

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

BULLETIN 1829

December 5, 1968

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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

BULLETIN 1829

December 5, 1968

1. NEW LEGISLATION - OTHER MERCANTILE BUSINESS ON PLENARY AND SEASONAL RETAIL CONSUMPTION AND PLENARY RETAIL DISTRIBUTION LICENSED PREMISES.

On November 13, 1968, the Governor approved Senate No. 634 (1968) which thereupon became Chapter 335 of the Laws of 1968, effective immediately.

The Act amends R.S. 33:1-12 (1, 2 and 3a) to provide, with respect to the conduct of other mercantile business on plenary and seasonal retail consumption and plenary retail distribution licensed premises, as follows (new matter underlined):

"Plenary retail consumption license. 1...this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except, subject to such rules and regulations established from time to time by the director, the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons, or the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages, or, in commercial bowling establishments, the retail sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and nonalcoholic beverages) is carried on...

"Seasonal retail consumption license. 2... this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except, subject to such rules and regulations established from time to time by the director, the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons, or the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on...

"Plenary retail distribution license. 3a... The governing board or body of each municipality may, by ordinance, enact that this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, except that any such ordinance, heretofore or hereafter adopted, shall not prohibit the retail sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts, and similar snacks, ice, and nonalcoholic beverages as accessory beverages to alcoholic beverages...."

JOSEPH M. KEEGAN  
DIRECTOR

2. OTHER MERCANTILE BUSINESS - LIMITED SUPERSEDING EFFECT OF NEW LEGISLATION (P.L. 1968, Ch. 335) ON MUNICIPAL ORDINANCE PROHIBITION OF SUCH BUSINESS BY PLENARY RETAIL DISTRIBUTION LICENSEES.

STATE REGULATIONS - REGULATION NO. 20, RULE 19 - LIMITED SUPERSEDING EFFECT OF NEW LEGISLATION (P.L. 1968, Ch. 335) ON RULE PROHIBITING "COMBINATION SALES" BY PLENARY AND SEASONAL RETAIL CONSUMPTION AND PLENARY RETAIL DISTRIBUTION LICENSEES.

November 26, 1968

Kleeman's Liquor Store, Inc.  
t/a The Bottle Shop  
306-308 North Avenue  
Garwood, New Jersey 07027

Gentlemen:

I have your undated letter, received November 21, 1968, in which you inquire as to the effect upon your licensed business of a recent amendment to the State Alcoholic Beverage Law concerning the sale of certain mercantile items on your licensed premises. You have asked: "Which is controlling the new state law or the local ordinance?"

According to Division records, you hold a plenary retail distribution license for the above premises in Garwood. Division records also disclose that an ordinance adopted on April 23, 1957 by the Mayor and Council of the Borough of Garwood, provides that holders of plenary retail distribution licenses in such municipality "shall not permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on."

On November 13, 1968, Governor Hughes signed into law Ch. 335 of the Laws of 1968, which, effective immediately, amended R.S. 33:1-12(3a) of the State Alcoholic Beverage Law to provide that, in municipalities in which the governing body has enacted, or hereafter enacts, by ordinance that plenary distribution licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, any such ordinance, heretofore or hereafter adopted, shall not prohibit the retail sale of "distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts, and similar snacks, ice and non alcoholic beverages as accessory beverages to alcoholic beverages." Additionally, the law amended R.S. 33:1-12(1) and (2) to permit plenary and seasonal retail consumption licensees to sell the aforesaid holiday alcoholic beverage merchandise and glassware as unit gift items.

Since state law takes precedence over municipal ordinances, you are advised that effective November 13, 1968 all plenary retail distribution licensees in the State may sell the above specific mercantile items set forth in Ch. 335 of the Laws of 1968, notwithstanding the provisions of any municipal ordinances, including the above cited Garwood ordinance, to the contrary. Accordingly, you may now sell these mercantile items at your licensed premises.

By the same token, plenary and seasonal retail consumption licensees, as well as plenary retail distribution licensees, may now engage in combination sales of the hereinabove mentioned holiday alcoholic beverage merchandise and glassware, notwithstanding the general prohibition against "combination sales" of any kind involving alcoholic beverages in Rule 19 of State Regulation No. 20. To the extent that Rule 19 prohibits such combination alcoholic beverage and glassware sales, it is superseded by the new law.

Copy of this letter is being forwarded to your municipal issuing authority, the Borough Council of the Borough of Garwood.

Very truly yours,  
JOSEPH M. KEEGAN  
DIRECTOR

3. APPELLATE DECISIONS - ISHMAL v. NEWARK.

JOHNNIE MAE ISHMAL )  
t/a BACK DOOR, )  
Appellant, )  
v. )  
MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )  
Respondent.

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Kohn, Kirsch & Needle, Esqs., by Lewis J. Weinstein, Esq.,  
Attorneys for Appellant  
Philip E. Gordon, Esq., by Anthony J. Iuliani, Esq.,  
Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) whereby by a 2-0 vote of its three members (one being absent) it revoked appellant's plenary retail consumption license for premises 132 Orchard Street, Newark, after finding appellant guilty of the following charges:

- "1. On December 8, 1965, August 27, 1966, October 1, 6, 1966, January 17, 1967, February 24, 1967, March 8, 1967, June 26, 1967, July 29, 31, 1967, and on divers other days, she allowed, permitted and/or suffered in and upon her licensed premises criminals or other persons of ill repute; and she further allowed, permitted and/or suffered her licensed premises to be accessible for the conducting of illegal activity or enterprise; and she further allowed, permitted and/or suffered her licensed premises to be used in furtherance or aid of, or accessible for such illegal activity or enterprise, which may result in a conviction in a criminal prosecution in that she, by and through her employees, agents and/or servants did allow persons to make overtures and arrangements for the purchase and sale of narcotics; and that she, through her employees, agents and/or servants allowed, permitted and/or suffered persons in and upon her licensed premises who indulged in or appeared to indulge in the use of narcotics to frequent and congregate in and upon her said licensed premises; and she allowed, permitted and/or suffered her licensed premises to be used in furtherance or aid of, or accessible for such illegal activity or enterprise, that is, the sale and purchase of narcotics, which

activity or enterprise may result in a conviction in a criminal prosecution; and she allowed, permitted and/or suffered her licensed premises to be conducted in such a manner offensive to common decency and public morals; in violation of Rule 4 of State Regulation No. 20.

- "2. On December 8, 1965, August 27, 1966, October 1, 6, 1966, January 17, 1967, February 24, 1967, March 8, 1967, June 26, 1967, July 29, 31, 1967, and on divers other days, she allowed, permitted and/or suffered in and upon her licensed premises immoral activity in that she, by and through her employees, agents and/or servants did allow persons to make overtures and arrangements for the sale and purchase of narcotics; and that she further allowed, permitted and/or suffered persons who indulged in and/or appeared to indulge in the use, sale and purchase of narcotics to frequent and congregate in and upon her said licensed premises; and she allowed, permitted and/or suffered and otherwise conducted her licensed place of business in such a manner as to become a nuisance and to be completely offensive to public morals and common decency; in violation of Rule 5 of State Regulation No. 20."

Upon filing of the appeal an order was entered by the Director staying respondent's order of revocation until further order herein.

Appellant contends in her petition of appeal that the action of the respondent was erroneous because:

- "a. The decision was against the weight of evidence.
- b. The Board failed to consider all of the evidence.
- c. The determination of the Board was as a result of mistake, passion or prejudice.
- d. The findings of the Board were inconsistent with the proofs of the case."

Respondent's answer denies the aforesaid allegations and states that "The grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the penalty imposed substantiated such action."

Both parties agreed to present the appeal solely upon the stenographic transcript before the Board pursuant to Rule 8 of State Regulation No. 15.

It appears from the transcript of the testimony taken before the Board that seven members of the Newark Police Department testified as to various incidents of traffic in narcotics which took place both inside and immediately outside the appellant's licensed premises.

Captain John Notte testified that, for about two years, among other things he has been in charge of assignments for investigations of narcotic activity taking place in the municipality; that "more than a dozen times" he accompanied detectives to the immediate area where the appellant's premises are located and personally observed "drug addicts and drug pushers" operating "hand to hand, and then the men would enter the tavern, the people involved, and we made arrests right after seeing them,

witnessing these things, so we know what was going on;" that reports submitted to him between December 1965 to the end of 1967 disclosed nineteen persons arrested, nine persons being apprehended inside the licensed premises and charged with possession of narcotics whereas three of these nine were also charged with sale of narcotics; that he himself never participated in any of the arrests.

Detective Thomas P. Lyons testified that he was assigned to the narcotics squad and worked under the command of Captain Notte along with Detectives Jerry (Jerome) Cleary and Arthur Gockeler; that on December 8, 1965 he arrested Hector Rodriguez in appellant's premises and found ten glassine envelopes in the phone booth of the establishment; that he recognized other persons who were narcotic users in the place but at no time did the bartender on duty ever request them to leave the establishment; that on August 27, 1966, he saw Alton Vines approach one Julio Santiago in front of the appellant's premises and observed one hand money to the other and then saw Santiago pick up a white cigarette box from the gutter and, when both men were apprehended, the box was found to contain six decks of heroin; that about 2:50 p.m. on March 8, 1967, accompanied by Detectives Cleary, Gockeler and Stangel, he saw Agnes Morales, who was in front of appellant's premises, approached by two males who handed her money and she then walked into an alley and removed a stack of glassine envelopes from her waist-band; that he and other officers then saw her enter the appellant's premises; that, when he entered, she left the bar and went to the ladies' room and later was arrested for possession of narcotics; that at various other times he observed persons in close proximity to the licensed premises whom he recognized as drug users. He stated that, as a result of his experience as an investigator involving users of narcotics, he is of the opinion that the appellant's licensed premises are "easily accessible to drug users and drug pushers" who frequent appellant's place of business.

It was stipulated that the testimony of Detective Jerome Cleary, if called upon to testify, would be substantially similar to that of Detective Lyons.

Detective Kenneth Jackson testified that he has worked in the area of the licensed premises from the end of 1965 to the end of 1967 and that on occasions, while in the appellant's place of business, he observed various users and pushers of narcotics.

Detective Bobbie Cottrel testified that he knows the appellant and on at least "fifty occasions" responded to make an investigation in an attempt to find evidence of narcotics trafficking in the area to substantiate any complaints; that on at least five occasions she informed him that there were narcotic addicts frequenting her licensed premises; that she did not say anything about narcotic pushers but that she just called him to inform him that she was aware of the narcotic traffic in the area and that she was calling for him to assist her in whatever manner he could in helping her get rid of it.

Detective Richard S. Ballard testified that he is an investigator in the narcotics squad and on December 8, 1965, while under the command of Captain Notte, was assigned to the area where the appellant's licensed premises are located; that on October 1, 1966, as a result of a call from the appellant that someone was selling narcotics in the tavern, he entered appellant's premises and she indicated to a pool table where two men were playing pool; that a man (subsequently identified as Bernard Alton) asked him whether he wanted "to buy some stuff;" that, in response thereto, he advised Alton that "I want two" and Alton then spoke to "a Puerto Rican sitting at the bar" who

"turned around, looked at us, shook his head 'no' and he dropped an envelope to the floor." When he retrieved the envelope it was found to contain "heroin, nine decks of heroin;" that he later learned that Alton was a part-time bartender at the appellant's licensed premises; that he (Detective Ballard) confronted the appellant concerning Alton's alleged employment and she said that "she was surprised that he was mixed up in it. She said that she gave him part time work because he had children;" that on October 6, 1966, he received a telephone call from the appellant who stated that "Theresa was sitting at the bar and selling narcotics to people coming in from the street;" that, in response thereto, when he entered the front door of the licensed premises he observed Theresa (Rodriquez) threw an object to the floor and, when it was retrieved, it was discovered to be a "hypodermic needle" and she was then taken to police headquarters; that during the month of October 1966 an average of three calls a week were received from the appellant who claimed that "there were drug addicts that were ruining her business, and selling narcotics on the street" and, furthermore, that these addicts were frequenting her place of business.

Detective Sergeant Edmund Bimbo testified that he is in the narcotics squad of the Newark Police Department and that arrest sheet of the Department disclosed that on January 17, 1967 one Fernandez was taken into custody by the Sheriff and also indicates that on February 24, 1967 and on June 26, 1967, arrests were made by the Sheriff's office inside the appellant's licensed premises pursuant to investigations which they made there.

Johnnie Mae Ishmal, the appellant, testified that she at no time ever knowingly permitted the sale or attempt to sell or traffic in drugs or narcotics in her place of business; that on occasions she has seen persons suspected of being under the influence of narcotics and, if they did not leave the premises, she would call the police; that over a period of time she spoke to many police officers who responded as a result of her calls which she said numbered "roughly, seventy-five or near a hundred or maybe more;" that, in explanation of the calls, appellant stated that they were not calls only for "pushers or addicts" but "a few of these calls were made because of people walking in and causing trouble in the place, breaking windows and mirrors and things like that, in a tavern;" that she employed Alton as a bartender on October 1, 1966, but he worked for only one day and, when he finished his work, he did not go home; that she noticed a few characters at the pool table with whom he had conversation and, as a result thereof, called the police and Detective Ballard responded, arresting Alton; that she had no idea that he was ever involved in the drug traffic; that she has been engaged in the liquor business for four years, having her premises around the corner from her present location where she has been operating her business for "about a year and five months;" that at the other location she never had any difficulty with either narcotic pushers or addicts; that she was aware that there was a problem of drug addicts congregating in the area and that they would at times frequent her liquor establishment but the only time she served them would be when they were not under the influence of drugs.

James Palmer testified that he lives at 123 Orchard Street, across from the appellant's tavern, and is a customer in the establishment; that he has never seen any evidence of unlawful activity in the place; specifically that he has never seen anybody attempting to sell or buy narcotics.

Charles Braswell testified that he lives at 142 Orchard Street, less than a block from the appellant's licensed premises, and has been working there for approximately two years and recalls that on three occasions appellant telephoned to the Police Department; that he saw appellant eject from the licensed premises anyone who appeared to her to be under the influence of narcotics on at least seven or eight occasions.

Monroe Adams (son of the appellant) testified that he worked in the licensed premises from December 1965 to the end of July 1967, during the year working part-time, and on many occasions he requested obvious drug addicts to leave the premises in accordance with the instructions given to him by his mother.

Theodore Johnson testified that he is employed as a bartender by appellant and began working for her the latter part of September 1966, and many times he requested persons who appeared to him to be under the influence of narcotics to leave the establishment; that at no time, however, did he ever see anyone attempting to buy or sell narcotics in the place; that on four or five occasions he heard appellant call the police because of addicts coming into the licensed premises.

Domingo Reno testified that he is the owner of the building wherein appellant's licensed premises are located, and on occasions called the police "when I heard noises in the back of the building, I called the police. People would be going in and out of the back there and then she would call me. It is like a shooting gallery." Domingo further testified that he operates a grocery store and also is the owner of a tavern on Mulberry Street in Newark. Inasmuch as he spends most of his time at the tavern which he operates, he testified he doesn't know too much concerning what goes on in the area of appellant's licensed business.

Appellant disputes the sufficiency of the evidence to establish that she was guilty of the alleged violations that her licensed premises were operated in a manner completely offensive to common decency and public morals and her licensed business was conducted in such manner as to become a nuisance.

The testimony of the police officers, which I am satisfied is accurately expressed, that they apprehended persons possessing narcotics and persons selling and attempting to sell narcotics on the licensed premises, is uncontradicted. In State v. Berman, 120 N.J.L. 381, 383, Chief Justice Brogan, speaking for the Supreme Court, stated:

"It has been repeatedly held that any place of public resort is a public nuisance where illegal practices are habitually carried on or when such place becomes the habitual resort of thieves, drunkards, prostitutes, &c., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). And, as Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953), said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

It is apparent by the manner in which the licensed premises has been operated that appellant made only a feeble attempt to conduct the business in a proper manner. She had lost control of the patrons and others who entered her establishment which resulted in her making, as she has testified, between seventy-five and one hundred telephone calls over a period of time to the Police Department to eject users and sellers of narcotics from the licensed premises. She testified that at her former location, before moving to the present site about a year and five months ago, she experienced no difficulty. However, from the testimony of the police with reference to her present location, it surely can be considered a trouble spot. There is no doubt that the manner in which appellant's business was operated constituted a nuisance to persons residing in the area.

The Legislature has invested an issuing authority with power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violations of the Alcoholic Beverage Law and State or local regulations. R.S. 33:1-31.

We are dealing here with purely disciplinary measures and their alleged infraction. Such measures are civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must only be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Careful examination and evaluation of the testimony herein convince me that most, if not all, of the allegations of the charges have been adequately proved in this matter. There is no denial on the part of appellant that the premises were frequented by narcotics addicts and sellers of narcotics. Appellant also employed a part-time bartender who remained in the premises after his work was finished for the day and was found by the police attempting to sell narcotics. I am satisfied that appellant allowed, permitted and suffered the activities set forth in the charges to take place in and upon her licensed premises. The charges have been proved by a fair preponderance of the evidence, which in this case is substantial, that the licensed business was conducted as a nuisance. Appellant has failed to sustain the burden of establishing that the Board's action in revoking her license was erroneous and should be reversed.

As to the other ground of appeal, that the Board acted as a result of mistake based on prejudice, I find no evidence of this claim.

Under the circumstances, it is recommended that an order be entered affirming respondent's action in revoking appellant's license and reimposing the order of revocation.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorneys for the appellant pursuant to Rule 14 of State Regulation No. 15.

With reference to the exception that "The hearer found appellant guilty of certain charges of which she had been acquitted below, although there was no cross appeal challenging the partial acquittal", I am aware from examination of the transcript submitted herein that certain allegations in charge (1) were dismissed by respondent. Nevertheless, guilt was found as to the remaining allegations in said charge and, in addition thereto, a finding of guilt by respondent on all allegations in charge (2). Therefore, in view of the numerous serious violations committed over a long period of time by appellant, it is apparent that respondent was justified in revoking appellant's license.

With reference to the other exceptions, I find that they either have been answered by the Hearer or are without merit.

After careful consideration of the entire record, including the transcript of the testimony, the Hearer's report and the exceptions taken thereto, I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of October 1968,

ORDERED that the action of the respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-113, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Johnnie Mae Ishmal, t/a Back Room, for premises 132 Orchard Street, Newark, be and the same is hereby revoked, effective immediately.

JOSEPH M. KEEGAN  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 135 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
FRANK DI GIUSEPPE  
t/a M & D Tavern  
507-509-511 S. Clinton Avenue  
Trenton, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-71, issued by the City Council of the City of Trenton

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Henry F. Gill, Esq., Attorney for Licensee  
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between May 17 and September 21, 1967, he permitted acceptance of numbers bets (and horse race bets on August 14, 1967) on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for twenty-five days effective March 10, 1963 for sale to minors; by the Director for seventy-five days effective January 6, 1966 for acceptance of numbers bets and sale in violation of State Regulation No. 38 (Re DiGiuseppe, Bulletin 1659, Item 2), and by the municipal issuing authority for five days effective September 5, 1966 for sale to minors and again for five days effective June 10, 1968 for permitting a minor to loiter on the licensed premises, in violation of local ordinance.

The prior record of suspension of license for similar violation within the past five years considered, the license will be suspended for one hundred twenty days (Re Turso, Bulletin 1756, Item 6), to which will be added fifteen days by reason of the record of three suspensions for dissimilar violations (Re Berbon, Bulletin 1810, Item 11), or a total of one hundred thirty-five days, with remission of five days for the plea entered, leaving a net suspension of one hundred thirty days.

Accordingly, it is, on this 21st day of October 1968,

ORDERED that Plenary Retail Consumption License C-71, issued by the City Council of the City of Trenton to Frank DiGiuseppe, t/a M & D Tavern, for premises 507-509-511 S. Clinton Avenue, Trenton, be and the same is hereby suspended for one hundred thirty (130) days, commencing at 2 a.m. Monday, October 28, 1968, and terminating at 2 a.m. Friday, March 7, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES - SUM DEPOSITED UNDER STIPULATION ORDERED RETURNED TO INNOCENT OWNER - ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED.

In the Matter of the Seizure on	)	
March 27, 1968 of eight containers	)	Case No. 12,026
of alcoholic beverages, various	)	
fixtures, furnishings and equipment	)	ON HEARING
and \$1.00 in cash in the unlicensed	)	CONCLUSIONS
premises of the Spanish-American	)	AND ORDER
Brotherhood Association located at 91	)	
Broadway, in the City of Paterson,	)	
County of Passaic and State of New Jersey	)	

-----  
Spanish-American Brotherhood Association, by Establen Martinez, Advisor, claimant.  
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28, and further, pursuant to a stipulation dated May 6, 1968 signed by Antonio Rios, vice-president of the Spanish-American Brotherhood Association to determine whether eight containers of alcoholic

beverages, various fixtures, furnishings and equipment and \$1.00 in cash, described in an inventory hereinafter referred to, seized on March 27, 1968 at the unlicensed premises of the Spanish-American Brotherhood Association located at 91 Broadway, Paterson, New Jersey constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$350.00 deposited by Antonio Rios on behalf of the Spanish-American Brotherhood Association, under the aforesaid stipulation, representing the retail value of the fixtures, furnishings and equipment set forth in the aforesaid stipulation should be forfeited or returned to the said club.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at the said premises. At the said hearing, Antonio Rios, representing the Spanish-American Brotherhood Association, appeared pro se, and sought the return of the seized property.

The testimony of ABC Agent M reflects the following: At about 8:55 p.m. on March 27, 1968 he entered the said premises and observed an individual, (later identified as Juan Vidal), who was standing behind a makeshift bar and there was one other person on the premises. The agent told Vidal that he was waiting for a friend of his and asked him for "one shot of VO and water". Vidal explained to him that he was merely a member and didn't know whether he could sell any liquor to him. Vidal then asked the other person whether he could sell liquor and was told that he could and should charge 50¢ per drink. He purchased two drinks for which he paid with a "marked" one-dollar bill.

Shortly thereafter, another ABC agent, accompanied by local police entered the premises and arrested Vidal; a search and seizure of the alcoholic beverages and the personal property were thereupon made.

Vidal was charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50(a) and was held in bail for arraignment in the Paterson Municipal Court.

A sample of a one-quart bottle containing six ounces of Seagram's V. O. Canadian Whiskey, seized herein, was analyzed by the Division chemist, who certified that it is an alcoholic beverage fit for beverage purposes with alcoholic content by volume of 43.6%.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to any of the individuals herein named or for the premises where the violations took place.

The applicable law is to the effect that where seized alcoholic beverages were intended for sale without a license, they are illicit. R.S. 33:1-1(i). If the same is established, such illicit alcoholic beverages, the personal property and the cash as set forth herein did constitute unlawful property and are subject to forfeiture. R.S. 33:1-66; R.S. 33:1-2; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 11,909, Bulletin 1779, Item 6.

The Spanish-American Brotherhood Association produced testimony on its behalf by Antonio Rios, a vice-president of the said claimant and Estaban Martinez, a member and Advisor of the said association and discloses the following: This

association is a non-profit organization which frequently sponsors association affairs to raise money for scholarship purposes. It has frequently obtained special permits from this Division when liquor was dispensed.

On the Saturday night prior to the date of seizure, a wedding was held at these premises and there were six cans of beer and one-third of a bottle of Seagram's V.O. Whiskey left over from that affair. Rios asserts that the person in charge of the wedding party left the liquor there for members' use and there was never any intention to sell the same.

Rios had given Vidal the keys because Vidal had offered to clean the premises and to permit a television repair man (the other person on the premises at the time of seizure) to set up a television set.

When Agent M entered the premises and insisted upon purchasing a drink, Vidal told him that the liquor was there solely for the consumption by members and was not for sale. However, after the agent continued to urge him to serve him, Vidal asked the television repair man what to charge the agent. The television repair man suggested 50¢, and the agent thereupon gave him the "marked" one-dollar bill for two drinks. Vidal took the one-dollar bill, and since there was no register or box to put the money in, he placed it behind a picture hanging on the wall behind the makeshift bar.

Agent M, called in rebuttal, admitted that the price for the drink was fixed by the television repair man, after Vidal had asked him what he should charge for the same.

I have had an opportunity to evaluate the testimony herein and to observe the demeanor of the witnesses as they testified. I am persuaded that although a sale was made by Vidal to the agent, he was not authorized to sell the said whiskey nor did the claimant have any knowledge that this said whiskey was sold or intended to be sold. It is clear that this was not a speakeasy operation since there is no dispute over the fact that the other person on the premises was not a patron but was a television repair man engaged in performing services strictly of that nature.

Obviously if this were a speakeasy operation, the premises would have contained more than one six-pack of unchilled beer and one-third of a bottle of whiskey. (There were none of the significant trappings of the usual speakeasy operation.) It is more realistic to conclude that the said alcoholic beverages in such small amounts was, in fact, presented to the membership as testified to by the witnesses for the claimant.

It is quite apparent that Vidal did not engage in the sale of whiskey under the authority of the association because the price list on the wall and the sale of drinks at special functions indicates that the price for this type of drink was 75¢. Vidal did not testify at this hearing because he has great difficulty in speaking or adequately understanding the English language. I am further impressed by a letter received from Bishop Vincent E. Puma of the Roman Catholic Diocese in Paterson which speaks highly of the claimant and its officers, and states that they "enjoy very excellent reputations in the Spanish community".

I, therefore, recommend, in the interests of substantial justice and fairness to this claimant that an Order be entered recognizing its claim for the return of the monies deposited on the stipulation. However, so far as the alcoholic beverages are concerned, in view of the actual sale to the ABC agent, it is further recommended that the said seized alcoholic beverages, and the "marked" money be forfeited.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions and I adopt them as my conclusions herein.

Accordingly, it is on this 22nd day of October, 1968

DETERMINED and ORDERED that the sum of \$350.00, representing the appraised retail value of certain fixtures, furnishings and equipment which were returned to claimant, Spanish-American Brotherhood Association, paid under protest pursuant to a stipulation signed on its behalf, shall be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages and cash be and the same are hereby forfeited, in accordance with provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and State, county and municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH M. KEEGAN  
DIRECTOR

SCHEDULE "A"

- 8 - containers of alcoholic beverages
- Various fixtures, furnishings and equipment
- \$1.00 - cash

6. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1967 TO JUNE 30, 1968 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 57 ISSUED BY THE DIRECTOR PURSUANT TO R.S.33:1-20)

C L A S S I F I C A T I O N   O F   L I C E N S E S

County	PLENARY RETAIL CONSUMPTIONS		PLENARY RETAIL DISTRIBUTION		CLUB		LIMITED RETAIL DISTRIBUTION		SEASONAL RETAIL CONSUMPTION		LICENSES EXPIRED SURREN- DERED REVOKED	NUMBER LICENSES IN EFFECT	TOTAL FEES PAID
	NO. ISSUED	FEES PAID	NO. ISSUED	FEES PAID	NO. ISSUED	FEES PAID	NO. ISSUED	FEES PAID	NO. ISSUED	FEES PAID	NO.		
ATLANTIC	483	\$ 206,960.00	74	\$ 27,775.00	30	\$ 2,420.00						587	\$ 237,155.00
BERGEN	818	344,806.00	301	93,913.00	159	14,499.59	46	\$ 2,214.50	5	\$ 2797.50	1	1328	458,230.59
BURLINGTON	198	93,159.00	43	16,431.00	54	7,133.91	1	50.00				296	116,773.91
CAMDEN	454	245,049.68	85	39,035.00	81	8,064.86			1	900.00	1	620	293,049.54
CAPE MAY	139	78,400.00	13	4,700.00	18	2,250.00						170	85,350.00
CUMBERLAND	82	43,097.27	15	4,450.00	31	4,050.00						128	51,597.27
ESSEX	1260	809,539.14	346	228,000.00	94	12,900.00	24	1200.00	1	2250.00	3	1722	1,053,889.14
GLOUCESTER	110	40,190.00	15	3,910.00	26	2,220.00						151	46,320.00
HUDSON	1423	643,800.40	297	121,900.00	80	9,372.68	59	2500.00			2	1857	777,573.08
HUNTERDON	79	31,508.00	15	8,878.00	16	1,800.00						110	42,186.00
MERCER	414	295,599.02	51	26,294.00	63	9,376.44					9	519	331,269.46
MIDDLESEX	635	322,905.00	88	30,155.00	132	10,850.20	4	200.00				859	364,110.20
MONMOUTH	553	294,778.00	126	45,670.00	67	7,666.25	10	492.00	17	20757.92	1	772	369,364.07
MORRIS	359	151,457.00	104	44,081.00	71	6,682.50	15	750.00	5	3120.00	1	553	206,090.50
OCEAN	197	110,578.90	53	23,912.00	49	5,281.06						299	139,771.96
PASSAIC	828	346,077.00	169	52,560.00	51	6,090.82	6	300.00			7	1047	405,027.82
SALEM	52	20,746.00	8	1,640.00	20	1,775.00						80	24,161.00
SOMERSET	190	89,535.00	42	13,225.00	41	4,791.78					1	272	107,551.78
SUSSEX	166	47,995.00	21	4,400.00	13	740.00	1	50.00	1	450.00	1	201	53,635.00
UNION	548	326,247.10	144	74,824.38	90	9,662.59	26	1293.00				808	412,027.07
WARREN	147	44,810.00	21	5,325.00	32	3,296.74			1	450.00		201	53,881.74
TOTAL	9135	\$4,587,237.51	2031	\$ 871,078.38	1218	\$ 130,924.42	192	\$ 9049.50	31	\$ 30725.32	27	12580	5,629,015.13

1 C denied - 1 C Cancelled - 11 C Revoked - 1 CS Not.Ren. 1 CS Exp.  
10 C Retired - 1 CB Surr. - 1 C voided - 2 C New Lic. 7 CB New Lic.

Joseph M. Keegan  
Director

October 30, 1968

7. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JOHN MANYK, INC. t/a Lyndhurst Bar & Grill 7 Ridge Road Lyndhurst, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-18, issued by the Board of Commissioners of the Township of Lyndhurst.

Goldman, Carlet & Garrison, Esqs., by George L. Garrison, Esq., Attorneys for Licensee Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between April 19 and July 3, 1968, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for seven days effective January 3, 1967 for sale to minors, for ten days effective July 10, 1967 for sale during prohibited hours, and for twenty days effective July 20, 1967 for sale to minors.

The license will be suspended for sixty days (Re LaSalle Tap Room, Bulletin 1820, Item 3), to which will be added fifteen days by reason of the prior record of three suspensions of license for dissimilar violations occurring within the past five years (Re Berbon, Bulletin 1810, Item 11), or a total of seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days.

Accordingly, it is, on this 30th day of October 1968,

ORDERED that Plenary Retail Consumption License C-18, issued by the Board of Commissioners of the Township of Lyndhurst to John Manyk, Inc., t/a Lyndhurst Bar & Grill, for premises 7 Ridge Road, Lyndhurst, be and the same is hereby suspended for seventy (70) days, commencing at 2 a.m. Wednesday, November 6, 1968, and terminating at 2 a.m. Wednesday, January 15, 1969.

JOSEPH M. KEEGAN DIRECTOR

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

In the Matter of Disciplinary Proceedings against

PLAY PEN INCORPORATION  
t/a Play Pen, Inc.  
789-791 Palisade Avenue  
Cliffside Park, New Jersey

SUPPLEMENTAL ORDER

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

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Daniel Amster, Esq., and Andora & Baron, Esqs., by Anthony D. Andora, Esq., Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On December 27, 1967, Conclusions and Order were entered herein suspending the license for thirty days commencing January 15, 1968, for permitting indecent entertainment (a topless go-go dancer) on the licensed premises. Re Play Pen Incorporation, Bulletin 1778, Item 5.

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

The Appellate Division affirmed the Director's action on June 14, 1968. Play Pen Incorporation v. Division of Alcoholic Beverage Control (App.Div. 1968), not officially reported; recorded in Bulletin 1805, Item 1.

On June 26, 1968, notice of appeal to the New Jersey Supreme Court was filed and the stay was continued pending determination thereof, and on October 15, 1968 the appeal was dismissed.

Mandate on affirmance having been received from the Appellate Division, the suspension may now be reimposed.

Accordingly, it is, on this 23rd day of October 1968,

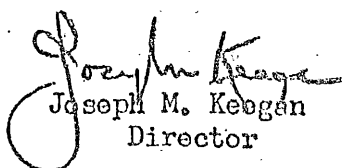
ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Cliffside Park to Play Pen Incorporation, t/a Play Pen, Inc., for premises 789-791 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. Wednesday, October 30, 1968, and terminating at 3 a.m. Friday, November 29, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

9. STATE LICENSES - NEW APPLICATIONS FILED.

F.C.D.S. Distributors, Inc., 396-398-18th Ave., Newark, N. J.  
Application filed November 26, 1968 for person-to-person transfer of State Beverage Distributor's License SBD-31 from George Rapp Inc.

Barton Distilling Company, 200 S. Michigan Ave. Chicago, Illinois  
Application filed December 2, 1968 for plenary wholesale license.

  
Joseph M. Keegan  
Director