

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

Mrs. Dora P. Rothschild

March 14, 1958

BULLETIN 1212

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New Jersey State Library

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY
(MAKING ARRANGEMENTS FOR ILLICIT SEXUAL INTERCOURSE) -
INDECENT DANCE - HOSTESSES - SALE DURING PROHIBITED HOURS
AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING
PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE
SUSPENDED FOR 210 DAYS.

In the Matter of Disciplinary)
Proceedings against)

FRANK ROSANO)
T/a BELVEDERE INN)
Conklintown Road)
Wanaque, PO Midvale, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-18, issued by the)
Borough Council of the Borough of)
Wanaque.)

George S. Grabow, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

'1. On the night of Thursday, August 8, 1957
and during the early morning of Friday, August 9, 1957,
you allowed, permitted and suffered in and upon your
licensed premises lewdness and immoral activity; in
that you offered to procure and procured for a male
patron a female for the purpose of prostitution and
illicit sexual intercourse and acts of perverted sexual
relations; you allowed, permitted and suffered the mak-
ing of arrangements for such prostitution, illicit
sexual intercourse and acts of perverted sexual rela-
tions and you made such arrangements; in violation of
rule 5 of State Regulation No. 20.

'2. On Friday, August 9, 1957, you allowed, per-
mitted and suffered in and upon your licensed premises
foul, filthy and obscene conduct in that you allowed,
permitted and suffered a female to perform a dance in
and upon your licensed premises in a lewd, indecent and
immoral manner; in violation of Rule 5 of State Regula-
tion No. 20.

'3. On Friday, August 9, 1957, you allowed, permit-
ted and suffered a female employed upon your licensed
premises to accept beverages at the expense of or as a
gift from customers and patrons in and upon your licensed
premises; in violation of Rule 22 of State Regulation
No. 20.

'4. On Friday, August 9, 1957 between the hours of
3:00 a.m. and 7:00 a.m., you sold, served and delivered
and allowed, permitted and suffered the sale, service and
delivery of alcoholic beverages and allowed the consumption
of alcoholic beverages on your licensed premises and failed

to have your entire licensed premises closed; in violation of Section 8 of an Ordinance adopted by the Mayor and Council of the Borough of Wanaque on May 5, 1937, as amended by Ordinance adopted on April 3, 1940.'

"Two ABC agents (hereinafter referred to as Agent P and Agent F) participated in the investigation pertaining to the aforesaid charges.

"The testimony of Agent P discloses that at 10:00 p.m. on August 8, 1957 he and Agent F entered defendant's licensed premises; that they ordered drinks from the defendant who was tending bar; that after service of the drinks defendant engaged in conversation with them and a short time thereafter as a blond female (hereafter referred to as June) walked toward the juke box the defendant remarked 'Not bad, huh?' to which remark Agent P said 'Not bad at all'; that Agent P asked if there was 'a chance of getting fixed up' to which defendant replied 'Stick around. Take your time. I'll fix you up'; that Agent P then said 'I have too much to lose. I don't want to have any trouble' and the defendant stated 'Don't worry. I know the score'; that Agent P asked the defendant if June could also fix up his friend and the defendant answered 'She can take care of you two and fifty more in a night'; that Agent P inquired what June charged and the defendant said 'twenty dollars' and that she would take them upstairs to the room she occupied in the premises; that defendant called June and introduced the agents to her and she then ordered a drink from the defendant and Agent P made payment therefor; that during the following hour June divided her time between the agents and other companions she knew in the barroom, consuming several drinks at the expense of the agents; that about 1:00 a.m. Agent F left the licensed premises and a half hour thereafter the defendant, after dancing with June, came over to where Agent P was seated and said 'All right, it is all taken care of. She will fix you up just as soon as she gets rid of those stiff's at the end of the bar'; that a short time later at the request of the defendant June was helped by the defendant to the top of the bar where she engaged in a dance which Agent P described 'she swayed her hips from side to side -- that is from left to right -- and got into a crouched position and moved her hips forward and to the rear, throwing bumps and grinds'; that at the completion of her dance, June came down from the bar and approached Agent P with whom she engaged in conversation regarding having sexual relations; that when June went to her other friends at the bar, the defendant came over to Agent P and after discussing June the agent inquired if June would engage in unnatural sexual acts and the defendant stated that some time previous he introduced June to a friend of his and 'the guy really flipped over her, that is how good she was'; that at about 2:30 a.m. the defendant called to June and told her she had to be going upstairs and, shortly thereafter, she proceeded up the stairs; that at 2:45 a.m. Agent F returned to the premises and, as a result of a conversation with Agent P, the defendant went upstairs and, shortly thereafter, returned and advised Agent P that June would be down in a few minutes; that about five minutes thereafter, defendant excused himself and stated that he would go up and get June at which time Agent P followed him upstairs and, at defendant's suggestion, Agent P waited at the top of the stairs; that defendant walked to a room on the second floor, 'opened the door and put the light on and called for June to come downstairs'; that he and defendant descended the stairs and at 3:00 a.m., at the defendant's suggestion, sat on a patio located at the back of the building; that Agent P asked defendant where he could go

with June and the defendant pointed to a building to the rear of the licensed premises and said 'when she comes down you can bring her to the bungalow there'; that at 3:15 a.m. he, Agent F and the defendant entered the barroom and were served drinks of alcoholic beverages by the defendant; that while seated at the bar June entered the barroom and the defendant called to her and said 'June, I want you to take Phil (Agent P) in the bungalow and fix him up...'; that he (Agent P) walked outside with June and she 'jumped up into my arms'; that as Agent P stood there, June told the defendant to go upstairs and make sure her boy friend wasn't watching and if everything was all right, the defendant should 'put the light on in the bathroom'; that a few minutes later a light flashed on in an upstairs room and June then said 'Let us go. That is the bungalow'; that as he (Agent P) and June entered the bungalow, he handed her three bills (a ten dollar bill and two five dollars bills) the serial numbers of which had previously been recorded; that June placed the money in the pocket of the pedal pushers which she was wearing at the time; that she then removed her pedal pushers and her blouse; that shortly thereafter the door to the bungalow opened and a local police officer and Agent F, followed by the defendant, walked into the building and June exclaimed to the defendant 'Frank, what have you done to me?'

"It was stipulated by the attorneys for the respective parties in this matter that, with the exception of any testimony given by Agent P on direct examination with reference to what occurred between 1:00 a.m. and 2:45 a.m. on the morning in question when Agent F was not in defendant's premises, the rest of the direct testimony of Agent F will be considered to be substantially similar for the purpose of the proceeding. Furthermore, the cross-examination of Agent F by the attorney for the defendant, in essence, corroborated the fact that the defendant participated in the arrangement, pertaining to the price charged and place wherein illicit sexual relations by June and Agent P could be committed. Agent F testified that he and Police Captain Montanye, who had been waiting in his (Agent F's) car which was parked alongside of the bungalow, walked over to the defendant and he (Agent F) identified himself and the three proceeded to the bungalow; that he (Agent F) opened the door and in response to Agent P's question advised him who he was; that June and Agent P were seated on a divan and June had a garment on the top part of her body but the bottom part was exposed; that June started to cry and then began to dress and as she came out of the bungalow said to the defendant 'Frank, what did you do to me? What did you get me into?'

"Defendant testified that when the agents came into the premises on the evening in question he engaged in conversation about a girl named Betty who Agent P claimed he knew; that after discussing the licensed premises Agent P treated the defendant to a drink and then inquired 'who is the little blond?' and he told him 'That is Junie. She is a nice kid. That is her boy friend she is sitting with'; that he called June over and introduced her to the agents and when she returned to her friends, Agent P asked him 'Could I score with the little blond?'; that he told Agent P 'I don't know. She is a nice kid. Talk to her on your own -- you know -- if you can score that will be your business'; that Agent P asked if he 'scored' with June could he go upstairs to a room and the defendant said 'No, I don't rent rooms because I don't want to get in trouble. I want to get rid of this place and get back to what I know what to do'; that when Agent P asked what

he should give June if he 'scored' with her the defendant replied 'What are you asking me for?'; that later June danced on the top of the bar which dance was not obscene in his opinion; that about 11:30 or 12:00 o'clock Agent F and Betty left the tavern and when they returned Agent F ordered a drink and when he served it, the defendant asked for the time and Agent F said 'It is five to three'; that prior to that time he went upstairs and asked June to come down as Agent P wanted to see her; that he and Agent P sat outside and talked over personal problems when June came down and that he (defendant) went upstairs to wash and when he came down Agent F, accompanied by Police Captain Montanye, walked from his (Agent F's) car and identified himself as an ABC agent; that they walked to the bungalow and no sooner was the door opened June came out crying and ran to him (the defendant) and said 'Frank, what did you do to me?'; that when asked by defendant's attorney 'How long a time elapsed from the time Captain Montanye opened the door until they both walked out' the defendant said 'Oh, I don't think it was two minutes' but when his attorney asked 'Was it two minutes before they walked out or did they come right out?' the defendant answered 'They came right out'; that 'June ran over to him and said "what happened"?'; that they then left for the police headquarters at Agent P's direction; that he asked June what occurred in the bungalow and she told him that Agent P invited her to the bungalow saying that he was thinking of buying the establishment and that he placed money in the pocket of her slacks and when she inquired 'What for?' Agent P said 'You know what for'; that he (the defendant) did not use the expression that he would 'fix' it for Agent P with June nor did he make any arrangements to have June engage in illicit sexual relations or unnatural sexual acts with Agent P; that June was not employed by him but occupied a room in the premises as did the fellow with whom she kept company; that he was paid the rent for the room 'in part'; that he did not serve any drinks to anyone after 3:00 a.m. On cross-examination defendant stated that he did not know what June did for a livelihood but admitted that she occasionally helped clean the place and watched the premises so that nobody entered the barroom; that when he and Agent P were discussing personal problems he remembered the agent remarking that he did not want any trouble as he had too much to lose but it was not in reference to June; that he did not check with the time on any watch or clock during the evening and morning in question.

"A report made by Captain Montanye about the occurrences pertinent to the matter now under consideration on the morning of August 9, 1957 (admitted as an exhibit in evidence by consent of the attorneys representing the respective parties) discloses that at 3:10 a.m. Agent F came to the car which Captain Montanye occupied and both went to where the defendant was seated in front of the entrance to the barroom and, after Agent F identified himself to the defendant and asked where Agent P was, Agent F and Captain Montanye went to a bungalow on the opposite side of the driveway from the tavern, entered the bungalow and, when Agent P responded to Agent F's question as to where he was, they 'walked into another room and someone lit a match. I could see a man, fully clothed, and a girl who was naked from the waist down, sitting on a divan or day-bed. The girl got up and put on a pair of slacks'; that they went outside and the girl, at the request of Agent P, handed him (Captain Montanye) some folded bills (two five and one ten dollar bills) and after he (Captain Montanye) made a note of the serial numbers he returned the money to the agent.

"I have carefully examined the evidence presented in the instant case and am satisfied that the testimony of the two agents as to what occurred at the time in question rings true. The defendant admits introducing June to the agents, and after June had gone upstairs he asked her to come down as Agent P wanted to see her; furthermore that she lived in a room on the second floor of the premises rented for her by her boy friend who also rented a room on the second floor of the premises; that when June came out of the bungalow after Agent F and the police captain entered the first thing she said to him was 'Frank, what did you do to me?'. Taking into consideration the testimony of the agents, the report of Captain Montanye and the admission of the defendant as recited herein, there is no doubt that the defendant is guilty of the charges preferred herein. The evidence of the agents disclosed that defendant not only procured June for Agent P for the purpose of engaging in illicit sexual intercourse and directed that she accompany Agent P to the rear bungalow but quoted the price to be charged by June for such illicit relationship.

"The attorney for the defendant in a memorandum filed herein contends that the agents were guilty of entrapment. The testimony of the agents discloses that defendant was a willing party to the entire transaction to have June and Agent P engage in illicit relations. Such contention is without merit.

"The privilege of selling alcoholic beverages at retail to the public, one granted to the few and denied to the many (Paul v. Gloucester, 50 N.J.L. 585) must be exercised in the public interest. There can be no question that such practices as herein disclosed must not be permitted to exist on licensed premises. Re Sengebush, Bulletin 311, Item 8, and cases cited. The operator of a liquor licensed business is charged with the responsibility of operating the business in a proper manner. His interest, financial or otherwise, cannot prevail over public interest. Grant Lunch Corp. v. Driscoll, 130 N.J.L. 554. These violations, considering their nature and number, disclose a most deplorable condition. From the full record it is obvious that this defendant has not only shown a callous disregard for both state and local regulations, but has demonstrated a shocking lack of appreciation for and understanding of fundamental decencies and proprieties in the operation of the licensed business.

"Under the circumstances and based on the believable testimony, I recommend that defendant be found guilty of the charges preferred in this case. The defendant's attorney, in attempted mitigation of penalty if the defendant be adjudged guilty of the charges preferred herein, especially with reference to Charge 1, cites cases wherein a suspension was imposed rather than a revocation of the license. However, an examination of the cases cited does not reveal such a shocking disregard for decency as that shown herein. I therefore recommend that the defendant's license be revoked in this case. Re Pecorino, Bulletin 889, Item 4."

Written exceptions to the Hearer's Report having been filed by the attorney for defendant, I, on my own motion, decided to hear oral argument and said oral argument was heard by me on January 20, 1958. The attorney for defendant pleaded particularly for mitigation of the penalty, should I sustain the Hearer in his findings of fact.

At the outset, I find that the facts appearing in the record amply justify a finding of guilt by the Hearer and his

recommended penalty of revocation. Now as to the mitigating circumstances advanced by defendant's attorney. It is represented that the mother of the licensee loaned him her life's savings of \$20,000.00 to enable him to obtain a transfer of the license and to purchase the licensed building, and that he contributed his total resources towards the balance of the purchase price. It is further represented that the licensee was a well-known golf professional for many years and that he gave up that line of business to enter the liquor industry because he was suffering from a back ailment; that he had been in business only four months before the violation and has voluntarily closed the premises since the violation occurred; that he desires to resume his former occupation and intends never to become interested again in the liquor industry. It is requested that the licensee may be granted an opportunity to consent to a transfer of the license and to sell the licensed building so that his mother's funds will not be lost.

I am persuaded by the attorney's argument to show some leniency under the circumstances not because the conduct of the licensee can be condoned but primarily because of loss to an innocent party, his mother, and because of the short period of time he was engaged in the liquor business, although the latter fact would not, standing alone, entitle licensee to any consideration.

I am, therefore, affirming the Hearer's Report to the extent that he recommends a finding of guilt. I, therefore, find defendant guilty as charged. Under the circumstances I shall suspend defendant's license for two hundred ten (210) days, with the proviso that he consents to the transfer of the license to a bona fide purchaser sufficiently in advance of the expiration date of the license to enable the local issuing authority to consider an application for transfer by the proposed purchaser before the license expires on June 30, 1958. If the license is thus transferred before its expiration, the transferee will take the license subject to the suspension imposed herein and any resolution of the local issuing authority renewing said license for the licensing year commencing July 1, 1958, shall contain the express condition that the renewed license shall be under suspension until September 15, 1958.

Accordingly, it is, on this 10th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Wanaque to Frank Rosano, t/a Belvedere Inn, for premises on Conklintown Road, Wanaque, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. February 17, 1958; and it is further

ORDERED that, if any renewal of this license be issued for the 1958-59 licensing year to a transferee thereof, such license shall be under suspension until 3:00 a.m. September 15, 1958.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF
STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED
FOR 60 DAYS.

In the Matter of Disciplinary
Proceedings against

HAMPS, INC.
t/a HAMPTON INN
1718 Springwood Avenue
Neptune Township
PO Neptune, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-12, issued by the
Township Committee of the Township
of Neptune.

Joseph N. Dempsey, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On Saturday, August 24, 1957, at about 12:20 a.m.,
you allowed, permitted and suffered the removal of
alcoholic beverages, viz., six 12-ounce cans of Krueger
beer, in their original containers from your licensed
premises; in violation of Rule 1 of State Regulation
No. 38.'

"The testimony of two ABC agents discloses that at
about 12:20 a.m. on Saturday, August 24, 1957, while seated in
an automobile parked across the street from defendant's licensed
premises, they observed through a screen door a man enter the
premises (which were well lighted at the time) and approach a
counter or bar; that another man came behind the counter, opened
the top door of a refrigerator, made several motions or gestures
from the refrigerator to the bar and thereafter placed objects
in a brown paper bag; that within a few seconds the man who had
been seen entering defendant's licensed premises without any-
thing in his arms emerged therefrom carrying a paper bag and
proceeded toward a parked car; that the agents immediately
approached the man, identified themselves to him and asked to be
shown what the bag contained; that at first the man did not
respond but finally permitted the agents to inspect the bag
which contained six 12-ounce cans of Krueger beer; that the
agents felt the respective cans of beer and found them to be
ice cold and wet; that, when the agents requested the man to
accompany them into the defendant's licensed premises, a third
person standing nearby said that he did not have to go with
them and, with this, the man then walked away; that another man
(subsequently identified as Simon Weber, an officer of defendant
corporate-licensee) whom the agents identified as the person
making the sale of beer, came out on the stone steps of the
premises and asked the agents what was going on; that, when
informed by the agents concerning the matter, he said he had
never before seen the man at any time; that the agents and
Weber then went into the premises and, pursuant to their
request, Weber opened the top door of the refrigerator and the
agents found the compartment to be well stocked with cans of
Krueger beer; that thereafter the man who had purchased the

beer came into the premises but, when questioned, was told by Weber that he didn't have to answer any questions; that, when the local police responded to a telephone call by one of the agents, one of the police officers obtained the information for the agents that the name of the man who had come out of the licensed premises with the beer was John Bray.

"Simon Weber, aforementioned, testified that he did not sell any beer to Bray on the morning in question. He identified various pages taken from a loose-leaf book which he explained contained the record of sales by the defendant of alcoholic beverages for off-premises consumption on August 23 and 24, 1957; that he also identified three photographs of the licensed premises taken a few days before the hearing herein and, using the photographs as a guide, testified that he had made a test at night from the place where the agents claimed to be seated in their car and that he could see the righthand side of the package goods section inside the premises but not the refrigerator; that, when interviewed by the agents at the time in question, he opened the door of the refrigerator wherein the cans of Krueger beer were kept and the section was completely full. He also denied that he advised Bray it was not necessary for him to answer any questions which the agents asked of him.

"Bray testified that he and James Hall lived together; that at about 8:00 p.m. on August 23, 1957, Walter Alexander was at their home and that the three were watching television; that Hall left the apartment about a quarter-to-nine and, about fifteen minutes thereafter, Alexander left; that, when the latter person left, he said he was going to get some beer; that at 11:30 p.m. he left his home and stopped at a tavern some distance away in an effort to find his friends; that neither of his friends was in this tavern so, after drinking a 'couple of beers', he left and proceeded towards defendant's licensed premises; that, as he approached the immediate vicinity of defendant's premises, he saw Alexander's car parked on the street and, upon inspecting the inside thereof, found a paper bag containing beer; that he took the package from the car and went into the defendant's licensed premises where he saw Alexander and the latter ordered him to put the beer back in the car; that, as he proceeded from the premises, the ABC agents snatched the bag from him; that he walked away but, a short time thereafter, returned to defendant's licensed premises; that he was interrogated by the agents, at which time his friends (Alexander and Hall) had already left the establishment; that he denied to the agents that he had purchased the cans of beer in defendant's licensed premises.

"Alexander corroborated the testimony of Bray about being in the home of Bray and Hall on the early evening of August 23rd and, about 9:00 p.m., leaving their residence from which he went directly to defendant's liquor establishment; that, before 10:00 p.m., he purchased the six cans of beer and, as he was bringing the beer to his car, he met Hall; that he and Hall went into defendant's premises, remaining until about closing time; that, at about 12 midnight, Bray came into the establishment carrying the bag containing the six cans of beer which he (Alexander) had purchased earlier in the evening, and that he thereafter directed Bray to put the cans back into his car.

"Hall corroborated the testimony of Alexander as to being with him and Bray during the early part of the evening on August 23rd and thereafter meeting Alexander carrying a package of beer near defendant's licensed premises; that, after Alexander put the package containing the beer in his car, they

entered defendant's premises; that, when Bram came into the place with the paper bag containing the six cans of beer, he heard Alexander order Bray to put the beer back in the car; that he did not see Bray in the establishment when he was being interrogated by the ABC agents.

"Moore (bartender employed by defendant-licensee) testified that Alexander had purchased the beer around 9:30 p.m. on the evening of August 23rd; that he recalled the agents being in the premises because one of them inquired as to his name and address; that he saw them talking to Weber, but that he did not hear the conversation.

"Jean Schoolfield (employed by the defendant) testified that on the morning of August 24th one of the agents pointed to her, which prompted her to ask Weber why the agent had pointed to her, because she had been continuously at the other end of the bar. In rebuttal, the agent denied that he had pointed to Jean Schoolfield as the person who made the sale.

"I have carefully examined the testimony of all the witnesses in this case. An inspection of the business records submitted by the defendant with respect to sales made on August 23 and 24, 1957 fails to support defendant's contention that the alleged sale could not have been made on the day in question. I am satisfied that the testimony of the agents described accurately the events that occurred at the time in question. The agents' testimony concerning the entry of Bray into the licensed premises, the actions of Weber with reference to the refrigerator and the emergence of Bray with the paper bag containing six cans of Krueger beer indicate without doubt that the beer was purchased by Bray from Weber. The cans of beer, according to the testimony of the agents, were ice cold and wet at the time when Bray was apprehended while leaving the premises. This most certainly would not have been the case were I to accept the testimony of defendant's witnesses that the cans of beer were in the car for a period of approximately three hours on a night in August. Another thing that shows a conflict in the testimony of Bray, on the one hand, and Alexander and Hall, on the other, was Bray's testimony that, when he returned to defendant's premises, his two friends (Alexander and Hall) had already gone. However, both Alexander and Hall testified that they remained in the licensed premises until closing time and did not see or hear Bray being questioned by the ABC agents. It is apparent from all of the evidence adduced herein that the cans of beer were delivered to Bray by Weber when Bray went into the premises a short time after midnight, and that Bray was in the process of taking them out when the agents stopped him. Under the circumstances, I am satisfied that the Division has proven its case by the preponderance of the believable evidence and, therefore, recommend that the defendant be found guilty of the charge preferred herein.

"Defendant has a prior adjudicated record. Effective January 7, 1957, and June 3, 1957, its license was suspended for a period of five days and twenty-five days, respectively, by the local issuing authority for violations similar to that committed herein. Hence the present violation is a third similar violation within a period of one year. I recommend that defendant's license be suspended for sixty days. Cf. Re Woodlawn Bar & Grill, Inc., Bulletin 1060, Item 2."

Written exceptions to the Hearer's Report and argument in support thereof were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of testimony, the Hearer's Report, the exceptions thereto and written argument of defendant's attorney, I concur in the findings and conclusions of the Hearer and shall adopt his recommendation. Hence I find defendant guilty as charged, and shall suspend its license for sixty days.

Accordingly, it is, on this 6th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Neptune to Hamps, Inc., t/a Hampton Inn, for premises 1718 Springwood Avenue, Neptune Township, be and the same is hereby suspended for sixty (60) days, commencing at 7:00 a.m. February 17, 1958, and terminating at 7:00 a.m. April 18, 1958.

WILLIAM HOWE DAVIS
Director.

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL SALE - ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on)
September 22, 1957 of three pints)
of wine, a Ford sedan and \$14.05)
in cash at or near the intersection)
of Beech and Mulberry Streets, in)
the City of Newark, County of Essex)
and State of New Jersey.)

Case No. 9576

ON HEARING
CONCLUSIONS AND ORDER

Anthony C. Blasi, Esq., Attorney for Attelia McAllister (also known as Annie Attelia Elliot).

County Bank and Trust Company, by Anthony R. Manfreda, Administrative Assistant.

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

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$14.05 in cash, and a Ford sedan, described in a schedule attached hereto, seized on September 22, 1957 at or near the intersection of Beech and Mulberry Streets, Newark, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, Attelia McAllister, the registered owner of the Ford sedan, appeared and sought its return. An appearance was also entered on behalf of County Bank and Trust Company, which sought recognition of its alleged lien on such motor vehicle. It was stipulated by Attelia McAllister that if such lien is recognized, her request for return of the motor vehicle shall be considered withdrawn.

The substance of testimony of ABC agents is as follows:

On the above date and location they observed a number of men gathered around the parked Ford sedan, and one of the agents observed Wilbur Elliot remove two pint bottles of wine from the car, while his wife, Attelia McAllister Elliot was seated therein,

hand the bottles to two men, and receive money from them in exchange. Attelia then left the car, and Wilbur obtained two more bottles of wine from the car, and placed the wine in his pocket. Two other men approached him, and he handed one of these men a bottle of wine in exchange for money. The agent then walked to the car, and asked Wilbur for a bottle of wine. After hesitating a moment, Elliot took a bottle of wine from his pocket, handed the bottle to the agent, who gave him a \$1.00 bill (identified by serial number), and received twenty-five cents in change.

Upon completing his purchase, the agent signalled to his fellow agent, who joined him, and both revealed their identity to Wilbur, who verbally admitted the various sales of wine, and produced his purse, which contained \$14.05, including the marked bill.

The agents seized two pints of wine which were in the motor vehicle, a pint of wine on Wilbur's person, the cash and the car.

Wilbur Elliot admitted at the hearing that he received payment for bottles of wine as stated by the agents, and in his previous signed sworn statement admitted that for about three weeks he made a practice of selling wine under similar circumstances. Attelia McAllister (Elliot) testified that she has been steadily employed for the past three years, and in essence, that she had no knowledge whatsoever of the sales of wine by her husband, Wilbur. To review and evaluate this testimony can serve no purpose, since the motor vehicle is to be returned to the bank, except to say that the evidence does not convincingly establish her lack of such knowledge.

Two of the pint bottles of wine were analyzed by the Division chemist who reports that it is wine fit for beverage purposes with an alcoholic content by volume of 20 per cent.

Wilbur Elliot did not hold any license authorizing him to sell alcoholic beverages and, in any event, it is unlawful, even for a licensee, to sell alcoholic beverages from a motor vehicle parked on the highway. Seizure Case No. 7145, Bulletin 783, Item 6. The seized wine is illicit because it was intended for unlawful sale. R. S. 33:1-1(i).

Such illicit wine and the motor vehicle in which it was 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.

County Bank and Trust Company presented in evidence a conditional sales contract dated July 19, 1955 signed by Attelia McAllister, assigned to the bank, and representing the sale to her of the Ford sedan in question with an unpaid balance due thereon after rebate for prepayment of \$849.28.

Before accepting the contract and extending credit to Attelia McAllister, the bank received information that she was employed by a laundry; earned \$48.00 a week, in addition to an income of \$40.00 per week from real estate, was given the address of her previous employer, and the address where she resided in Newark and that she had been the owner of such premises for 17 years, and was furnished with two business references.

The person who approved the loan for the bank testified that the personnel of the bank verified that the employment was correct, that her payments on the mortgage on her house were paid on time, and received a report from an independent credit

bureau that its records were clear respecting the applicant, and that, on such basis, and the additional signature of her son, he approved the loan.

I am satisfied that the bank made an adequate independent investigation of Attelia McAllister's background and source of income, and acted in good faith and did not know or have any reason to suspect that such vehicle would be used in unlawful alcoholic beverage activities. Consequently, I shall recognize the lien of the bank to the extent of \$849.28.

It appears that the amount of the lien and the costs of seizure and storage of the motor vehicle exceed the appraised value of such vehicle. The motor vehicle will therefore be turned over the bank upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 27th day of January, 1958, County Bank and Trust Company pays the costs incurred in the seizure and storage of the Ford sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" and the sum of \$14.05 in cash, 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: January 16, 1958.

SCHEDULE "A"

- 3 - pints of sherry wine
- 1 - Ford sedan, Serial No. U58T171142,
New Jersey Registration EO-1B3.
\$14.05 in cash

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN ROAD STAND -
STOCK OF ALCOHOLIC BEVERAGES AND EQUIPMENT ORDERED FORFEITED.

In the Matter of the Seizure on)
August 24, 1957 of a quantity of)
alcoholic beverages, \$23.18 in)
cash and various fixtures, and)
furnishings at Sam Brown's Road)
Stand, Lakewood-Trenton Road,)
Township of Millstone, County of)
Monmouth and State of New Jersey.)
-----)

Case No. 9554

ON HEARING
CONCLUSIONS AND ORDER

Henry Kaplan, Esq., Attorney for Ella Louise Brown.
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, \$23.18 in cash, and various fixtures and furnishings, described in a schedule attached hereto, seized on August 24, 1957 at a road stand known as the "Cool Spot" located on the Lakewood-Trenton Road, Millstone Township, New Jersey, constitute unlawful property and should be forfeited.

"Ella Louise Brown appeared at such hearing and sought return of the seized property.

"Two ABC agents testified in substance as follows:

"They were at the premises on August 10, 1957 at about 11:15 p.m. They described the stand as a one-story, two-room structure, with a music machine, cigarette vending machine, tables and chairs in the dining area and a kitchen in which there was a stove, refrigerator, soda cooler, cash register, table and kitchen utensils. A parking lot adjoins the stand. They observed various persons on the parking lot eating sandwiches and drinking beer and soda. The agents entered the stand and purchased sandwiches and two cans of beer from Ella Brown. A number of other persons were there whom the agents observed drinking beer purchased by them from Ella Brown.

"These agents were again at the premises on August 17, 1957 at about 11:30 p.m. and each purchased a can of beer from Ella Brown. There were a number of persons in the dining area, whom the agents observed drinking beer purchased by them from Ella Brown.

"The last visit by the agents was on August 24, 1957 at about 9:30 p.m. One of the agents purchased a can of beer from a woman who left the premises before her identity was established. The other agent purchased two cans of beer from a waitress later identified as Lera Robinson, and paid her with a dollar bill identified by serial number, which she placed in the cash register. The agents observed other persons drinking beer purchased by them from Lera Robinson and the other woman.

"At about 10:00 p.m., other ABC agents entered the place by pre-arrangement and disclosed their identity. One of these agents testified that they were informed by the agent in the premises of the sale of beer to them, and the deposit of the purchase price in the cash register, whereupon they checked the

register and found therein \$23.18, including the marked one dollar bill; that Ella Brown, who was present, told him that she operated the stand; denied that beer was sold in the premises and claimed that a party was going on and people bringing their own beer; that the agents seized a pint bottle and a gallon bottle containing wine, which were in the kitchen; the furnishings and equipment in the dining area and kitchen; and two cases of beer found in a motor vehicle owned by Ella Brown, which vehicle was on the parking lot a few feet from the stand. There were empty beer cans in and outside the premises. It was stipulated that another agent would testify to like effect.

"It was also stipulated that none of the persons involved held a license to sell alcoholic beverages, and that the premises were not licensed for that purpose.

"The defense presented to forfeiture is an outright denial by Ella Brown and Lera Robinson that they sold beer to the ABC agents or to any other persons. Ella Brown testified that she is employed as a domestic and in addition has operated the establishment for about 3 years, and that her husband picks up odd jobs. She claims that the seized wine belongs to her porter, on the ingenious explanation that she purchased it, and gave it, presumably drink by drink, to such porter in lieu of wages. She asserts that the two cases of beer seized were that day purchased by her sister, and given to Ella for use at a proposed picnic elsewhere.

"This explanation must be evaluated in the light of her testimony concerning the practice covering consumption of beer at her premises. She states that she permits persons visiting her place to bring beer and drink it on her parking lot, but not in her stand; that 'I have beer sometimes I give them, but I don't sell them any beer'. On the night of the seizure, she observed that the agents each held a can of beer, but claimed that she had not seen them previous to that date.

"Lera Robinson testified that she had been employed by Ella Brown weekends for about two months to serve food and soda; that on the night of August 24th she was accused of selling beer to the agents but denied that such was the fact, or she received any money in payment therefor, although she admitted that she observed the agents each with a can of beer in his possession; that she did not see other persons drinking beer or any empty beer cans about the place, but that sometimes people bring in beer to the dining area and drink it there.

"Four persons who say they patronize Ella Brown's establishment testified on her behalf. All of these persons stated that they were at the premises on August 24th. One of these persons saw one of the agents, who entered after he did, with an open can of beer at a table; but the witness did not buy any beer nor see anyone else buy beer at that or any other time; that sometimes he and others brought beer but do not bring it in the stand because Mrs. Brown does not allow them to do so; that he has food inside and drinks beer in his car; and that Lera Robinson was the waitress at the time and there was another girl there, but he could not tell whether she was working there or not.

"Another one of these persons testified that he was not served with beer and did not see any other person served with beer that night, although he observed that the agents had beer, but did not know where they obtained it, and that it was the first time he saw anybody in the place with beer; that he is

one of a number of migrant workers who are employed in the neighborhood; that Mrs. Brown's is the only establishment where they can obtain food and drink in such neighborhood; that the next nearest establishment of that nature being distant about twenty-three miles.

"The two other persons, who left the premises before the agents arrived, testified to the general effect that they never observed any alcoholic beverages sold or served in the premises. One of these persons, who is the son of Mrs. Brown, is employed there on weekends, states that at a few times he observed persons drinking alcoholic beverages inside the stand, and he would make them go out; that the majority of the customers are migrant workers.

"Without attempting a detailed review of the evidence, it is my opinion that the background of the establishment, and the logical inferences therefrom lend support, by the preponderance of the evidence, to a finding that the agents' account of their purchase of beer on the various occasions is accurate and deserves acceptance.

"The unlawful sale of beer on August 24th justifies the inference that the two cases of beer seized in Ella Brown's nearby car was intended for like unlawful sale and are therefore illicit alcoholic beverages. R. S. 33:1-1(i). Such illicit alcoholic beverages, and all other personal property seized therewith on the premises, 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.

"I recommend that all of the seized property should be ordered forfeited."

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

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

Accordingly, it is, on this 27th day of January, 1958,

DETERMINED and ORDERED that the seized alcoholic beverages and the \$23.18 in cash, described in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

SCHEDULE "A"

- 2 - bottles of wine
- 48 - cans of beer
- 1 - AMI music machine and currency therein
- 1 - cigarette vending machine and
currency therein
- 1 - electric fan
- 2 - wooden tables
- 5 - wooden chairs
- \$23.18 in cash

5. APPELLATE DECISIONS - EDISON PACKAGE LIQUOR STORE, INC. v. EDISON TOWNSHIP (APPEAL DISMISSED).

EDISON PACKAGE LIQUOR STORE,)
INC.,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
TOWNSHIP OF EDISON,)Respondent.)
-----)ON APPEAL
O R D E RMelko, Goldsmith & Pollack, Esqs., by George B. Pollack, Esq.,
Attorneys for Appellant.

Christian J. Jorgensen, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The above appeal was taken from the action of respondent whereby it denied an application for the transfer of License D-3 from Frank S. Miklosey, t/a Edison Liquors and Superette, to appellant and from premises at Route #27 and Sutton Lane to premises at 1907 Lincoln Highway.

Prior to the hearing herein a stipulation of dismissal, signed by the attorneys for both parties, was filed with me. No reason appearing to the contrary,

It is, on this 17th day of February, 1958,

ORDERED that the above appeal be and the same is hereby dismissed.


DIRECTOR.