

*Speelman*  
Ambrose

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

BULLETIN 1780

February 20, 1968

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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 1780

February 20, 1968

1. APPELLATE DECISIONS - BOYLE v. MONMOUTH BEACH AND CHANNEL CLUB.

JOSEPH AND DORIS BOYLE  
t/a BOYLE'S TAVERN,

Appellants,

v.

BOARD OF COMMISSIONERS OF THE  
BOROUGH OF MONMOUTH BEACH, and  
CHANNEL CLUB,

Respondents.

ON APPEAL  
ORDER

-----  
Joseph N. Dempsey, Esq., Attorney for Appellants.  
Parsons, Canzona, Blair & Warren, Esqs., by William G. Bassler,  
Esq., Attorneys for Respondent Borough.  
Klatsky, Himelman & Siegfried, Esqs., by William Himelman, Esq.  
Attorneys for Respondent Channel Club.

BY THE DIRECTOR:

Appellants appeal from the action of respondent Borough granting on July 1, 1967, a club license to respondent Channel Club for premises located at Mihm's Boat Yard, Monmouth Beach.

Prior to the hearing on appeal, the attorney for the appellants advised me by letter of December 29, 1967, that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 4th day of January 1968,

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

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE, NUMBERS AND SPORTING EVENTS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary  
Proceedings against

SCHULTZ REALTY CO.

t/a Platter Rest.

634 Gorge Rd.

Cliffside Park, N. J.

Holder of Plenary Retail Consumption

License C-9 issued by the Mayor and

Council of the Borough of Cliffside Park

CONCLUSIONS  
AND ORDER

Sherwin D. Lester, Esq., Attorney for Licensee.

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

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On February 23, 28, March 14, 18 and 21, 1967, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races on said dates of February 23 and March 21, 1967, in a lottery commonly known as the 'numbers game' on said dates of February 28, March 14 and 18, 1967, and on a sports event on said date of March 18, 1967; in violation of Rule 7 of State Regulation No. 20.

"2. On February 28, March 14 and 18, 1967, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

ABC Agents LS, R, S and Sa participated in the investigation which led to preferring the charges herein.

Agent LS testified that, accompanied by R, they entered the licensed premises (which was described as a neighborhood tavern) on March 14 at approximately 8:45 p.m. and positioned themselves at the bar. A male identified as George Alfiteri, also known as George the Greek, was tending bar. When questioned whether there was any occurrence of note, the agent replied, "At about 9 p.m. Agent R called George the Greek and asked him if he would take \$1 a day on No. 363 for 4 days, Wednesday, Thursday, Friday, and Saturday, and he handed him 4 \$1 bills, and after he handed him the money George repeated, '4 days at \$1 a day on 363.' He took the money and came from behind the bar and went into the kitchen and stayed there for about a minute, I guess, and came back out."

On cross examination, the witness admitted no marked money was used, no numbers slips were received and no arrests made.

Agent R testified that he entered the licensed premises alone on February 23 at noontime. Albert A. Colagreco, husband of a 50 per cent. stockholder of the corporate licensee (known as "Al" or "Moose") was tending bar. R observed a male enter and go directly to a male seated at the bar and ask, "Is the Cross running today?" The male at the bar removed a scratch sheet from his pocket, looked at it and responded, "Yes, he is running." R observed "the male who entered gave the male seated at the bar some money; the male accepted the money and put it in his pocket." It was the agent's opinion that the transaction between the two males was a horse race bet. At the time of this occurrence, Colagreco was approximately two feet away.

On February 28 R was accompanied in the investigation by Agents S and Sa. They entered the tavern at noontime and positioned themselves at the bar. Approximately ten patrons were in the barroom. Colagreco was tending bar. R noted the presence of George (who was seen tending bar at night) in the barroom. George was observed to answer the telephone twenty times during the two-hour stay of the agents in the tavern. On each occasion, George was observed to write on a slip of paper about 3 by 5 inches which he removed from his shirt pocket. A male approached George and said, "Here, George, here is \$2. Give me 228 for \$2." George wrote on the same slip he wrote on when answering the telephone. It was the agent's opinion that George had accepted a numbers bet.

R entered the tavern again on March 14 with LS (the Division's first witness) at 8:45 p.m. R called George over to their position at the bar and asked him "to take \$4 on 363 for Wednesday, Thursday, Friday, and Saturday, the 15th, 16th, 17th, and 18th." George took the \$4, entered the kitchen and, upon returning to the barroom, informed R, "You got 363 for Wednesday, Thursday, Friday, and Saturday." It was the agent's opinion that the transaction engaged in was a numbers bet.

On March 18, R, S and Sa entered the tavern at approximately 1:00 p.m. A male known as "Gabby" was tending bar. Approximately twenty patrons were in the barroom. Colagreco and Frank Angelotti (a stockholder of the licensee corporation) were in the tavern. Referring to a particular transaction which took place on that day, the agent testified: "One patron asked another patron where the Greek was. The patron asked Mr. Colagreco where the Greek was. He said, 'He is at the Alibi.' At that time one male was going down to see the Greek at the Alibi, the male who already asked for the Greek. I stopped the male and asked him where the Greek was. He said, 'He is at the Alibi.' I gave the male a dollar and said, 'Give the Greek 714 for me for today.'"

The sports event which was alleged to have occurred on March 18 and the occurrences of March 21 are not set forth in detail for the reason that it is my view that the Division did not sustain the burden of proving that the licensee allowed, permitted and suffered those offenses charged against it.

On cross examination, Agent R admitted that none of the transactions was reported to the local police.

Agent S corroborated the testimony of R concerning the activities in the licensed premises on February 28, March 18

and March 21. Specifically referring to February 28, he testified, "I observed George the Greek answer the telephone twenty times. On occasion the telephone would be answered by Al Colagreco, and Colagreco would come to the bar and say to the Greek, 'It is for you.' The telephone is located on a wall nearest the rest room, men's rest room. I made it a specific point to go by while George the Greek was on the phone, and I observed him writing numbers on a slip of paper at the telephone as I would go into the men's room, after which time I observed him go back to the bar and sit at the bar, and if the phone would ring again he would answer it also." He described the slip of paper as "about 3 by 5, 3 by 6, white slip of paper" which he kept in his shirt pocket. It was the agent's opinion that George was accepting numbers bets.

In defense of the charges, Frank P. Angelotti, one of the major stockholders and an officer of the licensee corporation, recalled seeing ABC Agents R and S in the tavern on March 18 and denied that gambling, in any form, occurred therein.

Albert A. Colagreco, the daytime bartender of the licensee corporation, denied that he ever participated in any betting in the licensed premises or that any betting was ever carried on therein.

The attorney for the licensee argued that (1) the Division did not establish the charges by a fair preponderance of the credible evidence and (2) no physical evidence of gambling was presented; therefore, the Division did not sustain the burden of proving the charges.

It is readily apparent that the major point of inquiry presented for determination is factual.

In evaluating the testimony and its legal impact, 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 and Pittala v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the 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).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

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

I am persuaded that the testimony of Agent R, presented in a direct and detailed manner, was credible and

truly depicted the gambling activities which he described. His testimony was amply corroborated by the testimony of the other ABC agents. I am particularly impressed by the overwhelming evidence of the numbers betting activity engaged in over the telephone in the licensed premises on February 28, 1967, by George Alfiteri (an employee of the licensee) who was seen to write numbers on paper while answering the telephone and who was also observed to accept a numbers bet from a patron on that day.

It is immaterial that no physical evidence of gambling was found in the licensed premises. Vide, State v. Campisi, 49 N.J. 238 (1967), wherein the Supreme Court held that tangible records of bets made by a bookmaker are not a prerequisite to a finding of guilt.

An additional basic principle is worthy of emphasis. In disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Knowledge on the part of the employer is not a prerequisite to a finding of guilt where an employee participates in the misdeeds. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

My evaluation and consideration of the testimony and the legal principles applicable thereto lead me to the conclusion that the Division has established the truth of the charges herein by a fair preponderance of the evidence. I recommend that the licensee be found guilty of said charges which particularly refer to the dates of February 23, 28, March 14 and 18, 1967 only. I further recommend a finding of not guilty as to so much of Charge 1 as refers to a sports event on March 18, 1967 and as refers to March 21, 1967.

The licensee has no prior record of suspension of license. I further recommend that the license be suspended for sixty days. Re Galamb, Bulletin 1755, Item 3.

#### Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof were filed with me on behalf of the licensee pursuant to Rule 6 of State Regulation No. 16. The licensee argues (1) that the evidence herein does not support a factual finding of guilt, and (2) the recommended penalty is too severe.

With respect to the factual finding question, the licensee contends that the credibility of the Division witnesses must be adversely affected by their admitted failure to seize the betting slips observed by them on the licensed premises or to take some sort of other action such as immediate communication with another law enforcement agency to apprehend those engaged in gambling activities at the tavern in question. As I read the licensee's written argument, its position is not that physical evidence is a sine qua non to establish a gambling offense on this point (see State v. DeStasio, 49 N.J. 247, 253 (1967) holding that with respect to bookmaking "It makes no difference whether the bets are committed to paper or memory, and hence it is not necessary to prove a tangible record was made" but that the testimony of the Division agents is so improbable that corroborative evidence, such as betting slips, is necessary to give credence to their testimony and the absence of such corroborative evidence warrants the rejection of this testimony.

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I do not agree with this contention. It is not improbable that the agents took no action during the course of their continued investigation which would disclose their identities or possibly interfere with their investigation of this and at least one other licensed premises in the area in question. It is common knowledge that investigations of this type normally involve a number of visits to licensed premises by the investigating officer notwithstanding the fact that gambling activity may have been observed on one or more of such visits. See, for example, Re Paula, Bulletin 1762, Item 2, involving gambling activities at a tavern observed by a State Trooper on five different dates, and Re Robbins-Nicholson, Inc., Bulletin 1748, Item 2, involving such activities observed by a Division Agent on seven different occasions.

I have carefully considered the entire record herein and make the following findings:

1. There is insufficient evidence to establish the licensee's guilt with respect to the dates of February 23 or March 18, 1967. On February 23 Agent R was unable to hear any conversation between two unidentified male patrons at the time an exchange of money took place between them. Although their prior conversation indicated that the passing of their money may have been a bet on a horse named "Cross", the lack of further details concerning this transaction impels me to hold the licensee unaccountable for its occurrence. As to the March 18 numbers bet incident, there is insufficient evidence that any employee of the licensee knew or should have known of the placing of a numbers bet with an unidentified patron. Furthermore, there is a conflict between the testimony of Agents R and S as to who placed this bet.

2. I will accept the Hearer's recommended "not guilty" findings with respect to the alleged sporting event bet on March 18 and the events of March 21.

3. I find that on February 28, 1967 the licensee, through its agents Colagreco and Alfiteri, allowed, permitted and suffered a lottery numbers bet of \$2 to be placed with Alfiteri by an unidentified male patron. This bet took place right at the bar of the licensed premises and directly in front of Colagreco who was on duty as bartender at the time. Moreover, it had been preceded by the numerous telephone calls for Alfiteri which should have alerted Colagreco to the suspicious actions of Alfiteri. Colagreco knew or should have known of this bet; his general disclaimer, "To my knowledge, no betting went on in the premises", is unacceptable in such circumstances. Nor is the intimation by him that his hearing is deficient a defense to the charge. "It has been consistently held that licensees and their agents must use their eyes and ears, and use them effectively, to prevent improper use of the premises." Re Paula, supra.

4. I further find that on March 14, 1967 the licensee, through its agent Alfiteri, allowed, permitted and suffered a \$4 lottery numbers bet to be placed by Agent R. This bet was in fact accepted by Alfiteri directly over the bar while he was acting as bartender. No contradictory evidence was presented by the licensee.

I therefore conclude that the licensee's guilt has

been established by more than a fair preponderance of the believable evidence herein so far as the making and accepting of lottery bets and the sale of participation rights in a lottery in and upon the licensed premises on February 28 and March 14, 1967, in violation of Rules 7 and 6 respectively of State Regulation No. 20, as alleged in Charges 1 and 2 herein. The balance of these charges are dismissed.

As to the penalty to be imposed, I will accept the Hearer's recommendation that the license be suspended for sixty days. This is the minimum penalty imposed in unaggravated first-offense cases where any numbers activity takes place; its imposition is not "severe" in the instant proceeding, as alleged by the licensee.

Accordingly, it is, on this 8th day of January 1968,

ORDERED that Plenary Retail Consumption License C-9, issued by the Mayor and Council of the Borough of Cliffside Park to Schultz Realty Co., t/a Platter Rest., for premises 634 Gorge Road, Cliffside Park, be and the same is hereby suspended for sixty (60) days, commencing at 3 a.m. Monday, January 15, 1968, and terminating at 3 a.m. Friday, March 15, 1968.

JOSEPH P. LORDI  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) -  
PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS,  
LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

FRANK & JOHN'S MARINA, INC.  
t/a Frank & John's Marina  
33 Laurel Avenue  
Keansburg, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-20 issued by the Municipal  
Council of the Borough of Keansburg

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Licensee, by John A. Wilson, President, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on November 21 and 29, 1967, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective October 18, 1965, for sale in violation of State Regulation No. 38.

The prior record of suspension of license for dissimilar violation within the past five years considered, the license will be suspended for sixty-five days, with remission of five days for the plea entered, leaving a net suspension of



sixty days. Re Mulhearn, Bulletin 1752, Item 3.

Accordingly, it is, on this 8th day of January, 1968,

ORDERED that Plenary Retail Consumption License C-20, issued by the Municipal Council of the Borough of Keansburg to Frank & John's Marina, Inc., t/a Frank & John's Marina, for premises 33 Laurel Avenue, Keansburg, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, January 15, 1968, and terminating at 2:00 a.m. Friday, March 15, 1968.

JOSEPH P. LORDI  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

MARGARET REIKER  
t/a Marge's Tavern  
125 Third Street  
Passaic, N. J. )

) CONCLUSIONS  
) AND ORDER

Holder of Plenary Retail Consumption )  
License C-82 issued by the Board of )  
Commissioners of the City of Passaic )

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Saltzman and Swartz, Esqs., by Edward H. Saltzman, Esq.,  
Attorneys for Licensee.

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

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on May 24, 26 and June 2, 1967, she variously permitted acceptance of numbers and horse race bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Galamb, Bulletin 1755, Item 3.

Accordingly, it is, on this 4th day of January, 1968,

ORDERED that Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of Passaic to Margaret Reiker, t/a Marge's Tavern, 125 Third Street, Passaic, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Thursday, January 11, 1968, and terminating at 3:00 a.m. Wednesday, March 6, 1968.

JOSEPH P. LORDI  
DIRECTOR

5. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1967 THROUGH DECEMBER 31, 1967

	1st Quarter July, Aug., Sept.	2nd Quarter Oct., Nov., Dec.	Total
<b>ARRESTS:</b>			
Total number of persons arrested	46	28	74
Licensees and employees	16	15	31
Bootleggers	29	13	42
ABC Agent impersonator	1	-	1
<b>SEIZURES:</b>			
Motor vehicles - cars	1	-	1
- trucks	-	1	1
Stillis - 50 gallons or under	1	1	2
Mash - gallons	-	320	320
Distilled alcoholic beverages - gallons	15.39	73.51	88.90
Wine - gallons	13.06	.47	13.53
Brewed malt alcoholic beverages - gallons	167.30	52.66	219.96
<b>RETAIL LICENSEES:</b>			
Premises inspected	1,676	1,988	3,664
Premises where alcoholic beverages were gauged	1,432	1,658	3,090
Bottles gauged	22,834	25,709	48,543
Premises where violations were found	375	594	969
Violations found	499	508	1,007
No Form E-141-A on premises	224	344	568
Unqualified employees	162	97	259
Application copy not available	52	66	118
Other mercantile business	12	16	28
Disposal permit necessary	6	11	17
Prohibited signs	1	2	3
Improper beer taps	1	1	2
Other violations	41	80	121
<b>STATE LICENSEES:</b>			
Premises inspected	78	47	125
License applications investigated	30	17	47
<b>COMPLAINTS:</b>			
Complaints assigned for investigation	1,087	1,171	2,258
Investigations completed	1,086	1,176	2,262
Investigations pending	(273)	(318)	(318)
<b>LABORATORY:</b>			
Analyses made	80	224	304
Refills from licensed premises - bottles	32	161	193
Bottles from unlicensed premises	16	21	37
<b>IDENTIFICATION:</b>			
Criminal fingerprint identifications made	19	23	42
Persons fingerprinted for non-criminal purposes	1,443	843	2,286
Ident. contacts made w/other enforcement agencies	980	578	1,558
<b>DISCIPLINARY PROCEEDINGS:</b>			
Cases transmitted to municipalities	22	19	41
Violations involved	23	21	44
Sale during prohibited hours	13	11	24
Sale to minors	10	7	17
Sale to non-members by club	-	2	2
Failure to close prem. during prohibited hours	-	1	1
Cases instituted at Division	94	53*	147*
Violations involved	120	61	181
Possessing liquor not truly labeled	30	6	36
Sale during prohibited hours	15	6	21
Permitting lottery activity on premises	10	11	21
Beverage Tax Law non-compliance	3	14	17
Sale to minors	8	7	15
Permitting bookmaking on premises	9	1	10
Fraud in application	6	2	8
Hindering investigation	2	3	5
Permitting gambling on premises	4	4	8
Permitting foul language on premises	3	1	4
Permitting immoral activity on premises	4	-	4
Conducting business as a nuisance	3	-	3
Sale to intoxicated persons	3	-	3
Permitting hostess activity on premises	2	1	3
Fraud and front	3	-	3
Retailer-to-retailer sales	3	-	3
Purchase from improper source	2	-	2
Failure to file notice of change in application	2	-	2
Sale outside scope of license	2	-	2
Sale below filed price	-	2	2
Failure to close premises during prohibited hours	-	2	2
Unqualified employees	2	-	2
Single instance of other violations	4	1	5

\*Includes one cancellation proceeding - license issued beyond limitation.

	1st Quarter July, Aug., Sept.	2nd Quarter Oct., Nov., Dec.	Total
<b>DISCIPLINARY PROCEEDINGS (CONTINUED)</b>			
Cases brought by municipalities on own initiative and reported to Division	42	44	86
Violations involved	53	70	123
Sale to minors	23	27	50
Permitting brawl, etc. on premises	4	10	14
Conducting business as a nuisance	5	3	8
Sale during prohibited hours	5	3	8
Failure to close prem. during prohibited hours	2	2	4
Unqualified employees	2	2	4
Permitting bookmaking on premises	4	-	4
Failure to afford view into prem. during prohibited hours	1	2	3
Permitting gambling on premises	-	2	2
Hindering investigation	-	2	2
Permitting lottery activity on premises	2	-	2
Employee working while intoxicated	1	1	2
Single instance of other violations	4	5	9
<b>HEARINGS HELD AT DIVISION:</b>			
Total number of hearings held	138	116	254
Appeals	25	17	42
Disciplinary proceedings	85	58	143
Eligibility	20	19	39
Seizures	4	5	9
Tax Revocations	2	12	14
Order to show cause	2	-	2
Hearings on Petitions	-	3	3
<b>STATE LICENSES AND PERMITS ISSUED:</b>			
Total number issued	5,275	4,694	9,969
Licenses	631	11	642
Solicitors' permits	167	98	265
Employment permits	1,464	825	2,289
Disposal permits	183	172	355
Social affair permits	1,382	1,238	2,620
Wine permits	44	716	760
Miscellaneous permits	676	662	1,338
Transit insignia	615	907	1,522
Transit certificates	113	65	178
<b>OFFICE OF AMUSEMENT GAMES CONTROL:</b>			
Licenses issued	14	82	96
State Fair licenses	190	-	190
Premises inspected	1,117	13	1,130
Premises where violations were found	36	1	37
Number of violations found	40	1	41
Enforcement files established	30	38	68

JOSEPH M. KEEGAN  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

Dated: January 23, 1968

6. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER -  
PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary  
Proceedings against

FRANK W. CICCONE  
t/a Torch Lounge  
535 Ridge Road  
Lyndhurst, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-12, issued by the Board of  
Commissioners of the Township of  
Lyndhurst.

*Officer Appel*  
*1810-1*

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Mills, Doyle & Muir, Esqs., by Charles T. Hock, Esq., Attorneys  
for Licensee.

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

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following  
charge:

"On February 17, 1967, you, the holder of a New Jersey plenary retail consumption license, without authority of a special permit first obtained from the Director of the Division of Alcoholic Beverage Control, purchased or obtained four cases of alcoholic beverages from Frank & Red's Cocktail Lounge, Inc., t/a Losers Lounge, holder of a plenary retail consumption license for premises 895 Broadway, Newark, N. J.; in violation of Rule 15 of State Regulation No. 20."

Albert Meglio (called as a witness on behalf of the Division) gave the following account: He is the principal officer of Frank & Red's Cocktail Lounge, Inc. and has been a friend and patron of the subject licensee for the past two years. In the afternoon of February 17 the licensee told him that he might need some bottles of liquor as a loan until he received a shipment to replenish his stock. When Meglio arrived home, he telephoned his tavern and directed the person in charge to send four cases of alcoholic beverages to Ciccone's premises. This was done. Later that evening he received a telephone call from ABC Agent T who requested that he come to the subject licensed premises, where he identified the four cases which had been delivered. He added that the reason these alcoholic beverages were delivered was because he had offered to loan the licensee this liquor "if he was short."

Barry Cooperman testified that, while in Meglio's tavern on February 17, 1967, Meglio spoke to him on the telephone and requested that he deliver the said cases of liquor to the licensee's premises. He thereupon obtained four cases of whiskey from the back room of the tavern and, accompanied by one Alex Gronsky, delivered them to Ciccone's premises in his own car, which had no transit insignia. After

two of the cases had been taken into the premises and handed to the porter, the witness was accosted by Agent T and questioned.

ABC Agent T testified as follows: On the date in question, while at the licensed premises pursuant to an unrelated investigation, he observed Cooperman and Gronsky carrying cases of liquor into the subject premises. In addition to the two cases delivered to the porter at these premises there were two other cases on the back seat of the vehicle. Upon questioning these men he ascertained that they had no delivery invoice. Cooperman telephoned Meglio, who admitted that the liquor was his and that these cases were delivered to the licensee's premises at his request. At about 6:15 p.m. of that evening the licensee appeared at the premises and admitted that he "borrowed the liquor and would pay it back from his stock when he was replenished."

Frank W. Ciccone (the licensee herein) testified that when he met Meglio during the afternoon of February 17, 1967 he told him "I wasn't doing so good" and "if I need a couple of bottles I'll give you a call." He denied making a specific request for the four cases of alcoholic beverages and insisted that he did not intend to borrow the same until such request was made.

On cross examination Ciccone maintained that, while his stock was "low to medium", he had enough for the week although his delivery was not due until the end of the following week. He was then asked:

"Q Did you tell the agent, 'I don't know anything about them? I just borrowed them'? What did you say?

A I said, 'If I need them I borrow them.'"

And further:

"A If I need it I would borrow it and repay it with liquor when I got my order."

In evaluating the testimony herein it might be well to restate certain fundamental operating principles which are applicable in these proceedings. 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. These cases require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373.

No testimony need be believed but, rather, the Hearer must always credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (3rd Ed. 1940); Greenleaf Evidence, sec. 201. 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. Further, it is established that a licensee is responsible for the conduct of his employees and is fully accountable for their activities during their employment on licensed premises. Essex Holding Corp. v. Hock, 136 N.J.L. 28; Kravis v. Hock, supra.

Using these guiding principles, I find that the version presented by the licensee is incredible and does violence to common experience. It is absurd to believe that Meglio would have delivered four cases of quart bottles of alcoholic beverages without the clear understanding and definite request by the licensee. The licensee asserts that he merely wanted to borrow a few bottles and made no specific request as to quantity.

I am persuaded to the contrary. It is more realistic to infer that the licensee, who had been on the Default List for the six months prior to the date in question, was understandably short in supply, and that the delivery of the alcoholic beverages was fulfillment of the direct request of the licensee. The ABC agent's coincidental visit at the licensed premises, which occasioned the unexpected confrontation with the individuals delivering the liquor, was a fortuitous circumstance not anticipated by the licensee.

The attorney for the licensee argues that the licensee did not "obtain" these alcoholic beverages because Meglio "took it upon himself to make delivery" and thus there was no overt act by the licensee to secure the whiskey.

Rule 15 of State Regulation No. 20 states in its applicable part:

"No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control...."

The word "obtain" as defined in Webster's New International Dictionary (Second Edition) means "to gain possession of; to procure; to acquire, in any way." The acquisition of these alcoholic beverages by the licensee through his agent comes within the proscription of the said regulation. The porter who received them acted as the agent of and on behalf of the licensee regardless of whether he was given specific instructions by the licensee to receive the same.

On the basis of the evidence presented, it is concluded that the Division has established the truth of the charge by a fair preponderance of the credible evidence and, indeed, by substantial evidence. I recommend that the licensee be adjudged guilty.

Licensee has a previous record of suspension of license by the Director for thirty-five days effective August 2, 1966, for possession of liquor not truly labeled. Re Ciccone, Bulletin 1692, Item 8.

I further recommend that the license be suspended for fifteen days (Re Bruno Hardcastle, Inc., Bulletin 1767, Item 1), to which should be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Triano, Bulletin 1760, Item 13), or a total of twenty days.

Conclusions and Order

Exceptions to the Hearer's report with supportive argument were filed by the licensee's attorney pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions raise purely factual questions which have been considered in detail by the Hearer in his report and that they are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the Hearer's report and the exceptions filed thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of January, 1968,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the Township of Lyndhurst to Frank W. Ciccone, t/a Torch Lounge, for premises 535 Ridge Road, Lyndhurst, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, January 11, 1968, and terminating at 2:00 a.m. Wednesday, January 31, 1968.

JOSEPH P. LORDI  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

Harold Sachs )  
t/a M & S Tavern )  
35 Essex Street )  
Paterson, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-195 issued by the Board of )  
Alcoholic Beverage Control for the )  
City of Paterson. )

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Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq.,  
Attorneys for Licensee.  
Edward J. Sheils, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, October 22, 1967, he sold a pint bottle of gin for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for fifteen days effective May 14, 1962, for permitting a brawl on the licensed premises, by the Director for twenty days effective July 29, 1965, for sale in violation of State Regulation No. 38, and again for

forty days effective March 10, 1966, for similar violation and hindering investigation (Re Sachs, Bulletin 1635, Item 3; Bulletin 1668, Item 4), and by the municipal issuing authority for thirty days effective January 3, 1967, for permitting a brawl on the licensed premises.

The prior record of suspension of license for dissimilar violation in 1962 disregarded because occurring more than five years ago, but the prior record of two suspensions for similar violation within the past five years considered, the license will be suspended for forty-five days (Re Club Ali-Baba, Inc., Bulletin 1749, Item 4), to which will be added five days by reason of the record of suspension for dissimilar violation in 1967 within the past five years (Re Boysen's Sunset Tavern, Inc., Bulletin 1766, Item 3), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 8th day of January, 1968,

ORDERED that Plenary Retail Consumption License C-195, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Harold Sachs, t/a M & S Tavern, for premises 35 Essex Street, Paterson, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. Monday, January 15, 1968, and terminating at 3:00 a.m. Thursday, February 29, 1968.

JOSEPH P. LORDI  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY  
LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary	)	
Proceedings against	)	
PERONA FARMS, INC.	)	CONCLUSIONS
t/a PERONA FARMS	)	AND ORDER
Lake Lenape Road	)	
Box 508, Andover Township	)	
PO Andover R.D. 2, N. J.	)	
Holder of Plenary Retail Consumption	)	
License C-8, issued by the Township	)	
Committee of Andover Township.	)	

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Dolan and Dolan, Esqs., by Francis E. Bright, Esq., Attorneys  
for Licensee.

Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 20, 1967 it possessed alcoholic beverages in six bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Lucks, Bulletin 1765, Item 6.



Accordingly, it is, on this 9th day of January 1968,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of Andover Township to Peronal Farms, Inc., t/a Perona Farms, for premises on Lake Lenape Road, Box 508, Andover Township, be and the same is hereby suspended for twenty (20) days, commencing at 7 a.m. Tuesday, January 16, 1968, and terminating at 7 a.m. Monday, February 5, 1968.

JOSEPH P. LORDI  
DIRECTOR

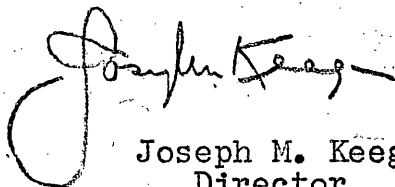
9. STATE LICENSES - NEW APPLICATIONS FILED.

Trenton Beverage & Wine Company  
130 Ward Avenue  
Trenton, New Jersey

Application filed February 19, 1968 for person-to-person transfer of Plenary Wholesale License W-48 from Trenton Beverage Company.

Leslie B. Johnson  
t/a Johnson's Beer & Soda Distributors  
521 Bay Avenue  
Manahawkin, New Jersey

Application filed February 19, 1968 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-103 from Nicholson's Beverages, Rear 1405 Kuser Road, Hamilton Township, New Jersey



Joseph M. Keegan  
Director