

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

BULLETIN 1765

December 7, 1967

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Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 1765

December 7, 1967

1. COURT DECISIONS - SPRINGDALE PARK, INC. v. ANDOVER AND
VIEBROCK - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-230-66

SPRINGDALE PARK, INC.,)
a New Jersey Corporation,)

Appellant,)

vs.)

TOWNSHIP COMMITTEE OF ANDOVER)
TOWNSHIP and CORD VIEBROCK,)

Respondents.)

-- N.J. Super. ---

Argued October 9, 1967 -- Decided October 25, 1967
Before Judges Sullivan, Foley and Leonard

On appeal from Division of Alcoholic Beverage Control

Mr. Irving Leuchter argued the cause for Appellant
(Messrs. Kapelsohn, Lerner, Leuchter & Reitman,
attorneys, Mr. Sol D. Kapelsohn, Of Counsel).

Mr. Frank G. Schlosser argued the cause for
Respondent Viebrock (Messrs. Van Blarcom,
Silverman & Weber, attorneys).

Mr. Arthur J. Sills, Attorney General, filed a
Statement In Lieu Of Brief (By Mr. Stephen G.
Weiss, Deputy Attorney General).

The opinion of the court was delivered by
LEONARD, J.A.D.

Respondent, Cord Viebrock, has for some time operated a 51 room motel located on Route 206 in Andover Township, Sussex County. In 1964 the Andover Township Committee, pursuant to N.J.S.A. 33:1-12.20, granted him a plenary retail consumption liquor license for his motel premises. In February 1966 he applied to the local authorities for the transfer of this license to other premises. Specifically he sought to extend his license to include, in addition to the motel, a building, adjacent to and on the north of the motel that he contemplated enlarging. He testified that he intended to utilize this new building as a public restaurant, private dining room, coffee shop and cocktail lounge to be operated in conjunction with his motel.

The Township Committee granted the transfer. Upon appellant's appeal the Director of the Division of Alcoholic Beverage Control affirmed the municipal action. (Springdale Park, Inc. v. Andover and Viebrock, Bulletin 1702, Item 2; Bulletin 1738, Item 2.) Appellant here challenges the propriety of the Director's determination.

Appellant contends that the transfer was in fact a transfer to a non-motel premises for a non-motel use. There-

fore, it argues that no license for the new building may be granted under N.J.S.A. 33:1-12.20. Appellant concedes that the mere physical separation of the contemplated building from the motel does not per se establish its non-motel use. However, it argues that this separation together with the contemplated size, location and seating capacity of the facilities to be operated within the new structure, establishes the latter's independent character.

Appellant further contends that a license may be issued under N.J.S.A. 33:1-12.20 only if the retail consumption of alcohol is to be subordinate to the legitimate needs of the hotel seeking the license. Again relying upon the size and extent of the new building and facilities, it argues, that in the instant case the retail consumption of alcohol will in fact not be subordinate to the operations of the motel, but to the contrary will be dominant thereto.

The Director "after careful examination and consideration of the entire record" determined that "the business to be conducted in said building to which the transfer was granted will be part and parcel of the motel operation" (Emphasis added). He further rejected the contention that the above cited statute mandated that the proposed new facilities for retail consumption of alcoholic beverages must be limited to the needs of the motel and to guests. In so doing he stated:

"I find nothing in the statute or the adjudicated cases to so limit such license issued to a motel. Once a plenary retail consumption license is issued to a motel it carries the same rights and privileges as any other plenary retail consumption license, and the restaurant facility which it operates can be as large or small as is economically feasible ***."

We concur with the Director that N.J.S.A. 33:1-12.20 contains no such limitation as here contended for by appellant. The statutory exception merely requires that such license be issued to a person for use "in connection with" the operation of a hotel containing at least 50 sleeping rooms. N.J.S.A. 33:1-12.32.

Upon a review of the entire record before us, we conclude that the Director's findings are amply supported and his determination was not unreasonable or illegally grounded. Consequently we will not interfere therewith. Fanwood v. Rocco, 33 N. J. 404, 414-415 (1960).

Judgment affirmed.

- 2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - AGGRAVATING CIRCUMSTANCES - SECOND SIMILAR CHARGE DEEMED EQUIVALENT TO SECOND SIMILAR OFFENSE FOR PENALTY PURPOSES - LICENSE SUSPENDED FOR 180 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DREXEL BAR, INC.)
 t/a Drexel Bar & Grill)
 326 N. Massachusetts Ave.)
 Atlantic City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-42 issued by the Board of Commissioners of the City of Atlantic City)

Paul J. Farley, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to original charges alleging that (1) and (2) on divers dates between October 17 and December 15, 1966, it permitted acceptance of numbers bets on the licensed premises and additional charges alleging that (3) and (4) on August 3 and 4, 1967, it permitted acceptance of horse race and numbers bets on the licensed premises, all in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for twenty-five days effective October 15, 1956, for sale in violation of State Regulation No. 38 and hindering investigation. Re Drexel Bar, Inc., Bulletin 1138, Item 3.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended on Charges (1) and (2) for sixty days (Re Yaccarino, Bulletin 1750, Item 5) and on Charges (3) and (4), deemed equivalent to a second similar offense within the past five years since the violation occurred after the establishment of the previous violation (cf. Re Sabar, Inc., Bulletin 1729, Item 3), for one hundred twenty days (Re Marcus, Bulletin 1676, Item 1), or a total of one hundred eighty days, with remission of five days for the plea entered, leaving a net suspension of one hundred seventy-five days.

Accordingly, it is, on this 28th day of September, 1967,

ORDERED that Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the City of Atlantic City to Drexel Bar, Inc., t/a Drexel Bar & Grill, for premises 326 N. Massachusetts Avenue, Atlantic City, be and the same is hereby suspended for one hundred seventy-five (175) days, commencing at 7:00 a. m. Thursday, October 5, 1967, and terminating at 7:00 a. m. Thursday, March 28, 1968.

JOSEPH P. LORDI
 DIRECTOR

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

In the Matter of Disciplinary)
Proceedings against)

JOSEPH DOHERTY)
t/a Doherty's Bar)
1101 Atlantic Avenue)
Atlantic City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-41 issued by the)
Board of Commissioners of the)
City of Atlantic City)

-----)
Licensee, Pro se.

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
divers days between November 3 and December 15, 1966, he permit-
ted the acceptance of horse race bets on the licensed premises,
in violation of Rule 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 DeLuca Tavern,
Bulletin 1750, Item 9.

Accordingly, it is, on this 21st day of September, 1967,

ORDERED that Plenary Retail Consumption License C-41,
issued by the Board of Commissioners of the City of Atlantic City
to Joseph Doherty, t/a Doherty's Bar, for premises 1101 Atlantic
Avenue, Atlantic City, be and the same is hereby suspended for
fifty-five (55) days, commencing at 7:00 a. m. Thursday, September
28, 1967, and terminating at 7:00 a. m. Wednesday, November 22,
1967.

JOSEPH P. LORDI
DIRECTOR

4. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1967 THROUGH SEPTEMBER 30, 1967

	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>TOTAL</u>
ARRESTS:				
Total number of persons arrested	13	19	14	46
Licensees and employees	5	6	5	16
Bootleggers	8	12	9	29
ABC Agent impersonator	-	1	-	1
SEIZURES:				
Motor vehicles - cars	1	-	-	1
Stillis - 50 gallons or under	-	-	1	1
Distilled alcoholic beverages - gallons	6.28	4.87	4.24	15.39
Wine - gallons	2.12	.80	10.14	13.06
Brewed malt alcoholic beverages - gallons	64.75	48.09	54.46	167.30
RETAIL LICENSEES:				
Premises inspected	416	589	671	1,676
Premises where alcoholic beverages were gauged	360	506	566	1,432
Bottles gauged	5,561	8,422	8,851	22,834
Premises where violations were found	96	146	133	375
Violations found	141	196	162	499
Unqualified employees	73	61	28	162
Application copy not available	13	19	20	52
Other mercantile business	3	3	6	12
Disposal permit necessary	3	1	2	6
Prohibited signs	-	-	1	1
Improper beer taps	1	-	-	1
Other violations	48	112	105	265
STATE LICENSEES:				
Premises inspected	9	40	29	78
License applications investigated	5	16	9	30
COMPLAINTS:				
Complaints assigned for investigation	340	391	356	1,087
Investigations completed	309	389	388	1,086
Investigations pending	298	318	273	889
LABORATORY:				
Analyses made	38	19	23	80
Refills from licensed premises - bottles	24	-	8	32
Bottles from unlicensed premises	4	8	4	16
IDENTIFICATION:				
Criminal fingerprint identifications made	4	4	11	19
Persons fingerprinted for non-criminal purposes	589	446	408	1,443
Ident. contacts made with other enforcement agencies	364	346	270	980
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	8	6	8	22
Violations involved	8	6	9	23
Sale during prohibited hours	5	2	6	13
Sale to minors	3	4	3	10
Cases instituted at Division	30	44	20	94
Violations involved	38	56	26	120
Possessing liquor not truly labeled	11	17	2	30
Sale during prohibited hours	3	7	5	15
Permitting lottery activity on premises	3	4	3	10
Permitting bookmaking on premises	4	5	-	9
Sale to minors	3	2	3	8
Fraud in application	-	3	3	6
Permitting immoral activity on premises	3	-	1	4
Permitting gambling on premises	2	1	1	4
Permitting foul language on premises	1	1	1	3
Beverage Tax Law non-compliance	1	-	2	3
Conducting business as a nuisance	2	1	-	3
Sale to intoxicated persons	-	3	-	3
Fraud and front	-	3	-	3
Retailer-to-retailer sales	-	2	1	3
Hindering investigation	-	1	1	2
Purchase from improper source	-	-	2	2
Sale outside scope of license	-	2	-	2
Failure to file notice of change in application	-	1	1	2
Unqualified employees	1	1	-	2
Permitting hostesses on premises	2	-	-	2
Failure to have copy of license application on premises	-	1	-	1
Possessing indecent matter	1	-	-	1
Permitting female impersonators on premises	1	-	-	1
Serving females at bar (local reg.)	-	1	-	1
Cases brought by municipalities on own initiative and reported to Division	13	15	14	42
Violations involved	21	18	14	53
Sale to minors	6	6	11	23
Sale during prohibited hours	3	2	-	5
Conducting business as a nuisance	4	1	-	5
Permitting brawl on premises	1	2	1	4

	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (Continued)				
Cases brought by municipalities on own initiative and reported to Division (Continued)				
Permitting bookmaking on premises	1	2	1	4
Permitting lottery on premises	-	2	-	2
Failure to close premises during prohibited hours	1	1	-	2
Unqualified employees	2	-	-	2
Act of violence	1	-	-	1
Fraud and front	1	-	-	1
Employee working while intoxicated	1	-	-	1
Possessing indecent matter	-	1	-	1
Failure to afford view into premises during proh. hours	-	1	-	1
Failure to advertise notice of renewal of license	-	-	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	36	36	66	138
Appeals	7	10	8	25
Disciplinary proceedings	24	20	41	85
Eligibility	3	5	12	20
Tax revocations	-	1	1	2
Seizures	-	-	4	4
Order to show cause	2	-	-	2
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	2,417	1,409	1,449	5,275
Licenses	617	5	9	631
Solicitors' permits	80	41	46	167
Employment permits	627	459	378	1,464
Disposal permits	97	23	63	183
Social affairs permits	412	493	477	1,382
Miscellaneous permits	317	177	182	676
Wine permits	4	2	38	44
Transit insignia	201	188	226	615
Transit certificates	62	21	30	113
OFFICE OF AMUSEMENT GAMES CONTROL:				
Licenses issued	11	3	-	14
State Fair licenses issued	21	102	67	190
Premises inspected	441	612	64	1,117
Premises where violations were found	22	13	1	36
Number of violations found	25	14	1	40
Enforcement files established	20	8	2	30


 JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: October 24, 1967

5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS -
AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 30 DAYS,
LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

Kenyon Inn, Inc.)
t/a Kenyon Inn)
23 S. Kentucky Avenue)
Atlantic City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-50 issued by the Board of)
Commissioners of the City of)
Atlantic City)

Benjamin C. Kligerman, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 2, 1967, it sold drinks of alcoholic beverages to three intoxicated patrons, in violation of Rule 1 of State Regulation No. 20.

Although the licensee has no previous record of suspension of license, the license then held by Albert Tanker and Esther Kramer (the latter an officer and stockholder of the licensee corporation) for premises 300 Pacific Avenue, Atlantic City, was suspended by the municipal issuing authority for ten days effective October 22, 1957, for sale to a minor and sale in violation of State Regulation No. 38; and the license then held by Albert Tanker and Paul Kramer (the latter an officer and stockholder of the licensee corporation) for premises 300 Pacific Avenue, Atlantic City, was suspended by the municipal issuing authority for ten days effective August 14, 1959, for sale in violation of State Regulation No. 38.

The previous record of suspensions of license for dissimilar violation occurring more than five years ago disregarded, but considering the violation to be aggravated by the number of intoxicated persons served, 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 Len-Ton, Inc., Bulletin 1740, Item 3.

Accordingly, it is, on this 30th day of October, 1967,

ORDERED that Plenary Retail Consumption License C-50, issued by the Board of Commissioners of the City of Atlantic City to Kenyon Inn, Inc., t/a Kenyon Inn, for premises 23 S. Kentucky Avenue, Atlantic City, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a. m. Monday, November 6, 1967, and terminating at 7:00 a. m. Friday, December 1, 1967.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

JOSEPH LUCKS)
t/a Belmont Tavern)
210 Belmont Ave.)
Newark, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-704 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark)

Licensee, Pro se)
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control)

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 19, 1967, he 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 (then in partnership with Sam Lucks) has a previous record of suspension of license by the municipal issuing authority for seventeen days effective June 23, 1947, for sale to minors.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Zinnia Incorporated, Bulletin 1636, Item 12.

Accordingly, it is, on this 26th day of September 1967,

ORDERED that Plenary Retail Consumption License C-704, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph Lucks, t/a Belmont Tavern, for premises 210 Belmont Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a. m. Tuesday, October 3, 1967, and terminating at 2 a. m. Monday, October 23, 1967.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

J. & J. PASZKEWICZ & SON, INC.)
t/a Friendly Inn)
331 Smith Street)
Perth Amboy, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-21 issued by the Board of Commissioners of the City of Perth Amboy)

Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, 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 Charge 1 as follows:

"On October 28, 1966, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon the licensed premises; in violation of Rule 7 of State Regulation No. 20."

(Inasmuch as Charge 2, alleging false statement in the license application, has heretofore been disposed of, we were solely concerned with the disposition of Charge 1 in the hearing held herein. Re J. & J. Paszkewicz & Son, Inc., Bulletin 1725, Items 1 and 2.)

In behalf of the Division Robert F. Engel testified that on October 28, 1966 he was employed as a county detective, associated with the office of the county prosecutor. Accompanied by George Pelley (who had four "marked" one-dollar bills on his person), he entered the licensed premises on that day at approximately 11:30 a. m. They sat "about in the center of the bar" at which Edward Paszkewicz was attending to the wants of "I think, six people."

At approximately 12 noon Pelley asked for and received pencil and paper from Paszkewicz. Pelley wrote a horse race bet on the paper which was later received in evidence. Engel's testimony then proceeded as follows:

- "Q Will you continue your observations, Mr. Engel?
A Well, there was--Mr. Paszkewicz and--Paskewicz is it?--and George were talking about something, and it seemed that he didn't want--he didn't want to take the paper from him.
Q Then what happened?
A The paper was handed back to Pelley.
Q And did you hear Mr. Paszkewicz say anything?
A Well, then Pelley said to him that that was the 1st at Aqueduct.
Q And what was the next thing you heard?
A That was about all I heard there. Then I left the premises."

Paszkewicz retained the money given to him by Pelley.

Engel and Pelley left the tavern at approximately 12:05 or 12:10 p. m. Engel returned to the tavern at approximately 1:17 p.m. accompanied by Lieutenant Donatelli, a county law enforcement officer; Casimir Smerecki, a local police officer; and ABC Agent D. Donatelli had a warrant in his possession. Although the front and rear entrances were open, there were no patrons or employees in the licensed premises. When Paszkewicz entered the licensed premises about five minutes later, he was served with the warrant, whereupon he said something to the effect that "you were in here with that screwball before trying to put a bet in." The four marked dollar bills were found on

Paszkewicz's person.

On cross examination the witness admitted that he was no longer employed as a county detective; that he found no bet slips on Paszkewicz's person or in the licensed premises; that it appeared that Pelley attempted to give a bet slip to Paszkewicz and that Paszkewicz "never had physical possession of the piece of paper." Engel had been acquainted with Pelley for many years; he had been in the licensed premises on other occasions during the past three or four years; Pelley told the witness that "he had been betting there;" and Pelley also informed him that "he had owed Paszkewicz some money at one time or another."

George J. Pelley testified that he had been acquainted with Detective Engel "about almost all my life" and had frequented the licensed premises occasionally for a period of "six or seven years." On the day in question he entered the licensed premises with Engel. He had in his possession four "marked" one-dollar bills given to him by Engel with which to place a bet. After positioning himself at the bar one stool removed from Engel, he ordered beer from Paszkewicz and asked for a newspaper and paper and pencil. On the slip of paper he wrote the name of a horse and "4 to win." Going to the end of the bar where Paszkewicz was stationed, Pelley said to him, "I got something good today, Eddie." After Paszkewicz responded, "What have you got?", the witness testified thusly:

"I handed it to him and he opened it up and he took the paper and he looked at 'Steve the Boss' over there and he said, 'What's this?' I said, 'That's what I want to play today' and he handed me the paper back. I said, 'How are you going to remember the thing, you know?' He said, 'You're in. Don't worry about it!' and I walked back to the bar and that was it. Then we went out."

On cross examination the witness admitted being convicted of the crimes of obtaining money under false pretenses in 1964, of possessing obscene films in 1962, and of breaking and entering in 1954. He had borrowed money from Paszkewicz (\$1 at one time and \$2 on another occasion) which he had repaid prior to October 28, 1966. He denied that the \$4 marked money given to him by the prosecutor's office was used by him to repay monies he owed Paszkewicz. He had informed the prosecutor's office of alleged criminal acts on other occasions "on and off for a few years."

Silvio J. Donatelli, a lieutenant of county detectives, testified that he participated in the investigation of the matter now on trial. He gave the four "marked" one-dollar bills to Detective Engel to give to Engel's informant. He had with him a warrant for Paszkewicz's arrest. When he and the other law enforcement officers arrived at the licensed premises, no one was in the tavern. Approximately four or five minutes thereafter Paszkewicz entered the tavern. The questioning then revealed the following:

- "Q When he came in, tell us the steps in the investigation.
- A When he walked in, he made the first utterance. He said, 'What's going on here?' And I think he directed his remarks at Detective Engel. He said something to the effect that 'You were here with the little guy' or 'screw ball who tried to bet, place a horse bet with me. I wouldn't take a horse bet.'"

He found on Paszkewicz's person the four "marked" bills with other monies. When Donatelli advised Paszkewicz that he was confiscating the \$4 marked money for the reason that they were connected with the taking of a horse race bet, Paszkewicz denied the accusation.

In defense of the charge Edward J. Paszkewicz, a stockholder in the licensee corporation who acted as manager of the tavern business, testified that he had been acquainted with Pelley for six or seven years prior to October 28, 1966. On that date he entered the licensed premises, asked for a slip of paper and then asked to see Paszkewicz at the end of the bar. The questioning proceeded, as follows:

"Q Did he Pelley see you at the end of the bar?

A That's right.

Q What did he say to you, if anything?

A 'I have a horse bet with a slip in my pocket. Will you take it?' I said, 'I don't want it.' I said, 'As long as you are betting horses, give me the four dollars you owe me,' and he gave me the four dollars."

Paszkewicz then testified that "about three days" prior to Friday, October 28, 1966, at Pelley's request he loaned him \$2 and, approximately one week prior to that time, he had also loaned Pelley \$2. Approximately five or six weeks after the arrest, Pelley called Paszkewicz on the telephone and said that he had no money and wanted to take a trip to Chicago. He said, "If you give me some money, I won't come up to testify against you." Paszkewicz asked Pelley, "Why did you try to set me up?", to which Pelley responded, "I was forced to do it."

In substance, Ronald J. Pedersen testified that he patronized the licensed premises frequently, was acquainted with Paszkewicz and Pelley, was in the tavern about three days prior to October 28, 1966 and again about five days prior to that time and on each occasion he observed Pelley ask for and receive a loan of \$2 from Paszkewicz.

Alfred Weingart, who was acquainted with Paszkewicz and Pelley, testified that he was in the licensed premises "either a week or ten days before" October 28, 1966. Immediately prior to leaving the tavern with Paszkewicz he observed Paszkewicz hand Pelley "a couple dollars." On cross examination the witness testified that he did not hear the exchange of conversation; however, he did observe Paszkewicz hand Pelley paper currency consisting of "two bills."

In rebuttal Pelley denied having borrowed money from Paszkewicz a few days prior to October 28, 1966 and again a week prior thereto, and said that he had not patronized the tavern for "about a month or two before, somewhere in that vicinity." Additionally, he denied telephoning Paszkewicz five or six weeks after October 28 to borrow money for a trip to Chicago and saying that he would not testify against him.

It is apparent that the major point of inquiry is factual. In this case, as in all disciplinary proceedings, the Division has the burden of proving the truth of the charge by a preponderance of the believable evidence.

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

such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

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

Disregarding Pelley's prior criminal record, it is still my view that his testimony (which has been contradicted by defense witnesses) does not engender a feeling that the Division has established the truth of the charge by the necessary preponderance of the believable evidence.

Engel's testimony concerning the alleged betting transaction (quoted above) does not corroborate Pelley's testimony that a horse race bet was in fact made.

A careful review of all of the testimony leads me to the conclusion that the Division has failed to establish that the licensee "allowed, permitted and suffered" the acceptance of the bets as alleged. Since there appears to be a lack of the necessary preponderance of the evidence to find the licensee guilty of the charge, I recommend that the charge be dismissed.

Conclusions and Order

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

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

Accordingly, it is, on this 22d day of September, 1967,

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

JOSEPH P. LORDI
DIRECTOR

- 8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SARA WEINTROB)
t/a Harry's Bar)
1225-1227 Baltic Ave.)
Atlantic City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-130 issued by the Board of Commissioners of the City of Atlantic City)

Licensee, Pro se)
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control)

by the Director for ten days effective March 27, 1961 for possession of an alcoholic beverage not truly labeled. Re Hilltop Tavern, Inc., Bulletin 1386, Item 8. In addition, the license of Anton Stastny, president of the corporate licensee, then t/a Town Tavern, for premises 117 Kinderkamack Road, Park Ridge, was suspended by the municipal issuing authority for seven days effective March 19, 1951 for permitting brawls on the licensed premises.

The prior record of suspensions of license in 1951 and 1961 for dissimilar violations occurring more than five years ago disregarded, but the record of suspension of license for similar violation in 1958 more than five but less than ten years ago considered, 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 Rodilloso, Bulletin 1750, Item 6.

Accordingly, it is, on this 21st day of September 1967,

ORDERED that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Lodi to Hilltop Tavern, Inc., t/a Hilltop Tavern, Inc., for premises 50 Essex Street, Lodi, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Thursday, September 28, 1967, and terminating at 3 a.m. Friday, October 13, 1967.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary)
Proceedings against)
NEHOC TAVERN, INC.)
t/a Jay's Corner)
27 Paterson Street)
Paterson, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-140 issued by the Board of
Alcoholic Beverage Control for the)
City of Paterson)

Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq.,
Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on July 7, 10, 12 and 25, 1967, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for the balance of the term effective January 2, 1957, for permitting solicitation for prostitution on the licensed premises (Re Nehoc Tavern, Inc., Bulletin 1149, Item 5), by the municipal issuing authority for five days effective May 1, 1961, for permitting a brawl on the licensed premises, and by the Director for fifteen days effective June 4, 1962, for sale in violation of State Regulation No. 38 (Re Nehoc Tavern, Inc., Bulletin 1461,

Item 6).

The prior record of suspensions of license for dissimilar violations occurring more than five years ago disregarded, 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 Reservoir Bar & Grill, Bulletin 1758, Item 5.

Accordingly, it is, on this 1st day of November, 1967,

ORDERED that Plenary Retail Consumption License C-140, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Nehoc Tavern, Inc., t/a Jay's Corner, for premises 27 Paterson Street, Paterson, be and the same is hereby suspended for fifty-five (55) days, commencing* at 3:00 a. m. Wednesday, November 8, 1967, and terminating at 3:00 a. m. Tuesday, January 2, 1968.

JOSEPH P. LORDI
DIRECTOR

*By order dated November 6, 1967, the suspension was deferred to commence at 3:00 a. m. Tuesday, January 2, 1968, and to terminate at 3:00 a. m. Monday, February 26, 1968.

11. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE
SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

KEY BAR, INC.)
t/a Key Bar)
202 South Fourth Street)
Camden, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-149 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden)

David Novack, Esq., Attorney 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 September 15, 1967, it sold two cases and two six-packs of beer to a minor, age 17, in violation of Rule 1 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 Tarby, Bulletin 1757, Item 3.

Accordingly, it is, on this 6th day of November, 1967,

ORDERED that Plenary Retail Consumption License C-149, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Key Bar, Inc., t/a Key Bar, for premises 202 South Fourth Street, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Tuesday, November 14, 1967, and terminating at 2:00 a. m. Wednesday, November 29, 1967.

JOSEPH P. LORDI
DIRECTOR

12. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS -
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

MABEL ESA)
7-9 North Straight Street)
Paterson, N. J.)

Holder of Plenary Retail Consumption)
License C-47 issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson)

CONCLUSIONS
AND ORDER

Licensee, Pro se.
Edward J. Sheils, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to charges (1) and (2) alleging that on October 7, 1967, she sold alcoholic beverages after 3:00 a. m. during prohibited hours, in violation of local regulation.

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 Emilio's, Inc., Bulletin 1723, Item 10.

Accordingly, it is, on this 13th day of November, 1967,

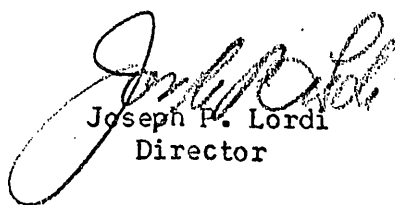
ORDERED that Plenary Retail Consumption License C-47, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Mabel Esa for premises 7-9 North Straight Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a. m. Monday, November 20, 1967, and terminating at 3:00 a. m. Thursday, November 30, 1967.

JOSEPH P. LORDI
DIRECTOR

13. STATE LICENSES - NEW APPLICATION FILED.

Charles H. Bensel
t/a Brewers' Distributors
Rear Building, 666 Mantua Avenue
Woodbury, New Jersey

Application filed December 6, 1967 for person-to-person transfer of State Beverage Distributor's License SBD-39 from William De Ascentiis, t/a Brewers' Distributors.


Joseph P. Lordi
Director