John Lawrence Co., Ltd.
11 Devonshire Road
Livingston, New Jersey
Application filed May 21, 1973 for
wine wholesale license.


Robert E. Bower
Director