

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2264

September 1, 1977

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Cedar Grove - Montclair) - FRONT - FALSE STATEMENT IN APPLICATION - UNDISCLOSED INTEREST BY HOLDER OF SOLICITOR'S PERMIT - LICENSE SUSPENDED FOR BALANCE OF TERM NOT LESS THAN 80 DAYS - SOLICITOR'S PERMIT SUSPENDED FOR 20 DAYS.
2. DISCIPLINARY PROCEEDINGS (Union City) - FRONT - UNDISCLOSED INTEREST - FAILURE TO KEEP BOOKS - LICENSE SUSPENDED FOR BALANCE OF TERM OR NOT LESS THAN 90 DAYS.
3. DISCIPLINARY PROCEEDINGS (Paterson) - SUPPLEMENTAL ORDER.

STATE OF NEW JERSEY  
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1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN APPLICATION - UNDISCLOSED INTEREST BY HOLDER OF SOLICITOR'S PERMIT - LICENSE SUSPENDED FOR BALANCE OF TERM NOT LESS THAN 80 DAYS - SOLICITOR'S PERMIT SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary  
Proceedings against

John Tully, Sr.  
146 Brunswick Avenue  
Cedar Grove, N.J.

Holder of Unlimited Solicitor's  
Permit No. 1309, issued by the  
Director of the Division of  
Alcoholic Beverage Control.

and

The Romany Liquor Shop, Inc.  
t/a The Romany Liquor Shop  
227 Glenridge Avenue  
Montclair, N. J.

Holder of Plenary Retail Distribution  
License D-8, issued by the Board of  
Commissioners of the Town of Montclair.

CONCLUSIONS  
and  
ORDER

-----  
Allen Zavodnick, Esq., by Lawrence A. Leven, Esq., Attorneys for Permittee,  
John Tully, Sr.  
Victor Librizzi, Jr., Esq., Attorney for Licensee, Romany Liquor Shop, Inc.  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This hearing came on pursuant to separate charges preferred against the solicitor permittee and licensee, which, by their nature, are inter-related, have been consolidated for hearing, and will be the subject of a single Hearer's report.

The Division alleges that from on or about November 21, 1969 to the present: John Tully, Sr., the holder of an unlimited solicitor's permit, (1) had an interest in the plenary retail distribution license issued to The Romany Liquor Shop, Inc; and (2) was either employed by it or connected therewith in a business capacity; in violation of Rule 7 of State Regulation No. 14.

The charges preferred against The Romany Liquor Shop, Inc., allege that:

- "1. In your long-form license application dated May 29, 1974, and filed with the Board of Commissioners of the Town of Montclair, upon which you obtained your current plenary retail distribution license D-8, you, after listing Margaret B. Tully as the holder of 100% of your issued and out-standing stock, have failed to disclose the previous and continuing suppression of a material fact in this long-form application, viz., to show a change in answer from 'No' to 'Yes' to Question No. 21 which asks: 'Does any corporation, partnership, association or individual other than the stockholders hereinabove set forth hold any beneficial interest, directly or indirectly, in the stock held by said stockholders or is any of such stock held in escrow or pledged in any way? \_\_\_\_ If answer is 'Yes' state details \_\_\_\_.'; to show and disclose that John Tully, Sr., John Tully, Jr. and Paul Tully had such interest in that they are the real and beneficial owners of all the shares of stock listed in the name of Margaret B. Tully; such evasion and suppression of material fact being in violation of N.J.S.A. 33:1-25.
2. In your aforesaid long-form application for license you have failed to disclose the previous and continuing suppression of a material fact, viz., a change in answer from 'No' to 'Yes' to Question No. 27 which asks 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license? \_\_\_\_ If so, state names, addresses and interest of such individuals, partnerships, corporations or association \_\_\_\_.'; and to show and disclose that the aforementioned John Tully, Sr. John Tully, Jr. and Paul Tully had such an interest in that they, indirectly through the said Margaret B. Tully have such an interest, as hereinbefore set forth in the license applied for and in the business conducted under said license; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.

3. In your aforesaid long-form application for license you have failed to disclose the previous and continuing suppression of a material fact, viz., a change in answer from 'No' to 'Yes' to Question No. 28 which asks: 'Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?\_\_\_ If so, give complete details \_\_\_\_\_': and to show and disclose you had agreed to permit the aforementioned John Tully, Sr., John Tully, Jr. and Paul Tully to retain the profits and income derived from your licensed business; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.
4. From on or about December 15, 1971, to date, you knowingly aided and abetted said John Tully, Sr., John Tully, Jr., and Paul Tully to exercise contrary to N.J.S.A. 33:1-26, the rights and privileges of your plenary retail distribution license; in violation of N.J.S.A. 33:1-52.
5. In your aforesaid long-form application for license you failed to disclose and show the previous and continuing suppression of a material fact, viz., a change from 'No' to 'Yes' to Question No. 23 in said long-form application which asks: 'Does the individual signing this application on behalf of said corporation, know, or have any reason whatsoever to believe or suspect, that any of the officers or directors of said corporation, or any holder, directly or indirectly, by any device or subterfuge whatsoever, of more than (10) per cent in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect?\_\_\_\_\_. If so, state name of person or persons failing to qualify \_\_\_\_\_' and to show and disclose you knew and had reason to know that John Tully Sr., who indirectly was the holder of issued and outstanding stock in the name of Margaret B. Tully, as aforesaid, would fail to qualify as an individual applicant for the reason of the fact that he was employed as a solicitor, then holder of Solicitor's Permit No. 1356 with Fleming and McCaig, and Solicitor's Permit No. 1425 with Galsworthy, Inc., and as such was prohibited by R.S. 33:1-43, with having any interest in retailing of alcoholic beverages; such evasion and suppression of a material fact being in violation of R.S. 33:1-25.

6. From on or about December 15, 1971, to date, you had connected with you in a business capacity a person directly interested in the wholesaling of alcoholic beverages, viz., John Tully, Sr., holder of a Solicitor's permit with Fleming and McCaig, Inc. and/or Galsworthy, Inc., each the holder of a plenary wholesale license; in violation of Rule 29 of State Regulation No. 20."

The permittee and the licensee pleaded "not guilty" to the respective charges.

During the course of testimony elicited from ABC Agent M, a number of items or documents were received in evidence and marked, as follows:

Application for plenary retail distribution license for the 1974-75 licensing year filed by The Romany Liquor Shop, Inc., executed by Margaret B. Tully, sole officer and one hundred percent stockholder of the corporate licensee.

A statement taken from Margaret B. Tully, on August 22, 1974 concerning which Agent M testified reflected answers given by her to questions propounded by the agent. It is noted that Agent M testified that Margaret B. Tully affirmed that the answers were her answers and that she refused to sign the statement without the consent of her attorney.

A photocopy of an agreement dated October, 1971 executed between Walter McKaba and Margaret B. Tully.

Original bill of sale from Romany Shoppe, Inc. to Romany Liquor Shoppe dated December 15, 1971 relative to the package liquor business conducted at 227 Glenridge Avenue, Montclair, which was brought to the Division offices by Margaret B. Tully on August 22, 1974.

Copy of closing statement concerning the sale of the aforementioned liquor outlet dated December 15, 1971 signed by McKaba and Margaret B. Tully which was also brought in to Agent M on August 22, 1974.

Photocopy of savings account in names of John Tully or Margaret B. Tully (husband and wife) in National Newark and Essex Bank which reflects a withdrawal of \$13,000. on November 4, 1971 and a copy of a deposit slip of the same date and of the same amount in American National Bank and Trust credited to the account of Margaret B. Tully for Romany Liquor Shop.

Photocopy of signature card of Fidelity Union Trust Company of John Tully or Margaret B. Tully together with copy of savings account in their joint names.

Five original cancelled checks signed by Margaret B. Tully bearing dates from September 8, 1971 to November 12, 1971 in the total sum of \$27,000. delivered to Agent M by Margaret B. Tully on August 22, 1974 which she asserted were for the purchase of the liquor establishment.

Four checks dated November 13, 1971, November 16, 1971, November 17, 1971 and February 24, 1973 respectively.

Transcript of a taped statement taken on September 20, 1974 from John Tully, Sr., by Agent M.

Copies of 1971 and 1972 joint income tax returns of John and Margaret Tully.

Prior to commenting on the significance of those exhibits which are relevant to a disposition of the charges, I shall discuss the testimony elicited from Walter M. McKaba. He testified that Tully serviced the package goods liquor business operated by him at 227 Glenridge Avenue, Montclair in his (Tully's) capacity as a salesman-solicitor for a wholesale house.

During the course of Tully's servicing of his account, McKaba informed Tully that he desired to sell his liquor business. Tully evinced interest in purchasing the business and, after the price was negotiated, McKaba referred the matter to his attorney to handle the details pertinent to the closing. He had no contact with Margaret Tully until the actual closing on December 15, 1971.

At no time did Tully inform McKaba that he was going to be the actual owner of the business, or that he would put it in his wife's name. The matter of the identity of the purchaser was arranged between the attorneys representing the purchaser and seller.

Neither the licensee nor the solicitor-permittee offered any testimony in their behalf.

The uncontroverted proofs adduced from the various exhibits may be summarized as follows: In her oral statement made at the Division offices to Agent M on August 22, 1974, Margaret B. Tully explained that the purchase price for the liquor establishment was \$30,000. plus \$8,000. for the stock. She did not know what her initial payment was, "All she knew was that she signed the transaction".

A corporation was formed (The Romany Liquor Shop, Inc.) to acquire the liquor business of which she became the president and sole stockholder. The money paid to acquire the business was derived from a savings account in Fidelity Union Bank and Trust in the joint names of Margaret B. Tully and her husband, John Tully, Sr., the solicitor-permittee herein.

All of the funds in that account were her husband's. Notes in the sum of approximately \$24,000. were executed to McKaba, payable at the rate of \$396.03 monthly.

She visits the licensed premises once each month, and hasn't worked there since August 1973. She does not know what the gross profits are; her son John Tully, Jr. manages the business. Later, she explained that all of the profits are used for the purpose of paying off the indebtedness incurred in the purchase of the business. Additionally, she acknowledged that various checks made payable to Romany Liquor Shop, and signed by her, were actually prepared by her husband.

Tully gave an oral statement to Agent M at the Division offices on September 20, 1974. This statement was electronically recorded and transcribed and admitted into evidence after Agent M and Rene Pfaff, a Division employee, testified that they compared the transcript with the tape, and that the transcription was accurate.

Tully's statement reflected that his wife and son, John Jr., operated the Liquor store. Upon his son, Paul attaining his statutory majority, both sons operated the business. Thereafter, his wife disassociated herself from the operation of the business.

Tully, in his capacity as the holder of a solicitor's permit, sold a substantial percentage of the liquor traded by the licensee in the conduct of its business.

Tully was shown a number of checks of the licensee, The Romany Liquor Shop, Inc. (some of which were received in evidence), which were signed by him. Tully explained that he wrote all of the checks because his wife and sons were unable to make out checks.

Tully conceded that various checks used for the purchase of the package goods business operated by the licensee were drawn on funds in a joint savings account in his and his wife's name in Fidelity Union Trust Company. His wife did not deposit any monies in that account.

He did not know why he endorsed a certain check drawn on the business account of the licensee, which was signed by his son John Tully, Jr., and written by him payable to cash in the sum of \$42.00.

Tully denied receiving any profits or anything else from the licensee or that he ever loaned any money to the licensee. Any money loaned to the licensee was loaned by his wife.

The pertinent sections of the applicable regulations are as follows:

Rule 7 of State Regulation No. 14:

"No holder of a Solicitor's Permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, or shall be employed by or connected in any business capacity with any retail licensee."

and: Rule 29 of State Regulation No. 20:

"No retail licensee shall employ or have connected with him in any business capacity whatsoever any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State nor shall any retail licensee be employed

by or connected in any business capacity whatsoever with any person interested, directly or indirectly, in the manufacturing or wholesaling of any alcoholic beverage within or without this State."

Therefore, the dispositive issues in the matter sub judice are, apart from the failure of notice in the application, whether John Tully, Sr. has such direct or indirect interest in the said license, and whether the retail licensee employed the said John Tully Sr. in violation of the above rules.

The essential purpose of the applicable statute and regulations "was to prevent control of retail outlets by manufacturers and wholesalers, i.e., a recurrence of "Tied houses which were responsible for many of the social and economic abuses which brought about Prohibition." Re Princeton Memorial Improvement Inc., Bulletin 255, Item 1 ; Cf. Penguin Club Inn, Inc., Bulletin 613, Item 1.

It has been long held that solicitor-permittees are heavily restricted in their outside activities. They may not be policemen (Re Kennedy, Bulletin 622, Item 3), constables (Re Grande, Bulletin 654, Item 6) or justices of the peace (Re Pagano, Bulletin 446, Item 3). They may not be musicians in a large licensed cabaret (Re Biard, Bulletin 516, Item 7). Of course, direct employment in licensed premises is expressly forbidden (Re Fine, Bulletin 851, Item 8); (Re Jugan, Bulletin 799, Item 8); (Re Kaplan, Bulletin 603, Item 10).

Even a well intentioned solicitor finding one of his licensee customers momentarily overwhelmed by business may not "pitch in" to lend a gratuitous helping hand without being in violation. Re Wasekanes, Bulletin 1207, Item 9; Re LeWinter, Bulletin 1219, Item 10; Re Homestead Inn, Inc., Bulletin 1699, Item 1. In addition to being barred from actual employment therein, the solicitor is forbidden to loan money or to arrange for such a loan to a retailer. Re Schlosser, Bulletin 1550, Item 3; Re Bauman, Bulletin 1550, Item 5. The mere business assistance of aiding a retailer to pay bills and supporting that aid with a transition cash loan was likewise forbidden. Re Cohen, Bulletin 1550, Item 6.

Solicitors whose relatives are licensees often find themselves in difficulty when they attempt to assist in the licensed premises. A father who assisted his son's management of a package store (Re Del Mastro, Bulletin 572, Item 1), and a father who appeared behind the bar to serve patrons (Re Schenkel, Bulletin 936, Item 4), were found to be in violation of the applicable regulations. The law is clear that its strict enforcement must depend upon separation of wholesalers and their solicitors from retailers. Re Gitter, Bulletin 1575, Item 2.

Preliminarily, I observe that, in evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super 242 (App.Div.1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, (App.Div.1962), not officially reported, reprinted in Bulletin 1491, Item 1.



The attorney for the solicitor-permittee, in his written summation, contends that the Division's case is based entirely upon inferences and assumptions; and that there was no clear or tangible proof that Tully received any profits, or was employed by, or was, in anywise, possessed of a beneficial interest in the corporate licensee.

Insofar as the question of employment is concerned, it is conceded that Tully wrote the checks for the licensee and that his wife merely signed them. The defense that Tully was not employed by nor received any remuneration by the licensee is untenable in view of the firmly established principles holding to the contrary.

In Re Jacobs, Bulletin 935, Item 3, it was held that salary or compensation is not a requisite to employment. This holding was followed in the case of Re Neim, Bulletin 1772, Item 2, wherein it was held that the question of compensation is irrelevant to the determination of employment.

In Kravis v. Hock, 137 N.J.L. 252, (Sup. Ct. 1948), the court considered this very issue. In that case it was alleged that certain females employed on licensed premises were engaged as independent contractors. In considering the matter of employment, the court stated (p.255):

"Webster defines the word 'employ:' 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.' The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the work 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts. Mr. Justice Perskie has emphasized this judicial determination in Cino v. Driscoll (Supreme Court, 1943), 130 N.J.L. 535, 540, where he said:

"Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N.J.L. 329; 22 Atl. Rep. (2d) 523."

From the totality of the evidence presented, the conclusion is inescapable, and I so find, that Tully held an undisclosed interest in the business and, to some extent, was employed therein. I am impressed by the fact that the cash to purchase the business came from a joint savings account of the Tullys. Their joint income tax return for 1971 disclosed that Tully's salary as a solicitor comprised practically their total income. Tully's wife received no salary or profits.

It was asserted by her that whatever profits were realized, were put back in the business. Concerning the acquisition of the liquor business, all she knew was that she "signed the transaction". No assertion was made that the money expended by Tully for the purchase of business was either a loan or a gift.

Considering all of these factors, including the additional fact that Tully's assertion that he made out the liquor stores checks because neither his wife or son knew how to make out checks was incredible and further considering that the motivation for the "front" exists because Tully is prohibited by law from holding an interest in a retail licensed business, it is apparent that Tully was the true and beneficial owner of the shares of stock of the corporate licensee held by his wife, Margaret B. Tully.

Also, in arriving at a determination herein, it should be noted that ".....failure of a party to testify may invite the indulgence against him of every inference warranted by the evidence presented by his adversary." 31A C.J.S. 156 (4) Evidence 422; Hackensack Motel Corp. v. Little Ferry, Bulletin 1648, Item 1, Furthermore, I am mindful that, "The very nature and characteristics of a 'front' is concealment and subterfuge. Very rarely is such proof buttressed with confessions and/or affirmative admissions. Thus the testimonial presentation must be largely circumstantial and documentary." Sharp's Lodge, Inc. v. Lakewood, Bulletin 1842, Item 1.

Applying the firmly established principles to the proceedings sub judice, I am persuaded that the charges herein have been established by a fair preponderance of the credible evidence. Hence, I recommend that the licensee and the solicitor-permittee be found guilty of the said charges.

It is recommended that the unlimited solicitor's permit issued to John Tully Sr., be suspended for twenty days.

It is further recommended that the Plenary Retail Distribution License issued to The Romany Liquor Shop, Inc. t/a The Romany Liquor Shop, be suspended for the balance of its term, with leave granted for the lifting of such suspension by the filing of a verified petition by the licensee or any bona fide transferee of the licensee that the unlawful situation has been corrected, which suspension, however, should not be lifted, in any event, sooner than eighty (80) days after the commencement date of the said suspension.

### CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's report, and written answers thereto were filed by the parties pursuant to Rule 6 of State Regulation No. 16.

The licensee, Romany Liquor Shop, Inc., presents two Exceptions addressed to the propriety of proceeding in this Division, while a matrimonial action is pending in the Superior Court between the alleged sole stockholder of the licensee, Mrs. Margaret B. Tully, and the solicitor, John Tully, Sr., charged with violation of Rule 7 of State Regulation No. 14.

The contention that this Division is without jurisdiction, or should have stayed proceedings pending judicial determination in the matrimonial action is without merit. The determination of equitable distribution before the Court would not necessarily dispose of the issues presented herein. The legal principles involved are not identical.

This Division, in its expertise, views the testimony toward resolution of the issues of prohibited conduct under applicable Division rules. A finding of guilt is predicated upon a finding of an interest in licensed premises, either "directly or indirectly," or employment of a prohibited person. The issue of equitable distribution is based upon a finding as to whether either party to the marriage acquired a "legal or beneficial interest" in property during marriage. N.J.S.A. 2A:34-23.

It is then alleged that it was impossible to prepare or coordinate a defense because of the bitterness of the matrimonial proceedings. I find no credible evidential support therefor, nor was it presented in a proper form of motion. Thus, this contention lacks merit.

The Exception of Romany Liquor Shop, Inc., also proffered by the solicitor, Tully, that the record does not support the findings of the Hearer's report of violation is rejected. Neither party subject to this disciplinary hearing presented any evidence. Failure of a party to testify as to facts within its knowledge raises a presumption that the testimony, if given, would be unfavorable to it. Wratchford v. Millburn Township, 105 N.J.L. 657, 658 (E. & A. 1929).

Upon careful review of the record, including the transcript of testimony, the exhibits and statements, I am persuaded that there are circumstances present which evidence an interest in the licensed premises exercised and held by John Tully, Sr. The attempt to negate such findings because of alleged lack of profit to John Tully Sr., is not dispositive. He prepared checks for the corporation in the course of the day to day operations of the business, including payroll. This constitutes prescribed employment. It is not necessary to show he received compensation. In re Gutman, 21 N.J. Super. 579, 583 (App. Div. 1952).

The pattern employed in the purchase, the source of funds, the control over finances, and the natural and probable inferences to be derived therefrom, evidence a prima facie finding a violation. The absence of any contradictory testimony mandates a finding that John Tully, Sr., had an interest in the licensed premises.

Furthermore, in the statement of John Tully, Sr., in evidence, of September 20, 1974, he stated, in response to a question concerning a particular check:

- A. September 11th, '72? When did we get the store, I a ...\$4,000. It was probably, September. It was probably money that was put in there for buying purposes. I don't really recall. The date don't ring a bell with me. (underlining added)

The last exception of Romany Liquor Shop, Inc., asserts that the only violation committed involved John Tully, Sr., in day to day affairs; therefore, only he should be penalized. This argument is clearly in view of the findings herein.

John Tully, Sr., presented two exceptions to the introduction of evidence which were correctly resolved by the Hearer. The statement of Tully was properly identified, authenticated and admitted into evidence. That the tape recording was not available for inspection is not critical. Tully had every opportunity to testify that the statement was incorrect, inaccurate or incomplete. He chose not to do so. A similar rationale applies to the altered deposit slip. This Division is not bound by the rules of evidence whether statutory, common law or adopted by the Rules of Court; but seeks all relevant evidence, N.J.S.A. 52:14B-10(a).

I have analyzed and assayed the exceptions concerning bank deposit legislation, potential bias or motivation in investigation and requests for reduction of recommended sanctions, and find that they are devoid of merit.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Hearer's report, the Exceptions filed thereto, and the answers to the Exception, I concur in the findings and the recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of April 1977,

ORDERED that the unlimited Solicitor's Permit No. 1309, issued by the Director of the Division of Alcoholic Beverage Control to John Tully, Sr., 146 Brunswick Avenue, Cedar Grove, New Jersey, be and the same is hereby suspended for twenty (20) days commencing at 9:00 a.m. Monday, April 18, 1977 and terminating at 9:00 a.m. Sunday, May 8, 1977; and it is further

ORDERED that Plenary Retail Distribution License D-8, issued by the Board of Commissioners of the Town of Montclair to the Romany Liquor Shop, Inc., t/a The Romany Liquor Shop, be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1977, effective 2:00a.m. on Thursday, April 14, 1977, and for the term of renewal of said license which may be granted, with leave to the licensee or any bona fide transferee of the license, or of any renewal of the said license which may be granted, to apply to the Director, by verified petition, for the lifting

of the suspension whenever the unlawful situation has been corrected; but, in no event, shall the lifting of said suspension be sooner than eighty (80) days from the commencement of the suspension herein.

Joseph H. Lerner  
Director

2. DISCIPLINARY PROCEEDINGS - FRONT - UNDISCLOSED INTEREST - FAILURE TO KEEP BOOKS - LICENSE SUSPENDED FOR BALANCE OF TERM OR NOT LESS THAN 90 DAYS.

In the Matter of Disciplinary  
Proceedings against

Osmar Rojas  
201 43rd Street  
Union City, N.J.

Holder of Plenary Retail  
Consumption License C-184,  
issued by the Board of  
Commissioners of the City  
of Union City.

CONCLUSIONS  
AND  
ORDER

.....  
Carl Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee entered a plea of "not guilty" to a charge alleging that: (1) in his application for transfer of his plenary consumption license, he failed to reveal that Sarai Restrepo and Manuel Cruz had an undisclosed interest in the licensed business and (2) From December 3, 1975, to date, he knowingly aided and abetted Sarai Restrepo and Manuel Cruz to exercise the rights and privileges of the license, in violation of N.J.S.A. 33:1-25,52 and (3) From December 24, 1975, to date, he failed to keep true books of account of the licensed business in violation of Rule 36 of State Regulation No. 20, N.J.A.C 13:2-31.36.

A hearing on the above charges was scheduled in this Division to which the licensee and his attorney had been duly noticed. At the time and date of such hearing, neither the licensee nor his attorney appeared to defend the charges and upon inquiry, the licensee's then attorney indicated that the licensee would not appear that date, reserved right of cross-examination with consent and subsequently advised in writing that he no longer represented the licensee. Whereupon the matter proceeded ex parte and the Division proceeded to introduce proof of the charges.

ABC Inspector T testified that he investigated the subject licensed premises on May 10, 1976 and obtained a statement from the licensee assisted by an interpreter who translated into the Spanish language the questions posed to the licensee and the responses thereto. Such inquiry, reduced to writing, was marked for identification.

Inspector T further testified that on May 7, 1976, he visited the premises accompanied by Detective John Goldner of the Union City Police Department. While awaiting the opening of the premises, both noticed that Sarai Restrepo arrived and opened up the premises and engaged in its operation. She produced various books and records of the licensed establishment, some of these records were offered into evidence.

The interpreter for the Union City Police Department, Felisa Salamanca, testified that the statement of the licensee, Osmar Rojas, was a faithful and accurate transcription of all questions and answers. Thereafter the statement of Rojas was introduced in evidence.

Detective John Goldner, of the Union City Police Department, testified that he had previously visited the licensed premises following the receipt of information "that Sarai Restrepo may be planning to burn the premises to collect on the insurance". At that visit, Sarai Restrepo identified herself to Goldner as the manager. He identified a police photograph and records of Sarai Restrepo taken in conjunction with a prior arrest and introduced in evidence as business records of the the police department.

An examination of the documents in evidence, discloses that, in the statement given by the licensee, he forthrightly admitted that his name was placed upon the license as the owner solely as a convenience to Sarai Restrepo and Manuel Cruz, who are the owners in fact.

The Police Reports on Restrepo and Cruz reveal that Restrepo has a police record for varied offenses beginning in 1962; Cruz has a current charge of possession of controlled dangerous substances. Both are, at the present time, ineligible to be owners of an alcoholic beverage license or to be employed in that industry.

The records received from Sarai Restrepo by ABC Inspector T and Detective Goldner in response to the demand for production of the books of the establishment, was in no sense "true books of account" or records of any substantial nature reflecting the business being conducted under the subject license.

Upon the evidence adduced, the proofs preponderate in favor of the Division and against the licensee with respect to each of the charges. I therefore recommend that the licensee be found guilty as charged.

Absent prior adjudicated record, it is further recommended that the license be suspended for ninety days.

However, since the unlawful situation has not been corrected to date, it is further recommended that the license be suspended for the balance of its term, with leave to be granted to any bona fide transferee of the license or the licensee to apply by verified petition for the lifting of the said suspension, whenever the unlawful situation has been corrected; but, in no event, sooner than ninety days from the commencement of the suspension herein.

CONCLUSIONS AND ORDER

No Exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16.

I note that a copy of the Hearer's Report was sent, pursuant to Division procedure, certified mail, return receipt requested, to Osmar Rojas, the licensee, at his address at the licensed premises. Said report was returned, with the notation that, the licensee moved and left no forwarding address.

Having carefully considered the entire record herein, including the transcript of the testimony, and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of April 1977,

ORDERED that Plenary Retail Consumption License C-148, issued by the Board of Commissioners of the City of Union City to Osmar Rojas for premises 201 43rd Street, Union City, N.J., be and the same is hereby suspended for the balance of its term, viz., midnight, June 30, 1977, effective 3:00 a.m. on Friday, April 22, 1977, and for the term of renewal of said license, which may be granted for the 1977-1978 license year, with leave to the licensee or any bona fide transferee of the license, or of any renewal of said license which may be granted, to apply to the Director, by verified petition, for the lifting of the suspension whenever the unlawful situation has been corrected; but, in no event, shall the lifting of said suspension be sooner than ninety (90) days from the commencement of the suspension herein.

Joseph H. Lerner  
Director

## 3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary  
Proceedings against

Parmelli's Hotel & Tavern, Inc.  
t/a Luigi's  
581-583 River Street  
Paterson, New Jersey

Transferred to:

Nikolinka Ciric and Zhemil Zhuta  
t/a International Restaurant  
581-583 River Street  
Paterson, New Jersey

Holder of Plenary Retail Consump-  
tion License C-255, issued by the  
Board of Alcoholic Beverage Control  
for the City of Paterson.

J. George Ivler, Esq., Attorney for Licensee

BY THE DIRECTOR:

On April 15, 1975, Conclusions and Order were entered herein suspending the subject license for the balance of its term, viz., until midnight, June 30, 1975, effective 3:00 a.m. Tuesday, April 29, 1975, upon finding licensee guilty of a charge alleging that it hindered and failed to facilitate an investigation of its licensed business; in violation of Rule 35 of State Regulation No. 20.

On July 12, 1976, a Supplemental Order was entered reinstating the aforesaid suspension, which had been terminated, upon averments through verified petition, that the unlawful condition had been corrected. Such averments by the then licensee were not supported in truth and fact.

The Supplemental Order granted leave to the licensee or any bona fide transferee to apply to the Director by verified petition for lifting of the suspension whenever the unlawful situation has been corrected.

It now appears, from the verified petition submitted by the said transferees, Nikolinka Ciric and Zhemil Zhuta, that the subject license has been purchased by them, and their application for a person-to-person transfer of the said license was approved by the Board of Alcoholic Beverage Control of the City of Paterson on March 24, 1977, subject to any suspension that may be imposed by the Director of the Division of Alcoholic Beverage Control referable to the pending charges preferred against the prior licensee alleging violations of N.J.S.A. 33:1-25, 1-26

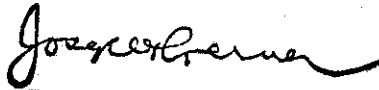


and 1-52 in providing false answer to Question No. 27 on its application and failing to disclose interest in license of Samuel Cohen and John Niccolai.

It further appears that the transferees have no interest in Parmelli's Hotel & Tavern, Inc. t/a Luigi's, or its stockholders, in any manner whatsoever; and the transferees agree to cooperate and produce any records which the Division may require. Therefore, the unlawful condition has not been conducted and/or committed by the transferees.

Accordingly, it is, on this 12th day of April 1977,

ORDERED that the said suspension, imposed herein, be and the same is hereby terminated, effective immediately, subject to the imposition of any suspension which may ensue, as a result of pending alleged violations by transferee's predecessor holder of the subject license.



Joseph H. Lerner  
Director