

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

BULLETIN 1176

July 17, 1957

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Defendants have a prior adjudicated record. Effective January 2, 1957, their license was suspended for fifteen days for dissimilar violations (Re Tucciarone, Bulletin 1150, Item 6).

It appears that Betty Jo Morgan was engaged for a three-day engagement commencing April 5, 1957, through a theatrical booking agent located in New York City.

Conceivably, it is possible that the licensees may have mistakenly assumed that it was legitimate and unobjectionable art or entertainment because it was supplied by a reputable booking agent. Under these circumstances I shall suspend defendants' license for twenty days, with an additional five days because of the previous dissimilar violation within the past five years. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 28th day of May, 1957,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of Passaic Township, to Andrew Tucciarone & Leonard Tucciarone, t/a Olde Picadilly, for premises on North side of Valley Road, Passaic Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. June 5, 1957, and terminating at 2:00 a.m. June 25, 1957.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES JOSEPH FARRELL)
T/a FARRELL'S TAVERN)
34 Grand Avenue)
Englewood, N. J.,)

CONCLUSIONS
AND ORDER

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

James Joseph Farrell, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold and permitted the sale, service and delivery of alcoholic beverages to two minors, and permitted said minors to consume alcoholic beverages in his licensed premises, in violation of Rule 1 of State Regulation No. 20.

On May 3, 1957, at about 10:00 p.m., two ABC agents who were then in defendant's licensed premises observed three young men in military uniform consuming what appeared to be beer. After these drinks had been consumed, and after each youth had purchased a second drink from Charles Cresseceur (the bartender), the agents seized these drinks and identified themselves. Subsequent investigation disclosed that one of the young men was of full age but that each of the other two was a minor, and statements were obtained from each minor. In his statement Pfc. Ernest --- (age 19) says that he ordered two glasses of beer which were served to him by the bartender. In his statement SP/3 William --- (age 19) says that he also ordered two glasses of beer which were served to him by the bartender.

In attempted mitigation defendant alleges that one of the minors displayed to the bartender an altered ID card indicating that he was of full age and that the other minor told the bartender that he was twenty-four years of age. The investigation by the ABC agents disclosed that one of the minors possessed an altered ID card but this minor denied that he had shown the card to the bartender and both minors denied that the bartender had questioned either of them as to his age. In any event, it is clear that defendant has not established a defense under the provisions of R. S. 33:1-77.

Defendant has a prior record. Effective July 11, 1955, the local issuing authority suspended his license for five days for sale during prohibited hours. The minimum suspension for sale to a minor nineteen years of age is now fifteen days (Re Malek, Bulletin 1147, Item 3). Because of the prior dissimilar violation committed within the past five years, I shall suspend defendant's license in this case for twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 23rd day of May, 1957,

ORDERED that Plenary Retail Consumption License C-7, issued by the Common Council of the City of Englewood to James Joseph Farrell, t/a Farrell's Tavern, for premises 34 Grand Avenue, Englewood, be and the same is hereby suspended for fifteen (15) days, commencing at 1:00 a.m. June 3, 1957, and terminating at 1:00 a.m. June 18, 1957.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FRANCIS HEDGE & LOIS HEDGE T/a THE PATIO 324 River Street Hoboken, N. J.,

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-106, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

Francis Hedge & Lois Hedge, Defendant-licensees, by Francis Hedge. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that on May 3, 1957, they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to two minors and allowed, permitted and suffered said minors to consume such beverages in and upon their licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on Friday, May 3, 1957 at about 9:00 p.m., two ABC agents entered defendants' licensed premises and took seats at the bar which was being tended by Francis Hedge, one of the licensees. At about 9:30 p.m., two young girls (apparent minors) came into the premises and took seats at the bar. Within the next thirty minutes, the agents saw the bartender serve two glasses of beer to one of the girls, three glasses of beer to the other, and accept payment thereof at 15¢ per glass. At about 10:15 p.m., after observing these young people consume their first round of drinks and part of their last service, the agents identified themselves. The girls gave their names and ages as follows: Charlotte C. --- (age 18) and Catherine A. --- (age 19). Francis Hedge gave a written sworn statement dated May 3, 1957 admitting the aforesaid violation.

Defendants have no prior adjudicated record. I shall suspend their license for fifteen days. Re Krugel, Bulletin 1130, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of May, 1957,

ORDERED that Plenary Retail Consumption License C-106, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Francis Hedge & Lois Hedge, t/a The Patio, for premises 324 River Street, Hoboken, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. June 3, 1957, and terminating at 2:00 a.m. June 13, 1957.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Objections to)
the Transfer of State Beverage)
Distributor's License SBD-110)
from)

ALBERT J. BAKUNAS)
T/a BAKUNAS BEVERAGE)
316 3rd Street)
Cliffside Park, N. J.,)

CONCLUSIONS

to)

WILLIAM C. ROTH)
131 Union Turnpike)
Wharton, N. J.)
-----)

Leo J. Berg, Esq., Attorney for Applicant.
Samuel Moskowitz, Esq., Attorney for North Jersey Counties
Retail Liquor Stores and New Jersey Retail Liquor Stores
Association, Objectors.
Robert H. Simandl, Esq., Attorney for Morris County Tavern
Association, Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Written objections having been filed by various objec-
tors, a hearing was duly held thereon.

"The attorneys who appeared at the hearing for objec-
tors stated that their clients oppose the transfer of the
license because the area is amply served by existing licensees
and because there is no public need or necessity for an addi-
tional SBD license in that area.

"At the hearing the applicant, William C. Roth, testi-
fied that he conducts a soda business in Randolph Township
approximately three miles from the premises known as 131 Union
Turnpike, Wharton. He further testified that he has about one
thousand customers to whom he sells soft drinks and presented
a petition, signed by approximately three hundred fifty of his
customers, setting forth that it would suit their convenience
if Mr. Roth were permitted to serve them with malt alcoholic
beverages.

"Two retail licensees whose premises are located in
Wharton and two retail licensees whose premises are located
in Dover testified that they deliver alcoholic beverages in
various municipalities in Morris County; that two State Bever-
age Distributors are presently operating in Morris County, and
that, in their opinion, there is no need for an additional
license of this type. The attorneys for objectors represented
that, if five other retail licensees who were present at the
hearing and whose premises are also located in Morris County
were called to testify, their testimony would be to the same
effect.

"Mayor Robert Anderson, of the Borough of Wharton,
testified that by unanimous request of the members of the
Borough Council, he had been asked to appear at the hearing
and voice objections to the transfer. He stated that the

objection of the Mayor and Council was the same as that set forth in a letter dated November 14, 1956, addressed to the Division by former Mayor Fancher. In that letter Mayor Fancher, after setting forth the number of licenses in the Borough, states that 'We feel that we have enough licensed premises in the Borough without a licensed premises for the storage and distribution of unchilled brewed malt alcoholic beverages.' Mayor Anderson also stated that he opposed the transfer because, while there could be no legal objection to this type of business in an industrial zone, there are at the present time two licensed beer distributors operating in the Borough and the Mayor and Council are interested in bringing a diversified type of business or industry to Wharton. The Mayor also presented petitions which had been given to him by Reverend Donald Ostroth. When called to testify, Reverend Donald Ostroth identified the petitions which contained the names of approximately one hundred fifty persons who objected to the transfer of the license. Edward Garrigus, Secretary of the Wharton Businessmen's Association, stated that his Association opposed the transfer because 'they are looking for industries in town but not this type of an industry.'

"It may be that the holders of retail liquor licenses were prompted to object principally for economic reasons. In considering the other objections, it must be borne in mind that municipal consent is not a statutory requisite for the issuance or transfer of a State license. Nevertheless, the transfer of a license, whether State or municipal, to other premises is not a privilege inherent in a license. Re Variety Beer and Soda Distributors, Inc., Bulletin 1000, Item 6; VanSchoick v. Howell, Bulletin 120, Item 6. The evidence shows that applicant is seeking to transfer a license from Cliffside Park to Wharton -- a distance of about thirty miles -- and, in effect, is planning to establish a new outlet for the sale of beer in an area which appears to be adequately serviced. Since the privileges of a State Beverage Distributor's license are statewide, the licensed premises may be located in any municipality in the State. In view of the objections by the Mayor and Council of Wharton, which objections appear to be based upon strong local sentiment opposing the transfer, I recommend that the application for the transfer of the license to 131 Union Turnpike, Wharton, be denied. Re Cohen & Dickman, Bulletin 1077, Item 9; Re Kabot, Bulletin 1154, Item 5."

Written exceptions to the Hearer's Report were filed with me by the attorney for applicant.

After carefully considering the entire record, including the transcript of testimony, the Hearer's Report and the exceptions thereto, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein and, hence, I shall deny the application for the transfer in question.

WILLIAM HOWE DAVIS
Director.

Dated: May 22, 1957.

5. DISCIPLINARY PROCEEDINGS - SALE TO PATRONS OF ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DUTCH MELE'S CLUBHOUSE, INC.)
 Oak Tree Road & Plainfield Ave.)
 Edison Township, PO RFD #1)
 South Plainfield, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Township of Edison.)

-----)
 Norman J. Abrams, 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 charge:

"On Saturday, April 27, 1957, you served and allowed, permitted and suffered the service of alcoholic beverages other than ordered to patrons for on-premises consumption; in violation of Rule 23 of State Regulation No. 20."

The file herein discloses that on April 27, 1957, at about 8:10 p.m., two ABC agents entered defendant's licensed premises and took seats at the bar. They sat close to the area where a bartender was dispensing drinks for the patrons in the dining-room. On seven different occasions within a period of about one hour (8:25 to 9:25) the agents observed the bartender fill orders for Seagram's 7 Whiskey, placed by the waitresses on duty in the dining-room, from a bottle labeled "Burke & Barry Reserve Blended Whiskey." On the seventh instance the agents interviewed the customers who were served with said last order and learned that they did not order Burke & Barry Reserve Blended Whiskey -- in fact, they stated "never heard of it."

By way of mitigation counsel for defendant has submitted a letter requesting that I deal leniently with the licensee. I have read the letter and examined the file, but find no extenuating circumstances that would impel me to impose a lesser penalty than that fixed in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend its license for fifteen days (cf. Re McLean, Bulletin 549, Item 10). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 27th day of May, 1957,

ORDERED that Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Township of Edison to Dutch Mele's Clubhouse, Inc., for premises at Oak Tree Road & Plainfield Avenue, Edison Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 3, 1957, and terminating at 2:00 a.m. June 13, 1957.

WILLIAM HOWE DAVIS
 Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

SHOW BOAT, INC.)
 T/a BIG TOP BAR & GRILL)
 511 Elizabeth Avenue)
 Elizabeth 4, N. J.,)

CONCLUSIONS)
 AND ORDER)

Holder of Plenary Retail Consump-)
 tion License C-41, issued by the)
 Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Elizabeth.)
 -----)

Show Boat, Inc., defendant-licensee, by Olga A. McClosky,
 Vice-President.

David S. Piltzer, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on April 26, 1957, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a minor and allowed, permitted and suffered the consumption of said beverages by such person in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on April 26, 1957, at about 9:40 p.m., two ABC agents entered defendant's licensed premises and took seats at the bar. At about 9:50 p.m., and again at 10:40 p.m., the agents saw Olga McClosky, vice-president of the corporate-licensee, prepare and serve two mixed drinks to a youthful-looking couple seated at a table in the rear of the premises. After each service she deposited the proceeds of the sale in the cash register behind the bar. At about 10:45 p.m. the agents identified themselves to the aforesaid couple and learned the girl to be Elisa --- (age 18) and her escort to be twenty-two years of age. The agents then made their identities known to Olga McClosky and informed her of the violation. Later in the evening Elisa and her companion each gave a sworn, written statement setting forth therein that they were each served with two mixed drinks containing alcoholic beverages; that they consumed the first two drinks; that the agents seized the second two drinks, and that at no time was Elisa questioned about her age. Olga McClosky refused to give a written statement.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days (the minimum penalty for a sale to an 18-year-old minor). Re Krugel, Bulletin 1130, Item 11. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 27th day of May, 1957,

ORDERED that Plenary Retail Consumption License C-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Show Boat, Inc., t/a Big Top Bar & Grill, for premises 511 Elizabeth Avenue, Elizabeth, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 3, 1957, and terminating at 2:00 a.m. June 13, 1957.

WILLIAM HOWE DAVIS
 Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

MIKE POYDINECZ ASSOCIATES, INC.)
T/a MIKE POYDINECZ ASSOCIATES, INC.)
86-88 Market Street)
Passaic, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-53, issued by the Board of Commissioners of the City of Passaic.)

-----)
Heller & Laiks, Esqs., by Richard Heller, Esq., Attorneys for Defendant-licensee.

Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that it sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein, Evelyn --- and Cynthia ---, both twenty years of age, testified that they visited defendant's licensed premises at about 10:30 p.m., Friday, February 8, 1957, and seated themselves in the dining area wherein each consumed beer served to them by a waitress who required no written proof of their ages. They testified further that ABC agents interviewed them and seized the unfinished portion of their drinks and that they identified for the agents the waitress who made the sale.

"Two ABC agents testified that on the night alleged they visited defendant's licensed premises wherein they observed a waitress serve a bottle of beer to each of three apparent minor females, two of whom consumed some of the contents; that they and other agents participating in the investigation identified themselves to two of the three females (one had departed) and ascertaining that they were minors, seized the unconsumed portion of their beverages. They testified further that the minors identified the waitress who had served them and that the manager of the establishment admitted that said waitress was an employee.

"Mike Poydinez testified that he is the owner of the licensed premises and employs therein 'two door checkers, special cop, two bartenders and waitress and manager', all of whom 'have orders not to serve anybody that looks like he is near that nineteen or twenty or under twenty-one years old'. He, however, admitted that he was not on the premises after 9:00 o'clock on the night alleged. No other witnesses appeared on defendant's behalf.

"Having carefully considered all the facts and circumstances of the case, I find that the Division has established defendant's guilt as to the violation charged by more than a fair preponderance of the believable evidence.

"Since defendant has no prior adjudicated record, I recommend that its license be suspended for the minimum period of ten days. Re Rova Farms, Inc., Bulletin 1093, Item 10."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.76 After carefully considering the facts and circumstances herein, I concur in and adopt the findings and recommended conclusions of the Hearer. Hence I shall suspend defendant's license for a period of ten days.

Accordingly, it is, on this 27th day of May, 1957,

ORDERED that Plenary Retail Consumption License C-53, issued by the Board of Commissioners of the City of Passaic to Mike Poydinecz Associates, Inc., t/a Mike Poydinecz Associates, Inc., for premises 86-88 Market Street, Passaic, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. June 3, 1957, and terminating at 3:00 a.m. June 13, 1957.

WILLIAM HOWE DAVIS
Director.

8. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE RESIDENCE - STOCK OF ALCOHOLIC BEVERAGES AND OTHER PERSONAL PROPERTY ORDERED FORFEITED - ARTICLE PRIMARILY A HOUSEHOLD EFFECT RETURNED - MOTOR VEHICLE RETURNED FOR LACK OF EVIDENCE WARRANTING FORFEITURE.

In the Matter of the Seizure on)
December 9, 1956 of a quantity of)
alcoholic beverages, furniture,)
fixtures and equipment, a Pontiac)
sedan and \$33.00 in cash, on and)
in front of premises occupied by)
James Holmes located at 1 Front)
Street, Pergolaville, Manalapan)
Township, County of Monmouth and)
State of New Jersey.)

Case No. 9369

ON HEARING
CONCLUSIONS AND ORDER

-----)
Pincus & Shamy, Esqs., by Jack Pincus, Esq., Attorneys for
James Holmes, Lessie Holmes and Eddie Armstead.
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 a quantity of alcoholic beverages, furniture, fixtures and equipment, \$33.00 in cash, and a Pontiac sedan as described in a schedule attached hereto, seized on December 9, 1956, at and in front of premises occupied by James Holmes, located at No. 1 Front Street, Pergolaville, Manalapan Township, New Jersey, constitute unlawful property and should be forfeited.

"James Holmes appeared at such hearing and sought return of the Pontiac sedan and a case of beer. His wife, Lessie Holmes, sought return of a washing machine, refrigerator, music machine and a television set. Eddie Armstead sought return of the \$33.00.

Forfeiture of the balance of the seized alcoholic beverages was not opposed.

"The substance of the testimony of ABC agents is as follows:

"On December 2, 1956 two ABC agents entered the living room of the dwelling of James Holmes at the above address. A music machine was located in the room. Holmes was present, as were three other men and two women. One man and one woman each had a can of beer. The agents asked Holmes for two cans of beer, which he brought from the kitchen, handed to the agents, and accepted payment therefor. Shortly after consuming the beer, the agents each purchased from Holmes a drink of whiskey.

"On December 9, 1956 these agents returned to the premises, were admitted by James Holmes, took seats, and asked Mrs. Holmes for two cans of beer. She obtained the beer in the kitchen, handed the beer to the agents, accepted payment therefor, and turned over the money to her husband. There were four other men present, playing cards, and one had a can of beer.

"By pre-arrangement, other ABC agents and officers entered the premises while the first two agents were there, and identified themselves to Mr. and Mrs. Holmes. The agents inspected the premises and noticed that there were a hundred or so empty beer cans in a barrel and scattered around the grounds; that there was a television set in a bedroom, and a refrigerator, washing machine, gas range and table in the kitchen. The agents seized the refrigerator, in which there were forty-nine cans of beer, the washing machine, the television set, and a music machine. In addition to the beer, they seized a pint of wine, two gallon bottles of wine, and a half gallon bottle of whiskey, all of which were found in the bedroom.

"During the course of the seizure, one of the agents asked James Holmes where he purchased alcoholic beverages and by what means they were brought to the premises, to which Holmes replied that he transported the alcoholic beverages in his car. Asked if he presently had any beer in the car, he replied that he had one case, and thereupon the agents inspected the car, which was parked in front of the premises, found one case of beer therein, and then seized the car and case of beer.

"James Holmes, at the request of the agents, surrendered \$33.00 in cash which he had on his person, but the money identified by serial number which the agents had used to pay for their beer was not among the bills.

"Lessie Holmes testified that on December 9th the two agents entered and took seats. She was walking around with beer in her hand. One of the agents asked for two cans of beer. She replied, 'I'm not going to give you my beer.' The agent said, 'I'll give you some money for it.' 'I says, Okay.' Thereupon she handed him two cans of beer and one of the agents paid her seventy cents. She asserts that she and her husband are employed as field hands, and she also is employed as a domestic on occasion. Asked to explain how it came about that the agents were admitted without question to her home, she replied, 'People come there, play blackjack, play checkers. I don't know anything about it -- lots of people come -- I don't feel I should say who you, who are you come from.' It appears from Mrs. Holmes' testimony that the music machine, owned by her and located in her living quarters, was operated by the deposit of coins.

"James Holmes testified that he did not see either agent on December 2nd, and that he did not sell any beer or other alcoholic beverages on December 2nd or December 9th. Concerning the beer in the car, he states that he told the agent it was there, and that he was saving it for Christmas, and that was the reason the beer remained in the car. James Holmes admits that in 1946 he was convicted of violating the Alcoholic Beverage Law. Asked who brought the wine and beer found in his house on December 9th, he answered that he did in the Pontiac sedan.

"In my opinion the frank admission of Lessie Holmes that she sold the beer to the agent on December 9th, the background of the establishment, and the presence of the many empty beer cans, tends to fortify the testimony of the agents that they purchased alcoholic beverages at the premises on December 2nd and December 9th. Their testimony should therefore be accepted as an accurate account of what occurred.

"It is admitted that neither James Holmes nor Lessie Holmes held any license authorizing either of them to sell alcoholic beverages, and that the premises are not licensed for the purpose.

"The evidence presented justifies the conclusion that at least the beer (and possibly the other alcoholic beverages found in the dwelling) was intended for unlawful sale, and that such alcoholic beverages are therefore illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages, and the personal property seized therewith in the dwelling 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 sum of \$33.00 surrendered by James Holmes is not subject to forfeiture under the Alcoholic Beverage Law (Seizure Case No. 8737, Bulletin 1065, Item 4), and there is no evidence that it represents fruits of the crime under general law, hence I recommend that such sum be returned to him. Under these circumstances, it is not necessary to determine whether to accept or reject Eddie Armstead's testimony that he gave the money to Holmes for safekeeping.

"Although subject to forfeiture, it is the practice of this Division, in the absence of aggravating circumstances, to return household effects upon application therefor. The washing machine may be fairly described as a household effect, and will be returned upon the payment of the costs of its seizure and storage.

"I am reluctant to recommend that the Pontiac sedan and the case of beer found therein should be forfeited. The only evidence presented which might justify such a finding is the statement of James Holmes, from which assumptions, inferences and speculations favorable to forfeiture would be required. I believe that Holmes' statements are too vague to furnish a foundation for forfeiture of his motor vehicle.

"Moral certainty should not be substituted for definitive legal proof. I therefore recommend that the Pontiac sedan and one case of beer be returned to James Holmes.

"I further recommend that the balance of the property seized be 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 conclusion herein.

Accordingly, it is, on this 14th day of May, 1957,

DETERMINED and ORDERED that if on or before the 27th day of May, 1957, James Holmes pays the costs incurred in the seizure and storage of the Apex Washing Machine and the Pontiac sedan more fully described in Schedule "A" attached hereto, such items and one case of beer will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property listed in the aforesaid Schedule "A" be and hereby is 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 direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: May 14, 1957.

SCHEDULE "A"

- 2 - gallon bottles of wine
- 1 - pint bottle of wine
- 2 - quart bottles of whiskey
- 96 - 12 oz. cans of beer
- 1 - Westinghouse T.V. set and stand
- 1 - Ami music machine with currency therein
- 1 - Admiral Refrigerator
- 1 - Apex washing machine
- 1 - Pontiac two-door sedan, Serial W8XH1228, Motor 8VL12228, N. J. Registration MW362.

9. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on March 19, 1957 of a quantity of alcohol, a tank and a Lincoln sedan on U. S. Highway No. 1 in the Township of Plainsboro, County of Middlesex and State of New Jersey.)	Case No. 9448
)	ON HEARING
)	CONCLUSIONS AND ORDER

Bankers Commercial Corporation, by Roger M. McHale, Assistant Collection 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 50 two-quart jars of alcohol, a tank with alcohol, and a Lincoln sedan, described in a schedule attached

hereto, seized on March 19, 1957 on U. S. Highway No. 1, Plainsboro, 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 Bankers Commercial Corporation, which sought recognition of its alleged lien on the Lincoln sedan. No one opposed forfeiture of the balance of the property seized.

Reports of ABC agents and other documents in the file presented in evidence with the consent of the representative of the bank, disclose the following facts:

A New Jersey State Trooper halted the Lincoln sedan on the above date and location during his routine patrol of traffic on the highway. He ascertained that the driver of the car was Charles T. Baucom, its registered owner. When the trooper discovered the above mentioned jars and tank of alcohol, without any tax stamp indicating the payment of tax on alcoholic beverages on any of the jars, he took into custody the alcohol and the car and arrested Charles Baucom and his brother, William B. Baucom.

Thereafter the alcohol and motor vehicle were turned over to ABC agents. The contents of one of the jars 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 46 percent.

Charles T. Baucom gave a signed sworn statement to the effect that he undertook to transport to New York bootleg alcohol obtained in New Jersey.

The alcohol is illicit because of the absence of a tax stamp on any of the jars, and is actually bootleg alcohol. R. S. 33:1-1(i), 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.

Bankers Commercial Corporation presented in evidence a conditional sales contract dated November 11, 1955, which the bank holds by assignment. The contract, signed by Thomas Baucom, evidences the conditional sale of the Lincoln sedan in question for the sum of \$1330.85, with an unpaid balance thereon of \$1251.00. The present balance due on the contract is \$417.04.

Before accepting the contract and extending credit to Thomas Baucom the bank received information that he was 36 years of age, married, resided at an address in Brooklyn, New York and was employed by a local concern, earning between \$75.00 and \$80.00 a week. The bank was also furnished with various personal and business references.

The bank checked with an independent credit agency, and did not receive any derogatory information concerning Thomas Baucom. The bank also checked with Baucom's employer, who verified his employment and residence.

It appears from the records of the Division that Charles T. Baucom was arrested on December 23, 1953 in Baltimore, Maryland, by Federal agents on charge of violation of the

Internal Revenue Laws, pleaded guilty, and on April 30, 1954 was sentenced to six months in the penitentiary and fined \$500.00.

The evidence presented indicates that the bank made an adequate independent investigation of Charles T. Baucom's background and activities, but did not make any investigation concerning his criminal record. The representative of the bank stated that no such investigation is made by the bank unless its normal check discloses some facts which indicate a possibility that the applicant has a criminal record, and that no such facts existed in the instant case.

Under such circumstances, there was no arbitrary requirement for the bank to include in its investigation inquiry of law enforcement officers whether Baucom had a criminal record. Seizure Case No. 9139, Bulletin 1128, Item 11.

Accordingly, I shall recognize the lien claim of the Bankers Commercial Corporation against the Lincoln sedan in the amount of \$417.04.

It appears that the appraised retail value of the Lincoln sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. The motor vehicle will, therefore, be returned to the Bankers Commercial Corporation upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 7th day of June, 1957, Bankers Commercial Corporation pays the costs incurred in the seizure and storage of the Lincoln 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: May 27, 1957.

SCHEDULE "A"

- 50 - two-quart jars of alcohol
- 1 - copper tank with 20 gallons of alcohol
- 1 - Lincoln sedan, Serial and Engine
No. 52LP28123H, New York
Registration 8K8504.

10. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ANTHONY SOLAZZO)
T/a GARDNER TAVERN)
178 Monticello Avenue)
Jersey City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-202, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Anthony Solazzo, Defendant-licensee, Pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

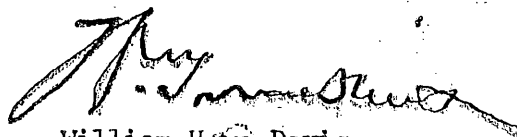
Defendant pleaded non vult to a charge alleging that on Wednesday, March 20, 1957, he sold during prohibited hours alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Wednesday, March 20, 1957 at about 10:30 p.m., two ABC agents entered the licensed premises and took seats at the bar behind which stood the licensee acting as bartender. At about 11:00 p.m., the agents saw a patron enter the premises, approach the bar and give a \$5.00 bill to the licensee who rang up a \$3.00 sale on the cash register. The licensee then took a pint bottle of Calvert Reserve Blended Whiskey from an enclosed cabinet and placed it on the bar for the patron. Within a couple of minutes the customer picked up the aforesaid pint bottle of whiskey, put it in his trouser pocket and left the premises from which he was followed by the agents into the street where he was stopped by them. The two agents then returned to the premises with the patron and identified themselves to the licensee who admitted the aforesaid violation.

Defendant has no prior adjudicated record. I shall suspend his license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re DiMattia, Bulletin 1141, Item 10.

Accordingly, it is, on this 29th day of April, 1957,

ORDERED that Plenary Retail Consumption License C-202, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anthony Solazzo, t/a Gardner Tavern, 178 Monticello Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 7, 1957, and terminating at 2:00 a.m. May 17, 1957.



William Howe Davis
Director