Deputy Director Stockburger

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

BULLETIN 1616

June 3, 1965

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ITEM

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

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1. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. JERSEY CITY and BAPHAM COMPANY INCORPORATED.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF JERSEY CITY, and BAPHAM COMPANY INCORPORATED, t/a SHOP RITE LIQUORS, Respondents.	)	ON APPEAL CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq. and Samuel J. Davidson, Esq., Attorneys for Appellant.
Meyer Pesin, Esq., by Joseph S. E. Verga, Esq., Attorney for Respondent Municipal Board.
Alexander A. Abramson, Esq., Attorney for Respondent Bapham Company Incorporated.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of respondent Board whereby it approved an application for a transfer of a plenary retail distribution license from Raymond F. Anton and Benjamin Anton to Bapham Company Incorporated, t/a Shop Rite Liquors, and from premises 306 Newark Avenue to premises to be constructed in Block 1288A, Lot 1F, Route 440 and Danforth Avenue, Jersey City.

The petition of appeal filed herein alleges that the Board's action was erroneous because all shares of the capital stock of the corporate transferee are held by Supermarkets Operating Co., a corporation which, at the time its application was filed and acted upon by the respondent Board, held two plenary retail liquor licenses and thus, by reason thereof, violated R.S. 33:1-12.31.

The statute in question (disregarding exceptions that do not apply to the matter under consideration) provides, in substance, that, after the effective date thereof (August 3, 1962), no person shall acquire a beneficial interest in more than two alcoholic beverage retail licenses. (Respondent corporate-licensee included in definition of a person in R.S. 33:1-1(r)).

On October 23, 1964 respondent Board approved the application for transfer, subject to special conditions approved by the State Director and contained in the following resolution:

"BE IT RESOLVED BY THE BOARD OF ALCOHOLIC BEVERAGE CONTROL OF JERSEY CITY, that application of person to person and place to place transfer of License No. D-32, from Raymond F. Anton & Benjamin Anton, 306 Newark Avenue, Jersey City, N. J. to Bapham Company Incorporated, t/a Shop Rite Liquors, City Block 1288, Route 440 & Danforth Avenue, Jersey City, N. J., is hereby approved, providing that the said license shall not be transferred unless and until the proposed new premises are completed in keeping with the filed and approved plans and specifications, and

"BE IT FURTHER RESOLVED, that the said transfer shall not be effected unless and until the applicant corporation and all its members have divested themselves of any and all interest in the limited retail distribution license in the township of Union and that no member of Uniondale Foods Corporation or of Supermarkets Operating Co., have any interest in such limited retail distribution license."

Municipal license issuing authorities may impose special conditions to the issuance of licenses deemed necessary and proper to accomplish the objects of the statute and secure compliance with the provisions thereof. The power is expressly conferred by R.S. 33:1-32. All such conditions, however, must be imposed by resolution of the issuing authority and must have the approval of the Director before they can become effective. Such approval of the said special conditions was duly given.

The only question raised by appellant and to be resolved under the facts appearing in the instant case is whether the respondent-licensee acquired a beneficial interest in the license in question by reason of the action of the respondent Board in approving the application.

In Grand Union Co. et als. v. Sills et als., 81 N.J. Super. 65, Judge Lyons, speaking for the court concerning a beneficial interest, stated:

"Then there is the claim that the expression, 'beneficial interest,' projects no sure concept of the legislative thinking. It is contended that in the absence of statutory definition, the term is meaningless. 'Beneficial interest' is a phrase not new in the law. As was pointed out in argument, that phrase and similar expressions are found in a number of ABC regulations. Bouvier defines it. It is used in our Wills Act and has been judicially interpreted in that context. N.J.S. 3A:3-6; In re Rogers Estate, 15 N.J. Super. 189, 206 (Cty. Ct. 1951). Other jurisdictions have dealt with its meaning. All in all, it may be said that reliable guides to its interpretation are to be found."

On appeal to the New Jersey Supreme Court (43 N.J. 390), Justice Jacobs remarked as follows:

"The purpose underlying the legislative use of the phrase 'beneficial interest,' a phrase which appears throughout the law (Montana Catholic Missions v. Missoula

> County, 200 U.S. 118, 127-128, 26 S. Ct. 197, 50 L. Ed. 398, 402 (1906); In re Rogers' Estate, 15 N.J. Super. 189, 206 (Essex Cty. Ct. 1951); In re Armistead, 362 Mo. 960, 245 S.W. 2d 145, 148 (1952)), seems clear enough; it, along with the comparable phrase 'directly or indirectly interested,' was contained in the original Control Act (L. 1933, c. 436, pp. 1193, 1205) and was intended to include ownership interests in the broad or equitable sence rather than in the narrow or technical sense. That certain marginal situations may present close questions for determination does not indicate that the statutory language is too uncertain. State v. Hudson County News Co. [35 N.J. 284, pp. 297-298]. It is worthy of note that the many references to beneficial and direct or indirect interests which appear in the regulations or application forms issued by the Division of Alcoholic Beverage Control have long been applied administratively without any significant difficulty."

At first blush it would appear from the language used by Justice Jacobs in Grand Union Co. et als. v. Sills et als., supra, that ownership interests in a liquor license "in the broad or equitable sense rather than in the narrow or technical sense" might apply to the license in question. However, considering the purpose of the statute applicable thereto, it is questionable whether the respondent-licensee acquired such a beneficial interest in the license as contemplated by the law by the mere approval of the application subject to special condition requiring divestiture of interest in another license.

During the pendency of the appeal herein, the Division received a notice from the Clerk of the Township of Union which reads as follows:

> "The Township Committee at its meeting of January 12, accepted for cancellation Limited Retail Distribution License No. DL-8, issued to Uniondale Foods, Inc., trading as Shop-Rite Uniondale, for premises at 969-973 Stuyvesant Avenue, Union, New Jersey."

In view of the fact that respondent-licensee has duly divested itself of all interests whatsoever in one of the two licenses which it, or any person connected with said respondent, possessed, it will be unnecessary to formally determine or resolve the only question presented in this appeal. Thus the questionable situation has been eliminated. This being a hearing de novo, the facts existing at the time of the determination of the appeal govern. Socony Vacuum Oil Co., Inc. v. Mount Holly Twp., 135 N.J.L. 112 (Sup.Ct. 1947); Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1; Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1; Watson and Hardeman v. Camden et al., Bulletin 1010, Item 1.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the respondent Board and dismissing the appeal.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

After careful consideration of all the facts and circumstances appearing herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 12th day of April, 1965,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)	
ANTHONY DELBONO t/a DELBONO'S GRILL 181 Throop Avenue New Brunswick, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-70, issued by the Board of Commissioners of the City of New Brunswick.	)	

Spritzer & Spritzer, Esqs., by Morris Spritzer, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On April 30, May 4 and 26, 1964, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse racing on all said dates and in a lottery, commonly known as the 'numbers game', on April 30 and May 26, 1964; in violation of Rule 7 of State Regulation No. 20.

"2. On April 30 and May 26, 1964, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises and possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Three New Jersey State Police officers participated in the investigation leading to the charges preferred in this matter. Trooper Walter T. Decker, who has had extensive experience in the investigation of gambling, bookmaking and lottery in his capacity

as a state trooper, testified that, pursuant to specific assignment, he entered the licensee's premises on April 14, April 30, May 4 and May 26, 1964. He was accompanied on several of these dates by two other state police officers and another unnamed assistant.

On his visit on April 30, at approximately 12:15 p.m., he seated himself at the bar and ordered a drink from a bartender known variously as Jessie and Chester (later identified as Chester Oliver). He particularly noted that Oliver served a number of the other patrons as well. About five minutes after he arrived, a person entered the tavern, seated himself a short distance from this witness, opened the rear page of the New York Daily News to the racing section, and ordered a glass of beer. This individual asked the bartender where Tony (later identified as the licensee) was, when he was informed that he was downstairs. He continued to examine the racing section and then told Oliver that he wanted to place a bet on "Fair Blend, $2 to win, 1st at Garden State." Oliver wrote something on a slip of paper, and the person then handed him the $2 which were placed in the bartender's pocket together with the slip of paper on which the particular notation was made.

The witness also stated that his examination of the racing sheet thereafter verified to him that "Fair Blend" was the name of a horse running in the first race at Garden State and $2 were placed on the horse toowin, come in first. A few minutes later the licensee entered the premises from the back of the bar and, while he was talking to Oliver, another person entered the bar, walked up to the bartender and stated "785 for a half." Oliver again took a slip out of his pants pocket, wrote down a number, received 50¢ from this individual, and that person then left. During this transaction, the licensee was a short distance away from the bartender. Shortly thereafter, Oliver left the bar and entered a black Chrysler sedan which was parked in front of the premises.

On May 4, 1964, the witness re-entered these premises at approximately 12:05 p.m., seated himself at the bar and noted that the licensee was behind the bar. Oliver entered the premises at approximately 12:10 p.m. and within a few minutes thereafter, a person came into the premises, approached Oliver and said "Two bucks on High Brow, 4th in New York." This was said in a loud voice which was obviously heard by the licensee who was just a short distance away and was "watching the whole transaction." The witness stated that the patron's statement clearly meant that he wanted to "place a two dollar bet on a horse called High Brow, who was running in the 4th at New York." This was thereafter verified by this witness's examination of the racing section of the New York Daily News. Oliver accepted the bet money, wrote an appropriate legend on a slip of paper and put the money and paper in his pocket.

On May 26, 1964, at 12:30 p.m., the witness again entered these premises and, upon seating himself at the bar, noted that the licensee was tending bar. On the customers' side of the bar was Oliver, talking to a few other patrons. At that moment Detective Maziekien entered the premises and, immediately upon his entry, the witness identified himself as an officer of the New Jersey State Police. Maziekien then read a search warrant to Oliver and the licensee. While the search warrant was being read, Oliver dropped a slip of paper which was retrieved by the witness. This paper (marked D-1 in evidence) was identified as a horse bet slip.

The witness was asked on cross examination why he did not make an immediate arrest on April 30 when he observed the violation of the law. He stated that he was acting under specific instructions and was directed not to make an arrest on that particular day.

Detective John J. Maziekien, a member of the criminal investigation section of the New Jersey State Police, who also has a substantial background in gambling investigations involving bookmaking, horse race betting and lotteries and is familiar with the terms, expressions, writings and techniques employed in such gambling activities, testified that on May 26, 1964, in the company of Officers Decker and Miller, he arrived in the vicinity of the licensed premises. Decker entered the premises first, and was joined within a few minutes by this witness. He identified himself to the licensee and read the search warrant. Decker handed him a slip of paper, which had fallen to the ground, which he identified and described as a betting slip. This slip had two daily double bets on the first and second races for a total of $4, and bore the initials M. D. A search of the premises disclosed a torn numbers slip in a trash can behind the bar near where Oliver was seated. The writings on this slip were also delineated, and it was apparent that this was a lottery slip; the numbers on the slip related to a "numbers game." The initials M. D. were the initials of one of the patrons at the bar at that time whose name was Michael De Bonas, who was "then employed at the Delbono tavern." The witness further observed that DeBonas was seated next to Oliver at the time of this confrontation.

On cross examination this witness admitted that there were no dates on the slip that was found behind the bar so that he could not state definitely exactly when that slip was made. He also found two passes to the race track upon searching Oliver. Oliver merely denied that he had made any memorandum of bets, or that he had any knowledge of the same.

Anthony Delbono (the licensee) testifying in his own behalf, categorically denied that he knew that any betting was taking place on his premises or that he had participated in any. He explained Oliver's presence as follows: He had known Mr. Oliver for fifteen or twenty years, and Oliver was not a paid employee. However, he would relieve him on occasions when he was required to go to the basement to process deliveries of alcoholic beverages. Oliver also would relieve him when he had to go to his doctor. However, he was merely a patron and came into the premises daily for anywhere from fifteen minutes to three hours.

On cross examination the licensee stated that his only employee is Wes Miller, his son-in-law, and that his brother Louis used to work for him. He denied that Michael DeBonas is presently an employee. He also denied that he had ever seen anybody take any bets on the premises. He explained that the reason he used Oliver on the half-dozen occasions during the past year was that he had a lot of money on the premises and couldn't have the premises unattended. He admitted, however, that during the time Oliver was behind the bar, he performed regular bartender duties. He emphasized that since May 26, 1964, he has not permitted Oliver to perform any services at his premises although he is still a regular patron there.

This is a disciplinary action which is civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252. These cases require proof by a preponderance of the believable evidence only.

Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373; Freud and Pittala v. Davis, etc., 64 N.J.Super. 242. Since this is strictly a factual situation, the credibility of witnesses must be weighed. No testimony need be believed in these cases but, rather, the hearer must credit as much or as little as he finds reliable. 7 Wigmore, Evidence, sec. 2100 (3rd Ed. 1940); Greenleaf, Evidence, sec. 201. 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; Gallo v. Gallo, 66 N.J.Super. 1.

I have had an opportunity to observe the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony. I am persuaded that the version given by the New Jersey State Police officers of what happened on the dates in question is a credible, factual and true version. On the contrary, I was singularly unimpressed with the credibility or veracity of the licensee. It is obvious that these police officers had no improper motive in testifying as they did, nor did they have any personal animus against the licensee.

I am particularly unimpressed with the licensee's explanation of the activities of Oliver. I am convinced that Oliver performed the duties as a bartender to a greater extent than was admitted by the licensee, and that the illegal activities complained of were actually and patently carried on by Oliver. The slips presented in evidence are positive, empiric proof that bets were being taken on the date in question; and the proof is evident that some of these bets were made in the presence of the licensee.

In the case of State v. Martinek, 12 N.J.Super. 320 (App.Div. 1951), where, among other things, betting slips were admitted as exhibits in evidence, Judge Eastwood cites 22A C.J.S. Criminal Law, Sec. 710, p. 954, as follows:

> "Property found at or near the scene of the crime, and concerning which there is evidence showing or tending to show its ownership or possession by accused when the crime was committed, may be exhibited to the jury, as may any property sufficiently identified which throws light on the crime or connects accused with it, and is shown to have come from his possession or to have been found on his premises, or, there being sufficient evidence to implicate him, on the premises of a co-conspirator."

Judge Eastwood further stated:

> "The admission of betting slips, racing forms and other gambling paraphernalia found on the premises in the possession of the accused has generally been recognized by our courts as evidence from which the jury might conclude the guilt or innocence of the accused on an indictment for bookmaking."

Also see State v. Morehous, 97 N.J.L. 285 (E. & A. 1922); State v. Sage, 99 N.J.L. 229 (E. & A. 1923); cf. Re Trawinski, Bulletin 1555, Item 2.

I believe it is further significant that Oliver was not produced as a witness on behalf of the licensee. Counsel for the licensee seeks to explain this omission by stating that Oliver was advised by his attorney not to testify at this hearing because he has been indicted by the Grand Jury for bookmaking. He also suggested that, if he were to testify, his testimony would be to the effect that he took no bets within the hearing or sight of the licensee. It should be pointed out, however, that, regardless of counsel's explanation, it is clear that this witness was available and could have been supboenaed by the licensee if he so desired.

I am further persuaded, and so find, that the licensee knew that the proscribed activities were being carried on at the premises and in his presence.

It is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees or patrons and is fully responsible for their activities on the licensed premises. Kravis v. Hock, supra; In re Schneider, 12 N.J.Super. 449; Rule 33 of State Regulation No. 20. The licensee states that he neither saw nor heard these activities carried on. It is equally obvious that he cannot avoid his responsibility by merely closing his eyes and ears. Licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5.

Under all of the circumstances appearing herein, I find that the licensee allowed, permitted and suffered gambling in and upon his licensed premises in that he permitted the making and accepting of bets on horse racing on all of the said dates, and in a lottery known as the "numbers game" on April 30 and May 26, in violation of Rules 6 and 7 of State Regulation No. 20; and that he further, on April 30 and May 26, permitted and suffered tickets to a "numbers game" to be sold and offered for sale on his premises, specifically in violation of Rule 6 of State Regulation No. 20. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28; Re Costanzo, Bulletin 1599, Item 3.

I conclude that the Division has established the truth of these charges by a fair preponderance of the believable evidence and recommend that the licensee be found guilty as charged.

Licensee has a prior adjudicated record. The local issuing authority suspended the license for fifteen days effective June 7, 1942, for permitting gambling (card and dice games) and sale to minors; for five days effective June 15, 1953, for sale during prohibited hours; for twenty days effective May 10, 1954, for sale to minors; and for twenty days effective July 10, 1955, for sale during prohibited hours. In addition, his license was suspended by the Director for thirty days effective March 25, 1957, for sale to minors (Re Delbono, Bulletin 1164, Item 4) and for fifty days effective June 4, 1962, for sale during prohibited hours, foul language and hindering an investigation (Re Delbono, Bulletin 1461, Item 1).

It is therefore further recommended that the prior record of suspensions for dissimilar violations occurring more than five years ago be disregarded, but that the record of suspension for dissimilar violations occurring in 1962 be considered, and that an order be entered suspending the license for sixty-five days. Re Poodle Club, Inc., Bulletin 1596, Item 2.

Conclusions and Order

Written exceptions to the Hearer's Report and argument thereto were filed by the licensee's attorneys pursuant to Rule 6 of State Regulation No. 16. I find it necessary to discuss only one of the points raised.

In the written argument the licensee contends that it is significant that the Division failed to produce an available witness who could have corroborated the testimony of Trooper Decker with respect to the incidents of April 30, 1964. The Division's failure to produce this witness, it is contended, should be considered adverse to the Division's case in resolving the conflict between the testimony of Decker and the licensee.

On cross examination Decker stated that he was accompanied by a paid informer of the State Police on his visit of April 30, 1964 to the licensed premises. The identity of this informer was not revealed by Decker.

In State v. Clawans, 38 N.J. 162, 170 (1962) the New Jersey Supreme Court stated:

> "Generally, failure of a party to produce before a trial tribunal proof which, it appears, would serve to elucidate the facts in issue, raises a natural inference that the party so failing fears exposure of those facts would be unfavorable to him. 2 Wigmore, Evidence, § 285 (3d ed. 1940). But such an inference cannot arise except upon certain conditions and the inference is always open to destruction by explanation of circumstances which make some other hypothesis a more natural one than the party's fear of exposure. This principle applies to criminal as well as civil trials, to the State as well as to the accused."

I am satisfied that the record herein contains adequate explanation for the failure of the Division to call the informer in question as a Division witness. The prosecuting attorney expressly stated that he was not aware that another person accompanied Decker to the licensed premises on the date in question until this information was brought out on the cross examination of Decker. Under the circumstances, obviously he could not have had any fear of unfavorable exposure of facts through the testimony of the informer. Furthermore, even in the instance where an informer's participation is known in advance, he may reasonably not be produced as a witness in order that his identity may not needlessly be revealed. Cf. State v. Murphy, 36 N.J. 172, 178 (1961). See also State v. Booker, 86 N.J. Super. 175 (App.Div. 1965) and N.J.S. 2A:84A-28 with respect to the privilege accorded a witness to conceal the identity of an informer.

By the same token, I have not considered the failure of the licensee to produce Oliver as his witness. The pending criminal indictment against Oliver for bookmaking explains his reluctance to testify in this disciplinary proceeding.

Having carefully considered the entire record herein, I find that the exceptions of the licensee are without merit and, consequently, I concur in the findings and conclusions of the Hearer and adopt his recommendations. I will therefore impose the penalty recommended by the Hearer, namely, a license suspension of sixty-five days. In this latter connection I cannot agree with

the licensee's assertion that a lesser penalty be imposed because the gambling activity "was very small." The fact that commercialized gambling was involved warrants the imposition of the penalty in question.

Accordingly, it is, on this 31st day of March 1965,

ORDERED that Plenary Retail Consumption License C-70, issued by the Board of Commissioners of the City of New Brunswick to Anthony Delbono, t/a Delbono's Grill, for premises 181 Throop Avenue, New Brunswick, be and the same is hereby suspended for sixty-five (65) days, commencing at 2 a.m. Wednesday, April 7, 1965, and terminating at 2 a.m. Friday, June 11, 1965.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)	
NICHOLAS & HELEN GULLONE t/a POST OFFICE TAVERN 292 Market Street Paterson, New Jersey	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-341, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	)	

Bruno L. Leopizzi, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensees pleaded not guilty to the following charge:

"On September 15 and 17, 1964, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The Division offered the testimony of Agents S and D in substantiation of the charge.

Agent S's testimony may be succinctly stated, as follows: On September 15, 1964, at about 5:00 p.m., he entered the licensed premises and went to the bar. Tending bar was a person named "Bill"; one of the patrons was a male called "Scotty", later learned to be Thomas Todd; and he also observed one of the licensees, Nicholas Gullone, seated at a table with a group of patrons, including Scotty, about five or six feet behind the agent. He heard Mr. Gullone say to the group, "Do you have anything for me?" One of the group answered, "Not right now but we will have

something soon." He then observed them consulting the back pages of a newspaper. Scotty went out and returned in a few minutes with a newspaper and they made notations on a slip of paper and gave the slip and paper currency to Mr. Gullone. Scotty again departed from the premises for a few minutes and, upon his return, he went to the bar to the left of the agent. Agent S told Scotty (with the bartender standing directly in front of them) he had a few dollars to bet on a horse at the trotters that evening and asked, "Do I have time to get it in?" Scotty replied, "Sure. Go in the men's room and write it down." Scotty supplied him with paper and pencil; he went into the men's room and wrote out a horse race bet. Scotty said, "Write your name under it. This way Nick will know who it is for in case he doesn't remember you." The agent gave Scotty the bet slip and four one dollar bills, whereupon they both emerged from the men's room. Scotty was observed to approach the table where Mr. Gullone was seated and hand the money and slip of paper to Mr. Gullone. The agent departed at 7:00 p.m.

Agent S returned to the vicinity of the licensed premises on September 17, 1964 at approximately 5:00 p.m. with three other Division agents, a New Jersey State Police officer and an investigator attached to the Passaic County Prosecutor's office. He entered the premises with Agent D and they took positions at the bar. Again, Bill (ascertained to be William Burnett) served as bartender. He observed Mr. Todd approach the bar and ask for and receive a small paper pad and a pencil from the bartender and return to a table where he had been seated with two males. One of the males was observed looking at a newspaper, make notations on a slip of paper, and give the slip of paper and a five dollar bill to Mr. Todd, who then asked the bartender for change. Todd kept the slip of paper and four one dollar bills in his hand and returned one dollar to the male at the table. Todd left the licensed premises and was observed walking across a parking lot and into a diner operated by Mr. Gullone.

In the presence of Agent D, Agent S asked the bartender, Mr. Burnett, where Scotty was, saying, "I have a horse race bet to give him tonight on the trotters before I leave." At this time Scotty returned to the premises, whereupon the agent called him to the bar. In response to the agent's statement that he had a horse race bet that he wanted to give him for that night, Mr. Todd (Scotty) said, "O.K. Go to the men's room and write it down." Upon request, the bartender furnished Todd with pad and pencil. Todd gave the pad and pencil to the agent; the agent entered the men's room and wrote down a horse race bet; emerged therefrom and gave a slip of paper from the pad and $8 to Todd, who was seated at a table with two males. Upon returning to the bar, he said to the bartender in the presence of Agent D, "I just gave my horse bet to Scotty. I hope I am lucky." The bartender replied, "Lots of luck!"

The agent's version did not vary upon cross examination.

Agent D corroborated the narration of Agent S as to the events of September 17, 1964.

The licensees produced no testimony in their behalf.

It is a well established principle of law that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was restated in Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App.Div. 1962),

not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

> "The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962)."

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. 32 C.J.S. Evidence, sec. 1042.

My evaluation and consideration of the testimony lead me to the conclusion that the Division has established the truth of the charge herein by a fair preponderance of the evidence, and I recommend that the licensees be found guilty of said charge.

Licensees have no prior adjudicated record of suspension of license. I recommend that the license be suspended for sixty days. Re Farrell's Lounge, Inc., Bulletin 1600, Item 3.

Conclusions and Order

No written exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendations.

In addition to the factual findings of the Hearer, certain additional facts are noteworthy of recitation. On the occasion that Agents S and D visited the licensed premises on September 17, 1964, Agent S had on his person a five-dollar bill and three one-dollar bills, the serial numbers of which had been previously recorded.

The testimony convincingly indicated that during the course of the investigation which followed shortly after the alleged bookmaking activity with Todd took place, the horse race slip and the $8 given to Todd by Agent S (consisting of the five-dollar bill and the three one-dollar bills, the serial numbers of which were previously recorded) were found on the person of Todd.

In addition, it should be reported that the bartender Burnett, upon being questioned by Agent S as to bookmaking, denied having knowledge of any gambling activity on the premises, but admitted that the agent did tell him he was placing a horse race bet with Todd in the tavern.

Agent R testified that he entered the licensed premises on September 17, 1964, and during the course of the investigation, asked Burnett whether he was aware of the bookmaking activities of Todd, Burnett replied, "Well, I had a good idea that he was because occasionally he would come to me and ask for paper and pencil." He admitted further that Agent S advised him that he had placed a bet with Todd.

Accordingly, it is, on this 5th day of April, 1965,

ORDERED that Plenary Retail Consumption License C-341, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Nicholas and Helen Gullone, t/a Post Office Tavern, for premises 292 Market Street, Paterson, be and the same is hereby suspended for sixty (60) days, commencing at 3:00 a.m. Monday, April 12, 1965, and terminating at 3:00 a.m. Friday, June 11, 1965.

JOSEPH P. LORDI
DIRECTOR

4. DISQUALIFICATION REMOVAL PROCEEDINGS - CONCEALING ASSETS IN BANKRUPTCY - FORGING AND UTTERING U. S. TREASURER'S CHECKS - MAINTAINING DISORDERLY HOUSE (PROSTITUTION) - UNSAVORY DISCIPLINARY RECORD - ORDER DENYING PETITION.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R.S. 33:1-31.2.	CONCLUSIONS AND ORDER
Case No. 1902	

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted in a federal court in New York on April 8, 1946, for unlawfully concealing assets in a bankruptcy proceeding, and on December 9, 1954 for forging and uttering U.S. Treasurer's checks; that on his first conviction he was fined $500 and on his second conviction he was given a two-year suspended sentence and placed on probation for five years. It further appears that on November 18, 1952, petitioner was convicted in the Union County Court for maintaining a disorderly house (prostitution), in violation of R.S. 2:158-2, and was fined $500. Although petitioner's fingerprint record shows no other convictions, he had been involved with the law in 1943 (grand larceny, check), in 1944 (worthless check), in 1948 (false pretenses and secreting mortgaged property), in 1953 (assault with a deadly weapon) and in 1958 (false pretenses, three charges). All of the aforesaid charges were dismissed by grand juries with the exception of the one in 1944 wherein the complaint was withdrawn.

Since the crimes of which petitioner was convicted in 1946, 1952 and 1954 involve the element of moral turpitude, he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (61 years old) testified that he is married and living with his wife; that for the

past nine years he has lived in the same area where he presently resides; that since June 1961 he has been employed as manager of a well known news stand; that prior thereto he bought and sold real estate on his own behalf; that he has not been associated with the liquor industry for the past five years, and that ever since his conviction in 1946 he knew that he was disqualified from engaging in the alcoholic beverage industry in this State.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction on December 9, 1954, he has not been convicted of any crime.

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

Petitioner produced three character witnesses (an attorney-at-law, an engineer, and a business agent for a union) who testified that they have known petitioner for more than five years last past and, in their opinion, he is now an honest, law-abiding person with a good reputation.

The records of this Division disclose that on September 24, 1956, the then Director suspended the license of Rosewood Inn, Inc. for twenty-five days for sale to minors and permitting an act of violence on the licensed premises (Bulletin 1138, Item 4); that Ann and Gerald Sabin (wife and son, respectively, of the petitioner) were the officers, directors and stockholders of the corporate licensee, and that the decision recites that Albert Abraham Sabin (petitioner) was employed on the licensed premises on the date of the violations and that he fired a revolver shot which was the basis of the charge of permitting a brawl.

In Re 339 Plane St., Inc., Bulletin 1220, Item 3, it appears that ninety-eight per cent. of the stock of the corporate licensee was listed in the name of Fred Palm, but was actually owned by Albert Abraham Sabin (petitioner) who participated actively in the conduct of the licensed business. The charges therein were permitting solicitation for prostitution on the premises, permitting unescorted females to solicit drinks from patrons and otherwise conducting the licensed business as a nuisance; fraud in concealing the true ownership of the business by false answers in the application; aiding and abetting others to exercise the privileges of the license; failure to file notice of a chattel mortgage on the premises and employing a person disqualified by reason of a criminal conviction involving moral turpitude. Pending outcome of the proceedings, the capital stock of the corporation was purchased by new stockholders and, shortly thereafter, the license was extended to a receiver in bankruptcy. Nevertheless, the license was suspended for a period of two hundred and seventy days, effective March 24, 1958.

On March 14, 1960, the then Director revoked the license of Countryside Tavern, Inc. (Bulletin 1335, Item 2) for nine violations: sale to minors, sale after hours, hindering investigation, false answers in application, employing unqualified employee, alcoholic beverages not truly labeled, and because of a prior record. Briefly, it appears that petitioner was listed in the license application as the holder of eleven shares of ninety-nine shares issued, whereas he was actually the owner of seventy-seven shares; that he operated the licensed business, and that he personally hindered the Division agent's investigation. Hindering

an investigation is a most serious violation which threatens the entire enforcement structure. Re Case No. 1190, Bulletin 1044, Item 6.

To afford petitioner the relief requested, it is necessary that I find that he has been conducting himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R.S. 33:1-31.2.

I have carefully examined the Conclusions and Orders entered in above disciplinary proceedings.

While more than five years have elapsed since his conviction in 1954, I am not satisfied, by reason of petitioner's criminal record and his apparent disregard for the alcoholic beverage law of this State and the rules and regulations of this Division, that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 12th day of April, 1965,

ORDERED that the petition herein be and the same is hereby denied.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
STELIOS SAFFOS t/a S.S.CAFE 1250 Kaighn Avenue Camden, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	)

Michael Melissas, 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 January 16, 1965, he sold three 6-packs of beer to a minor, age 16, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifteen days effective August 13, 1962, for possession of alcoholic beverages in bottles not truly labeled. Re Saffos, Bulletin 1475, Item 7.

The license will be suspended for twenty-five days (Re M. Lehmann, Incorporated, Bulletin 1590, Item 8), to which

will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Lafayette Bar, Inc., Bulletin 1603, Item 7), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 19th day of April, 1965,

ORDERED that Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Stelios Saffos, t/a S. S. Cafe, for premises 1250 Kaighn Avenue, Camden, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, April 26, 1965, and terminating at 2:00 a.m. Friday, May 21, 1965.

JOSEPH P. LORDI
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Carmine Maglione
t/a Menlo Beer & Soda Distributor
Route 27, East of Frederick Street
Menlo Park, New Jersey
Application filed May 26, 1965 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-103 from Nicholson's Beverages, rear 1405 Kuser Road, Hamilton Township, New Jersey

Joseph P. Lordi
Director