

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Route 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2299

October 12, 1978

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1. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE
SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary
Proceedings against

New Plus Two Corporation
t/a Foxy Lady
Route 35
Sayreville
P.O. South Amboy, N.J. 08879

Holder of Plenary Retail Consumption
License C-38 issued by the Mayor and
Council of the Borough of Sayreville.

CONCLUSIONS
AND
ORDER

Thomas C. Brown, Esq., Attorney for Licensee.
Leonard A. Peduto, Jr., Deputy Attorney General,
Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded not guilty to a charge alleging that, on January 21, 1977, it possessed, had custody of and allowed, permitted and suffered in and upon its licensed premises the following alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Three One Quart Bottles Cutty Sark
Blended Scots Whisky, 86 proof,

One quart J & B Rare Blended Scots
Whisky, 86 proof,

One quart MacKenzie Blended Scotch
Whisky, 86 proof,

One quart Rockingham Park American
Blended Whiskey, 90 proof;

in violation of Rule 27 of State Regulation No. 20.

ABC Agent B testified at the hearing in the Division that on January 21, 1977, pursuant to routine inspection, he seized from the licensed premises a total of 13 bottles containing various alcoholic beverages. Six of the bottles, which are the subject matter of this proceeding, were taken from the main floor barroom, after gauging indicated they may be low in proof. The remaining

seven bottles, taken from the basement floor of the licensed premises, are not relevant to the subject proceedings. Each of the seized bottles was sealed, bore the signature of the ABC agent and the licensee's manager, the said bottles were thereupon submitted to the Division chemist for analysis.

Penelope Moore, whose qualifications as a chemist was conceded, testified that she made a chemical analysis of the contents of the six bottles mentioned in the charge in order to determine whether the labels truly described the contents thereof. Her analysis of the six bottles indicated that each contained an alcoholic beverage that was low in proof and also contained foreign matter. The solids, acids and color were within the acceptable range. It was her opinion that the lowered proof was due to evaporation, and was not produced by tampering with the contents.

In defense of the charge, William Keegan, Jr., employed as the manager of the licensee's establishment, testified that, on January 21, 1977, the Division agent seized a total of thirteen bottles. All of the bottles bore speed pourers. The licensee received a letter dated April 25, 1977 from the Division which referred to seven of the bottles inspected on January 21, 1977. This letter afforded the licensee the opportunity to pay a fine of \$50.00 for each bottle, or a total of \$350.00, for the seven bottles that contained foreign matter, in lieu of institution of disciplinary proceedings therein. As a result of this communication, the licensee forwarded its certified check to the Division in the sum of \$350.00. Subsequent thereto, the licensee received a notice of the subject charge, dated July 19, 1977, relative to the other six bottles.

Licensee argued that it was not made aware of an alleged violation pertaining to the six bottles until after it had received the letter from the Division dated April 25, 1977 respecting the seven bottles for which it had paid the fine. It also urged that no tampering was alleged or proven and that the lowered proof was due solely to evaporation.

In arriving at a determination herein, I find that no factual conflict was presented. It is uncontroverted that the contents of each of the bottles alleged in the charge were low in proof.

In its pertinent part, Rule 27 of State Regulation No. 20 provides as follows:

No retail licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage . . . in violation of the Alcoholic Beverage Law, or any alcoholic beverage in any keg, barrel,

can, bottle, flask or similar container which . . . bears a label which does not truly describe its contents...(emphasis added)

The underlined portion of the subject rule is clear and unambiguous. It renders the mere possession of a container bearing a label which does not truly describe its contents a violation. Mere possession is malum prohibitum.

An offense which is malum prohibitum does not require proof of guilty knowledge or intent, unless the statute or regulation clearly so provides.

A licensee is responsible for any alcoholic beverages not truly labeled found upon his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156, 159 (Sup. Ct. 1947). As the Court stated therein:

We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration.

Hence, any defense predicated upon a lack of guilty knowledge is effectively negated without considering the bona fides thereof.

I am persuaded by the fair preponderance of the credible evidence that the licensee is guilty of the charge, and I so recommend.

Licensee has no prior adjudicated record. It is, further, recommended that the license be suspended for twenty days.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the licensee, and written Answers thereto were submitted on behalf of the Divison, pursuant to Rule 6 of State Regulation No. 16.

A total of thirteen bottles were seized by a Division agent pursuant to a routine retail gauging inspection at the licensee's premises. The licensee does not contest that these bottles bore labels not truly descriptive of the contents thereof. Rather, in its Exceptions, the licensee argues that the procedure employed by the Division of filing charges as to 6 bottles and permitting the payment of a fine as to 7 bottles, was unfair and improper.

It is Division policy and practice to distinguish, in violation procedures and extent of penalty, between alcoholic beverages which, upon chemical analysis are determined to contain foreign matter or are evaporated, from those bottles which are the subject of tampering, eg., product-to-product refill, watering, or substitution of contents. In the former case, a fine may be accepted, in lieu of license suspension, assuming the amount of bottles involved is not excessive. In the latter, formal charges are filed against the licensee.

I find no prejudice or unfairness by this procedure in general, or as applied to the licensee sub judice. Nor do I find the recommended penalty to be excessive. Thus, the licensee's Exceptions as clearly without merit.

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 recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of June, 1978,

ORDERED that Plenary Retail Consumption License C-3 issued by the Mayor and Council of the Borough of Sayreville to New Plus Two Corporation, t/a Foxy Lady for premises Route 35, Sayreville, be and the same is hereby suspended for the balance of its term, to wit, Midnight, Friday, June 30, 1978, commencing 3:00 a.m. Friday, June 16, 1978; and it is further

ORDERED that upon any renewal of the aforesaid license which may be granted for the 1978-79 license term, said license be and the same is hereby suspended until 3:00 a.m. Thursday, July 6, 1978.

JOSEPH H. LERNER
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING ON LICENSED PREMISES ON THREE SEPARATE OCCASIONS - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against
 Gino's Bar & Grill, Inc.
 t/a Gino's Bar & Grill
 33 East Somerset Street
 Raritan, N.J. 08869
 Holder of Plenary Retail Consumption License C-5 issued by the Mayor and Council of the Borough of Raritan.

CONCLUSIONS and ORDER

 Daniel C. Soriano, Esq., Attorney for Licensee.
 Leonard A. Peduto, Jr., Deputy Attorney General,
 Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded "not guilty" to a charge alleging that, on April 20, 27 and 29, 1977, it allowed, permitted and suffered gambling upon its licensed premises through the making of bets on horse races, and the presence of writings pertaining to gambling activities; in violation of Rule 7 of State Regulation No. 20.

Testifying on behalf of the Division, ABC Agent B recounted three visits to the licensed premises on April 20, 27 and 29, 1977, at which time he was accompanied by other ABC agents. On each of the visits, he made bets on horse races with one Tony Moretti, a patron, in the presence of the bartender, Frank Cicero, whom the agent observed participate with Moretti in a "daily-double" bet.

On the final visit, April 29th, Agent B entered with "marked" money and, following the placing of a bet, called in local police and members of the County Prosecutor's staff. Moretti was arrested on a gambling charge. The "marked" money was retrieved from Moretti's pocket.

ABC Agent McN corroborated the testimony of Agent B, adding that, he too placed bets with Moretti. His initial bet was on the "numbers game", where he selected number 147. He discussed this bet with the bartender before placing it with Moretti. On a later occasion, he placed a horse racing bet with Moretti, the details of which bet he also discussed with the bartender.

Tony Charles Moretti testified on behalf of the licensee. He characterized himself as an unemployed alcoholic. He admitted taking money from the Agents, but denied that he had anything to do with betting illegally. His alleged reason for accepting the bets was that he had no money for drinks and used the subterfuge of accepting bets from them as a means of obtaining funds for drinking.

The bartender, Frank Cicero, professed ignorance of any betting activity by Moretti, but did admit that he gave Moretti a dollar to participate in a daily-double race bet. He described the active horse betting conversation merely as evincing interest in the races being held at a nearby track but denied that any bets were made in consequence of such conversation.

Cicero's testimony describing such conversations and its innocence was restated by Oscar Medina, who is a steady patron of the licensee.

In the adjudication of this matter, I am mindful that we are guided by the basic principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal. Thus, they require proof of the charge by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents essentially a factual issue, and the fair and reasonable conclusions to be drawn therefrom, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouths of credible witnesses, but must be credible in itself. It must be such as 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).

I have had the opportunity to observe the demeanor of the witnesses as they testified, and in view of the conflict in the testimony, I have carefully evaluated and assayed their testimony. I am persuaded that the testimony of the ABC Agents is credible and forthright. Their account of what transpired on the dates charged herein has the hallmark of accuracy and truthfulness.

I find the testimony of Moretti to be completely unbelievable, incredible and almost preposterous. Although he admitted that the Agents placed bets with him and he took their money, he advanced the fantastic explanation that he had no intention to place such bets, but rather, intended to keep the money for drinking.

Bartender Cicero's denials of the betting activity which occurred directly in front of him, and to which he was a very minor party, is equally incredible. Each agent testified

to having conversations with the bartender respecting the bets they were making or had made with Moretti. I find the bartender's denial of the agent's conversations with respect to this betting activity to be of little weight or credibility.

There is such an abundance of testimony of repeated acts of gambling that it is inconceivable that such activity could have occurred without the knowledge and consent of the licensee's employees. I, therefore, reject as unbelievable the testimony of the bartender and the patrons submitted in defense of the charge.

I find that the charge has been proven by a fair preponderance of the credible evidence, indeed, by substantial evidence, and recommend that the licensee be found guilty thereof.

The licensee has no prior chargeable record of suspension of license. It is, therefore, recommended that the license be suspended for ninety (90) days on the charge herein. Re LaCalandra, Bulletin 2152, Item 6; Re Pabian, Bulletin 2230, Item 3.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the licensee and an answer thereto was submitted on behalf of the Division, pursuant to Rule 6 of State Regulation No. 16.

In its Exceptions, the licensee attributes error to the Hearer's Report in three general categories of findings and recommendations.

The Hearer's factual findings that the licensee's employee had direct knowledge of gambling activities on the licensed premises is amply supported in the record, by the credible testimony and reasonable inferences derived therefrom. Whether the licensee's employee was consulted prior to the Division agent's placing of bets with a patron, Charles Moretti, is not dispositive. It is clear that the employee knew of the Division agent's wager with Moretti, and that, in fact, the employee, personally placed a wager with Moretti.

The licensee asserts that the gambling activity was not established to be illegal gambling. The evidence clearly manifests the acceptance of wagers for "numbers" and "horse racing" by Moretti within the licensed premises. The agents were not his personal friends. Moretti never left the licensed premises to go to the racetrack with the bets. Moretti used the pay-telephone within the licensed premises, in proximity to the placing of the wagers by the agent. The licensed premises are not an authorized "Pick It" agent. All of these factors, plus the numerous other indicia in the record, amply support a finding of illegal gambling activity.

Lastly, the licensee argues that the penalty imposed is excessive. On three separate occasions, gambling activity occurred within the licensed premises with the knowledge of the licensee's employee. The categorization of the gambling activity as commercial, for penalty purposes, is proper under these facts. This was not patron-to-patron wagers on pool table games or televised sports events. Each infraction or violation constitutes a separate offense. N.J.S.A. 33:1-70.

Therefore, I reject as wholly without merit, each Exception set forth by the licensee.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report, the written Exceptions filed thereto by the licensee and written reply submitted on behalf of the Division, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein. I shall, thus, impose a suspension of license for (90) ninety days.

Accordingly, it is, on this 15th day of June, 1978,

ORDERED that Plenary Retail Consumption License C-5 issued by the Mayor and Council of the Borough of Raritan to Gino's Bar & Grill, Inc., t/a Gino's Bar & Grill for premises 33 East Somerset Street, Raritan, be and the same is hereby suspended for the balance of its term, to wit, midnight, Friday, June 30, 1978, effective 2:00 a.m. Tuesday, June 27, 1978; and it is further

ORDERED that upon any renewal of the subject license that may be granted for the 1978-79 license term, said license be and the same is hereby suspended until 2:00 a.m. Monday, September 25, 1978.

JOSEPH H. LERNER
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - GAMBLING PERMITTED ON LICENSED PREMISES - EX PARTE PROCEEDING - SUBSEQUENT OPPORTUNITY AFFORDED LICENSEE TO PRESENT DEFENSE - HOWEVER NO DEFENSE WAS INTERPOSED - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

Patnick, Inc.
 t/a Markey's Tavern
 807-809 Central Avenue
 Union City, N.J. 07087

Holder of Plenary Retail Consumption License C-44, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS
 AND
 ORDER

.....
 Samuel R. DeLuca, Esq., Attorney for Licensee.
 Leonard A. Peduto, Jr., Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

The licensee pleaded "not guilty" to a charge alleging that, it allowed, suffered and permitted gambling upon its licensed premises, on April 25, 26, 27 and 29, 1977; in violation of Rules 6 and 7 of State Regulation No. 20.

The matter was set down to be heard on October 19, 1977, after several adjournments, which were requested by licensee's attorney, were granted. Neither the licensee or its attorney appeared on that date, nor was any contact, by telephone or letter, received from the licensee referable to its absence. A phone call to the licensee's attorney's office disclosed that his diary noted the hearing was scheduled to be held that day.

The Division moved to present its case, ex parte. It had subpoenaed several county detectives to present testimony, who were present. The hearing officer granted the motion one hour and ten minutes after the time set for the hearing to commence.

I

Paul Sullivan an investigator assigned to the Hudson County Prosecutor's gambling squad testified in support of the charges. Pursuant to assignment he was surveilling the activities of one Louis Mastrofino, a convicted gambler, at an apartment house in Union City.

On April 21, 1977, at 11:54 a.m., a green Dodge arrived at the scene and Mastrofino exited and entered the apartment house. A motor vehicle search disclosed that the car was registered to one, John Shaw, Jr.

On April 22nd, a few minutes before noon, Mastrofino was observed entering the apartment house. He exited at 2:30 p.m., and departed in the green Dodge. He drove a few blocks, parked the vehicle, and entered Markey's Tavern, the subject licensee's premises, located at 809 Central Avenue. He left the licensed premises after approximately thirty seconds.

On April 25th, Mastrofino entered the apartment house at 11:35 a.m. He departed at 2:30 and was picked up by Shaw (whose appearance was known to Investigator Sullivan) in the green Dodge. He was driven to Markey's Tavern, where he stayed for less than one minute, and departed.

On April 26th, the pattern was repeated, this time using a silver colored Thunderbird, which was also registered in the name of John Shaw, Jr., the driver.

On April 27th Mastrofino was observed entering the apartment house at 11:50 a.m. He exited at 12:15 p.m. He drove to 708 Thirteenth Street and stayed there until 2:27 p.m. He then departed and arrived at Markey's Tavern at 2:38 p.m. He again stayed for less than one minute in the licensed premises.

Investigator Sullivan also described various phone calls made to telephones installed at 421 Eighth Street, second floor rear and 708 Thirteenth Street, second floor, which he felt reasonably established that Mastrofino was visiting or using the apartments in which said phones were installed.

It was Sullivan's expert opinion, and set forth in the affidavit leading to a search warrant that, Mastrofino was accepting bets over the telephone at 421 Eighth Street and taking them at the same time each day (around 2:30) to Markey's Tavern, where he turned them over to someone else and departed within one minute of his arrival.

Sullivan participated in the arrest of Mastrofino on April 29th, as he was about to enter an automobile at the Thirteenth Street location. Seven slips of white paper noting lottery bets, and one piece noting a horse bet, were found on his person.

George Sullivan (George) another investigator employed by the Hudson County gambling squad, testified that on April 27th, in the company of his superior officer, he entered Markey's Tavern at 2:10 p.m. Between 2:25 and 3:15

he observed approximately ten persons enter the tavern and walk past the bar to a location where a heavy set male with close-cropped hair, identified as Joseph Capizzi, sat. They would speak to him very briefly and then walk into the kitchen. They would stay less than one minute in the kitchen and then depart the tavern immediately, except for one female who upon exiting the kitchen, ordered a beer at the bar and departed after consuming it. None of them were observed to be carrying food as they left the kitchen.

Mastrofino, whose identity was already known to George, was one of the above-described persons.

In addition to Capizzi, one Joseph Nardone, a known gambler with a history of past violations in Hudson County, Mr. Marchesani, the principal stockholder of Patnick, Inc., t/a Markey's Tavern and several unknown males were present in the tavern during the time George made his observations.

Marchesani was seen sitting near Capizzi. The licensee's principal stockholder also conversed with Capizzi, and entered the kitchen area with him.

On April 29th, George and his superior officer again entered the licensed premises. Posing as customers, they awaited other members of the squad who were to follow with arrest and search warrants. At 2:30 p.m., the three arresting officers appeared and advised Marchesani that they had a search warrant for the tavern and its patrons. George identified himself as a police officer and took part in the search. In his presence, another investigator (Leroy Hurley) searched Marchesani. Among other things, they found what were identified as numbers slips and a tally sheet. Marchesani was placed under arrest.

Leroy J. Hurley, the arresting officer, testified in corroboration of George's testimony. After qualifying as a law enforcement officer expert in gambling investigations, he testified as to the meaning of the notations upon the slips and tally sheets seized during the raid.

II

Subsequent to the ex parte hearing, licensee petitioned the Director for permission to present a defense to the charges. The Director granted the request and set a date for presentation of said defense.

On the date set, neither the licensee or its attorney appeared. Inquiry ascertained that the licensee's attorney was on vacation and his associate was engaged elsewhere. The hearing officer granted the motion to terminate the matter, made by the Deputy Attorney General representing the Division.

III

Preliminarily, I observe that we are dealing with a purely disciplinary action; 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 preponderance of the credible evidence only. Butler Oak Tavern V. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a factual situation, the credibility of witnesses must be weighed. 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 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

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

I have set forth in considerable detail the testimony in the record in order to objectively arrive at a determination herein, being mindful that the matter was presented ex parte.

The testimony of the investigators, relative to the betting activity engaged in by Capizzi and others upon the licensed premises, on the dates mentioned in the charge, is factual, clear and credible.

While there is no requirement that the proscribed activities be "open and notorious", I find substantial credible evidence which unmistakably demonstrates that the corporate licensee's manager knew or should have known of the existence of such proscribed activities. In Mazza v. Cavicchia, 28 N.J. Super 280 (App. Div. 1953), rev'd on other grounds, 15 N.J. 498, 509 (1954), the court held that the knowledge of the licensee is not necessary to sustain a conviction of the charge.

The rule in question comes clearly within the delegated authority of the Director as a reasonable regulation

in the field of alcoholic beverage control. The Director has the power to make the licensee responsible for the activities upon the licensed premises. In fact, it is difficult to see how the Division could properly maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director promulgated there under and would make the enforcement of the Law an impossibility.

The cases in this Division are legion which hold that a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises, by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must take all necessary and reasonable precautions 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. At the least, the licensee "suffered" the aforesaid gambling activities on the licensed premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947).

Accordingly, after a careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, I conclude and find that the Division has established the truth of the charge, and recommend that the licensee be adjudged guilty thereof.

Licensee has no prior chargeable record. I, further, recommend that the license be suspended for sixty (60) days.

Conclusions and Order

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

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

Accordingly, it is, on this 8th day of June, 1978,

ORDERED that Plenary Retail Consumption License C-44, issued by the Board of Commissioners of the City of Union City to Patnick, Inc., t/a Markey's Tavern for premises 807-809 Central Avenue, Union City be and the same is hereby suspended for the balance of its term, to wit, midnight, Friday, June 30, 1978, commencing 3:00 a.m. Thursday, June 22, 1978, and it is further

ORDERED that upon any renewal of the subject license which may be granted for the 1978-79 license term, said license be and the same is hereby suspended until 3:00 a.m., Monday, August 21, 1978.

JOSEPH H. LERNER
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - CANCELLATION PROCEEDINGS - PROOF OF INADVERTANCE OF TRANSFER - CHARGE NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against
 Arthur L. Zande, Individual
 And
 Lakeland State Bank
 32-19 Route 23
 P.O. Oakridge
 West Milford Township, N.J.
 07438
 Holder of Plenary Retail Consumption License C-34 issued by the Township Committee of the Township of West Milford.

CONCLUSIONS
 AND
 ORDER

 Hunziker, Hunziker & Jones, Esqs., by Robert A Jones, Esq.,
 Attorney for Licensees.

BY THE DIRECTOR:

Arthur L. Zande and Lakeland State Bank were ordered to show cause why their current Plenary Retail Consumption License C-34 should not be suspended, revoked or cancelled, and declared null and void on the alleged basis that the said license had been improvidently transferred to them, in violation of N.J.S.A. 33:1-26. The allegation has been contested by the said parties.

I have examined the circumstances surrounding the said allegation, and it appears that Plenary Retail Consumption License C-34 was transferred to the parties by virtue of a Judgment of Foreclosure entered April 26, 1977 by the Superior Court of New Jersey, Chancery Division, Passaic County.

The Court, having reconsidered the matter, determined that the portion of the subject mortgage which purported to compel the mortgagor in default to transfer the said license to the mortgagee was in violation of N.J.S.A. 33:1-26; and, accordingly, on April 20, 1978, the Court vacated that section of the Judgment of Foreclosure which ordered the implementation of the violative mortgage provision. Thus, by virtue of the Court's subsequent Order, the original licensee, Annie Laurie Inn, Inc., recovered the right to Plenary Retail Consumption License C-34.


Subsequently, the litigants entered into a settlement agreement whereby Arthur L. Zande, Lakeland State Bank, and

Annie Laurie Inn, Inc. agreed and consented to the transfer of the license to third parties, Charles and Andrea Nuzzo, or their assignee. On June 5, 1978, the Court entered a Settlement Order which embodies the said agreement.

Having considered the facts and circumstances herein, and satisfied that compliance with the provisions of N.J.S.A. 33:1-26 has been secured by virtue of directives of the Superior Court, Chancery Division; and upon good cause shown, I have determined to enter an Order dismissing the charge preferred by the Division against Arthur L. Zande, individual, and Lakeland State Bank.

Accordingly, it is, on this 14th day of June, 1978,

ORDERED that the charge herein be and the same is hereby nolle prossed.


JOSEPH H. LERNER
DIRECTOR