

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. ROUTES 1-9 (SOUTHBOUND) NEWARK, N. J. 07114

BULLETIN 2321

June 4, 1979

TABLE OF CONTENTS

ITEM

1. NEW LEGISLATION - AMOUNT A MUNICIPALITY IS AUTHORIZED TO EXPEND TO RETIRE RETAIL CONSUMPTION LICENSES IS INCREASED TO \$15,000.00
2. DISCIPLINARY PROCEEDINGS (Trenton) - GAMBLING - LOTTERY - NUMBERS GAME - POSSESSION OF GAMBLING SLIPS - LICENSE SUSPENDED FOR 90 DAYS.
3. DISCIPLINARY PROCEEDINGS (Millville) - FAILURE TO HAVE ALCOHOLIC BEVERAGE LICENSE AVAILABLE FOR INSPECTION ON PREMISES - LICENSE SUSPENDED FOR 5 DAYS.
4. DISCIPLINARY PROCEEDINGS (Ridgewood) - FAILURE TO FILE MINIMUM PRICES - IMPROPER GIFT TO RETAILER BY SOLICITOR - SUSPENSION OF PERMIT FOR 10 DAYS.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2321

June 4, 1979

1. NEW LEGISLATION - AMOUNT A MUNICIPALITY IS AUTHORIZED TO EXPEND TO RETIRE RETAIL CONSUMPTION LICENSES IS INCREASED TO \$15,000.00.

On April 4, 1979, the Governor signed into law Senate Bill No. 915 (1978) which thereupon became Chapter 61 of the Laws of 1979, effective immediately. The new law reads as follows:

2. No such contract shall authorize payment to the licensee for transfer of the license to the municipality of a sum in excess of \$15,000.00 and no such contract shall result in the reduction in the number of retail consumption licenses to fewer than one for each 3,000 of the municipality's population, and no license so acquired by the municipality shall be reissued to any applicant.

This act shall take effect immediately.

JOSEPH H. LERNER
DIRECTOR

Dated: May 3, 1979

2. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - NUMBERS GAME - POSSESSION OF GAMBLING SLIPS - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against)

Andy's Tavern, Inc., t/a Andy's Tavern 18-20 Sweets Avenue Trenton, New Jersey)

CONCLUSIONS

Holder of Plenary Retail Consumption License 1111-32-010-001, issued by the City Council of the City of Trenton.)

AND

ORDER

Seelig & Rednor, Esqs., by Jack L. Seelig, Esq., Attorneys for Licensee.
Leonard A. Peduto, Jr., Esq., Deputy-Attorney General
Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded "not guilty" to the following charges:

1. On or about February 25 and 26, 1977, and March 10, 12, 17, 21, 25 and 31, 1977, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the "numbers game"; in violation of Rule 6 of State Regulation No. 20.

2. On or about February 25 and 26, 1977, March 10, 12, 17, 21, 25 and 31, 1977, and April 14, 1977, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises slips, tickets, books, records, documents, memoranda and other writings pertaining to unlawful gambling; in violation of Rule 7 of State Regulation No. 20.

It was stipulated that those parts of the charges which refer to the dates of February 25, 1977 and March 25, 1977, be dismissed for the reason that there was no evidence offered relating thereto.

The Division offered the testimony of three ABC agents and two investigators employed by the Mercer County Prosecutor's Office in substantiation of the charges.

Agent M, who possessed sufficient experience in investigating gambling activities including numbers betting, testified that, accompanied by Agent V and pursuant to specific assignment to investigate alleged gambling activity in the licensed premises, he visited the licensed premises, a neighborhood tavern, on February 26, 1977. He observed a young female in the licensed premises later identified as Molly Cole, daughter of the one hundred percent stockholder of the corporate licensee, Andrew Cole, (hereinafter Andy). Andy was stationed in the package goods section of the tavern.

While the agents were positioned at the bar, Agent M heard a male, Bob, later identified as Robert Berry, (hereinafter Bob), ask of V, "What's it going to be today?" Agent V replied, "It's going to be three-eight-three (383)." Thereupon Agent V asked the barmaid for pencil and paper. Upon receipt of pencil and paper the agent wrote the number on the paper.

Agent M then asked Agent V whether three-eight-three was the only number he was going to play. Agent V didn't reply, however, the barmaid who was observing Agent V making the notation said, "The number's going to be five-eight-eight (588) today. I can feel it." Agent V then wrote the number five-eight-eight (588) on the paper and said, "Okay, I played the five-eight-eight (588) too."

Agent M then informed Bob that he wanted to play eight-one-two (812) for a dollar. Bob requested Agent V to write the number on the same piece of paper. After writing the number, Agent V handed the slip to Bob together with money in payment of the bets. Bob then made notations on his own slip of paper. The numbers writing took place on top of the bar. Agent M observed other numbers bets recorded on the slip of paper.

The agent then observed Bob engage in whispered conversations with other patrons; making notations on the same slip of paper and saw the patrons hand money to Bob. Additionally, Agent M observed a male positioned five stools to the right, (identified as Wayne Pack), place a dollar bet on number six-two-one (621)

and make a notation on a slip of paper. The Coles, father and daughter were positioned behind the bar at the time of this last described activity.

Agent M returned to the licensed premises alone on March 10, 1977, proceeded to the bar, asked for and was served a drink by Mollie Cole. Bob was in the premises. He informed Bob that he desired to place a bet on the number eight-one-two (812) for \$1.00. Bob placed a slip of paper on top of the bar, made a notation thereon and accepted the money from Agent M.

On that day, Agent M also heard Wayne Pack ask patrons what they were going to play that day. They responded in whispered conversation and handed him money and slips of paper. He then observed Bob making notations and return the slips to the patrons.

Additionally, he observed a female, identified as Dorothy Dunne, accepting money from patrons while making notations on top of the bar. He observed an elderly male "having conversations with patrons and make notations, asking what did they want to play."

Agent M testified that during the course of the above mentioned transactions relating to the date of March 10, 1977, the barmaid was behind the bar. Upon being questioned relative to which transactions she observed, the agent testified, "Most all of the transactions, from what I could observe. There were only a few patrons in the premises at the time. Most of the time she was standing out or watching."

In furtherance of the investigation; Agent M returned to the licensed premises on March 12, 17, 21, and 31, 1977, accompanied by Agent B.

On March 12, 1977, Andy was tending bar. Bob, who was in the tavern, asked Agent M what he wanted that day. Agent M replied that he wanted eight-one-two (812) for a dollar. Bob followed the usual pattern of recording the transaction on a long slip of white paper on top of the bar and accepting a dollar bill from the agent. After Bob departed from the premises he observed Wayne Pack ask several of the patrons that entered the premises what they wanted to play on that day. The patrons would then hand Pack slips of paper and money. Upon receiving several slips Pack would place them in brown pay envelopes which he removed from the back bar. Upon Bob's return to the tavern, Pack handed the envelopes to Bob and Bob again departed from the tavern.

On the occasion of the agent's visit on March 17, 1978, Andy

was again tending bar. He observed Wayne Pack standing at the rear end of the bar accepting slips and money from patrons. After placing the slips in the brown envelopes, he joined Bob who was standing outside in front of the tavern. Continuing, the agent testified that he observed a Melvin Wilson engage in whispered conversation with patrons, accept money and make notations on a strip of white paper on top of the bar. He could not overhear any of the patrons. Andy was stationed behind the bar and on occasions was standing in the vicinity of Wayne Pack and Melvin Wilson while they were engaged in the above described conversations and the making of notations.

Relative to Agent M's visit of March 21, 1977, he testified that Mollie Cole was tending bar and observed Wayne Pack, Melvin Wilson and Bob Berry present in the tavern. He overheard a patron request Pack to play number six-four-two (642) for a dollar and observed Pack place a strip of white paper, which he held in his right hand, on top of the bar and make notations on it. The agent also observed Bob engage in whispered conversations with patrons, make notations and accept money from them.

Agent M testified that on his visit of March 31, 1977, he observed that Mollie Cole was again tending bar. He observed Pack and Dorothy Dunne seated together at the rear part of the bar making notations, checking long slips of paper, checking money and place slips of paper in brown envelopes, which he secured from behind the bar, and place them on top of the bar.

Upon being asked to describe what some of the patrons did on the dates aforementioned, the agent testified, "some of the patrons would immediately go over to Wayne Pack, Miss Dunne, Melvin Wilson; have whispered conversations with them, pass them slips, give them money, and depart the premises." Further, he testified that some of the patrons remained in the premises to consume alcoholic beverages.

Relative to the final visit of April 14, 1977, Agent M testified that he entered the barroom alone at approximately 12:30 p m. Mollie Cole was tending bar. He observed the presence of Pack and Wilson and also a male known as Donald Waltin. He observed each of the aforesaid males checking slips of paper and money. Some of the slips were thereafter thrown behind the bar. Some were placed in brown envelopes. Waltin placed some of the slips in his right front trouser pocket. He was unable to observe the notations on the slips of paper.

At approximately 12:50 p.m., on that date, investigators from the Prosecutor's Office and two ABC agents entered the tavern and identified themselves to Mollie Cole and informed her

of the investigation. Each of the aforesaid males were observed to throw slips of paper behind the bar. Waltin and Wilson tried to run. The raiding party checked the patrons. Agent M was treated as a patron. He departed from the premises at approximately 1:10 p.m.

On cross-examination, Agent M explained that no employee accepted any money from him except for drinks, nor did he observe any employee accept any bets.

It was stipulated that the testimony of Agent B, who accompanied Agent M on the investigation of the licensed premises conducted on March 12, 17, 21 and 31, 1977, would be similar to the testimony offered by Agent M.

Agent G, who possessed ample experience in the field of lottery gambling operations, testified that he participated in the raid of the licensed premises on April 14, 1977, in association with another ABC agent and several other law enforcement officers who were armed with search and arrest warrants. The police called out that they were engaged in a raid. While Agent G was going behind the bar, a male identified as Donald Waltin collided with him. Waltin placed something in his mouth and swallowed it. On the shelf behind Waltin, Agent G found two matchbooks containing numbers bets, showed them to Lieutenant Golya and placed him under arrest. A search of Waltin revealed that he had in his possession slips containing numbers bets and three manila payroll envelopes containing numbers bets.

John F. Byrne, employed as a investigator by the Mercer County Prosecutor's Office, who participated in the raid on April 14, 1977, testified that search warrants were directed against the licensed premises and against various individuals.

The inventory list prepared by the Prosecutor's Office containing a list of all items seized in the raid, a copy of which was left with Mollie Cole, the employee in charge of the premises. It indicated that there was seized in the raid, a brown paper bag containing five manila envelopes with various initials written thereon. Contained in each of the envelopes were pieces of paper containing illegal lottery bets. One particular piece of paper contained the date April 14, 1977. A second item found in the premises was a tally sheet which contained, among other figures, several three-digit numbers. Item 3 on the list was a cigar box. It contained fifty-fifty (50-50) chance tickets and two green chances with no state license numbers thereon.

Item No. 4 is irrelevant to the determination of these

charges.

Item No. 5 is another brown manila envelope found in a wall sign at the rear of the bar. Contained therein were two sheets of paper, each dated April 14, 1977, and each containing columns of illegal lottery wagers.

Item No. 6 similarly is a brown paper bag which contained, among other things, four sheets each dated April 14, 1977, and containing two columns of illegal lottery bets.

Item No. 7 found in a garbage can behind the bar, among other things, includes tally sheets which contain a summary of the illegal lottery bets accepted by a numbers writer of the play taken the prior day.

Item No. 10 consisted of a box containing empty brown paper envelopes of the type previously mentioned.

Elmer Golya, Lieutenant of Detectives in the County Prosecutor's Office, whose expertise in the field of gambling was conceded, testified concerning Item No. 5 found in the licensed premises and referred to in the testimony of the previous witness. Particularly referring to one aforementioned sheets of paper, Golya explained that the three digit numbers written thereon referred to illegal lottery wagers.

In defense of the charges, Andrew Cole testified that he would open the tavern for business at 7:00 a.m. and stay until 9:00 or 9:30 a.m. then his daughter Mollie Cole would come on duty, at which time he would leave to open another tavern which he owned with his wife. He was never in the subject premises when it was under investigation by the ABC agents. His brother-in-law relieved his daughter at the tavern.

He knew that Berry, Pack and Wilson patronized the tavern on a daily basis. He had heard that they accepted bets. However, he had warned them to never engage in betting activity in the subject premises.

In response to the question whether he ever saw anyone write an illegal number in the tavern, Cole testified, "They would never let me catch them doing it. Never. I have heard of it, yes, but they would never let me see it."

Relative to the cigar box described by a previous witness, Cole explained that he never saw such a box in the tavern, nor did they have any use for such a box. Concerning the little brown envelopes described by the Division's witnesses, he ex-

plained that they obtained such envelopes from a bank, which were then used as employee pay envelopes.

He never saw anyone place a bet while he was in the licensed premises, nor did he see anyone writing on pieces of paper on top of the bar.

Preliminarily, I observe that we are dealing with a purely disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super 449 (App. Div. 1951). Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a factual situation, the credibility of witnesses must be weighed. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and 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); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had the opportunity to observe the demeanor of the Division's witnesses as they testified and have made a careful analysis and evaluation of their testimony.

I have set forth in considerable detail the testimony in the record in order to objectively arrive at a determination herein.

The testimony of Agent M relative to the betting activity engaged in by the various individuals in the licensed premises on the various dates mentioned in his testimony is factual, clear, credible and, in fact, unchallenged.

The corporate licensee denied responsibility for the acts of the individuals engaged in the above described illegal betting activity for the expressed reason that the one hundred percent stockholder was not in the premises at the time of the alleged illegal occurrences. This argument lacks legal validity.

N.J.A.C. 13:2-23.28 provides as follows:

In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by

an agent, servant or employee or the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings.

Vide, in Re Schnieder, supra.

While there is no requirement that the proscribed activities be "open and notorious", I find substantial credible evidence which unmistakably demonstrates that the barmaid knew or should have known of the existence of such proscribed activities. In Mazza v. Cavicchia, 28 N.J. Super 280 (App. Div. 1953), rev'd on other grounds, 15 N.J. 498, 509 (1954), the court held that the knowledge of the licensee is not necessary to sustain a conviction of the charge.

The rule in question comes clearly within the delegated authority of the Director as a reasonable regulation in the field of alcoholic beverage control. The Director has the power to make the licensee responsible for the activities upon the licensed premises. In fact, it is difficult to see how the Division could properly maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director promulgated thereunder and would make the enforcement of the Law an impossibility.

This Division has consistently held that a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes

and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Corp. v. Hock 136 N.J.L. 28 (Sup. Ct. 1947).

Additionally, I note that the licensee did not produce the barmaid as a witness, and no reason was given for her non-production as a witness.

The principle of law applicable hereto is that, where a party has a witness or witnesses available, and they possess peculiar knowledge concerning the facts essential to a party's case, the failure to call said witness or witnesses gives rise to an inference that, if called, the testimony elicited therefrom would be unfavorable to said party, i.e., he could not truthfully contradict the testimony of the Division's witnesses. Re Lesniewski, Bulletin 1581, Item 5; Hickman v. Pace, 82 N.J. Super. 483 (1964); Re Soto Pruna, Bulletin 1713, Item 1.

Licensee's attorney urged that the licensed premises are located in a high crime area where illegal lottery playing was prevalent and it was impossible to keep the individuals who engaged in these activities out of the tavern. However, I find no evidence that the proper law enforcement authorities were summoned or their aid enlisted to prevent illegal lottery activity in the licensed premises. On the other hand, it is apparent that the licensee, through its sole corporate officer and stockholder, abdicated its duty to operate the premises in a law abiding manner.

In sum, I find that the licensee's denial of culpability is devoid of factual or legal substance.

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 Charges 1 and 2 as to all dates mentioned therein except for the dates of February 25 and March 25, 1977, and I so find. Accordingly, I recommend that the licensee be found guilty of said charges, except for said dates of February 25 and March 25, 1977, with respect to which I recommend a dismissal.

Licensee has no prior chargeable record of suspension of

license. I recommend that Charges 1 and 2 be merged for penalty purposes, and that the license be suspended for ninety (90) days.

CONCLUSIONS AND ORDER

No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-19.6.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein. Thus, I find the licensee guilty of the charges, except as to the incidents alleged on February 25, 1977 and March 25, 1977 which I hereby dismiss. I shall impose a ninety (90) days suspension of license.

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that Plenary Retail Consumption License 1111-32-010-001 issued by the City Council of the City of Trenton to Andy's Tavern, Inc., t/a Andy's Tavern, for premises 18-20 Sweets Avenue, Trenton be and the same is hereby suspended for ninety (90) days commencing 2:00 a.m. Thursday, February 15, 1979 and terminating 2:00 a.m. Wednesday, May 16, 1979.

JOSEPH H. LERNER
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - FAILURE TO HAVE ALCOHOLIC BEVERAGE LICENSE AVAILABLE FOR INSPECTION ON PREMISES - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

Paul Zinader
t/a Joseph's Liquor Store
1525 North High Street
(Wheaton Plaza)
Millville, New Jersey
08332)

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Distribution License 0610-44-018-001, issued by the Board of Commissioners of the City of Millville.)
-----)

No appearance in behalf of Licensee.
Mart Vaarsi, Esq., Deputy-Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

A charge was preferred against the licensee, as follows:

On September 28, 1976, you failed to have on your licensed premises available for inspection by authorized persons and officers, a photostatic or other true copy of the application for your then current license, in violation of Rule 16(b) of State Regulation No. 20.

Service of Notice of the above charge was originally effected upon licensee by certified mail and upon failure of the licensee to respond, service of the notice of the time and place of the hearing was effected by ordinary mail.

Upon the failure of the licensee or anyone in his behalf to communicate with the Division or appear at the hearing or furnish any reason for such failure to appear, the matter was

heard ex parte.

In substantiation of the charge, ABC Agent B testified that, pursuant to specific assignment to inspect the licensed premises, he visited the premises on September 28, 1976. Agent B met the licensee, Paul Zinader, and asked him to produce the said document. Upon request, Zinader signed an acknowledgement form regularly used by the Division in the conduct of its official business, wherein he acknowledged that there was no current copy of the license application in the premises available for inspection.

I find that the Division has established the truth of the charge by unchallenged evidence and thus recommend that the licensee be found guilty as charged.

Licensee has no prior adjudicated record.

It is further recommended that the license be suspended for five (5) days.

CONCLUSIONS AND ORDER

No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-19.6.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein. I find the licensee guilty of the charge and shall impose a five (5) days suspension of license.

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that Plenary Retail Distribution License 0610-44-018-001 issued by the Board of Commissioners of the City of Millville to Paul Zinader, t/a Joseph's Liquor Store for premises 1525 North High Street, Millville be and the same is hereby suspended for five (5) days commencing 10:00 p.m. Monday, February 12, 1979 and terminating 10:00 p.m. Saturday, February 17, 1979.

JOSEPH H. LERNER
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE MINIMUM PRICES - IMPROPER GIFT TO RETAILER BY SOLICITOR - SUSPENSION OF PERMIT FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

Gaetano Aita)
285 Greenway Rd.)
Ridgewood, N.J. 07451)

CONCLUSIONS

Holder of Unlimited Solicitor's Permit No. 1304 issued by the Director of the Division of Alcoholic Beverage Control.)
-----)

AND
ORDER

No appearance in behalf of Licensee.
Heikki Leesment, Esq., Deputy-Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Gaetano Aita, holder of an Unlimited Solicitor's Permit, pleaded "not guilty" to the following charges:

1. In or about May, 1977, you sold, or offered for sale or delivery at retail, alcoholic beverages concerning which a schedule of minimum consumer resale prices and labels had not been filed with the Director of the Division of Alcoholic Beverage Control; in violation of Rule 1 of State Regulation No. 30.
2. In or about May, 1977, you furnished directly or indirectly, to a retailer an inducement and/or free goods, deals, and similar merchandising devices, in violation of Rule 3 of State Regulation No. 35.

Upon the failure of the solicitor-permittee or anyone in

his behalf to communicate with the Division or appear in response to the charges or give any reason for his failure to appear, the matter was heard ex parte.

In substantiation of the charges, the Division offered the testimony of ABC Agent N. The agent testified that Aita, was at that time employed as a solicitor for Velardi and Son Wine Imports, a liquor wholesaler. While so employed, Aita sold a quantity of wine to Emerson Swim and Racquet Club. Agent N explained that the arrangements for the sale and delivery of the wine were made between Aita and a Mr. Cerbo who was the Club's Restaurant Manager.

Among the wines delivered were several cases of Tommasi wines. These wines had not been filed by Aita's employer with the Director of the Division of Alcoholic Beverage Control, pursuant to Rule 1 of State Regulation No. 30 (now N.J.A.C. 13:2-33.1).

Additionally, Agent N explained that Cerbo also indicated that he informed Aita that due to the large quantity of wines ordered he couldn't pay for the wine on time. In response, Aita told Cerbo not to worry about payment and that payment could be made later when he had the money.

I find that the Division has established the truth of the charges by a fair preponderance of the evidence, indeed, by unchallenged evidence and recommend that the permittee be found guilty as charged.

Solicitor-permittee has no prior adjudicated record of suspension of his permit. I further recommend that this Unlimited Solicitor's Permit No. 1737, now issued in connection with his employment for Foreign Brands, Inc., be suspended for ten (10) days on each charge, or a total suspension of twenty (20) days.

CONCLUSIONS AND ORDER

No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-19.6.

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

Accordingly, it is, on this 1st day of February, 1979,

ORDERED that Unlimited Solicitor's Permit No. 1737 issued by the Director of the Division of Alcoholic Beverage Control to Gaetano Aita in connection with his employment for Foreign

Brands, Inc., be and the same is hereby suspended for twenty (20) days commencing midnight, Tuesday, February 20, 1979 and terminating midnight, Monday, March 12, 1979.

JOSEPH H. LERNER
DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

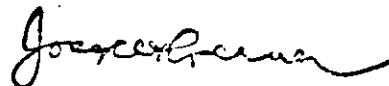
Robert Toledo
t/a Toledo Beverages
283 Orchard Street
Elmwood Park, New Jersey
Application filed May 4, 1979 for
person-to-person transfer of a
State Beverage Distributor's license
from John Durante, t/a Durante Beverages.

Diekirch Imports Inc.
436 Rte. 130
North Brunswick, New Jersey
Application filed May 10, 1979 for
limited wholesale license.

Southern Comfort Corporation (A Delaware Corp.)
1220 North Price Road
St. Louis, Missouri
Application filed May 11, 1979 for
person-to-person transfer of Plenary
Wholesale License 3400-23-069-001
from Southern Comfort Sales Corporation
of New York.

D'Elia Enterprises Inc.
730 Irving Street
Secaucus, New Jersey
Application filed May 18, 1979 for
person-to-person transfer of State
Beverage Distributor's License
3400-19-271-001 from Town Beverage.

Leonardo Lo Cascio & Helga Lo Cascio
t/a Lo Cascio Imports
721 Carroll Place
Teaneck, New Jersey
Application filed May 24, 1979
for limited wholesale license.



Joseph H. Lerner
Director