Director

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

BULLETIN 1913 June 30, 1970

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - HUDSON - BERGEN PACKAGE STORES ASSOCIATION v. PARAMUS AND INN MANAGEMENT CORP.

HUDSON-BERGEN PACKAGE STORES ASSOCIATION, Appellant, v. Mayor and Council of the Borough of Paramus, and Inn Management Corp., t/a Holiday Inn, Respondents.	)	ON APPEAL CONCLUSIONS AND ORDER

Samuel J. Davidson, Esq., Attorney for Appellant
Gary S. Stein, Esq., Attorney for Respondent Mayor and Council
Daniel Amster, Esq., Attorney for Respondent Inn Management Corp.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the respondent Mayor and Council of the Borough of Paramus (hereinafter Council) whereby it granted the application of respondent Inn Management Corp., t/a Holiday Inn, which operated a hotel containing at least one hundred guest sleeping rooms, for the issuance of a new plenary retail consumption license for premises located at 601 Marginal Road, Paramus.

The resolution adopted by the Council reads as follows:

"WHEREAS, INN MANAGEMENT CORP. has made application to the Borough of Paramus for a Plenary Retail Consumption License for premises located at 601 Marginal Road, Paramus, New Jersey, which application sets forth the matters and things required by N.J.S.A. 33:1-25; and

"WHEREAS, the applicant is the operator of a hotel containing at least one hundred (100) guest sleeping rooms; and

"WHEREAS, Notice of Application was published by said applicant in the Sunday Post, a newspaper printed in the English language, published and circulated in the Borough of Paramus as required by law and the Borough Clerk having received written objections and transmitted the same to the Mayor and Council of the Borough of Paramus, a hearing thereon was fixed for April 24, 1969, notice of the date, hour and place thereof being given to the applicant and to the objectors; and

"WHEREAS, said hearing was held on April 24, 1969 at which both the applicant and the objectors were repre-

sented by counsel and all such parties were given an opportunity to be heard; and

"WHEREAS, it was contended by the objectors that the application submitted by INN MANAGEMENT CORP. should be denied on the ground that HOLIDAY INNS OF AMERICA INC. has a beneficial interest in the application in violation of the provisions of N.J.S.A. 33:1-12.31; and

"WHEREAS, the Mayor and Council have determined that HOLIDAY INNS OF AMERICA INC. does not have a beneficial interest in the application within the meaning of that term as used in N.J.S.A. 33:1-12.31; and

"WHEREAS, Ordinance No. 603 of the Borough of Paramus authorizes the issuance of a Plenary Retail Consumption License to a person or firm who operates a hotel within the Borough of Paramus containing at least one hundred (100) guest sleeping rooms; and

"WHEREAS, the Mayor and Council of the Borough of Paramus, having made the investigation required by N.J.S.A. 33:1-35, are satisfied that the public interest would be served by the issuance of said license;

"NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Paramus that the application of INN MANAGEMENT CORP. for a new Plenary Retail Consumption License No. C-32 for premises located at 601 Marginal Road in the Borough of Paramus, for a hotel containing at least one hundred (100) sleeping rooms be and the same is hereby granted subject to the condition that said Plenary Retail Consumption License No. C-32 shall not be transferable, as provided by Ordinance No. 603 of the Borough of Paramus; and

"BE IT FURTHER RESOLVED that the Borough Clerk be and she is hereby authorized and directed to sign, issue and deliver said license to the applicant upon payment of the fee required by law."

In its petition of appeal appellant urges that the action of the Council was erroneous in that:

"(a) The granting of said License is repugnant to N.J.S.A. 33:1-12.1 because Inn Management Corp. conducts a franchised operation under the trade name 'Holiday Inn' on which royalties are paid for the use of said trade name to Holiday Inns of America, Inc., a Tennessee Corporation, under and pursuant to a License Agreement dated July 5, 1966 between Inn Management Corp., et als, and said Holiday Inns of America, Inc., and by an amendment or supplement thereto, based on room sales.

"(b) Since the trade name 'Holiday Inn' as used by Inn Management Corp. under its licensing agreement with Holiday Inns of America, Inc. at the subject premises is for an over-all operation, and under the said licensing agreement, royalties are paid based on room rental, the Plenary Retail Consumption License No. C-32 is used in promoting room rentals of rooms through a restaurant in which the licensed premises are located as an integral part of one operation, giving Holiday Inns of America, Inc.

a beneficial interest in the subject license.

"(c) Holiday Inns of America, Inc. which has acquired a beneficial interest in the subject license by the issuance thereof to Inn Management Corp. on July 5, 1966 holds similar beneficial interests in more than two Retail Liquor Licenses since which it acquired prior to or subsequent to August 2, 1962, the effective date of the adoption of N.J.S.A. 33:1-12.1.

"(d) Under a 'License Agreement' between Holiday Inns of America, Inc. and Inn Management Corp. it is the intention of the parties hereto that 'Inns' (including the subject Licensed premises) be operated by the Licensee (Inn Management Corp.), and all other such Licensees together with Inns then or thereafter operated by the Licensor, and those Inns operated or to be operated by other Licensees under similar agreements, will form a national system of such Inns, thus establishing an interest in the subject Plenary Retail Consumption License in Holiday Inns of America, Inc.

"(e) Inn Management Corp. has acknowledged and recognized an interest of Holiday Inns of America, Inc. in the trade name 'Holiday Inn' which the subject premises operates, and the exclusive right to use 'Holiday Inn' as a part of, or in connection with or applicable to the Holiday Inns of America, Inc. system, thus establishing an interest in the subject Plenary Retail Consumption License in Holiday Inns of America, Inc. by the very use of the trade name 'Holiday Inn' at 601 Marginal Road, Paramus, New Jersey.

"(f) In and by the hereinabove referred to 'License Agreement' between Inn Management Corp., trading as Holiday Inn and Holiday Inns of America, Inc., Inn Management Corp. accepted the license to use the trade name 'Holiday Inn' on condition that it maintain its premises and accommodations in a clean, safe, and orderly manner and to provide efficient, courteous and high quality 'Holiday Inn' service to the public, and to furnish inn accommodations, services and conveniences of the same quality, type and distinguishing characteristics as provided at the 'Holiday Inns' in and around Memphis to the end that the inns operated by the License under said agreement shall each help to create good will among the public for 'Holiday Inn' system inns as a whole, thus Holiday Inns of America, Inc. is given a form of supervision of the eat and drink facilities of the subject premises and by virtue thereof an interest in the subject Plenary Retail Consumption License operation contrary to N.J.S.A. 33:1-12.1.

"(g) The action of the Respondent, Mayor and Council of the Borough of Paramus, constitutes an abuse of discretion, is capricious, arbitrary and contrary to law."

Respondents in their separate answers deny that the action of the Council was contrary to law or was erroneous.

The factual complex is essentially undisputed. Holiday Inns of America, Inc., a Tennessee corporation authorized to do business in New Jersey (its corporate name was changed to Holiday Inns, Inc., Exhibit A-4 in evidence) on July 5, 1966 entered into

a license or franchise agreement with respondent Inn Mangement Corp., the operator and lessee of the hotel premises to be licensed, and Parkway Motel Associates, the owner-lessor of the land. The license agreement was received in evidence as Exhibit A-3.

In appellant's written memorandum submitted at the hearing it repeats the contentions contained in its petition of appeal and urges chiefly that, under and by virtue of the terms of the licensing or franchise agreement, Holiday Inns, Inc. had acquired a beneficial interest in and to the plenary retail consumption license issued by the Council although it was not the applicant therefor. More specifically, it maintains that, because pursuant to said agreement respondent Inn Management Corp. conducts a franchised operation under the trade name "Holiday Inn;" that because the operation of the restaurant wherein alcoholic beverages are sold and in which the licensed premises are located promotes the rentals of rooms; that because the agreement provides that royalties are paid based on room rental and because it must maintain a standard of accommodations and services of the same quality and type as provided by licensor Holiday Inns, Inc. at or near Memphis, Tennessee, the franchisor or licensor Holiday Inns, Inc. has acquired a beneficial interest in the plenary retail consumption license.

The license agreement, paragraph Second (e), provides that Inn Management Corp. shall be obligated

> "To pay to Licensor at Memphis, Tennessee, within fifteen (15) days after the end of each month, commencing with the month in which Licensee opens his Holiday Inn and continuing for the life of this agreement, as a royalty or further consideration for this license, an amount equal to fifteen (15¢) cents a night times the total number of rooms in Licensee's Holiday Inn or two and one-half percent (2-1/2%) of gross rooms revenue, whichever is greater."

Al Olshan (who is involved in the operation of the hotel complex and who was the only witness called to testify at the hearing) testified that Holiday Inns, Inc. holds no stock in Inn Management Corp., has no control over the hiring and firing of restaurant or bar employees, it does not share in the profits or losses resulting from the operation of the sale of alcoholic beverages, and that it does check on the cleanliness of the restaurant as part of its overall inspection. The restaurant operation aids the room rentals.

Thus it appears that the dispositive issue has been identified: Does the licensor Holiday Inns, Inc. possess a beneficial interest in the subject license?

It appears that the Division has not been called upon heretofore to determine the precise question involving a licensing or franchise agreement in conjunction with the instant factual setting.

In Grand Union Co. v. Sills, 43 N.J. 390 (1964) the court said:

> "The purpose underlying the legislative use of the phrase 'beneficial interest,' a phrase which appears throughout the law (Montana Catholic Missions v. Missoula County, 200 U.S. 118, 127-128, 26 S. Ct. 197, 50 L. Ed. 398,

402 (1906); In re Rogers' Estate, 15 N.J. Super. 189, 206 (Essex Cty. Ct. 1951); In re Armistead, 362 Mo. 960, 245 S.W. 2d 145, 148 (1952), seems clear enough; it, along with the comparable phrase 'directly or indirectly interested,' was contained in the original Control Act (L. 1933, c. 436, pp. 1193, 1205) and was intended to include ownership interests in the broad or equitable sense rather than in the narrow or technical sense...."

In the case of a landlord-tenant relationship (Re Club Parsippany, Bulletin 411, Item 8), Acting Commissioner Garrett held that, where the leasing agreement provided for a payment of a percentage of the gross receipts, disclosure of the arrangement must be made so that the issuing authority may determine whether the leasing agreement is bona fide and not a subterfuge to conceal a partnership or front arrangement.

In Formal Opinion 1964, No. 3, the Attorney General, upon being requested to render an opinion (1) concerning the validity of a lease entered into between a landlord who was the owner of more than two alcoholic beverage retail licenses and a tenant who operates a liquor store with rent based upon a percentage of gross sales and (2) whether such lease gives the landlord a beneficial interest in an additional license contrary to R.S. 33:1-12.31, concluded that if the rental agreement, considered as a whole, represents an acceptable landlord-tenant relationship, not entered into for the purpose of circumventing the provisions of the statute, such an agreement would not constitute a "beneficial interest" within the meaning of the statute. The test should be whether the agreement represents solely a reasonable method of compensating the landlord for the use of the premises or whether it is a device whereby the landlord can also derive benefits equivalent to a participation in the business conducted therein. The factors that could be considered include the extent of participation in gross receipts, the pre-existing relationship of the parties and whether or not the landlord has any right to control the manner of conducting the business.

After carefully considering all of the facts herein, the stipulations and the exhibits, I am of the opinion that the franchise operation under review is not repugnant to the Alcoholic Beverage Law or the rules and regulations of this Division. I find that the Council acted circumspectly and lawfully in determining that Holiday Inns, Inc. did not have a beneficial interest in the plenary retail consumption license it issued to respondent Inn Management Corp.

Accordingly, it is recommended that an order be entered affirming the action of respondent Council and dismissing the appeal.

Conclusions and Order

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

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

Accordingly, it is, on this 5th day of May 1970,

ORDERED that the action of the respondent Mayor and Council of the Borough of Paramus be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against

TOWN TAVERN OF BD. BROOK, INC.
13 Hamilton St.
Bound Brook, N.J.,

Holder of Plenary Retail Consumption License C-16 (for the 1968-69 and 1969-70 licensing periods) issued by the Borough Council of the Borough of Bound Brook.

CONCLUSIONS AND ORDER

Joseph C. Doren, Esq., Attorney 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 charges:

"1. On Saturday, March 22, 1969, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises tickets and participation rights in two lotteries, i.e., one commonly known as the 'numbers game' and the other as 'TTSC Raffle'; in violation of Rule 6 of State Regulation No. 20.

"2. On Saturday, March 22, 1969, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, books, records, documents, memoranda and other writings pertaining to unlawful games and gambling activity, viz., bets on horse races, 'sports events', i.e., basketball and baseball games, and in two lotteries, i.e., one commonly known as the 'numbers game' and the other as 'TTSC Raffle'; in violation of Rule 7 of State Regulation No. 20."

In behalf of the Division, Lieutenant Joseph Karkowski

of the Somerset County prosecutor's office, whose expertise in the investigations of bookmaking was admitted, testified that armed with a search warrant which authorized a search of the licensed premises (consisting of the street level tavern premises and the cellar underneath), he entered the licensed premises on March 22, 1969 at approximately 1:50 p.m. He was accompanied by other prosecutor detectives and two ABC agents at the time he executed the search warrant upon George L. Ziegler, the principal stockholder and president of the corporate-licensee, who was in active management of its business. The patronage at that time consisted of approximately twenty-seven to thirty persons.

During the course of the search, which was of three or four hours duration, Karkowski answered the telephone on approximately seven occasions. The individuals calling "would not identify themselves but just wanted to speak to Mr. Ziegler or George."

After confiscating some items from the bar area, the officers searched the cellar area.

In the cellar and in a desk used as a work area by Ziegler, the witness discovered a "packet of yellow tickets that are imprinted 'Basket of Cheer, T.T.S.C.,' and also a printed 'Date' with a line and 'Donation 50 cents,' and each ticket of 110 found in this packet bearing a different number on the bottom. The tickets are perforated." The right half contained a legend "Basket of Cheer" and had a place for a name and also a number which was identical with the left half of the ticket. It was the officer's opinion that these items were "tickets for a drawing, commonly called a lottery ticket, and they could be utilized for a drawing of any nature." These were received in evidence, and marked Exhibit D-2.

In a drawer underneath the bar near the cash register, the lieutenant found "various slips of paper that Mr. Ziegler made he said notations on that primarily deal with credit accounts of various customers, and on one of them there is a notation with the name 'Haas' and date and some writings apparently dealing with sales of liquor, and a bottom notation being the word 'Bets - $20' on it. Included in that packet of slips was another one which bears the first name and full names of four people with plus notations of figures which, in my opinion, could be a tallying of accounts which is often used by people who take or make bets." All of the slips were received in evidence and marked Exhibit D-3. The prosecutor conceded that many of the items were not relevant to the charges.

A copy of the New York Daily News dated March 22, 1969 was found on a cooler behind the bar near an extension telephone, by Detective Metzler (a member of the raiding party) who handed it to Lieutenant Karkowski. It was Karkowski's opinion that some of the ink notations on the upper right hand corner represent the line or point spreads on basketball games to be played on that day. The two lowest ink notations on the upper right hand corner of page 1 represent the point spread or odds on exhibition baseball games scheduled to be played that day. The ink notations on the lower center of page 1 and the upper right hand corner of page 2 represent a record of bets made on basketball games. It was also the officer's opinion that these were not bets taken from one bettor because he noted that the notations contained

opposing bets. The ink notations on the upper left hand corner of page 34 represent a numbers bet. The other ink notations on page 34 of the newspaper represent horse race bets. This newspaper was received in evidence as Exhibit D-4.

Detective Metzler found a second issue of the Daily News (also dated March 22, 1969) on top of the bar. It was immediately given to Lieutenant Karkowski. He stated that certain pencil markings on page 34 of the newspaper (which contained horse race entries at various race tracks) represented bets on horses. This was received in evidence as Exhibit D-5. The officer did not know who had made the notations. Ziegler denied knowledge of the notations made on the various papers found in the premises. The officers departed the premises at approximately 5:00 p.m.

On cross examination, Karkowski conceded that he did not know who made the notations on D-4 and 5 (the newspapers) nor did he know when or where the markings were made.

The report of the State Police laboratory concerning the writing on the newspapers did not establish that the writings were Ziegler's. He, of course, did not know whether those writings represented bets made with Ziegler or anyone else connected with the licensee.

Concerning Exhibit D-2, Karkowski testified that they were "typical lottery or drawing tickets that can be utilized for a Basket of Cheer or any other purpose or drawing." The tickets were unused. The following testimony was then elicited:

"Q Did he [Ziegler] talk to you about the Basket of Cheer?
A We had some conversation along that line. I think he did mention he had been questioned about those tickets some time before.
Q Isn't it a fact he told you he was not only questioned but they were taken away from him and these were tickets that must have been overlooked by the ABC men when they were there when they originally picked them up?
A I believe he said that.
Q He said he was as surprised as you were when you found them?
A That I don't know.
Q But he did tell you they must have been tickets the ABC overlooked when they made the other raid; is that correct?
A He mentioned he had been questioned by the ABC about it.
Q And these must have been tickets they apparently did not pick up when they were there?
A Yes, sir."

Concerning one of the slips which is a part of D-3 in evidence, Karkowski testified as follows:

"Q I show you one of the slips in there which is 'Skippy H, plus 45.' What is that?
A That could be --

Q Not 'could'. What is it? If you don't know say so.
A This is an accounting between Mr. Ziegler and four individuals of money owed to those individuals.
Q Or do they owe it to him? Which is it?
A No. That follows a pattern of them owing debts to Mr. Ziegler.
Q How would you come to that conclusion with that pattern?
A 'Skippy H' shows 'plus 45,' which means Skippy is $45 ahead of whatever action he is involved in. 'Phil' is 'plus 50.' 'Pete Baron' is 'plus 160.'. 'Russ P' is 'plus 60.' Those are typical notations of bettors being ahead of a bookmaker, usually signified by a 'plus.' If they are losing money with the book the general designation is a minus."

Karkowski expressed no opinion as to when that slip was written. Upon questioning Ziegler concerning this particular slip, Ziegler informed him that he did not know what it meant. He was positive that Ziegler did not tell him that the figures represented amounts due to patrons and credited for the purchase of drinks at a future date. He then testified that, upon questioning Ziegler about the slips, Ziegler responded "it was booze to the persons he was lending."

In defense of the charge, George L. Ziegler testified that none of the writings contained in the newspapers, marked D-4 and 5 in evidence, was made by him. He had no knowledge of who made the writings.

Continuing, Ziegler testified:

> "It is standard procedure every night when the paper man stops there we always buy a couple. Various patrons buy a couple. Sometimes we find up to 3,4, or 5 newspapers there in the tavern, sometimes 1, sometimes people steal ours when they come into the place and we haven't got them at the end of the day."

He had not seen the writings on the newspapers prior to having them called to his attention by Karkowski.

Concerning the slips marked D-3 in evidence, some represented credits for drinks due patrons. For example, when several patrons would drink together and would purchase drinks for each other and one of them drank less than the others, he would receive a credit for a drink that he could order at a future date.

Particularly referring to a slip which bears a writing at the top "Haas" and "12-22", the witness explained that all of the slips are in his handwriting and the sum $28.50 represents the total sum due on account of the sale of bottled alcoholic beverages to a patron named Haas. He explained the bottom notation "Bets, $20" in this manner: he goes to the track several times a year; when he goes with someone like Haas who owes him money, he would request his debtor to place a bet for him and credit the bets to the amount.

He had never accepted a bet in the licensed premises; he never observed betting activity in the licensed premises; nor does he permit the acceptance of bets therein.

Concerning the raffle tickets marked D-2 in evidence, Ziegler testified that, approximately four years ago, he had 2,000 tickets printed for use by an unincorporated club, the membership being confined to patrons of the licensed premises. The club held raffles occasionally. On December 23, 1968, a quantity of raffle tickets, that were dated and to be used in conducting a raffle on that day, were seized by ABC agents. Ziegler admitted receiving a letter from the ABC in which "...they quoted all the laws violated. It did explain even the paraphernalia as such on the premises was a violation."

On March 22, 1969 (the date alleged in the charges) the raiding party found the balance of the usused raffle tickets. Subsequent to December, 1968 neither he nor the club engaged in raffle activities. The raffle tickets were discovered in a desk drawer. He was unaware of their existence.

Sheila C. Brennan, who had been employed as a barmaid at the licensed premises for approximately four years, testified that the slips received in evidence as D-3 represent recordings of credit extended to steady patrons for purchases not paid for at the time of the purchase. She had not seen raffle tickets on or sold in the premises ever since the ABC agents confiscated them. Whenever she works the night shift, she purchased two newspapers.

Fred W. Haelig testified that he patronizes the licensed premises regularly and that he was in the premises on the afternoon of the raid. He never saw wagers being made therein. He was an active member of the club that sold the raffle tickets, D-2. The last time he saw them was in December 1968.

William Clark, who also patronizes the licensed premises regularly and is a club member, testified that, on frequent occasions, he had other patrons purchase drinks for him. Not being able to consume them, he would be given credit for them. He never observed anyone betting in the premises. He was made aware of the fact that the ABC had confiscated raffle tickets in the premises in December 1968. It was his impression that all of the tickets were confiscated.

In rebuttal, Lieutenant Karkowski testified that the yellow raffle tickets (Exhibit D-2, in evidence) were found by him on top of the desk, and it was so noted in the return of the search warrant.

In adjudicating matters of this kind, 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); Howard Tavern Inc. v. Division of Alcoholic Beverage Control, not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein,

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 under 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.

Referring to the slips marked D-3 in evidence, concededly the bulk of the slips represented entries made in the conduct of the tavern business.

Although two of the slips are suspect, namely the slip which bears the top item "Skippy H", "plus 45" and the slip which bears the top item "Haas 12-22" and at the bottom thereof bore the writing "Bets - $20.00", I am not convinced that the quantum of proof is sufficient to legally justify a finding of guilt as to these items. A finding of guilt cannot be predicated upon suspicion.

After reviewing the totality of the evidence concerning the two newspapers (Exhibits D-4 and D-5) it is my opinion that the proof is sufficient to sustain the charges as to these items. Although the writings on the newspapers could not be attributed to Ziegler, that is not an ingredient of the charge. I am mindful of the fact that the newspapers were currently dated and that the writings and markings thereon were necessarily of current origin. It is also noteworthy that there were opposing bets marked thereon which raises an inference that a "booking" of bets occurred.

I am further mindful of the fact that on the approximately seven occasions that Karkowski answered the telephone, the individual calling refused to identify himself after asking for Ziegler or George.

Referring to Exhibit D-2 in evidence, Lieutenant Karkowski testified that they represent "tickets for a drawing, commonly called a lottery ticket, and they could be utilized for a drawing of any nature." They, therefore, clearly come within the proscription of Rules 6 and 7 of State Regulation No. 20. Ziegler's testimony that he was unaware of their presence in the licensed premises and that he had no intention of conducting a drawing with them is of no consequence in the determination of this matter.

The pertinent part of each rule reads that "No licensee shall...allow, permit or suffer ... in or upon the licensed premises any ticket, etc., ..." (Emphasis added.) In view thereof, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charges in so far as they relate to the possession of the tickets for a drawing or raffle tickets (D-2 in evidence) and possession of records, documents, memoranda and other writings pertaining to bets on horse races,

basketball and baseball games and in the lottery known as the "numbers game" (D-4 and D-5 in evidence).

The licensee has a prior record of suspension of license by the Director for fifteen days, effective August 30, 1966 for gambling activity (wagering on pool game). Re Town Tavern of Bound Brook, Inc., Bulletin 1680, Item 4 and Bulletin 1695, Item 13.

It is accordingly recommended that the license be suspended for sixty days (Re Mercurio, Bulletin 1798, Item 3), and that there be added five days by reason of the prior record of suspension for dissimilar violation within the past five years (cf. Re Gropp's Tavern, Inc., Bulletin 1867, Item 6), or a total of sixty-five days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

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

Accordingly, it is, on this 30th day of April 1970,

ORDERED that Plenary Retail Consumption License C-16, issued by the Borough Council of the Borough of Bound Brook to Town Tavern of Bd. Brook, Inc., for premises 13 Hamilton Street, Bound Brook, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2 a.m. Tuesday, May 19, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Thursday, July 23, 1970.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
Williams Bar and Grill, Inc. t/a Austin's Lounge 579 Perry Street Trenton, N.J.,	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-251, issued by the City Council of the City of Trenton.	)

Licensee, by Joseph Speciale, Vice-President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to charge alleging that on December 10, 1968, 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.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective July 25, 1966, for permitting a disturbance, brawl and unnecessary noise on the licensed premises.

The prior record of suspension of license for dissimilar violation occurring within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Ferrari and Ferrari, Bulletin 1802, Item 3.

Accordingly, it is, on this 8th day of May 1970,

ORDERED that Plenary Retail Consumption License C-251, issued by the City Council of the City of Trenton to Williams Bar and Grill, Inc., t/a Austin's Lounge, for premises 579 Perry Street, Trenton, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Thursday, May 28, 1970, and terminating at 2:00 a.m. Monday, June 22, 1970.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION.

In the Matter of Disciplinary Proceedings against

SAULEN, INC.
t/a Hialeah Club
1917 Atlantic Avenue &
13-15 N. Michigan Avenue
Atlantic City, N.J.,

Holder of Plenary Retail Consumption License C-137, issued by the Board of Commissioners of the City of Atlantic City.

SUPPLEMENTAL ORDER

Edwin H. Helfant, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On February 5, 1970, I entered an order herein deferring the license suspension of fifty-five days for permitting a female entertainer to accept drinks at the expense of a male patron, because it appeared that the licensed business was then being conducted only on a minimal basis, following conclusion of the summer season. Re Saulen, Inc., Bulletin 1900, Item 5.

Reports of recent investigation disclose that the licensed business has now been resumed for the current season. Consequently I am satisfied that the deferred suspension may now be imposed.

Accordingly, it is, on this 4th day of June 1970,

ORDERED that Plenary Retail Consumption License C-137, issued by the Board of Commissioners of the City of Atlantic City to Saulen, Inc., t/a Hialeah Club, for premises 1917 Atlantic Avenue & 13-15 N. Michigan Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 7:00 a.m. Thursday, June 18, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Wednesday, August 12, 1970.

RICHARD C. McDONOUGH
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

STRENGER & GREENBERG, TAVERN, A CORPORATION
293 Communipaw Ave.
Jersey City, N.J.,

Holder of Plenary Retail Consumption License C-259, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Licensee, by Sidney Strenger, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Friday, April 10, 1970, it sold a pint bottle of gin for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Glazer & King, Bulletin 1906, Item 10.

Accordingly, it is, on this 4th day of June 1970,

ORDERED that Plenary Retail Consumption License C-259, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Strenger & Greenberg, Tavern, A Corporation, for premises 293 Communipaw Ave., Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1970, commencing at 2:00 a.m. Monday, June 22, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Thursday, July 2, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RIO PORTO, INC.)
t/a Rio Lounge
Wildwood Manor Route 9) CONCLUSIONS
Middle Township AND ORDER
PO Rio Grande, N.J.,)

Holder of Plenary Retail Consumption)
License C-4, issued by the Township
Committee of Middle Township.)

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Cafiero and Balliette, Esqs., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers days between May 19, 1969 and February 20, 1970, it purchased alcoholic beverages from other retail licensees, in violation of Rule 15 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Brunetti's Lighthouse, Inc., Bulletin 1897, Item 7.

Accordingly, it is, on this 3rd day of June 1970,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of Middle Township to Rio Porto, Inc., t/a Rio Lounge, for premises Wildwood Manor Route 9, Middle Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, June 8, 1970, and terminating at 2:00 a.m. Thursday, June 18, 1970.

Richard C. McDonough
Director