

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

BULLETIN 1139

NOVEMBER 20, 1956.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Long Beach Township) - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
2. DISCIPLINARY PROCEEDINGS (Paterson) - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Clifton) - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Galloway Township) - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Union City) - LOTTERY - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Brick Township) - SUSPENSION LIFTED UPON CORRECTION OF ILLEGAL SITUATION.
7. ACTIVITY REPORT FOR OCTOBER 1956.
8. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1956 THROUGH SEPTEMBER 30, 1956.
9. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND APPURTENANT EQUIPMENT ORDERED FORFEITED - MOTOR VEHICLES RETURNED TO LIENOR AND OWNER - BUILDING ORDERED PADLOCKED.
10. DISCIPLINARY PROCEEDINGS (Ringwood) - AGGRAVATED SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS.
11. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey State Library

ORDERED that Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the Township of Long Beach to William DeFreitas, Jr. and Eliza Ellen DeFreitas, t/a Inlet Inn, S/W Cor. Rhode Island Ave. & Long Beach Boulevard, Long Beach Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. October 8, 1956, and terminating at 2:00 a.m. October 18, 1956.

WILLIAM HOWE DAVIS
Director.

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

In the Matter of Disciplinary Proceedings against)

SALVATORE DiGREZIA and FRANK DeGREZIA)
T/a C. & C. Bar & Grill)
407 - 21st Avenue)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-336, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Salvatore DiGrezia and Frank DeGrezia, Defendant-licensees, Pro se. Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they sold during prohibited hours an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

On Sunday, August 26, 1956 at about 2:00 p.m., two ABC agents then in defendants' premises observed Salvatore Boccardi, a bartender, obtain a pint of Schenley Reserve Blended Whiskey and place it in a paper bag. The bartender then told a patron at the bar that he would leave the whiskey behind the bar until the patron was ready to leave. The bartender took a sum of money which was on the bar in front of the patron, and rang up the sum of \$2.80. At 2:20 p.m., the patron obtained the bag with the pint of whiskey from behind the bar and left the premises. One of the agents followed immediately, apprehended the patron, was joined by his fellow agent, and the three men returned to the licensed premises. The agents disclosed their identity, whereupon Boccardi acknowledged the sale of the pint bottle of whiskey which the agents had observed.

Defendants have no prior adjudicated record. I shall suspend their license for fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Felice, Bulletin 1125, Item 11.

Accordingly, it is, on this 2nd day of October, 1956,

ORDERED that Plenary Retail Consumption License C-336, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Salvatore DiGrezia and Frank DeGrezia, t/a C. & C. Bar & Grill, 407 - 21st Avenue, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. October 9, 1956, and terminating at 3:00 a.m. October 19, 1956.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RUTT'S HUT, INC.)
T/a RUTT'S HUT)
413-417 River Road)
Clifton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Clifton.)

-----)
Friend & Friend, Esqs., by Israel Friend, Esq., Attorneys for)
Defendant-licensee.)
Edward F. Ambrose, Esq., appearing for Division of Alcoholic)
Beverage Control.)

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Friday night, June 8, 1956, you allowed, permitted and suffered the consumption of alcoholic beverages by a person under the age of twenty-one (21) years, viz., Robert A. ---, age 19, in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

Acting on information received from the Wayne Township Police Department, ABC agents obtained two sworn statements, one from Robert --- (age 19), dated June 13, 1956, and the other from Grace --- (a minor), dated June 14, 1956. Robert states that on June 8, 1956 at about 9:30 p.m., he, together with three female minors and two male adults arrived on the parking lot of the licensed premises in an automobile driven by one of the male adults; while the three girls remained in the car, the three men went into the licensed premises where one of the adults ordered three glasses of beer, some soda and other refreshments at a counter located in the front part of the building; they then brought their purchases to the automobile and while seated therein, the two male adults and he consumed the beer and the girls drank the soda after which they drove off; that no one questioned his age when the beer was ordered.

Grace says that on June 8, 1956, she went to Rutt's Hut in Clifton, by automobile in the company of two girl friends, Robert, and two young men; that at about 9:00 p.m., upon their arrival on the parking lot of the licensed premises, the three fellows left the car and entered the licensed premises through a side door that led to a counter in the front part of the building; the three girls remained in the car; shortly thereafter, the three fellows, each carrying a glass of beer and other refreshments, returned to the automobile, where they drank the beer. None of the girls had any of the beer; that she had been to the licensed premises on five prior occasions and is familiar with the same.

On June 14, 1956 at about 5:30 p.m., Grace identified the licensed premises and pointed out the exact area on the parking lot where the car was parked on June 8, 1956. The records of our Division disclose that the aforementioned parking area is part of the licensed premises.

The attorneys for the licensee have submitted a memorandum and certain photographs of the parking area and other parts of the licensed premises. I have examined these photographs and read the contents of the brief, and in particular have I noted the last paragraph on the second page of the memorandum which reads as follows:

"In the complaint at issue, an adult purchased the beer and brought it to a car on the parking lot where it was consumed by a minor or minors. The violation was not an intentional one and it can be taken for granted that if the minor had gone to the stand himself to purchase the beer he would never have been served."

However, on September 10, 1946, the then Deputy Commissioner of this Division sent a letter to the licensee advising it of the possibility of such pitfalls and dangers by continuing to include the automobile parking area as part of the licensed premises, in fact, the letter suggested that the licensee exclude it.

Moreover, the plea of non vult entered herein by the licensee was not to a sale of alcoholic beverages to a minor but rather to a charge of allowing, permitting and suffering the consumption of alcoholic beverages by a minor on the licensed premises which is in contravention of the stated Rule and Regulation. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Defendant has held a license since Repeal and has no prior adjudicated record. The usual penalty for sale of alcoholic beverages to a nineteen-year-old minor, subsequent to January 16, 1956, is fifteen days. Re Balzer's Delicatessen, Inc., Bulletin 1121, Item 6. However, under all the circumstances of this case, I shall suspend defendant's license for ten days. Cf. Re S. J. Aldarelli, Inc., Bulletin 757, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 2nd day of October, 1956,

ORDERED that Plenary Retail Consumption License C-5, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Rutt's Hut, Inc., t/a Rutt's Hut, 413-417 River Road, Clifton, be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 a.m. October 15, 1956, and terminating at 3:00 a.m. October 20, 1956.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

EDWARD CLINTON & JOSEPH H. CLINTON)
T/a COLOGNE MARKET INN)
115 South Cologne Avenue)
Galloway Township)
PO Cologne, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Galloway.)

-----)
Edward Clinton & Joseph H. Clinton, Defendant-licensees, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a minor, in violation of Rule 1 of State Regulations No. 20.

Acting upon information received from a New Jersey State game warden that on September 4, 1956, while on routine patrol duty, he came upon three minors who were drinking in a car parked in the woods, ABC agents obtained three signed sworn statements dated September 11, 1956, from Robert ---, Frank --- and Francis ---. The gist of these statements is that on September 4, 1956, the three boys were riding in a car owned by the mother of one of the boys and decided to get some beer. They drove to defendants' licensed premises, which Robert (age 20) entered while the other two boys remained seated in the car. Robert emerged from the licensed premises within a short time carrying six bottles of Ballantine beer, entered the car and the boys drove off to the wooded area. Robert in his statement adds that the person who sold him the beer did not question him as to his age and that he did not sign any representation thereof and was not asked to display any document showing his age. The three boys directed ABC agents to defendants' premises which they identified as the place where Robert had purchased the beer and, in addition, Robert identified Edward Clinton (one of the licensees) as the person who sold him the beer.

Defendants have no prior adjudicated record. I shall suspend defendants' license for a period of ten days (the minimum suspension for sale of alcoholic beverages to a twenty-year-old minor). Re Habbart, Bulletin 1130, Item 9. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 4th day of October, 1956,

ORDERED that Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Galloway to Edward Clinton & Joseph H. Clinton, t/a Cologne Market Inn, for premises 115 South Cologne Avenue, Galloway Township, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. October 15, 1956 and terminating at 7:00 a.m. October 20, 1956.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - LOTTERY - GAMBLING - LICENSE
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOHN QUIRICO & JOHN WILLIAM QUIRICO)
2201-03 West Street)
Union City, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption)
License C-102, issued by the Board of)
Commissioners of the City of Union City.)

Emanuel M. Sultan, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that (1) they allowed, permitted and suffered a lottery in and upon their licensed premises; (2) they allowed, permitted and suffered pool playing for money stakes in and upon their licensed premises -- both in violation of Rule 7 of State Regulations No. 20; and (3) they allowed, permitted and suffered sale of participation rights in a lottery known as the "numbers game" -- in violation of Rule 6 of State Regulations No. 20.

The file herein discloses that on August 17 and 24, 1956 ABC agents visited defendants' licensed premises. On their first visit they observed John William Quirico, one of the licensees herein, playing pool for money stakes with several patrons. They also observed a man called "Lou" openly accepting money from various patrons whom he solicited to play the "numbers." On this occasion the agents, in the presence of Quirico, played several "numbers" with "Lou." On their second visit the agents, in the presence of "Joe", a bartender, played several "numbers" with "Lou," paying him with marked money. As prearranged, other ABC agents and a local detective entered the premises and after identifying themselves obtained the marked money and "numbers" slips from "Lou" whom the betting agents had pointed out. "Lou" was arrested by a member of the Union City Police Department.

Defendants have no prior adjudicated record. Prior to January 16, 1956 the usual penalty imposed for permitting on licensed premises commercialized gambling in which the licensee or his employees participated was a suspension of the license for twenty days. Re Koch, Bulletin 1093, Item 6. However, on that date I announced that the penalty in such cases would be increased by five days. Re Increased Penalties, Bulletin 1095, Item 1. I shall, therefore, suspend defendants' license for twenty-five days and remit five days for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 16th day of October, 1956,

ORDERED that Plenary Retail Consumption License C-102, issued by the Board of Commissioners of the City of Union City to John Quirico & John William Quirico, 2201-03 West Street, Union City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. October 23, 1956, and terminating at 3:00 a.m. November 12, 1956.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SUSPENSION LIFTED UPON CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against SEABAY INN, INC. T/a SEABAY INN Highway 35 & Deauville Drive Deauville Beach, Brick Township PO Normandy Beach, N. J.,

ON PETITION

Holder of Plenary Retail Consumption License C-3 for the 1955-56 licensing period, issued by the Township Committee of the Township of Brick, and renewed as License C-3 for the 1956-57 licensing period to

O R D E R

SEABAY INN, INC. T/a MURPHY'S SEABAY INN,

for the same premises.

Novins & Novins, Esqs., Attorneys for Petitioner.

BY THE DIRECTOR:

On September 10, 1956, I suspended defendant's license for the balance of its term, effective at 2:00 a.m. September 17, 1956, after it had pleaded non vult to charges alleging that it had falsely answered questions in an application filed June 14, 1955. Leave was given to apply to me for an order lifting suspension if the illegal situation was thereafter corrected provided the suspension would not be lifted until the expiration of twenty days from the effective date thereof. Re Seabay Inn, Inc. (not yet reported in bulletin).

The petition of Harold F. Murphy filed herein sets forth that the questions were properly answered in its application filed for the current licensing year. Attached to said petition is a certification from the Brick Township Clerk setting forth the manner in which the questions were answered in the latter application.

It thus appearing that the unlawful situation has been corrected and that the suspension will be in effect for twenty days at 2:00 a.m. October 7, 1956,

It is, on this 4th day of October, 1956,

ORDERED that the suspension heretofore imposed be lifted and that License C-3 be restored to full force and operation at the opening hour on Sunday, October 7, 1956.

WILLIAM HOWE DAVIS Director.

7.

ACTIVITY REPORT FOR OCTOBER 1956

ARRESTS:		
Total number of persons arrested - - - - -		25
Licensees and employees - - - - -	7	
Bootleggers - - - - -	18	
SEIZURES:		
Motor vehicles - cars - - - - -		2
Stills - over 50 gallons - - - - -		1
- 50 gallons or under - - - - -		3
Mash - gallons - - - - -		1,735-26
Distilled alcoholic beverages - gallons - - - - -		417.93
Wine - gallons - - - - -		20.96
Brewed malt alcoholic beverages - gallons - - - - -		16.60
RETAIL LICENSEES:		
Premises inspected - - - - -		754
Premises where alcoholic beverages were gauged - - - - -		750
Bottles gauged - - - - -		13,027
Premises where violations were found - - - - -		53
Violations found - - - - -		70
Type of violations found:		
Unqualified employees - - - - -	25	Disposal permit necessary - - - - - 4
Application copy not available - - - - -	16	Other mercantile business - - - - - 3
Regs. #38 sign not posted - - - - -	6	Prohibited signs - - - - - 1
		Other violations - - - - - 15
STATE LICENSEES:		
Premises inspected - - - - -		37
License applications investigated - - - - -		16
COMPLAINTS:		
Complaints assigned for investigation - - - - -		410
Investigations completed - - - - -		372
Investigations pending - - - - -		171
LABORATORY:		
Analyses made - - - - -		140
Refills from licensed premises - bottles - - - - -		2
Bottles from unlicensed premises - - - - -		62
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made - - - - -		17
Persons fingerprinted for non-criminal purposes - - - - -		181
Identification contacts made with other enforcement agencies - - - - -		130
Motor vehicle identifications via N. J. State Police teletype - - - - -		2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		14
Violations involved:		
Sale during prohibited hours - - - - -	9	
Sale to minors - - - - -	3	
Employing female bartender (local reg.) - - - - -	2	
Failure to close premises during prohibited hours - - - - -	2	
Permitting hostesses on premises - - - - -	1	
Cases instituted at Division - - - - -		33*
Violations involved:		
Sale during prohibited hours - - - - -	9	Sale without license - - - - - 1
Sale to minors - - - - -	7	Sale to non-members by clubs - - - - - 1
Permitting immoral activity on premises - - - - -	3	Failure to have copy of license application on premises - - - - - 1
Possessing indecent matter - - - - -	3	Sale to intoxicated person - - - - - 1
Conducting business as a nuisance - - - - -	2	Employing female bartender (local reg.) - - - - - 1
Fraud and front - - - - -	3	Possessing illicit liquor - - - - - 1
Sale below minimum resale price - - - - -	2	Failure to close premises during prohibited hours - - - - - 1
Permitting lottery activity (raffie, numbers) - - - - -	2	Permitting bookmaking on premises - - - - - 1
Sale outside scope of license - - - - -	2	Mislabeled beer taps - - - - - 1
Possessing contraceptives on premises - - - - -	1	
Storage off licensed premises - - - - -	1	
*Includes one cancellation proceedings - license improvidently issued to club not bona fide		
Cases brought by municipalities on own initiative and reported to Division - - - - -		15
Violations involved:		
Permitting brawls on premises - - - - -	7	Failure to afford view into premises during prohibited hours - - - - - 1
Sale during prohibited hours - - - - -	4	Failure to close premises during prohibited hours - - - - - 1
Sale to minors - - - - -	3	
Hindering investigation - - - - -	1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		50
Appeals - - - - -	6	
Disciplinary proceedings - - - - -	32	Seizures - - - - - 10
Eligibility - - - - -	1	Tax revocations - - - - - 1
STATE LICENSES AND PERMITS ISSUED:		
Total number issued - - - - -		2,064
Licenses - - - - -	5	Social affair permits - - - - - 485
Employment permits - - - - -	161	Miscellaneous " - - - - - 134
Solicitors' " - - - - -	48	Transit insignia - - - - - 226
Disposal " - - - - -	66	Transit certificates - - - - - 13
Wine " - - - - -	926	

WILLIAM HONE DAVIS
DIRECTOR

Dated: November 5, 1956

8. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1956 THROUGH SEPTEMBER 30, 1956

	JULY	AUG.	SEPT.	TOTAL
ARRESTS:				
Total number of persons arrested	28	48	34	110
Licensees and employees	7	20	8	35
Bootleggers	21	27	26	74
ABC agent impersonator	-	1	-	1
SEIZURES:				
Motor vehicles - cars	1	4	6	11
- trucks	-	-	1	1
Stills - over 50 gallons	-	2	-	2
- 50 gallons or under	-	-	2	2
Mash - gallons	400.00	750.00	322.20	1,472.20
Distilled alcoholic beverages - gallons	14.66	44.82	181.90	241.38
Wine - gallons	12.12	62.92	7.40	82.44
Brewed malt alcoholic beverages - gallons	41.34	165.19	186.91	393.44
RETAIL LICENSEES:				
Premises inspected	506	543	523	1,572
Premises where alcoholic beverages were gauged	555	280	428	1,263
Bottles gauged	9,983	4,898	7,945	22,826
Premises where violations were found	29	48	43	120
Violations found	38	101	45	184
Type of violations found:				
Unqualified employees	16	73	9	98
Application copy not available	11	15	15	41
Regs. #38 sign not posted	2	2	6	10
Other mercantile business	1	1	7	9
Improper beer taps	3	-	1	4
Disposal permit necessary	1	2	0	3
Prohibited signs	0	2	0	2
Probable fronts	0	2	0	2
Other violations	4	4	7	15
STATE LICENSEES:				
Premises inspected	4	14	21	39
License applications investigated	11	13	8	32
COMPLAINTS:				
Complaints assigned for investigation	413	422	299	1,134
Investigations completed	367	409	312	1,088
Investigations pending	(237)	(220)	177	177
LABORATORY:				
Analyses made	170	180	198	548
Refills from licensed premises - bottles	1	2	7	10
Bottles from unlicensed premises	65	55	75	195
IDENTIFICATION BUREAU:				
Criminal fingerprint identifications made	27	33	31	91
Persons fingerprinted for non-criminal purposes	382	260	190	832
Identification contacts made with other enforcement agencies	242	235	142	619
Motor vehicle identifications via N. J. State Police teletype	-	1	2	3
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	6	9	10	25
Violations involved:				
Sale during prohibited hours	3	7	5	15
Sale to minors	2	2	3	7
Failure to close premises during prohibited hours	-	2	3	5
Sale to non-members by clubs	1	-	1	2
Failure to afford view into prem. during prohibited hours	-	1	-	1
Service to women at a bar (local reg.)	-	-	1	1
Permitting lottery activity (sweepstakes)	-	-	1	1
Cases instituted at Division	27	40*	23	90
Violations involved:				
Sale to minors	16	16	9	41
Sale during prohibited hours	4	10	2	16
Sale below minimum resale price	5	3	-	8
Conducting business as a nuisance	-	4	3	7
Permitting bookmaking on premises	1	1	2	4
Fraud and front	1	1	2	4
Unqualified employees	-	2	2	4
Permitting immoral activity on premises	-	1	3	4
Sale to intoxicated persons	-	3	-	3
Sale outside scope of license	-	2	1	3
Possessing illicit liquor	-	2	1	3
Permitting lottery activity (fight & baseball pools, numbers, raffle tickets)	-	1	2	3
Hindering investigation	-	1	1	2
Possessing indecent matter	-	1	1	2
Service to women at a bar (local reg.)	1	0	0	1
Permittee engaging in conduct prohibited to employer	1	-	-	1
Storage off-licensed premises	-	1	-	1
Furnishing gifts with retail sales	-	1	-	1
Mislabeling beer taps	-	1	-	1
Failure to file notice of change in application	-	1	-	1
Exercising license privilege prior to transfer	-	-	1	1
Permitting gambling (pool game) on premises	-	-	1	1
Permitting hostesses on premises	-	-	1	1
Permitting prostitutes on premises	-	-	1	1

*Includes one cancellation proceeding - license improvidently issued by reason of disqualified stockholder.

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (Continued)				
Cases brought by municipalities on own initiative and reported to Division	15	6	10	31
Violations involved:				
Sale to minors	10	6	4	20
Permitting minors to loiter on premises (local reg.)	3	1	-	4
Permitting brawls on premises	2	-	3	5
Conducting business as a nuisance	2	1	-	3
Sale during prohibited hours	-	1	1	2
Permitting immoral activity on premises	1	-	-	1
Permitting gambling on premises	1	-	-	1
Sale outside scope of license	-	-	1	1
Fraud in application	-	-	1	1
Permitting lottery activity on premises	-	-	1	1
Employing bartender w/o requisite identification card	-	-	1	1
Failure to close premises during prohibited hours	-	-	1	1
Service to women at a bar (local reg.)	-	-	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	52	67	39	158
Appeals	11	24	1	36
Disciplinary proceedings	31	33	30	94
Eligibility	5	8	5	18
Seizures	2	2	2	6
Applications for license	3	-	1	4
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	2,554	1,294	1,022	4,870
Licenses	914	21	1	936
Employment permits	335	262	179	776
Solicitors' "	62	50	42	154
Disposal "	80	108	58	246
Social affair "	321	398	354	1,073
Miscellaneous "	225	118	234	577
Transit insignia	578	298	146	1,022
Transit certificates	39	39	8	86

WILLIAM HOWE DAVIS
DIRECTOR

Dated: October 10, 1956

9. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND APPURTENANT EQUIPMENT ORDERED FORFEITED - MOTOR VEHICLES RETURNED TO LIENOR AND OWNER - BUILDING ORDERED PADLOCKED.

In the Matter of the Seizure on) Case No. 9129
 March 1, 1956 of a still, appur-)
 tenant equipment, 25 - 5-gallon)
 cans of alcohol, 20 lbs. of sugar,)
 17 lbs. of yeast, a Ford sedan, a) ON HEARING
 Chrysler sedan and a Studebaker) CONCLUSIONS AND ORDER
 truck, on premises located on)
 Winslow Road, Lower Penns Neck)
 Township, County of Salem and)
 State of New Jersey.)

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 Malandra & Tomaselli, Esqs., by Peter J. Coruzzi, Esq.,
 Attorneys for Peter Marsella and Antoinette Marsella.
 Cobbin & Farr, Esqs., by William R. Farr, Esq., Attorneys for
 Central-Penn National Bank of Philadelphia.
 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, Chapters 1 and 2, Revised Statutes of New Jersey, to determine whether a still, appurtenant equipment, a quantity of alcohol, other articles, a Ford sedan, a Chrysler sedan, and a Studebaker truck, described in a schedule attached hereto, seized on March 1, 1956 on premises owned by Peter Marsella and Antoinette Marsella located on Winslow Road, Lower Penns Neck Township, New Jersey, constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

When the matter came on for hearing, pursuant to R. S. 33:1-66 and R.S. 33:2-4, an appearance was entered by Peter Marsella, who sought return of the Studebaker truck, by Antoinette Marsella, who sought return of the Chrysler sedan, and on behalf of Central-Penn National Bank of Philadelphia, which sought recognition of its alleged lien on the Ford sedan. Peter and Antoinette Marsella also sought to avoid padlocking of the dwelling on the premises. No one opposed forfeiture of the balance of the property seized.

Three ABC agents testified, in substance, that on March 1, 1956, accompanied by local police officers, they executed a search warrant for the premises and discovered the presence of a large illicit still in a barn located on such premises. The Chrysler sedan and Studebaker truck were parked on the premises approximately 50 to 100 feet from the barn. The farm house is located about 150 feet from the barn. The agents seized the still, motor vehicles, and other property, including 25 five-gallon cans of alcohol.

The agents arrested Charles Wagner, who was in the dwelling. While the seizure was in progress Joseph M. Di Luzio drove the Ford sedan into the premises. The agents discovered 60 one-gallon empty glass jugs in the car and thereupon seized such jugs, and the motor vehicle, and placed Di Luzio under arrest. Peter Marsella was arrested subsequently.

The still was not registered with the Director of the Division of Alcoholic Beverage Control as required by R. S. 33:2-1. The alcohol is illicit because it is the product of

an illicit still, without payment of the tax on alcoholic beverages. R. S. 33:1-1(1), R.S. 33:1-88. Such unregistered still, illicit alcohol, and all other personal property seized therewith on the premises constitute unlawful property and are subject to forfeiture, and the premises are subject to padlocking. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66, R. S. 33:2-2, 5.

The substance of the evidence presented on behalf of Peter Marsella and Antoinette Marsella is as follows:

They are residents of Philadelphia, Pennsylvania where they and their two children reside with Mr. Marsella's mother. He has been employed by a large dairy concern for the past 13 years, with a weekly income of about \$90.00. His hours of employment are generally between 4:00 a.m. and 12:00 noon or 1:00 p.m. He does not appear to have any previous criminal record.

They purchased the farm in question about 1949, and have an investment therein of about \$2,000.00. They hoped eventually to obtain an income therefrom which would enable Mr. Marsella to terminate his employment with the dairy, but up to the present time the prospect thereof does not appear likely. For a year or so they raised crops of tomatoes, and then planted asparagus, which can be harvested only after five years. They used the farm dwelling for summer and weekend use, and require use of the dwelling to carry on their farming activities.

Title to the 1947 Chrysler is in the name of Antoinette Marsella. It is in poor running condition, almost useless, and without much value. The Studebaker truck is five years old, used in connection with the farming activities, and essential to such further activities.

Mr. Marsella ostensibly leased the barn where the still was found to one Jack Kelly on November 1, 1955. While I discount Mr. Marsella's claim that he did not know, or have any reason to suspect that the large still was in the barn, I am reluctant, in view of his previous good background and his economic circumstances, to deprive him of the use of the dwelling and truck which appear essential to his farming activities.

Where, as here, it appears that the person involved has no previous criminal record of violating the Alcoholic Beverage Law, and his economic circumstances are such that padlocking would constitute an undue hardship by seriously impairing or depriving him of a substantial part of his means of livelihood, that penalty is waived or not fully imposed, even where the person applying for such relief was actually responsible for the presence and operation of the illicit still. It is to be noted that Peter Marsella's guilt or innocence on that score will be definitively decided in the pending criminal proceedings. See Supplemental Order Seizure Case No. 8374, and cases cited therein.

Padlocking will therefore be limited to the barn in which the still was seized and the Chrysler sedan will be returned to Antoinette Marsella and the Studebaker truck returned to Peter Marsella upon payment of the costs incurred in their seizure and storage.

Central-Penn National Bank acquired by assignment a conditional sales contract, dated December 15, 1955, signed by Joseph

M. Di Luzio, covering the Ford sedan, evidencing its loan of \$2161.80 on the security of such motor vehicle. The present unpaid balance due thereon, after rebate for prepayment, is \$1565.93.

The bank also presented a Certificate of Title to a motor vehicle issued by the Pennsylvania Department of Revenue which has noted thereon the lien of the bank in the amount of \$2161.80.

Before accepting such assignment and extending credit to Joseph M. Di Luzio, the bank received his application for credit wherein he represented that he resided at an address in Philadelphia, was single, residing with his parents, had been employed as a truck driver for one and a half years at a weekly salary of \$60.00, and gave the name of his present employer and his former employer and trade and personal references. The bank checked this information and found it to be accurate and received no derogatory information from those references which it checked. The fingerprint records of Joseph M. Di Luzio do not disclose any previous record for violating any liquor laws.

I am satisfied from the evidence presented that the bank acted in good faith and had no knowledge or reason to suspect that the motor vehicle would be used in connection with illicit still activities. I shall, therefore, recognize its lien to the extent of \$1565.93.

It appears that the retail value of the Ford sedan does not exceed the amount of such lien and the costs incurred in its seizure and storage. Such motor vehicle will, therefore, be turned over to the bank upon payment of such costs.

Accordingly, it is DETERMINED and ORDERED that if on or before the 5th day of October, 1956, Central-Penn National Bank 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 such bank; and it is further

DETERMINED and ORDERED that if on or before the 5th day of October, 1956, Peter Marsella and Antoinette Marsella pay the costs incurred in the seizure and storage of the Chrysler sedan and Studebaker truck, listed in Schedule "A", such motor vehicles will be returned to them; and it is further

DETERMINED and ORDERED that the balance of the seized property, as listed in the aforesaid Schedule "A", constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, and that it 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 barn located on premises owned by Peter Marsella and Antoinette Marsella on Winslow Road, Lower Penns Neck Township, New Jersey, being the building in which the still was seized, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the 1st day of November, 1956.

WILLIAM HOWE DAVIS
Director.

Dated: September 25, 1956.

SCHEDULE "A"

- 25 - 5-gallon cans of alcohol
- 1 - Westinghouse Electric Pump
- 1 - Home Mart Electric Pump
- 1 - Electric Motor
- 1 - Quiet Oil Burner
- 2 - sets of 1" copper coils
- 7 - 100-gallon barrels of mash
- 1 - wooden dephlegmator
- 1 - wooden cooler
- 2 - iron cookers
- 20 - lbs. of sugar
- 17 - lbs. of yeast
- 32 - empty wooden barrels
- 60 - empty one-gallon jugs
- 1 - Ford sedan, Serial No. A6CG120908, Engine No. A11452719, Pennsylvania Registration F7R69.
- 1 - Chrysler sedan, Serial No. 70594472, New Jersey Registration S/C94.
- 1 - Studebaker truck, Serial No. R557874, Engine No. D-76962, New Jersey Registration XR63E.

10. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

EDNA HAFNER)
T/a EDNA'S MOUNTAIN INN)
Greenwood Lake Road)
Ringwood Borough)
PO Wanaque RFD, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 (for the 1955-56 and 1956-57 licensing periods), issued by the Borough Council of the Borough of Ringwood.)

James F. Dougherty, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge alleging that she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to minors and permitted the consumption of such beverages by said minors in and upon her licensed premises, in violation of Rule 1 of State Regulations No. 20.

Because of the Division's expressed inability to produce Charles --- (an alleged minor) as a witness at the hearing, any reference to him in the charge preferred herein is hereby deleted.

At the hearing of this case four minors -- 17, 17, 18 and 20 years of age, respectively -- (identified herein as "Bernard", "Paul", "Raymond" and "Peter") testified that they visited defendant's licensed premises on the evening of March 31, 1956, and during the time they remained in said premises they were

served divers glasses of beer by defendant and Fred Hafner (her husband). All of the witnesses agreed that none was asked by anyone at any time about his age. The four minors further testified that on April 9, 1956, they called at the defendant's premises in the company of ABC agents, two of the minors stating that they identified the defendant as the person who had served them beer on the night in question, one was uncertain as to the identification of the person making service, and one identified the place as the licensed premises where he had been on March 31 aforementioned.

William H. Schlegel (an adult) testified that he was with the minors on March 31 and that, although beer was served to the various members of his party, he could not recall what they did with it. He further testified that he did not hear any of the minors questioned by anyone concerning his age.

Donald --- testified that he and a companion were in defendant's licensed premises on the evening of March 31, 1956, and that defendant was tending bar. He further testified that he did not see who served the beer but remembered one of the minors in question drinking beer that evening.

An ABC agent testified that on April 9, 1956, he and two fellow agents and the four minors were in defendant's licensed premises; that Bernard --- pointed out Mrs. Hafner as having served him alcoholic beverages; Paul --- pointed out both Fred and Edna as serving him; Raymond --- pointed out Edna served him and Donald --- said Edna had been present that night but didn't recall her serving any of the minors. The agent further testified that Schlegel didn't enter the premises; that Peter --- was unable to identify either Edna or Fred at the time as having served him; that Fred Hafner stated he had never seen any of the minors before with the exception of Bernard --- whom he had seen at "a service station of Pompton Lakes at one time or another;" that "Edna said she was tending bar, and I believe Fred said he had been also a certain period of time. I don't recall exactly what time he did say he had been helping." It was stipulated by the attorneys for the respective parties herein that the direct testimony of two other agents who had accompanied the aforementioned agent would be substantially similar to his. Cross-examination of the latter two agents did not change the direct testimony attributed to them by stipulation.

Fred Hafner testified that he was not in defendant's licensed premises from 8:00 p.m. on March 31 to 2:00 a.m. the following morning; that on April 9, 1956, he was present when the minors and the ABC agents came into the premises and that none of them could positively identify the licensed premises as the place they had been in March 31, 1956 or the defendant as the person who served them.

Defendant testified that she was tending bar on the evening of March 31, 1956, but did not see any of the minors in her premises at that time; that on April 9, 1956, when the boys came into the premises with the ABC agents, they said "I'm not sure if this is the place or not. It looks like it", and when they were asked by an agent whether she was the person who served them alcoholic beverages, they answered in the affirmative; that, although she relieves her husband at 8:00 p.m., he generally returns to the tavern at 2:00 a.m. the following morning; and that she had no recollection when he actually came to work on Saturday night, March 31.

George Thompson testified that he and his wife were in defendant's licensed premises on April 9, 1956 when the boys and

the AEC agents were there and the boys were uncertain as to the identities of the person making service and as to the place. It was stipulated by the attorneys that if Julia Thompson (wife of the aforementioned witness) were called to testify, her testimony would be similar to that of her husband.

No exceptions were taken to the Hearer's report within the time limited by Rule 6 of State Regulations No. 16.

I have carefully examined all of the testimony adduced herein and after due consideration thereof concur with the finding of the Hearer that the four minors were in the defendant's licensed premises on the evening of March 31, 1956, at which time they each were served several glasses of beer by the defendant. The fact that one of the minors could not identify the person who served the beer to him is not fatal in disciplinary proceedings against the licensee (Re Miller, Jr., Bulletin 1106, Item 10).

I find the defendant guilty of the charge preferred herein.

Defendant has no prior adjudicated record. The usual penalty heretofore imposed for a violation involving a 17-year-old minor was a suspension of the license for fifteen days (Re Keelan, Bulletin 1095, Item 4). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days (Re Increased Penalties, Bulletin 1095, Item 1). Since the violation in the instant case occurred after that announcement, and considering the fact that four minors were served and permitted to consume alcoholic beverages on defendant's licensed premises at the time in question, I shall suspend defendant's license for twenty-five days (cf. Re Ronald Enterprises, Inc., Bulletin 1125, Item 1).

Accordingly, it is, on this 8th day of October, 1956,

ORDERED that Plenary Retail Consumption License C-2, issued for the 1956-57 licensing period by the Borough Council of the Borough of Ringwood to Edna Hafner, t/a Edna's Mountain Inn, Greenwood Lake Road, Ringwood Borough, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. October 15, 1956, and terminating at 3:00 a.m. November 9, 1956.

WILLIAM HOWE DAVIS
Director.

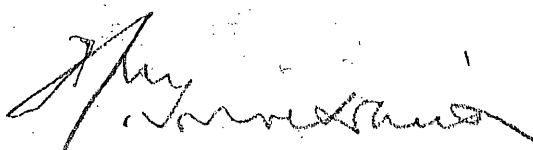
11. STATE LICENSES - NEW APPLICATIONS FILED.

Donald Perretti, t/a Valley Beverage Distributors
191 Paris Avenue, Northvale, N. J.

Application filed November 13, 1956 for place-to-place transfer of State Beverage Distributor's License SBD-204, from S.E. Corner Paris Avenue & Livingston St., Northvale, N.J.

Linden Motor Freight Co., Inc.
2020 South Stiles St., Linden, N.J.

Application filed November 16, 1956 for Transportation License.



William Howe Davis
Director.