

Gossweiler

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

BULLETIN 1500

MARCH 25, 1963

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New Jersey State Library

STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1500

MARCH 25, 1963

1. APPELLATE DECISIONS - CASCIO v. ROSELLE PARK.

JOHN CASCIO, t/a BUSINESS
MENS INN,
Appellant,

v.

BOROUGH COUNCIL OF THE BOROUGH
OF ROSELLE PARK,

Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

Alfonso L. Pisano, Esq., Attorney for Appellant.
Joseph A. Lettieri, Esq., Attorney for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant appeals from the action of respondent whereby on September 13, 1962 by a four-to-two vote, it denied an application for a place-to-place transfer of appellant's plenary retail consumption license C-10 from premises 101 East Westfield Avenue to premises being constructed at 400 Seaton Avenue, Roselle Park.

"Appellant in the petition of appeal alleges that respondent's action was erroneous in that:

'Respondent acted in an arbitrary and capricious manner in abuse of the exercise of its discretion, contrary to the evidence presented before it at the public hearing concerning said application for transfer held on June 28, 1962; and otherwise in a manner contrary to law and the precedents of the Division of Alcoholic Beverage Control.'

"Respondent contends, among other things, in its answer filed herein that there is no need for or convenience to be served by the transfer of the liquor license to the proposed premises and, furthermore, that the distance between the respective premises was too great to warrant approval of the transfer.

"A stipulation was entered into by the attorneys for the respective parties wherein it was agreed that the area wherein the appellant's proposed premises is located is a residence "C" zone permitting four-family residences but which does not permit premises to be used for industry or business. However, on September 14, 1962, appellant was granted a variance to permit the erection of a two-story building with store and residence apartments. It was further agreed that appellant's proposed

premises is not within 800 feet of an existing license or within 200 feet of a church or school; that a school is located 1200 feet distant and a church 800 feet away. It was further stipulated that the distances mentioned in the respondent's answer were to be taken as correct, and said answer recited that the distance between appellant's present premises and the proposed site is 8,000 feet.

"Appellant testified that he made application for the transfer because at his present location he has no parking facilities and furthermore he is being restricted in the operation of the business by the landlord who desires that he vacate the premises.

"Appellant produced two witnesses who are familiar with the area to which the appellant seeks to transfer his license, and both were in agreement that the operation at the proposed place would not be detrimental to the public interest.

"Councilman Cacosa testified that he voted against the transfer of appellant's license to the proposed location because he considered the area to be residential in nature and by reason of the fact 'of the children, the traffic congestion, the church situation, a new school presently to be built in that location and the concern of the residents because at the present time one hundred percent of that area has been built up and there's no more building to be done and one hundred percent of the building has been done with the exception of Mr. Cascio.'

"Councilman Miciek testified that he voted in opposition to the transfer because of the 'feelings of the people in the immediate area'; the traffic conditions in 'that the spur has been put there, traffic backs up beyond the Seaton Avenue point'; a school being 1200 feet away; the closeness to the Church of the Assumption, the announcement from the pulpit of said church that a grade school is in contemplation of being constructed and the desire to retain the liquor establishments on Westfield Avenue.

"Councilman Lehr testified that he voted to deny the transfer because most of the opinions expressed at the hearing 'seemed to be from the immediate neighborhood and since it has been brought out this is primarily a residential area with the exception of the three corners involved, that I would be guided by that. And then, of course, in conclusion I was guided by the recommendations of the chairman of the license committee who happened to be also the councilman from that ward.'

"Councilman Power testified that he cast his vote to deny the transfer because 'I wanted to do the best thing that I could for the neighbors, for the neighborhood, and for the whole town'; also he was concerned with the number of objectors who appeared and the absence at the hearing of persons residing in the neighborhood of the proposed premises who might have appeared if in favor of the transfer.

"Councilman Rixon testified that his vote in favor of the transfer was entered because he 'felt this man had every legal and ethical right to ask for a transfer'; that he needed a parking area and that appellant's present landlord 'wanted him out.'

"Councilman Whitmeyer testified that he voted for the transfer because of similar reasons expressed by Councilman Rixon and, furthermore, the premises sought by appellant was near a railroad and 'in close proximity to a very heavy industrial area,

not being too far away from West Westfield Avenue."

"It has been repeatedly stated that, although in fairness to an applicant, a local issuing authority should state the reasons for its decision, such failure to do so is not fatal. Inasmuch as this is a trial de novo, appellant has been accorded his full day in court. Haba Realty Corp. v. Long Branch, Bulletin 984, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1; Cerra v. Verona, Bulletin 1463, Item 6.

"It has long been held that the question of whether or not a license should be permitted at a particular location is one within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm. Redfield v. Long Branch et al., Bulletin 1027, Item 1. It is apparent by the vote that appellant failed to satisfy the majority of the members of respondent Council that the public interest would best be served by the transfer of the license and there is nothing apparent in the record to indicate that the refusal to grant appellant's application was inspired by improper motives. See Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (1960). The most that has been shown is that there is an honest difference of opinion among members of the respondent Borough Council.

"Although the refusal to permit appellant to transfer to the proposed site may cause a hardship to him, it has always been recognized by this Division that the test to be applied is the welfare of the community.

"After considering all the evidence herein, including the exhibits and the oral argument of the attorneys for the respective parties, I conclude that appellant has failed to sustain the burden of establishing that the action of the respondent was erroneous, arbitrary, capricious or constituted an abuse of discretion on its part. Rule 6 of State Regulation No. 15. It is recommended, therefore, that an order be entered affirming respondent's action and dismissing the appeal."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorney for appellant. Written answering argument was filed with me by the attorney for respondent.

After carefully considering the testimony, exhibits, Hearer's Report, exceptions thereto and written argument filed in behalf of appellant and the respondent, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I shall enter an order as recommended by the Hearer.

Accordingly, it is on this 5th day of February, 1963,

ORDERED that the action of respondent Borough Council of the Borough of Roselle Park be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN PRIVATE CLUB - APPLICATION OF CLAIMANT FOR RETURN OF COMMINGLED CASH DENIED - APPLICATION FOR RETURN OF FIXTURES AND OTHER PERSONAL PROPERTY DENIED - ALCOHOLIC BEVERAGES, CASH AND OTHER PERSONAL PROPERTY SEIZED THEREIN ORDERED FORFEITED.

In the Matter of the Seizure
on September 1, 1962 of a
quantity of alcoholic beverages,
soda, furnishings, fixtures, equip-
ment and \$81.35 in cash, at Mountain
Spring Camp, R.D. 1, in the Township
of Washington, County of Warren and
State of New Jersey.

CASE NO. 10,898

CONCLUSIONS
AND ORDER

-----)
Edward E. Stover, Esq., by Frederic C. Ritger, Jr., Attorney for
claimant.

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

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28, and further pursuant to a stipulation dated September 6, 1962, signed by Beatrice Hansen, to determine whether 85 bottles of alcoholic beverages, 20 bottles of soda, \$81.35 in cash, various fixtures, furnishings and equipment, described in an inventory hereinafter referred to, seized on September 1, 1962 at Mountain Spring Camp, R.D. 1, Washington Township, New Jersey, constitute unlawful property and should be forfeited.

"Pending seizure hearing in the case, Beatrice Hansen deposited \$280.00 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 fixtures, furnishings and equipment, exclusive of the alcoholic beverages and \$81.35 in cash, and thereupon obtained the return of the property seized, excepting the said alcoholic beverages and cash.

"Beatrice Hansen has accordingly stipulated that the said Director should determine, in the present proceedings, whether such sum shall be forfeited, or returned to her.

"When the matter came on for hearing pursuant to R.S. 33:1-66, and such stipulation, an appearance was entered on behalf of Beatrice Hansen, who sought return of her deposit of \$280.00. Mrs. Hansen was unable to attend the said hearing because of her illness and it was agreed that in the event that her appearance was deemed necessary by her counsel in the prosecution of her claim, this matter would be adjourned in order to enable her to make such appearance. At the conclusion of this hearing counsel for Mrs. Hansen waived that condition.

"It was further stipulated by counsel for the claimant and the attorney for this Division, that the file herein shall be admitted into evidence, except for the following: (1) this claimant does not admit that the conversation as related by the agents in their reports was accurately reported; (2) claimant does not agree that the facts were exactly as you stated them with reference to the passing of the money on the bar. Counsel

then stated '***I would like it clear on the record that I admit the balance of the facts in the matter'.

"The established facts revealed by the file herein, and the additional testimony of the ABC agents, are that on September 1, 1962 the Division received a specific complaint that alcoholic beverages were being sold at the premises in question without a license. Four agents, having in their possession six \$1.00 'marked' bills, the serial numbers of which had been previously recorded, entered the said premises and took places at a bar located on the first floor of this two-story building.

"The agents observed three females consuming mixed drinks in Martini glasses. The bartender, subsequently identified as Robert S. Geller, approached the agents and asked them 'What will you have?' Both agents received from Geller a Dry Martini each, after which each agent put his three \$1.00 bills on the bar. After serving the agents the bartender took one of the 'marked' \$1.00 bills from Agent N and was observed putting it in a drawer underneath the bar.

"After the agents consumed a portion of their drinks a female, later identified as Beatrice Hansen, questioned the agents as to their presence in the premises. The agents said that they had an appointment with some females and were told, 'This is a private club. You will have to go.' The agents responded, 'We will go as soon as we finish our drinks'. Thereupon, Agent N went upstairs and made a call to the State Police. They then identified themselves to Mrs. Hansen, Geller and one Karolyn Kerry, who represented herself to be the manager of these subject premises. She was questioned, and admitted that she had no license authorizing the sale of alcoholic beverages.

"Thereupon, the agents conducted a search of the premises and prepared an inventory. They found the sum of \$81.35 in a drawer beneath the bar, which sum included the 'marked' dollar bill used by the agents which the bartender took in payment of the two drinks. In the adjoining room, wine and beer were found; in the office on the second floor the agents found 17 bottles of beer and other alcoholic beverages were found on the premises.

"The records of this Division do not disclose any license or permit to have been issued to either of the persons hereinabove mentioned, namely Geller, Karolyn Kerry or Beatrice Hansen, or for the premises in question. In the course of their investigation Mrs. Hansen advised the agents that one George Weissman was the owner of the premises. However, it should be noted that subsequent to this hearing an investigation was made of the tax records, which disclosed that the record owner of these premises is Constance F. Weissman (and not Weissnan as previously reported). No license was issued by this Division to a George Weissnan or Constance F. Weissman.

"Agent N testified at the hearing in corroboration of the filed reports, and more particularly with reference to the conversations which claimant disputed. His testimony remained consistent and constant under cross-examination. It was agreed that if Agent J were produced as a witness, his testimony would have been substantially the same as the testimony theretofore given by Agent N.

"Karolyn Kerry, called as a witness in behalf of the claimant, testified that she was the manager of the Mountain

Spring Camp on the date in question. This camp was a children's camp which was closing down for the season and a party for the staff was arranged on these premises on the evening in question. She testified further that she and Geller purchased the alcoholic beverages that were served from funds collected from the staff members and that no set price or fee was charged for any of the drinks. However, those who obtained drinks made contributions 'for the purchase of --' same. She explained that \$74.00 of the money seized also represented weekend receipts from guests who stayed at the camp and the balance represented additional collections made for the party.

"On cross-examination she admitted that this money was used for the purchase of food, particularly 'pizza pies', although she was not authorized to use the money for that purpose. She could not say exactly how much money was spent for the purchase of alcoholic beverages and stated that she turned the cash receipts over to Geller because 'I was going to bed, and I asked him to take care of it'.

"Robert S. Geller testified that he tended bar on the night in question and served the two agents martinis. He took \$1.00 from the agents and put it in a box underneath the bar and further stated that he had served drinks to other patrons; but that no fixed price was set for any of the drinks. He operated on the general instructions that he was to serve drinks to anyone who was old enough to be drinking and that '--anybody who cared to contribute I should take their money; anybody who didn't care to contribute I shouldn't ask them'.

"On cross-examination he admitted that he did not know exactly how much money there was in the box and stated that he served about ten drinks. He also stated that as far as he knows the money was collected from the various people by the manager. He estimated that when he originally went behind the bar there was approximately \$50.00 in the drawer.

"On rebuttal, Agent D testified that the inventory reflects a total of 70 bottles seized by the agents at the time in question. Claimant admits that there was no license authorizing the sale of alcoholic beverages for the subject premises but claimant's counsel energetically argues that the activity hereinabove described did not constitute a 'sale' under the terms of the Statute. His contention is that this was a private party and most of the people contributed either before or during the party for the purchase of the said beverages.

'R.S. 33:1-1(w) defines a "sale" as:

"Sale." Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including deliveries from without this State and deliveries by any person without this State intended for shipment by carrier or otherwise into this State and brought within this State, or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee."

"The bartender readily admitted that he sold the drinks to ABC agents and received cash consideration therefor. Thus, a sale of alcoholic beverages to them has been clearly established within the definition hereinabove stated.

"On the basis of the evidence presented, I recommend a finding that there was a sale within the definition of the Statute and that the seized alcoholic beverages were intended for the unlawful sale and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and the furnishings, fixtures and equipment and all of the other property seized in the establishment, including the cash, 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 testimony of Mrs. Kerry, the manager, is entirely unconvincing, that the cash found in the drawer underneath the bar represented weekend receipts from the rental of rooms. She stated that she authorized the bartender to purchase pizza pies and other foods with this money although this was not in accordance with her general authority. At no time did she tell the bartender exactly how much money she placed in the drawer for his use in the operation of the bar. Such action is unrealistic and inconsistent with believable conduct.

"Normal business experience would dictate that receipts obtained from the rental of rooms would be kept separate and apart from receipts of bar sales. There is no convincing reason why Mrs. Kerry did not take this money with her when she retired for the night. It would have been more reasonable for her to do so; instead, she alleges that she put the money in the drawer under the bar. The bartender's testimony, in effect contradicts her testimony.

"It is more probable on the basis of both her testimony and the testimony of the bartender that the money was obtained from the purchase of alcoholic beverages and was used by the bartender for that purpose.

"It is admitted that the 'marked' money was clearly commingled with the other cash. The preponderance of the believable evidence imperatively requires a recommended finding that the claimant's application for the return of the deposit be denied and that instead, an order be entered forfeiting the \$81.35 in cash; and that the deposit of \$280.00 likewise be forfeited and disposed of in accordance with law. Re Seizure Case No. 10,321, Bulletin 1377, Item 3; Seizure Case No. 10,557, Bulletin 1419, Item 3; Seizure Case No. 10,500, Bulletin 1411, Item 6; R.S. 33:1-1(y); R.S. 33:1-2."

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 31st day of January, 1963

DETERMINED and ORDERED that the seized property, including \$81.35 in cash, more fully described in Schedule "A", attached hereto, constitutes unlawful property; and that the sum of \$280.00 (representing the retail value of such fixtures, furnishings and equipment, exclusive of the alcoholic beverages and \$81.35 in cash, as set forth herein which were returned to

Beatrice Hansen) paid under protest to the Director of the Division of Alcoholic Beverage Control by the said Beatrice Hansen, together with the \$81.35 in cash, be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages are hereby forfeited, 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 Acting Director of the Division of Alcoholic Beverage Control.

EMERSON A. TSCHUPP,
ACTING DIRECTOR

SCHEDULE "A"

- 85 - bottles of alcoholic beverages
- 20 - bottles of soda
- 2 - refrigerators
- 6 - bar stools
- 1 - bar
- 1 - record turntable
- numerous assorted glasses
- 1 - Frigidaire freezer
- 1 - typewriter
- 1 - adding machine
- 1 - desk
- 1 - shotgun
- 1 - box of shells
- 17 - reels of tape
- 2 - rolls of motion picture film
- 2 - intercom units
- \$81.35 in cash

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary
Proceedings against

WILLIAM J. HOLLOWAY
t/a HOLLOWAY'S CASINO
Black Horse Pike, No. of
12th Street
Folsom (Boro), N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-6, issued by the Borough
Council of the Borough of Folsom.

Gardner & Williams, Esqs., by Victor C. Otley, Jr., Esq.,
Attorneys for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee pleaded not guilty to the following charge:

'On July 7, 1962, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., John ---, age 18 and Robert ---, age 18; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein the Division called as its witnesses John ---, Robert ---, John C. --- and an ABC agent hereinafter referred to as Agent C.

"John, age 18 (born June 22, 1944), testified that on July 7, at about 9 p.m., he, Robert, John C. and a fourth companion (William) drove to the licensed premises; that he and Robert entered the same; that William J. Holloway, the licensee (identified by John at the hearing), was tending bar; that he and Robert simultaneously asked Mr. Holloway for four six-packs of Schmidt's beer; that the licensee removed the requested alcoholic beverages from a cooler and 'gave them to us;' that in payment thereof he gave Mr. Holloway a five-dollar bill and received eighty cents in change, following which he and Robert, each in possession of two of the six-packs, returned to the car.

"John further testified that he had visited the licensed premises previous to July 7, 1962; that on none of his visits was he ever questioned about his age; that he, Robert and John C. returned to the licensed premises on July 8, 1962, in the company of a New Jersey state trooper and Agent C, and that he identified the licensee to the officers as the person from whom the beer had been purchased as alleged.

"On cross examination John reiterated the pertinent parts of his direct examination and further testified that John C. and William did not leave the car; that his companions had reimbursed him for the price of the beer; that during their visit to the premises on July 7 aforesaid the barroom was empty except for one male who summoned Mr. Holloway from a back room and departed

shortly thereafter; that he and Robert were standing at the center of the bar alongside each other and directly opposite the licensee when they ordered the beer; that there was no other bartender in attendance; that they were in the premises for about five minutes; that he had been served and consumed beer in the licensed premises on four occasions previous to July 7, 1962; that he was never denied the sale of alcoholic beverages at the premises and that on the day in question he had consumed a couple of glasses of beer at a wedding reception which he had left at about 2 p.m. d
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"On further cross examination John testified that a female (identified at the hearing as Evelyn Sharp) came to his home on July 8, 1962, at about 3 p.m.; that he had a discussion with Mrs. Sharp; that, because of the elapse of time, he was not sure of what was said by either, and that he believed Mrs. Sharp mentioned the Holloway Casino.

"Robert substantially corroborated John's testimony, identified the licensee as the bartender who made the alleged sale of the beer, and further testified that on July 7, 1962, he was eighteen years of age; that the licensee, upon emerging from the back room, cordially greeted him and John; that the licensee placed the four six-packs of beer on the bar 'one on top of the other, two stacks;' that the entire transaction took between five and ten minutes; that on July 8, 1962, he returned to the licensed premises and identified the licensee to the state trooper and Agent C as the person who on July 7 aforesaid sold him and John the beer and that he had visited the licensed premises on a previous occasion.

"On cross examination Robert testified that he met John at a gas station in the Borough at about 8 p.m. on July 7, 1962; that at about 8:45 p.m. they decided to visit the licensed premises; that he remembered the incident of the male calling the licensee from the back room but was unable to recall his physical appearance.

"John C. (18 years of age) testified that on July 7, 1962, at about 8 p.m., he met John and Robert; that about 9 p.m. he, John, Robert and William drove to the licensed premises; that John parked the car in front of the same about fifteen feet from its main entrance; that he and William did not leave the car; that he observed John and Robert, empty handed, enter the licensed premises and about five minutes later emerge therefrom, each carrying two six-packs of Schmidt's beer, and that he had consumed some of the beer.

"On cross examination John C. testified that, after John and Robert returned to the car, he paid his share of the purchase price of the beer and that he did not enter the premises because of his age.

"Agent C testified that on July 8, 1962, he drove to the licensed premises with John, Robert and John C.; that the minors directed him to and identified the same as the place where the beer had been purchased as aforesaid; that John and Robert identified the licensee as the person who sold them the beer on July 7, 1962; that, upon questioning, the licensee stated that on July 7, 1962, at about 9 p.m., he was on duty at the licensed premises; that he sells Schmidt's beer and that he denied selling any beer to John and Robert on the night in question.

"Evelyn Sharp, on behalf of the licensee, testified that on July 8, 1962, she went to John's home; that John denied that he had obtained the beer in question at the licensed premises; that John refused to state where he had purchased the beer and that prior to July 8 aforesaid she had not met John.

"On cross examination Mrs. Sharp testified that she is employed as a waitress by another licensee in the Borough of Folsom; that she had mentioned Holloway's in her conversation with John 'Because my baby sitter told me that Holloway's was probably involved;' that she visited John's home between 4:30 and 5 p.m., and that she was unaware that earlier in the day John had identified Mr. Holloway as the person who had sold him the beer.

"In response to my questioning, Mrs. Sharp stated that she went to John's home 'because talk was around that he had purchased it (the beer) at Holloway's;' that, on the night of July 7 aforesaid, John came to her home and attacked her baby sitter; that her only reason to learn where John had obtained the beer was to give the dispenser thereof 'a piece of my mind;' and that, prior to the day of hearing held herein, she had not learned where John purchased the beer.

"William J. Holloway (the licensee) denied he ever served John alcoholic beverages, repeated his denial to Agent C and further testified that he has held a plenary retail consumption license for twenty-nine years; that he has never been charged with any violations of the liquor laws; that he acts as his own cook at the licensed premises; that at about 7:15 p.m. on July 7, 1962, after having his dinner in the barroom, he returned to the kitchen to prepare food for his customers and to attend to the other usual kitchen duties; that Benjamin Funk, his son-in-law, and his daughter came to the premises about 5:30 p.m.; that Dr. Lewis J. and Mrs. Berg arrived at the premises about 8 p.m.; that between 7:15 and 10:15 p.m. he frequently returned to the barroom to visit with his son-in-law, his daughter, Dr. and Mrs. Berg, and with some patrons; that at about 7:15 p.m. Mr. Funk relieved him behind the bar; that he did not return to the same until about 10:30 p.m., at about the time the state trooper and John came into the premises; that Margie Long, Herbert Ware and other patrons were seated at the bar; that Doris McNight (employed as a waitress at the licensed premises) was on duty on the night in question, and that for the past fourteen years his price for four six-packs of Schmidt's beer has been \$4.40.

"On cross examination Mr. Holloway testified that his wife generally tends bar when he is occupied in the kitchen; that he had never seen Robert in the licensed premises previous to his arrival in the same with the trooper, albeit his wife had seen him prior thereto; that, to the best of his knowledge, John had visited the licensed premises on three occasions previous to July 7, 1962; that on his first visit he was unaccompanied, on his second and third visits he was with a couple of other boys; that he did not sell John or his companions any alcoholic beverages; that, to his knowledge, John had not been served any alcoholic beverages by anyone in his premises, and that he does not store large quantities of six-packs in the cooler.

"On further cross examination the licensee testified that on the night in question the state trooper, accompanied by John, came into the premises at about 10:30 p.m. and returned at about 11:30 p.m. with Robert; that the two minors identified him as the

one who sold them the beer; that on the first of aforesaid visits he denied the accusation; that on the second visit the trooper threw the four Schmidt's beer labels on the counter, and that he was not questioned by the trooper.

"In response to my questioning Mr. Holloway stated that he did not know that Robert's visit to the premises with the trooper was for the purpose of identifying him as the person who made the alleged sale; that he stood mute when the beer labels were displayed by the trooper, and that he had no opportunity to deny the alleged sale.

"On redirect examination the licensee testified that, on the trooper's second visit, his (the trooper's) conversation was limited to one question addressed to Robert, and that they left immediately after Robert answered the question with a nod of his head.

"Lewis J. Berg, on behalf of the licensee, testified that he is a dentist; that on July 7, 1962, between 7:30 and 10 p.m., he and his wife were sitting at a table in the licensed premises; that he commanded an unobstructed full view of the bar, the barroom and its front entrance; that he heard the testimony of the Division's witnesses; that he did not see any of them in the licensed premises during his aforesaid visit; that, from the time he entered to the time he left the premises, Funk was tending bar, Herbert Ware was sitting at the bar, other patrons unknown to him came and left the premises, at no time did the licensee go behind the bar and, to his knowledge, no one purchased a case of beer.

"Dr. Berg further testified that he is a good friend of Mr. Holloway; that he has visited the licensed premises hundreds of times; that the sale of beer by the case is not made from the cooler; that very few of the licensee's patrons are under thirty years of age; that by reason of his eight years experience as a criminal investigator for the Alcohol Tax Unit 'I think I would have automatically noticed' the minors in the licensed premises.

"On cross examination Dr. Berg testified that during his aforesaid visit he did not leave his table; that he and his wife were having dinner, in the course of which several people visited and conversed with him and that, after he had finished his dinner, he and Mr. Holloway discussed business problems relative to the disposition of some property they had purchased.

"Marguerite Long testified that she is a housewife and a part-time waitress; that on July 7, 1962, she put her children to bed at about 8:30 p.m.; that shortly thereafter she left her home, arrived at the licensed premises at about 8:45 p.m. and remained therein until about 2:45 the next morning; that she took a seat at the bar with her back to the front door; that Dr. and Mrs. Berg were sitting at a table; that Mr. Ware and a couple were sitting at the bar; that Mrs. Holloway and Mrs. McNight were about the premises, and that Mr. Funk was tending bar. Mrs. Long further testified that between 10 and 10:30 p.m. two patrons entered the premises and Mr. Funk summoned Mr. Holloway from the kitchen, following which she moved to the other end of the bar; that she did not see John and Robert in the premises prior to their arrival in the same with the state trooper, and that she remembered an occasion previous to July 7, 1962, when Mr. Holloway refused to sell alcoholic beverages to John.

"On cross examination Mrs. Long testified that she made no observation of the time she had entered the premises; that she frequently visits the same and that she was unable to recall the date on which Mr. Holloway rejected John's patronage.

"Doris McNight (waitress at the premises) corroborated the testimony of Mrs. Long with respect to her designation of the patrons and members of the Holloway family who were in the licensed premises on the night of July 7 aforesaid and with respect to the refusal by Mr. Holloway to sell alcoholic beverages to John previous to the night in question, and further testified that on July 7, 1962, she was on duty at the premises between 2:30 and 11 p.m.; that she did not observe any of the minors therein; that at about 9 p.m. she was not out of the barroom for more than five to ten minutes; that beer, when sold by the case, is not taken from the cooler and that the price of four six-packs of Schmidt's beer is \$4.40.

"On cross examination Mrs. McNight testified that on the night in question she was in and out of the barroom serving Dr. and Mrs. Berg, and that at different intervals she had engaged in conversation with Mrs. Long and other customers in the premises.

"Mrs. McNight, on further cross examination, testified that, on the occasion when she had witnessed the refusal by Mr. Holloway to sell alcoholic beverages to John, he (John) was accompanied by two companions; that she had heard Mr. Holloway ask John for an ID card; that John replied he had none; that neither of John's companions requested any alcoholic beverages nor did Mr. Holloway address himself to them; that on July 7, 1962, she left the premises at about 11 p.m. and that she was not there when the state trooper and John arrived.

"Harry T. Graham testified that he resides opposite the home where the aforementioned wedding reception took place on July 7, 1962; that he knew John by sight; that he saw John at the reception and that he believes he last saw John at the reception between 4 and 5 p.m.

"On cross examination Mr. Graham testified that he had no particular reason for noting John's presence at the reception and that he knew John by name.

"Benjamin Funk testified that he is in the trucking business; that on July 7, 1962, at about 5:30 p.m., he, his wife and child came to the licensed premises to visit the Holloways; that they had dinner about 7 or 7:15 p.m., following which he tended bar until shortly after 10 p.m.; that Mrs. Long, Mr. Ware and other patrons unknown to him were sitting at the bar; that Dr. and Mrs. Berg, upon entering the premises, joined the Holloways at a table in the barroom; that Mrs. Long entered the premises while he was tending bar; that he did not serve any alcoholic beverages to John and Robert and that Mr. Holloway did not come behind the bar.

"On cross examination Mr. Funk testified that at no time while tending bar did he leave the barroom; that he was present on both occasions on the night of July 7 aforesaid when the trooper came into the premises with John and Robert; that he heard the minors allege that they had obtained the beer at the licensed premises at about 9:10 p.m. on the night in question; that he heard the trooper inform Mr. Holloway that the minors were accusing him of making the sale; that he stood mute during both aforesaid visits; that he did not volunteer any information to the trooper

because he did not realize the nature of the complaint, and that he had no opportunity to speak because the visits were short.

"In response to my question, Mr. Funk testified that he did not discuss the matter with Mr. Holloway between the visits of the trooper.

"Rose E. Berg testified that she and Dr. Berg were in the licensed premises on July 7 aforesaid between 7:45 and about 10:15 p.m. and that during said period of time Funk was tending bar.

"Dorothy Spangler, Theodore Whitmyer and Jack L. Eckhardt, respectively the clerk, president and mayor of the Folsom Borough Council, testified that Mr. Holloway and the licensed business bore very good reputations.

"On rebuttal, John denied the statements attributed to him by Mrs. Sharp and reiterated that he purchased the beer at the licensed premises. Robert and John C. reaffirmed their direct testimony.

"This case presents a conflict between the testimony of the witnesses of the licensee and the principal witnesses for the Division. However, I find as a fact from the testimony of the minors that on July 7, 1962, John and Robert purchased the alcoholic beverages in question at the licensed premises. There is no claim nor any evidence that the minors had any motive to accuse the licensee unjustly nor can I conceive that they would conspire against the licensee. The testimony of John, corroborated by Robert and John C., remained unshaken notwithstanding the exhaustive cross examination to which he was subjected.

"After reviewing the evidence and the exhibits, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence, and I recommend that the licensee be found guilty as charged. Licensee has no prior adjudicated record. It is further recommended, therefore, that an order be entered suspending the license for fifteen days, the minimum penalty for the sale of alcoholic beverages to an 18-year-old minor. Re Seery, Bulletin 1478, Item 12; Re Lincoln Inn, Bulletin 1467, Item 2."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for the licensee pursuant to the provisions of Rule 6 of State Regulation No. 16.

I have given careful consideration to the evidence and exhibits herein, the Hearer's Report, and exceptions and written argument of counsel for the licensee in support thereof. Inconcur in the conclusions of the Hearer and adopt his recommendations. Hence I find the licensee guilty as charged.

Accordingly, it is, on this 4th day of February 1963,

ORDERED that plenary retail consumption license C-6, issued by the Borough Council of the Borough of Folsom to William J. Holloway, t/a Holloway's Casino, for premises on Black Horse Pike, No. of 12th Street, Folsom (Boro), be and the same is hereby suspended for fifteen (15) days, commencing at 7 a.m. Monday, February 11, 1963, and terminating at 7 a.m. Tuesday, February 26, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - COMBINATION
SALE - DISCOUNT - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

MARGARET E. PAPP and WALTER J. PAPP
t/a GARDEN LIQUOR AND DELICATESSEN
617 Somerset Street
Franklin Township (Somerset County)
PO Somerset, N. J.

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distribution
License D-1, issued by the Township
Committee of Franklin Township.

Licensees, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensees plead guilty to charges alleging that on January 19, 1963, they (1) sold a 4/5 quart bottle of rye whiskey and a 4/5 quart bottle of Scotch whisky at less than their total filed prices, in violation of Rule 5 of State Regulation No. 30, (2) thereby making a combination sale at a single aggregate price, in violation of Rule 19 of State Regulation No. 20, and (3) thus furnishing a discount in price, in violation of Rule 20 of State Regulation No. 20.

Although the licensees as individuals have no previous record of suspension, the license of Lindenwold Open House, Inc. for premises at White Horse Pike and Myrtle Avenue, Lindenwold, in which corporation they were then stockholders, was suspended by the Director for five days, effective September 16, 1957, for sale to a minor. Re Lindenwold Open House, Bulletin 1191, Item 10.

The prior record of dissimilar violation disregarded because occurring more than five years ago and considering that the second and third charges were merely safeguarding charges in support of the basic first charge of sale below filed price to cover contingencies of proof had the case gone to contested hearing, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re McManus, Bulletin 1482, Item 6.

Accordingly, it is, on this 4th day of February, 1963,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of Franklin Township, Somerset County, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. Monday, February 11, 1963, and terminating at 9:00 a.m. Saturday, February 16, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ROBERT D. EDWARDS)
t/a "ROCKAWAY HOTEL")
9 Wall Street)
Rockaway, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Rockaway.)

Licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, December 16, 1962, between 1:15 and 1:50 p.m., he sold one pint bottle of rye whiskey, 1 pint bottle of Scotch whisky and two six-packs of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Boyer, Bulletin 1486, Item 4.

Accordingly, it is, on this 11th day of February, 1963,

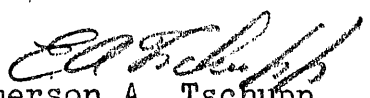
ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Rockaway to Robert D. Edwards, t/a "Rockaway Hotel", for premises 9 Wall Street, Rockaway, be and the same is hereby suspended for ten (10) days commencing at 2:00 a.m. Monday, February 18, 1963, and terminating at 2:00 a.m. Thursday, February 28, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED..

Reitman Industries
300 Frelinghuysen Avenue
Newark, N. J.

Application filed March 21, 1963 for Plenary Wholesale License.


Emerson A. Tschupp
Acting Director