Deputy Director Stockburger ✓

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

BULLETIN 1632 August 31,1965

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ITEM



New Jersey State Library

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

BULLETIN 1632 August 31, 1965

1. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LOTTERY - PRIOR SIMILAR RECORD - ALLEGED UNLAWFUL SEARCH AND SEIZURE - LICENSE SUSPENDED FOR 120 DAYS.

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| In the Matter of Disciplinary Proceedings against | ) | |
| MOSES & ALBERT BACSKO t/a MELODY BAR 106 French Street New Brunswick, N. J. | ) | CONCLUSIONS AND ORDER |
| Holders of Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the City of New Brunswick. | ) | |

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Klaessig and Winograd, Esqs., by Frederick Klaessig, Esq., Attorneys for Licensees.
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

Licensees pleaded not guilty to the following charges:

"1. On April 9, 13, 15, 28, May 11 and 26, 1964, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

"2. On May 26, 1964, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises tickets and participation rights in lotteries, viz., drawings commonly known as 'Irish Hospital Sweepstakes' and 'fifty-fifty clubs'; in violation of Rule 6 of State Regulation No. 20."

The Division offered the testimony of two New Jersey State Police officers in substantiation of the charges.

With respect to Charge 1, the testimony of Walter T. Decker, who had extensive experience in the investigation of gambling, bookmaking and lottery in his capacity as a State trooper, may be summarized as follows: Pursuant to specific assignment he visited the licensed premises on several occasions; he entered the licensed premises the first time on April 9, 1964, at 11:45 a.m. and sat at the bar; one of the licensees (Albert Bacsko) was tending bar; there were about six patrons around the bar; at about 11:55 a.m. a woman entered, sat at the bar, opened

the Daily News to the racing section and, after reading it, took a small piece of white paper out of her handbag, placed it on the bar, wrote something on it, called Albert Bacsko to where she was sitting and gave the piece of paper and $2 which she wrapped around it to Bacsko. Bacsko accepted the slip of paper and the $2; went to the phone booth, placed the $2 in his pants pocket and then walked into the back room where he couldn't be observed. There was no conversation between the woman and Bacsko, just the exchange of the slip and $2; the transaction took place about four to six feet away from where the witness was seated.

Thereafter he observed a male patron who had been seated at the bar take out an Armstrong racing sheet (a daily publication mainly devoted to horse racing), examine it on the bar, take out a slip of paper from his pocket, place it on the bar, take out two one-dollar bills from his pants pocket, write on the slip of paper, wrap up the slip of paper and the money together, hand it to Albert Bacsko who walked into the back room. The witness did not know what Bacsko did with the money and slip of paper. It was Decker's opinion the two transactions indicated that horse bets had been made. He departed the premises at 12:20 p.m.

Decker again entered the licensed premises on April 13, 1964, at 11:30 a.m., and sat at the bar. Albert Bacsko was behind the bar. A patron seated a few stools away was examining the racing section of the New York Daily News, asked Bacsko for a slip of paper. Bacsko gave him a slip of paper from a pad near the cash register. The man wrote on the slip of paper and said to Bacsko, "This Better Way, the 1st at Aqueduct, looks like a good bet today." Bacsko replied, "They all look good." Upon finishing writing, the patron took two one-dollar bills from his pocket and handed the slip of paper and money to Bacsko. Bacsko entered the back room and, upon his re-entry into the barroom, Decker did not see either the slip of paper or the money.

Decker revisited the licensed premises on April 15, 1964, at 12:15 p.m.; sat at the bar and noted that Albert Bacsko was tending bar. He observed a man seated about four stools away looking over the racing section of the New York Daily News ask Bacsko to give him a slip of paper and a pen. Bacsko gave him a slip of paper from a pad near the cash register and a ball-point pen. The man wrote on the slip of paper, took two one-dollar bills from his wallet, place the slip of paper around the money and hand the money and slip of paper to Bacsko who walked directly to the back room. The trooper stated that, based upon his experience, the transaction indicated that a horse race bet had been made.

On April 28, 1964, the trooper re-entered the licensed premises at 12:05 p.m. and again sat in the same area as heretofore. Albert Bacsko was tending bar. A woman seated four stools away was examining the racing section of the New York Daily News, said to a man seated two stools away, "I like Wild Cargo and Jet Flare in the 2nd at Aqueduct." She took out a slip of paper from her handbag, wrote on the paper, took $2 out of her handbag, called Bacsko and handed him the slip of paper and the $2. Bacsko then walked into the back room. The witness described the transaction as a horse race bet.

On May 11, 1964, at 11:50 a.m., the witness again entered the premises. Albert Bacsko was again tending bar. A patron seated five stools away, who was examining the Armstrong daily racing sheet, took out a slip of paper from his pants pocket, placed the paper on the bar, wrote something on the paper, put two single dollar bills

together with the slip of paper and called Bacsko. He handed Bacsko the slip of paper with the money and again Bacsko went into the back room. The witness stated that in his opinion the transaction indicated that a horse race bet had been made.

On cross examination the witness stated that he was not positive this last described transaction was a horse bet, he did not see the writing; however, it was his opinion that the transaction constituted a horse bet.

Decker admitted that on April 9, 1964 he was accompanied by a person used as an informer by the New Jersey State Police and, upon questioning, refused to reveal his identity stating he was under orders not to do so. The Hearer denied the request of the licensees' attorney to compel the officer to reveal the identity of the informer. Decker asserted that the informer was with him on each date that he visited the licensed premises. He further declared that he used his own automobile on the occasion of these investigations, and the automobile bore no insignia or other marking identifying it with the "State Police."

In response to the question as to why he did not make an arrest, Decker stated that he was under orders not to make any arrests.

Detective Michael Goch, who is on the staff of the criminal investigation division of the New Jersey State Police and who also had a substantial background in gambling investigations, including lotteries and bookmaking, testified that he entered the licensed premises on May 26, 1964, at 12:30 p.m., in the company of another State police officer, identified himself to Albert Bacsko and proceeded to execute a search warrant obtained from the Middlesex County Court. A search of the premises produced three copies of the Armstrong daily sheet amongst some old newspapers in the back room. In a booth near the rear of the barroom the detective found four slips which he identified as being horse race slips. He described one slip as being a "2 if 4 reverse" bet which could not be made at a track but could only be made with a bookmaker. He also found in the same booth an Armstrong daily sheet bearing the current date May 26, 1964. Underneath the table and on the floor in the same booth area he found ten sheets or slips, each containing horse bets. Some slips contained a listing of horses found in the Armstrong publication bearing current date, i.e., May 26, 1964.

On cross examination Detective Goch admitted that he could not identify the handwriting on the horse bet slips or state whose slips they were. He could not tell the dates that some of the slips were written. He admitted that the Armstrong publications were legal publications.

Julia Balogh, testifying in behalf of the licensees, stated that she visited the licensed premises about three mornings a week between 10 a.m. and 12:30 p.m. during April and May 1964; she saw Decker in the licensed premises with another man in April 1964; that she learned from Bacsko that Decker was a State Trooper because he went out and checked his car and saw his "name on it;" that on April 9, 1964, at 11:55 a.m., she did not examine the racing section of the New York Daily News and then take a slip of paper from her handbag, call over Al, and hand Al a slip of white paper and two single dollar bills. She saw Decker in the tavern twice, each time accompanied by an unidentified male. She saw the unidentified male in the tavern twice unaccompanied by Decker. She

denied making a horse race bet in the tavern on April 28, 1964, at 12:05 p.m.

Homer Lee Bell testified that he was a patron of the licensees for three years; that he was retired; he would visit the licensed premises daily between 10 a.m. and 1:30 p.m., including April and May 1964; he remembers Decker being in the licensed premises; that on the occasion of the second visit Albert Bacsko walked out of the tavern and, upon his re-entry, advised Bell that Decker was a trooper, that an unidentified male was with Decker on each of these occasions, and that this same male came into the tavern without Decker two or three times. He never saw anyone place a bet with Bacsko.

Albert Bacsko (one of the licensees) denied that he engaged in bookmaking ever since he was convicted of bookmaking in 1961 or 1962. He stated that he had no knowledge that the various slips found by Detective Goch were on the premises. He recalled seeing Decker come into the bar in early April 1964 with an unidentified male. He went outside to put a coin in a parking meter, saw a car close to the tavern which had a "State Police" sign on its sun visor, and he surmised it was the two strangers (indicating Decker and the unidentified male). He saw Decker and the unidentified male possibly "two or three times together" and the "other fellow came two or three times by himself."

The licensees' attorney at the hearing argued that the Hearer should have compelled Trooper Decker to reveal the identity of the informer so that the licensees could call him as a material witness and disprove the testimony of the trooper. He claimed that a denial of that privilege would be unconstitutional because a defendant is entitled to be confronted with witnesses against him as provided in the Sixth Amendment of the United States Constitution, and if he were denied this privilege he would be denied due process and a mistrial should be granted and the evidence must be stricken as incompetent. This argument was reiterated in the attorney's brief. This argument must be rejected.

In State v. Clawans, 38 N.J. 162, 170 (1962) the New Jersey Supreme Court stated:

> "Generally, failure of a party to produce before a trial tribunal proof which, it appears, would serve to elucidate the facts in issue, raises a natural inference that the party so failing fears exposure of those facts would be unfavorable to him. 2 Wigmore, Evidence, § 285 (3ed. 1940). But such an inference cannot arise except upon certain conditions and the inference is always open to destruction by explanation of circumstances which make some other hypothesis a more natural one than the party's fear of exposure. This principle applies to criminal as well as civil trials, to the State as well as to the accused."

I am satisfied that the record herein contains adequate explanation for the failure of the Division to call the informer in question as a Division witness. The prosecuting attorney expressly stated that he was not aware that another person accompanied Decker to the licensed premises on the date in question until this information was brought out at the hearing. Under the circumstances, obviously he could not have had any fear of unfavorable exposure of facts through the testimony of the informer.

Furthermore, even in the instance where an informer's participation is known in advance, he may reasonably not be produced as a witness in order that his identity may not needlessly be revealed. Cf. State v. Murphy, 36 N.J. 172, 178 (1961). See also State v. Booker, 86 N.J. Super. 175 (App.Div. 1965) and N.J.S. 2A:84A-28 with respect to the privilege accorded a witness to conceal the identity of an informer. This section of the statute is also embodied in the Rules of Evidence, Rule 36, to become effective January 12, 1966. In the Murphy case, supra, Chief Justice Weintraub reasoned that the prosecutor does not have a peremptory duty to use all available evidence to support the charge.

It may be further pertinent to point out that the Sixth Amendment to the United States Constitution refers to confrontation with witnesses in criminal prosecutions. The instant proceedings are civil in nature and not criminal.

Counsel additionally argues that the search and seizure were unlawful and therefore all evidence seized thereunder must be suppressed, and that at no time did the raiding officers invoke N.J.S.A. 33:1-35 and the consent embodied in the alcoholic beverage license application for the premises when they entered the premises and therefore they were bound by the terms of the search warrant they employed.

Again, the licensees fail to acknowledge the principle that the commission of one act may make them answerable to two separate penalties -- one a criminal penalty and the other a civil penalty. This Division is not at all concerned with the criminal aspects of this case and its ramifications. However, it is vitally concerned with proper administration of the Rules and Regulations governing the liquor traffic and to remedy the abuses inherent therein.

A license to vend intoxicating beverages is merely a privilege to pursue an occupation otherwise illegal, and is completely subject to regulation by the Legislature. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373; Grand Union Co. v. Sills, 81 N.J. Super. 65. It has been held that a constitutional right may be waived by a person when he engages in a business which is regulated by law, the acceptance of a license to engage in such business being a necessary acceptance of the statutory conditions and an implied waiver of the constitutional immunity to that extent. 79 C.J.S. sec. 64, and cases therein cited. See also Wallace v. Ford (1937; D.C.), 21 Fed. Supp. 624.

In the instant matter licensees consented to such inspections and searches when they executed their application for the said license. They had the alternative of not engaging in this business; their consent was purely voluntary. Acceptance of the license is an acceptance of the requirements to be observed by the licensee. The requirements impose the obligation to observe them, since the obligation is one voluntarily assumed in return for the privilege. See 116 A.L.R. 1093, and cases therein annotated.

Therefore, both by legislative mandate and voluntary consent of the licensee, the right of search and inspection by authorized officers is patent and unarguable.

Additionally, it should be emphasized that the reason for permitting such inspection of premises without a search warrant, as well as other exceptional measures provided for in the alcoholic beverage law, is that, from the earliest history of our State, the

sale of intoxicating liquor has been dealt with by the legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be applied. Paul v. Gloucester County, 50 N.J.L. 585, 595 (E. & A. 1888). This field is peculiarly subject to strict governmental control. Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 598 (Sup.Ct. 1938). Consistent therewith is the Legislature's mandate that "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." Franklin Stores Co. v. Burnett, supra. The court, in Blanck v. Magnolia and D'Amico et al., 38 N.J. 484, reprinted in Bulletin 1486, Item 1, in discussing the history of alcoholic beverage control, refers to the comments of Chief Justice Case writing for the Court of Errors and Appeals in Hudson Bergen County Retail Liquor Stores Assn. v. Board of Com'rs of City of Hoboken, 135 N.J.L. 502, 507-509 (E. & A. 1947), who stated that the reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes for nearly 250 years, from early colonial times through the post-prohibition legislative requirements.

Justice Case also pointed out that our courts have held that, in interpreting statutes in this field, meticulous technicalities should not be permitted to thwart the Legislature's effort to keep a public convenience from becoming a social evil and, therefore, State authorities should be given every opportunity to work out the mandate of the Legislature.

Thus the execution of a search warrant by police officials is a superfluity in so far as this Division is concerned, and the legality or illegality of its issuance and execution is of no moment in this instant civil proceeding.

The Division solely and strictly relies upon the authority of R.S. 33:1-35 and is not concerned as to whether or not the officers (contemplated within the purview of this section), and who conducted the search and seizure, had or had not a search warrant. Thus the Division is not bound by the terms of a search warrant and is not put to a choice as to whether it should accept the fruits of a search warrant that may have been employed by the State police officers or rely upon the section of the statute above quoted in the instant proceedings.

Finally, licensees argue that there is insufficient evidence to convict.

As to Charge 1, this argument is not well founded. It is a well established principle of law that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra; Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was restated in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

> "The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962)."

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.

Further, it is pertinent to point out that in State v. Martinek, 12 N.J. Super. 320 (App.Div. 1951), where, among other things, betting slips were admitted as exhibits in evidence, Judge Eastwood said:

> "Property found near scene of crime, and concerning which there is evidence showing or tending to show its ownership or possession by accused when crime was committed, may be exhibited to jury, as may any property sufficiently identified which throws light upon crime or connects accused with it, and is shown to have come from his possession or to have been found on his premises, or, there being sufficient evidence to implicate him, on premises of a co-conspirator."

Judge Eastwood further stated:

> "The admission of betting slips, racing forms and other gambling paraphernalia found on premises in possession of accused is generally recognized as evidence from which jury might conclude the guilt or innocence of accused on indictment for bookmaking."

See also, 22A C.J.S. Criminal Law, sec. 710.

In State v. Fiorello, 36 N.J. 80, 91, 92 (Sup.Ct. 1961), Justice Jacobs, speaking for the court, upheld the admission into evidence of tally or record sheets which the State's expert witness testified resembled tally sheets or records found during gambling investigations he had conducted in the past. Justice Jacobs also remarked that:

> "The ingenuity of bookmakers and the sparcity of their recorded indicia have been frequently noted, and while courts must be alert to avoid the lessening of the procedural safeguards to which persons accused of bookmaking are fairly entitled, they must be equally alert to avoid the frustration of bookmaking prosecutions legitimately based on inferences which may reasonably be drawn from furtive conduct and scanty records."

A careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, compel me to conclude that the Division has established the truth of Charge 1 herein by a fair preponderance of the believable evidence, and I recommend that the licensees be found guilty of said charge.

With respect to Charge 2, I am of the opinion that there is lacking the necessary preponderance of evidence to find guilt. Hence I recommend that the licensees be found not guilty of Charge 2.

Licensees have a prior record of suspension of license by the Director for forty days effective January 17, 1962, for bookmaking and possession of contraceptives. Re Bacsko, Bulletin 1435, Item 1. Were this a first offense I would recommend that the license be suspended for the currently effective minimum

period of sixty days. Re Mellolark, Inc., Bulletin 1573, Item 2; Re Regan, Bulletin 1609, Item 6. However, in view of the licensees' prior record of suspension of license for a similar violation within the past five years, I recommend that, in accordance with established practice, the minimum penalty be doubled and the license suspended for a period of one hundred twenty days. Cf. Re Markowitz, Bulletin 1538, Item 1.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

After a full review of the record of the testimony taken at the hearing, which I find the Hearer has accurately summarized in his report, and a careful and detailed consideration of the arguments advanced by the attorneys for the licensees both at the hearing and in their brief, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions.

In passing, I point out that I have given great weight, as, apparently, the Hearer did, to the testimony of Investigator Walter T. Decker. His presence in the tavern was not by chance or patrol but pursuant to an official, specific assignment to make observation and to report any gambling activity. The record amply demonstrates that he did just that in minute detail, and the physical evidence of gambling and gambling paraphernalia found in the tavern by Detective Michael Goch on May 26, 1964, fortifies and buttresses his testimony on all points to the inescapable conclusion that leaves the veracity of his testimony without doubt that what he observed and heard in the tavern on April 9, 13, 15, 28 and May 11, 1964 was actually gambling activity, viz., the making and accepting of horse race bets, and that the licensees, through Albert Bacsko, one of them, allowed, permitted and suffered such activity on the licensed premises.

Accordingly, it is, on this 7th day of July, 1965,

ORDERED that Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the City of New Brunswick to Moses and Albert Bacsko, t/a Melody Bar, for premises 106 French Street, New Brunswick, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 2:00 a.m. Wednesday, July 14, 1965, and terminating at 2:00 a.m. Thursday, November 11, 1965.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS.

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| In the Matter of Disciplinary Proceedings against | ) | |
| VICTORIA WOJCIK-STANLEY and FRANK J. PADLO<br>216 Second Street<br>Elizabeth, N. J. | ) | CONCLUSIONS AND ORDER |
| Holders of Plenary Retail Consumption License C-89, issued by the City Council of the City of Elizabeth. | ) | |

Richard P. Muscatello, Esq., Attorney for Licensees.
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

Licensees pleaded not guilty to the following charge:

"On March 27, 1965, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The Division offered the testimony of Agent D who is employed as an inspector by the Division of Alcoholic Beverage Control and the testimony of Eugene Raymond Ahern, a plainclothesman in the Police Department of the City of Elizabeth, in substantiation of the charge.

The testimony of Agent D may be summarized as follows: Pursuant to specific assignment, he visited the licensed premises on March 27, 1965 at 12:50 p.m., with another Division agent and an investigator connected with the Union County Prosecutor's office and stood at the center of the bar. In addition, there were other law enforcement officers assigned to this particular investigation. A man who identified himself as Adolph Padlo was tending bar. There were about twelve patrons in the tavern. One of the persons in the tavern identified himself as Frank Padlo.

A search of the licensed premises was conducted. In particular, Agent D saw Officer Ahern answer the telephone on several occasions and stood by Adolph Padlo while the officer was searching his person. Agent D (who had extensive experience in conducting gambling investigations, including horse race and numbers bookmaking) testified that a number of horse race slips and tally sheets were removed from Padlo's pocket.

On cross examination Agent D stated that he did not actually witness any bookmaking or betting on the premises.

Eugene Raymond Ahern (who had ample experience in conducting gambling investigations) testified that he entered the licensed premises on March 27, 1965, at 12:50 p.m., with a sergeant

attached to the Elizabeth Police Department and executed a search warrant. He noted that Adolph Padlo was tending bar and proceeded to conduct a search of his person while behind the bar. A number of slips were removed from the pockets of Adolph Padlo, which were identified by the officer as being betting slips pertaining to horse races to be held on that date (March 27, 1965) at various tracks. Also removed from his person were two tally sheets which he described as sheets commonly used by bookmakers to record the bets.

Officer Ahern, who was also delegated to answer incoming telephone calls, described four incoming telephone calls within thirty-five minutes wherein the callers asked for "Frank" and proceeded to relay a number of horse race bets on various horses running that day.

On cross examination Ahern testified that, when he entered the licensed premises at 12:50 p.m., Adolph Padlo was tending bar and Frank Padlo was at the rear of the tavern.

The licensees produced no testimony in their behalf.

It is pertinent to point out that in State v. Martinek, 12 N.J. Super. 320 (App.Div. 1951) where, among other things, betting slips were admitted as exhibits in evidence, Judge Eastwood (at p. 323) quoted 22 C.J.S. Criminal Law, sec. 710 (now 22A C.J.S. Criminal Law, sec. 710):

> "Property found near the scene of the crime, and concerning which there is evidence showing or tending to show its ownership or possession by accused when the crime was committed, may be exhibited to the jury, as may any property sufficiently identified which throws light upon the crime or connects accused with it, and is shown to have come from his possession or to have been found on his premises, or, there being sufficient evidence to implicate him, on the premises of a co-conspirator."

Judge Eastwood further stated (at p. 324):

> "The admission of betting slips, racing forms and other gambling paraphernalia found on the premises in the possession of the accused has generally been recognized by our courts as evidence from which the jury might conclude the guilt or innocence of the accused on an indictment for bookmaking."

In State v. Fiorello, 36 N.J. 80, 92 (Sup.Ct. 1961), Justice Jacobs, speaking for the court, upheld the admission into evidence of tally or record sheets which the State's expert witness testified resembled tally sheets or records found during gambling investigations he had conducted in the past. Justice Jacobs also remarked that:

> "The ingenuity of bookmakers and the sparcity of their recorded indicia have been frequently noted, and while courts must be alert to avoid the lessening of the procedural safeguards to which persons accused of bookmaking are fairly entitled, they must be equally alert to avoid the frustration of bookmaking prosecutions legitimately based on inferences which may reasonably be drawn from furtive conduct and scanty records."

It is a firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was restated in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

> "The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962)."

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.

My evaluation and consideration of the testimony lead me to the conclusion that the Division has established the truth of the charge herein by a fair preponderance of the evidence, and I recommend that the licensees be found guilty of said charge.

Licensees have a previous record of suspension of license by the municipal issuing authority for ten days effective January 25, 1960, for sale to minors. It is recommended that the prior record of suspension for dissimilar violation be disregarded because occurring more than five years ago, and that the license be suspended for a period of sixty days. Re Gullone, Bulletin 1616, Item 3.

## Conclusions and Order

No written exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendations.

Certain facts are noteworthy of emphasis. The slips found on the bartender Adolph Padli, identified as betting slips pertaining to horse races to be held on that day, coupled with incoming telephone calls directed to "Frank" placing bets on various horses (Frank Padlo being one of the licensees and present at the time the calls were made), lead to the inescapable conclusion that the licensees "permitted" and "suffered" gambling, viz., the making and accepting of horse race bets in and upon their licensed premises on the date alleged herein.

A close evaluation of the transcript of testimony satisfies me that the Division has established the validity of the charge by a clear preponderance of the evidence.

Accordingly, it is, on this 19th day of July 1965,

ORDERED that Plenary Retail Consumption License C-89, issued by the City Council of the City of Elizabeth to Victoria Wojcik-Stanley and Frank J. Padlo, for premises 216 Second Street, Elizabeth, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, July 26, 1965, and terminating at 2:00 a.m. Friday, September 24, 1965.

JOSEPH P. LORDI
DIRECTOR

3. DISQUALIFICATION REMOVAL PROCEEDINGS - STEALING AND FORGING POSTAL MONEY ORDER - CONVICTION BY COURT MARTIAL OF CIVIL OFFENSE - ORDER REMOVING DISQUALIFICATION.

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| In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2. | ) | CONCLUSIONS AND ORDER |
| Case #1933 | ) | |

BY THE DIRECTOR:

Petitioner's criminal record discloses that on April 19, 1943, following a conviction at an Army Court-Martial at Fort Lewis, Seattle, Washington, for stealing and forging a United States postal money order, he was sentenced to serve a term of two and one-half years at Turlock, California, a rehabilitation center, and was released therefrom in March 1944.

Since conviction of the crimes of larceny and forgery in a civil court involves the element of moral turpitude and since it is settled that the judgment of a court martial is to be accorded the same finality and conclusiveness, as to the issues there involved, as the judgment of a civilian court (U.S. v. Price, 285 F. 2d 918 (3 Cir. 1958), cert. denied 358 U.S. 922, 3 L.Ed. 2d 241), petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (43 years old) testified that he is married and living with his wife; that for the past six years, he has lived in the same municipality where he presently resides; that he has been employed as a truck driver for over ten years; that since October 1964, he has been employed by a transportation licensee; that in a Division questionnaire submitted to him on April 23, 1965 by his employer, he had admitted his aforesaid conviction; and that, until recently, when notified by this Division, he had no knowledge that he was ineligible for employment by a licensee.

Petitioner further testified that he is asking for the removal of his disqualification to be free to continue his present employment, and that ever since his conviction on April 19, 1943, he has not been arrested nor has he been convicted of any crime.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a clerk, a power house engineer and a clothing cutter) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The only hesitation I have to grant the relief sought herein is based on the fact that petitioner, although disqualified, worked for a licensee in this State. I am, however, favorably influenced by three factors--(a) that petitioner's criminal record shows his conviction took place about twenty-two years ago, (b) the testimony of his character witnesses, and (c) his sworn testimony that he was unaware of his ineligibility to be employed

by a licensee. Knowledge of the law, moreover, is not an essential prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all of the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 22d day of July, 1965,

ORDERED that petitioner's statutory disqualification, because of the conviction described herein, be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

JOSEPH P. LORDI
DIRECTOR

4. PRACTICES UNDULY DESIGNED TO PROMOTE CONSUMPTION - NUISANCE - DANCE PERFORMANCES BY FEMALES IN SHOW WINDOW OF LICENSED PREMISES VISIBLE FROM PUBLIC THOROUGHFARE DISAPPROVED.

JULY 13, 1965

Filippi Inc.
t/a Pepper Box Bar and Restaurant
Cliffside Park, N. J.

This Division has received numerous complaints concerning dance performances by female entertainers staged in the show window of your licensed premises, resulting in large gatherings of persons, many of whom are teenagers, on the public walk, and also serving to distract the attention of drivers passing by your premises.

It is further reported that you have been adamant in your refusal to render cooperation to municipal officials in their requests that you discontinue this promotion.

Properly conducted entertainment upon licensed premises may be a traditional and inoffensive part of an alcoholic beverage business; but allowing the place to become a public nuisance is quite another thing. This blatant and unwarranted promotion by you in defiance of justifiable resentment by municipal officials has invited severe public criticism and, if continued, would undermine public confidence in our system of alcoholic beverage control in New Jersey.

Moreover, aside from your shortsightedness in putting on an attraction of this nature which has such a strong appeal to teenagers, it is indefensible for you to lure patronage to your establishment by a promotion of this nature which may be deemed to constitute what the Alcoholic Beverage Law describes as a scheme "unduly designed to increase consumption of alcoholic beverages" and interdicted by Rule 20 of State Regulation No. 20.

I shall expect your immediate written assurance that you have discontinued the above and any other type of entertainment in your show window, or any other place upon your premises where such entertainment may be visible from the public walk or thoroughfare.

Very truly yours,

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

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| In the Matter of Disciplinary Proceedings against | ) | |
| EDMUND PRAWDZIK<br>t/a ANTHONY'S TAVERN<br>313 Henderson Street<br>Jersey City, N. J. | ) | CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-134, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. | ) | |

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 8, 1965, he sold a pint bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days effective September 3, 1957, for similar violation. Re Prawdzik, Bulletin 1190, Item 7.

The prior record of similar violation occurring more than five but less than ten years ago considered, the license be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Brass Rail Liquors, Inc., Bulletin 1610, Item 6.

Accordingly, it is, on this 26th day of July 1965,

ORDERED that Plenary Retail Consumption License C-134, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Edmund Prawdzik, t/a Anthony's Tavern, for premises 313 Henderson Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, August 2, 1965, and terminating at 2 a.m. Tuesday, August 17, 1965.

JOSEPH P. LORDI
DIRECTOR

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

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| In the Matter of Disciplinary Proceedings against | ) | |
| ANTHONY LACALANDRA t/a MONOPOLI BAR 611 Jersey Avenue Jersey City, N. J. | ) | CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. | ) | |

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John W. Yengo, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, June 13, 1965, he sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Ja-Da Inc., Bulletin 1614, Item 9.

Accordingly, it is, on this 19th day of July 1965,

ORDERED that Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anthony Lacalandra, t/a Monopoli Bar, for premises 611 Jersey Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, July 26, 1965, and terminating at 2 a.m. Thursday, August 5, 1965.

JOSEPH P. LORDI
DIRECTOR

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

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| In the Matter of Disciplinary Proceedings against | ) | |
| WALTER SZOT<br>t/a SZOT TAVERN<br>20 William Street<br>Wallington, N. J. | ) | CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-36, issued by the Mayor and Council of the Borough of Wallington. | ) | |

Herbert S. Alterman, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 16, 1965, he sold six twelve-ounce bottles of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Ja-Da, Inc., Bulletin 1614, Item 9.

Accordingly, it is, on this 26th day of July 1965,

ORDERED that Plenary Retail Consumption License C-36, issued by the Mayor and Council of the Borough of Wallington to Walter Szot, t/a Szot Tavern, for premises 20 William Street, Wallington, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, August 2, 1965, and terminating at 3 a.m. Thursday, August 12, 1965.

JOSEPH P. LORDI
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Peter J., Joseph, August, Julian and Arthur Mustardo
t/a Lyndale Beverage Co.
650 Valley Brook Avenue
Lyndhurst, New Jersey

Application filed August 24, 1965 for place-to-place transfer of State Beverage Distributor's License SBD-173 from 15-17 Hackensack Avenue, Ridgefield Park, New Jersey.

Joseph P. Lordi
Director

New Jersey State Library