

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

Mr. Gossweiler

BULLETIN 1316

January 7, 1960

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

January 7, 1960

BULLETIN 1316

- L. STATE REGULATION NO. 30 - AMENDMENT PREVIOUSLY STAYED BY COURT (1279-1) REINSTATED WITH FURTHER AMENDMENT, EFFECTIVE MARCH 21, 1960 - AMENDMENT CONSTRUED.

December 15, 1959

TO ALL MANUFACTURERS, WHOLESALERS, AND RETAILERS:

On March 16, 1959, State Regulation No. 30 was amended, effective April 1, 1959, to require the filing of minimum consumer resale prices for private label and exclusive brand alcoholic beverages.

Thereafter, a suit was filed in the New Jersey Superior Court, Appellate Division, to test the validity of that amendment and, pursuant to an order entered May 28, 1959 staying the operation of the amendment pending final disposition of the proceedings, the regulation as it existed immediately prior to April 1, 1959 was reinstated.

The suit has been terminated and the amendment to the regulation, together with several additional amendments, has been repromulgated, effective March 21, 1960.

While the principal change consists of the provisions requiring the filing of schedules of minimum consumer resale prices and labels for private label brands owned by a retailer and exclusive brands owned by a manufacturer or wholesaler and offered for sale or sold by such manufacturer or wholesaler exclusively to one New Jersey retailer, there are some provisions, especially Rules 1 and 3, which affect manufacturers and wholesalers filing minimum consumer resale prices for brands of alcoholic beverages sold to more than one New Jersey retailers.

All manufacturers, wholesalers and retailers should read most carefully the entire text of the amended regulation.

PRIVATE LABEL BRANDS AND EXCLUSIVE BRANDS

With respect to private label brands and exclusive brands, attention is specially directed to the following:

1. On and after April 1, 1960, no private label brand or exclusive brand of any type of alcoholic beverage may be sold at wholesale or retail, unless a schedule of minimum consumer resale prices and specimen labels have been FILED with the Director on or before March 21, 1960. Thereafter, schedules of minimum consumer resale prices for such private label brands and exclusive brands shall be filed quarterly on the 20th day of June, September, December and March of each year to become effective on the 1st day of July, October, January and April of each year.

2. After April 1, 1960, minimum consumer resale prices for NEW private label brands or exclusive brands may be filed not later than the 20th day of any month to become effective on the 1st day of the following month for the balance of the then current quarter-annual period.

3. Schedules of minimum consumer resale prices for private label brands and exclusive brands will remain on file with the Director and a

copy of such schedule will be kept on the retail licensed premises during the period when such schedule is in effect available for inspection by the public and agents of this Division but will NOT be published in the Minimum Consumer Resale Price Pamphlet.

4. The schedules of minimum consumer resale prices for such private label brands and exclusive brands are to be filed by the manufacturer or wholesaler who owns such brand or by an authorized agent of the manufacturer or wholesaler, or, in the case of private label brands, by the manufacturer or wholesaler supplying such private label brand to the retailer or by any wholesaler having authority, in writing, from the retailer owning such private label brand, except where the brand is imported by the retailer under a special permit issued by the Director, in which case the retailer shall file the schedule.

5. New labels for a brand already filed must be filed with the Director forthwith.

6. Private label brands and exclusive brands other than malt alcoholic beverages may be price advertised as heretofore but must be stated to be such private label brand or exclusive brand. No retailer shall display upon the licensed premises or advertise, directly or indirectly, in any periodical, publication, circular, handbill or direct mailing piece, a price for any alcoholic beverage, including private label and exclusive brand alcoholic beverages, other than the price thereof filed with the Director. However, it is not the intentment of the amended regulation to prohibit sale of any brand of alcoholic beverage at a price higher than that filed with the Director.

7. No licensee shall sell or advertise for sale at retail, any private label brand or exclusive brand of alcoholic beverages, unless (1) the minimum consumer resale price thereof filed with the Director is contained in a schedule which shall be kept upon the retailer's licensed premises available for inspection by the public and by agents of the Director and (2) the retailer displays upon the licensed premises in such plain view as to be easily read by all persons visiting such premises, a sign, in letters not smaller than three-quarters (3/4) of an inch in height and one-half (1/2) inch in width, bearing the following legend:

"Pursuant to Rule 6(c) of State Regulation No. 30 of the Division of Alcoholic Beverage Control, a schedule of minimum consumer resale prices filed with said Division for all of our private label brands and exclusive brands of alcoholic beverages is maintained on these premises and is available for inspection by our patrons."

8. Instructions for filing prices and labels will be issued in the near future and, thereafter, will be sent quarterly to each filing manufacturer and wholesaler together with the notices and instructions for price filings for the Minimum Consumer Resale Price Pamphlet.

BRANDS SOLD TO MORE THAN ONE NEW JERSEY RETAILER

Manufacturers and wholesalers selling or offering for sale brands of alcoholic beverages to more than one New Jersey retailer shall continue to file schedules of minimum consumer resale prices as heretofore. However, a requirement for the filing of labels for such brands, heretofore required by ruling, has been incorporated in Rule 1.

The requirement that manufacturers and wholesalers whose minimum consumer resale price listings are included in the pamphlet shall be chargeable with the proportionate cost of the printing and mailing of the pamphlet so published and mailed has been continued, but Rule 3

has been amended to require such payment to be made within 60 days after the effective date of the prices listed in the pamphlet. Failure by any manufacturer or wholesaler to pay such proportionate cost shall be deemed cause for the Director's refusal to accept any further price listings from any such manufacturer or wholesaler while such proportionate cost remains unpaid.

No retailer shall display upon the licensed premises or advertise, directly or indirectly, in any periodical, publication, circular, handbill or direct mailing piece, a price for any alcoholic beverage, including brands of alcoholic beverages sold or offered for sale to more than one New Jersey retailer, other than the price thereof filed with the Director. However, it is not the intendment of the amended regulation to prohibit sale of any brand of alcoholic beverage at a price higher than that filed with the Director.

WILLIAM HOWE DAVIS
DIRECTOR

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STATE REGULATION NO. 30 is amended to read as follows:

STATE REGULATION NO. 30

Minimum Consumer Resale Prices of Alcoholic Beverages

Rule 1. No licensee shall sell or offer for sale or deliver, at wholesale or retail, any alcoholic beverage, including private label brands owned by a retailer and exclusive brands owned by a manufacturer or wholesaler and offered for sale or sold by such manufacturer or wholesaler exclusively to one New Jersey retailer, unless a schedule of minimum consumer resale prices and labels for each brand of alcoholic beverages shall first have been filed with the Director of the Division of Alcoholic Beverage Control for each quarter-annual period designated in Rule 3 hereof, by (1) the manufacturer or wholesaler who owns such brand, or (2) a wholesaler selling such brand who is appointed as exclusive agent by the brand owner for the purpose of filing such schedule, or (3) any wholesaler with the approval of the Director in the event that the owner of such brand does not file or is unable to file a schedule or designate an agent for such purposes, or (4), in the case of private label brands, by the manufacturer or wholesaler supplying such private label brand to the retailer or by any wholesaler having authority, in writing, from the retailer owning such private label brand, except where the alcoholic beverages are imported by the retailer under a special permit issued by the Director, in which case the retailer shall file the schedule of minimum consumer resale prices and the labels.

A schedule of minimum consumer resale prices required to be filed for malt alcoholic beverages shall be filed separately for each recognized trading area established by Rule 8 hereof where it is to be sold or offered for sale.

Manufacturers and wholesalers intending to sell private label brands or exclusive brands of alcoholic beverages to retailers shall accompany such filings with the name and address of the retailer to whom such alcoholic beverages are to be sold. Except for special cause shown, in writing, to the Director, no brand of alcoholic beverage which has been sold exclusively to one New Jersey retailer may be sold to any other New Jersey retailer or be listed for sale or sold to more than one New Jersey retailer unless the brand has not been delivered by the manufacturer or any wholesaler to such exclusive New Jersey retailer during a period of at least one year previously and no brand of alcoholic beverage which has been listed for sale or sold to more than one New Jersey

retailer may be listed for sale or sold to one New Jersey retailer exclusively unless the brand has not been delivered by the manufacturer or any wholesaler to another New Jersey retailer during a period of one year previously.

Rule 2. Schedules of minimum consumer resale prices required to be filed with the Director shall be filed in form to be prescribed by the Director.

Schedules of such prices for brands of alcoholic beverages to be sold or offered for sale to more than one New Jersey retailer shall be filed not later than the 20th day of February, May, August and November of each year, to become effective on and after the 1st day of the succeeding April, July, October and January of each year.

Schedules of such prices for brands of alcoholic beverages to be sold or offered for sale exclusively to one New Jersey retailer shall be filed not later than the 20th day of March, June, September and December of each year, to become effective on and after the 1st day of April, July, October and January of each year, but schedules of such prices for new brands to be so sold or offered for sale may be filed not later than the 20th day of any month to become effective on the 1st day of the following month. A true copy of all such schedules shall be kept upon the retailer's licensed premises during the period when such schedule is in effect available for inspection by the public and by agents of the Director.

Rule 3. Minimum Consumer Resale Price Lists shall be published quarter-annually by the Director, to become successively effective on and after the 1st day of January, April, July and October of each year, and shall list by type and brand name the minimum consumer resale prices of alcoholic beverages listed with the Director by manufacturers and wholesalers in accordance with Rule 1 hereof; provided, however, that nothing contained herein shall require the printing and publication of schedules of minimum consumer resale prices for any brand of alcoholic beverages offered for sale or sold by its manufacturer or wholesaler exclusively to one New Jersey retailer. The Minimum Consumer Resale Price Lists shall be printed in pamphlet form and mailed to all New Jersey retailers not later than three (3) business days before the effective date of such price lists. All manufacturers and wholesalers whose minimum consumer resale price listings are included in the pamphlet shall be chargeable with a proportionate cost of the printing and mailing of the pamphlet so published and mailed which shall be paid by such manufacturer or wholesaler within sixty (60) days after the effective date of the prices listed in the pamphlet. Failure by any manufacturer or wholesaler to pay such proportionate cost shall be deemed cause for the Director's refusal to accept any further price listings from such manufacturer or wholesaler while such proportionate cost remains unpaid.

Rule 4. The Director may, upon adequate cause appearing therefor, suspend or defer the foregoing provisions as to the time of filing minimum consumer resale price listings, time of publication of Minimum Consumer Resale Price Lists, and time of mailing to retailers, to permit changes in minimum consumer resale prices to take effect upon such shorter or longer notice as he may prescribe. Any Minimum Consumer Resale Price List and any minimum consumer resale price of a private label brand or exclusive brand then currently effective may be continued in effect after the scheduled publication date of the next succeeding Minimum Consumer Resale Price List or, in the case of private label brands and exclusive brands, after the scheduled effective date of the next succeeding minimum consumer resale price filing for such brands, by announcement of the Director upon his finding that an emergency exists.

Rule 5. No licensee shall sell or offer to sell at retail, directly or indirectly, any alcoholic beverage, the price of which has been filed with the Director at less than its filed price; provided, however, that a special permit so to do may be granted by the Director for special cause shown pursuant to Rule 7 hereof. In the case of malt alcoholic beverages, the prohibitions of this Rule shall apply to each of the trading areas established by Rule 8 hereof and the sale shall be deemed to have been made at the place of delivery.

Rule 6. (a) No licensee shall advertise, directly or indirectly, in any periodical, publication, circular, handbill or direct mailing piece, the retail price of any alcoholic beverage, other than malt alcoholic beverages, not listed in the then currently effective Minimum Consumer Resale Price List published by the Director; provided, however, that nothing herein contained shall prohibit such price advertising at the price filed with the Director, of a private label brand or exclusive brand of alcoholic beverage, other than malt alcoholic beverages, confined to, or owned, controlled or distributed by a single retailer, and stated to be such in the advertisement.

(b) No licensee shall advertise, directly or indirectly, in any periodical, publication, circular, handbill or direct mailing piece, the retail price of any malt alcoholic beverage whether or not listed in such Minimum Consumer Resale Price List.

(c) No licensee shall sell or advertise for sale at retail, any private label brand or exclusive brand of alcoholic beverages, unless (1) the minimum consumer resale price thereof filed with the Director is contained in a schedule which shall be kept upon the retailer's licensed premises available for inspection by the public and by agents of the Director and (2) the retailer displays upon the licensed premises in such plain view as to be easily read by all persons visiting such premises, a sign, in letters not smaller than three-quarters (3/4) of an inch in height and one-half (1/2) inch in width, bearing the following legend:

"Pursuant to Rule 6(c) of State Regulation No. 30 of the Division of Alcoholic Beverage Control, a schedule of minimum consumer resale prices filed with said Division for all of our private label brands and exclusive brands of alcoholic beverages is maintained on these premises and is available for inspection by our patrons."

(d) No retailer shall display upon the licensed premises or advertise, directly or indirectly, in any periodical, publication, circular, handbill or direct mailing piece, a price for any alcoholic beverage other than the price thereof filed with the Director.

Rule 7. Application by a licensee privileged to sell alcoholic beverages at retail for a special permit authorizing the sale of any particular item, the price of which has been filed with the Director as hereinabove required, at less than such filed price will be entertained by the Director in the following situations: (a) where the item was actually possessed by the licensee prior to the initial listing of the item in the Minimum Consumer Resale Price List or, in the case of private label brands and exclusive brands, where the item was actually possessed by the licensee prior to the initial filing with the Director; (b) where the licensee is actually and permanently closing out his stock for the purpose of completely discontinuing sale of such item; (c) where the item is damaged or deteriorated in quality and notice is given to the public thereof; and (d) where sale of the item is by an officer acting under order of any court.

Rule 8. The recognized trading areas for malt alcoholic beverages shall be known as Area A and Area B, respectively, and shall be as follows:

Area A consists of the counties of Bergen, Burlington (except the Township of Maple Shade), Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren.

Area B consists of the counties of Atlantic, Camden, Cape May, Cumberland, Gloucester, Salem and the Township of Maple Shade in the County of Burlington.

Promulgated Tuesday, December 15, 1959.

Effective Monday, March 21, 1960.

Filed with the Secretary of State (N.J.) Tuesday, December 15, 1959.

- 2. DISCIPLINARY PROCEEDINGS - RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE - CONTRACEPTIVES - SALE ON OTHER THAN LICENSED PREMISES - SALE IN VIOLATION OF REGULATION NO. 38 - LICENSE SUSPENDED FOR 205 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Salvatore & Grace Scavone
t/a Blue Heaven Inn
East side of U.S. Rt. #1
near East Ave.,
Edison Township, PO Rt. #2
Nixon, N. J.,

CONCLUSIONS
and
ORDER

Holders of Plenary Retail Consumption License C-21, issued by the Municipal Council of Edison Township.

Isadore J. Padula, Esq., Attorney for Defendant-licensees
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to the following charges:

- "1. On Friday, August 28 and Wednesday, September 2, 1959, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.
- "2. On Wednesday, September 2, 1959, you possessed prophylactics against venereal disease and contraceptives and contraceptive devices; in violation of Rule 9 of State Regulation No. 20.
- "3. On Wednesday, September 2, 1959, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license, as defined by R.S. 33:1-12(1), contrary to R.S. 33:1-26 and R.S. 33:1-1(w) in that you sold a drink of creme de menthe by the glass and a drink of whiskey by the glass for consumption other than on your licensed premises; in violation of R.S. 33:1-2.

"4. On Wednesday, September 2, 1959 at about 11:20 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., two bottles of Knickerbocker beer, at retail, in their original containers for consumption off your licensed premises, and allowed, permitted and suffered the removal of such alcoholic beverages from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

On Friday, August 28, 1959, at 1 p.m., ABC agents visited defendants' licensed premises and engaged in conversation with defendants during the course of which defendant Salvatore Scavone (hereinafter referred to as Sal) mentioned "We have cabins out back and everything" which could be rented for \$6. At 1:30 p.m. Sal left the premises and the agents continued their conversation with Grace Scavone, the other defendant (hereinafter referred to as Grace) and, upon stating that they were looking for a place to take a couple of girls, Grace informed them that no one would bother them in the cabins as it is "a real lover's lane back there." The agents inquired of Grace whether they needed baggage and if it were necessary for them to use their correct names, and she answered that no baggage was necessary and they should just sign "Mr. & Mrs." regardless of what name they might use. Grace stated to the agents that they did not supply the girls as the females who frequented the licensed premises associated with the truck drivers who patronized the establishment. Sal came into the premises, relieving Grace who departed therefrom. At 2:30 p.m. a woman called V--- came into the premises, took a seat at the bar next to one of the agents, and they became engaged in conversation. The agents treated V--- to drinks and one of them danced with her. As the agents were leaving the premises they told V---, in Sal's presence, that they would see her on Wednesday night.

The agents returned to the premises on Wednesday, September 2, 1959, at about 9:55 p.m. and one of them inquired of Sal about V---. Sal said he had not seen her but suggested that the agent call her place of employment. The agent then informed Sal that he and V--- had planned to rent one of the cabins for the purpose of engaging in sexual intercourse. Sal said "Yeah", smiled and proceeded to tend bar. At 10:35 p.m. the agent asked Sal for V---'s employer's number and Sal obtained a coaster from the back bar on which was written a telephone number. He handed the coaster to the agent who went to the telephone and made the call. The agent returned to the bar and told Sal that V--- was not there, but he and his fellow agent would wait a little while and, if she did not show up, they would call a couple of girls. About 10:45 p.m. Grace entered and the agents treated her and Sal to a drink. One of the agents informed Grace about the date they had with V--- for that night and that he had made a call to her place of employment but that she was not there. The agents then informed Grace that later they were going to call a couple of girls, to which Grace said "Good." At about 11:05 p.m. one of the agents arranged with Sal to rent a cabin for a few hours' use as they had called a couple of married women who had agreed to go to the cabin to engage in illicit relations and that they did not want to get caught with females who were not their wives. Sal told them they had nothing to worry about as "nobody bothers us here." Sal directed the agents to sign the register as "Mr. & Mrs." and said he didn't care what name they used. The agents did as directed. Sal served the agents two bottles of beer, a drink of creme de menthe on the rocks, and a glass of rye on the rocks, the latter two drinks in open containers which Sal placed in a paper bag. Sal cautioned the agents not to let anyone see the drinks on the way to the cabin. The agents paid Sal for the drinks and \$6 (the serial numbers of the bills having been previously recorded) apiece, and Sal handed one of them the key to Cabin #16 remarking "I'll have to see these girls of yours when they come." The agents told Sal to show them to Cabin #16 when they arrived and Sal agreed. The agents went to the cabin which contained two rooms, in each of which was a single bed and other household furniture. At 11:45 p.m., in response to a knock, one of the agents

opened the door and two other agents, Sal and a State Trooper entered. Sal admitted that he knew they were waiting for two girls and there- after the "marked" money was returned to an agent. A check of the license application showed that the cabins did not constitute part of the licensed premises.

During a search of the premises a dozen contraceptives were found in the drawer of a small desk which the agents had used when they registered. Sal admitted that he was aware that the cabin was rented by the agents while they were in the licensed premises for the purpose of engaging in illicit sexual relations; that he had told them they could register under any name, and that he served them drinks to take to the cabin.

Defendants have no prior adjudicated record. I shall suspend their license on Charges 1 and 3 for one hundred eighty days (Re Molenard Bulletin 1265, Item 4); for ten days on Charge 2 (Re Gertman, Bulletin 1233, Item 2) and for fifteen days on Charge 4 (Re Hooton & Coons, Bulletin 1301, Item 10), making a total suspension of two hundred five days. Five days will be remitted for the plea entered herein, leaving a net suspension of two hundred days.

Accordingly, it is, on this 16th day of November, 1959,

ORDERED that plenary retail consumption license C-21, issued by the Municipal Council of Edison Township to Salvatore & Grace Scavone, t/a Blue Heaven Inn, for premises on East side of U.S. Rt. #1, near East Ave., Edison Township, be and the same is hereby suspended for two hundred (200) days, commencing at 2:00 a.m. Friday, November 27, 1959, and terminating at 2 a.m. Tuesday, June 14, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN HOTEL - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES, FURNISHINGS AND EQUIPMENT ORDERED FORFEITED - ASSIGNEE OF HOTEL OPERATOR WHO DEPOSITED CASH UNDER PROTEST HELD TO HAVE NO INDEPENDENT STANDING.

In the Matter of the Seizure	:	
on August 16, 1958 of a quantity	:	
of alcoholic beverages, furnishings,	:	Case No. 9778
fixtures, equipment and \$3.00 in	:	
cash at premises known as Riverview	:	On Hearing
Inn, operated by Ida Tillman, located	:	
at 710 - 8th Avenue in the Borough	:	CONCLUSIONS AND ORDER
of Belmar, County of Monmouth and	:	
State of New Jersey	:	
.....	:	

Isaac Elstein, Esq., appearing for Harold Jones.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 and further pursuant to a stipulation dated June 3, 1959, signed by Harold Jones as assignee of Ida G. Tillman, to determine whether a quantity of alcoholic beverages, \$3.00 in cash, and various fixtures, furnishings and equipment, described in a schedule attached hereto, seized on August 16, 1958 at premises known as Riverview Inn operated

by Ida Tillman, located at 710-Eighth Avenue, Belmar, N. J. constitute unlawful property and should be forfeited.

"At the time of the seizure Ida Tillman deposited \$500. in cash under protest pursuant to R.S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the aforesaid fixtures, furnishings and equipment, and thereupon obtained return of all of the seized property, excluding the alcoholic beverages and \$3.00 in cash. Thereafter Harold Jones, as assignee of Ida Tillman, stipulated in writing that the Director determine in seizure proceedings whether such sum of \$500.00 should be forfeited or returned to him.

"Harold Jones appeared at the hearing and sought return of the deposit of \$500.00. Ida G. Tillman was not present at the hearing and no one opposed forfeiture of the alcoholic beverages or \$3.00 in cash.

"An ABC agent testified in substance as follows: He was at the premises in question on August 9th, and August 16th, 1958. It is a three story brick building with a dining room in the basement. On August 9th he ordered and was served with food and a can of beer by a waitress, later identified as Marie Johnson. On August 16th the agent ordered food and a can of beer which was served by Marie Johnson. Other ABC agents and the local Chief of Police then entered the premises and disclosed their identity. The money used by the ABC agent to pay for his food and beer was recovered, part surrendered by Marie Johnson and the balance was found on the upper floor.

"Another agent testified to the following effect: He entered the dining room on August 16th and observed a can of beer in front of the other agent. The agents questioned Marie Johnson and she admitted she had sold beer to the agent, and informed them that some of the money which she received from the agent was on her person and the balance was on the upper floor in the possession of Mrs. Tillman's daughter. Ida Tillman then came on the scene, and the agents told her about the sale of beer to the agents, to which she responded that she did not sell alcoholic beverages with meals, but served alcoholic beverages without additional charge. The agents found a case of beer in a refrigerator in the kitchen on the upper floor, 12 cans of beer in a freezer, and 35 cans of beer underneath a cooler. A partly filled bottle of wine was found in an alcove in the basement.

"An ABC inspector in charge of removing and storing seized property testified as follows: He entered the premises at about 9:30 or 10:00 P.M., an hour or so after the other agents. In the kitchen he spoke with Ida Tillman, who was reported to be operating the premises, and told her that he would accept a cash deposit in lieu of removing the furnishings and equipment. No one else had previously advised her to that effect. She accepted the proposal, but stated that he would have to await the arrival of her husband from New York with the money. A person who appeared to be a cook employed on the premises volunteered to advance the money, left the room, and returned with a large roll of bills, counted out \$500.00, handed the money to Mrs. Tillman, and she in turn gave the money to the inspector, who gave her a receipt therefor, and instructed the agents not to remove the furnishings and equipment. She remained in the kitchen from the time he spoke with her without making any telephone call until he received the cash deposit.

"Neither Ida Tillman nor Marie Johnson held any license authorizing either of them to sell alcoholic beverages, and the premises were not licensed for that purpose. The evidence presented establishes that the seized beer was intended for sale without a license and hence is an illicit alcoholic beverage. R.S. 33:1-1(i). Such illicit alco-

holic beverages, and all personal property including the \$3.00, seized therewith in the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"Ida Tillman cannot obtain the return of the deposit of \$500.00, representing the value of the seized furnishings, fixtures, and equipment, because she permitted the unlawful sale of alcoholic beverages in her establishment. Harold Jones, as her assignee, likewise cannot obtain return of the money.

"However, he urges that Mrs. Tillman actually advanced the money on his account; that he returned the money to her, and that his claim is independent of any claim she may have because he is the landlord of the premises, is the owner of the seized furnishings, fixtures and equipment, and is innocently involved in the matter. In other words, that in actuality it should be treated as if he had made the deposit in the first instance, and that his claim should be considered in that light. The evidence presented by the ABC inspector indicates that Jones had nothing to do with the deposit of the money, and he must overcome this evidence by clear and cogent proof.

"According to Mr. Jones, in May 1958 he leased the entire premises, including the furnishings and equipment, to Jack Gilbert and Ida Gilbert (her maiden name is Tillman), and they operated a summer hotel there; that he received a telephone call on August 16, 1958 at his office in New York City, telling him about the raid, that he called his attorney in Belmar, and shortly thereafter the attorney told him over the telephone that a deposit of money was required to prevent the removal of the furnishings; that he told his attorney to do what he could because the lessee could not remain in business if the fixtures were removed; that he then received another call from Mrs. Tillman advising him that the sum of \$500.00 was required; that he told her to use any means to obtain the money; that he would come down immediately and return the money; that he arrived in Belmar later that night, went to the jail where Mrs. Tillman was detained, and arranged for her bail; that he had no knowledge of, or reason to suspect that Ida Tillman was selling alcoholic beverages at the premises. He gave her about \$200.00 in jail to obtain a bond for her release and paid the balance to her later. He presented a written assignment of the money dated May 16, 1959 and signed by Ida Tillman, and a receipt dated August 18, 1958 from Ida Tillman for \$500.00.

"It must be remembered that any return of the deposit is a purely discretionary act under authority of R.S. 33:1-66(e), and constitutes remission of forfeiture. We only have the word of Mr. Jones and the documents executed after the seizure to establish that the events are as he describes. It suggests itself that it could easily be an after-thought to escape the penalty imposed by law if his testimony were to be accepted at face value. His action in arranging for Mrs. Tillman's bail bond and his zeal on her behalf in undertaking a midnight trip to Belmar indicates a close relationship between them. He claims that he had \$500.00 in cash available when he called. The attorney to whom he refers was not present to corroborate his account of what happened. Ida Tillman was not present; allegedly because she refused his request to appear, despite his claim that he advanced the money on her behalf in order to enable her to continue to operate her hotel business. I am of the opinion that the account given by Harold Jones is not definitive or satisfactory evidence that actually it is his money which was deposited assuming that he is not legally merely an assignee of Ida Tillman and by reason thereof has no independent standing. I therefore recommend that his application for return of the money be denied.

"I further recommend that an order be entered forfeiting the alcoholic beverages and \$3.00 in cash and that the deposit of \$500.00 likewise be forfeited and disposed of in accordance with law."

Exceptions to the Hearer's Report and written argument thereon were filed pursuant to Rule 4 of State Regulation No. 28 by the attorney for Harold Jones. I have carefully considered the entire record, including the transcript of the testimony, the exhibits in evidence, the Hearer's Report, and the exceptions thereto and written argument, and in general agree with the findings and conclusions of the Hearer.

Additionally, it is clear from the evidence that while the cook loaned Mrs. Tillman \$500.00 to forestall the removal of the personal property, furniture and fixtures owned by another person, nevertheless, such advancement of the cash in question enabled Mrs. Tillman to continue in business. The mere fact that Mr. Jones might have later repaid the amount advanced does not alter the fact that there is no satisfactory evidence that Mr. Jones had anything to do with the original payment being made -- what he may have agreed to do subsequently with regard to repaying the amount advanced is his business, in other words, it would be a separate transaction between the persons directly involved, and of no concern to this agency. I therefore concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is DETERMINED and ORDERED that the seized alcoholic beverages and \$3.00 in cash, more fully 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 that the alcoholic beverages 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; and it is further

DETERMINED and ORDERED that the various fixtures, furnishings and equipment, described in Schedule "A" constitute unlawful property and that the sum of \$500.00 representing the retail value of such fixtures, furnishings and equipment returned to Ida Tillman, paid under protest to the Director of the Division of Alcoholic Beverage Control by Ida Tillman, be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with law.

Dated: November 10, 1959

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

48 - cans of beer	2 - fans
1 - bottle of vermouth	1 - freezer
1 - juke box	1 - refrigerator
1 - bowling machine	1 - couch
1 - skee ball machine	1 - iron stand and lamp
1 - pinball machine	1 - humidifier
14 - tables	32 - glasses
50 - chairs	\$3.00 in cash

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - OBSCENE MATTER - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 Joseph Diaz)
 t/a Joe's Tavern)
 487 Communipaw Avenue)
 Jersey City, New Jersey)
 Holder of Plenary Retail Consumption License C-284, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
 -----)

CONCLUSIONS
 and
 ORDER

Defendant-licensee, Pro se.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On August 7, 12 and 19, 1959, you allowed, permitted and suffered gambling, viz., the making and accepting of bets in a lottery commonly known as the 'numbers game', in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.
- "2. On August 7, 12 and 19, 1959, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.
- "3. On August 19, 1959, you allowed, permitted and suffered in and upon your licensed premises and had in your possession obscene, indecent, filthy, lewd, lascivious and disgusting matter in form of representations with accompanying words, phrases, legends and expressions having obscene, indecent, filthy, lewd, lascivious, and disgusting import and meaning; in violation of Rule 17 of State Regulation No. 20."

On August 7, 1959, an ABC agent visited defendant's licensed premises and observed a patron hand the defendant a sum of money to be given to a man called Harry (later identified as Henry Kohr) who, after answering the telephone, had left the premises a short time prior thereto. Harry re-entered the premises and the patron who was still there informed him that the defendant had the money. Harry inquired whether he wanted "the same number" and the patron stated that he did. The defendant then handed the money in question to Harry, who made a notation on a piece of paper. The agent observed Harry place a number of quarters and half-dollars on the back bar.

On August 12, 1959, the same agent visited the defendant's premises, at which time the defendant and Harry were present. On six occasions, Harry was seen answering the telephone and he also used the telephone on five occasions to make calls. Harry accepted \$1 for a numbers bet from another ABC agent who entered the premises and wrote the number given on a candy wafer. He also accepted numbers bets from other patrons and used candy wafers, respectively, to record them.

Harry placed quarters and a half dollar on the back bar in the defendant's presence. After Harry went outside, the agent who had placed the bets asked the defendant whether he would have the money to pay him. The defendant replied "I haven't got anything to do with that. Harry will give it to you. He's all right. He's good".

On August 19, 1959, the two agents who had been in defendant's premises on August 12, 1959 again visited the establishment. The defendant was tending bar and Harry was standing outside the premises. The telephone rang and Harry entered the premises and went to the telephone booth. When Harry emerged from the booth, one of the agents handed him two one-dollar bills (the serial numbers of which had been previously recorded) and said that he wished four 25 cent number bets, one \$1 bet, and handed Harry a piece of paper containing the numbers he desired. Harry accepted the paper and the money in plain sight of defendant, who was standing across the bar from the two as the transaction took place. Harry went into the telephone booth, at which time the other agent went outside and, as prearranged, contacted two more agents and three police officers assigned in the matter. Harry then left the premises and, as he got into his car, two of the agents identified themselves. Immediately, another agent and the local detectives requested Harry to empty his pockets, which were found to contain \$225. The incident drew the attention of the patrons in defendant's establishment who left the premises to see what was occurring. One of the agents remained in the premises and a patron returned remarking to the defendant, "They got Harry again, Joe. You better get rid of the slips if you have any", to which the defendant replied, "I haven't got anything on me, but I hope they don't come in here" and, turning to the agent, said "You haven't got any slips on you, have you kid? If you do, get rid of them". The ABC agents and the detectives brought Harry into the premises where everyone, including the agent who had remained in the premises, identified himself to the defendant, who admitted that he knew Harry was taking number bets but claimed he did not know Harry was taking these bets in the licensed premises. When asked by an agent why Harry always answered the telephone, defendant answered that he didn't care who answered it.

The agents searched the premises and found on the back bar a cigar box containing several lewd articles.

Defendant has a prior adjudicated record. Effective October 14, 1957 the defendant's license was suspended by the Director for ten days for an "hours" violation. Re Diaz, Bulletin 1196, Item 9. The minimum suspension for gambling on Charges 1 and 2 is twenty-five days. Re Lotz, Bulletin 1299, Item 5. The minimum suspension for possession of obscene or lewd articles on the licensed premises is ten days. Re Iberia Tavern & Restaurant, Inc., Bulletin 1224, Item 5. Five days will be added for the past dissimilar record of the defendant which occurred during the past five years, making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 16th day of November, 1959,

ORDERED that Plenary Retail Consumption License C-284, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Joseph Diaz, t/a Joe's Tavern, for premises 487 Communipaw Avenue, Jersey City, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m., Monday, November 23, 1959, and terminating at 2:00 a. m., Monday, December 28, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Emil A. Fendelander, Sr.
 t/a Bearfort Lodge
 Union Valley Road
 West Milford Township
 PO RD 1, Newfoundland, N.J.
 Holder of Plenary Retail Consumption License C-21, issued by the Township Committee of West Milford Township

CONCLUSIONS
 AND
 ORDER

Columbo Cammarano, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of non vult to the following charges:

- "1. On July 21, 30, August 13 and 21, 1959 and on divers other days during the months of June, July and August 1959, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of horse race bets; in violation of Rule 7 of State Regulation No. 20.
- "2. On August 30, 1959, you allowed, permitted and suffered gambling, viz., the playing of a card game for stakes of money, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

On July 21 and July 30, 1959, ABC agents visited the defendant's licensed premises and observed therein Tony Briscolina (hereinafter Tony) and William O'Connell (hereinafter O'Connell) engaged in what appeared to be horse race betting activities in the presence of the licensee and his bartender, William Magnat (hereinafter Bill).

On August 13, 1959, two different agents visited defendant's tavern and observed a patron called Ken place a horse race bet with Tony who, after getting some change from Bill, proceeded to the telephone booth with Ken's betting slip. Later, Ken accepted from one of the agents a \$5 bet on a horse and turned the slip and money over to Tony, who again entered the phone booth. Before the agents left, they were assured by Ken that if their horse won, "I'm usually here. If not, Tony or Bill will give it to you".

On August 21, 1959, the same two agents returned to the licensed premises and noted therein the licensee, Bill and O'Connell. The agents perused the racing section of a daily paper and asked Bill for a pencil and paper. Bill accommodated them and one of the agents wrote on a slip of paper a horse race bet to be played "across the board" for \$6. The agents then asked the licensee if he wanted to play a couple of horses with them and he replied, "I don't play them any more". When one of the agents asked O'Connell if he knew where Tony was because they had previously placed a horse race bet with him, O'Connell said he did not know the whereabouts of Tony but, "If you got anything you give it to me, I'm the guy that takes them". At this time, Bill handed

O'Connell a slip of paper and some money and thereafter O'Connell accepted from the agent six marked one-dollar bills and the horse race bet previously recorded on the slip of paper supplied by Bill. As pre-arranged, a third agent and an investigator from the prosecutor's office entered the tavern and all identified themselves. O'Connell was asked to empty his pockets, and among the contents were found the marked money and bet slip given to him by the agent and the bet slip and money given to him by Bill. The licensee stated that he knew O'Connell was taking bets for several months in his tavern and that he did not receive any profit for accommodating him. Bill admitted that he gave O'Connell a horse race bet slip and money.

Respecting the second charge, it appears that at about 2:45 p.m. Sunday, August 30, 1959, two different agents, accompanied by female companions, attended a picnic held in an outdoor area of defendant's licensed premises. Therein they observed O'Connell, who was collecting admission money and tickets, and Tony, who was acting as bartender in a bar set up in a garage. They later observed three patrons seat themselves at a table and engage in a card game for money and saw O'Connell leave his post occasionally to watch the game, in which he finally joined. When the weather became inclement, the four card players resumed their gambling at a table in the garage. At this point, one of the agents left the area and phoned an investigator at the prosecutor's office and informed him of the gambling activity. Shortly thereafter, the investigator arrived at the picnic area and, after he and the agents identified themselves, they confiscated the money and cards in front of the players. The card players were arrested and taken before a magistrate before whom they pleaded guilty to gambling for money while playing cards and each was fined \$25. The fines were paid by O'Connell.

No charges have heretofore been preferred against defendant. The minimum suspension imposed for the violation set forth in Charge 1 where the licensee or his employees are involved is a suspension of the license for twenty-five days (Re Maplewood Hotel, Inc., Bulletin 1302, Item 10) and the minimum suspension imposed for the violation set forth in Charge 2 is ten days (Re A.L.F. & J. Inc., Bulletin 1279, Item 8). Whenever a prior similar violation occurs within a five-year period, the suspension for the subsequent violation will be doubled. Re Club Rainbow, Inc., Bulletin 1269, Item 4. However, the subsequent violation charged herein involves the playing of a small card game at an outing. Since that offense does not constitute commercialized gambling, it will be deemed dissimilar to the prior violation. Under the circumstances, I shall suspend defendant's license for twenty-five days on Charge 1 and for an additional fifteen days on Charge 2 because of the prior dissimilar violation which occurred within a five-year period (Re Fanok, Bulletin 1307, Item 11), making a total suspension of forty days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 16th day of November, 1959,

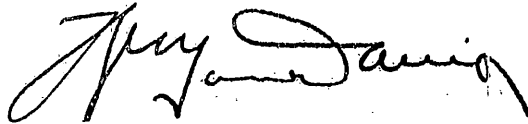
ORDERED that Plenary Retail Consumption License C-21, issued by the Township Committee of West Milford Township to Emil A. Fendelander, Sr., t/a Bearfort Lodge, for premises on Union Valley Road, West Milford Township, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m., Monday, November 23, 1959, and terminating at 2:00 a.m., Monday, December 28, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

6. STATE LICENSES - NEW APPLICATIONS FILED.

Joeli Wine Distributors, Inc.
t/a Pirrone Wine Sales, Perrone Wine &
Spirits, Alda Import Co., Charlotte
Vinicole Cie., Edelweiss Distributing Co.,
Esther Distributing Co. & Leona Wine Co.
327 North Fourteenth Street
Kenilworth, New Jersey
Application filed January 4, 1960 for
place-to-place transfer of Wine Wholesale
License WW-36 from 217 Division Avenue,
Garfield, New Jersey

Sanford Kalb
t/a Kalb Beverages Company
Easterly Side of Addison Road
Howell Township, R. D. #3,
Farmingdale, New Jersey
Application filed January 5, 1960 for
person-to-person, place-to-place transfer
of State Beverage Distributor's license
SBD-97 from Michael Yunger and Adam Peter
Yunger, t/a Tasty Bottling Company, 1434
Parkside Avenue, Ewing Township, New Jersey



William Howe Davis
Director