

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

BULLETIN 1110

MAY 3, 1956.

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Figure 1. The effect of the concentration of the *Agaricus bisporus* spores on the growth of *Agaricus bisporus* and *Agaricus bisporus* spores on the growth of *Agaricus bisporus*.

STATE OF NEW JERSEY
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BULLETIN 1110

MAY 3, 1956.

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD
NOT CONSIDERED BECAUSE OF LAPSE OF TIME - MITIGATING
CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR
PLEA.

In the Matter of Disciplinary)
Proceedings against)

FRANK GOLDERE)
63 Morris Street)
Morristown, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-)
bution License D-9, issued by the)
Board of Aldermen of the Town of)
Morristown.)
-----)

Frank C. Scerbo, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging
that on January 30, 1956, and on divers days prior thereto, he
sold alcoholic beverages to a minor, in violation of Rule 1 of
State Regulations No. 20.

The file herein discloses that, as a result of informa-
tion obtained from a member of the Summit Police Department,
ABC agents obtained signed and sworn statements from William
--- (19 years of age) and from three other minors. In his
statement William --- says that on the afternoon of January
30, 1956, he met the other minors and was driven to defendant's
licensed premises; that he entered the premises alone and pur-
chased from defendant two quarts of beer and a 4/5 quart bottle
of wine; that, after he returned to the car with the alcoholic
beverages, the car was driven to another location where he and
his companions consumed the alcoholic beverages; that there-
after, on the same afternoon, the car was driven to defendant's
licensed premises on two other occasions; that on each occasion
he entered the store alone and purchased from defendant a quart
of wine, and that all or a part of the wine was consumed else-
where by him and his companions. In his statement William ---
also says that, within three weeks prior to January 30, 1956,
he had purchased alcoholic beverages two or three times from
defendant on the licensed premises, and that defendant had
never questioned him as to his age. The statements obtained
from the other three minors substantially corroborated the
statement given by William --- except as to events which
occurred within the licensed premises.

The file further discloses that William accompanied ABC
agents to defendant's licensed premises on February 1, 1956;
that he identified defendant as the person who had sold alco-
holic beverages to him, and that defendant then told the ABC
agents that William --- had visited his premises only once on
January 30, 1956, at which time he sold alcoholic beverages to
William because "he took him to be twenty-one years old."

Defendant has a prior record. Effective June 15, 1940,
the local issuing authority suspended his license for one day

for an "hours" violation. However, since that violation occurred more than ten years ago, it will not be considered in fixing penalty herein (Re Camden Lodge #111 Loyal Order of Moose, Bulletin 1023, Item 3). Until recently the usual penalty for sale of alcoholic beverages to a minor nineteen years of age was a suspension of the license for ten days (Re Lane, Bulletin 1085, Item 10). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days (Re Increased Penalties, Bulletin 1095, Item 1). Ordinarily I would suspend defendant's license for an additional five days because of the number of sales to the minor, but for the fact that I am convinced that defendant was of the opinion that the minor was over twenty-one. This is borne out by pictures of the minor exhibited to me by defendant's attorney, who appeared in oral argument, from which it appears that the minor has a mustache, is bald-headed and about five feet eleven inches in height. To me he would seem to be anywhere from twenty-five to thirty years of age, and I shall, therefore, accept the attorney's statement in mitigation of the offense and impose the present minimum penalty of fifteen days, with five days being remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 2nd day of April, 1956,

ORDERED that Plenary Retail Distribution License D-9, issued by the Board of Aldermen of the Town of Morristown to Frank Goldere, for premises 63 Morris Street, Morristown, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. April 9, 1956, and terminating at 9:00 a.m. April 19, 1956.

WILLIAM HOWE DAVIS
Director.

2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF STOLEN WINE - MOTOR VEHICLE ORDERED FORFEITED - STOLEN WINE RETURNED TO OWNER.

In the Matter of the Seizure on)	Case No. 8937
July 7, 1955, of a quantity of)	
alcoholic beverages and a Chevrolet)	
truck on the New Jersey Turnpike at)	ON HEARING
Mile Post 106, in the City of Newark,)	CONCLUSIONS AND ORDER
County of Essex and State of New)	
Jersey.)	

Charles L. Bertini, Esq., Attorney for Gaetano DiGennaro.
Italian Swiss Colony, by Joseph Tubertini, Production Manager.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 196 one-gallon glass jugs and 10 four-fifth quart bottles of wine and a Chevrolet truck, described in a schedule attached hereto, seized on July 7, 1955 on the New Jersey Turnpike at Mile Post 106, Newark, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, Gaetano DiGennaro, the registered owner of the Chevrolet truck, appeared and sought its return. An appearance was also entered on behalf of Italian Swiss Colony which sought return of the seized wine.

The Hearer's Report setting forth the facts presented at the hearing in the case, and his recommendations thereon was mailed to the attorney for Gaetano DiGennaro and to the Italian Swiss Colony. No objection or exception to such report was filed within the time limited therefor.

I have given careful consideration to the complete record in the case, have reviewed the Hearer's Report, and make the following findings as established by the evidence presented:

On July 7, 1955, at about 4:00 a.m., a New Jersey State Trooper stopped the Chevrolet truck in question on the New Jersey Turnpike in Newark, New Jersey, while on routine traffic patrol. The trooper ascertained that the truck was being operated by its registered owner, Gaetano DiGennaro, and that he was transporting 196 one-gallon glass jugs and 10 four-fifth quarts of wine. DiGennaro did not hold a transportation license or permit authorizing the use of such truck for transportation of the wine. Accordingly, the trooper took the wine and truck into custody, and such articles were later turned over to ABC agents.

Transportation of this large quantity of wine without a license or permit is a violation of the Alcoholic Beverage Law, irrespective of its intended use. R. S. 33:1-2. The wine, and the motor vehicle in which it was transported and found, are subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-66.

Gaetano DiGennaro seeks to avoid the forfeiture on claim that he acted in good faith and unknowingly violated the law.

He gave the following account of the source and destination of the wine:

He obtained the wine at the plant of the Italian Swiss Colony, a licensed winery, located in Fairview, New Jersey, pursuant to his arrangement therefor with a person known to him as "Blackie". About a week prior to July 4, 1955, "Blackie" first appeared at his chicken farm located in Monmouth County and purchased a dozen eggs. "Blackie" returned a week or so later and purchased another dozen of eggs. On this occasion he gave DiGennaro a gallon of wine. He told DiGennaro he could get damaged goods (wine), broken seals, chipped glass gallons for \$3.00 a case. "Blackie" told him to come Thursday about 3:00 or 3:30 a.m. DiGennaro went there, backed up the truck and the wine was loaded thereon from the loading platform. "Blackie" was the only person there and the plant was completely illuminated. He had no idea the wine was stolen. He did not pay "Blackie" for the wine because "Blackie" said, "I'll see you."

On cross-examination he stated that "Blackie" did not tell him that he was employed by the winery and he did not know whether he worked there. He had a check for \$87.00 with him and did not know in advance how much wine was available for him at the plant. Previously he had not purchased any such quantity of wine, and he intended to sell the wine to his family at cost. The wine was in sealed cartons, properly labelled. Asked whether he did not consider it peculiar to go to the plant at 3:00 a.m., his answer was that those who purchase damaged eggs from him are required to appear at a specific time fixed by him. His average income from his poultry business is \$70.00 to \$75.00 per week. He supports himself, his wife and one child.

He has no roadstand, but sells eggs wholesale to a firm in Brooklyn which calls for them each Wednesday and Saturday at his nine-acre farm. There are only poultry houses there, about 150 feet in from the road. Personally he does not drink much wine. He does not have much cash generally available. He does not have much retail trade. He had no definite commitments from his family that they would purchase wine and previously had not purchased any wine for them.

The New Jersey State Trooper who made the seizure testified to the following effect: When he questioned DiGennaro as to the destination of the wine, DiGennaro told him that he was transporting the wine for his brother's father-in-law, who, he claimed, owned a tavern in South Amboy, who was to pay for the wine at a later date. Pressed for the name and address of the father-in-law, DiGennaro changed his story, and stated that he obtained the wine from the winery plant through "Blackie", who was a friend of his father, and was a frequent visitor at his father's home. Asked whether the wine was legally in his possession, he said, "I guess we took it" -- that he stole it. The trooper further testified that DiGennaro did not tell him that he was buying damaged goods, or that he met "Blackie" when he came to the farm to buy eggs.

The production manager of Italian Swiss Colony testified that its records do not disclose any sale of the seized wine to any licensee; that a night shift of two men was on duty at its plant on the date in question.

I am authorized to return property subject to forfeiture to a person who has established that he acted in good faith and unknowingly violated the law. R. S. 33:1-66(e). The testimony of the trooper and the winery representative contrasted with the palpably sham account given by DiGennaro leads to the conclusion that DiGennaro participated in the theft of the wine and hence did not act in good faith but was engaged in an illegal enterprise. His request for return of the Chevrolet truck is therefore denied.

The wine, stolen from Italian Swiss Colony, will be returned to it when the wine is no longer needed for evidential purposes in the pending criminal proceedings against DiGennaro.

Accordingly, it is DETERMINED and ORDERED that the Chevrolet truck, 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; and it is further

DETERMINED and ORDERED that the wine listed in the afore-said Schedule "A" shall be returned to Italian Swiss Colony after such wine is no longer needed for evidential purposes in any pending criminal proceedings against DiGennaro.

WILLIAM HOWE DAVIS

Dated: March 9, 1956.

Director.

SCHEDULE "A"

- 196 - one-gallon glass jugs of wine
- 10 - 4/5 quart bottles of wine
- 1 - Chevrolet truck, Serial No. 2GP-F121154,
Engine No. GBM198520, N. J. Registration
XK78-D.

3. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAX-PAID ALCOHOLIC BEVERAGES WITHOUT COMPLIANCE WITH STATE REGULATIONS NO. 18 - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEW YORK - ALCOHOLIC BEVERAGES ORDERED FORFEITED - CLAIM OF INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure on) Case No. 9006
October 2, 1955, of a quantity)
of whiskey and an Oldsmobile coupe)
on the northbound lane of the New) ON HEARING
Jersey Turnpike, at 48.5 Mile Post,) CONCLUSIONS AND ORDER
in the Township of Mansfield, County)
of Burlington and State of New Jersey.)

James Henderson, Pro se.

Beneficial Finance Company of New York, Inc., by Gerald Van Loon, Branch Manager.

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

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 12 - 4/5 quart bottles of whiskey, 168 pint bottles of whiskey and 144 one-half pint bottles of whiskey and an Oldsmobile coupe, described in a schedule attached hereto, seized on October 2, 1955 on the New Jersey Turnpike at the 48.5 Mile Post, in Mansfield, New Jersey, constitute unlawful property and should be forfeited.

A New Jersey State Trooper halted the motor vehicle on the above date and location while on routine traffic duty. He ascertained that the driver of the motor vehicle was Eleanor Jenkins and that its registered owner was James Henderson, both of whom were residents of New York City. When the trooper discovered the aforementioned whiskey (all of which was taxpaid) being transported in the vehicle, he took such whiskey, motor vehicle and Eleanor Jenkins into custody pending investigation as to whether such alcoholic beverages were being legally transported in this state.

Eleanor Jenkins, who claimed to be the owner of the whiskey, stated that she purchased such alcoholic beverages in Washington, D. C. and was transporting them to New York City. Although she had in her possession a bill or invoice from a Washington retail liquor dealer, purporting to evidence her purchase of the alcoholic beverages being transported, such invoice did not comply with State Regulations No. 18, Rule 2, in that the consignee named therein is James W. Henderson and not Eleanor Jenkins, the bona fide consignee. Eleanor Jenkins did not have any license or permit issued by the Division authorizing the transportation of such alcoholic beverages through this state.

Accordingly, the motor vehicle and the alcoholic beverages were turned over to AEC agents.

When the matter came on for hearing pursuant to R. S. 33:1-66, James Henderson appeared and sought return of the Oldsmobile coupe. Beneficial Finance Company of New York, Inc. entered an appearance at a supplemental hearing and sought recognition of its alleged lien on the motor vehicle. Neither of these claimants nor Eleanor Jenkins sought return of the alcoholic beverages.

The alcoholic beverages were transported in this state in violation of R. S. 33:1-2 and Regulations No. 18, Rule 2. Such alcoholic beverages are therefore illicit and, together with the motor vehicle in which they were transported and found, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66.

Beneficial Finance Company presented in evidence a chattel mortgage dated July 22, 1954 signed by James B. Henderson covering the motor vehicle in question and securing payment of the sum of \$500.00. Before advancing such sum of money the finance company was informed that James B. Henderson was single and resided at 141 W. 127th Street, New York City for the past 11 years and was employed as a correction officer by the Department of Correction of New York City for the past five years at a salary of \$5,000.00 a year. The finance company checked this information and found it to be accurate and that there were no liens or judgments against Mr. Henderson. In addition, Mr. Henderson appeared at the offices of the finance company, presented his pass from the Department of Correction and his chauffeur's license as proof of his identity and signature. The present unpaid balance due on the chattel mortgage is \$307.51.

I am satisfied that Beneficial Finance Company of New York, Inc. acted in good faith and did not know or have any reason to suspect that the motor vehicle would be used in the unlawful transportation of alcoholic beverages. I shall recognize its lien to the extent of \$307.51. R. S. 33:1-66(f).

It appears that the appraised value of the motor vehicle does not exceed the amount of the lien claim and the costs of its seizure and storage. The Oldsmobile coupe will therefore be returned to the Beneficial Finance Company of New York, Inc. upon payment of the costs of its seizure and storage.

James Henderson filed a written stipulation subsequent to the hearing stating that his claim should be considered withdrawn if the motor vehicle is returned to the finance company. Hence, there is no necessity to definitively determine the merits of his claim in these forfeiture proceedings although his testimony and that of Eleanor Jenkins might justify the inference that the alcoholic beverages were to be imported with his knowledge into New York for an illegal purpose.

Accordingly, it is DETERMINED and ORDERED that if on or before the 26th day of March, 1956, the Beneficial Finance Company of New York, Inc. pays the costs incurred in the seizure and storage of the Oldsmobile coupe, described in Schedule "A", attached hereto, such motor vehicle will be returned to it; and it is further

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

WILLIAM HOWE DAVIS

Dated: March 15, 1956.

Director.

SCHEDULE "A"

- 12 - 4/5 quart bottles of whiskey
- 108 - pint bottles of whiskey
- 144 - one-half pint bottles of whiskey
- 1 - Oldsmobile coupe, Engine No. 8A49675, Serial No. 499B3393, N. Y. Registration 2G6733.

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - LIEN CLAIM OF INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure on) Case No. 9077
 December 17, 1955 of a quantity)
 of alcohol and a Ford sedan on the)
 southbound lane 33 Mile Post of the)
 New Jersey Turnpike, in Mt. Laurel) ON HEARING
 Township, County of Burlington and) CONCLUSIONS AND ORDER
 State of New Jersey.)

 T. Crawley Davis, Jr., Esq., Attorney for Equitable Security Trust Company.
 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 11 gallon jugs and one half-gallon jug of alcohol and a Ford sedan, described in a schedule attached hereto, seized on December 17, 1955 on the New Jersey Turnpike, 33 Mile Post, Mount Laurel Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Equitable Security Trust Company, which sought recognition of its alleged lien on the motor vehicle. Forfeiture of the alcoholic beverages was not opposed.

Reports of ABC agents and other documents in the file admitted into evidence with consent of counsel for the lien claimant disclose the following facts:

A New Jersey State Trooper halted the Ford sedan on the above date and location while on routine traffic patrol on the highway. He ascertained that the driver of the motor vehicle was Hollis A. Gaines, Sr., its registered owner. When the trooper discovered the aforementioned jugs of alcohol in the trunk of the car, without any stamps thereon indicating the payment of tax on alcoholic beverages, he took into custody the alcohol, car and passengers therein. Later the motor vehicle and alcohol were turned over to ABC agents.

A sample of the contents of one of the jugs was analyzed by the Division chemist who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 48 per cent.

Hollis A. Gaines, Sr., in a signed statement, relates that he purchased the alcohol from a stranger, and that such alcohol was transferred on the New Jersey Turnpike from a Plymouth sedan to Gaines' Ford sedan; and that he intended to sell the alcohol in Delaware.

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

Equitable Security Trust Company has presented a conditional sales contract dated November 5, 1955, signed by Hollis A. Gaines, Sr., which it holds by assignment, and which represents the conditional sale of the Ford sedan in question to Gaines. The balance secured by the document was \$1125.84. The present balance due thereon after rebate for prepayment is \$799.45.

The finance company also presented a Certificate of Title to Motor Vehicle issued by the Department of Motor Vehicles of the State of Delaware, dated November 5, 1955, evidencing title to the Ford sedan in question in Hollis A. Gaines, Sr., and having noted thereon a lien in favor of Equitable Security Trust Company in the amount of \$1125.84.

Before extending credit to Hollis A. Gaines, Sr. the finance company was informed that he resided at 805 North Buttonwood Street, Wilmington, Delaware; was married and had three dependents; was employed as a laborer by a local construction company; was furnished with the name of his previous employer, by whom he had been employed for over five years; and was furnished with the names of personal and business references. It developed that the finance company had a number of previous accounts with Gaines and, from its prior experience, considered Gaines to be of excellent financial rating, and ascertained that various other credit references had similar experiences with him over a period of about six years. On the basis of this information, the finance company accepted at face value the information it had concerning the residence and employment of Gaines. Hollis A. Gaines, Sr. does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that the Equitable Security Trust Company acted in good faith and did not know or have any reason to suspect that the motor vehicle would be used in the unlawful transportation of alcoholic beverages. I shall recognize its lien to the extent of \$799.45. R. S. 33:1-66(f).

It appears that the appraised value of the motor vehicle does not exceed the amount of the lien claim and the costs of its seizure and storage. The Ford sedan will therefore be returned to the Equitable Security Trust Company upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 26th day of March, 1956, the Equitable Security Trust Company pays the costs incurred in the seizure and storage of the Ford sedan, described in Schedule "A", attached hereto, such motor vehicle will be returned to it; and it is further

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

WILLIAM HOWE DAVIS
Director.

Dated: March 16, 1956.

SCHEDULE "A"

- 11 - one-gallon glass jugs of alcohol
- 1 - one-half gallon glass jug of alcohol
- 1 - Ford sedan, Serial No. B-3-CG-132684,
Delaware Registration 145190.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - LIEN CLAIM OF INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure on) Case No. 9084
December 25, 1955 of a quantity)
of alcohol and a Buick sedan on)
Route #206 near Mansfield Square,)
in Mansfield Township, County of) ON HEARING
Burlington and State of New Jersey.) CONCLUSIONS AND ORDER

-----)
Abraham Weiss, Esq., Attorney for Century Discount Corp.
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 eight one-gallon jugs of alcohol and a Buick sedan, described in a schedule attached hereto, seized on December 25, 1955 on Route 206, near Mansfield Square, Mansfield, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Century Discount Corp., which sought recognition of its alleged lien on the motor vehicle. Forfeiture of the alcoholic beverages was not opposed.

Reports of ABC agents and other documents in the file admitted into evidence with consent of counsel for the finance company disclose the following facts:

New Jersey State Troopers halted the Buick sedan on the above date and location while on routine traffic patrol on the highway. The troopers ascertained that the motor vehicle was being driven by James McNair, its registered owner. When the troopers discovered the aforementioned jugs of alcohol in the trunk of the car, without any stamps thereon indicating the payment of tax on alcoholic beverages, they took into custody the alcohol, car, and the passengers in the vehicle. Later the motor vehicle and alcohol were turned over to ABC agents.

A sample of the contents of one of the jugs was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 45.8 per cent.

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

Century Discount Corp. has presented a conditional sales contract, dated May 9, 1955, signed by James McNair and

Elizabeth McNair, assigned to the finance company, and representing the conditional sale of the Buick sedan in question to the McNairs. The balance secured by the document was \$1850.40. The present balance due thereon after rebate for prepayment is \$1219.11.

Before financing McNair's purchase of the motor vehicle, the finance company was informed that James McNair resided at 232 Sumpter Street, Brooklyn; was furnished with the name and address of his employer, by whom he was employed as a machine operator for over three years, his earnings averaging about \$60.00 a week; was furnished with the name and address of his previous employer; and the name and address of Elizabeth McNair's employer, and advised that her earnings averaged about \$42.00 a week. The finance company was also furnished with a number of business and personal references. The company checked this information and found it to be accurate, and contacted various references and law enforcement agencies and received no derogatory information concerning either James McNair or Elizabeth McNair. James McNair does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that the Century Discount Corp. acted in good faith and did not know or have any reason to suspect that the motor vehicle would be used in the unlawful transportation of alcoholic beverages. I shall recognize its lien to the extent of \$1219.11. R. S. 33:1-66(f).

It appears that the appraised value of the motor vehicle does not exceed the amount of the lien claim and the costs of its seizure and storage. The Buick sedan will therefore be returned to the Century Discount Corp. upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ordered that if on or before the 26th day of March, 1956, the Century Discount Corp. pays the costs incurred in the seizure and storage of the Buick sedan, described in Schedule "A", attached hereto, such motor vehicle will be returned to it; and it is further

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

Dated: March 16, 1956.

WILLIAM HOWE DAVIS
Director.

SCHEDULE "A"

- 8 - one-gallon glass jugs of alcohol
- 1 - Buick sedan, Serial No. 36932968, Engine No. V-1301597, New York Registration 3L6973.

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - ALCOHOLIC BEVERAGES ORDERED FORFEITED - VARIOUS FIXTURES AND EQUIPMENT RETURNED TO INNOCENT CLAIMANTS - BALANCE OF FIXTURES AND EQUIPMENT ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. 9095
January 6, 1956 of a quantity of)
alcoholic beverages, and various)
fixtures, furnishings and equipment)
at the "El Caribe Restaurant", opera-) ON HEARING
ted by Hugo Arias, located at 437) CONCLUSIONS AND ORDER
Grand Street, in the City of Paterson,)
County of Passaic and State of New)
Jersey.)

Saltzman, Rubenstein & Kosoff, Esqs., by John F. Segreto, Esq.,
Attorney for Isadore Dorman.
Seymour M. Stadtmauer, Esq., Attorney for B. B. Rider Corporation
and Walter E. Heller & Company.
J. Barbach & Son, by Marvin Barbach.
General Cigarette Service, by Dominick Pezzano.
B. L. Novelty, by Leo Borcello, President.
Estate of John Minero, t/a G. & M. Vending Co., by Clio Rosazza.
North Jersey Cigarette Sales, Inc., by Sam Jordan, Manager.
I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, soda and various fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on January 6, 1956 at the "El Caribe Restaurant" operated by Hugo Arias, located at 437 Grand Street, Paterson, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, appearances were entered on behalf of the above named persons, who sought return of various items seized, as hereinafter more specifically described. No one opposed forfeiture of the seized alcoholic beverages or soda.

An ABC agent testified that he visited the premises on December 30, 1955 and January 5th and 6th, 1956. He describes the restaurant as having a store front, with a sign "El Caribe Restaurant", located on the ground floor of an apartment building. In the interior in one room there was a lunch counter, music machine, gum and cigarette vending machines, back counter, cash register, ice cream freezer, glasses and dishes. In a rear room there were booths, a cigarette vending machine, and two kerosene range burners, chairs and tables. In the kitchen there was a refrigerator and usual kitchen equipment.

On the agent's first visit he took a seat in one of the booths and Mercedes Arias, wife of Hugo Arias, served him with food. The agent asked for wine. Mrs. Arias consulted her husband, and then informed the agent that they did not have any wine. Jose Rodriguez, the chef, came to the booth and the agent asked if he had any whiskey. He replied in the negative, but stated that he had "coquito". He explained that it was a drink made of alcohol, coconut milk and eggs. The agent ordered

"coquito" which was served by Rodriguez. The agent paid Rodriguez for the food and drink, which included a charge of 70 cents for the "coquito". The agent retained a portion of the "coquito" which was later submitted to the Division chemist for analysis.

The agent returned to the restaurant on January 5th and took a seat in a booth. He ordered food and wine, and was served therewith by Mercedes Arias. He paid Rodriguez for the food and wine. Hugo Arias was present, supervising the service of food and drink. A portion of the wine was likewise later submitted for analysis.

Neither Hugo Arias, Mercedes Arias, Jose Rodriguez nor "El Caribe Restaurant" held any license authorizing any of them to sell alcoholic beverages, and the premises were not licensed for that purpose. The report of the Division chemist disclosed that the "coquito" purchased on December 30th consists of milk, alcohol, flavor and a trace of salt, is fit for beverage purposes, and has an alcoholic content by volume of 36.2 percent. The chemist's analysis of the wine purchased on January 5th disclosed that it is a wine fit for beverage purposes with an alcoholic content by volume of 16 percent.

The first mentioned agent, other agents, and local police officers entered the restaurant on January 6th to execute a search warrant issued on the basis of the aforementioned unlicensed sales of alcoholic beverages. Hugo Arias, Mercedes Arias, and Jose Rodriguez were present. Hugo asserted that he was the owner of the restaurant. The agents seized in the kitchen a five-gallon can approximately half full of alcohol, a jug with "coquito" in one of the refrigerators; a bottle of whiskey in another refrigerator; a bottle of wine; and the furnishings, fixtures, and equipment of the restaurant.

The report of the Division chemist discloses that the alcohol in the can, which bore no stamp indicating the payment of tax on alcoholic beverages, is alcohol fit for beverage purposes with an alcoholic content by volume of 93.0 percent, and that the "coquito", wine and whiskey seized are also alcoholic beverages fit for beverage purposes.

There is an inference that, from the evidence presented, the seized alcoholic beverages were intended for unlawful sale, and hence are illicit. Furthermore, the absence of any tax stamp on the can of alcohol renders such alcohol illicit. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and all other personal property seized therewith in the restaurant constitutes unlawful property and is subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Isadore Dorman, the owner of the building, seeks return of a list of equipment located in the premises in question as set forth in the schedule of a chattel mortgage, dated January 19, 1955, duly recorded, signed by Octavio Aguilar, Francisca Aguilar, Carmelo C. Morales and Emilia Morales given to secure the sum of \$800.00.

Mr. Dorman's history of the transaction is as follows: He has been the owner of the premises for about five years. In 1953 or 1954 two brothers named Brower operated the restaurant. They became delinquent in payment of rent in the amount of about \$300.00. They turned over the business to a person named Hall, who abandoned the business. Dorman then purchased the fixtures

and equipment of the restaurant from the Browers for the rent due him and some additional sum. The restaurant remained closed for a period of about six months, until Dorman sold such equipment to Jose Aguayo, for \$1,000.00, to be paid in installments. In January 1955 Aguayo sold the business to Octavio Aguilar, Francisca Aguilar, Carmelo C. Morales and Emilia Morales. At the time there was a balance due to Dorman of \$800.00. The new purchasers executed the chattel mortgage in question to Aguayo, who assigned it to Dorman, and also executed another chattel mortgage of \$1100.00 to Aguayo, which he apparently still retains. In August 1955 Octavio Aguilar and Francisca Aguilar, who apparently purchased their partners' interest, purported to sell the business to Hiram Cumpiano for \$250.00 in cash, and the assumption by Cumpiano of the obligation to pay Dorman \$600.00 and to pay Aguayo \$1100.00. On November 25, 1955 Cumpiano sold the business to Juan Pablo Franco and Hugo A. Arias, subject to a conditional bill of sale covering a refrigeration unit sold by Prestige Refrigerator Sales in the sum of \$1031.08, and another conditional bill of sale held by B. B. Rider Corporation in the sum of \$1489.30. The purchasers also agreed, by a separate instrument, to assume the obligation to pay \$600.00 to Dorman and \$1100.00 to Aguayo. Dorman entered into a written lease with Franco and Arias on November 25, 1955 for the premises, and secured an additional written agreement from them relating to the terms of payment of the debt due him and assumed by them.

Dorman testified that on the occasion he had to visit the restaurant he did not enter the kitchen, and that there were no alcoholic beverages visible, nor did he observe any sale or consumption of alcoholic beverages on any such occasion. The unpaid balance due on the mortgage is \$575.00.

Mr. Dorman testified that the Wurlitzer music machine, National cigarette machine, shooting gallery, Rowe cigarette vending machine, one of the cash registers, Savage Ice Cream Refrigerator, electric wall clock, Oster Electric Mixer, Dormeyer electric pop-up toaster, Kenmore Gas Heater and the three-door refrigerator do not belong to him and are not covered by his mortgage. The oil burners and American slicing machine are not listed on the schedule in Dorman's chattel mortgage.

Walter E. Heller & Company presented in evidence a conditional sales contract, dated September 19, 1955, signed by Hiram Cumpiano, representing the sale to him by B. B. Rider Corporation of a Frigidaire refrigerator with a meter payment attachment, delivered at the premises in question, at the price of \$1339.30. This contract was assigned to the Heller Company. The present unpaid balance due thereon is \$1227.80.

J. Barbach & Son presented in evidence a document dated December 3, 1955, signed by Juan Franco, representing the loan to Hugo Arias and Juan Franco of a Savage ice cream cabinet No. 4930076, Style 4S with an attached motor, in replacement of another cabinet loaned to Octavio Aguilar and Carmelo C. Morales on January 28, 1955.

Dominick Pezzano, t/a General Cigarette Service, presented a bill evidencing his purchase of a National nine-column cigarette vending machine on December 5, 1955, and testified that he placed such machine in the premises in question, with his business card displayed thereon.

Leo Borcello, president of the B. L. Novelty, presented a bill evidencing its purchase of an "Exhibit" shooting gallery, on July 14, 1955, which he testified he placed in the restaurant in question about November 1955.

Clio Rosazza presented in evidence a bill evidencing the purchase by G. & M. Vending Co. on August 31, 1955 of a Wurlitzer Music box, model 1800, Serial No. 233732, and testified that such machine was placed in the restaurant in question while it was operated by Hiram Cumpiano.

North Jersey Cigarette Sales, Inc. presented evidence that it installed a Rowe eight-column "President" cigarette vending machine in the restaurant in question on September 1, 1954 at first by arrangement with Octavio Aguilar and Carmelo C. Morales and later by arrangement with Hiram Cumpiano.

The premises in question appear to be a commercial restaurant, albeit with numerous changes of ownership. None of the above named claimants observed any alcoholic beverages, or sale or consumption thereof in the premises. Hugo Arias, Mercedes Arias and Jose M. Rodriguez do not appear to have any previous record for violating any alcoholic beverage laws. I am therefore satisfied that all of such claimants acted in good faith and did not know or have any reason to suspect that alcoholic beverages would be sold in the restaurant without a license. Consequently I shall recognize each of their claims. I am further satisfied that the value of the property claimed by Isadore Dorman does not exceed the sum of \$575.00 and the value of the Frigidaire refrigerator does not exceed the sum of \$1227.80.

Accordingly, it is DETERMINED and ORDERED that if on or before the 9th day of April, 1956, each of the respective claimants pays his proportionate share of the costs of the seizure and storage, as allocated by the Director, the Frigidaire Refrigerator will be returned to Walter E. Heller & Company; the Savage Ice Cream cabinet will be returned to J. Barbach & Son; the National cigarette vending machine will be returned to General Cigarette Service; the "Exhibit" Shooting Gallery will be returned to B. L. Novelty; the Rowe "President" cigarette vending machine will be returned to North Jersey Cigarette Sales, Inc.; the Wurlitzer music machine will be returned to G. & M. Vending Co.; and the balance of the seized property, excepting one cash register, wall clock, Oster Electric Mixer, Dormeyer electric pop-up toaster, Kenmore Gas Heater, two oil burners, and an American Slicing Machine will be returned to Isadore Dorman; and it is further

ORDERED that such cash register, wall clock, Oster Electric Mixer, Dormeyer electric pop-up toaster, Kenmore Gas Heater, two oil burners and American Slicing Machine and the alcoholic beverages and soda, as described in Schedule "A", attached hereto, constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS

Dated: March 29, 1956.

Director.

SCHEDULE "A"

- 1 - five-gallon can of alcohol
- 2 - 4/5 quart bottles of alcoholic beverages
- 1 - one-gallon jug of alcoholic beverage
- 168 - bottles of soda
- 1 - Wurlitzer music machine with currency therein
- 1 - National Cigarette Machine with currency therein
- 1 - Rowe Cigarette Machine with currency therein
- 1 - shooting gallery and currency therein
- 2 - coffee urns and stand
- 2 - National cash registers
- 1 - American slicing machine with motor
- 1 - ice cream refrigerator
- 1 - electric clock
- 1 - soda fountain
- 12 - stools
- 7 - tables
- 2 - refrigerators
- 5 - chairs
- 1 - steam table
- 4 - heaters
- 1 - showcase
- 1 - toaster
- Miscellaneous silverware and cups

7. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL
ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)
COLE B. ELVINGTON)

To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-14, issued by the)
Township Committee of the Township)
of Lawrence to)

ON PETITION
O R D E R

JEAN & COLE B. ELVINGTON)
T/a HOLIDAY INN)
28 Lawn Park Avenue)
Lawrence Township)
PO Trenton 8, N. J.)

John Schlossberg, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

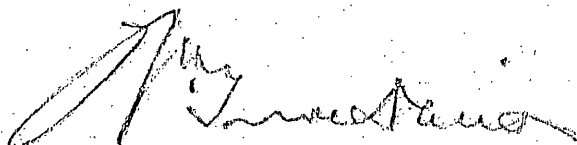
It appears from a verified petition filed herein that on July 19, 1955, petitioner was convicted in the Mercer County Court on a charge of selling alcoholic beverages to minors, in violation of R. S. 33:1-77, as a result of which he was fined the sum of \$250.00. Said conviction resulted in the automatic suspension for the balance of its term of the license held by Jean & Cole B. Elvington. R. S. 33:1-31.1. The license certificate was picked up by ABC agents on March 15, 1956.

It further appears from the petition and from the reports of this Division that, in disciplinary proceedings instituted by the Township Committee of the Township of Lawrence, the licensees pleaded non vult to a charge of selling alcoholic beverages to five minors and that, as a result thereof, the Township Committee

suspended their license for a period of thirty days (less five days for the plea), effective May 21, 1955. The conviction in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. The disciplinary proceedings were instituted by the Township Committee on its own initiative and, under all the circumstances, I am satisfied that the suspension imposed by the Township Committee was adequate. Hence the petitioner's request for lifting of the automatic suspension of the license will be granted..

Accordingly, it is, on this 16th day of March, 1956,

ORDERED that the automatic suspension of License C-14, held by Jean & Cole B. Elvington, t/a Holiday Inn, for premises 28 Lawn Park Avenue, Lawrence, be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately..



William Howe Davis
Director.