

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

BULLETIN 2008

November 8, 1971

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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 2008

November 8, 1971

1. COURT DECISIONS - HAUSNER v. ELIZABETH - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-875-70

In the Matter of Disciplinary
Proceedings against

S. EDWARD HAUSNER
t/a Skyline Lounge
789 Dowd Avenue
Elizabeth, N. J.

Holder of Plenary Retail Consumption
License C-111 (for 1969-70 license
period as extended for 1970-71 license
period) issued by the City Council of
the City of Elizabeth.

Submitted September 22, 1971 - Decided September 27, 1971.

Before Judges Kilkenny, Labrecque and Lane.

On appeal from Division of Alcoholic Beverage
Control, Department of Law and Public Safety.

Mr. Theodore Cohen, Attorney for appellant,
S. Edward Hausner; Mr. Anthony X. Arturi,
on the brief.

Mr. George F. Kugler, Jr., Attorney General,
Attorney for respondent, Division of Alcoholic
Beverage Control; Mr. Stephen Skillman, Assistant
Attorney General, of counsel; Mr. Bertram P. Goltz,
Jr., Deputy Attorney General, on the brief.

The opinion of the Court was delivered by

LANE, J.A.D.

(Appeal from decision in Re Hausner, Bulletin 1956,
Item 1. Director affirmed. Opinion not approved
for publication by the Court Committee on Opinions).

2. NEWS RELEASE - SALES BY DISTRIBUTORS TO INDIVIDUALS AT
MILITARY INSTALLATIONS.

Richard C. McDonough, Director of the Division of Alcoholic Beverage Control today released the contents of letters he has written to the military bases located in New Jersey requesting that they strictly enforce their regulation concerning sales of alcoholic beverages to unauthorized individuals. In letters to the Commanding Officers of the Army, Navy and Coast Guard installations, he advised of the practice of some distilleries soliciting and selling directly to servicemen and civilians in contravention of their regulations and requested their assistance in putting a stop to this activity.

Further, the Director advised the Commanding Officer of McGuire Air Force Base of the result of a recent investigation of this activity on his base and asked his assistance in preparing similar regulations as the other services have to prevent these occurrences in the future.

"The whole procedure is unfair" the Director said, "these military and civilian personnel, because they are located on federal property, are not subject to my jurisdiction, they are therefore buying direct from a distillery and at wholesale prices. This creates unfair competition to the military's own post exchanges as well as the retailers located near the base".

"Now that we have determined that these military regulations cover this situation we have asked for their continued assistance in the enforcement of the same. As to McGuire Air Force Base where we have found specific instances of this activity, we have asked the Post Commander as well as General Catton, Commander, Military Air Lift Command and the Secretary of the Air Force to consider promulgation of a similar set of regulations as are in effect for the other branches of the service.

Dated: October 8, 1971

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The minutes of the meeting of the Council held on June 28, 1971 was accepted into evidence upon stipulation of counsel.

The president and principal stockholder of the corporate licensee, Joseph Oliveri, testified that the license had been renewed annually for eighteen years without the necessity of his attendance before the Council except on one instance when he, and several other licensees were directed to appear before the Council to learn of some change of policy. He further testified that he had heard rumors of a possible rejection of his license and in consequence, called the secretary of the Council, who assured him that his presence at the meeting would not be necessary.

Thomas J. Garvey, Secretary of the Council, acting on ABC matters, testified that prior to the June 28th meeting, Oliveri spoke to him but he denied that he advised him or anyone, not to attend the meeting. He did call Oliveri subsequent to the meeting to advise that the license had not been renewed.

Councilman Joseph C. McGlynn testified that he and four other members of the Council voted against renewal of appellant's license on the basis of the record of prior suspensions and on his general knowledge of the licensed premises. He indicated that the members of the Council did have caucus sessions in private where discussions of many licenses ensued. He admitted there were not written objections to the granting of appellant's license.

No other witnesses were introduced by either party.

Appellant urged that the action of Councilman O'Keefe indicated a personal objection to renewal. He had introduced a motion that prevented appellant's application from being voted upon along with all of the others. The motion carried, and the subject application (and another) was culled from the general list of applications acted upon. Appellant construes the introduction of the motion to be an objection to the renewal of license that called for a hearing under Rule 6 of State Regulation No. 2. This contention is rejected since the expression of a member of the issuing authority is not an objection within the purview of the said rule. Rule 8 of State Regulation No. 2 sets forth that:

"No hearing need be held if no such objections shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

Furthermore, the failure to have a hearing, in and by itself, cannot support an appeal. As the court expressed in Downie v. Somerdale, 44 N.J. Super. 84, 87 (App. Div. 1957):

"Mr. Downie's contention seems to be that the borough council should have furnished him with some statement of its reasons to which he might take exception before the council came to its decision. But the law does not impose on the council an obligation of this sort."

Therefore, since the Council on its own motion determined not to renew the license, it was not required to hold a hearing on the said application.

Appellant was offered at the hearing before this Division opportunity to present whatever evidence available to it to show that the action of the Council was capricious and unreasonable, hence the alleged deficit of not being aware of the Council's impending action was thus corrected. Cf. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943).

The Council adopted the motion to deny the license by a single sentence which was the soul of brevity. "Based on findings of the State ABC many times, for similar violations." While not expansive in verbiage, its brevity was in indirect proportion to the licensee's long record of suspensions. That record was included as part of the minutes of the meeting and may be synthesized as follows:

- 1958 - ten days - lewdness, immoral activity, foul, filthy and obscene language.
- 1961 - thirty-five days - sale to intoxicated persons and solicitation.
- 1963 - two hundred days - lewdness and immoral activity, renting rooms for illicit sexual intercourse.
- 1971 - forty days - lewdness and immoral activity and indecent conduct by homosexuals.

In the latter offense, judicial notice is taken that the licensee pleaded non vult to the charges occurring on July 24, August 1, 2, 14, 15, 22, 28, 29, September 1, 12, 25 and 26, 1970. (Re Mello-D-Club, Inc., Bulletin 1984, Item 3.) Reports of investigation disclosed that females have been dancing together in an indecent manner, caressing each other immorally on their genital parts and using vile, obscene and vulgar words loudly within hearing of other patrons and employees of the licensee. Males were observed lightly embraced while kissing each other mouth to mouth in an obscene manner.

Thus the Council had before it a sorry record to be weighed against the public good. In the area of licensing as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. In its consideration of this matter, the Council was guided by the principles enunciated in Tumulty v. Dunellen et al., (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1, as follows:

"The problem before (the Board) upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license be renewed. (Emphasis supplied)

See Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 36 N.J. Super 512; aff. 20 N.J. 373. The record in this case shows manifestly that the Council felt the continuance of this operation would be inimical to the public good. Nordco v. State, 43 N.J. Super. 277, 287 (App. Div. 1957).

As the court stated in Nordco, supra. at p.282:

"...It seems to us entirely proper for both the local and state agencies, when passing on such applications, to take into account not only the conduct of the licensee, but also conditions not attributable to its conduct, which render a continuance of a tavern in a particular location against the public interest."

Finally, it is well to note the expression of Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App. Div. 1953):

"The governmental power extensively to supervise the conduct of 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."

After considering the totality of the evidence herein, I conclude that the appellant has failed to sustain its burden of establishing that the action of the Council was erroneous, in accordance with Rule 6 of State Regulation No. 15.

It is accordingly recommended that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibit 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 16th day of September 1971,

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

ORDERED that the order dated July 12, 1971, extending the term of appellant's 1970-71 plenary retail consumption license pending determination of the appeal herein be and the same is hereby vacated, effective immediately.

Richard C. McDonough,
Director.

4. DISCIPLINARY PROCEEDINGS - INDECENT MATTER (LEWD MOTION PICTURE FILM) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against)

Kiefer's Tavern, Inc.)
215-217 Broad Avenue)
Palisades Park, N. J.,)

Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Palisades Park.)

CONCLUSIONS
and
ORDER

Frederick Klaessig, Esq., Attorney for Licensee
Edward F. Ambrose, 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 the following charges:

- "1. On March 17 (amended 18) and 23, 1971, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that on both of said dates you, through a person employed as a bartender on your licensed premises, made offers to and arrangements with patrons and customers on your licensed premises to procure, obtain for and sell to them matter containing obscene, indecent, filthy, lewd, lascivious and disgusting matter, viz., reels of motion picture films depicting male and female persons engaged in acts of sexual intercourse, acts of sexual perversion and other lewd and indecent sexual poses, acts and practices, and on said date of March 23, 1971, sold two reels of such motion picture films to customers and patrons on your licensed premises; all such activity being in violation of Rule 5 of State Regulation No. 20.
- 2. On March 23, 1971, you allowed, permitted and suffered in and upon your licensed premises and possessed, distributed and caused to be distributed thereon obscene, filthy, lewd, lascivious and disgusting matter, viz., two reels of motion picture films depicting male and female persons engaged in acts of sexual intercourse, acts of sexual perversion and other lewd and indecent poses, acts and practices; in violation of Rule 17 of State Regulation No. 20."

ABC agents G and S participated in the investigation of the licensed premises, as a result of which the aforementioned charges

were preferred against the licensee.

Agent G testified that he, in the company of agent S, had visited the premises on an assignment to investigate an alleged gambling complaint and had visited the premises on several occasions prior to March 18, 1971 (the date fixed in the complaint was amended from March 17 to March 18, 1971) at which time the bartender, Eugene Lynch, hereafter called "Gino", did not have the "hot film" (meaning thereby pornographic film) the agent was looking for.

Returning on March 23, Gino informed the agent that he then had the film; the agent offered to purchase two rolls. Gino offered to go to the car, when the agent was about to leave, and get the rolls for him. About 10:00 a.m. when the agent was about to leave, Gino "...left the premises and went to his car and came back a minute or so later with 2 roll boxes. I had a \$10 bill on the bar. He took the \$10 bill and he said to me, 'I am only charging you \$9, the same price I paid for them'. He gave me \$1 back and also put the 2 rolls of film in a brown paper bag."

Agent S sitting alongside of agent G at the bar corroborated the testimony of agent G. Vigorous cross examination of both agents did not substantially alter the above recitation.

It was stipulated by both counsel at the outset of the hearing herein that the films were pornographic.

This case is companion to the matter of disciplinary proceedings held at the same time against Kuchar & Brupbacher, t/a Charlmaree Tavern & Rest., wherein the same agents and the same bartender developed a factual picture resulting in the same charges. As they are parallel cases, their similarities are striking, hence reference is here made to it.

Licensee offered the testimony of its bartender, Eugene Lynch, known as Gino who, although warned of the possibilities of self-incrimination nonetheless desired to testify. He readily admitted selling the films but the circumstances under which they were sold set the scene of the sale to be at his car parked on the street in front of the licensed premises. He gave the following version: he went outside with agent G to whom he gave two rolls of film in a brown paper bag after extracting them from his car. Agent G gave him a \$10 bill and he returned \$1 change from his pocket. Agent G returned to the bar carrying the brown paper bag, and the witness re-entered the tavern, picked up his keys and a bank deposit, and thereupon left the premises to make the deposit.

The testimony of the bartender, Gino, was corroborated by the principal officer of the licensee, Peter Kuchar, who recalled that Gino had left the tavern, turning his authority over to a relief bartender, returned in a few minutes, picked up his keys and left. He had seen agent G leave at the same time, return in a few moments with a brown paper bag which the witness thought was a package containing lunch. He indicated that when Gino left the tavern and asked the relief bartender to take charge he was, at that point, off duty. He did not resume his station behind the bar on that morning.

Thus arose the primary issue in the matter. Was the sale of the offending film executed by an employee on the licensed premises or was it made while the employee was off duty outside the licensed premises, where the offense could not be chargeable to the licensee.

Toward a resolution of the issue in favor of the licensee, the relief bartender, Thomas Smith, was called to testify. Although vague as to days or dates, he testified in corroboration of Gino's version.

His testimony revolved around a tiny bank book, accepted in evidence, which contained proof of a deposit made on March 23. The date of this deposit fixed the time of the said incident to which the witness testified. While he had positive recollection of agent G having left the bar, returning with the brown paper bag, he had no recollection of Kuchar having washed windows. All other witnesses recalled the window washing. He testified further that it was his bank book for his part-time exterminating business that Gino would take to the bank, and as there was a deposit there for March 23, it was conclusive to him that Gino left for the bank on that day. He declared that he is paid by the hour, the payroll records are made up by an accountant, and that the hours he worked vary from day to day. However, no payroll records were offered in evidence.

The charge made here is a serious charge and a finding of guilt must be firmly based. No testimony need be believed but, rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100. The Division is required to establish its case only by a preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

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 common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

Applying the above principles to all of the testimony presented on both sides, the testimony of the agents possessed a clarity not easily overcome. Both agents are experienced and capable; each testified clearly and directly. They were precise in their review of the purchase as having taken place within the licensed premises, and considering their knowledge of the applicable regulations, I am persuaded that they did not fabricate testimony to negate the defense.

The testimony of the bartender, Gino, while offered as the unblemished truth in that it was against his interest was apparently manufactured to place himself in a good light before his former employer. His admission of a fait accompli took little, if anything, from his position in that the sale, wherever made, was so easily proven. His action of helpfulness to the licensee was merely gratuitous. Further, the testimony of Kuchar was undoubtedly due to conjecture, for he was engrossed in house-keeping chores, and was totally unaware of the surreptitious machinations of his bartender. The testimony of relief bartender, Smith, has already been commented upon. "...even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees." Hodes Corporation v. Newark, Bulletin 1730, Item 1.

The licensee is fully responsible for the actions of his employees during their employment on the licensed premises.

Kravis v. Hock, 137 N.J.L. 252 (1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Accordingly, after considering the entire record and the applicable legal principles, I find, by the clear and convincing proof in this case that the charge has been sustained by a fair preponderance of the credible evidence. It is, therefore, recommended that this licensee be found guilty of the charges.

Absent prior record, it is recommended that the license be suspended on the charges herein for ninety days. Re New Hurricane Bar (A Corp.), Bulletin 1927, Item 7; Re The Bird Cage, Inc., Bulletin 1775, Item 1.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, and the exceptions filed which I find lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 16th day of September 1971,

ORDERED that Plenary Retail Consumption License C-4 issued by the Mayor and Council of the Borough of Palisades Park to Kiefer's Tavern, Inc., for premises 215-217 Broad Avenue, Palisades Park, be and the same is hereby suspended for ninety (90) days, commencing at 3:00 a.m. Thursday, September 30, 1971 and terminating at 3:00 a.m. Wednesday, December 29, 1971.

Richard C. McDonough
Director

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN POOLROOM - PARTIAL HEARING - RETURN OF DEPOSIT POSTED AS RETAIL VALUE OF CERTAIN FURNISHINGS AND EQUIPMENT DENIED ABSENT GOOD FAITH.

In the Matter of the Seizure :
on September 6, 1970 of one : Case No. 12,367
juke box and three pinball :
machines seized at 49 Prospect : On Hearing
Street, in the City of Newark, :
County of Essex and State of : CONCLUSIONS and ORDER
New Jersey. :

J. D. Vending Company, Inc., by Joseph Dino, President, claimant.
Harry D. Gross, Esq., appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether one juke box and three pinball machines as set forth in an inventory attached hereto, made a part hereof and marked Schedule "A", seized on September 6, 1970 at the unlicensed premises of the International Poolroom, 49 Prospect Street, Newark, constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$400.00 deposited with the Director by Joseph Dino as agent for and on behalf of J. D. Vending Company, Inc., under protest, representing the appraised retail value of certain furnishings and equipment which were returned to the said Joseph Dino, should be forfeited or returned to him.

At the hearing herein Joseph Dino appeared on behalf of the said claimant and sought the return of the \$400.00 deposited under the aforesaid stipulation. The Division's file was admitted in evidence with the consent of the claimant and contained the following: Reports of agents who took part in the investigation; certificate of the Director that no license or special permit was issued to any person at or for the premises 49 Prospect Street, Newark, New Jersey; an inventory of the seized items; affidavits of mailing and publication; the report of chemical analysis of the Division chemist certified by the Director establishing that one six-ounce bottle containing brandy and coffee, seized herein, contains an alcoholic beverage, fit for beverage purposes, with an alcoholic content of 10.93% by volume; and a list bearing serial numbers of "marked" money used in the investigation.

It should be noted that other personalty seized is not made a subject of this report for the reason that stipulations with reference thereto have not been executed as of the date of the hearing herein. R.S. 33:1-66(a).

The reports of investigation establish that ABC agents S and R proceeded to the subject premises at 11:00 A.M. on August 30, 1970; agent R remained outside at a point of observation while agent S entered. Inside he found approximately 75 patrons seated at tables consuming coffee and soft drinks. Agent S seated himself at one end of a food counter from where he could observe several opened bottles of brandy under the counter. He observed three males behind the counter, later identified as Manuel Torres, age 38, Antonio ---, age 16 and Manuel ---, age 17.

He observed male patrons approach the counter and order "Cafe Negro Pecquenito" and accompany this order with a downward thrust of the thumb; whereupon the bartender took a bottle of brandy from under the counter and poured some into the coffee. He charged agent S. 40¢ therefor.

Agent S then ordered in a similar manner and was served the same type of drink by Antonio ---. Agent S then tasted the coffee and with a syringe drew off the remaining contents and deposited it unnoticed in a bottle in his pocket. He then departed the premises.

On September 6, 1970 in the company of agent R, G and Detective Toma of the Newark Police Department, he again approached the premises. A "marked" money list was prepared and retained by agent R while agent S, with "marked" five-dollar and one-dollar bills, entered the premises leaving agents R, G and Detective Toma outside at a point of contact. He again observed Torres, Alfonso and Esteves serving coffee with brandy and coke with brandy to numerous patrons. Agent S then ordered a "Cafe Negro Pecquenito" from Esteves with the same accompanying gesture as used on the visit of August 30, 1970. Esteves then picked up a bottle of brandy from which he poured some brandy into a cup of coffee. Agent S paid with the "marked" five-dollar bill which Esteves placed in the register, thereafter returning \$4.00 to agent S.

Agent S later made a similar purchase from Manuel (the minor) for which he paid with the "marked" one-dollar bill which Manuel placed in the register. Agent S had earlier drawn off a sample of the beverage purchased from Antonio (the other minor).

Thereafter, agent S signalled agent R who entered with agent G and Detective Toma and identified themselves. Thereupon a seizure of all alcoholic beverages, monies and personal property in the club at this time was completed. Torres admitted the sale of alcoholic beverages without a license and identified his partner, not then present, as Manuel Riberiu. The minors, Manuel and Antonio, were charged under R.S. 33:1-50, with sale of alcoholic beverages without a license and released in the custody of their parents. Torres and Riberiu were arrested and charged with unlawful possession of alcoholic beverages with intent to sell, in violation of R.S. 33:1-50(b).

Joseph Dino testified that he is the majority stockholder of J. D. Vending Company, owner of the juke box and three pinball machines seized. He continued that he has been doing business at the International Poolroom for five years and that he personally visited the premises weekly to service the machines. He generally performed his duties between nine and ten a.m.; he often saw patrons on the premises but never saw alcoholic beverages served. He checked with the Police Department and received their approval prior to placing the machines but made no personal investigation of the said premises.

The Division file clearly indicates that alcoholic beverages were being sold on the premises and that no license or special permit were ever issued to the premises or to any person thereat. Therefore, the personal property (cash, alcoholic beverages, etc.) seized on the premises constitute unlawful property and are subject to forfeiture.

The claim of the J. D. Vending Company is without merit. It

is inconceivable that Dino could have serviced this establishment weekly for five years and nonetheless be without any knowledge of the illegal activity. It is true that the circumstances as described would serve to present to an observer the picture of patrons drinking coffee or soft drinks, and it is further true that all alcoholic beverages were kept out of sight except for those brief moments when actually dispensed.

It is admitted by the claimant that, apart from his reliance on a license issued by the local police and his regular weekly service calls, he pursued no further investigation of the premises or of those people in charge thereof.

It is extremely unlikely that Dino could have visited the premises weekly for some five years without being made aware in some way that alcoholic beverages were being dispensed. However, "claimants for the return of seized property such as vending machines installed at unlicensed premises will not be permitted to rely on any presumed investigation of such premises by any other person or agency, including law enforcement agencies. Personal inspection by such claimant or their agents at reasonable hours (not merely early morning business hours) will be required in order to show that the claimant neither knew nor should have known of the illicit alcoholic beverage activity taking place on such premises." Seizure Case No. 12,252, Bulletin 1919, Item 5.

Under all the circumstances herein, I am satisfied that the claimant did not act in good faith pursuant to the above cited statute and regulation that the claimant either knew or should have known that unlawful alcoholic beverage activity was taking place in the premises.

Accordingly, it is recommended that the claim of the said claimant be denied, and that an order be entered forfeiting the monies deposited under the aforesaid stipulation.

Conclusions and Order

Exceptions were taken to the Hearer's Report by the claimant within the time limited by Rule 4 of State Regulation No. 28. I have examined and analyzed the Exceptions and find that they have been either satisfactorily answered in the Hearer's Report or are lacking in merit.

After carefully considering the facts and circumstances herein, including the transcript of testimony, the exhibits, the Hearer's Report and the Exceptions thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 16th day of September, 1971

DETERMINED and ORDERED that the claim of J. D. Vending Company, for the return of \$400.00, deposited under protest, by Joseph Dino, as agent for and on behalf of J. D. Vending Company, with the Director representing the appraised retail value of one juke box and three pinball machines, which were returned as aforesaid, be and the same is hereby denied, and the sum of \$400.00 is hereby forfeited in accordance with the provisions of R.S. 33:1-66 to be accounted for in accordance with law.

Richard C. McDonough,
Director

SCHEDULE "A"

- 1 - juke box
- 3 - pinball machines

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA -
APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary)
Proceedings against)

CLUB LA RU, A CORP.)
t/a Club La Ru)
14 West Broadway)
Paterson, N. J. 07501)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-319 issued by the Board of)
Alcoholic Beverage Control of the City)
of Paterson.)

Wegner & Wegner, Esqs., by Robert J. Wegner, Jr., Esq., Attorneys
for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
May 18, 1971 it sold alcoholic beverages in two bottles with labels
that did not truly describe their contents, in violation of Rule 27
of State Regulation No. 20.

Licensee has a record of previous suspensions, both by the
local issuing authority, the first for ten days effective January 4,
1965 for sales to a minor, and the second for ten days effective
May 21, 1965 for violation of local hours ordinance.

Prior suspensions for dissimilar offenses occurring more
than five years ago disregarded in admeasuring penalty, the license
would normally be suspended for fifteen days (Re Piez, Bulletin 1975,
Item 6) with remission of five days for the plea entered, leaving a
net suspension of ten days. However, the licensee has made application
for the imposition of a fine in lieu of suspension in accordance
with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I
have determined to accept an offer in compromise by the licensee to
pay a fine of \$400 in lieu of suspension.

Accordingly, it is, on this 16th day of September 1971,

ORDERED that the payment of a \$400 fine by the licensee
is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough
Director

7. DISCIPLINARY PROCEEDINGS - FRONT - CRIMINALLY DISQUALIFIED EMPLOYEE - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY AFTER 90 DAYS FOR LIFTING OF SUSPENSION UPON CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against)

Edmour Restaurants, Inc. t/a Herb Kaye's Restaurant 786 Broad Street Newark, N. J.,)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-555, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

-----) William Osterweil, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to three charges alleging that in connection with the filing of an application for license it (1) failed to disclose a person other than the listed stockholders had a beneficial ownership of the stock and that such undisclosed stockholder was, in fact disqualified as an applicant by reason of prior conviction of a crime involving moral turpitude in violation of R.S.33:1-34 and (2) such disqualified person was employed in the licensed premises in violation of Rule 1 of State Regulation No. 13, and (3) the licensee aided and abetted said disqualified person to exercise, contrary to R.S. 33:1-26, the rights and privileges of a plenary retail consumption license; in violation of R.S. 33:1-52.

To date, no correction of the unlawful situation has been accomplished.

Absent prior record, the license will be suspended for the balance of the term, with leave granted the licensee or any bona fide transferee of the license to apply for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than ninety days from the date of the commencement of the suspension herein. Re The Broad Ave. Corp., Bulletin 1895, Item 2.

Accordingly, it is, on this 20th day of September 1971,

ORDERED that Plenary Retail Consumption License C-555, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Edmour Restaurants, Inc., t/a Herb Kaye's Restaurant for premises 786 Broad Street, Newark, be and the same is hereby suspended for the balance of its term, effective 2:00 a.m. on Friday, September 24, 1971, with leave to licensee or any bona fide transferee of the license 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, sooner than ninety days from the commencement of the suspension herein.

Richard G. McDonough Director

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LAELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Cranberry Lake Lodge, Inc.
 t/a Cranberry Lake Lodge
 Route 206, Cranberry Lake
 Byram Township
 PO RD Andover, N. J.,
 Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Byram.

CONCLUSIONS
and
ORDER

Licensee, by Peter Romano, President, Pro se
Walter H. Cleaver, Esq., Appearing for Division

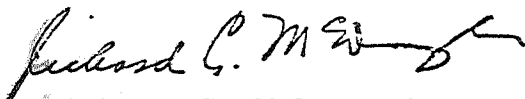
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 7, 1971 it possessed two bottles of alcoholic beverages the labels of which did not truly describe their contents.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Piez, Bulletin 1975, Item 6.

Accordingly, it is, on this 20th day of September 1971,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Byram to Cranberry Lake Lodge, Inc., t/a Cranberry Lake Lodge, for premises on Route 206, Cranberry Lake, Byram Township, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Friday, October 1, 1971 and terminating at 3 a.m. Monday, October 11, 1971.


 Richard C. McDonough,
 Director.