

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1558

May 5, 1964

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Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1558

May 5, 1964

1. APPELLATE DECISIONS - HERMAN, C & D WINES AND LIQUORS and ESSEX
COUNTY RETAIL LIQUOR STORES ASSOCIATION v. NEWARK and AULISE.

PAUL HERMAN, T/A SUMNER WINES)
AND LIQUORS, CO. and C & D WINES)
AND LIQUORS, AND ESSEX COUNTY)
RETAIL LIQUOR STORES ASSOCIATION,)

Appellants,

v.

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK AND ROSE AULISE,)

Respondents.

ON APPEAL

ORDER

Brass & Brass, Esqs., by Leonard Brass, Esq., Attorneys for
Appellants.

Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for
Respondent Municipal Board

Robert W. Wolfe, Esq., Attorney for Respondent Aulise.

BY THE ACTING DIRECTOR:

Appellants appeal from grant by respondent Municipal Board on May 1, 1963, of application of respondent Aulise for place-to-place transfer of plenary retail consumption license from premises 262-264 Clifton Avenue to premises 150 Bloomfield Avenue, Newark.

Prior to the hearing on appeal, by letter of March 5, 1964 appellants advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 6th day of March 1964,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR.

2. APPELLATE DECISIONS - ZABERER v. NORTH WILDWOOD AND RAPPAPORT.

EDWIN J. ZABERER,)	
Appellant,)	
MAYOR AND COMMON COUNCIL OF)	
THE CITY OF NORTH WILDWOOD, AND)	
STANLEY RAPPAPORT, T/A THUNDERBIRD)	ON APPEAL
MOTEL,)	
Respondents.)	ORDER

-----)

Perskie & Perskie, Esqs., by Marvin D. Perskie, Esq., Attorneys
for Appellant
James Stephen Cafiero, Esq., Attorney for Respondent Mayor and
Common Council
Nathan C. Staller, Esq., Attorney for Respondent Rappaport.

BY THE ACTING DIRECTOR:

Appellant appeals from the grant by respondent Mayor and Common Council of North Wildwood of a plenary retail consumption license to respondent Rappaport for premises Lots 3-22 inclusive Block 290 & Easterly side of Surf Avenue between 23rd and 24th Avenues, North Wildwood.

Prior to the hearing on appeal, by letter of March 7, 1964 the attorney for respondent Rappaport advised me that all counsel had consented to dismissal of the appeal with prejudice. No reason appearing to the contrary,

It is, on this 9th day of March 1964,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. MORAL TURPITUDE - CONVICTION OF OPERATING A LOTTERY (EMPLOYMENT AS A RUNNER) HELD TO INVOLVE MORAL TURPITUDE.

March 25, 1964

RE: Eligibility No. 726

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of a crime.

Applicant's criminal record discloses that on April 6, 1962, following a plea of guilty in the Bergen County Court to a charge of operating a lottery between September 1 and December 7, 1961, he was sentenced to serve from one year to one year and a day in New Jersey State Prison and was paroled on October 9, 1962.

A report received by the Division discloses that applicant was arrested on December 6, 1961, following a raid on a licensed premises; that, upon entering the premises, the officers observed the applicant seated in a telephone booth; that the applicant was searched; that nothing of an incriminating nature was found in his possession; that shortly thereafter the telephone rang and was answered by one of the raiding officers; that the caller placed several "numbers" bets with the officer and requested that they be given to the applicant.

The records of this Division disclose that on March 29 and December 11, 1963, the applicant was interviewed at the office of the Division with reference to his eligibility; that on his first visit applicant stated that he was the principal in his gambling activities; that he had no employees and that he did a weekly business of about \$600. Applicant was thereupon advised that his conviction appeared to involve moral turpitude because he had engaged in commercialized gambling as a principal.

On his second visit to the Division applicant stated that he was in error in his aforesaid interview; that he was not the principal in his unlawful venture; that he was employed as a "runner" by a Mr. X on a commission basis, fifty per cent. on horse racing bets and twenty-five per cent. on "numbers" bets, and that his weekly commissions amounted to about \$250. Applicant further stated that his original statement was made to conceal the identity of Mr. X and that he was advised by his attorney to return to the Division and to disclose the true extent of his gambling activities.

At the hearing held herein applicant testified that he had been employed as a "runner" by Mr. X; that he had met Mr. X only once; that he had turned over the proceeds of his gambling activities to an employee of Mr. X known to him as "Joe;" that "Joe" paid him his commissions and that Mr. X was the ultimate recipient of the gambling proceeds.

Heretofore it has been held in numerous Division rulings that the crime of commercialized gambling may or may not involve moral turpitude, depending upon the facts in the case. See, for example, Re Case No. 1735, Bulletin 1506, Item 5.

The type of gambling described herein by its very nature requires that kind of organization which breeds corruption and affects the moral fibre of the community. It is apparent that the applicant herein was an integral part of such group and that his services facilitated the operation of such a syndicate. The prime evil in question is not so much the gambling in and of itself but, rather, the syndicated structure which has as its underlying purpose the violation of our lottery statute.

In view of the above and the sworn testimony of the applicant that he was employed as a "runner" in a lottery, it is my opinion that the crime of which he was convicted on April 6, 1962, involves the element of moral turpitude.

Under the circumstances, applicant is advised that (1) in my opinion he has been convicted of a crime involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33: 1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3)

R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him in any business capacity whatsoever a person so disqualified.

JOSEPH P. LORDI
DIRECTOR.

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION FOR LICENSE - CRIMINALLY DISQUALIFIED EMPLOYEE - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 55 DAYS UPON PROOF OF CORRECTION.

In the Matter of Disciplinary
Proceedings against

PEPPERMINT TWIST, A CORP.
103 Jackson Street
Newark, New Jersey

Holder of Plenary Retail Consumption
License C-494, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Newark.

CONCLUSIONS
AND ORDER

Louis M. Turco, Esq., Attorney for Licensee.
David S. Piltzer Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. In your application filed with the Municipal Board of Alcoholic Beverage Control on November 21, 1962, upon which you obtained your plenary retail consumption license, in answer to Question 22 you listed Cynthia Fucci, Frank Fucci and Maria Fucci as the holders of 80%, 10% and 10%, respectively, of your issued and outstanding stock, and, in answer to Question 24, you stated that none of said stockholders had any beneficial interest, directly or indirectly, in the stock held by the other stockholders, whereas in truth and fact Cynthia Fucci and Maria Fucci did not have any beneficial interest in said stock and Frank Fucci had such an interest in that he was the real and beneficial owner of all said stock; said false statements, misrepresentations and evasion and suppression of material facts being in violation of R.S. 33:1-25.

"2. In your aforesaid license application, you falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay (by way of rent, salary or otherwise) to any employee, or other person, any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?' whereas in truth and fact you had agreed to permit Frank Fucci to retain all the

profits and income derived from your licensed business; in violation of R.S. 33:1-25.

"3. From on or about November 21, 1962 to date, you employed and had connected with you in a business capacity Vincent Fucci, a person who had been convicted of a crime involving moral turpitude, viz., receiving stolen goods, in violation of N.J.S. 2A:139-1; in violation of Rule 1 of State Regulation No. 13.

"4. On April 29 and May 6, 1963, you failed to facilitate and you hindered and delayed and caused the hindrance and delay of an investigation, examination and inspection being conducted by Investigators of the Division of Alcoholic Beverage Control; in violation of R.S. 33:1-35."

A certified copy of the application for license referred to in Charges 1 and 2 was received in evidence.

The Division's case was grounded upon the results of a continuing investigation of the licensee by two ABC agents, commencing with their first visit to the licensed premises on April 22, 1963. Their testimony was buttressed by several statements of officers and employees of the corporate licensee, as well as checks and other instruments pertinent to the allegations.

On April 22, 1963, the agents interviewed the bartender, one Vito Menza, who informed them that the establishment was owned by Frank Fucci. An appointment was made for April 24, which Fucci cancelled. However, a subsequent appointment was made by telephone directly with Fucci for April 29. The agents returned to the premises and interviewed a person who represented himself to be Frank Fucci. In fact, it later developed that this individual was Vincent Fucci, the brother of Frank. At that time, Vincent turned over a number of checks which were admitted into evidence, and gave an oral statement to the agents.

The agents returned to the premises on May 6, identified themselves, and again Vincent represented himself to be Frank Fucci; and, impersonating his brother, gave a statement. Vincent, however, refused to sign it for the assigned reason that his attorney was not present.

Further investigation with the Newark Police Department disclosed that the person whom they had interviewed was not Frank Fucci. Fortified with a photograph and other records of Frank, they returned to the premises on May 13, at which time Vincent finally disclosed his true identity and executed a voluntary statement. This was also offered in evidence. In this statement, Vincent set forth that he is authorized to sign checks and has, in fact, signed a number of checks in payment of purchases for the corporate licensee. He also said that he occasionally tends bar, takes care of the books, pays the help, orders the liquor and frequently brings the paper work home to his wife. He identified the record showing his conviction of the crime of receiving stolen goods, a crime involving moral turpitude, which would disqualify him from participating in any capacity in the alcoholic beverage industry.

Frank Fucci appeared at the Division offices on May 21, 1963, when a statement was prepared in question-and-answer form reflecting information obtained from him by the agents. However, he declined to sign the statement because "he didn't know what

was going on and he didn't want to sign the statement." In this unsigned voluntary statement, Frank Fucci gave the following information: He wanted to buy the business then owned by one Johnny Demko; the price agreed upon was \$7,000; \$1500 was put up in cash, \$500 of his own money and \$500 each from his mother, Maria Fucci, and his sister-in-law, Cynthia Fucci. "The balance \$5,500.00 was obtained from the Attorney Miller out of his own funds. There was no paperwork involved in receiving the \$5,500.00 from Miller. It was a personal loan as a friend. There was no specific arrangements as to repayment, no chattel, promissory notes, or pre-dated checks as security."

The statement further discloses that although each made an equal cash investment, Cynthia received eight shares of stock and Maria and Frank received one share each. Asked about the operation of the tavern, Frank disclosed that one Vito Menza and his brother, Vincent Fucci, participate in its operation but that neither of them receive any pay; that Cynthia takes care of the bookkeeping and paper work and they have no accountant or other bookkeeper. "When my brother is at the tavern he is in charge. He is usually there three or four times a week. When I am there I am in charge. Vincent is there looking after his end because his wife has an interest." The following question was then put:

"Q Will Vincent get any of the profits of the business?

A Well, they are husband and wife. I would be lying if I told you that she would get all the profit and he would not get some.

Q In other words because they are married they will share in the profits that are due to Cynthia?

A Well, I guess so."

Cynthia Fucci was interviewed at the Division offices on June 7, 1963, and executed a voluntary, signed and sworn statement after reading the same. In this statement, she corroborated the fact that she presently holds eight shares of the corporate stock and stated that she invested \$500 from money she had saved while she was working. She admitted that her husband Vincent helps out at the licensed premises but "he is not a regular employee." Although she is supposed to take care of the books, she did not do so because she did not have the time; she did not know who does it. She further stated that her husband has the authority to sign checks for the corporation. She was asked the following questions:

"Q Why then, if you hold 80% of the stock, do you know so little about the place?

A I only did it as a favor to Frank Fucci, my brother-in-law. Frank has a former wife who he was afraid would be able to get part of the place if it was in his name so he asked me to put the majority of the stock in my name. Mr. Miller, the attorney, suggested that the stock be put in my name so Frank's former wife could not get part of the place.

Q When and how did Frank first mention this arrangement to you?

A I was first under the impression that Frank was going to have the tavern in his name. He had talked about buying this tavern several times in my presence. Then he asked me if he could put the license in my name so he would be protected from his former wife. Later on my husband, Vincent, told me that Frank was going to make a corporation and that he wanted to put the stock in my name. He told me Frank was going to ask me about it. I told Vincent it would be all right. Frank did come and ask me and I accepted. At the closing Miller suggested that 80% be put in my name and that Frank and his mother be given 10% apiece. My mother-in-law, Maria Fucci, had no intention of going in on this business until she was asked by Frank to be a stockholder.

Q Why, if you were only doing a favor for Frank, did you put up money for the stock?

A This was just a favor also. Frank had no money so I loaned him the \$500.00. He will pay me back as soon as he is able.

* * *

Q Why did Frank ask you to be the stockholder and not someone else?

A I don't know. He asked me and I said all right.

Q Was the \$500.00 that your mother-in-law put in a loan to Frank, also?

A Yes.

* * *

Q Would it be correct to say that this tavern, the Peppermint Twist, is actually Frank's tavern and that you and your mother-in-law have no real interest in it other than lending him the money and letting him put your names on the license?

A That is correct.

Q Will you benefit from this tavern in the way of salary or profit?

A Nothing.

Q Will Frank Fucci retain all the profits?

A Yes." (Emphasis supplied)

Agent H testified that he was present when Cynthia Fucci was interviewed at the Division office on June 7, 1963 witnessed the statement taken from her, and corroborated the prior agent's testimony that after reading the statement, she appeared thoroughly to understand the same and voluntarily signed and swore to the truth of its contents.

On behalf of the licensee, Vincent Fucci admitted that he impersonated his brother Frank on the occasion of the first two visits by the Division agents, as set forth hereinabove, and gave

the following explanation: He was only trying to be helpful by saying that he was, in fact, his brother and, since he knew as much about the business as his brother did, he saw no real harm in such misrepresentation. He was only trying to do his brother a favor because his brother was unable to leave his place of employment; and Vincent did not realize the seriousness of the investigation. However, on the third visit, he finally admitted his identity.

He further testified that he was unemployed, but occasionally was self-employed as an itinerant used-car salesman, and would frequently help out at the tavern. He had no set hours. He did much of the porter work, some of the bookkeeping, occasionally tended bar, and did some purchasing of the supplies. He denied that his brother is the beneficial owner of all the stock and stated that they had an arrangement whereby his wife was paid \$50 a week as a draw, although she performed no services. At the end of the year, if the business made any money, that amount drawn by his wife would be deducted from the equal share to which she would be entitled. His mother, who, he insists, is also an equal owner although 10% of the stock was placed in her name, and had no part in the management of the business.

The witness further admitted that he had been convicted in the Essex County Court of receiving stolen goods and was sentenced on December 15 1954 to eighteen months in the Essex County Penitentiary. He claimed that he was unaware that he was thereby disqualified from engaging in the alcoholic beverage industry.

On cross examination, Vincent Fucci stated that the only person drawing any money from the business was his wife and that she was paid, personally, by his brother Frank. Frank disbursed the receipts. It was Vincent's impression that Frank held 80% of the stock. He was then asked the following question:

"Q Aren't you, in fact, the manager whenever Vito is not at the tavern?

A You could call me the manager in name or anything else but I would do anything to help the place, let me say that much to you, I would do anything and if it meant giving a decision on something and I thought it was the right decision, I would do it if I was trying to help."

Upon further questioning by me, this witness stated that his brother Frank was the only one who signed the note obligating himself for the balance of \$5,500 due on account of the purchase price of \$7,000; that neither his mother nor his wife obligated themselves thereon. He could not explain why 80% of the stock was put in his wife's name.

Cynthia Fucci, wife of Vincent and sister-in-law of Frank, in effect repudiated practically all of the substantive statements given to the Division investigators in her sworn statement of June 7. She explained that she thought she would get her husband into trouble because he had a criminal record and therefore stated that Frank was the sole owner of the business. She admitted that she read the statement and understood its contents although she was somewhat confused. In her direct testimony at this hearing, she stated that she is the holder of 80% of the stock of the corporate licensee and is its secretary-treasurer.

As a stockholder she receives \$50 a week as a "loan" and explained that, if at the end of the year, the business made a profit, this money would be deducted from her equal share thereof. The \$50 was usually delivered to her by Frank and she readily admitted that she performs no services. She was supposed to do the bookkeeping for the corporation but found that she did not have the time to do it. In explaining further why she had sworn in her earlier statement that Frank was the owner, she used the following language:

"Because my husband had a record that I thought, you know, we weren't allowed to have a tavern, I thought that I would get him in trouble in my having it under my --you know-- the name being the same. I knew that he couldn't participate in it and I thought that it would be getting him into trouble if I said that I was 80 per cent of the stockholder."

She insisted that she invested \$500 and, therefore, had an interest in this corporation.

On cross examination, it developed that she knew very little about the initial negotiations leading up to the purchase of this business, or about the operation of the business itself. She admitted that she is a high school graduate and had worked until three years prior to the hearing as the chief accountant for a nationally known industrial company, earning about \$500 a month. The \$500 which she had invested came from cash which she had originally withdrawn from a bank for the purpose of buying a car. This money she turned over to Frank and assumed he used it as part of the down payment for the purchase of the tavern.

Further questioning elicited the fact that she was not familiar with either the profits or losses of the corporation and relied for this information solely upon what Frank told her. Frank gave her \$50 a week in cash, but never by check, although the corporation had a checking account.

She also admitted that Frank had spoken to her about his marital situation, particularly with respect to the possibility of his ex-wife's receiving additional alimony, but explained it as follows:

"Frank just made a remark about when he said the 80 per cent, Mary won't be able to sue for more alimony, it was just a remark, joking, and that's why I thought of it then."

My further questioning of this witness elicited from her the explanation that she told the Division investigators that Frank was the sole owner because she would be barred from engaging in the alcoholic beverage industry since her husband had a criminal record. However, she could not explain why this did not prevent having 80% of the stock actually put in her name. Her only justification for this was that her lawyer suggested that the corporation be set up in that way, after which Frank "made a remark to the effect that it's just as well because Mary can't get a boost in alimony or something like that, a raise in her alimony."

I have carefully examined and evaluated the testimony and the exhibits with respect to these charges. I have also

observed the demeanor of the witnesses as they testified before me. We are dealing with purely disciplinary measures which are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). Thus, the Division need establish its case only by a fair preponderance of the credible evidence. Freud and Pittala v. Davis, 64 N.J. Super. 242; Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373.

The testimony of the Division agents, together with the statements of the licensee's officers and employees, forcefully and convincingly support the Division's charges. Usually in "front" cases, the evidence is merely circumstantial; rarely is there direct admission of the charges. However, the statements of both Vincent and Cynthia Fucci are clearly affirmative admissions which buttress the gravamen of the charges herein preferred.

The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be grounded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508. No testimony need be believed, but rather so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence sec. 2100 (1940); Greenleaf Evidence sec. 201 (16th Ed. 1899).

Using these principles as a guide, I find that both Vincent and Cynthia Fucci unmistakably falsified their testimony when they testified before me. I am much more persuaded by the voluntary sworn statement given by Cynthia Fucci on June 7, in which she gives perhaps the real reason why Frank Fucci put the major portion of the stock in her name and in the name of his mother. It appears that Frank is presently remarried and is obligated to pay alimony to his former wife. It is my conviction that he used his sister-in-law and mother as a subterfuge in order to keep the assets of this enterprise without the reach of his ex-wife.

It may be that his mother Maria and his sister-in-law Cynthia did actually advance \$500 each but, if that is the fact, then I am satisfied from the testimony and the statements herein that these were not investments in the business but rather, at the very most, loans to Frank in order to enable him to consummate this transaction. This is further evidenced by the fact that Frank was the only one who obligated himself on the balance of \$5500 which was part of the purchase price for this business.

The explanation given by Cynthia as to why she signed the statement on June 7 is implausible and preposterous since she had already signed the application for license submitted to the Newark Municipal Board of Alcoholic Beverage Control in which she set forth that she was an 80% shareholder in this corporation. I cannot see any logical substance to her explanation that her reason for telling the Division agents that Frank was the sole owner was because of her husband's criminal record. Such explanation makes no sense, nor does it have even the slightest ring of truth.

With respect to Vincent, he admits that he impersonated his brother on the agents' first two visits to the tavern and, in fact, gave a statement to them with wilful misrepresentation that he was his brother Frank. His explanation that he was trying to do his brother a favor and was, in fact, giving truthful answers must be similarly rejected. Also, his conviction of crime seriously affects his credibility.

It is also significant that Frank Fucci was never produced at the hearing, although the hearing was adjourned when I

was advised that he was on his way. Counsel represented to this court that it was impossible for Frank to leave his place of employment because he had been just recently reinstated after having been suspended for absenteeism and therefore his job was in jeopardy. However, counsel presented into evidence Frank's unsigned statement "since his testimony with respect to the ownership of the corporation would have similarity to his statement."

It would have been of much greater help to have come face to face with Frank and to have confronted him with some of the obvious contradictions in the testimony and the statements given during the course of the investigation of this matter and at this hearing. A presumption arises, by his failure to refute the testimony regarding these charges, that he could not truthfully contradict the testimony offered by the Division's witnesses. Where a party has a witness or witnesses available and where they possess peculiar knowledge essential to the facts of a party's case, the failure to call said witness or witnesses gives rise to an inference that, if called the testimony elicited therefrom would be unfavorable to the said party. Jacoby v. Jacoby, 6 N.J. Misc. 86; Cork 'N Bottle, Inc., Bulletin 1232 Item 3.

It should further be noted that, in the absence of Frank, the records of this corporation were not produced at this hearing so that I did not have the opportunity to examine them. It should lastly be noted as of overriding decisive significance that the testimony abundantly manifests the fact that Frank was in full control and operation of the premises, handling the receipts, accounting to nobody and disbursing the monies.

I therefore find (1) that Cynthia and Maria Fucci do not have any beneficial interest in the stock of the corporate licensee; that Frank is the real and beneficial owner of all the stock, and that false statements, misrepresentations and evasion and suppression of the material facts are reflected in the application filed with the municipal issuing authority on November 21, 1962; (2) that Frank Fucci retained all the profits and income derived from this licensed business; (3) that on November 21 1962, the corporate licensee employed and had connected with it in a business capacity Vincent Fucci, a person who had been convicted of a crime involving moral turpitude; and (4) that Vincent Fucci's action in personating his brother Frank Fucci and misrepresenting to the Division agents on April 29 and May 6, 1963 that he was Frank Fucci and giving a statement to them under such misrepresentation, constituted failure to facilitate and hindering and delaying an investigation, examination and inspection being conducted by investigators of this Division.

Since I have found that all of the charges herein have been proved by a fair preponderance of the credible proofs, I recommend that the licensee be found guilty as charged.

Licensee has no prior adjudicated record. Since it does not appear that Frank Fucci was disqualified in any way to hold as much stock as would represent his true interest as principal in the corporation, it is recommended that as to Charges 1 and 2 the license be suspended for a minimum period of twenty-five days. Re Lido Bar & Grill, Inc., Bulletin 1544, Item 2. In addition, it is recommended that the license be suspended on Charge 3 for twenty days (Re Lu-Anne, Inc., Bulletin 1526, Item 15) and on Charge 4 for ten days (Re: Burke's Tavern, Inc., Bulletin 1539, Item 3), or a total of fifty-five days.

Conclusions and Order

No exceptions to the Hearer's Report were filed with me 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, argument of counsel and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Since to date no correction of the unlawful situation has been accomplished, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than fifty-five days after commencement of the suspension herein.

Accordingly, it is, on this 9th day of March, 1964,

ORDERED that Plenary Retail Consumption License C-494, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Peppermint Twist, A Corp., for premises 103 Jackson Street, Newark, be and the same is hereby suspended for the balance of its term, effective 2:00 a.m. Tuesday, March 17, 1964, with leave to the licensee or any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation for lifting of the suspension of the license on or after 2:00 a.m. Monday, May 11, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER TEMPORARILY STAYING SUSPENSION.

Auto. Susp. #244)	
In the Matter of a Petition to)	
Lift the Automatic Suspension)	ON PETITION
of Plenary Retail Distribution)	
License D-22, Issued by the)	ORDER
Municipal Board of Alcoholic)	
Beverage Control of the City)	
of Clifton to)	

SEMON WINE & LIQUOR CO., INC.
1057 Main Avenue
Clifton, N.J.

Joseph M. Keegan, Esq., Attorney for Petitioner

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on March 2, 1964, John Andrew Semon, vice-president of the licensee-petitioner corporation, was fined \$50 and \$5 costs in the Clifton Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on December 6, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. The suspension has

not been effectuated because of the pendency of this proceeding.

It further appears that disciplinary proceedings are presently pending before the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioner after the disciplinary proceedings have been decided. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Pasch, Bulletin 1538, Item 8.

Accordingly, it is, on this 13th day of March, 1964,

ORDERED that the aforesaid automatic suspension be stayed pending the entry of a further order herein.

JOSEPH P. LORDI
DIRECTOR

6. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #243)	
In the Matter of a Petition to)	
Lift the Automatic Suspension of)	
Plenary Retail Consumption License)	
C-23, issued by the Board of)	ON PETITION
Commissioners of the City of)	
Union City to)	ORDER
SOLLECITO'S CORP.)	
2117 Summit Avenue)	
Union City, N.J.)	

James E. Anderson, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on January 3, 1964, Mary Sollecito, president of the licensee-petitioner corporation, was fined \$25 in the Union City Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to minors on December 26, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the municipal issuing authority has suspended the license for ten days from February 17 to February 27, 1964, after the licensee pleaded guilty to a charge in disciplinary proceedings alleging the same sale to the minors. It appearing that the suspension has been served, I shall lift the automatic suspension. Re Vigliano, Bulletin 1546, Item 9.

Accordingly, it is, on this 13th day of March, 1964,

ORDERED that the statutory automatic suspension of said license C-23 be and the same is hereby lifted, effective immediately.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - POSSESSION OF PINBALL MACHINES -
 LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

STADIUM COCKTAIL LOUNGE, INC.
 408-414 Bloomfield Avenue
 Newark 7, New Jersey

Holder of Plenary Retail Consumption
 License C-478, issued by the Muni-
 cipal Board of Alcoholic Beverage
 Control of the City of Newark.

CONCLUSIONS
 AND ORDER

 Eugene D. Molinaro, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
 December 20, 1963, it permitted three pinball machines on its
 licensed premises, in violation of Rule 7 of State Regulation
 No. 20.

Absent prior record, the license will be suspended for
 ten days, with remission of five days for the plea entered, leav-
 ing a net suspension of five days. Re Polish American Citizens'
Club, Bulletin 1512, Item 11.

Accordingly, it is, on this 16th day of March, 1964,

ORDERED that Plenary Retail Consumption License C-478,
 issued by the Municipal Board of Alcoholic Beverage Control of
 the City of Newark to Stadium Cocktail Lounge, Inc. for premises
 408-414 Bloomfield Avenue, Newark, be and the same is hereby
 suspended for five (5) days, commencing at 2:00 a.m. Monday,
 March 23, 1964, and terminating at 2:00 a.m. Saturday, March 28,
 1964.

JOSEPH P. LORDI
 DIRECTOR

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

In the Matter of Disciplinary)
 Proceedings against)

MOLLIE & ABE HELLER)
 T/A HELLER'S)
 872-4 CLINTON AVENUE)
 Irvington, 11, N.J.)

CONCLUSIONS
 AND ORDER

Holders of Plenary Retail Consumption)
 License C-34, issued by the Municipal)
 Council of the Town of Irvington.)

 Emanuel N. Silberner, Esq., Attorney for Licensees.
 David S. Piltzer, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensees plead guilty to a charge alleging that on
 February 6, 1964, they possessed alcoholic beverages in three
 bottles bearing labels which did not truly describe their con-
 tents, in violation of Rule 27 of State Regulation No. 20.

Licensees have a previous record of suspension of
 license by the municipal issuing authority for ten days, effective
 July 3, 1960, for sale during prohibited hours.

The prior record considered, 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 Jolas, Bulletin 1527, Item 10.

Accordingly, it is, on this 13th day of March, 1964,

ORDERED that Plenary Retail Consumption License C-34,
 issued by the Municipal Council of the Town of Irvington to
 Mollie and Abe Heller, t/a Heller's, for premises 872-4 Clinton
 Avenue, Irvington, be and the same is hereby suspended for
 twenty (20) days, commencing at 2:00 a.m. Tuesday, March 17,
 1964, and terminating at 2:00 a.m. Monday, April 6, 1964.

JOSEPH P. LORDI
 DIRECTOR.

9. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #239)	
In the Matter of a Petition to)	
Lift the Automatic Suspension)	ON PETITION
of Plenary Retail Distribution)	
License D-3, Issued by the)	
Borough Council of the)	SUPPLEMENTAL
Borough of South River to)	ORDER
JACKSON LIQUORS, INC.)	
t/a JACKSON LIQUOR)	
64 Jackson Street)	
South River, N. J.)	

 Edwin A. Kolodziej, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On January 22, 1964, an order was entered temporarily staying statutory automatic suspension of license of licensee-petitioner pending determination of disciplinary proceedings against it.

It now appears from Division records that in disciplinary proceedings conducted by the municipal issuing authority, the license was suspended for five days commencing at 7:00 a.m. March 9, 1964, and terminating at 10:00 p.m. March 13, 1964, after plea of non vult to a charge alleging sale of alcoholic beverages to the same minor, which sale was the subject of the previous criminal conviction. It appearing that the suspension has been served, I shall lift the automatic suspension. Re Vigliano, Bulletin 1546, Item 9.

Accordingly, it is, on this 24th day of March, 1964,

ORDERED that the statutory automatic suspension of said license D-3 be and the same is hereby lifted, effective immediately.


 Joseph E. Lordi
 Director