

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

DP

BULLETIN 1392

July 11, 1961

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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 1392

July 11, 1961

1. APPELLATE DECISIONS - SKIP'S BAR, INC. v. NEWARK.

SKIP'S BAR, INC.)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

Irving J. Zwillman, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by Richard A. Walsh, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from respondent's action on February 15, 1961, whereby it suspended appellant's License C-323 for 180 days after finding appellant guilty of the following charge:

"On Friday night, October 7th, Saturday night October 8th, Sunday night October 9th, Friday night October 14th, Saturday night October 15th, Friday, October 21st, 1960, in early morning, Saturday October 22nd in evening, Sunday night October 23rd, early hours of Thursday, October 27th, early morning hours of Friday, October 28th, Saturday October 29th, during late evening hours, and Sunday night, October 30th, 1960, that you allowed, permitted and suffered your licensed place of business to be conducted in such manner so as to become a nuisance, in that you allowed, permitted and suffered, persons who appeared to be homosexuals, viz: males impersonating females, to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and morals, public morals; in violation of Rule 5 of State Regulation #20."

"Appellant's premises are located at 204 Mulberry Street, Newark.

"Upon the filing of the appeal the Director entered an order on February 23, 1961, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

"In its petition of appeal appellant alleges that the finding of guilt was arbitrary, capricious and against the weight of the evidence.

"The appeal was heard de novo on March 16, 1961, upon the transcript of the proceedings before respondent Board and upon additional evidence presented at the hearing of the appeal. See

Rules 6 and 8 of State Regulation No. 15.

"The transcript of the proceedings before the Board discloses that the testimony as to the alleged violations was given by Detective Walter Azgiery, Jr., of the Newark Police Department, and it was stipulated that the testimony of Detective Edward Batzinger of the Newark Police Department would be the same as that given by his fellow officer. Detective Azgiery testified that he and Detective Batzinger visited appellant's premises on each of the dates mentioned in the charge; that on October 7 there were twenty-one women and thirty-two men (six of whom were suspected homosexuals) on the premises; that on October 8 there were twelve women and twenty-four men (two of whom were suspected homosexuals) on the premises, and that on October 9 there were sixteen women and twenty-four men (nine of whom were suspected homosexuals) on the premises. The witness testified that on October 7 and October 9 he spoke to James Carter, Jr. (president of appellant corporation), who was tending bar, with reference to the type of clientele on the premises and advised him to try to eliminate the condition there. At the hearing before the Board, four of these suspected homosexuals appeared in response to subpoenas and police records show that one of them was convicted in 1958 as a female impersonator.

"Detective Azgiery further testified that, on each of their subsequent visits between October 14 and October 30, there were between three and seven suspected homosexuals on the premises out of a total patronage which varied between eighteen and sixty-eight. He testified that these suspected individuals wore make-up and called each other 'dear' and 'darling.' On cross-examination Detective Batzinger testified that he concluded that these suspected individuals were homosexuals because of:

'their manner of speech, their speech, and quite a number of times we heard one call the other honey and dear, not like normal fellows: From their walk and hip swinging, and more sway of their wrists than a woman does.'

"On behalf of appellant, James Carter, Jr., testified at the hearing below that appellant has held a license for more than two years and has no prior record. He admitted that the two detectives had visited the premises on many occasions during October 1960, but denied that either detective had ever told him he was catering to homosexuals or instructed him to keep them out. He denied that he knew any of the suspected homosexuals who were present at said hearing. James Carter, Jr., also testified at the hearing of the appeal, but the testimony then given by him is substantially the same as that given by him at the hearing before respondent Board.

"After carefully considering all the testimony, I believe the testimony of Detective Azgiery that he spoke to Mr. Carter about the type of clientele on October 7 and October 9. There is nothing to indicate that the suspected individuals who were on the premises on October 7 and October 9 were the same individuals who were on the premises on subsequent dates during October. However, the evidence of the detectives as to the mannerisms of the suspected individuals who were present on each visit is sufficient to establish appellant's guilt. In Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957), Judge Jayne said:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we

identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"I conclude that the preponderance of the believable evidence establishes the guilt of appellant. I find no basis for reversal and no sufficient reason for modification by the Director of the penalty imposed by respondent. The plea for modification should be made, if at all, to respondent. Harrison Wine and Liquor Company, Inc. v. Harrison, Bulletin 1296, Item 2.

It is recommended, therefore, that an order be entered affirming respondent's action, vacating the order staying the suspension and fixing the effective dates for the one-hundred-and-eighty day suspension imposed by respondent."

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

After carefully considering the evidence and exhibits herein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of April 1961,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the one-hundred-and-eighty-day suspension heretofore imposed by respondent, and stayed during the pendency of this appeal, be restored against License C-323 held by Skip's Bar Inc., for premises at 204 Mulberry Street, Newark, to commence at 2 a.m. Wednesday, May 3, 1961, and to continue in effect until the expiration of said license at midnight June 30, 1961; and it is further

ORDERED that any renewal for the 1961-62 licensing year, or transfer of said license, shall be and remain under suspension until 2 a.m. Monday, October 30, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

2. STATE REGULATIONS - REGULATION NO. 34 - SPECIAL SOCIAL AFFAIR PERMITTEES ARE RETAILERS WITHIN CONTEMPLATION OF REGULATION - ALCOHOLIC BEVERAGES OTHER THAN MALT MAY BE DELIVERED TO PERMITTEES ONLY AT CURRENTLY EFFECTIVE WHOLESALE PRICE.

June 12, 1961

TO ALL MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES (V, VL, S, SL, R, W, WL AND WW LICENSEES)

Question has been raised whether manufacturers and wholesalers may furnish alcoholic beverages other than malt alcoholic beverages to organizations holding special social affair permits wholly gratuitously or at a price less than that listed in the Wholesale Price List published pursuant to State Regulation No. 34.

R.S. 33:1-89 and 90 provide:

"Price discrimination by sellers to retailers forbidden.
It shall be unlawful for any manufacturer, wholesaler, or other person privileged to sell to retailers to discriminate in price, directly or indirectly, between

different retailers purchasing alcoholic beverages other than malt beverages bearing the same brand or trade name and of like age and quality.

"Discounts, rebates, etc. to retailers unlawful."

It shall be unlawful for any manufacturer, wholesaler, or other person privileged to sell to retailers to grant, directly or indirectly, to any retailer purchasing alcoholic beverages other than malt beverages, any discount, rebate, free goods, allowance or other inducement over and above any discount, rebate, free goods, allowance or other inducement available to any other retailer purchasing from him alcoholic beverages bearing the same brand or trade name and of like age, quality and quantity." (Emphasis added)

State Regulation No. 34, Rule 1, provides in pertinent part:

"No Manufacturer or wholesaler shall deliver to any retailer...any alcoholic beverages, except at the price thereof...listed by said manufacturer or wholesaler in the then currently effective...Wholesale Price List..." (Emphasis added)

(It may be noted in passing that State Regulation No. 34 has consistently prohibited sale to "a retailer" or "any retailer" since its original promulgation in September, 1940, and throughout its numerous revisions in the meantime. See, inter alia, Bulletin 422, Item 1; Bulletin 426, Item 1; Bulletin 654, Item 1; Bulletin 831, Item 4; Bulletin 934, Item 1; Bulletin 1105, Item 1.)

"Retailer" has been defined by the Alcoholic Beverage Law since Repeal, in R.S. 33:1-1(u), as "Any person who sells alcoholic beverages to consumers."

"Person" is likewise defined (by R.S. 33:1-1(r)) to include "Any...association of natural persons,...corporation (or) organization..."

Special social affair permits are granted, pursuant to R.S. 33:1-74, to organizations, corporations or associations (i.e., "persons"), not, as is often mistakenly supposed, primarily to allow such organization to purchase alcoholic beverages direct from manufacturers or wholesalers, but instead, in the language of the permit, "to sell alcoholic beverages by the glass or other open receptacles at the social affair to be conducted by permittee..." (i.e., to sell alcoholic beverages to consumers). The privilege of purchase at wholesale is merely incidental to the permission to sell at retail. As was said by the late Commissioner Burnett in Re Blanda, Bulletin 264, Item 4, special social affair permits are, in effect, one day licenses and the permittees are subject to the same regulations as regular municipal licensees.

Accordingly, you are advised that a special social affair permittee is a retailer within the contemplation of the Alcoholic Beverage Law and regulations; and alcoholic beverages, other than malt alcoholic beverages, may be sold or delivered to such permittees only at the then currently effective wholesale price as listed with the Division of Alcoholic Beverage Control.

In this connection, it is to be borne in mind that R.S. 33:1-1(w) defines "sale" to include "the gratuitous delivery or gift of any alcoholic beverage by any licensee" and that any gift of alcoholic beverages, other than malt alcoholic beverages, by any manufacturer or wholesaler to any retailer, including social affair permittees, constitutes a sale of such beverages to "any retailer" obviously at less than their listed price, in violation of State Regulation No. 34.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -
PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

CAROL CACCSE AND CALOGERA PARINO
t/a THE STATELINER
142 Sitgreaves Street
Phillipsburg, N. J.

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption
License C-36, issued by the Board of
Commissioners of the Town of
Phillipsburg.

Carol Caccese and Calogera Parino, Defendant-licensees, Pro se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents therein, in violation of Rule 27 of State Regulation No. 20.

On March 21, 1961, an ABC agent tested defendants' open stock of liquor and seized a number of bottles for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that the contents of three of the seized bottles were high in solids and low in acids and varied in color when compared with samples of the genuine product of the named brands.

Carl Caccese (manager of the licensed premises) verbally admitted to the ABC agent that he had refilled these bottles and had been refilling bottles of whiskey for three weeks prior to the date alleged herein.

Defendants have a prior adjudicated record. Effective February 8, 1959, their license was suspended for five days by the local issuing authority for the sale and delivery of alcoholic beverages at retail in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

I shall suspend defendants' license for twenty days, the minimum period where three bottles are involved (Re Union News Co., Bulletin 1326, Item 12), to which will be added five days because of the dissimilar violation which occurred within the past five years (Re Fanok, Bulletin 1307, Item 11), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 18th day of April 1961,

ORDERED that Plenary Retail Consumption License C-36, issued by the Board of Commissioners of the Town of Phillipsburg to Carol Caccese and Calogera Parino, t/a The Stateliner, for premises 142 Sitgreaves Street, Phillipsburg, be and the same is hereby suspended for twenty (20) days, commencing at 1 a.m. Tuesday, April 25, 1961, and terminating at 1 a.m. Monday, May 15, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. ACTIVITY REPORT FOR MAY 1961

ARRESTS:	
Total number of persons arrested	26
Licensees and employees	10
Bootleggers	16
SEIZURES:	
Motor vehicles - cars	3
Stillis - 50 gallons or under	1
Mash - gallons	735.00
Distilled alcoholic beverages - gallons	38.24
Wine - gallons	3.00
Brewed malt alcoholic beverages - gallons	3.56
RETAIL LICENSEES:	
Premises inspected	523
Premises where alcoholic beverages were gauged	675
Bottles gauged	11,302
Premises where violations were found	37
Violations found	47
Reg. #38 sign not posted	16
Unqualified employees	15
Prohibited signs	5
Application copy not available	3
Other mercantile business	2
Improper beer taps	1
Other violations	5
STATE LICENSEES:	
Premises inspected	31
License applications investigated	26
COMPLAINTS:	
Complaints assigned for investigation	399
Investigations completed	376
Investigations pending	165
LABORATORY:	
Analyses made	240
Refills from licensed premises - bottles	50
Bottles from unlicensed premises	30
IDENTIFICATION:	
Criminal fingerprint identifications made	14
Persons fingerprinted for non-criminal purposes	288
Identification contacts made with other enforcement agencies	206
Motor vehicle identifications via N. J. State Police teletype	7
DISCIPLINARY PROCEEDINGS:	
Cases transmitted to municipalities	5
Violations involved	5
Sale during prohibited hours	4
Sale to minors	1
Cases instituted at Division	28
Violations involved	37
Possessing liquor not truly labeled	7
Sale during prohibited hours	4
Sale to minors	3
Permitting gambling (cards, wagering)	3
Permitting lottery activity (numbers, drawing) on premises	3
Permitting bookmaking on premises	3
Sale to non-members by club	2
Hindering investigation	2
Cases brought by municipalities on own initiative and reported to Division	21
Violations involved	25
Sale to minors	12
Sale during prohibited hours	4
Permitting brawl on premises	4
Permitting immoral activity on premises	2
Failure to close premises during prohibited hours	2
Retailer to retailer sales	2
Sale below filed price	1
Permitting immoral activity on premises	1
Conducting business as a nuisance	1
Service to women at the bar (local reg.)	1
Permitting hostesses on premises	1
Unqualified employees	1
Licensee working while intoxicated	1
Hindering investigation	1
Failure to close premises during prohibited hours	1
HEARINGS HELD AT DIVISION:	
Total number of hearings held	47
Appeals	7
Disciplinary proceedings	27
Eligibility	5
Seizures	2
Tax revocations	6
STATE LICENSES AND PERMITS ISSUED:	
Total number issued	14,317
Licenses	3
Solicitors' permits	42
Employment	348
Disposal	98
Social affair permits	478
Miscellaneous	385
Transit insignia	11,727
Transit certificates	1,236
OFFICE OF AMUSEMENT GAMES CONTROL:	
Licenses issued	143
Premises inspected	301
Premises where violations were found	16
Number of violations found	24
Enforcement files established	40

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

Dated: June 5, 1961

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - APPLICATION OF OWNER FOR RETURN OF MOTOR VEHICLE DENIED FOR FAILURE TO ESTABLISH GOOD FAITH - MOTOR VEHICLE ORDERED SOLD - CLAIM OF INNOCENT LIENOR RECOGNIZED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 10,436
October 23, 1960 of a quantity of)	
alcohol and an Oldsmobile sedan on)	ON HEARING
the New Jersey Turnpike, Mile Post)	CONCLUSIONS
No. 39 in the Township of Mount)	AND ORDER
Laurel, County of Burlington)	
and State of New Jersey.)	

 Chivian and Chivian, Esqs., by Louis Chivian, Esq., Attorneys for
 General Motors Acceptance Corporation.

Sheldon M. Liebowitz, Esq., by Conrad W. Krafte, Esq., Attorneys for
 Otis Glover, Sr.

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 to determine whether 90 two-quart 'Mason' jars of alcohol and an Oldsmobile sedan, described in a Schedule attached hereto, and marked 'Schedule A', seized on October 23, 1960 at the 39 Mile Post of New Jersey Turnpike in the Township of Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

"When the matter came on for hearing pursuant to R.S. 33:1-66, Otis Glover, Sr., the registered owner of the said Oldsmobile sedan appeared at the hearing and sought its return. The General Motors Acceptance Corporation also entered an appearance and sought recognition of its alleged lien on the said Oldsmobile sedan. No one opposed forfeiture of the alcohol.

"Reports of ABC agents and other documents in the file presented in evidence, with the consent of counsel for the claimant, disclose the following facts:

"A New Jersey State Trooper halted the motor vehicle in question on the New Jersey Turnpike in the vicinity mentioned, while on his routine patrol of traffic, on October 23, 1960. He ascertained that the motor vehicle was being driven by the claimant's son, Otis Glover, Jr., and bore New York License Plates No. 7550BB registered in the name of Lily B. Glover. Both Lily B. Glover and her husband, the claimant, Otis Glover, Sr., were passengers in the automobile. Upon examination the trooper found 90 two-quart 'Mason' jars of alcohol in the trunk of the automobile without a stamp on any of the jars, indicating the payment of tax on alcoholic beverages. The trooper arrested Otis Glover, Jr., who admitted full responsibility for the transportation and possession of such alcohol, and stated that he had paid \$120.00 for it at the time of his purchase of same in Washington, D.C. The trooper seized the alcohol, and the Oldsmobile sedan, and these items were later turned over to ABC agents.

"A sample of the contents of one of the jars of alcohol 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 47.5 percent.

"The seized alcohol is illicit because of the absence of a tax stamp on any of the jars. Such alcohol and the vehicle in which it was

transported constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

"According to the testimony of Otis Glover, Sr. the motor vehicle is registered in the names of his wife, Lily and himself, and he states that the automobile was purchased from the Crest Oldsmobile Corporation for the total sum of \$5376.22. He made a down payment of \$500.00 and the balance was financed by the General Motors Acceptance Corporation. He further testified that he earns \$100.00 a week and his wife earns \$88.00 a month as a building superintendent, from which earnings he made regular monthly payments on this car. The witness further testified that he resides with his wife in the Bronx, New York that his son, Otis, Jr., at the time in question, was only working several days each week. On October 23, 1960 his son prevailed upon him and his wife to accompany him in this car to Washington, D.C. to pick up some clothes at the residence of his son's wife (the son was separated and living apart from his wife). They left for Washington at 9:00 P.M. that evening and while there in a restaurant in Washington, D.C., the son left them for about an hour with the car, during which time he presumably obtained the alcoholic beverages and placed them in the trunk of the said motor vehicle. They then proceeded back to New Jersey the following morning, where they were apprehended as stated hereinabove. He denies knowing where his son went after Otis, Jr. left them at the restaurant, nor did he ask him.

"Mrs. Lily Glover substantially corroborated the testimony of her husband. She further testified that when they entered the restaurant in Washington her son did not have anything to eat, but instead forthwith left them and proceeded on his business.

"Otis Glover, Jr., the son, appeared at the time of the hearing but failed to take the stand.

"The circumstances surrounding the trip late at night to Washington at the request of a son who admittedly had no money should have aroused suspicion on the part of his parents, that there was something more unusual than the mere desire to pick up some clothing belonging to the son. The fact that this trip was started at 9:00 P.M. when both parties testified that they were tired and did not want to go to Washington, indicates that there must have been some more compelling reason than the mere desire to retrieve a few bundles of clothes. It is inconsistent with our experience to believe that this round trip involving travel of approximately 500 miles would have been made solely for that purpose.

"The Director has the discretionary authority to return property subject to forfeiture to a person who establishes to his satisfaction that he acted in good faith, and did not know or have any reason to suspect that his property would be used in violation of the Alcoholic Beverage Law R.S. 33:1-66(f).

"I conclude that the conduct of Otis Glover, Sr. under all the circumstances in this case displays a marked careless indifference to what use his son made of the car so that insofar as forfeiture proceedings are concerned, this claimant cannot be regarded as having acted in good faith. See Seizure Case No. 7467, Bulletin 857, Item 1 and Seizure Case No. 8227; Seizure Case No. 8554; Bulletin 1034, Item 9.

"General Motors Acceptance Corporation has presented in evidence a conditional sales contract dated October 6, 1960 signed by Otis Glover (Otis Glover, Sr., according to the testimony), and co-signed by his wife, Lily B. Glover, covering the purchase of the Oldsmobile sedan in question. The present balance due on such contract (which the finance company holds by assignment) is \$3275.99. The credit supervisor of the finance company testified that from their record it appears that before extending credit to finance the purchase of the motor vehicle and

accepting such contract, the finance company received information as to Glover's residence, marital status and employment, substantially as testified to by Glover. In addition, General Motors Acceptance Corporation was furnished with satisfactory personal and business references. The finance company made an independent check through the Motor Clearing Bureau, an agency which is in the business of making credit investigations, and it reported the information to be accurate.

"The finance company thereafter discovered that title to this car was taken in the name of Lily Glover instead of Otis Glover, Sr., and the company promptly acted to have Lily Glover sign the contract as a co-buyer.

"I therefore recommend a finding that the finance company acted in good faith and did not know or have any reason to suspect that the said motor vehicle would be used for the purpose of unlawfully transporting alcoholic beverages. I therefore recommend that the lien of General Motors Acceptance Corporation upon the motor vehicle in question be recognized to the extent of \$3275.99.

"It appears likely that the amount realized at public sale of the motor vehicle will exceed the cost of seizure and amount of the lien, and I therefore recommend that such vehicle be sold at public sale subject to the lien."

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

Accordingly, it is on this 18th day of April 1961,

DETERMINED and ORDERED that the Oldsmobile sedan 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 shall be offered for sale at public sale pursuant to State Regulation No. 29 and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained; otherwise the motor vehicle will be returned to General Motors Acceptance Corporation upon payment of the costs of its seizure, storage and sale; and it is further

DETERMINED and ORDERED that if the Oldsmobile sedan is sold, out of the proceeds of said sale there shall be first deducted the costs of seizure, storage and sale as have been or may be incurred; second, out of the balance if any, there shall be paid to the General Motors Acceptance Corporation its lien claim, recognized to the extent of \$3275.99; and third, the balance, if any, of the proceeds of such sale, after the payments aforesaid, shall be retained for the use of the State of New Jersey; 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

SCHEDULE "A"

- 90 - two-quart "Mason" jars of alcohol
- 1 - Oldsmobile sedan, Serial No. 608L-16712,
New York Registration NY7550BB

6. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - CLAIMS OF INNOCENT LIENORS RECOGNIZED - FURNISHINGS, EQUIPMENT, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. 10,492
January 13, 1961 of a quantity of)
alcoholic beverages, various furnishings,) ON HEARING
fixtures, equipment and \$41.36 in cash, at) CONCLUSIONS
Rivera Restaurant, located at 141 Broadway,) AND ORDER
in the City of Paterson, County of Passaic)
and State of New Jersey.)

Robert Goodman, Esq., appearing for claimants, Leo Barcello, Jose Aponte, Eligio Ortega.

Reliable Cigarette Company by Benjamin Markowitz, claimant.

J.A.J. Vending Corporation t/a Midtown Amusements by Joseph Cropanese, Secretary, claimant.

David S. Piltzer, 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 to determine whether a quantity of alcoholic beverages, \$41.35 in cash and various fixtures, furnishings and equipment described in a schedule attached hereto and marked 'Schedule A' which was seized on January 13, 1961 at Leo's Restaurant, also known as The Rivera Restaurant, located at 141 Broadway, Paterson, New Jersey, constitute unlawful property, and should be forfeited.

"The following claimants appeared at the hearing and sought return of their property, to wit: The Reliable Cigarette Company sought the return of a cigarette vending machine; J.A.J. Vending Corporation t/a Midtown Amusements sought return of a music machine known as a juke box, a wall box and a speaker stand; Leo Barcello sought return of a pool table; Jose Aponte sought the return of a cash register; and Eligio Ortega sought the return of certain items in the premises which were listed in a chattel mortgage given by the restaurant owner to him as security for the payment of an outstanding debt.

"An ABC agent testified as follows: he and another agent entered the defendant's establishment on two occasions.

"On their second visit on January 13, 1961 they entered the premises and took seats at the counter and ordered coffee from a Mr. Felix Ortiz, an employee. After consuming the coffee they then ordered two drinks of whiskey. Mr. Ortiz reached to the back end of the counter, took a four-fifth bottle of Schenley Whiskey, poured the same into two different glasses. These were paid for with one-dollar bills, the serial numbers of which had been listed by the agents on a slip of paper. Shortly thereafter the two agents ordered two more drinks which were served them by the said Ortiz and they paid him with dollar bills the numbers of which had been similarly noted. The sale was rung up on a cash register and twenty cents change was returned to the agents. At 10:45 P.M. two more ABC agents accompanied by police officers of the Paterson Police Department, by pre-arrangement, entered the licensed premises and identified themselves.

"They arrested Manuel Rivera, the owner, and Ortiz, and they they were arraigned in the Paterson Municipal Court and held for Grand Jury action on a charge of the illicit sale of alcohol, in violation of R.S. 33:1-2 and R.S. 33:1-50(a).

"The agents seized the whiskey, a pint bottle of wine, \$41.35 in cash and the other equipment, fixtures, furnishings and personal property of the establishment, as set forth in the schedule. It was stipulated by counsel for the claimants that the other agents would have testified to like effect. One of the drinks served to one of the agents on the above date was analyzed by the Division chemist, who reports that it is an alcoholic solution containing alcohol (8.5 percent by volume), which was fit for beverage purposes. The drink served to the other agent contained alcohol (8.4 percent by volume), which was fit for beverage purposes, the four-fifth quart bottle of Schenley Reserve Blended Whiskey contained alcohol in the amount of 43 percent by volume and the pint bottle of Vincove California Muscatel Wine contained alcohol in the amount of 20 percent by volume.

"On behalf of the Reliable Cigarette Company, Gerald Strumolo testified that he is a serviceman employed by the Runyon Sales Company which controls the Reliable Cigarette Company, and that he visited these premises once every two weeks for the purpose of servicing the said machine. He denied that he ever saw illicit alcoholic beverages being dispensed, and testified that he had no knowledge of such activity on these premises.

"Joseph Cropanese testified that he is an officer and collector for J.A.J. Vending Corporation which had a juke box, wall box and speaker stand on these premises. All these items were used conjunctively as one unit. He visited this place on only one occasion prior to the date of the seizure and did not observe any alcoholic beverages being dispensed on the premises and did not observe any illicit activity.

"Leo Barcello is the owner of the Barcello Distributing Company, which is a one-man operation, and he testified that he leased a pool table to one Eligio Ortega, and when Rivera purchased this business from Ortega he continued his arrangement with Rivera. He further states that he allowed Rivera a four weeks free operation, and had occasion to visit the restaurant several times only for the purpose of checking on his property. He denied that he ever saw any alcoholic beverages sold and testified that he did not observe any illicit activity during his visits.

"Jose Aponte testified that a cash register which he loaned to Ortega was continued on the premises when Rivera took over. He stated that he felt sorry for Rivera because he was a poor man and, hence, did not remove the register. He denies that he knew of any alcoholic beverages being dispensed or any illicit alcoholic beverage activity being carried on during this period.

"Eligio Ortega testified that he had previously operated a restaurant on these premises and had lost about \$3000 in a short time. He then sold the business to Rivera taking back a chattel mortgage (which was presented at this hearing but not marked in evidence), which covered that personal property not otherwise claimed by the other claimants, with the exceptions of the alcoholic beverages and the cash. He stated that Rivera made only one monthly payment in the sum of \$50 and that there is due and owing to him the sum of \$500.00. He further testified that he would visit the restaurant every other day and would occasionally go there at night. However, he denied that he saw any illicit alcoholic beverage activity and testified that he never observed any transaction involving alcoholic beverages in these premises.

"Upon the basis of the evidence presented I recommend a finding that the seized alcoholic beverages were intended for unlawful sale and hence are illicit R.S. 33:1-1(i). Such illicit alcoholic beverages and the fixtures and personal property located 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.

"I am satisfied from the evidence presented that each of the claimants acted in good faith and did not know or have any reason to suspect that alcoholic beverages were being sold in the place. I therefore recommend that the claims to the various items be recognized and that an order be entered to return said property to the respective claimants, provided the claimant pays the costs of the seizure and storage before a date to be fixed in said order. R.S. 33:1-66(f) and Seizure Case No. 9505, Bulletin 1192, Item 5.

"It is further recommended that an order be entered forfeiting the other items set forth in Schedule 'A'."

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 18th day of April, 1961,

DETERMINED and ORDERED that if on or before the 1st day of May, 1961 the Reliable Cigarette Company pays the costs of the seizure and storage of the cigarette vending machine, such machine will be returned to it; and it is further

DETERMINED and ORDERED that if on or before the 1st day of May, 1961 the J.A.J. Vending Corporation t/a Midtown Amusements pays the costs of the seizure and storage of a music machine, a wall box and a speaker stand, such items will be returned to it; and it is further

DETERMINED and ORDERED that if on or before the 1st day of May, 1961 Leo Barcello pays the costs of the seizure and storage of a pool table, such pool table will be returned to him; and it is further

DETERMINED and ORDERED that if on or before the 1st day of May, 1961 Jose Aponte pays the costs of the seizure and storage of a cash register, such cash register will be returned to him; and it is further

DETERMINED and ORDERED that if on or before the 1st day of May, 1961 Eligio Ortega pays the costs of the seizure and storage of furnishings and equipment which are included in the schedule annexed to the chattel mortgage marked "Exhibit C-5" in evidence executed by Manuel Velez Rivera to the said Eligio Ortega, such items will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the \$41.35 in cash, 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 shall 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

SCHEDULE "A"

- 1 - pint bottle of wine
- 1 - 4/5 quart bottle of whiskey
- 11 - cases of assorted soda
- 2 - juke boxes and currency therein

1 - cigarette machine and currency therein
 1 - pool table
 1 - cash register
 4 - tables
 16 - chairs
 11 - stools
 2 - refrigerators
 1 - clock
 1 - scale
 Assorted knives, spoons, forks, glasses, etc.
 \$41.35 in cash

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -
 LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

MARY BLAKELY & DONALD BLAKELY
 t/a BLAKELY'S TAVERN
 878 Main Street
 Paterson 3, N. J.

CONCLUSIONS
 AND ORDER

Holders of Plenary Retail Consumption)
 License C-16, issued by the Board of)
 Alcoholic Beverage Control for the)
 City of Paterson.

 Defendant-licensees, by Donald Blakely, partner.
 William F. Wood, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On March 9, 1961, an ABC agent made a preliminary test of the open stock of alcoholic beverages in defendants' licensed premises and seized a 4/5 quart bottle labeled "Fleischmann's Preferred Whiskey, 90 Proof", the contents of which appeared to be off in proof and color.

Subsequent analysis by the Division's Chemist disclosed that the contents of the seized bottle were excessively high in solids when compared with an analysis of the contents of a genuine bottle of the same item.

Defendants have no prior record. In the letter entering the plea, both defendants deny that they tampered with the contents of the seized bottle and state that they cannot explain how the violation occurred. Under the circumstances, I shall suspend defendant's license for ten days, the minimum period of suspension in a case involving one bottle. Re Kaplus, Bulletin 1382, Item 9. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 17th day of April 1961,

ORDERED that Plenary Retail Consumption License C-16, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Mary Blakely & Donald Blakely, t/a Blakely's Tavern, for

premises 878 Main Street, Paterson, be and the same is hereby suspended for five (5) days, commencing at 3 a.m. Monday, April 24, 1961, and terminating at 3 a.m. Saturday, April 29, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

8. SEIZURE - FORFEITURE PROCEEDINGS - UNLICENSED TRANSPORTATION OF STOLEN ALCOHOLIC BEVERAGES - MOTOR VEHICLE ORDERED RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on)	Case No. 10,505
February 1, 1961 of a Lincoln)	
sedan in the City of Newark, County)	ON HEARING
of Essex and State of New Jersey.)	CONCLUSIONS
-----)		AND ORDER

Local Finance Company, by Harold G. Barth, Jr., 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 Lincoln sedan described in a schedule attached hereto and marked "Schedule A" seized on February 1, 1961, in Newark, New Jersey, constitutes 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 the Local Finance Company which sought recognition of its alleged lien on the motor vehicle. Anthony Chirichello, the owner of the motor vehicle, did not appear, nor did anyone appear on his behalf, to make any claim thereto.

Reports of ABC agents and other documents in the file presented in evidence with the consent of the manager of the finance company, disclosed the following facts:

On January 12, 1961 Anthony Chirichello, the registered owner of the Lincoln sedan, involved herein, accompanied by one William H. Barton stole four cases of liquor from a truck owned by the Miller Motor Haulage Co. and placed the same in the trunk of the said Lincoln sedan. This whiskey was thereafter sold by Chirichello to a New York contact for the sum of \$70.00, which money was divided between Chirichello and Barton. Thereafter, on January 17, 1961, continuing the same pattern of unlawful activity, Chirichello and Barton stole nine cases of liquor from a truck owned by the J & J Distributing Company of Newark, and placed the said whiskey in the trunk of this Lincoln sedan. They sold the whiskey to an unidentified truck driver for \$100.00, dividing the said money between themselves.

Shortly thereafter Chirichello and Barton were apprehended, arraigned on the charge of larceny in violation of R.S. 2a:1-119-2 and held in bail for action by the Essex County Grand Jury. The motor vehicle herein was surrendered to the Newark Police by Chirichello's father where it was then turned over to the ABC agents. Anthony Chirichello gave the officers a signed statement admitting the thefts of the said alcoholic beverages, the transportation of the same in his Lincoln sedan, and that he did not have a transportation license or permit authorizing the use of the motor vehicle in question for transportation of alcoholic beverages. This was confirmed by the records of this Division. The motor vehicle in which these alcoholic beverages were transported constitutes unlawful property, and is subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-66.

The Local Finance Company presented into evidence a chattel mortgage dated July 27, 1960, secured by a note of the same date covering the Lincoln sedan owned by Anthony Chirichello and representing a loan to Anthony Chirichello in the sum of \$463.00.

This loan had its genesis in a prior loan made to Chirichello by the finance company on January 22, 1960 in the sum of \$500.00 on which Chirichello had made three monthly installments of \$26.77. His balance on July 27, 1960 was \$417.56 and on that date he requested a renewal of the loan and an increase in the amount then outstanding. The loan company thereupon paid off the initial loan and gave him an additional amount of \$45.44 which made the total indebtedness on that date on the re-cast loan the sum of \$463.00. The reason that the finance company recast this loan was that Chirichello had requested an additional amount which he asserted was needed for vacation expenses. Three payments on the recast loan were made by Chirichello and on December 8, 1960, the balance due was \$424.22.

Before advancing this loan, and permitting Chirichello to execute this mortgage and note, the finance company received information that Chirichello was 23 years of age, married, and resided in Atlantic Highlands, New Jersey for about one month, had lived at a previous address for about five years; was employed as a truck driver for two years last past; also had part-time employment in a barbershop, and had a total earnings of \$450.00 a month. The finance company verified his employment, and contacted his references, but made no inquiry with reference to his criminal record. The witness testified that, had he known of the substantial criminal record of Chirichello, his company would not have granted this loan. However, it further appears that Chirichello had no previous liquor law violations.

I am satisfied that the finance company made a reasonable, independent investigation of Chirichello's background and source of income, acted in good faith and did not know, or have any reason to suspect, that the Lincoln sedan would be used to transport illicit alcoholic beverages. Consequently, I shall recognize the lien of the finance company to the extent of \$424.22, the amount due thereon as of December 8, 1960.

It appears that the amount of the lien and the cost of storage and seizure exceed the appraised value of such vehicle.

Accordingly, it is DETERMINED and ORDERED that if on or before the 1st day of May, 1961 the Local Finance Company pays the costs of the seizure and storage of the Lincoln sedan, such motor vehicle will be returned to it.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: April 20, 1961

SCHEDULE "A"

- 1 - Lincoln sedan, Serial No. 53WA19737H,
New Jersey Registration #BAP-114.

9. STATE LICENSES - NEW APPLICATIONS FILED.

transfer

BULL

Joseph H. Reinfeld, Inc.

591-629 Rahway Avenue

Union, New Jersey

Application filed June 29, 1961 for place-to-place transfer of the 1961-62 Plenary Wholesale License W-11 from 461-467 Frelinghuysen Avenue, Newark, New Jersey.

Joseph H. Reinfeld, Inc.

461-67 Frelinghuysen Avenue

Newark, New Jersey

Application filed July 6, 1961 for Additional Salesroom on Plenary Wholesale License W-11 for premises 1423 Ferry Avenue, Camden, New Jersey.

Baxter Warehouse Corporation

591-629 Rahway Avenue

Union, New Jersey

Application filed July 6, 1961 for Additional Warehouse on Plenary Wholesale License W-34 for premises 1423 Ferry Avenue, Camden, New Jersey.

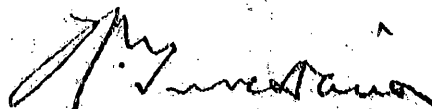
Menotti Lembo

t/a Lembo Distributing Company

936-938 South Elmora Avenue

Elizabeth, New Jersey

Application filed July 7, 1961 for place-to-place transfer of State Beverage Distributor's License SBD-106 from 53 West Grand Street, Rear, Elizabeth, New Jersey.



William Howe Davis
Director