

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

BULLETIN 1504

April 11, 1963

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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.

BULLETIN 1504

April 11, 1963

1. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION -
LICENSE SUSPENDED FOR 210 DAYS.

In the Matter of Disciplinary Proceedings against)

DOMAPP, INC.)
110 - 12th Avenue)
Newark 7, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-66, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, Esq.,
Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleaded not guilty to the following charge:

'On July 18, 19 and 20, 1962, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, through Benjamin Rubinstein, your president and holder of fifty per cent (50%) of your corporate stock, made offers to male patrons and customers on your licensed premises to procure and did procure females to engage in acts of illicit sexual intercourse with said male patrons and customers and participated in and allowed, permitted and suffered the making of overtures and arrangements, in and upon your licensed premises, by said females with male patrons and customers for acts of illicit sexual intercourse, as aforesaid; in violation of Rule 5 of State Regulation No. 20.'

"To substantiate the charge the Division produced ABC Agents R, S, C, F and T who, with Agent St, participated in the investigation of the licensee's business.

"The testimony of Agent R is substantially as follows: On Wednesday, July 18, 1962, he and Agents S and T entered the licensee's premises shortly before midnight and remained until 1:40 a.m. the following morning. During their stay they became friendly with Benjamin Rubinstein (hereinafter Ben), president of the corporate licensee, who introduced them to several females and later told them that action in the place happens only on week-ends. When they were leaving, Ben asked them to return, saying 'I'll steer you guys right. Don't worry about a thing.'

Stick with me. I'll see that you meet some girls... I know you fellows don't mind spending money.' Agent R further testified that shortly after 2 p.m. Thursday, July 19, 1962, he, Agents S, C, F and St arrived at the licensed premises which he and Agents S and C entered. Richard Wallin was tending bar and at about 3:40 p.m. Ben took over as bartender until William Randolph (the night bartender) arrived. Ben remained on the premises and, when told that they (the agents) came back because they had had such a good time the night before, Ben said 'Stick around, fellows. The girls will be in later. Don't worry about anything. I'll take care of you.' Ben then introduced them to two females called Millie and Vy, for whom they bought several drinks. When Millie and Vy went to the ladies' room Ben said 'Look, fellows, these broads don't have any class. You let me take care of it. I'll get you something,' and when Agent C said 'Ben, you know why we're here. We want to get laid', Ben responded 'Don't worry, I'll take care of you.' After making six or seven unsuccessful telephone calls, Ben said to them 'Maybe the girls are not home from work', assuring them that they usually come in later on in the evening. At 8:10 p.m. they left the premises, promising to return, which they did at about 10:15 p.m. Ben greeted them saying 'I want you to meet a white girl named Barbara seated over at the bar.' Barbara was with a male companion named Wright, and Ben brought her over and introduced her, after which she returned to her companion. Ben then said 'Let me go over and talk to Barbara. She's a good lay. I'll set it up for you,' informing them that she usually charges \$20 but, since they were friends of his, she would charge only \$15. Ben then talked to Barbara and returned to them saying 'See, I told you fellows I'd take care of you', telling them that her price would be \$15 and that he had arranged for Wright to take him (Agent R) and Barbara to her apartment for the purpose of having sexual intercourse, after which he would take Agent C and then Agent S. Shortly thereafter he, Barbara and Wright left the premises, having been admonished by Ben that 'You have to be very careful. Be sure to go out the side door.' When they entered Barbara's basement apartment on Hillside Avenue, he (Agent R) handed her a ten-dollar and a five-dollar bill, the serial numbers of which had been previously recorded. She put the money in her purse and he and Wright went directly to her bedroom where she disrobed and asked him to disrobe also. When he told her that he had had too much to drink and couldn't engage in sexual intercourse, she said 'Well, look, Honey, you paid for it. If you don't want it, that's tough.' Thereafter he, Barbara and Wright returned to the licensed premises and Ben said to him 'See, I told you she was a good lay, wasn't she?' and he shook his head indicating she was. Ben then turned to Agent C and said 'All right, Charlie you're next.' At this point Agent S left the premises and returned within a few minutes. In the meantime Agent C had left with Barbara and Wright and he didn't see him again until shortly before 1 a.m. when Agent C returned with two police officers. He, Agents S and C then identified themselves to Ben who, with Wright, were escorted by the police to police headquarters where Ben, Barbara and Wright, in the presence of one another and the agents, admitted their participation in the illicit arrangements.

"The testimony of Agent S corroborated that of Agent R in all respects, and he further testified that, when Ben said 'Charlie you're next', he and Agent R went to the men's room and marked a ten-dollar bill with the initials ABC and passed the bill to Agent C before Wright, Barbara and Agent C left the premises.

"Agent C was produced, and it was stipulated between the attorneys for the parties hereto that his direct testimony would

corroborate that of Agent S in so far as what occurred on the licensed premises during Agent C's stay on July 19 and the early morning of July 20, 1962. His further testimony shows the following: When he left the licensed premises with Barbara, he handed her the ten-dollar bill that had been marked in the men's room of the licensed premises, and the five-dollar bill the serial number of which had been previously recorded, after which Wright drove him and Barbara to an apartment on Warren Street where they were greeted by a female. He and Barbara entered a bedroom where Barbara disrobed and asked him to do likewise. He excused himself saying that he had to go to the bathroom and, returning shortly, he was leisurely disrobing when Agents F and St entered the bedroom accompanied by local police who requested Barbara to empty her purse on the bed. She complied and among the contents were found the bills which Agent R had given to her and on the floor at her feet were found the bills he had given to her. The money and the list containing the corresponding serial numbers of three of the bills were received in evidence.

"Agent F testified substantially as follows: On July 19, 1962, he and Agent St remained at a vantage point outside the licensed premises. At about 11:30 p.m. Agent S came out of the tavern, conferred with Agent St for a few minutes, and returned. About 12:15 a.m. he saw Agent C, Wright and Barbara leave the premises, get into a green Cadillac and drive away. He and Agent St followed them in his car to Warren Street, and he saw the trio enter an apartment. Agent St then called the local police and, within a few minutes, he and Agent St were joined by Patrolmen Lynch and Capas. The four entered the apartment and proceeded to the bedroom on the second floor where they saw Barbara lying on the bed nude from the waist down, and Agent C standing nearby partially disrobed. The police took Barbara into custody after finding the money given to her by Agents R and C. Thereafter he, Agents C and St and the police returned to the licensed premises, at which time all the agents identified themselves to Ben who with Wright were escorted to police headquarters where they and Barbara, in the presence of one another and the agents, admitted their participation in the illicit arrangements.

"Appearing on behalf of the licensee were Miss Jones, Mrs. Brown, Randolph the bartender, Barbara and Ben.

"Miss Jones testified in substance that at about 11 p.m. Thursday, July 19, 1962, she was in the licensee's premises and was offered drinks by Agents R and S, which she refused; that Ben never arranged with her to meet men; that she didn't observe Ben talking to the agents or hear him tell them he was going to fix them up with women; that she knows Barbara who was in the tavern, and didn't see Ben introduce her to the agents or hear him make arrangements with her to have sexual relations with them.

"Mrs. Brown testified in substance that she was in the licensee's premises on Wednesday night, July 18, and again on Thursday, July 19, 1962; that on Wednesday night she didn't hear Ben say he was going to fix the agents up with girls if they came back Thursday; that on Thursday she joined the agents and was asked by Agent C if she would go out with him to have a good time; that she told him he had the wrong person and, after buying a round of drinks for all the agents, she left the premises.

"Randolph testified in substance that he was working on the evenings of July 18 and 19, 1962; that on the 18th he saw Agents R and S and another man (Agent T) enter the premises about

11:45 p.m. but didn't hear any conversation between them and Ben; that at 4:45 p.m. the following day, when he arrived, he saw agents R, S and C at the bar and later on saw Barbara and Wright enter the premises; that he didn't see the agents talk to Barbara or Wright, and that he was too busy tending bar to hear any conversation the agents may have had with Ben.

"Barbara, who appeared at the hearing by order of the Superior Court, testified in substance that on July 19, 1962, Ben introduced her to the agents after Agent S had asked him four or five times for an introduction; that, as she was returning from the ladies' room, Agent S told her that he was sexually disturbed and wanted to know if she could do anything for him; that she turned around and went back to where she had been sitting that she later went to her apartment to 'do something, and feed my cat'; that Agent R 'wanted to go along for the ride. There was another fellow with him' and that Ben never asked her to have sexual relations with any of the agents. On cross examination Barbara testified that she had been visiting Ben's tavern for over a year, that she had been employed for a week before July 19, 1962, and that prior thereto she had been unemployed for 'a year or so;' that her husband, from whom she is separated, helps her when she is unemployed; that she is friendly with Wright and has been out with him on several occasions; that she was with him on July 19, that Ben 'had a word to say now and then' to the agents, and that later on he introduced her to them. She admitted Wright drove her and Agent R to her apartment on Hillside Avenue but not for the purpose of engaging in sexual intercourse and that, when she and Wright drove to Warren Street to see his girl friend, Agent C and some of the other agents followed them. She categorically denied everything else to which the agents testified.

"Ben testified in substance that he is president of the corporate licensee and has been engaged in the tavern business for about twenty-five years and has never before been charged with a violation; that, when Agents R and S and another man (Agent T) entered his tavern on July 18, they said they knew friends of his in New Brunswick and mentioned them by name; that the following afternoon the agents again visited the premises and were treating the girls therein to drinks; that they asked him to fix them up and he replied 'I don't fix anybody up. Look, I keep my nose clean'; that Agent S said he had a sex urge and that he (Ben) told him that he could get relief by the application of cold water; that about 10 p.m. Barbara and Wright entered the tavern and he introduced her to the agents, and that he never arranged with Barbara or any other female patron to engage in sexual relations with men. On cross examination Ben denied everything else testified to by the agents.

"In oral argument at the close of the testimony the licensee's attorney contended, inter alia, that (a) the police who participated in the latter part of the investigation should have been produced by the Division to corroborate the testimony of the agents as to what the officers observed, heard and did, and (b) that the agents' conduct in the course of their investigation constituted entrapment.

"As to (a): It is apparent that at the hearing held on October 30, 1962, the Division had established a prima facie case and it must be conceded that, after the licensee's first three witnesses testified on that date, the case was adjourned to November 15, 1962. It would seem, therefore, that the licensee's

attorney had ample time to interview the police officers and to subpoena them as witnesses for the licensee if their statements were found to be at variance with the testimony of the agents.

"As to (b): The law of entrapment in New Jersey is stated by Judge (now Justice) Francis in State v. Rosenberg, 37 N.J. Super. 197, at 204 (App.Div. 1955), as follows:

'Generally, it may be said that where a police officer 'envisages a crime, plans it, and activates its commission by one not theretofore intending its perpetration' for the purpose of providing a victim for prosecution, the defense is available. Sorrels v. United States, 287 U.S. 435 ***. However, a distinction must be recognized between the situation where the criminal intent or design originates in the mind of the officer for the purpose of luring or entrapping the accused into commission of the offense which otherwise he would not have committed, and where such intent has its inception in the mind of the accused and the officer acting in good faith in the pursuit of his duties merely furnishes opportunities or facilities for, or aids or encourages the accused in the commission of the offense. State v. Marquardt, 139 Conn. 1, 89 A. 2d 219 (Sup.Ct. Err. 1952); 22 C.J.S. Criminal Law, § 45 (1940); Annotation 86 A.L.R. 264 (1933); 1 Wharton, Criminal Law (12th ed. 1932), § 390, n. 3; Annotation, 18 A.L.R. 146 (1922). In the latter instance there is no entrapment.'

"In the instant case there is no evidence that the agents implanted an unlawful design in the mind of Rubinstein, or that they by trickery, persuasion or fraud induced Rubinstein to commit a wrongful act. The agents were investigating a specific complaint alleging the very violation charged, and during the course of their investigation they merely afforded Rubinstein and opportunity to commit the offense, which he did by procuring the female patron for the purpose of prostitution. Clearly there was no entrapment. Cf. Zimmerman v. Bernards, Bulletin 228, Item 10; Re Sandago, Bulletin 249, Item 1; Re Rosano, Bulletin 1212, Item 1.

"Having had the opportunity to judge the credibility of the witnesses, and recognizing the sharp dispute of facts, I find that the testimony of the agents is highly credible and convincingly depicts what actually occurred during their investigation of the licensee's business on the dates alleged. On the contrary, I cannot, considering all of the circumstances, give any credence to the testimony of the licensee's witnesses. I conclude, therefore, that the Division has established the truth of the charge by a fair preponderance of the believable evidence, and I recommend that the licensee be adjudged guilty as charged.

"Procurement for prostitution by licensees or their employees will not be tolerated. The public is entitled to protection from such sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2 (aff'd In re 17 Club, Inc., 27 N.J. Super. 43 (App.Div. 1953)).

"Considering the gravity of the violation, but also considering the licensee's long, clear previous record, I further recommend that the license be suspended for two hundred ten days. Re Foti, Bulletin 1488, Item 7."

Exceptions to the Hearer's Report were filed with me by the licensee's attorney within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the summation of the licensee's attorney, the Hearer's Report and the exceptions thereto filed with me, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 26th day of February, 1963,

ORDERED that Plenary Retail Consumption License C-66, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Domapp, Inc. for premises 110 - 12th Avenue, Newark, be and the same is hereby suspended commencing at 2:00 a.m. Tuesday, March 5, 1963, for the balance of its term, viz., until midnight June 30, 1963; and it is further

ORDERED that any renewal license which may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, October 1, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

- 2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CAPPY'S HIDEAWAY, INC.
208 W. Main Street
Bound Brook, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Bound Brook.

Licensee, by Joseph N. Capawana, President, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on January 27, 1963, it sold a drink of an alcoholic beverage to a minor, age 18, in violation of Rule 1 of State Regulation No. 20, and (2) in its application for current license, it failed fully to disclose its record of previous suspension of license, in violation of R.S. 33:1-25.

The previous record of suspension, the subject of the second charge, is as follows:

1. License suspended by the Director for twenty-five days, effective January 23, 1961, for sale of alcoholic beverages to minors and local hours violation. Bulletin 1377, Item 9.
2. License suspended by the Director for thirty-five days, effective April 2, 1962, for sale of alcoholic beverages to minors, permitting filthy and obscene language on premises and conducting the licensed business as a nuisance. Bulletin 1446, Item 11.

The prior record of two similar violations within the past five years considered, the license will be suspended on the first charge for thirty-five days (cf. Re Benny's Tavern, Inc., Bulletin 1462, Item 4) and on the second charge for ten days (Re The Ulster Club of New Jersey, Inc., Bulletin 1477, Item 11), making a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 28th day of February, 1963,

ORDERED that Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Bound Brook to Cappy's Hideaway, Inc. for premises 208 W. Main Street, Bound Brook, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. Thursday, March 7, 1963, and terminating at 2:00 a.m. Tuesday, April 16, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN HOME - STOCK OF ALCOHOLIC BEVERAGES, EQUIPMENT AND COMMINGLED CASH ORDERED FORFEITED - CASH IN WALLET NOT COMMINGLED ORDERED RETURNED TO CLAIMANT - DEPOSIT UPON STIPULATION DETERMINED TO REFLECT REASONABLE VALUE OF GOODS, AND ORDERED FORFEITED.

In the Matter of the Seizure on)	
September 23, 1962 of a quantity of)	CASE NO. 10,918
alcoholic beverages, \$535.75 in)	
cash, various fixtures, furnishings,)	ON HEARING
and equipment at 6 Hilliary Avenue,)	CONCLUSIONS
in the Town of Morristown, County of)	AND ORDER
Morris, and State of New Jersey.)	

Hillas and Thierfelder, Esqs., by Erhard B. Thierfelder, Esq.,
Attorneys for claimant.

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

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28, and further pursuant to a stipulation, dated October 24, 1962, signed by Sol Del Vallie, to determine whether 206 bottles of beer, 107 bottles of taxpaid alcoholic beverages, 46 bottles of soda, \$535.75 in cash and various fixtures and equipment, more particularly described in a schedule attached hereto and marked Schedule 'a', seized on December 23,

1962 at premises occupied by Sol Del Vallie at 6 Hilliary Avenue, Morristown, N. J. constitute unlawful property and should be forfeited; and further to determine whether the sum of \$500.00, representing the retail value of the various fixtures, furnishings and equipment, exclusive of the alcoholic beverages and the aforesaid \$535.75 in cash, paid under protest by Sol Del Vallie aforesaid, should be returned to him, or forfeited.

"The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at the said premises. When the matter came on for hearing pursuant to R.S. 33:1-66, Sol Del Vallie, represented by counsel, appeared at such hearing, and sought return of the cash, and such sum which he could establish, as exceeding the actual retail value of the furnishings, equipment and fixtures which said amount was posted by him under protest, according to the stipulation herein.

"The testimony of ABC agents C and S who were produced by the Division as its witnesses, reflected the following: On September 23, 1962 these agents took a post of observation near the premises, which consist of a two and one-half story frame dwelling. At 1:30 a.m., the agents saw an automobile drive up to the said premises. They observed several men get out of a car and enter the subject premises by a side entrance. Other automobiles followed the first car and persons were observed entering and shortly after departing from the same entrance.

"At 2:15 a.m. Agent C walked in the side door of the above house, found two persons in the building basement. One of these men put a pint bottle of whiskey in his pants pocket and left the subject premises. The other person went into an adjoining room and came out carrying what appeared to be a pint bottle of gin or vodka which he carried outside.

"Agent C then went into an adjoining room and found a person, whom he identified as Sol Del Vallie, the owner of this building, sitting on a bed. He then requested a pint of VO and Del Vallie opened a metal wall cabinet from which removed a full, sealed pint bottle of Seagram's VO Whiskey which he handed to the agent who, in turn, gave him a 'marked' five-dollar bill, the serial number of which had been previously recorded.

"Del Vallie thereupon gave him fifty cents change. The agent thereupon left the premises. Shortly thereafter he returned to the premises with Agent S and local police officers. When they entered the building basement they found Del Vallie talking to another patron. Agent C then said, 'Hey, Sol, I need a pint of gin, too. Give me a pint'.

"Del Vallie went into the adjoining bedroom and came out with a full sealed pint bottle of Seagram's Gin which he handed to Agent C in return for which he was paid with four one-dollar 'marked' bills and received fifty cents in change. Agent C thereupon signalled the other officers and pointed to Del Vallie as the man who had just sold him these alcoholic beverages, without a license to do so.

"Del Vallie was dressed in his pajamas and was asked to empty his pajama pocket. He demurred, 'No, you are not going to steal it (money) like the last time'. He then went to the bedroom, returned a few minutes later with his trousers on. He was then directed to empty his pockets on the table which he did.

This included the four one-dollar bills and his wallet, total sum of which amounted to \$535.75.

"Del Vallie was questioned regarding the sale of alcoholic beverages, but he denied making any sales, stating that he had bought all of the whiskey for himself and his friends who came by to pick it up. He was thereupon arrested for sale of alcoholic beverages without a license authorizing him to do so in violation of R.S. 33:1-2 and R.S. 33:1-50(a) and possession of alcoholic beverages with intent to sell same without a license contrary to R.S. 33:1-2 and R.S. 33:1-50(b).

"A search of the premises disclosed a considerable quantity of beer, wine, gin and whiskey as set forth in Schedule 'A' attached hereto. Thereafter, he was arraigned in the Morristown Municipal Court and held in bail for action by the Morris County Grand Jury.

"The agents produced the list containing the serial numbers of the 'marked' bills, and there was also admitted into evidence the report of the Division chemist dated September 26, 1962 reflecting analyses of two samples of alcoholic beverages seized by the agents on the date in question. One sample taken from a pint of Imported VO Canadian Whisky indicates that it is a blended whiskey fit for beverage purposes with alcohol by volume of 44.0 percent. Another sample taken from a pint of Seagram's Extra Dry Golden Gin indicated that it is a gin fit for beverage purposes with alcohol by volume of 45.2 percent.

"Agent S testified that when the money was taken out of the pocket he counted it and found that there was a total of \$535.75, among which was the four 'marked' one-dollar bills. However, the five-dollar 'marked' bill was not found, nor was a polaroid camera, which the claimant alleges was on the premises at the time. Agent S stated that he attempted to obtain a written statement from the claimant but Del Vallie refused to make a voluntary, signed statement.

"Counsel for the claimant advocated at the hearing, prior to the production of his witnesses, that the only issue that he was concerned with was whether the '\$535.75 could be considered unlawful property and subject to seizure. In other words, on direct I am going to confine myself solely to that testimony'. However, in answer to my question, he stated that he would offer additional testimony with respect to the appraised value set by this Division on the property seized, and returned under the stipulation entered herein.

"Sol Del Vallie, the claimant, testified that he was in his basement talking to two gentlemen when the ABC agents accompanied by police officers came into the room, showed him a warrant and said, 'We are officers, ABC officers. You are under arrest. We have a search warrant'. He stated that the only money he had on him was a five-dollar bill and five one-dollar bills in his pajama coat pocket which he was wearing. They then entered an adjoining room, and came out with four one-dollar bills and asked whether he had any more money in his room. He admitted that there was additional monies in the adjoining room and unlocked his safe and took a little box with silver in it and three rolls of \$100.00, \$50.00 in each roll, three rolls of \$1.00 bills, \$50.00 in each roll. He also took out his wallet in which he claims that there was \$210.00 in \$10.00 and \$20.00 bills, and this money was also put on the table and counted.

"Del Vallie asserts that there was approximately \$530.00 in cash which was seized from him on that night; that most of the money came from rents from tenants and from his wages. He also had to pay a mortgage on the first day of the month, as well as his taxes, and asserts that he kept this cash because he didn't want to put it in a bank. He testified as to the value of the articles and furnishings seized and according to his best estimate, their present value is approximately \$400.00. He therefore protests the value of \$500.00 set by this Division which he was required to post in order to obtain the return of the property.

"On cross examination, the defendant insisted that he had his wages in his 'pay' envelope, but was unable to produce the said envelope at the hearing. He also admitted that he has both a savings account and a checking account at the Morristown Trust Co. His explanation for keeping the large amount of cash at home was that he once issued a check which bounced and his mortgagee insisted that he pay in cash. He also insisted that he had \$210.00 in his wallet, all in \$10.00 and \$20.00 bills. When pressed for the reason why he had so much silver in his possession, he stated that this sum resulted from tips that he received as a cook. Some satisfied customers would come to the kitchen door of the restaurant in which he was employed and frequently give him tips because they enjoyed the food.

"He also explained that while he had \$336.00 in his bank account, he nevertheless preferred to pay most of his bills in cash. With respect to the value set by him on the property taken, he insisted that the total value of the property was placed at \$300.00 when a seizure was made as a result of a raid, on his premises in September 1961, by this Division.

"However, it was clear that there were additional items taken on the date in question which were not seized at the prior occasion. The claimant also produced Louise Evans who testified that she is a tenant at the said premises and paid him \$95.00 per month on the first of each month in cash.

"She testified that she saw the polaroid camera in the morning prior to the raid but was unable to state what happened to it during the two days intervening between her next entry into the apartment.

"Agent S in rebuttal testified that when Del Vallie returned to the room in which the agents were present he removed all the money from his pants pocket and his wallet was in his pocket at that time. He also stated that four one-dollar bills were produced by Del Vallie, and the agents did not enter the bedroom or obtain any money therefrom.

"When Agent S confronted Del Vallie with the four 'marked' one-dollar bills Del Vallie denied knowing how the money came to be with the other monies. This agent also repeated that Del Vallie removed the wallet from his pocket and thereafter removed additional monies from that pocket which he placed on the table. His testimony was corroborated in rebuttal by Agent C.

"The primary contention of the claimant is that he is entitled to the return of the seized cash, because he made no sale of any illicit alcoholic beverages and, therefore, the money was improperly taken from him. My evaluation of the testimony of the ABC agents, all of whom testified substantially the same in every

important particular, convinces me their version of what occurred on these premises on the date in question was a forthright and credible portrayal.

"I am persuaded that there were 'buys' of illicit alcoholic beverages made by Agent C, both before and simultaneously with the seizure; that Del Vallie sold these beverages to the agent, and received the 'marked' money, as testified to by the agent. I am also equally convinced that the activity, as testified by the agents took place at these premises, and that many sales of illicit alcoholic beverages were made to other persons on this evening.

"It is particularly significant to note the large and extensive stock of alcoholic beverages which was seized on the date in question. It cannot be seriously contended that this amount of stock was being held for personal consumption or for some 'friends' of claimant. The transactions bespeak a commercial enterprise of substantial proportions.

"The only real issue, therefore, is whether the \$535.75 which was placed on the table by Del Vallie and thereupon seized by the agents should be forfeited. The general rule is that where money is commingled with money obtained through the unlawful sale, all of the money is subject to forfeiture, as well as the fixtures, furnishings and equipment. Seizure Case No. 10,009, Bulletin 1391, Item 4. Section R.S. 33:1-66(b) provides:

'All alcoholic beverages, fixtures and personal property, located in or upon any premises, building, yard or enclosure connected with a building in which an illicit beverage is found, possessed, stored or kept are hereby declared unlawful property and should be seized, forfeited and disposed of as other unlawful property seized under this section.' (Emphasis mine)

"Where money is clearly commingled with 'marked' money it is subject to forfeiture. Seizure Case No. 10,646, Bulletin 1435, Item 5; Seizure Case No. 10,349, Bulletin 1366, Item 2; Seizure Case No. 9382, Bulletin 1179, Item 5.

"In Seizure Case No. 7263, Bulletin 812, Item 2, the Director used the following language:

'This clear statutory language has, from the very outset of the State Department of Alcoholic Beverage Control been construed to mean just what it says. Under its provisions the late Commissioner Burnett ordered forfeited the entire equipment of a restaurant speakeasy'.

R.S. 33:1-2, R.S. 33:1-66(b).

"There is a sharp conflict between exactly what happened to this money. The agents' version is that Del Vallie was directed to place all of the money on the table. He then went into his bedroom and shortly thereafter returned and placed monies, including his wallet, on the table. He personally removed the monies from the wallet. In the money he placed on the table were the four one-dollar 'marked' bills.

"Del Vallie disputes this version and disclaims knowledge of the four one-dollar 'marked' bills. He, of course, denies that any money came from the illicit sale of alcoholic beverages.

He asserts that the cash, including the large sums of silver coins, represented his salary, rent receipts and savings. I believe that the evidence is plenary and substantially persuasive of the account as given by the ABC agents.

"I do not believe Del Vallie's testimony that he did not sell drinks; that all of this money represented the items hereinabove set forth; that the four 'marked' bills were not part of the money which he produced and which he laid on the table. His credibility is further affected by his prior convictions of crime, which involved charges of possession and sale of alcoholic beverages, the last one which occurred in September 1961. Evidence of these convictions was admitted solely for the purpose of affecting his credibility.

"However, with respect to the money in the wallet in the sum of \$210.00 there seems to be some doubt, in my mind, as to whether that money was actually commingled. The testimony of the agents is somewhat vague on that point and they frankly could not say whether the \$4.00 in 'marked' money was actually found in the wallet of Del Vallie. Under these circumstances, I recommend that the claim of Del Vallie for the return of the monies in question be denied except that he be given the benefit of the doubt with respect to the \$210.00 found in the wallet, and that sum should be returned to him. Thus, I recommend an order be entered forfeiting the cash except for the sum of \$210.00 which should be returned to claimant. Seizure Case No. 9653, Bulletin 1231, Item 8; Cf. Re Silverstein, Seizure Case No. 10,450, Bulletin 1401, Item 6; R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

"The second contention of the claimant was that the appraised value of the property seized upon which he was required to place a cash bond of \$500.00 according to the stipulation entered herein, exceeds the actual retail value thereof. Del Vallie testified that, in his opinion, the actual retail value of the furnishings, equipment and other personal property seized amounts to approximately \$400.00. Since he is no expert, his testimony can only be considered as his personal opinion. No expert testimony was produced.

"My examination of the testimony convinces me that the appraised value of this Division was reasonable and not excessive, and I therefore recommend that the claim for rebatement of a portion of the cash bond posted by this claimant pursuant to the stipulation entered herein, be disallowed.

"It is further recommended, on the basis of the evidence presented, that all of the equipment, furniture and personal property, including the alcoholic beverages, except for and excluding the cash contained in the wallet, in the sum of \$210.00, be declared to be unlawful property and that an order be entered forfeiting the same. R.S. 33:1-66; Seizure Case No. 10,009, Bulletin 1391, Item 4."

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

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

Accordingly, it is, on this 27th day of February, 1963,

DETERMINED and ORDERED that the said sum of \$210.00 referred to in the Hearer's Report shall be returned to Sol Del Vallie; and it is further

DETERMINED and ORDERED that the balance of the cash seized, amounting to \$335.75 be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66; and it is further

DETERMINED and ORDERED that the sum of \$500.00 representing the appraised retail value of the various fixtures, furnishings and equipment, exclusive of the alcoholic beverages and the aforesaid cash, paid under protest by Sol Del Vallie aforesaid, pursuant to a stipulation signed by him, shall be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66; and it is further

DETERMINED and ORDERED that the alcoholic beverages, more fully described in Schedule "A", attached hereto, constitutes unlawful property, and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained under State Regulation No. 29 for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Acting Director of the Division of Alcoholic Beverage Control.

EMERSON A. TSCHUPP,
ACTING DIRECTOR

SCHEDULE "A"

206 - bottles of beer
127 - bottles of alcoholic beverages
46 - bottles of soda
1 - juke box
1 - television set
1 - frigidaire
3 - timers
5 - viewers
2 - toasters
13 - cartons of cigarettes
1 - meat slicer
1 - kitchen clock
2 - boxes (Buddy Boy)
1 - box of records
1 - radio
\$535.75 in cash

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLOVER BAR, INC.)
t/a CLOVER BAR, INC.)
462-462B Amboy Avenue)
Perth Amboy, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-16, issued by the Board of Commissioners of the City of Perth Amboy.)

Licensee, by Lucille Gengor, President, and John U. Gengor, Secretary, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads guilty to charges alleging that on February 8, 1963, at 11:05 p.m., it sold a quart bottle of beer and a quart bottle of whiskey (1) for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) below filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Mintz's Tavern, Inc., Bulletin 1493, Item 5.

Accordingly, it is, on this 27th day of February, 1963,

ORDERED that Plenary Retail Consumption License C-16, issued by the Board of Commissioners of the City of Perth Amboy to Clover Bar, Inc. for premises 462-462B Amboy Avenue, Perth Amboy, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, March 5, 1963, and terminating at 2:00 a.m. Monday, March 25, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALBERT W. & JEANETTE C. JOHNSON)
404 - 36th Street)
Union City, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-189, issued by the Board of Commissioners of the City of Union City.)

Licensees, Pro se.

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

BY THE ACTING DIRECTOR:

Licensees plead guilty to a charge alleging that on February 16, 1963, they sold drinks of alcoholic beverages to three minors, age 18, 19 and 20, in violation of Rule 1 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the Director for twenty days, effective July 19, 1961, for permitting bookmaking and numbers activity. Re Johnson, Bulletin 1407, Item 7.

The prior record considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Cf. Re Mulhearn, Bulletin 1482, Item 10; Re Paulin, Bulletin 1459, Item 5.

Accordingly, it is, on this 28th day of February, 1963,

ORDERED that Plenary Retail Consumption License C-189, issued by the Board of Commissioners of the City of Union City to Albert W. and Jeanette C. Johnson for premises 404 - 36th Street, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Thursday, March 7, 1963, and terminating at 3:00 a.m. Wednesday, March 27, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

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

In the Matter of Disciplinary Proceedings against

GEORGE A. RUTH & DENNIS MIDDAUGH
t/a Dinnie & George's
295 Ninth Street
Jersey City 2, N. J.

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-509, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensees, Pro se.

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

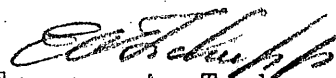
BY THE ACTING DIRECTOR:

Licensees plead non vult to a charge alleging that on February 7, 1963, at 12:18 a.m., they sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Davidson Liquors, Inc., Bulletin 1493, Item 9.

Accordingly, it is, on this 25th day of February, 1963,

ORDERED that Plenary Retail Consumption License C-509, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to George A. Ruth and Dennis Middaugh, t/a Dinnie & George's, for premises 295 Ninth Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, March 4, 1963, and terminating at 2:00 a.m. Thursday, March 14, 1963.


Emerson A. Tschupp
Acting Director