

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

Mr. Michelson

BULLETIN 1172

JUNE 19, 1957.

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New Jersey State Library

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

BULLETIN 1172

JUNE 19, 1957.

1. APPELLATE DECISIONS - DeLOTTO ET ALS. v. WEST PATERSON.

Case No. 2

LOUIS DeLOTTO, GEORGE PAPENDICK)
and OWEN B. McGEARY, t/a McBRIDE)
LIQUORS,)

Appellants,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH)
OF WEST PATERSON,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Louis P. Bertoni, Esq., Attorney for Appellants.
Edward A. Haffer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"In a previous appeal between the same parties the Director remanded the case to respondent for further consideration upon the merits (DeLotto et al. v. West Paterson, Bulletin 1154, Item 2).

"While the previous appeal was pending, two new members were elected to the Borough Council. Because of the fact that the new members had not heard the evidence previously given, respondent held a second public hearing on March 4, 1957, before giving further consideration to the pending application. The councilman whose possible disqualification was referred to in the previous opinion did not participate. At the conclusion of said public hearing the other members of the Borough Council adopted, by a three-to-two vote, a resolution denying appellants' application for the transfer of the license for the stated reasons that:

'*** transfer of the same would not be in the public good, particularly to residents residing in Dowling Estates and further reason that transfer of same would result in a concentration of licensed premises in the immediate area.'

"As stated in the prior appeal, the application in question seeks a transfer of License C-9 from Lambert DeBlock and Dorothy DeBlock to appellants, and from 532 McBride Avenue to 1011 McBride Avenue, West Paterson.

"The petition of appeal alleges in effect that the action of respondent was arbitrary and capricious and that respondent abused its discretion in the matter.

"No question is raised herein as to the qualifications of appellants. The evidence discloses that the premises to which appellants seek to transfer the license are located in a large shopping center. The main portion of the building at the shopping center is occupied by an Acme market. Four smaller stores in the same building are now used, respectively, as a luncheonette, a bank, a pharmacy and a dry-cleaning establishment, and appellants' proposed premises are located in one

of three vacant adjoining stores. The building at the shopping center is set back approximately 250 feet from McBride Avenue. There is a parking area (about 250 feet by 1,000 feet) between the building and McBride Avenue, and it has been stipulated that the parking area can accommodate a minimum of five hundred automobiles. Approximately 70 feet behind said building a wooden fence has been erected along the boundary line between the shopping center and a large residential development known as Dowling Estates. The objectors herein are residents of Dowling Estates. John Asmus, president of Dowling Estates Civic Association, Inc., and other members of said Association who appeared at the hearing held by respondent on March 4, 1957, spoke in opposition to the transfer and presented a petition signed by about one hundred members of the Association who objected to the transfer. At the hearing herein Mr. Asmus testified that the objections were that there are sufficient taverns in front of the development; that persons attending the licensed premises would travel through the Dowling Estates; that children coming from school would pass the premises, and that the operation of licensed premises at the place in question would depreciate the value of the objectors' properties.

"The premises from which the license is sought to be transferred are located 1.1 miles from the shopping center. If the transfer were granted, the nearest places licensed for consumption would be Ryle Park Tavern, 1500 feet away, and The Lounge, 2500 feet away, in one direction on McBride Avenue, and Blakeley's Tavern, 1530 feet away, and Riverview Tavern, 2800 feet away, in the opposite direction on McBride Avenue. There would also be a package goods store about 500 feet away on the opposite side of McBride Avenue.

"The transfer of a license in a municipality from one section to another section containing other licensed premises may result in unsatisfactory conditions sufficient to warrant denial of the transfer (Herbert H. Levine, Inc. v. Harrison, Bulletin 1032, Item 1). However, it is difficult to see how the transfer of the license could be deemed, under the facts of this case, to bring about an undue concentration of licenses in that section of the Borough.

"As to the other objections, the evidence shows that appellants plan to operate a cocktail lounge and serve sandwiches and light lunches. The public entrance to their premises would be only through the front door facing McBride Avenue, and the rear entrance (facing the fence separating the shopping center from the residential area) would be used only for the delivery of merchandise. McBride Avenue is a main thoroughfare and there appears to be no reason why the existence of licensed premises at the shopping center should result in any increase in vehicular traffic through Dowling Estates. If the premises are properly conducted, they should not result in the depreciation of objectors' property any more than any other business conducted at the shopping center or present any danger to children who, apparently without objection, cross the parking lot when going to and returning from school. This case is somewhat analogous to Bisante v. Camden, Bulletin 58, Item 10, and Koos v. Ocean et al., Bulletin 810, Item 4, wherein it has been held that, while the refusal to issue a license for premises in a residential neighborhood is proper, general objections by persons residing on residential side-streets to the issuance or transfer of a license for premises located in a business neighborhood do not justify a refusal.

"There is no inherent right to the transfer of a liquor license but, where it appears that there is an arbitrary or unreasonable refusal to transfer a license; the action of the local issuing authority will be reversed. Palmer v. Atlantic City, Bulletin 1017, Item 1; Duca v. National Park, Bulletin 1070, Item 1; Brandt v. Lakewood, Bulletin 1072, Item 1.

"After reviewing all the evidence, I conclude that the action of respondent was unreasonable and must be reversed. Hence I recommend that an order be entered reversing the action of 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, I concur in the findings of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of May, 1957,

ORDERED that the action of respondent be reversed, and respondent is ordered to transfer said license in accordance with the application filed by appellants.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR DISMISSED.

In the Matter of Disciplinary Proceedings against)

JERRY'S TAVERN, INC.)
T/a JERRY'S TAVERN)
1017-1023 Kingsley Street)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the)
City Council of the City of Asbury)
Park.)

Patterson & Cooper, Esqs., by David M. Pindar, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On October 25, 1956, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Bernard J. ---, age 18; in violation of Rule 1 of State Regulation No. 20.'

"This proceeding was instituted on the basis of alleged sales of beer in original containers for off-premises consumption to one Bernard J. ---, an alleged minor, on three different occasions on the evening of October 25, 1956. The

information which resulted in the charge that a sale of alcoholic beverages was made to the alleged minor on the date in question was received on October 26, 1956 from the Operations Officer of the Investigation Division of the Provost Marshal's Office, Fort Monmouth, New Jersey.

"At the hearing in this case Bernard J. --- did not appear as a witness. Two companions of Bernard testified that on the evening of October 25, 1956 on three separate occasions, they had accompanied him to defendant's licensed premises. Joseph --- testified that he entered the premises with Bernard on the three occasions, and on each occasion Bernard purchased six cans of beer from a woman clerk in the defendant's establishment. He further testified that he was unable to identify the woman who waited on Bernard that evening. Edward J. De Pagter (an adult member of the armed forces) testified that he drove Bernard and Joseph (both of whom were members of the armed forces) to the premises of defendant, but remained in the car on the three occasions while his companions went into the package goods section of the licensed premises to obtain the beer.

"Mary Narciso, vice-president and manager of defendant corporate-licensee, and Josephine Turinese, sister of Mary Narciso, who is employed by defendant, testified that they were in the package goods section of defendant's licensed premises on the evening of October 25, 1956. Mary Narciso further testified that she was sewing in an adjoining room and that her sister took care of the business. Josephine Turinese testified that she recalled Edward J. De Pagter coming into the place on the evening of October 25, 1956 and that before selling six cans of beer to him she questioned De Pagter concerning his age and he then produced an "ID Card" disclosing that he was born in 1933.

"The attorney appearing for the Division on the date of the hearing requested a continuance thereof in order that he might have an opportunity to produce Bernard as a witness at a subsequent hearing. Pursuant thereto, the matter was continued until December 20, 1956 at which time the attorney for the Division stated for the record that information received from the military authorities disclosed that Bernard would not be available as a witness at any time in the foreseeable future. Thus the Division rested its case on the testimony previously presented.

"Although I am of the opinion that the sale of beer was made to Bernard at defendant's licensed premises on the times in question, the proof of the age of said Bernard at the times he purchased the beer has not been satisfactorily established. The Division, in order to prove Bernard's age, offered a fingerprint card which, without formal objection by the attorney for the defendant, was marked as an exhibit in evidence in the case. The said card, among other things, gave the date of birth of the Bernard named therein as May 19, 1938. Although this would indicate the Bernard mentioned on the card to be a minor, it cannot, standing alone, be accepted therefrom as an established fact of the age of said person. Legal proof of age and identity should be established by the production of a birth certificate, testimony of the minor, or the testimony of a member of the family. See Ashen v. Carteret, Bulletin 652, Item 6 and Stafford v. Haddon, Bulletin 877, Item 2.

"The attorney appearing for the Division contends that there is precedent that the proof of age of a person may be legal

established in manner similar to that attempted in the instant case and cited several cases to substantiate his contention. In each of the cases cited an examination of the evidence discloses that the age of the minor in question was properly proved by the production of a birth certificate pursuant to statutory authority.

"In view of the circumstances appearing in this case, I recommend that the charge herein that alcoholic beverages were sold to Bernard, a minor, be dismissed."

After the Hearer submitted his report, the attorney appearing for the Division, pursuant to Rule 6 of State Regulation No. 16, filed written exceptions to the Report and a memorandum containing argument in substantiation thereof. The attorney for the defendant thereafter filed a memorandum setting forth answering argument to that advanced by the attorney appearing for the Division. I have carefully examined said argument of the attorneys herein and, after due consideration thereof, have decided to adopt the conclusions of the Hearer as my conclusions in this case and shall enter an order dismissing the charge.

Accordingly, it is, on this 25th day of April, 1957,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

3. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to)
Transfer of State Beverage)
Distributor's License SBD-12,)
held by)

CARMINE COCCARO and ANNETTE)
COCCARO)
T/a MILLVILLE BEVERAGE COMPANY)

CONCLUSIONS

From: Snyder Avenue, Vineland,)
To: Rear of 323 North High St.)
Millville, N. J.)

-----)
N. Douglas Russell, Esq., Attorney for Applicants.
Nathaniel Rogovoy, Esq., Attorney for Objector, City of Millville.
Edward S. Miller, Esq., Objector pro se and Attorney for other
Objectors.

BY THE DIRECTOR:

Written objections having been filed to the granting of the application to transfer the license in question from place to place, a hearing was duly held.

The objectors allege that the transfer of the license would create a traffic hazard; that there is no need for an additional license in the area to which the transfer is sought, and that the transfer would be contrary to the best interest of the City of Millville.

At the hearing held herein the applicants testified that the premises for which they now hold a license, located

on Snyder Avenue, Vineland, have no heat, electricity or telephone, and that they are uncertain whether they will be permitted to continue to operate said premises because the owner thereof has recently died. Applicants seek to transfer their license a distance of three or four miles to premises located in the rear of 323 North High Street, Millville. Said premises consist of a section (approximately 14 feet by 22 feet) located in the rear portion of the first floor of a building operated as a bus station, and a section of approximately the same size located directly underneath in the cellar of the same building. As the proposed licensed premises have been arranged, there is no access from the portion of the building used as a bus terminal to the licensed premises; there being a separate entrance-door to the proposed licensed premises near the rear of the building. Carmine Coccoaro admitted that he and his partner have not conducted any business under their license for the past eight or nine months. The bus terminal is owned by Annette Coccoaro and her husband Anthony Coccoaro.

On behalf of the objectors, Mayor Corson, of the City of Millville, testified that the City Commissioners unanimously voted to request the disapproval of the application for the transfer of the license because of the traffic hazard and the lack of need for an additional license in that section of the City. He testified that plenary retail distribution licenses have been issued for two premises on High Street, and that another plenary retail distribution license has been issued for premises on Main Street near High Street. Emil Fath, Chairman of the Board of Millville National Bank, testified that he has resided on Mulberry Street, Millville, for forty years, and that the rear of his property adjoins the property occupied by the bus terminal. His objections include the objection that the location of the proposed licensed premises in the bus terminal building would be undesirable because of the large number of women and children who patronize the bus terminal. Edward S. Miller, an attorney-at-law, testified that he also resides on Mulberry Street, Millville, and that the rear of his property adjoins the property occupied by the bus terminal. He testified that empty beer cans and litter of all kinds are now thrown on his property and that he believes that, if the transfer were granted, the problem of nuisance would increase. The bus terminal is used by a number of buses, particularly during the summer months.

It appears that the Board of Adjustment of the City of Millville refused the applicants a permit to make alterations to the building in question and to use the same in the operation of a wholesale beer distributing business. On appeal to the Superior Court, a motion for Summary Judgment was granted and the Board of Adjustment was directed to issue the "use" permit.

The Hearer's Report dated April 10, 1957 set forth the above facts and recommended that the application for transfer be denied. Thereafter the attorney for the applicants filed with me written exceptions to the Hearer's Report and written argument thereon. I have considered the exceptions and argument and agree with the recommendation of the Hearer for the following reasons:

1. The existence of licensed premises in the rear of the bus terminal may result in the creation of a traffic hazard as contended by the local governing body;

2. There appears to be strong local sentiment against the proposed operation at the premises, and there is sufficient evidence to support the contention of the local governing body that the transfer of the license would be contrary to the best interests of the City. While municipal consent is not a statutory requisite to the issuance or transfer of a State license, nevertheless the transfer of a license is not a privilege inherent in the license. Re Variety Beer and Soda Distributors, Inc., Bulletin 1000, Item 6;

3. In my opinion, the decision of the Superior Court involved merely a construction of the zoning ordinance, and the question as to whether or not the license should be transferred to said premises is to be decided by the Director in the exercise of his discretion. Mauriello v. Driscoll, 135 N.J.L. 220 (Sup. Ct. 1947).

Under the circumstances, there is no need to decide whether the transfer of a State Beverage Distributor's License to an area in which a number of distribution licenses are located would create an undue concentration of licenses.

For the reasons aforesaid, the application for the transfer in question will be denied.

WILLIAM HOWE DAVIS
Director.

Dated: April 30, 1957.

4. DISCIPLINARY PROCEEDINGS - SOLICITATION FROM HOUSE TO HOUSE AND BY TELEPHONE - ACCEPTING ORDER AT OTHER THAN LICENSED PREMISES - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PARKER WINES & LIQUORS, A CORP.
751 Bergen Avenue
Jersey City 6, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

-----)
Alexander A. Abramson, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On divers days during the months of November and December 1956, you, directly or indirectly, solicited from house to house the purchase of alcoholic beverages by personal visits and by telephone, and allowed, permitted and suffered such solicitation; in violation of Rule 3 of State Regulation No. 20.

"2. On or about November 20, 1956, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail distribution license, as defined by R. S. 33:1-12(3a), contrary to R. S. 33:1-26 and R.S. 33:1-1(w), in that you accepted an order for alcoholic beverages at premises other than your licensed premises; in violation of R. S. 33:1-2."

The file herein discloses on various days during the months of November and December, 1956, Harvey Dwork, president of defendant corporate licensee, made telephone calls to business establishments soliciting orders for alcoholic beverages. Also at times during the aforementioned months he personally visited one or more business establishments and solicited orders for alcoholic beverages.

The file further discloses that on or about November 20, 1956, the said Harvey Dwork, on behalf of defendant-licensee, visited a business firm and, as a result of his solicitation from an officer thereof for an order of alcoholic beverages, sold and delivered two cases of alcoholic beverages to said establishment.

Defendant has a prior adjudicated record. Effective July 3, 1950, its license was suspended for five days for sale of alcoholic beverages below minimum consumer price (Re Parker Wine and Liquor Stores, Inc., Bulletin 881, Item 7). In view of the fact that the prior violation was dissimilar to those in the instant case, I shall not consider it in fixing the penalty herein. I shall suspend defendant's license for a period of ten days. Cf. Re Silk City Bottling Co., Inc., Bulletin 1086, Item 10; Re Neighborhood Home Beverage Service, (A Corp.), Bulletin 1101, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 2nd day of May, 1957,

ORDERED that Plenary Retail Distribution License D-10, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Parker Wines & Liquors, A Corp., for premises 751 Bergen Avenue, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. May 13, 1957, and terminating at 9:00 a.m. May 18, 1957.

WILLIAM HOWE DAVIS
Director.

5. STATE BEVERAGE DISTRIBUTOR'S LICENSE --OBJECTIONS TO TRANSFER -
ADDITIONAL TESTIMONY AND REARGUMENT - APPLICATION FOR TRANSFER
GRANTED.

In the Matter of an Application)
by)

EDWARD C. WALKIEWICZ and)
JOSEPH R. WALKIEWICZ)
T/a WHITE EAGLE BOTTLING CO.)
177-181 South Street)
Newark, N. J.,)

ON APPLICATION FOR
REARGUMENT

for Transfer of State Beverage)
Distributor's License SBD-5 held)
by)

CONCLUSIONS

ANTHONY ROTELLA)
t/a ROTELLA DISTRIBUTING CO.)
45 Downing Street)
Newark, N. J.)

Leo J. Berg, Esq., Attorney for Applicants.
Braff, Litvak & Ertag, Esqs., by Jerome Litvak, Esq.,
Attorneys for Aaron Auerbach, t/a Pacific Wine & Liquors,
Objector.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for City of Newark.

BY THE DIRECTOR:

After entry of my Conclusions dated January 3, 1957, the attorney for applicants requested leave to present argument for reconsideration. As a preliminary step before deciding whether such request should be granted, I directed that a further hearing should be held on notice to all interested parties, at which hearing the parties would be permitted to introduce further testimony as to the distance between the premises sought to be licensed and the school and as to need and necessity for establishing another outlet in that section of Newark.

The additional testimony was taken on February 25, 1957, and it appears therefrom that subsequent to January 3, 1957, the applicants set posts in concrete behind a gate located at a former entrance to their licensed premises and chained the gate to the concrete so that it is now impossible to use said entrance. The entrance which has been closed is the entrance to the licensed premises referred to in the prior Conclusions. The result is that the only available entrance to applicants' licensed premises at the present time is through another driveway which is located approximately 233 feet from the gate to the playground of the school. One witness who resides in Irvington, N. J., and another who resides in Union, N. J., testified that the granting of the transfer would be convenient to them because the applicants now deliver carbonated beverages and, if the transfer were granted, the applicants would also be enabled to deliver beer to them. After said testimony was transcribed, the attorneys for the respective parties orally argued the matter before me on April 5, 1957.

The additional testimony as to the alleged need for the transfer carries little weight. However, after considering the

testimony as to the closing of one entrance to applicants' premises and the oral argument herein, I have decided to grant the application for transfer for the following reasons:

- a. The distance between the nearest entrance to the proposed licensed premises and the nearest entrance to the school now exceeds 200 feet. The area is primarily business and industrial.
- b. The objection that proximity to a school of the State Beverage Distributor's license in question presents a minors problem (in that children will have to pass the premises going to and from school) is without merit because
 - (1) The nature of the license permits only the sale of unchilled beer in quantities of not less than 144 fluid ounces (1/2 case) which would certainly offer no attraction or inducement to a minor to buy;
 - (2) The great percentage of the business of a State Beverage Distributor licensee is home-to-home delivery on order rather than over the counter.
- c. It is proposed to move the license from a location within a mile of the premises in question so that another license is not being created in the area and applicants will continue to service their same customers who reside in Essex County and adjoining counties.
- d. State Beverage Distributor licensees offer little, if any, competition (except in rare cases) to retail distribution and consumption licensees even in the same area in which distribution and consumption licensees are located. State Beverage Distributor licensees deliver throughout the State and, as a rule, do not conduct a retail business (over the counter) of any substance.
- e. Where it is contended that there are ample retail outlets in any area to satisfy the needs and requirements of the public, evidence to the effect that a nominal percentage of the State Beverage Distributor's business is over the counter does not demonstrate that the existence of a State Beverage Distributor licensee in the area will result in an undue concentration of licenses.

For the reasons aforesaid I have reconsidered my previous Conclusions. The application for the transfer in question will be granted.

WILLIAM HOWE DAVIS
Director.

Dated: April 25, 1957.

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN STORE - STOCK OF ALCOHOLIC BEVERAGES AND FIXTURES AND FURNISHINGS ORDERED FORFEITED - REQUEST BY OWNER FOR RETURN OF AMUSEMENT MACHINES DENIED.

In the Matter of the Seizure)
on February 17, 1957 of a)
quantity of alcoholic beverages,)
various furnishings, fixtures)
and equipment in a restaurant)
operated by Abbis Moore located)
on Sixth and Main Streets,)
Glassboro Lawns in Elk Township,)
County of Gloucester and State of)
New Jersey.)

Case No. 9419

ON HEARING
CONCLUSIONS AND ORDER

-----)
Adolph Stern, Esq., Attorney for Harmony Music Co.
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, and further pursuant to a stipulation dated March 22, 1957 signed by Bruce Shollenberger, one of the partners trading as Harmony Music Co., to determine whether a quantity of alcoholic beverages, and various furnishings, fixtures and equipment as described in a schedule attached hereto, seized on February 17, 1957 in a restaurant operated by Abbis Moore located on Sixth and Main Streets, Glassboro Lawns, Elk Township, New Jersey, constitute unlawful property and should be forfeited.

Pending hearing in the case, a music machine and pinball machine which have been seized were returned to Harmony Music Co. upon payment of the sum of \$150.00, their appraised retail value, to the Director of the Division of Alcoholic Beverage Control under protest, pursuant to R. S. 33:1-66. Bruce Shollenberger, on behalf of his firm, has stipulated that such Director shall determine in the present proceeding whether this sum shall be returned to Harmony Music Co. or be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66 and the aforesaid stipulation, Abbis Moore did not appear to oppose forfeiture of any of the seized property. Affidavits were submitted by Harmony Music Co. in lieu of personal appearance of anyone on its behalf, in support of its application for return of the machines (or the money deposited in place thereof).

Reports of ABC agents and other documents in the file presented in evidence disclose the following facts:

Abbis Moore conducted a small restaurant at the above location. He does not hold any license authorizing him to sell alcoholic beverages, and the premises are not licensed for that purpose. On February 3, 1949 he was fined \$100.00; on December 2, 1954 he was fined \$200.00 and on September 22, 1955 he was fined \$500.00 in criminal proceedings arising out of his unlawful sale of alcoholic beverages at the premises in question. In each of the three instances personal property was seized at this establishment and declared forfeited.

On February 16, 1957, at about 11:15 p.m., ABC agents at the premises in the course of an investigation purchased a pint of gin and various drinks of whiskey from Moore. The agent also observed Moore sell alcoholic beverages to other persons who were in the place.

At about 1:00 a.m. other ABC agents and other officers entered the restaurant, as pre-arranged, and identified themselves to Moore. The agents seized two bottles of gin and a bottle of wine which were in the premises, as well as the furnishings, fixtures and equipment therein.

The evidence presented warrants a finding that the seized alcoholic beverages were intended for unlawful sale and therefore constitute illicit alcoholic beverages. R.S. 33:1-1(1). Such illicit alcoholic beverages and all other personal property seized therewith in the premises 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 affidavits submitted on behalf of Harmony Music Co. set forth that the music machine and pinball machine were installed in Moore's establishment on or about August 10, 1956, and that its personnel had no reason to suspect that Moore was operating a speakeasy. However, there is no mention in the affidavits of the fact that in August 1954 a music machine owned by Harmony Music Co. was seized at the same premises, and its application for return of the machine was denied, after a hearing at which it appeared that Morris Spiegel, on behalf of the music company, made no investigation whatsoever as to Moore's character and background when placing the machine there, despite the fact that it then represented the second seizure of its equipment in a speakeasy. Seizure Case No. 8668, Bulletin 1042, Item 10.

It is difficult to understand why, under such circumstances, the music company was foolhardy enough to again place its machines in Moore's establishment. Even assuming that it exercised poor judgment, rather than a deliberate design to provide music machines for speakeasies, it is obvious that it cannot obtain return of the \$150.00 representing the value of the two machines.

Accordingly, it is DETERMINED and ORDERED that the seized alcoholic beverages and personal property seized therewith, 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 shall be sold at public sale for the use of the State in accordance with State Regulation No. 29, or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the discretion of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the sum of \$150.00, representing the appraised retail value of the music machine and pinball machine, paid under protest to the Director of the Division of Alcoholic Beverage Control on behalf of Harmony Music Co. whereby it obtained return of such machines, be and the same hereby is forfeited in accordance with the provision of R. S. 33:1-66, to be accounted for in accordance with the law.

WILLIAM HOWE DAVIS

Dated: April 25, 1957.

Director.

SCHEDULE "A"

- 3 - bottles of alcoholic beverages
- 1 - cigarette vending machine and currency therein
- 1 - pinball machine and currency therein
- 1 - music machine and currency therein
- 5 - wooden booths and tables
- 4 - stools

7. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)
November 14, 1956 of 55 cases of)
assorted wines and a Diamond T)
1 1/2 ton van-type truck on)
Brinkerhoff and Broad Avenues, in)
the Borough of Palisades Park, in)
the County of Bergen and State of)
New Jersey.)
-----)

Case No. 9356

ON HEARING
CONCLUSIONS AND ORDER

Roy W. Wright, Pro se.

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 November 16, 1956 signed by Roy Windom Wright, to determine whether fifty cases (1320 pint bottles) of wine, and a Diamond T truck, as described in a schedule attached hereto, seized on November 14, 1956 at or near the intersection of Brinkerhoff and Broad Avenues, Palisades Park, New Jersey, constitute unlawful property and should be forfeited.

"Pending hearing in the case, Roy Windom Wright deposited \$150.00 in cash 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 aforesaid truck, and thereupon obtained return of such motor vehicle. He has stipulated that such Director shall determine, in the present proceedings, whether such sum should be forfeited or returned to him.

"Roy Windom Wright appeared at the hearing and sought return of the aforesaid sum of \$150.00, and the wine.

"Reports of ABC agents and other documents in the file, presented in evidence with the consent of Roy Windom Wright, disclose the following facts:

"Local police officers observed the truck, bearing New York State license plates, parked in front of a liquor store located in Palisades Park. The truck was being loaded with cases of wine. Thereafter the police officers seized the truck while transporting fifty-five cases of wine en route to New York City, because Roy Windom Wright, the driver of the truck, did not have any transportation permit or license authorizing transportation of alcoholic beverages in this state. The wine and truck were subsequently turned over to ABC agents.

"The wine is illicit because it was transported without authorization of a transportation license or permit. R. S. 33:1-1(1). Such illicit wine and the truck in which it was transported and found are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"Roy Windom Wright testified that he is in the trucking business; that he met one 'Marty' in New York City and arranged with him to call for the wine at the Palisades Park liquor store;

that he drove to such store, and picked up the wine, which was already assembled for him; that he did not pay anyone for the wine and did not know the cost of the wine, and intended to distribute the wine as Christmas presents, and that he intended to pay 'Marty'.

"He further testified that he has been a trucker for eight years, doing odd jobs of house moving, owns only the one truck, has an income therefrom of about \$2500.00, from which he is required to support himself, his wife, and four children, and that he barely makes a living. He estimates that the price of the fifty-five cases of wine amounts to between \$400.00 and \$600.00, and stated that previously he never purchased more than a bottle or so of alcoholic beverages at a time; that his funds on hand did not amount to much more than his estimated cost of the wine.

"Under the circumstances presented, I am firmly convinced that Wright did not purchase the 1320 pint bottles of wine with the intent of presenting them to anyone as Christmas gifts. It appears certain that Wright did not intend to use all of the wine for personal consumption but, on the contrary, it seems entirely likely that he either intended to sell the wine illegally or was transporting it for some other person who intended to dispose of it in other than legal channels. In the absence of convincing proof that Wright was engaged in a legitimate venture, your discretionary authority to relieve him of forfeiture of the truck (represented by the cash deposit), and the wine, should not be exercised in his favor. See Seizure Case No. 8632, Bulletin 1043, Item 5.

"I therefore recommend that such wine and the \$150.00, deposited in place of the truck, be ordered forfeited."

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

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

Accordingly, it is, on this 25th day of April, 1957,

DETERMINED and ORDERED that the seized alcoholic beverages 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 shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the discretion of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the sum of \$150.00, representing the appraised retail value of the Diamond T truck, paid under protest to the Director of the Division of Alcoholic Beverage Control on behalf of Roy Windom Wright whereby he obtained return of such truck, be and the same hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with the law.

WILLIAM HOWE DAVIS
Director.

SCHEDULE "A"

- 1320 - pint bottles of wine
- 1 - Diamond T Van truck, Serial No. 4047610, Engine No. CB-JXE3, C-951539, New York Registration 141-596.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

PARK PLAZA LOUNGE, INC.)
250 Third Avenue)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-63, issued by the)
Board of Commissioners of the)
City of Long Branch.)

-----)
A. Gerald Lawrence, 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 March 30, 1957, it sold alcoholic beverages, directly or indirectly, to two minors and permitted said minors to consume such beverages on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that two ABC agents entered defendant's licensed premises on March 29, 1957, at about 10:30 p.m. At about 12:45 a.m. March 30, 1957, they observed a bartender serve a drink to Jean --- and a glass of beer to Stephan ---. After Stephan consumed some of his drink the agents seized the glass of beer and ascertained that he was nineteen years of age. The agents then seized the drink which had been served to and partly consumed by Jean --- and ascertained that she was eighteen years of age. Subsequent analysis disclosed that this drink contained vodka. Both minors denied that any employee of defendant corporation had questioned either of them as to their respective ages.

In mitigation defendant's attorney alleges that Robert E. Godfrey, president of defendant corporation, attempted to check the ages of young persons entering the premises and that the violation occurred because there was an unusually large crowd on the evening in question. This, of course, does not excuse the violation.

Defendant has no prior record. I shall suspend defendant's license for fifteen days, the minimum suspension for the type of violation committed herein (Re Mondelli, Bulletin 1142, Item 8). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 1st day of May, 1957,

ORDERED that Plenary Retail Consumption License C-63, issued by the Board of Commissioners of the City of Long Branch to Park Plaza Lounge, Inc., for premises 250 Third Avenue, Long Branch, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. May 13, 1957, and terminating at 3:00 a.m. May 23, 1957.

WILLIAM HOWE DAVIS
Director.

9. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY
DIRECTOR - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary
Proceedings against)

FRANK FARRON)

T/a FARRON'S TAVERN)

354-356 Paterson Avenue)

East Rutherford, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consump-
tion License C-6, issued by the)
Mayor and Council of the Borough)
of East Rutherford.)

Macy Davidson, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on April 26, 1957, petitioner was fined \$50.00 and sentenced to serve ninety days in the Bergen County jail and that said sentence was suspended after petitioner pleaded guilty in the County Court of Bergen County to a charge of selling alcoholic beverages to a minor in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R. S. 33:1-31.1. The petition requests the lifting of said suspension.

By order dated October 16, 1956, I suspended petitioner's license for twenty-five days (less five for the plea) after he pleaded non vult in disciplinary proceedings to a charge alleging that he sold alcoholic beverages to the same minor. The suspension was effective from 2:00 a.m. October 23, 1956, to 2:00 a.m. November 12, 1956.

Since the suspension imposed in the disciplinary proceedings is adequate, the relief sought herein will be granted.

Accordingly, it is, on this 17th day of May, 1957,

ORDERED that the automatic suspension of License C-6, issued by the Mayor and Council of the Borough of East Rutherford to Frank Farron, t/a Farron's Tavern, for premises 354-356 Paterson Avenue, East Rutherford, be and the same is hereby lifted and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Arthur R. Minck, t/a Minck Beverage Co.
East 90 Ridgewood Avenue, Paramus, N.J.

Application filed June 13, 1957 for person-to-person transfer of State Beverage Distributor's License SBD-94 from Diehl Beer & Beverage Co., Inc.

International Wines, Inc.

841 Clinton Avenue, Kenilworth, N.J.

Application filed June 13, 1957 for Transportation License.

New Jersey State Library *William Howe Davis*
William Howe Davis
Director.