

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

BULLETIN 1691

September 14, 1966

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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 1691

September 14, 1966

DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - FOUL LANGUAGE - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 85 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

Manruff Corp. )  
t/a Woody's Tap Room )  
40 West Grand Street )  
Elizabeth, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption )  
License C-252, issued by the City )  
Council of the City of Elizabeth )

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Licensee, by Frank J. Woodruff, Vice-President, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on June 5, 8-9 and 19, 1966, it conducted the licensed place of business as a nuisance, viz., permitting apparent male and female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) on June 19, 1966, it permitted foul, filthy and obscene language by the manager of the premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question, the licensed premises was patronized by large numbers of apparent homosexuals, i.e., on June 5 by approximately thirty males and four females out of a total patronage of fifty, on June 8-9 by four males out of a total patronage of ten, and on June 19 by approximately forty males and seven females out of a total patronage of seventy-five.

Licensee has a previous record of suspension of license (1) by the municipal issuing authority for ten days effective September 18, 1961, for sale during prohibited hours, and (2) by the Director for forty-five days effective January 7, 1964, for sale during prohibited hours, sale below filed price and foul language on the premises. Re Manruff Corp., Bulletin 1547, Item 4.

The license will be suspended on the first charge for sixty days (Re Blue Note, Inc., Bulletin 1674, Item 7) and on the second charge for twenty days, i.e., double the minimum suspension for a first offense, by reason of prior record in 1964 for similar violation within the past five years (Re Bernstein, Bulletin 1677, Item 2), to which will be added five days because of suspension of license for dissimilar violation in September 1961 within the past five years (Re Dzedzic, Bulletin 1676, Item 8), or a total of eighty-five days. Five days will be remitted for the plea entered, leaving a net suspension of eighty days.

Accordingly, it is, on this 12th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-252, issued by the City Council of the City of Elizabeth to Manruff Corp t/a Woody's Tap Room, for premises 40 West Grand Street, Elizabeth, be and the same is hereby suspended for eighty (80) days, commencing at 2:00 a.m. Monday, July 18, 1966, and terminating at 2:00 a.m. Thursday, October 6, 1966.

JOSEPH P. LORDI,  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - EMPLOYEE WORKING WHILE INTOXICATED - FOUL LANGUAGE - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against  
Marge's Cafe, Inc.  
t/a Marge's Cafe  
578 Spruce Street  
Camden, New Jersey  
Holder of Plenary Retail Consumption License C-204 for the year 1965-66 and C-19 for the year 1966-67, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden

CONCLUSIONS  
AND  
ORDER

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Joseph T. Sherman, 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 November 13, 1965, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages directly or indirectly to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. On November 13, 1965, you allowed, permitted and suffered a person actually or apparently intoxicated to work in and upon your licensed premises; in violation of Rule 24 of State Regulation No. 20.
- "3. On November 13, 1965, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

In behalf of the Division ABC Agent J testified that, pursuant to specific assignment to investigate an allegation of serving beverages to intoxicated persons and permitting foul and indecent language, he, together with Agent C, entered the licensed premises (described as a neighborhood tavern) on Saturday, November 13, 1965, at 12:01 a.m. They sat about midway of the "odd-shaped" bar. The patronage consisted of five males and two females. Tending bar was Joseph Tighe (identified as the president of the licensee corporation); also in the premises was Tighe's wife (Margaret A. Tighe) who was the secretary and treasurer of the licensee corporation.

The agents were served by Tighe. When Agent J was requested to describe the service and Tighe's appearance and demeanor, he testified that Tighe staggered to the place where the beer was kept, he spilled beer upon opening the bottle and spilled beer upon pouring it into the glass. Tighe's face was flushed, his clothes disheveled, he staggered about holding onto the bar and bumping into the wall. It was the agent's opinion that Tighe was intoxicated. Tighe was constantly drinking, and as the evening progressed he became more intoxicated. He was the only person tending bar.

At approximately "12:30, 12:35" he saw a person identified as John Smith enter the tavern. He staggered to the bar, fumbled in his pocket, had difficulty in pulling out change and threw it on the bar and shouted an obscenity in asking for a drink. His eyes appeared bloodshot. Tighe responded in kind, using an obscene word. Smith ordered a beer; Tighe opened a bottle with "great difficulty" and spilled some on the bar. Smith consumed the bottle of beer after spilling some on himself and on the bar. He couldn't hold the bottle steady, he appeared to be intoxicated. Tighe made additional servings to Smith, with Tighe having difficulty in getting the beer and opening the bottle, and Smith having difficulty in consuming it. He constantly spilled the beer. Smith appeared to get more intoxicated, louder and vulgar. Tighe continued to drink shots of whiskey.

He observed a person identified as Edward Penneo enter the licensed premises "somewhere around twelve-thirty" who appeared to be intoxicated. His clothes were disheveled, he staggered and spoke with a thick tongue. Tighe served Penneo three bottles of beer. The service and the consumption were similar to the service and consumption hereinabove described having reference to Smith.

Continuing, the agent testified that, throughout the period of time he was present, the patrons and Tighe used language that can undeniably be described as foul, filthy and obscene. The language was audible from one end of the bar to the other. The patrons were not admonished against the use of the foul language by either Mr. Tighe or Mrs. Tighe.

The agents identified themselves to Tighe, and Agent J advised him that in his opinion he and some patrons he was serving were intoxicated and that he permitted the use of foul and indecent language. Tighe made no response to that declaration. The agents then identified themselves to Mrs. Tighe and, upon making a similar declaration to her, she (Mrs. Tighe) responded that Mr. Tighe was drunk, that she thought several of the patrons were drunk, and that some used foul language.

On cross examination the agent admitted that none of the original seven patrons who were in the licensed premises when

the agents entered therein appeared to be intoxicated. However, foul language was generally used by some of the seven patrons.

Agent C testified that he, together with Agent J, participated in the investigation of the matter now on trial and entered the licensed premises on November 13, 1965 at 12:01 a.m.

In the interest of brevity I report that Agent C's testimony corroborated the testimony given by Agent J, hereinabove recited, as to the matters relevant to the charges filed against the licensee. It was his opinion that Tighe (who served as bartender) was intoxicated and that he served two apparently intoxicated patrons, namely, Smith and Penneo. He too described the loud, foul and obscene language that was used in the tavern.

Under vigorous cross examination the agent's testimony corroborated the testimony he gave on direct examination.

In defense of the charges Joseph M. Tighe testified that he was the president of the licensee corporation and that his wife was the secretary thereof. On Friday, November 12, at about 2 p.m., he accompanied his brother to his home and "had a few drinks out there." It was his sister-in-law's birthday. He returned home "about 5:30, 6 o'clock." That evening his wife tended bar until she asked to be relieved so that she could eat. This was about 11:45 p.m. Prior to that time he was in bed all evening, he had been taking medicine and had been receiving medical attention for several months prior thereto. He testified that, after relieving his wife, he did not drink, he never drinks while he is working.

Additionally he stated that he did not observe anyone entering the tavern who was apparently intoxicated. Mr. Penneo is seventy-two years old and "is sort of a little loud. The man wouldn't say 'damn' let alone any other curse word, and I know that from my heart. Mr. Penneo walks with a bounce. He had an operation on his stomach. He has a sack. He needs a lot of care. Once in a while he will take a shot, rarely, but he likes his beer. A little loud but I don't mean nothing." He served him a couple of beers. As to Mr. Smith, he did not serve him at all. His wife served him before he went behind the bar. Smith sat there with half a beer until the agents came in. As to the agents, Tighe testified, "They didn't even finish their beer when they introduced themselves to me, in there about 5 to 8 minutes, 5 minutes."

Finally, he denied selling alcoholic beverages to anyone whom he believed to be under the influence of intoxicating liquor, denied hearing or allowing anyone to use foul, filthy and obscene language and denied using foul language himself. He claimed there was a total of eight or nine persons in the tavern at the time in question. On cross examination he confirmed that he went to his sister-in-law's birthday party with his brother, arriving there at 2 p. m., admitting that he had "3, 4 or 5" drinks before leaving the party at "5, 5:30." He denied having any drinks either prior to or after the birthday party. After returning to the tavern at about 6:30 p.m. he went upstairs to the apartment to lie down because he had been taking medicine and "didn't feel too good." In response to the question "Were you also feeling the drinks you had had?", Tighe answered, "Well, I couldn't say. I know I didn't feel good, anyhow."

He reiterated that he relieved his wife at 11:45 p.m. because she wanted something to eat. She ate in the kitchen and thereafter sat on the patrons' side of the bar next to her sister.

He denied pouring beer out of a bottle for any patron. In response to the question as to whether or not Smith appeared to be intoxicated, Tighe replied, "Not exactly real intoxicated. He was in there, and he had a beer in front of him. I can't think now but he said something about being bothered." He admitted that Agent C climbed up on a stool to take down the license after exclaiming that Tighe was too drunk to get it. He denied that his wife admitted to the agents that Tighe was intoxicated.

Margaret Tighe (wife of the previous witness) testified that she tended bar at the licensed premises on the date in question. After being relieved at about "11, 11:30" she ate in the kitchen and then sat at the bar with her sister. The agents were in the tavern no longer than ten or fifteen minutes prior to identifying themselves. She had never seen Smith prior to the night in question. Neither Smith nor Penneo (whom she referred to as "Uncle Ed") was intoxicated. She saw no one enter the tavern who, in her opinion, was under the influence of intoxicating liquor. She heard no loud or offensive language, if she had she would have "said something to them." Her husband was suffering from a nervous condition on the night in question, he was not intoxicated. When questioned by the agents as to whether or not her husband was intoxicated she replied, "No."

On cross examination the witness admitted that, although her husband was sick, he would have a few drinks. He didn't go behind the bar on the Friday night November 12 after returning from the party because he was sick. She reiterated that her husband was sober when he returned to tending bar and did not stagger or spill any drinks.

Francis J. McDevitt testified that he patronizes the licensed premises and he was in the licensed premises on the night of Friday, November 12, into the morning of November 13. None of the patrons, including Smith or Penneo, was intoxicated. Tighe was not intoxicated. None of the patrons used profanity or indecent language. Due to a medical condition Penneo could not attend the hearing of the within matter.

On cross examination McDevitt testified that the agents entered the licensed premises "around a quarter to twelve, twelve o'clock, somewhere in there." They stayed in the tavern approximately one hour; "they came down and asked Mr. Penneo for his identification, and they asked Mr. Smith."

James H. Cramer testified that he and his wife were in the back room of the licensed premises on Friday night, November 12, 1965, "from nine o'clock on", and departed therefrom as the agents were entering the tavern. While he was there he heard no profane language and did not see anyone who appeared to be intoxicated.

John A. Salvatore testified that he entered the licensed premises on the evening of November 12 and remained there "quite a while that night." He did not hear profane language used, Penneo was not drunk, and Mr. Tighe did not drink that night.

On cross examination this witness admitted that, on sporadic occasions, he helped out at the tavern. Additionally he testified that he left the tavern at one or after one in the morning, and the agents were still in the premises when he departed from the tavern. It was his opinion that the agents had been in the tavern approximately "three-quarters of an hour, half an hour" before he left.

Inasmuch as the instant proceedings presents a purely factual question, I have carefully examined and evaluated the testimony presented herein. Additionally, I have carefully observed and noted the demeanor of all of the witnesses. I am forcefully persuaded that the version given by the ABC agents was credible and truly portrayed the occurrences of the date in question. On the other hand, I am convinced that the defense presented by the licensee was incredible and full of contradictions. Joseph Tighe testified that the agents were in the tavern from five to eight minutes when they identified themselves. Tighe's wife Margaret testified that the agents were in the tavern no longer than ten or fifteen minutes when the agents identified themselves. On the other hand, Francis J. McDevitt (a patron testifying in behalf of the licensee) stated that the agents entered the licensed premises at approximately 11:45 p.m. or 12 Midnight and remained in the premises approximately one hour. This closely approximated the agents' version as to the time spent in the licensed premises. Another patron (John A. Salvatore) testified that he didn't leave the tavern until 1 a.m. or later, and the agents were in the tavern approximately three-quarters of an hour or a half-hour prior to that time and the agents were still in the premises when he departed therefrom. Thus it is readily apparent that the testimony of the patrons clearly contradicted the testimony given by the operators of the licensed premises as to the length of time the ABC agents were in the premises and making their observations.

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 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.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527., Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1.

A careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, impel me to conclude that the Division has established the truth of Charges 1, 2 and 3 by a fair preponderance of the believable evidence and I so find. I recommend that the licensee be found guilty of said charges.

The licensee has no prior record of suspension of license. I further recommend that the license be suspended on the first charge for twenty days (Re Synakowski, Bulletin 1671, Item 8); on the second charge for twenty days (Re Urbanowski, Bulletin 1647, Item 5), and on the third charge for ten days (Re Zukas, Bulletin 1675, Item 3), or a total of fifty days

Conclusions and Order

No exceptions to the Hearer's report were filed within the time limited by 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 13th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Margé's Cafe; Inc., t/a Marge's Cafe, for premises 578 Spruce Street, Camden, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m. Wednesday, July 20, 1966, and terminating at 2:00 a.m. Thursday, September 8, 1966.

JOSEPH P. LORDI,  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

The Bamark Corp. )  
t/a Saxony Bar & Liquors )  
939 Market Street )  
Camden, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-110, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden )  
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Supnick and Bezich, Esqs., by Samuel L. Supnick, 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 March 4, 9 and 10, 1966, it permitted acceptance of numbers 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 Gatefern, Inc., Bulletin 1679, Item 5.

Accordingly, it is, on this 6th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-110, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to the Bamark Corp., t/a Saxony Bar & Liquors, for premises 939 Market Street, Camden, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Wednesday, July 13, 1966, and terminating at 2:00 a.m. Tuesday, September 6, 1966.

JOSEPH P. LORDI,  
DIRECTOR

4. DISQUALIFICATION REMOVAL PROCEEDINGS - ABDUCTION - ORDER REMOVING DISQUALIFICATION.

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. 2026

BY THE DIRECTOR:

Petitioner's criminal record discloses that on June 10, 1960, he was convicted in the Bergen County Court for abduction in violation of N.J.S. 2A:86-3 and, as a result thereof, was sentenced to serve an indeterminate term in Bordentown Reformatory (suspended), placed on probation for two years and fined \$100.00.

Since the crime of which petitioner was convicted involve the element of moral turpitude (see 58 C.J.S. 1205-06), 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 (33 years old) testified that he is married and living with his wife; that for the past thirty years he has lived in two municipalities in this State; that he has been employed by a transportation licensee for four years; that in a Division questionnaire submitted to him on February 15, 1966 by his employer, he admitted that he had been convicted of a crime and that until recently, when notified by this Division, he had no knowledge that he was ineligible for employment by a licensee.

Petitioner further testified that he is asking for the removal of his disqualification to be free to continue his present employment and that, ever since his conviction in 1960, he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against petitioner.

Petitioner produced three character witnesses (a county probation officer, a tax accountant and a superior law enforcement officer) 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 hesitation I have to grant the relief sought herein is based on the fact that the petitioner, although disqualified, worked for a licensee in this State. I am, however, favorably influenced by three factors--(a) that petitioner's criminal record shows only one conviction which took place about six years ago, (b) the testimony of his character witnesses, and (c) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee in this State. 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 of the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 1st day of July, 1966,

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

JOSEPH P. LORDI,  
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against  
Aldano's Inc.  
t/a Aldano's Inn  
U. S. Hwy #1  
North Brunswick Township  
PO RFD 4, New Brunswick, N.J.  
Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of North Brunswick

CONCLUSIONS  
AND  
ORDER

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Busch & Busch, Esqs., by Malcolm R. Busch, 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 March 1, 1966 and prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly to a person under the age of twenty-one (21) years, viz., Newton ---, age 18 and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, Newton --- testified that he was born May 19, 1947 and was 18 years of age (on the date of the hearing, March 28, 1966).

On March 1, 1966, accompanied by Edward ---, he arrived at the licensed premises at "11:30, 25 to 12" and parked his car in the parking lot adjoining the premises. Upon entering the premises, he went to the bar and asked the bartender for a beer. He was served a glass of beer which he consumed and, upon request of the same bartender, he was served a "couple more" beers. Upon consuming the beer, he asked for and received a container of beer. In the meantime, Edward had walked into the tavern and thereupon the minor took the container of beer to the car accompanied by Edward. Newton was not questioned as to his age, nor requested to produce proof as to his age, nor requested to make a written representation as to his age.

On cross examination, the witness testified that he was not certain that he could identify the bartender who served him, he had not seen the bartender either before or after the occurrence. He was certain it was not Daniel Armenti who served him, or Al or Carmine Covino.

Edward --- (also a minor) testified that he accompanied Newton to the licensed premises for the purpose of getting beer. They arrived at the licensed premises at 11:30 p.m. Newton entered first. About fifteen minutes later, Edward entered the tavern and saw Newton at the bar. A brown paper bag was on the bar to Newton's right. The pair departed from the tavern and returned to Newton's car, Newton carrying the paper bag. In the car Edward ascertained that the container in the bag contained beer.

On cross examination, it was disclosed that after the car proceeded for some distance, Edward had a conversation with a police officer. Upon questioning by the police officer, Edward did not reveal where the beer had been obtained.

At this point, Newton was recalled as a witness for the Division. He testified that he did not reveal the place where he had obtained the beer to the first police officer who questioned him. However, he did reveal the place to the second police officer.

On cross examination, the witness stated that he did not disclose the location where he bought the beer to the South Brunswick police but did reveal that information to the Franklin Township police.

ABC Agent D testified that he and Agent T met Newton and Edward at the State Police barracks at Princeton on Saturday, March 19, and were directed to the licensed premises by the youths. He described as "very accurate" the description they gave of the place. Agents D and T accompanied by the youths entered the licensed premises where the agents advised Daniel Armenti (president of the licensee corporation) that they were there investigating an incident which occurred on March 1, 1966. Daniel Armenti advised the agents that his brother George tended bar on the night of March 1 and he summoned George to the licensed premises. Upon arrival, George informed the agents that he had been on duty on March 1 from 6:00 p. m. to "probably" midnight. Questioning of Agent D then revealed the following:

"Q Did either of these boys pick out either of the Armentis as the one served him?

A No, sir.

Q What, if anything, did they say?

A They said they could not be positive.

Q What did the Armentis say? Particularly George.

A George said that he did not recall ever seeing him in the premises or serving him."

Immediately thereafter (on cross examination) the witness testified as follows:

"Q Did George say that he did not recall ever seeing him in the premises or did he say he did not recall seeing him in the premises that night?

A That night. He did say that night, yes.

Q He said he did not recall serving him that night?

A Yes, sir."

The agent testified that on his other visits to the licensed premises in the line of duty, made at night, he found the lighting to be ample.

In behalf of the licensee, George Armenti testified that he was employed as part time bartender at the licensed premises and was on duty on March 1, 1966, from 6:00 p. m. to midnight. He recalled seeing Newton in the licensed premises occasionally with some other patron. He was served food and soft drinks. It was his opinion that Newton was a minor and the fact that Newton ordered soft drinks fortified that belief. He denied that Newton was in the licensed premises on March 1 and that he served him beer for on-premises consumption and a container of beer to take out. He denied that he had ever seen Edward in the licensed premises until the night he came in with the agents.

Daniel Armenti, who is the secretary of the licensee corporation and acts in a managerial capacity, testified that George Armenti was the bartender on duty on March 1, 1966 from 6:00 p. m. to midnight. On the day in question, he was working in the stockroom and at intervals went through every area of the licensed premises. He relieved his brother George at midnight. He had seen Newton in the licensed premises on several occasions having food and soft drinks. He would not serve him anything other than soft drinks because his appearance was that of a minor. He did not see him on the licensed premises at all on March 1, 1966. He never saw Edward on the premises until March 19, 1966.

On cross examination, the witness reiterated that he did not see Newton or Edward on the licensed premises on March 1, 1966.

In rebuttal, Newton testified that he was served beer "a couple of times" prior to March 1, 1966. However, he could not identify the bartender.

The licensee's attorney argued, in effect, that the Division had not sustained the burden of proof by a fair preponderance of the credible evidence.

Primarily, it should be noted that we are presently dealing with a disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N. J. Super. 449 (App. Div. 1951). Thus, the proof must be supported by a fair preponder-

ance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the instant proceeding presents a purely factual question, the credibility of witnesses must be weighed. It is the function of an administrative agency to weigh the evidence, to determine the credibility of witnesses, to draw inferences and conclusions from the evidence, and to resolve the conflicts therein. Cf. Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super 501 (App.Div. 1956).

The guiding rule in these matters 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, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

Although the conduct of the minors on the date in question was less than exemplary, nonetheless I am persuaded that their version with respect to the alleged purchase depicted what actually occurred.

Although there was a lack of identification of the employee making the sale, I am of the opinion that the failure to identify the particular employee was motivated solely by the desire of the youth to protect his identity. Notwithstanding, it has long been established that the failure to identify the particular employee making the sale or service of alcoholic beverages to a minor is not fatal in disciplinary proceedings, provided it be established that the minor purchased, had served to him or was permitted to consume an alcoholic beverage in the licensed premises. Re Kurinsky and Ancel, Bulletin 1100, Item 7; Re Dante, Bulletin 771, Item 9; Ott's Incorporated v. Division of Alcoholic Beverage Control (App. Div.), decided March 29, 1962, not officially reported, reprinted in Bulletin 1444, Item 1.

While a finding of guilt should not be made where the evidences are in serious conflict and equally as consistent with innocence as with guilt, nevertheless a categorical denial by the licensee's witnesses should not be permitted to overcome clear and logical evidence to the contrary. I am of the opinion that a fair evaluation of the evidence clearly preponderates in favor of a finding of guilt, and I so recommend.

The licensee has no prior record of suspension of license. I further recommend that the license be suspended for fifteen days. Re F. & W. Beverage Service, Bulletin 1678, Item 9.

#### 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 transcript of the proceedings and the Hearer's report, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is, on this 11th day of July 1966,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of North Brunswick to Aldano's Inc., t/a Aldano's Inn, for premises U.S. Highway #1, North Brunswick, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, July 18, 1966, and terminating at 2 a.m. Tuesday, August 2, 1966.

JOSEPH P. LORDI  
DIRECTOR

DISCIPLINARY PROCEEDINGS - GAMBLING ("LIAR'S POKER") - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

GARY'S BAR, INC. )  
17 Centre Street )  
Newark, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-274, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark )

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Sarcone and Mascia, Esqs., by C. Robert Sarcone, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 26 and February 4 and 11, 1966, it permitted gambling (wagering on a pool game and the playing of "Liar's Poker"), in violation of Rule 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days effective October 13, 1959, for possessing alcoholic beverages not truly labeled (Re Gary's Bar, Inc., Bulletin 1309, Item 6) and by the municipal issuing authority for ten days effective January 7, 1963, for permitting a brawl on the licensed premises.

The prior record of suspension of license disregarded by reason of intervening changes of stockholders (Re Duffy's Tavern, Inc., Bulletin 1679, Item 4), the license will be suspended for fifteen days (Re S. Amster, Inc., Bulletin 1657, Item 4; Re Ed Finn's Cocktail Bar, Bulletin 1530, Item 5), with remission of five days for the plea entered, leaving a net suspension of ten days.

Accordingly, it is, on this 11th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-274, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Gary's Bar, Inc. for premises 17 Centre Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, July 18, 1966, and terminating at 2:00 a.m. Thursday, July 28, 1966.

JOSEPH P. LORDI,  
DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

J & M TAVERN, INC. )  
440 Woodside Avenue )  
Newark, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-170, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Arthur S. Horn, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to charges (1) and (2) alleging that on May 7, 1966, it permitted acceptance of numbers bets and the conduct of a horse race pool 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 Gatefern, Inc., Bulletin 1679, Item 5; Re Friendly Tavern, Inc., Bulletin 1581, Item 9.

Accordingly, it is, on this 28th day of June 1966,

ORDERED that Plenary Retail Consumption License C-170, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to J & M Tavern, Inc., for premises 440 Woodside Avenue, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, July 5, 1966, and terminating at 2 a.m. Monday, August 29, 1966.

JOSEPH P. LORDI  
DIRECTOR

8. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #288	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary)	)	
Retail Consumption License C-5,	)	
Issued by the Mayor and Borough	)	On Petition
Council of the Borough of North	)	
Haledon to	)	O R D E R
Frank & Mary J. Zergiebel	)	
912 Belmont Avenue	)	
North Haledon, N. J.	)	

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on July 13, 1966, Frank Zergiebel, one of the licensees-petitioners, was fined \$50 in the North Haledon Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on July 1, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' 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 in disciplinary proceedings conducted by the municipal issuing authority, the license was suspended for five days commencing August 1, 1966 and terminating August 6, 1966, on a charge alleging sale of alcoholic beverages to the same minor, which sale was the subject of the previous criminal conviction. Hence, I shall lift the automatic suspension in anticipation of the service of the municipal suspension. Re Spina, Bulletin 1681, Item 9.

Accordingly, it is, on this 27th day of July, 1966,

ORDERED that the statutory automatic suspension of said license C-5 be and the same is hereby lifted, effective 2:00 a.m. Saturday, August 6, 1966!

JOSEPH P. LORDI  
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED  
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

Captain Bill's Ponderosa, Inc. )  
Route #46 )  
Montville Township )  
PO Pine Brook, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-7, issued by the Township )  
Committee of the Township of Montville )

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Louis R. Cerefice, Esq., Attorney for Licensee.  
Morton B. Zemel, Esq., Appearing for Division of Alcoholic  
Beverage Control.

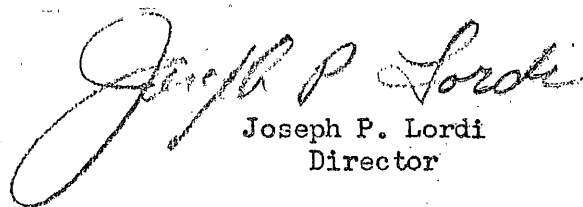
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on  
May 12, 1966, it possessed alcoholic beverages in three 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 days, with remission of five days for the plea entered,  
leaving a net suspension of fifteen days. Re Birdland Nite Club,  
Bulletin 1671, Item 11.

Accordingly, it is, on this 27th day of July, 1966,

ORDERED that Plenary Retail Consumption License C-7,  
issued by the Township Committee of the Township of Montville  
to Captain Bill's Ponderosa, Inc. for premises on Route #46,  
Montville, be and the same is hereby suspended for fifteen (15)  
days, commencing at 2:00 a.m. Monday, August 1, 1966, and terminating  
at 2:00 a.m. Tuesday, August 16, 1966.

  
Joseph P. Lordi  
Director