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

BULLETIN 1965

April 13, 1971

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - RE PADDOCK LOUNGE, INC. - DIRECTOR AFFIRMED.

2. APPELLATE DECISIONS - CRANER & PILON v. PATERSON - SUPPLEMENTAL ORDER.

3. DISCIPLINARY PROCEEDINGS (Atlantic City) - LEWDNESS AND IMMORAL ACTIVITY (PROSTITUTION) - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 95 DAYS.

4. DISCIPLINARY PROCEEDINGS (Kearny) - GAMBLING (HORSE RACE AND NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - CLAIM OF INNOCENT OWNER OF U-HAUL MOTOR VEHICLE RECOGNIZED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

6. DISQUALIFICATION REMOVAL PROCEEDINGS - EIGHT PRIOR CONVICTIONS - DISQUALIFICATION REMOVED.

7. DISQUALIFICATION REMOVAL PROCEEDINGS - THEFT FROM UNITED STATES GOVERNMENT - DISQUALIFICATION REMOVED.

8. STATUTORY AUTOMATIC SUSPENSION (Wood-Ridge) - ORDER STAYING SUSPENSION.

9. DISQUALIFICATION REMOVAL PROCEEDINGS - PERJURY - DISQUALIFICATION REMOVED.

10. DISCIPLINARY PROCEEDINGS (Elizabeth) - GAMBLING (LOTTERY) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1965 April 13, 1971

1. COURT DECISIONS - RE PADDOCK LOUNGE, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 2114-69

PADDOCK LOUNGE, INC.,
t/a PADDOCK LOUNGE,

Plaintiff-Appellant,

v.

RICHARD C. McDONOUGH, DIRECTOR,
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
STATE OF NEW JERSEY,

Defendant-Respondent.

Argued February 22, 1971 - Decided March 4, 1971.

Before Judges Conford, Kolovsky and Carton.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Robert I. Ansell argued the cause for appellant (Messrs. Anschelewitz, Barr, Ansell & Bonello, attorneys).

Mr. John P. Sheridan, Jr., Deputy Attorney General, argued the cause for respondent (Mr. George F. Kugler, Jr., Attorney General, attorney; Mr. Stephen Skillman, Assistant Attorney General, of counsel).

PER CURIAM

(Appeal from decision in Re Paddock Lounge, Inc., t/a Paddock Lounge, Bulletin 1929, Item 3. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. APPELLATE DECISIONS - CRANER & PILON v. PATERSON - SUPPLEMENTAL ORDER.

JOHN A. CRANER & RAYMOND P. PILON t/a MUGGSY'S FRIENDLY TAVERN, Appellants, v. BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondents.	)	ON APPEAL ORDER

Craner & Brennan, Esqs., by John A. Craner, Esq., Attorneys for Appellants.
Joseph L. Conn, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Board of Alcoholic Beverage Control for the City of Paterson which suspended appellants' plenary retail consumption license for thirty-five days, effective November 20, 1970, for premises 839 Main Street, Paterson, after finding appellants guilty of certain violations of the rules and regulations of this Division and of the Alcoholic Beverage Law.

Prior to the date of this hearing, the Appellate Division of the Superior Court, on January 21, 1971, affirmed my Order (Craner & Pilon v. Paterson, Bulletin 1918, Item 1), which affirmed the action of the respondent in denying appellants' application for renewal of their plenary retail consumption license for the license year 1969-70 for the aforementioned premises (App. Div. No. A-1736-69, not officially reported, recorded in Bulletin 1953, Item 3). Consequently, this appeal has become moot.

Accordingly, it is, on this 17th day of February 1971,

ORDERED that the within appeal be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (PROSTITUTION) - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 95 DAYS.

In the Matter of Disciplinary Proceedings against	)	
RI-BO, INC. t/a Red Morgans Cocktail Lounge 27-29 S. Missouri Avenue Atlantic City, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-204, issued by the Board of Commissioners of the City of Atlantic City.	)	

Asbell & Ambrose, Esqs., by Benjamin Asbell, Esq., Attorneys for Licensee
Edward F. Ambrose, 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 June 18, 1970, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

In support of the charge the testimony of Agent G was offered. He testified that on June 18, 1970 about 10:45 p.m. he entered the licensed premises, having left agent B and two local detectives outside at a point of surveillance. He asked the bartender (later identified as John Tenuto) of the whereabouts of a female named Tonya, and was directed to the other side of the bar where she was seated.

The agent sat next to her and in her presence said to the bartender:

> "I am sure glad she came tonight. We had a date to get laid. How is she? Is she a good girl?"

to which the bartender replied "I don't know. I guess so." Shortly thereafter, when arrangements with the girl to engage in illicit sexual intercourse were completed, the agent asked the same bartender "How is the Sylvania Hotel? I am going to pay forty dollars. I don't want to get rapped in the head and lose the rest of my money" to which the bartender replied that, as far as he knew, the hotel was okay; he never heard of anybody "getting hurt" there.

The agent saw Agent B in back of him when the above part of the conversation ensued. Thereupon the agent and girl left the bar and went to the hotel where marked money was paid, the girl undressed, and the other agent and the two detectives, accompanied

by the proprietress, entered and the marked money was recovered. When the group returned to the bar and the licensee was apprised of the charge, the girl apologized to the licensee several times.

Agent B testified that he had followed Agent G into the tavern, a short time after Agent G entered, and walked up to where Agent G and the girl were seated and stood in back of them. He watched them and the bartender engage in conversation and heard Agent G ask the bartender about the Sylvania Hotel. He corroborated the testimony of Agent G in which the girl replied to the question, with the bartender directly in front of them, "Don't worry. We go there all the time." The remaining testimony of Agent B was also fully corroborative of that of Agent G.

The licensee presented the testimony of the bartender (John Tenuto) who stated that the agent came in, asked for the girl Tonya by name, and the girl entered shortly thereafter. The agent and the girl engaged in a conversation which he was unable to hear. He knew the girl and he admitted commenting about the hotel with what he said was intended sarcasm. To the question "Did he ask you if she was any good or anything like that?" his response was "He might have. I just didn't answer him if he did. I didn't know her. By that statement he might have meant did I go with her and find out if she was any good. How the hell would I know if she was any good?" Further, he was asked, "Did he tell you he had a date to get laid?"; his answer: "They all say that. A lot of customers come in and say that. That is a common statement."

On cross examination the witness admitted a few prostitutes frequent the place. The girl was a very frequent visitor of the premises, coming in three or four times a week. He declared the girl trims poodle dogs as her regular work. He was adamant that he was not working on the night of June 17 (a Wednesday) because Wednesday was one of his nights off.

The work schedule, or copy of it, was not available at the hearing, but by stipulation was to be received later. This was received and incorporated as part of the record. The schedule reveals the bartender witness was off June 17.

There can be no doubt that arrangements were made for an act of prostitution within the licensed premises. That this occurred is not persuasively denied. However, such arrangements, to be binding on the licensee, must be with the knowledge and consent of the licensee or his agents in order to impute that they were allowed, suffered or permitted. Club 309 v. Newark, Bulletin 1548, Item 2.

Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Gustamachio v. Brennan, 128 Conn. 356, 23 Atl. Rep. 2nd 140.

As Judge Jayne stated in Davidson v. Fornicola, 38 N.J. Super. 365 at 371:

> "In exacting proof by the preponderance or greater weight of the evidence, the law does not prescribe the necessary quantum of the overweight or the degree of excess of its superiority in credibility. A preponderance is attained where the evidence in its quality or credibility destroys and overbalances the equilibrium."

Also, testimony, to be believed, must not only proceed from the mouth 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).

Bearing these principles in mind, considering the full impact of all of the evidence is it sufficient to support a finding of guilt? The crux of the Division's evidence consists of fragments of conversation allegedly overheard by the bartender. The first sentence, presumably of implication, was by the bartender when he replied with a shrug "I don't know" in response to the question "We had a date to get laid....". And some minutes later, replying to a question concerning the hotel the agent asked "How is the Sylvania Hotel? I am going to pay forty dollars and I don't want to get rapped in the head and lose the rest of my money", to which the bartender replied "I never heard of anyone getting hurt there." The girl is alleged to have said "We go there all the time" in front of the bartender.

Taking all of the above as material from which the case is produced, with the exception of the sentence "We had a date to get laid" nothing in the conversations subsequent can be conclusively presumed to refer to prostitution, although it can be said to preponderantly relate to prostitution. Even the offending sentence itself, while obviously in poor taste from a conversational point of view, does not imply sexual relations for payment. However, the "forty dollars" referred to was tied, in the words directed to the bartender, with the price asked for by the girl. Both responses of the bartender that he never heard of anyone being hurt there or the girl commenting that "we go there all the time" are empty of any specific reference to or connotation with prostitution but related together lead to an inescapable conclusion that the subject was prostitution of which the bartender was quite aware.

From the cross examination of the bartender, he both denied, then admitted, hearing words "how is she; is she pretty good" which he interpreted "Is she a good lay." But he denied hearing the conversation in full as described by the agents. He admitted that prostitutes do, on occasion, frequent the licensed premises but the number is few because the management is strict.

Where positive proof is attempted to be overcome by negative testimony, the latter must be complete and must negative every link in the chain of the former. Meeker v. Boyland, 28 N.J.L. 276 (Sup. Ct. 1860). Ordinarily, affirmative testimony is stronger than negative testimony. Rapp v. Public Service Coordinated Transport, 9 N.J. 11 (Sup. Ct. 1952).

As the girl was a prostitute, came into the premises three or more times a week, was known to the bartender personally, that he had been a bartender there almost five years, knew the Sylvania Hotel as a "run down dive, a flea house"; all these facts lead to a conclusion that the bartender was aware that prostitution arrangements were developed at his bar.

It is apparent then that from the testimony of both agents as well as the bartender, the bartender was aware that there were women patronizing the licensed premises who would enter into arrangements to engage in prostitution. Were it established that a corporate member or employee procured the female to engage in sexual intercourse, the license would be revoked. Re Merjack Corp., Bulletin 998, Item 1.

The charge made here is a serious charge and a finding of guilt must be firmly based. No testimony need be believed but, rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100.

The comparative degree of proof by which a case must be established is the same in an administrative proceeding as in a judicial proceeding, i.e., by a preponderance of the evidence. 42 Am. Jr. Public Administrative Law, sec. 132, p.467, and cases cited therein.

It is therefore recommended, after considering all the facts and circumstances herein, that the licensee be found guilty of said charge.

Licensee has a prior adjudicated record. Effective May 2, 1966 its license was suspended by the Director for fifteen days for permitting unescorted females to solicit drinks at the expense of male patrons. (Re Ri-Bo, Inc., Bulletin 1677, Item 3.)

It is further recommended, that the license be suspended for ninety days (Re Stewart, Bulletin 1886, Item 3) to which should be added five days for the prior dissimilar violation within five years (Re Polo Chez, Inc., Bulletin 1947, Item 2), making a total of ninety-five 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, and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of February 1971,

ORDERED that Plenary Retail Consumption License C-204, issued by the Board of Commissioners of the City of Atlantic City to Ri-Bo, Inc., t/a Red Morgans Cocktail Lounge, for premises 27-29 S. Missouri Avenue, Atlantic City, be and the same is hereby suspended for ninety-five (95) days, commencing at 7:00 a.m. Monday, February 22, 1971, and terminating at 7:00 a.m. Friday, May 28, 1971.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE AND NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against Midland Cocktail Bar, Inc. t/a Midland Cocktail Bar Inc. 168 Midland Avenue Kearny, N.J., Holder of Plenary Retail Consumption License C-33, issued by the Town Council of the Town of Kearny.	CONCLUSIONS and ORDER

Simon, Dentsman & Noonan, Esqs., by John W. Noonan, Esq., Attorneys for Licensee
Francis P. Meehan, Jr., 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 June 27 and July 4, 1970 you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races, and further on said date of July 4, 1970, you allowed, permitted and suffered in and upon your licensed premises slips, tickets, records, documents, memoranda and other writings pertaining to aforesaid gambling activity and to other gambling activity, viz., lottery activity commonly known as the 'numbers game' and to 'sports events' betting; in violation of Rule 7 of State Regulation No. 20."

The Division's case was developed through the testimony of ABC Agent Sc, which was corroborated by Agent S. Agent Sc testified that he had visited the premises about nine times, many of which were prior to June 27, 1970, the first date specified in the charge. On that date he, in the company of Agent S, visited the licensed premises about noon, and found the bartender, David Brady, in charge. He also recognized, among the half dozen male patrons, two males whom he identified as Tony and Ray.

He observed Tony (later identified as Tony Marinaro) talking to three males, making notes, accepting money and making phone calls. He also observed Ray (later identified as Ray Rahner) have conversations with other patrons, make phone calls and specifically ask a patron "Was that the 2nd at Monmouth?" Ray referred to what is commonly called a "scratch sheet".

He further testified that while the bartender was on duty he paid no particular attention to these conversations and activities until he tried to place a bet with Ray, who refused to accept the bet, whereupon the witness, commenting to the bartender about the refusal, allegedly received this reply:

"Well, I don't care what Ray does. If he doesn't know you, he won't take any bets from you."

Sometime later he did induce Ray to accept a bet and did in fact place a bet in the amount of $5 with him. Simultaneously, Ray also accepted an $8 bet from another patron.

On the second date in the charge, July 4, 1970, at noon, both agents returned to the licensed premises, with "marked money" in their possession. Two other agents, B and N were in surveillance outside the licensed premises. Tony and Ray entered, were served by the bartender and took bets from patrons. Agent Sc made an $8 bet with Ray. A conversation with the bartender ensued with Agent Sc noting the placing of the bet and the bartender asked him the outcome of the prior bet. Ray had a conversation with another patron whose name was Corrigan, and an exchange of money took place. The other agents who were mentioned as being outside, together with a detective of the Kearny Police Department, entered and were informed of what had transpired; Ray, Tony and Corrigan were thereupon searched, and the "marked money" and betting slips were recovered.

The testimony of Agent S was stipulated as being corroborative.

In defense, the bartender David Brady, who was also an officer of the corporate licensee, testified that he saw no betting activity; never knew Marinaro or Rahner to take bets and denied discussing bets placed by the agent. He insisted that his only conversation with Agent Sc concerned pigeon racing.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948).

The testimony of the bartender in denying knowledge of betting activity, if true, shows an appalling inattention to people and things around him. However, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. Not only is it no defense that an employee of the licensee had not participated in the violation (which I am satisfied was not true in the instant case) but, in addition, licensees may not avoid their responsibility for conduct occurring on their premises by merely closing their eyes and ears, but must use them effectively to prevent the proscribed activities on their premises. Re McKernan, Bulletin 1519, Item 2; Bilowith v. Passaic, Bulletin 527, Item 3.

It may be noted that when the bartender was asked on direct examination if he had asked the agent "What happened to your horse last week" his response was "not that I can remember"; in the response to the question "Didn't he offer to buy you a drink if he won?" he replied "Not that I can remember"; and finally, when asked if he had responded to a question with the answer "If Ray doesn't know you, he won't take bets from you", his answer again was "Not that I can remember." It strains credulity for such important questions to have escaped recollection of the bartender.

The testimony of Agent Sc, corroborated by Agent S was exact and detailed; times, date and place were complete and there was no area of equivocation in the character of the testimony. Certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. Essex Holding Corp. v. Hock,

136 N.J.L. 28 (Sup. Ct. 1947).

Under the circumstances, and upon a careful examination of the evidence appearing herein, it is concluded that the Division has established the truth of the charge by a fair preponderance of of the believable evidence, and it is recommended that the licensee be found guilty of the said charge.

Absent prior adjudicated record of suspension of license it is recommended that the license be suspended for sixty days. Re Gasser, Bulletin 1941, Item 4.

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 February 1971,

ORDERED that Plenary Retail Consumption License C-33, issued by the Town Council of the Town of Kearny to Midland Cocktail Bar, Inc., t/a Midland Cocktail Bar, Inc., for premises 168 Midland Avenue, Kearny, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, February 22, 1971, and terminating at 2:00 a.m. Friday, April 23, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - CLAIM OF INNOCENT OWNER OF U-HAUL MOTOR VEHICLE RECOGNIZED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on July 10, 1970 of a quantity of alcoholic beverages and a Ford Van truck on the eastbound lane of Route 80, in the Borough of Fairfield, County of Essex and State of New Jersey.	Case No. 12,346 ON HEARING CONCLUSIONS AND ORDER

Richard Kops, Esq., appearing for claimant, U-Haul Co.
Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes of New Jersey and State Regulation No. 28 to determine whether 1842 containers of alcoholic beverages and one - 1969 Ford Van truck, more particularly described in a schedule attached hereto, made part hereof, and marked Schedule "A", seized on July 10, 1970 on the eastbound lane of Route 80 in the Borough of Fairfield, Essex County, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66 the U-Haul Company, Inc., the owner of the aforesaid vehicle, represented by counsel, appeared and sought its return.

Forfeiture of the alcoholic beverages was unopposed.

Reports of ABC agents and other documents presented in evidence with the consent of the claimant, and buttressed by additional testimony at this hearing by a New Jersey State trooper disclosed the following facts: On July 10, 1970 at 3:30 P.M. State Trooper Bershefski stopped the motor vehicle in question at the above location because of a traffic violation. While questioning the driver, identified as David Pressley, the trooper noticed a quantity of beer in the rear of the van.

Pressley admitted that he had no license or permit to transport alcoholic beverages through this State and stated that it was being transported to a rock festival in Rhode Island. The State trooper took possession of the alcoholic beverages and the motor vehicle, all of which were later adopted by agents of this Division.

Pressley was thereupon arrested, charged with the possession and transportation of alcoholic beverages without a license or permit in violation of R.S. 33:1-2 and R.S. 33:1-50(a) and held in bail pending a hearing in the Fairfield Municipal Court.

The file contained the affidavit of mailing, the affidavit of publication and the certificate of the Director establishing failure to obtain the requisite license or permit.

On July 29, 1970 the contents of one 12 ounce can, full, of Old Milwaukee Genuine Draft Beer, seized herein, was analyzed by the Division chemist, and his report, certified by the Director, established that it is an alcoholic beverage fit for beverage purposes with alcohol, by volume, of 4.28%. The seized alcohol is illicit because the same was transported and possessed without proper license or permit. R.S. 33:1-1(i); R.S. 33:1-66; R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

Edward Eustis, the office manager of Arcoa, Inc., which is the service company for the corporate claimant, testified that this vehicle was rented under the usual form of contract in these transactions.

Robert J. Clancy, a clerk and mechanic employed by the Hetzel's Texaco Service Station, Milwaukee, Wisconsin, one of the outlets of the claimant, gave the following account: This facility is the largest U-Haul dealer in the State of Wisconsin and normally rents a large number of U-Haul equipment each year.

He rented this U-Haul van to William T. Knight, III, who signed the usual form of contract. This contract which was admitted into evidence sets forth, as one of its conditions, that the lessee agrees not to transport "any intoxicating liquors or other contraband or cause the same (vehicle) to be used in violation of any municipal, county or state law..."

The contract also specifically provides that the vehicle is not to be removed from the State of Wisconsin. When the vehicle was rented, it was represented that the lessee planned to transport certain personal property to a rock festival in Walpaco, Wisconsin. He was satisfied that this vehicle was being operated for legitimate purposes.

The account given by the claimant herein appears to be credible and forthright. I am satisifed, by the evidence herein, that the claimant appears to have made a reasonable investigation considering the type of business in which it is engaged. The lessee agreed to all of the conditions of the contract and paid the usual deposit. I am further persuaded that the claimant did not know or have any reason to believe that Knight was engaged in illicit liquor activity, or that the said motor vehicle would be used in connection therewith. Re Seizure Case No. 11,869, Bulletin 1752, Item 7.

Accordingly, the motor vehicle will be ordered returned to the claimant. The claimant has specifically waived the filing of a Hearer's Report in this matter.

Accordingly, it is on this 8th day of February, 1971,

DETERMINED and ORDERED that the said motor vehicle be returned to the said claimant upon payment of reasonable costs of seizure and storage; and it is further

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

RICHARD C. McDONOUGH
DIRECTOR

SCHEDULE "A"

1842 - containers of alcoholic beverages
1 - 1969 Ford Van truck, Serial No. BE8677B, Wisconsin Registration C5771.

6. DISQUALIFICATION REMOVAL PROCEEDINGS - EIGHT PRIOR CONVICTIONS - DISQUALIFICATION REMOVED.

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 No. 2512		

BY THE DIRECTOR:

Petitioner requests the entry of an order removing his statutory disqualification resulting from eight convictions of crime involving moral turpitude.

The following is a summary of petitioner's record of convictions of crime.

1931 Breaking, entering and larceny - sentenced to Annandale (suspended)

1934 Breaking, entering and larceny - sentenced to three to four years in New Jersey State Prison

1937 Robbery - sentenced to five to seven years in New Jersey State Prison - carrying concealed weapons - suspended sentence

1949 Conspiracy to violate Federal Internal Revenue laws (operator of still) - sentenced in Federal Court in Newark to serve one year in Danburry

1950 Operating illicit still - fined $200 in Passaic County Court

1952 Conspiracy to violate Federal Internal Revenue laws - sentenced in Concord, New Hampshire to serve two years in Atlanta and fined $2,500

1956 Illicit transportation of distilled spirits - sentenced in Federal Court in Newark to six months

1958 Conspiracy to violate Federal Internal Revenue laws (distilling spirits without giving bond etc.) sentenced in Federal Court in Newark to serve eighteen months in Lewisburg and paroled in 1960.

Since the crimes of which petitioner was convicted involved the element of moral turpitude (Re Case No. 2181, Bulletin 1788, Item 5) he 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 (57 years old) testified that he is married and living with his wife and two minor children; he has resided at his present address for twenty-four years; he was employed as an electrician for many years; since his parole in 1960 he has been doing electrical work under a sub-contract given to him by his brother-in-law.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction in 1958 he has not been convicted of any crime or arrested.

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 (an insurance broker and two tailors) 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.

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

Accordingly, it is on this 19th day of February, 1971,

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

RICHARD C. McDONOUGH
DIRECTOR

7. DISQUALIFICATION REMOVAL PROCEEDINGS - THEFT FROM UNITED STATES GOVERNMENT - DISQUALIFICATION REMOVED.

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 No. 2509

BY THE DIRECTOR:

Petitioner's criminal record discloses that in 1957, he was convicted in the United States District Court of the crime of theft from the United States Government. He was thereupon sentenced to a suspended sentence, five years probation, and a fine of $250. In 1964 he was convicted of larceny in the Jersey City Municipal Court, and was sentenced therein to thirty days.

Since the crimes of which petitioner was convicted involved the element of moral turpitude (Re Case No. 1808, Bulletin 1559, Item 6) he 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 (36 years old) testified that he is married and living with his wife and two minor children; for the past twelve years he has resided at his present address and; he was employed as a manager on licensed premises.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that ever since his conviction in 1964 he has not been convicted of any crime or arrested.

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 (three postal employees) 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 reservation I have in granting the relief sought herein is based on the fact that although disqualified, he was employed as a manager on licensed premises in this State. I am, however, favorably influenced by three factors, viz., (a) testimony of his character witnesses, (b) his sworn testimony that he was unaware of his ineligibility to be associated with the alcoholic beverage industry in this State, and (c) his present attitude. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

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

Accordingly, it is on this 18th day of February, 1971,

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

RICHARD C. McDONOUGH
DIRECTOR

8. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #329)
In the Matter of a Petition to Lift)
the Automatic Suspension of Plenary)
Retail Distribution License D-4, ORDER
Issued by the Mayor and Council of)
the Borough of Wood-Ridge to)
)
FREDERICK A. WOLTZ)
263 Valley Boulevard)
Wood-Ridge, N. J.)
)

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on January 21, 1971, Frederick A. Woltz, petitioner, was fined $250 and $5 costs in the Wood-Ridge Municipal Court after pleading guilty to a charge of a sale of alcoholic beverages to a minor on November 21, 1970, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that the petitioner pleaded non vult to a charge of sale to minors in violation of Rule 1 of State Regulation No. 20 in disciplinary proceedings instituted by the municipal issuing authority against the said licensee.

It further appears that the licensee has voluntarily ceased any alcoholic beverage business since November 27, 1970 and intends to sell the same after final disposition of this matter is made by the local issuing authority.

A supplemental petition to lift the automatic suspension may be filed with me by the petitioner after the suspension has been served upon the resumption of the said operation.

In fairness to petitioner, I conclude that, at this time, the effect of the automatic suspension should be temporarily stayed. Re Novak and Kapitan, Bulletin 1669, Item 4.

Accordingly, it is, on this 18th day of February 1971,

ORDERED that the aforesaid automatic suspension of license D-4 be stayed pending the entry of a further order herein.

RICHARD C. McDONOUGH
DIRECTOR

9. DISQUALIFICATION REMOVAL PROCEEDINGS - PERJURY - DISQUALIFICATION REMOVED.

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 No. 2519	)	

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted of perjury in the Burlington County Court in 1953. He was sentenced to a term of one to five years in State Prison, and paroled on June 7, 1954.

Since the crime of which petitioner was convicted involved the element of moral turpitude (Re Case No. 978, Bulletin 936, Item 10) he 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 (49 years old) testified that he is married and living with his wife and four children; he has been in the newspaper publishing business most of his adult life.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State, and that ever since his conviction in 1953 he has not been convicted of any crime or arrested.

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 utility foreman, a supervisor of maintenance, and a retiree) 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.

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

Accordingly, it is, on this 22nd day of February, 1971,

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

RICHARD C. McDONOUGH
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - GAMBLING (LOTTERY) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
STANLEY MALLACK and HELEN M. MALLACK t/a Mallack's 521 Jackson Avenue Elizabeth, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-204, issued by the City Council of the City of Elizabeth.	)

Harry G. Hyra, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensees plead non vult to Charges (1) and (2) alleging that on November 19, 20, 25 and 27, 1971, they permitted the acceptance of football pool lottery bets on the licensed premises and, on November 27, 1971, possessed on the licensed premises tickets and participation rights in such gambling and lottery activity, in violation of Rules 6 and 7 of State Regulation No. 20.

Reports of the investigation disclose that the football pool bets and the tickets and participation rights used in the betting constituted and were part of commercialized gambling activity equivalent to the acceptance of horse race or numbers bets.

Licensees have a previous record of suspension of license by the municipal issuing authority for five days, effective October 6, 1969, for sale of alcoholic beverages to a minor.

The license will be suspended on the charges herein for sixty days (Re Pleasureland, Inc., Bulletin 1950, Item 7), to which will be added five days by reason of the record of suspension for dissimilar violation occurring within the past five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), or a total of sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 22nd day of February 1971,

ORDERED that Plenary Retail Consumption License C-204, issued by the City Council of the City of Elizabeth to Stanley Mallack and Helen M. Mallack, t/a Mallack's, for premises 521 Jackson Avenue, Elizabeth, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, March 8, 1971, and terminating at 2:00 a.m. Friday, May 7, 1971.

Richard C. McDonough
Director