

STATE OF NEW JERSEY  
 Department of Law and Public Safety  
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
 1100 Raymond Blvd. Newark, N.J. 07102

March 13, 1969

BULLETIN 1841

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

March 13, 1969

BULLETIN 1841

1. COURT DECISIONS - ESPOSITO'S INC. v. DIVISION OF ALCOHOLIC  
BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-20-68

ESPOSITO'S, INC.,  
t/a HONEY BEE INN,

Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, DEPARTMENT OF  
LAW AND PUBLIC SAFETY, DIVISION OF  
ALCOHOLIC BEVERAGE CONTROL, and  
JOSEPH M. KEEGAN, DIRECTOR OF THE  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Defendants-Respondents.

Argued January 6, 1969 -- Decided January 21, 1969

Before Judges Sullivan, Foley and Lewis.

On appeal from the Division of Alcoholic Beverage  
Control.

Mr. Stanley L. Benn argued the cause for appellant  
(Messrs. Wilentz, Goldman and Spitzer, attorneys).

Mr. John J. P. Ryan, Deputy Attorney General, argued  
the cause for respondent (Mr. Arthur J. Sills,  
Attorney General of New Jersey, attorney; Mr. Stephen  
Skillman, Deputy Attorney General, of counsel).

PER CURIAM.

(Appeal from the Director's decision in Re Esposito's,  
Inc., Bulletin 1819, Item 5. Director affirmed. Opinion not  
approved for publication by the Court committee on opinions.)

*Basic Call  
1819-5*

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL.

In the Matter of Disciplinary Proceedings against )

ESPOSITO'S, INC. )  
t/a Honey Bee Inn )  
U.S. Route #9 )  
Woodbridge, N. J. )

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-36 issued by the Township Council of the Township of Woodbridge )

-----  
Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, Esq., Attorneys for Licensee  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On August 28, 1968, I entered Conclusions and Order herein suspending the license for thirty days commencing September 4, 1968, for possession of alcoholic beverages not truly labeled and false statement in the license application. Re Esposito's, Inc., Bulletin 1819, Item 5.

Prior to the effectuation of the suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The court affirmed my action on January 21, 1969. Esposito's, Inc. v. Division of Alcoholic Beverage Control (App. Div. 1969), not officially reported, recorded in Bulletin 1841, Item 1. Mandate on affirmance having now been received, the suspension may be reimposed.

Accordingly, it is, on this 10th day of February, 1969,

ORDERED that the thirty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-36, issued by the Township Council of the Township of Woodbridge to Esposito's, Inc., t/a Honey Bee Inn, for premises on U.S. Route #9, Woodbridge, commencing at 2:00 a.m. Monday, February 17, 1969, and terminating at 2:00 a.m. Wednesday, March 19, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATION - FAILURE OF LICENSEE TO APPEAR AT HEARING - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )  
 )  
 ✓ KRIEG CORPORATION )  
 t/a CAT 'N FIDDLE )  
 Northwesterly end of Beach )  
 Cliffwood Beach, Matawan Township )  
 PO Box 231, Keyport, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 issued by the Township Committee of the Township of Matawan )

-----  
 Licensee, by Richard H. Goldberger, President, Pro se  
 Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleaded not guilty to charges (1) and (2) alleging that by false statements in its current application for license, it concealed the fact that Charles Rubin, Harold Glantz and Nick Ryan, all residents of New York, were each the holder of a 25 per cent beneficial stock interest in the licensee corporation (thus rendering the licensee corporation ineligible to hold the license), in violation of R.S. 33:1-25.

After three adjournments of the hearing date at the licensee's request, no one in behalf of the licensee appeared at the hearing. Testimony was thereupon taken ex parte and at the conclusion of the hearing, it was announced that no Hearer's report would be prepared but instead the matter would be submitted for the Director's determination pursuant to Rule 5 of State Regulation No. 16.

Having carefully considered the transcript of testimony and the exhibits, I find the licensee guilty as charged.

In view of the licensee's guilt of the charges and its failure to appear at the hearing, the only proper penalty is revocation of the license. Cf. Re Poodle Club, Inc., Bulletin 1797, Item 1.

Accordingly, it is, on this 16th day of January, 1969,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Matawan to Krieg Corporation, t/a Cat 'n Fiddle, for premises northwesterly end of Beach, Cliffwood Beach, Matawan, be and the same is hereby revoked effective immediately.

JOSEPH M. KEEGAN  
 DIRECTOR

4. APPELLATE DECISIONS - FANTASIA v. ATLANTIC CITY and 35 NORTH ARKANSAS AVENUE, INC.

|                               |   |           |
|-------------------------------|---|-----------|
| FRANK FANTASIA,               | ) |           |
| Appellant,                    | ) | ON APPEAL |
| v.                            | ) | ORDER     |
| BOARD OF COMMISSIONERS OF THE | ) |           |
| CITY OF ATLANTIC CITY, and 35 | ) |           |
| NORTH ARKANSAS AVENUE, INC.,  | ) |           |
| Respondents.                  | ) |           |

-----  
John O. Sitzler, Jr., Esq., Attorney for Appellant  
Murray Fredericks, Esq., Attorney for Respondent Atlantic City  
No appearance for Respondent 35 North Arkansas Avenue, Inc.

BY THE DIRECTOR:

Appellant appeals from the grant on June 6, 1968 of renewal of plenary retail consumption license for premises 35-37 N. Arkansas Avenue, Atlantic City, to respondent 35 North Arkansas Avenue, Inc. by respondent Board of Commissioners of Atlantic City.

Prior to hearing, the attorney for appellant consented to the entry of an order dismissing the appeal.

Accordingly, it is, on this 14th day of January 1969,

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

JOSEPH M. KEEGAN  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

|                                      |   |             |
|--------------------------------------|---|-------------|
| In the Matter of Disciplinary        | ) |             |
| Proceedings against                  | ) |             |
| VINCENT A. MEEHAN                    | ) | CONCLUSIONS |
| t/a Meehan's Cedar Bar               | ) | AND ORDER   |
| 14 Ridge Road                        | ) |             |
| North Arlington, N. J.               | ) |             |
| Holder of Plenary Retail Consumption | ) |             |
| License C-3 issued by the Mayor and  | ) |             |
| Council of the Borough of North      | ) |             |
| Arlington                            | ) |             |

-----  
Liebman & Liebman, Esqs., by Joseph G. Liebman, Esq., Attorneys  
for Licensee  
Louis F. Treole, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On June 13, 18 and July 1, 1968, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On June 13, 18 and July 1, 1968, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

## I

The attorney for the licensee raised a jurisdictional question in a memorandum of law submitted prior to hearing. He raised the same question at the outset of the hearing and again in oral summation at its conclusion. In essence, the licensee argued that inasmuch as the charges preferred against him contained the same elements as provided and defined in N.J.S.A. 2A:121-3, which offense is indictable and therefore entitles the licensee to all rights of a defendant in a criminal prosecution, including those embodied in the New Jersey Constitution, Article I, Section 10 (right to trial by jury, etc.), the Director lacked jurisdiction herein.

It is my considered judgment that the licensee misconceives the scope and purport of this and similar proceedings before the Division. R.S. 33:1-31 provides that "any license... may be suspended or revoked...for any of the following causes: ...g. Any violation of rules and regulations..." It further provides:

"No suspension or revocation of any license shall be made until a 5-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him."

It thus clearly appears that disciplinary proceedings are proceedings in rem (against the license) and not in personam (against the licensee), albeit the licensee must be noticed and afforded opportunity to be heard. Thus the argument of the licensee is wholly without merit.

It has heretofore been held that the acquittal of a licensee or his agent and employee on criminal charges is immaterial to a determination in these proceedings. Disciplinary proceedings against a licensee are civil in nature. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948); In re Schneider, 12 N.J. Super. 449 (Sup. Ct. 1951). The two proceedings (criminal and disciplinary) are different in kind, involve different issues, quantum of proof and types of penalty. See Re DuPree, Bulletin 108, Item 8; Re Messina and Ruisi, Bulletin 392, Item 12; Re Rosenthal & Geller, Bulletin 843, Item 4; Re 17 Club, Inc., Bulletin 949, Item 2; Re The Sport Center, Bulletin 1131, Item 5.

The courts have not departed from the holding of Justice Eastwood enunciated in Kravis v. Hock, supra, at p. 255, wherein he stated:

"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. The contemporaneous construction thus given to a law of the state for over a decade is necessarily respected by us. State v. Kelsey, 44 N.J.L. 1; Graves v. State, 45 Id. 203; affirmed, Id. 347; Central Railroad Co. v. Martin, 114 Id. 69, 80; 175 Atl. Rep. 637; Burlington County v. Martin, 128 N.J.L. 203; 28 Atl. Rep. (2d) 116; Martini v. Civil Service Commission, 129 N.J.L. 599, 603; 30 Atl. Rep. (2d) 569."

The right of the Director to prohibit possession of lottery tickets in licensed premises under State Regulation No. 20, Rule 6, was upheld in State v. Zurawski, 89 N.J. Super. 488 (App.Div. 1965), aff'd 47 N.J. 160 (1960). See also Re Paula, Bulletin 1762, Item 2, aff'd Paula v. Div. of Alcoholic Beverage Control (App.Div. 1968), not officially reported, recorded in Bulletin 1791, Item 1.

## II

We shall now turn our attention to the factual complex and the legal issues flowing therefrom.

Nicholas Roon, Jr., who had been employed as an investigator by the State Police for twelve years and possessed ample experience in conducting gambling investigations, including horse race and numbers betting, gave the following account: He entered the licensed premises on June 13 at approximately 12:20 p.m., sat at the bar near the beer taps and ordered beer. The bartender was identified as Vincent A. (Vinnie) Meehan, the licensee herein. At approximately 12:35 p.m. a male identified as "Ed" (Ed Kavanaugh) entered the barroom and sat to the left of the investigator. When an unidentified male said to Ed, "211", he observed Ed "take a bill" from the unknown male and place the bill in his sweater pocket. The questioning revealed the following:

"Q Now, from your observation and experience, can you give an opinion as to what type of activity or transaction this was?

A Yes, sir.

Q What was it?

A Ed, we were referring to, accepted a bet for 211, the number 211, and received a paper currency from the unknown white male."

Shortly thereafter, Ed and the investigator left the premises.

The Officer returned to the licensed premises on June 18 at approximately 12:10 p.m. and sat at the bar. Vinnie was tending bar. At approximately 12:35 p.m. Ed entered the barroom

and sat to the officer's right. As Ed was being seated, the bartender gave Ed two bills and said, "Here, Ed. Same numbers as yesterday." The witness identified the bills as United States currency. He did not see the denomination of the currency. Ed "took out a small slip of paper at that time, Ed, and he wrote on it." Ed then placed the money and the slip in his pants pocket. Although the witness did not see what Ed wrote on the slip, it was his opinion that Vinnie and Ed were engaged in numbers betting activity. Ed left the premises at approximately 12:55 p.m. and Roon shortly thereafter.

The Officer re-visited the premises on July 1 at approximately 12:15 p.m., sat at the bar and ordered a drink. He testified as follows:

"At approximately 12:35 p.m. a white male known as Ed entered the premises and he sat directly across from me. There's a circular type of bar at one end, and he sat directly across from me.

Q And did you make any further observations?

A At approximately five minutes later after--this would be approximately 12:40, an unknown white male sitting to my--next to Ed, handed Ed a piece of paper currency and said to Ed, '153, Ed.' And Ed accepted the bill and placed the bill in his pants pocket. And shortly after, the bartender went over to Ed, who is Vinnie, and handed him four coins and said, 'Ed, 139.' Ed took the four coins from the bar and placed it in his pocket."

It was the investigator's opinion that the unknown male and the bartender had placed numbers bets with Ed.

Ed did not order drinks on either June 18 or July 1.

On cross examination, Roon could not testify that the paper bills handed to Ed on the three dates mentioned in the charges were American currency. It was his opinion that when the bartender placed four coins on the bar on July 1 and said to Ed "139", the coins Ed picked up were silver coins.

Roon was in the tavern on more than three occasions between June 18 and July 1. On the occasions not mentioned in the charges, he did not witness anything that he thought was illegal.

In defense of the charges, the licensee, Vincent A. Meehan, testified that he tended bar on all the dates mentioned in the charges and at the hours mentioned by Investigator Roon. He had been acquainted with Ed for six months. Ed customarily brought food in at noontime and ate his lunch at the bar. He did not know, nor had he reason to believe, that Ed was a bookmaker. Ed never received numbers bets in the barroom. On June 13, he did not hear an unknown male say "211" to Ed. He did not, on June 18 and July 1, place numbers bets with Ed. He did not hand bills to Ed and say "the same numbers as yesterday." He did not on July 1 see an unknown male hand Ed paper currency and say "153." He did not, on that day, place four coins on the bar and say to Ed "139." Ed "never wore a sweater up until last month [September 1968]. He always wore a T-shirt." Ed could not appear at the hearing because he would lose his job. Two signs reading "Positively

No Gambling" were posted in the tavern. Finally, he testified that he did not allow and permit people to come in and make book in the licensed premises.

In adjudicating this matter, I am guided by the long 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. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I closely observed the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony. It is my view that Investigator Roon's testimony depicting the numbers betting was persuasive and credible. Despite an intensive and, I might add, grueling cross examination by the licensee's attorney, his testimony was essentially unshaken as to the matters pertinent to the charges. Considering the totality of the testimony, it can be inferred that Ed was a numbers bookmaker.

After carefully considering all of the evidence adduced herein and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the said charges.

Licensee has a prior record of suspension of license. When he held a license for premises 401 Ocean Avenue, Jersey City, it was suspended by the Director for fifteen days effective April 17, 1963, for an "hours" violation. Re Meehan, Bulletin 1512, Item 10. I further recommend that the prior record of suspension of license for dissimilar violation occurring more than five years ago be disregarded and that the license be suspended for sixty days. Re Kaelin, Bulletin 1828, Item 4.

#### Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee's attorney, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the transcript of testimony, the exhibits and the exceptions filed, I concur in

the findings and conclusions of the Hearer and adopt them as my conclusions.

Accordingly, it is, on this 13th day of January, 1969,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of North Arlington to Vincent A. Meehan, t/a Meehan's Cedar Bar, for premises 14 Ridge Road, North Arlington, be and the same is hereby suspended for sixty (60) days, commencing at 3 a.m. Monday, January 20, 1969, and terminating at 3 a.m. Friday, March 21, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

✓ 6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against )

PLAY PEN INCORPORATION )  
t/a Play Pen Inc. )  
789-791 Palisade Ave. )  
Cliffside Park, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Cliffside Park. )

-----  
Andora & Baron, Esqs., by Brian T. Murphy, Esq., Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Friday night May 5, 1967, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd and immoral manner; in violation of Rule 5 of State Regulation No. 20."

The essential facts are not in dispute.

On Friday night, May 5, 1967, Division agents assigned to investigate the licensed premises observed a female dancing while attired in brief bikini-type pants and pasties about the size of a silver dollar or approximately an inch-and-a-half in diameter covering each nipple. She also wore an elastic string around her shoulders and across her back and chest to which were tied two pieces of transparent black netting approximately an inch wide by six inches long rolled up underneath her breasts. The string and netting had no functional purpose. Thus, when the

dancer performed, her unsupported breasts bounced and rotated.

The licensee presented no evidence and submitted that a purely legal question was presented for determination for the reason that the facts in the present case were similar to the facts in Re Play Pen Incorporation, Bulletin 1778, Item 5 (then on appeal to the Appellate Division) which also involved a "topless" dancer.

In defending the charge preferred against the licensee in the present case, its attorney relied upon the legal argument presented in his brief filed on the appeal from the suspension of license in the prior case. Re Play Pen Incorporation, supra.

Inasmuch as the Appellate Division affirmed the Director, vide, Re Play Pen Incorporation v. Division of Alcoholic Beverage Control (App.Div. 1968), not officially reported, recorded in Bulletin 1805, Item 1, and the appeal therefrom taken by the licensee to the Supreme Court of New Jersey was dismissed on October 15, 1968, I recommend that the licensee be found guilty of the charge herein.

It is to be noted that the indecent performance in the prior case occurred on February 3-4, 1967, and was the subject of charge dated February 21, 1967, and that the performance which is the subject of these proceedings occurred on May 5, 1967, while the prior charge was pending. Since the license was suspended on the prior charge for thirty days, it is recommended that the conviction herein be considered as for a second offense and that the penalty be doubled to suspension for sixty days. Cf. Re Drexel Bar, Inc., Bulletin 1765, Item 2.

#### Conclusions and Order

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

Having carefully considered the entire record, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of January 1969,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Cliffside Park to Play Pen Incorporation, t/a Play Pen Inc., for premises 789-791 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, January 20, 1969, and terminating at 2 a.m. Friday, March 21, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

7. STATE LICENSES - APPLICATION FOR TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE DENIED.

In the Matter of Objections to an Application for Transfer of State Beverage Distributor's License SBD-112 to )  
)  
)

SUNRISE MARKET INC. )  
t/a Sunrise Shop Rite and/or )  
Shop Rite of Caldwell. )  
540 Passaic Avenue )  
West Caldwell, N. J., )

from )

THEODORE J. LEITEREG )  
t/a Leitereg's Beer and Soda )  
Distributing Co. )  
106 Matawan Road )  
Madison Township, N. J. )

CONCLUSIONS

- 
- Gilbert Ehrenkranz, Esq., Attorney for Applicant
  - John J. McDonough, Esq., Attorney for Borough of West Caldwell, An Objector
  - Julius R. Pollatschek, Esq., Attorney for New Jersey Package Stores Association, an Objector
  - Leonard Brass, Esq., Attorney for Essex County Retail Liquor Stores Association, an Objector
  - Daniel Amster, Attorney for Packard's Fine Wine And Spirit Shop of West Caldwell, New Jersey, an Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Written objections to the application for transfer of the license in question having been received by the Director, a hearing in the matter was held thereon.

There were twelve objectors to the application, among them the Mayor and Council of the Borough of West Caldwell.

At the instant hearing, and appearing for the applicant, was its president Irving Gladstein, who testified that the location of the license is now in Madison Township and that plans for the proposed new premises to be constructed in West Caldwell had been filed with the Division; that applicant presently operates a supermarket in the building adjacent to the proposed location but separated therefrom without means of "egress and ingress" thereto; that applicant holds a plenary retail distribution license in the Borough of West Caldwell; and, in so far as the license in question is concerned, the applicant is "only interested in operating a retail establishment for the convenience of our customers" who patronize the supermarket. On cross examination Mr. Gladstein stated that applicant has an option to rent the proposed premises but, "if I do not pick up the option, the landlord still is going to put these buildings up." When asked concerning the distance from the proposed premises to Roosevelt School, Mr. Gladstein said that, although he did not make a measurement, in his opinion it would not be within two hundred feet from the school entrance as prohibited

by law; that there is a plenary retail consumption license operating in the plaza adjacent to the location of the proposed licensed premises at a distance of "two, three hundred feet? I don't know exactly", and then added, "No, it's more than that."

West Caldwell Councilman Allen London testified that, when notice was received of an application for the transfer of the license under consideration, "the mayor and council met and discussed the matter quite fully. It was the consensus of the mayor and council that there were sufficient licenses of liquor in the borough along with those in the surrounding areas. And it has been the policy, I think, even before my time, but it is the policy or the consensus of the present council that we have a sufficient number of outlets, retail outlets;" that the Borough Attorney was instructed to send a letter to the Director listing the objections; that he (Councilman London) stated, before becoming a councilman, he was a member of the Board of Health and during "the period of roughly sixteen months, there were over a hundred complaints that came to the board of health directly" about the operation of the supermarket and it was his opinion that, if the transfer of the liquor license is approved, it will cause an increase in complaints. On cross examination Councilman London stated that he had no knowledge of any formal complaints filed in the municipal court and, if there were any, what was the disposition thereof.

Chief of Police Caleb G. Crane testified that presently there exists a dangerous traffic problem on Passaic Avenue in the vicinity of the driveway to the applicant's supermarket and there are "times during the day when traffic is traveling north that the light at Bloomfield Avenue stops traffic and it backs up past the Shop-Rite driveway two abreast;" that Chief Crane also stated that, if beer is permitted to be sold in premises next to the supermarket, there will be "more trucks and the more traffic in and out of the Shop-Rite driveway, it would cause more traffic on the street. Of course, depending on which way they turned when they came out on Passaic Avenue, it could create conditions that do not exist at the present time." On cross examination Chief Crane stated, in answer to a question asked by the attorney for the applicant, that Holiday Liquors and Packard's Fine Wines & Spirits Shop are accessible from all points in the community for patrons and customers, and that both of those establishments have entrances and exits "on Bloomfield Avenue and Passaic Avenue also." Chief Crane stated that these licensed premises aforementioned were accessible to pedestrians as "they would walk out to the street and down the sidewalk and then into the other shopping area."

Joseph J. LeBow (spokesman for the Beverage Distributors Association) stated that his objection to the contemplated transfer was because a State Beverage Distributor's license was created by the Legislature "to fill a certain need for the additional beer distributor whose function was to sell, at wholesale, to licensees, to clubs, under minimum price laws and other regulations, and also to serve as a home distributor, distributing beer and soda to the homes." Mr. LeBow further stated that there are at present nine State Beverage Distributor licensees serving customers "in and around the area of West Caldwell."

Aaron Wiss (executive director of the State Beverage Distributors Association of New Jersey) testified that in his opinion applicant is attempting to convert a State Beverage Distributor's license into a limited retail distribution license, the issuance of a new license of this type being now prohibited by law. Furthermore, Mr. Wiss stated that, by the applicant's assertion that he would surrender part of the

privileges of the license in question, it would violate the intent of the Legislature and thus create confusion and problems thereby. Moreover, in his opinion, if the applicant did accept a condition preventing sale of malt beverages at wholesale, there would be nothing in the future to preclude a transferee of said license from requesting that the wholesale privilege be restored. Mr. Wiss further stated that in his opinion "it would open up a Pandora's Box in the present orderly processes of distribution of alcoholic malt beverages in the State of New Jersey. It would create an unfair practice as far as the wholesalers are concerned, and I don't think it would be particularly fair and equitable to the retailers as well."

With respect to the legality and propriety of the holder of a retail license also holding a State Beverage Distributor's license, in the matter of disciplinary proceedings against Alexander Rosenberg, t/a Berlin Bottling Co., Bulletin 217, Item 8, wherein it was found that Rosenberg held a State Beverage Distributor's license and also held an interest for a short period of time in a plenary retail consumption license, Commissioner Burnett ruled that "Manufacturers and wholesalers are not to be interested, directly or indirectly, in retail licenses even for a short period of time." Also, in the appeal of Square Tavern, Inc. v. Jersey City, Bulletin 372, Item 9, Commissioner Burnett held, among other things, that an officer and majority stockholder of a corporation which was the holder of a State Beverage Distributor's license was disqualified from being interested in any other retail liquor establishment.

It may be that many of the objectors in this case were holders of retail liquor licenses and were prompted to object because of economic reasons. In considering the objection by the municipality it must be borne in mind that municipal consent is not a statutory requisite for the issuance or transfer of a State license. Nevertheless, the transfer of a license, whether State or municipal, to other premises is not a privilege inherent in a license. Re Variety Beers and Soda Distributors, Inc., Bulletin 1000, Item 6; VanSchoick v. Howell, Bulletin 120, Item 6.

The evidence herein shows that applicant is seeking to transfer a license from Madison Township to West Caldwell, which is a considerable distance away from its present location, and in effect it is planning to establish a new outlet for the sale of beer in the area which appears to be adequately serviced. I am mindful that the privileges of a State Beverage Distributor's license are statewide and the licensed premises may be located in any municipality in the State. However, the objection by the Mayor and Council of West Caldwell, that there are enough liquor outlets in the municipality to serve the needs of the residents, seems to be well taken in view of the fact that there are other retail liquor outlets within a short distance from the proposed location.

In view of the circumstances appearing herein, it is recommended that the instant application for the transfer of the license be denied. Re Cohen & Dickman, Bulletin 1077, Item 9; Re Kabot, Bulletin 1154, Item 5.

#### Conclusions

No exceptions to the Hearer's report were filed.

After carefully considering the entire record, including the transcript of the testimony, exhibits, the memoranda filed by the attorney representing the applicant and the attorneys appearing for the various objectors, and the Hearer's report, I concur in and adopt the Hearer's findings and conclusions as my conclusions herein.

I therefore deny the application.

JOSEPH M. KEEGAN  
DIRECTOR

Dated: January 16, 1969

8. DISCIPLINARY PROCEEDINGS - LOTTERY ("50-50" CLUB) - PURCHASE FROM INDIVIDUAL - BOTTLING - ALCOHOLIC BEVERAGES NOT TRULY LABELED - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

✓ INTERNATIONAL BROTHERHOOD OF PULP, )  
SULPHITE & PAPER MILL WORKERS )  
LOCAL #380 )  
7304 River Road )  
Pennsauken Township )  
Delair, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-3 issued by the Township Committee of the Township of Pennsauken )

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McGuire and Healey, Esqs., by Peter P. Green, Esq.,  
Attorneys for Licensee  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on November 15, 1968, it (1) and (2) conducted a "50-50" lottery on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20, and on November 16, 1968, it (3) purchased a half-gallon bottle of vodka from an unlicensed individual, in violation of Rule 15 of State Regulation No. 20, (4) bottled the vodka for sale by refilling a quart bottle from the half-gallon, in violation of R.S. 33:1-78, (5) possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, viz., the quart bottle labeled 100 proof vodka refilled with 80 proof vodka, in violation of Rule 27 of State Regulation No. 20, and (6) sold drinks of alcoholic beverages to non-members, in violation of Rule 8 of State Regulation No. 7.

Absent prior record, the license will be suspended on the first and second charges for fifteen days (Re The Disabled American Veterans Home Association, Bulletin 1815, Item 6), on the third charge for fifteen days (Re Albert C. Wall, Inc., Bulletin 1820, Item 12), on the fourth charge for ten days (Re Frankie's Nomad Club, Inc., Bulletin 1481, Item 4), on the fifth charge for fifteen days (Re Juniewicz, Bulletin 1822, Item 13), and on the sixth charge for fifteen days (Re Amalgamated Local #731, UAW, Bulletin 1726, Item 2), or a total of seventy days, with remission of five days for the plea entered, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 4th day of February, 1969,

ORDERED that Club License CB-3, issued by the Township Committee of the Township of Pennsauken to International Brotherhood of Pulp, Sulphite & Papermill Workers Local #380 for premises 7304 River Road, Pennsauken, be and the same is hereby suspended for sixty-five (65) days, commencing \* at 3:00 a.m. Tuesday, February 11, 1969, and terminating at 3:00 a.m. Thursday, April 17, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

\*By order dated February 7, 1969, the suspension was deferred to commence at 3:00 a.m. Monday, March 3, 1969, and terminating at 3:00 a.m. Wednesday, May 7, 1969.

9. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

|   |   |             |
|---|---|-------------|
| In the Matter of Disciplinary Proceedings against   | ) |             |
| T.E.C. LIQUOR COMPANY, INC.   | ) | CONCLUSIONS |
| t/a "Canal's Liquor Mart"   | ) | AND ORDER   |
| 4950 Marlton Pike   | ) |             |
| Pennsauken, New Jersey  | ) |             |
| Holder of Plenary Retail Distribution License D-9, issued by the Township Committee of the Township of Pennsauken | ) |             |
| -----   |   |             |
| Licensee, by Thomas E. Canal, President, Pro se   |   |             |
| Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control                                     |   |             |

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 31, 1968 it sold twelve 4/5 quart bottles of whiskey below filed price, in violation of Rule 5 of State Regulation No. 30.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Lincoln Engine Company #2, Bulletin 1799, Item 3.

Accordingly, it is, on this 10th day of February 1969,

ORDERED that Plenary Retail Distribution License D-9, issued by the Township Committee of the Township of Pennsauken to T.E.C. Liquor Company, Inc., t/a "Canal's Liquor Mart", for premises 4950 Marlton Pike, Pennsauken, be and the same is hereby suspended for five (5) days, commencing at 9 a.m. Monday, February 17, 1969, and terminating at 9 a.m. Saturday, February 22, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

10. CANCELLATION PROCEEDINGS - ORDER DISCHARGING ORDER TO SHOW CAUSE UPON CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Cancellation )  
Proceedings against )

TWO G'S BAR, INC. )  
2 Main Street )  
Paterson, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-115, issued by the Board of )  
Alcoholic Beverage Control for the )  
City of Paterson. )

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Licensee, by George McGillick, President, Pro se  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Licensee does not contest an order to show cause why its license should not be cancelled because improvidently issued in violation of R.S. 33:1-25 in view of the fact that George McGillick, president and fifty-one per cent. stockholder of the licensee corporation, was ineligible for license by reason of his conviction on April 29, 1966 for the crime of possession of lottery slips, a crime involving moral turpitude, thereby rendering the licensee corporation ineligible for license.

The fact of the conviction was set forth in the current application for license and was not concealed by any false statement therein.

During the pendency of the proceeding the stockholding interest of George McGillick was transferred to Virginia McGillick, previously holder of forty-eight per cent. of the stock and thus now holder of ninety-nine per cent. Hence the unlawful situation no longer exists and the order to show cause will be discharged. Re Wally's Tavern, Inc., Bulletin 1813, Item 5.

Accordingly, it is, on this 13th day of February 1969,

ORDERED that the order to show cause herein be and the same is hereby discharged.

  
Joseph M. Keegan  
Director