

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2121

November 1, 1973

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2121

November 1, 1973

1. APPELLATE DECISIONS - GOMES v. NEWARK - ON SUPPLEMENTAL HEARING.

Manuel G. Gomes  
t/a Cantanhede International  
Bar & Restaurant,

Appellant,

v.

Municipal Board of Alcoholic  
Beverage Control of the City  
of Newark,

Respondent.

On Appeal

CONCLUSIONS  
and  
ORDER

.....  
Irvin L. Solondz, Esq., Attorney for Appellant  
William H. Walls, Esq., by Salvatore Perillo, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Supplemental Hearer's Report

Appellant appeals from the action of the respondent Municipal Board of Alcoholic Beverage Control (hereinafter Board) which on June 30, 1972 found appellant guilty of violating the Municipal Code of the City of Newark (Title 4:1-4) and suspended appellant's plenary retail consumption license for fifteen days. A de novo hearing with this Division was held on the appeal at which, by stipulation of counsel the matter was submitted solely upon transcript of proceedings before the Board, pursuant to Rules 6 and 8 of State Regulation No. 15.

Following a review of the transcript by this Division, the matter was remanded to the Board for the purpose of supplementing the record with respect to the said charge. Such hearing in remand was held by the Board and a transcript of the supplemental proceedings at that hearing have been furnished.

At the supplemental hearing, Clifford Minor, a police officer of the City of Newark, assigned as an investigator for the Board, testified that, in March 1972 he visited the licensed premises. He testified that he observed the following: "He (meaning the licensee) erected an extension to the building creating another building. There are two buildings where there was only one." He further averred that no application had been filed with the Board by the appellant for any alteration.

On cross examination, officer Minor admitted that he had not previously examined the buildings but that there was a door leading from the old structure to the new and there were "extensive alterations to the kitchen which annexed to the new building that was constructed." He added that the kitchen is part of the licensed premises.

There was no other testimony offered. The Board attempted to elicit testimony of the appellant. To the question: "Have you at any time served alcohol in this new area of the building", the appellant responded with a negative shake of the head.

As determined in the initial Conclusions and Order, there was a complete paucity of evidence offered on behalf of either appellant or respondent. At the subsequent hearing on remand to the Board, the only testimony offered was that of Minor, the substance of which has already been quoted supra.

The Board properly found by a fair preponderance of the credible evidence that there was an alteration to the licensed premises without Board approval, albeit the dates of such improvement as recited in the charge, were unproven. In matter involving a construction to a building, the offense if there be one, is continuing in nature. The construction alluded to as occurring in December 1971 and February 1972 was not of momentary nature, and in view of the fact that it existed in March of 1972, it may be considered, a priori, to have continued at the times charged.

Hence, the Board had before it the single and uncontroverted testimony that an alteration to the premises had taken place. No refutation of any kind was offered by appellant. When the chairman attempted to ascertain what the defense was, the appellant chose to remain silent.

In oral argument, counsel for appellant argued:

"As I indicated in my original argument, I contend there has been no violation of the ordinance. If there is, there is a technical, at best, a very technical violation of altering and when I say this, that has not even been stated here. I don't think that this man should be penalized any further than he has in that he has a restaurant, which he has been in essence, unable to operate as a restaurant in order to effectively compete with other establishments in the area, since he does not have a license."

Thus, the attorney for the appellant admits inferentially, there was a violation of the ordinance, even though he maintains

that it was merely "technical". In short, the Board, having found from the only evidence before it that an alteration of the licensed premises without prior approval took place reasonably determined further that the charge was established by a fair preponderance of the credible evidence.

I, therefore, find that the appellant has failed to sustain the burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be affirmed, the appeal dismissed, the order staying the suspension pending appeal be vacated, and that the penalty of suspension of license for fifteen days heretofore imposed by the Board, be reimposed.

#### Conclusions and Order

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

Having carefully considered the entire record herein, including the transcripts of testimony of the hearings held before the Board, the Hearer's report and the exceptions filed with respect thereto, which I find lacking in substance and without merit, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of September 1973,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby dismissed; and it is further

ORDERED that my order dated January 31, 1973 continuing the stay ordered by my prior order entered on July 12, 1972 staying the effective dates of suspension, theretofore imposed by the Board, pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-367, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Manuel G. Gomes, t/a Cantanhede International Bar & Restaurant for premises 195 Ferry Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing 2:00 a.m. Thursday, September 27, 1973 and terminating 2:00 a.m. Friday, October 12, 1973.

Robert E. Bower  
Director

- 2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - HINDERING INVESTIGATION - ASSAULT ON ABC AGENT - PRIOR SIMILAR VIOLATIONS - LICENSE SUSPENDED FOR 100 DAYS.

In the Matter of Disciplinary Proceedings against )

Helen Pawlicki )  
 t/a South Seas )  
 1 South Front Street )  
 Elizabeth, N.J., )

CONCLUSIONS  
 and  
 ORDER

Holder of Plenary Retail Consumption License C-158, issued by the City Council of the City of Elizabeth. )

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 Sheldon & Freda, Esqs., by Victor J. Freda, Esq., Attorneys for Licensee  
 Carl A. Wyhopen, Esq., Appearing for 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 Saturday, March 3, 1973, you sold, served, and delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage, directly or indirectly to a person under the age of eighteen (18) years; Edward P\_\_\_\_, age 16 and allowed, permitted and suffered the consumption of such alcoholic beverage by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- 2. On Saturday, March 3, 1973 between 9:15 p.m. and 11:30 p.m. you directly or indirectly through your agents, servants and persons employed on your licensed premises and in your behalf failed to facilitate, hindered, delayed and caused the hindrance and delay and attempted to hinder, delay and cause the hindrance and delay of an investigation of your licensed premises then and there being conducted by Inspectors and Investigators of the Division of Alcoholic Beverage Control, Department of Law and Public Safety of the State of New Jersey; in that you through your employees assaulted such Inspector, in violation

of Rule 35 of State Regulation No. 20.

3. On Saturday, March 3, 1973 between 9:15 p.m. and 11:30 p.m. you allowed, permitted and suffered acts of violence in and upon your licensed premises, viz., Assault and battery upon an Inspector of the Division of Alcoholic Beverage Control, Department of Law and Public Safety of the State of New Jersey, in violation of Rule 5 of State Regulation No. 20."

In the consideration and adjudication of these charges we are guided by the 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); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Hornauer v. Div. of Alcoholic Bev. Control, 40 N.J. Super. 501 (1956). The credibility of witnesses must be carefully assessed. Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The findings in these cases must be based upon competent legal evidence and must be grounded on a reasonable certainty as to probabilities arising from a fair consideration of the evidence. Moreover, 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 (1940); Greenleaf, Evidence, Sec. 201 (16th Ed. 1899).

Based upon these principles, I shall consider the facts and the applicable law with respect to each of the charges herein.

As to the first charge: The Division's case was presented through the testimony of two ABC agents who visited the licensed premises pursuant to a specific assignment to investigate alleged unlawful liquor activity. The testimony of ABC agent C, which was fully corroborated by the testimony of a fellow agent, CH, may be briefly summarized as follows: On Saturday, March 3, 1973, at about 8:40 p.m. he entered the licensed premises in the company of agents CH and I, and took position at the center of the bar. He observed a patron, later identified as Edward --, who appeared to him to be a minor and who, in testimony at this hearing, later admitted that he was, indeed, a sixteen-year old minor.

Edward was then in conversation with the bartender Frank Pawlicki, the son of the licensee. They were discussing certain driver's licenses and selective service card, which Edward had in his possession and which bore the name of Smith. Edward was heard to say "The only thing didn't fit me was the eyes, which I will have to change" to which Pawlicki said "You will be served

anyway". The sense of this observation by the bartender apparently was to the effect that if Edward wanted to be served alcoholic beverages in a tavern, such identification would enable him to obtain such service. Edward then placed the documents back into his pocket. At that time the minor had a glass of alcoholic beverages in front of him. At 9:00 p.m. he ordered a gin and 7-Up, which was served to him by the bartender, for which he paid with a dollar bill, and he received forty-five cents in change. They noted that there was another person, later identified as Robert Loch who the agents then thought was also under-age, who had ordered an orange juice and vodka, known as a screwdriver.

At about 9:15 p.m. while Edward was consuming the gin and 7-Up the agents identified themselves and questioned Edward as to his age. He produced the two driver's licenses and the draft card and "realizing I had been seated next to him during the discussion, he admitted to being sixteen years of age."

The minor was then immediately taken into custody and both the minor and the bartender were told they were under arrest. His drink and that of Loch (who later that evening satisfied the agents that he was eighteen years of age) were taken by the agents and placed at the end of the bar. However, the glasses in which the drinks were contained were broken through the interference and action of the licensee; the said hindering is the basis of the second charge, which will be discussed infra.

Edward, testifying on behalf of the licensee, denied that he had either been served or had consumed alcoholic beverages and gave the following account: He had been out riding with his friend, Robert Loch, that day and entered the premises at about 9:30 p.m. He took a seat at one of the tables and was asked by the bartender what he wanted to order. He ordered and was served a sandwich for which he paid eighty-five cents. He was also served a Coke, which he says was given to him "for free".

When the sandwich had been prepared and was placed on the bar, he went over to pay for it at 9:50 p.m. It was soon thereafter that the agents first approached him, after his discussion with the bartender. His version of the discussion was that he had found a wallet containing these driver's licenses and the draft card and was asking the bartender whether he knew who the true owner was. He denied that he had ordered any alcoholic beverages, that the only thing he had ordered was the sandwich from a person whom he identified as John Trum.

Frank Pawlicki, the son of the licensee who was then employed in these premises as the bartender, testified as follows: While on duty on March 3, 1973 he first noticed the ABC agents when they walked into the tavern at 9:20 p.m. They sat at the rear of the bar and ordered a round of drinks, and one of the agents went to the pool table. The minor, Edward, entered the tavern with his friend, Robert Loch, at about 8:40 p.m., and while

Edward sat at a table, Loch played pool.

Upon entering Edward ordered a sandwich and soda, and after he consumed the sandwich and soda, came up to pay for them. As Edward was about to leave the premises after paying for the sandwich, he showed him the driver's licenses and draft card and asked him whether he knew who the true owners were. He couldn't give him that information, and Edward put them back into his pocket.

He saw the agents question Edward and the next thing he knew was that they told him that he was under arrest charged with the sale and service of alcoholic beverages to a minor. He denied that, and said that he had only served Edward a "Coke". On cross examination he admitted that Edward had been a friend of his for a number of years.

Robert Loch was not produced as a witness by the licensee and did not testify at this hearing.

The agents, called on rebuttal, denied that there was any food on the bar or on the table or that any food was served to anyone during their visit.

I have carefully evaluated the testimony with respect to this charge and have had an opportunity to observe the witnesses as they testified. I am persuaded that the testimony of the agents was forthright, credible and accurately depicted the true situation that existed that evening. On the other hand, I disbelieve the testimony of the witnesses for the licensee with respect to this charge because I find their version of what happened to be incredible and inconsistent with common experience of mankind in these circumstances.

I note a serious inconsistency in the testimony of the minor and the bartender. The minor, Edward, testified that when the sandwich was prepared he went to the bar to pay for it and it was at that time that he was first interrogated by the ABC agents. However, Pawlicki testified that the sandwich has been served to the minor at an earlier time and that he had consumed the sandwich. The agents, however, testified that there was no food served nor was there any evidence that food had been served during their visit. The employee who, Edward testified, prepared the sandwich was not produced as a witness.

Furthermore, the testimony of the agents with respect to the conversation of the minor with the bartender seems consistent with reality. The minor apparently wanted to establish that, at some time thereafter, he could use these identification documents falsely in order to obtain alcoholic beverages. I also do not believe in the light of human experience that this minor was given a coco cola without charge after being charged

for the sandwich. The minor, of course, being a long time friend of the licensee obviously colored his testimony. When he says that he never discussed this matter with the licensee or her son such testimony is similarly incredible. In view of the fact that they have been friends for a long time, it is unrealistic to believe that no such discussion was had. Thus, his credibility has been adversely affected.

I, therefore, find that this charge has been established by a fair preponderance of the credible evidence, and recommend that the licensee be found guilty of this charge.

As to the second and third charges: The following testimony was adduced from agents C and CH. After the confrontation with Frank Pawlicki and the minor when the agents were convinced that the minor was drinking an alcoholic beverage which had been served to him by Pawlicki, and the minor and Pawlicki had been placed under arrest, the agents took the two drinks, which were partly consumed by the minor and Robert Loch, and placed them at the end of the bar.

At about 9:24 p.m. they telephoned the Elizabeth Police Department informing them that an investigation was taking place and requested assistance. At this point in the investigation, the licensee, Helen Pawlicki, who had been notified of the investigation, entered the premises and was very "nervous" and distraught. She refused to cooperate with the agents and stated loudly to the persons present "Don't answer anything. Keep your mouths shut and tell these guys nothing." She went behind the bar, grabbed one of the drinks which the agents had sequestered, and attempted to pour it down the sink, at which time agent C grabbed the drink from her and placed it back on the rear of the bar.

At 9:30 p.m. another telephone call was made to the local police because they had not as yet responded to the earlier call. Agent C then picked up the drink and while holding it, Frank Pawlicki who was then under arrest, jumped up from his seat and with his left hand tried to strike agent C. Agent C put his right arm up to protect himself. Loch then joined in and struck the agent on the left shoulder causing the said glass to fall on the floor and break; the liquid which was the evidence in it was lost. Agent C was knocked against the pool table and while agent CH responded to his aid, either Loch or Pawlicki said to agent CH "You are next" and ran after him.

At this point, agent C grabbed Loch with his right hand whereupon Loch struck him on the right shoulder. Agent CH subdued Pawlicki and shortly thereafter, the police arrived. As a result of this encounter, both Loch and Pawlicki were charged with assault and battery upon a law enforcement officer, in violation of N.J.S.A. 2A:90-4. This was in addition to the charge made against Frank Pawlicki for sale to a minor, in violation of N.J.S.A. 33:1-77.

The agent added that immediately prior to the assault, the licensee was "very loud, very boisterous". She loudly insisted upon proof of sale to the minor, and that he be given a sobriety test. When they showed her the two drinks which they had set aside, she grabbed one of the glasses and the agent then grabbed the glass itself from her hand.

Frank J. Pawlicki, called as a witness on behalf of the licensee gave the following account: While on duty as a bartender on the night in question, he noted that the agents entered the tavern at about 9:20 p.m. They seated themselves at the bar, ordered a round of drinks and one of the agents went to play pool. After the confrontation by the agents with respect to Edward, his mother, the licensee, was summoned and she entered the premises.

All of the patrons had already been requested to leave the premises and the only ones then in the premises was this witness, Edward, Loch, John Trum his cousin and another patron. When his mother was informed about the charge she "Got nervous and everything." When the agent identified the glasses, he did not see his mother attempt to grab either of the glasses. However, he did hear the glasses break. He explained that the agent wanted some identification and "he pulled some stuff out of my wallet, and he bumped into me." As a result of it "...the glasses, I don't know if they fell or what" but he did not see any glasses break. However, he saw the agents grab Loch and throw him against the wall. Finally, he denied that he struck or attempted to strike any of the agents.

On cross examination, he asserted that although he was thereafter handcuffed, he had no idea why the police put the handcuffs on him. He was able to observe what transpired although he remained close to his mother because she was "hollering".

Helen Pawlicki, the licensee, testified that on this night she was not feeling well and when she was summoned to the premises she saw a lot of commotion. She asked her son whether he had sold alcoholic beverages to a minor and the son denied it. At that time "The other two were all fighting. They were screaming." She was then requested to get the license and "I was all shook up, I am telling you the truth, because I wasn't feeling good." She saw one of the agents slap Loch and she protested. She insisted that the minor should be examined for intoxication, but the agents ignored her demand.

During all of this time there was considerable pushing and shoving. She denied breaking or seeing the glasses break. However, she did hear the glasses break.

Further, in describing the attitudes of Loch and her son, she stated "They were frustrated and excited because they didn't know what to make of this."

Clarence Hall, testifying on behalf of the licensee, stated that he operates a business next door to this tavern and he entered the tavern at about 10:55 p.m. At that time one of the agents told the patrons to leave, and he left with them. The only thing he recalls is seeing the bartender and the minor taken by the police from the tavern. However, he admitted that he did not see any of the incidents that transpired upon which the charges herein were predicated.

Both agents, on rebuttal, denied seeing Hall at any time that evening in or about the premises. The first time that they saw Hall was when he appeared at the hearing before me.

I have carefully evaluated the testimony with respect to charges No. 2 and No. 3 and find that the agents' version of what transpired relative to these charges was credible, forthright and factual. These agents visited these premises pursuant to a specific assignment and there is no contention or even suggestion that they were improperly motivated. On the other hand, we have the testimony of both the licensee and her son whose testimony was obviously colored by their interest. This applies equally to the testimony of the minor. The record reflects the actions of a very nervous and excited licensee who, according to her own account, angrily disapproved of the procedures used by the agents in their investigation and, indeed, of the investigation itself. She admits that she was too upset and excited to remember what actually transpired between the agents and her son and Loch. Somebody knocked the glass containing the alleged drink served to the minor from the agent's hand. Mrs. Pawlicki states that she didn't see the glass break but does remember hearing it break.

Her son felt frustrated and excited but denied that he actually was engaged in any assault upon the agent. However, in the general atmosphere that prevailed, according to the admissions of the licensee and her witnesses, there was shouting and confusion. According to the agents, she told the patrons not to cooperate with the agents and not to answer any questions. This she denies; but it is reasonable from common experience to conclude that with the attitude which she manifested, even during the hearing, that there was positive hostility towards the agents which the licensee generated and encouraged which ultimately resulted in the destruction of the seized alcoholic beverages, the assault on the agent, and the continuing hindrance of the investigation by the licensee. Furthermore, the licensee is inculcated by the acts of her son, an employee, during the course of his employment on the licensed premises. Essex Holding Corp. v. Hock, 136 N.J.L. (1947). Rule 33 of State Regulation No. 20.

I am also convinced that Hall, the other witness for the licensee, was never in the premises during these incidents. However, his testimony had no substantial relevance and may be disregarded.

Loch was never produced as a witness and the explanation given was that he was involved in an auto accident the day before the hearing although he himself was not injured. There was no satisfactory reason given for his failure to appear. This applies, similarly, to John Trum, who apparently was present at that time.

The principle of law applicable hereto is that where a party has a witness or witnesses available, and where 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 contradict the testimony of the Division's witnesses. Re Lesniewski, Bulletin 1581, Item 5; Hickman v. Pace, 82 N.J. Super. 483 (1964); Re Cork 'N Bottle, Bulletin 1232, Item 3; Re Soto Pruna, Bulletin 1713, Item 1.

It is logical to conclude from the totality of the evidence and the circumstances herein that the licensee directly or indirectly, both personally and through her employee, hindered, delayed and caused the hindrance and delay of an investigation of the said licensed premises then being conducted by agents of this Division, and that she allowed, permitted and suffered acts of violence, that is, assault and battery upon an agent of this Division.

The licensee was under a duty to do everything in her power to facilitate the lawful and authorized investigation by the agents of this Division, and not, in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever. It is crystal clear that licensee acted in disregard of her obligation. Vogellus v. Division of Alcoholic Beverage Control, (App. Div. 1963) not officially reported, recorded in Bulletin 1537, Item 1; see N.J.S.A. 33:1-35.

I am convinced and find that the Division has established these charges No. 2 and No. 3 by a fair preponderance of the believable evidence, indeed, by substantial evidence. I, therefore, recommend that the licensee be found guilty of the said charges.

Licensee has a prior adjudicated record. Her license was suspended by the local issuing authority, for ten days, effective April 19, 1965 for sale of alcoholic beverages for off-premises consumption (a Sunday); and by the Director for ten days, effective September 20, 1965 for sale of alcoholic beverages to a minor. Re Pawlicki, Bulletin 1638, Item 12.

It is further recommended that this license be suspended for thirty days on the first charge. Re Arbet Corp., Bulletin 2097-1H; and for sixty days on charges No. 2 and No. 3. Re Sventy and Wilson, Inc., Bulletin 2090, Item 1U; Cf. J-Three Lounge, Inc., Bulletin 1778, Item 1, to which should be added ten days by reason of the two similar violations occurring within the past ten years, or a total of one hundred days.

#### Conclusions and Order

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

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

Accordingly, it is, on this 10th day of September 1973,

ORDERED that Plenary Retail Consumption License C-158, issued by the City Council of the City of Elizabeth to Helen Pawlicki, t/a South Seas for premises 1 South Front Street, Elizabeth, be and the same is hereby suspended for one hundred (100) days, commencing 2:00 a.m. on Wednesday, September 19, 1973 and terminating on Friday, December 28, 1973.

Robert E. Bower  
Director

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETTING) - PRIOR DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 100 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )  
 Perk's Tavern, Inc. )  
 t/a Perk's Tavern )  
 555 Ocean Avenue )  
 Jersey City, New Jersey, )  
 Holder of Plenary Retail Consumption )  
 License C-18, issued by the Municipal )  
 Board of Alcoholic Beverage Control )  
 of the City of Jersey City. )  
 ----- )

CONCLUSIONS  
and  
ORDER

No Appearance on behalf of Licensee  
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On January 16th, 25th and February 1, 1973 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' to be sold and offered for sale in and upon your licensed premises and further on February 1, 1973 you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises tickets and participation rights in such lottery, in violation of Rule 6 of State Regulation No. 20."

An appearance was entered in licensee's behalf by Leon Sachs, Esq., its attorney. After two adjournments this matter was finally scheduled for hearing at the Division offices on Monday, July 16, 1973, at 10:00 a.m. Two or three days prior thereto Sachs informed the Prosecution Bureau of this Division that he would not appear to represent the licensee because the licensee failed to pay his retainer fee.

The hearing commenced ex parte at 10:55 a.m. and was concluded at 11:30 a.m. Neither the licensee nor anyone in its behalf appeared at the hearing, nor did the licensee contact this Division either prior or subsequent to the hearing herein to explain its failure to appear.

In behalf of the Division ABC agent S testified that, accompanied by agent M, he entered the licensed premises January 16, 1973, at 1:15 p.m. and asked the bartender Henry Perkins whether the "numbers man" would be in that day. The bartender replied that he is usually in between 3:00 and 4:00 p.m. Agent S then asked the bartender if he would give William Perkins (a stockholder of corporate licensee and a son of the bartender Henry Perkins) two dollars on the number 4444 because he didn't have time to wait. Henry accepted the money and said he would try to get the number bet in.

On February 1, 1973, agent S revisited the tavern, again accompanied by agent M. Prior thereto these agents, together with ABC agent G and a local police officer, prepared a marked money list and marked money. Henry Perkins was tending bar. William Perkins was in the office. Upon knocking, William Perkins opened the door for the agents and each agent placed two number bets, each for one dollar, or a total of four dollars, with William Perkins. Perkins accepted four marked one-dollar bills from the agents and made a memorandum of the number bets on a pad. Agent G was contacted at his designated place of contact. Shortly thereafter agent G entered the tavern accompanied by a local police officer, and ordered all persons to depart, including agents S and M.

Agent G testified that, after being contacted by agent M on February 1, he and a local police officer entered the licensed premises, confronted William Perkins and recovered the four marked one-dollar bills from among a stack of other bills. He also saw written on a pad on a desk near a telephone four numbers which corresponded with the numbers which agent S said he would bet with Perkins. A search of the rear room revealed papers and pads containing a total of one hundred thirty-three number bets.

Thus it is apparent that the Division has established the truth of the charge by a fair preponderance of the believable evidence, indeed by substantial evidence, and I recommend that the licensee be found guilty as charged.

Licensee has a prior record of suspension of license (1) by the municipal issuing authority for ten days effective May 4, 1970, for permitting licensed premises to be conducted as a nuisance, and (2) by the Director a fine of \$600 in lieu of fifteen-day net suspension for an "hours" violation, by order dated January 16, 1973.

It is further recommended that the license be suspended on the charge herein for ninety days (Re Granese, Bulletin 2092, Item 1M), to which should be added ten days by reason of two dissimilar violations occurring within the past five years, making a total of one hundred days.

Conclusions and Order

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

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

Accordingly, it is, on this 18th day of September 1973,

ORDERED that Plenary Retail Consumption License C-18, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Perk's Tavern, Inc. t/a Perk's Tavern for premises 555 Ocean Avenue, Jersey City, be and the same is hereby suspended for one hundred (100) days, commencing 2:00 a.m. Monday, October 1, 1973 and terminating 2:00 a.m. Wednesday, January 9, 1974.

ROBERT E. BOWER  
DIRECTOR

4. NOTICE TO MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES - REDUCING DISCOUNT FOR CASH PAYMENT WITHIN (7) DAYS - EXCLUSIVE OF SALES TAX - AMENDING RULE 2(b) OF STATE REGULATION NO. 34.

NOTICE TO ALL LICENSEES:

On October 31, 1973, I amended the first paragraph of Rule 2(b) of Division Regulation No. 34, effective November 1, 1973 to provide as follows (additions indicated by underscoring, deletions indicated within brackets):

Manufacturers and wholesalers of alcoholic beverages other than malt alcoholic beverages, intending to sell such alcoholic beverages to retailers, shall file with the Director not later than the twentieth day of February, May, August and November of each year price and discount listings as provided for and as limited in this Rule, containing as to each alcoholic beverage listed (1) its correct brand or trade name, (2) its nature and type, (3) its age and proof or alcoholic content when stated on the label, (4) the number of unit containers per case, (5) the capacity of each unit container, and (6) the wholesale bottle and standard case prices and, at the option of the manufacturer or wholesaler, the one-half and one-quarter standard case prices, which prices shall be individual for each alcoholic beverage and not in combination with any other alcoholic beverage. Said listing may contain a statement of any discount to be allowed; provided, however, that a discount allowed to a retailer shall not exceed [two] one per centum [(2%)] (1%), to be allowed uniformly for payment in cash (including money order, certified

check or a cashier's or treasurer's or similar bank officer's check, but excluding ordinary check) at or before delivery or within seven (7) days thereafter, to be applicable to the total purchase price of a single complete delivery of an entire purchase order exclusive of state sales tax, but not applicable to any retailer whose name appears on the Division's Default List in effect on the date of delivery.

Joseph H. Lerner  
Acting Director

Promulgated October 31, 1973


Effective November 1, 1973

Filed with Secretary of State (N.J.) October 31, 1973

5. STATE LICENSES - NEW APPLICATION FILED.

Bacardi Imports, Inc.  
2205 Morris Avenue  
Union, New Jersey

Application filed October 29, 1973  
for place-to-place transfer of  
Plenary Wholesale License W-68 from  
2100 Biscayne Boulevard, Miami, Florida.

  
Robert E. Bower  
Director