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

BULLETIN 1828

November 25, 1968

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

BULLETIN 1828

November 25, 1968

1. APPELLATE DECISIONS - MENDHEIM v. NEWARK.

GEORGE E. MENDHEIM,)
t/a BRICK TOP LOUNGE & LIQUORS,)
Appellant,) CONCLUSIONS
AND ORDER
v.)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK,)
Respondent.

Harvey L. Weiss, Esq., Attorney for Appellant
Philip E. Gordon, Esq., by Charles J. Farley, Esq., Attorney
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal was filed by appellant as a result of the action of respondent whereby it suspended appellant's plenary retail consumption license for premises 302 Mulberry Street and 2 Mulberry Place, Newark, for twenty days effective June 24, 1968, after appellant was adjudged guilty of sale of an alcoholic beverage to and permitting its consumption by a minor on December 14, 1967, in violation of Rule 1 of State Regulation No. 20.

Upon the filing of the appeal an order was entered staying the order of suspension pending further order herein.

Appellant in his petition of appeal contends that respondent's action was erroneous in that it was against the weight of the evidence.

Respondent avers in its answer that its decision was based upon the factual testimony before it from which it, "in its sound discretion, concluded that the penalty imposed substantiated such action."

The attorneys for the respective parties agreed to submit the appeal on the transcript of testimony taken in proceedings before respondent, pursuant to Rule 8 of State Regulation No. 15.

The testimony of Hortense --- (18 years of age) disclosed that she was in appellant's licensed premises on the night of December 14; that, while speaking to a male companion, she consumed "a little" of the beer from his glass; that at the time the bartender was at the other end of the bar washing glasses; and that no beer was served to her by the bartender.

Respondent's attorney produced a statement signed and sworn to by Hortense which, among other things, stated that her

companion "bought me a Schaefer beer." In explanation of the reason for giving this information to the police the witness stated that she was at police headquarters at the time and "I wanted to get them to let me go home."

Detective Michael Capitti testified that three days after the date of the alleged sale Hortense was at police headquarters and, while being interviewed on another matter, she mentioned that she was served a drink by "Jimmy the bartender" on the date in question. When the police officer asked Hortense "How often do you drink at that [appellant's] bar?", she answered, "Every weekend."

No other witnesses were produced on respondent's behalf at the hearing below. The primary testimony before respondent was by the minor, called by it in support of the charges, who categorically denied that she had purchased any alcoholic beverages at appellant's premises on the date alleged. Respondent's attorney sought to challenge her testimony and offered a prior statement in an attempt to contradict the testimony of the witness.

In a situation of the kind now under consideration, where a contradictory statement is offered, it may be "permitted for the sole purpose of neutralizing or of wiping the slate clean of the unexpected adverse testimony of the witness and is to be clearly distinguished from impeachment" or the use of the cross examination as substantive evidence. State v. Hogan, 137 N.J.L. 497 (Sup.Ct. 1948), aff'd 1 N.J. 375 (1949). See also State v. D'Adame, 84 N.J.L. 386, 397 (E. & A. 1912).

In State v. Cooper, 10 N.J. 532 (1952), the Supreme Court said at p. 560:

"The party calling the witness may, when surprised by his testimony, examine him as to previous contradictory statements, not to impair his credibility generally, but to show one or the other of the statements must be erroneous. Such evidence of contradiction 'neutralizes the statement on the stand, by showing that the witness cannot be correct in both statements and is as likely to be wrong in the latter as in the former.'"

This same principle was adopted by the court in State v. Baechlor, 52 N.J. Super. 378.

The sole effect of neutralization is to restore the status prevailing before the witness testified upon the particular point or points on the neutralization to the same extent as though she had never been called. Her testimony, so neutralized, is out of the case completely, as a matter of law. State v. Caccavale, 58 N.J. Super. 560, 572; Re Newman & Gitter, Bulletin 1575, Item 3.

Therefore there is no evidence supporting respondent's charges. The statement of the minor could only be used as supportive or corroborative evidence and not as direct or affirmative evidence in and of itself. Cf. Cino v. Driscoll, 130 N.J.L. 535.

The comparative degree of proof by which a case must be established is the same in an administrative proceeding as in a judicial proceeding, i.e., by a preponderance of the evidence. 42 Am. Jur., Public Administrative Law, sec. 132, p. 467, and cases cited therein. The charges must be established by affirma-

tively satisfactory evidence. A finding of guilt may not be based upon mere suspicion, no matter how reasonably inferable such suspicion may be. Re Doyle, Bulletin 469, Item 2.

It is apparent that the evidence produced by respondent does not support the charges preferred in this matter. No direct evidence appears to support respondent's contention; and I am satisfied that there is no competent proof that appellant sold alcoholic beverages to the said minor, or permitted her to consume the same, on the date in question.

I recommend that the action of respondent be reversed and that the charges against appellant be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the transcript of the testimony and the recommendations in 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 18th day of October 1968,

ORDERED that the action of respondent in finding appellant guilty of the charges preferred herein and suspending his license be and the same is hereby reversed, and the charges be and the same are hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

- 2. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - CLAIM OF INNOCENT OWNER OF U-DRIVE VEHICLE RECOGNIZED - SURETY BOND ORDERED RETURNED TO CLAIMANT - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)
 on March 8, 1968 of a quantity)
 of alcoholic beverages and a)
 1967 GMC Value Van truck in the)
 Township of Franklin, County)
 of Somerset and State of New)
 Jersey.)
 - - - - -)

ON HEARING
 CONCLUSIONS
 and
 ORDER

Furst, Furst, Feldman & Benenson, Esqs., by Jay R. Benenson, Esq.,
 appearing for Avis-Rent-a-Car
 David S. Piltzer, Esq., appearing for the Division of Alcoholic
 Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28, and, further, pursuant to a surety bond in the sum of \$4400.00 endorsed by Avis-Rent-a-Car of 97 - 45 Queens Boulevard, Rego Park, New York, as Principal, and

the Peerless Insurance Company of Keene, New Hampshire, as surety, to determine whether 290 containers of alcoholic beverages and one 1967 GMC Value Van truck, seized on March 8, 1968 at the corner of Easton Avenue and Reeves Street, in Franklin Township, County of Somerset, New Jersey, constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$4400.00, secured by the said bond deposited, as aforesaid, under protest, representing the appraised retail value of the said motor vehicle, should be forfeited, or returned to the Avis-Rent-a-Car.

When the matter came on for hearing pursuant to R.S. 33:1-66 the Avis-Rent-a-Car, the owner of the aforesaid motor vehicle, represented by counsel, appeared and sought its return. Forfeiture of the alcoholic beverages was unopposed.

Reports of ABC agents and other documents in the Division's file presented in evidence, with the consent of the claimant herein disclosed the following: On March 8, 1968, a truck, rented from the Avis-Rent-a-Car facility, at 2282 Jericho Turnpike, Garden City, New York bearing New York Registration 139-941 carrying 58 packages of assorted alcoholic beverages, totaling 290 bottles, was seized by the Franklin Township Police and the Division's agents in Franklin Township, Somerset County, N.J. The truck bore no transit insignia authorizing it to transport alcoholic beverages in this State, as required by the Alcoholic Beverage Law and Regulations. The driver of the truck was Stanley Brecher, an employee of Essensfeld Brothers, Inc., 442 Washington Street, New York, New York.

The evidence established that some of the 290 bottles of alcoholic beverages on the truck were being delivered to New Jersey residents pursuant to solicitation by mail, of orders for the purchase of these alcoholic beverages, which solicitation was carried on by an out-of-state mail order firm, unlicensed for such activity in this State.

Since these alcoholic beverages were transported in an unlicensed vehicle which did not have a transit insignia affixed thereto or an inscription painted thereon, in violation of Rule 2 of State Regulation No. 17, such alcoholic beverages are illicit. R.S. 33:1-1(i); R.S. 33:12.

Furthermore, the transportation of such alcoholic beverages in furtherance of a mail order solicitation has been considered by this Division to be unlawful because such solicitation is deemed to be an unlawful sale, absent lawful permit or license. Such transportation is unlawful because it is aiding and abetting such unlawful activity; the alcoholic beverages and the motor vehicle, in which they were contained and transported are deemed unlawful property, subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66.

Edwin Shapiro, the sales lease engineer, employed by Avis-Rent-a-Car, testifying in support of its claim, gave the following account: He is the supervisor in the Metropolitan area for this claimant which owns about 2,000 trucks for leasing purposes. The claimant leased this truck to Essensfeld Brothers, Inc. upon recommendation of one of the claimant's regular clients, Franklin Stores. A Dun and Bradstreet report of Essensfeld Brothers, Inc., prepared on behalf of this claimant indicated that that company was a satisfactory risk.

Further, Essensfeld Brothers, Inc. represented that the truck would be used for transporting produce and general commodities. Claimant had no knowledge of the fact that Essensfeld Brothers, Inc. intended to use the same for the transportation of alcoholic beverages. The truck was rented in the regular course of business, under the usual rental agreement negotiated in these transactions.

Reginald Dugard, a station manager for this claimant, testified that he was the person who actually rented the vehicle to Stanley Brecher, the driver for Essensfeld Brothers, Inc. He had no knowledge, or any reason to believe that this vehicle would be used in unlawful liquor activity. He first learned that it was so used after the vehicle was seized by the Franklin Township Police. The entire transaction was with Essensfeld Brothers, Inc. by this claimant and was done in the usual course of business.

The account given by the claimant herein appears to be credible and forthright. I am satisfied, from the evidence herein, that the claimant appears to have made a reasonable investigation, considering the nature of the business in which it is engaged as a truck rental company. I further find that it did not know or have any reason to believe that Essensfeld Brothers, Inc. was engaged in illicit liquor activity, or that the said motor vehicle would be used in connection therewith. R.S. 33:1-66, Seizure Case No. 11,519, Bulletin 1661, Item 6; Seizure Case No. 11,869, Bulletin 1752, Item 7.

Accordingly, it is recommended that the claim of Avis-Rent-a-Car be recognized, and that the bond posted as set forth hereinabove be returned to it. It is, further, recommended that an order be entered forfeiting the seized alcoholic beverages as set forth in the inventory attached hereto and marked Schedule "A".

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions and I adopt them as my conclusions herein.

Accordingly, it is on this 17th day of October, 1968

DETERMINED and ORDERED that the surety bond securing the sum of \$4,400.00, representing the appraised retail value of the 1967 GMC Value Van truck which was returned to the claimant, Avis-Rent-A-Car, posted under protest, pursuant to a stipulation signed on its behalf be and the same shall be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages be and the same are hereby forfeited, in accordance with the provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and State, county and municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 290 - containers of alcoholic beverages
- 1 - 1967 GMC Value Van truck, Serial No. 3S3650HPC20768, New York Registration 139-941

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN POOLROOM - CLAIM OF INNOCENT OWNER OF PINBALL MACHINE AND POOL TABLE RECOGNIZED - SUM DEPOSITED ON STIPULATION BY OWNER OF BALANCE OF FIXTURES AND EQUIPMENT ORDERED FORFEITED AS WELL AS CASH AND ALCOHOLIC BEVERAGES.

In the Matter of the Seizure)
 on March 31, 1968 of a quantity)
 of alcoholic beverages, miscel-)
 laneous fixtures, furnishings and)
 equipment and \$79.35 in cash in)
 the unlicensed pool room located)
 at 116 Elm Street, in the City of)
 Newark, County of Essex and State)
 of New Jersey.)

ON HEARING
 CONCLUSIONS
 and
 ORDER

 Mitchell Glucksman, Esq., appearing for Manuel Antonio Esteves.
 J. & T. Vending Co., Inc. by Joseph M. Dino, President.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic
 Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28, and further pursuant to two stipulations, each dated May 28, 1968, one signed by Manuel A. Esteves and the other signed by J. & T. Vending Co., Inc., respectively, to determine whether four containers of alcoholic beverages, various furnishings, fixtures, equipment, and \$79.35 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on March 31, 1968 in a pool room, located at 116 Elm Street, Newark, New Jersey, constitute unlawful property and should be forfeited; and, further, to determine whether the sums of \$550.00 from Manuel A. Esteves and \$300.00 from J. & T. Vending Co., Inc. deposited, under protest, under the aforesaid stipulations, representing the retail value of fixtures, furnishings and equipment, set forth separately in the said stipulations, should be forfeited or returned to them.

The seizure was made by ABC agents and local police because of alleged unlawful sales of alcoholic beverages at a speak-easy conducted at the said premises.

At the hearing herein Manuel Esteves, represented by counsel, sought the return of the monies deposited under stipulation signed by him. J. & T. Vending Co., Inc., appearing through its president, sought recognition of its claim for the return of monies deposited under the stipulation signed on its behalf, representing the appraised retail value of two pinball machines and a pool table owned by it.

The file of this Division, admitted into evidence by stipulation of said claimants, contained the affidavit of mailing, affidavit of publication, the inventory, the chemist's report certifying to the alcoholic content of the alcoholic beverages seized, copies of the cash receipts, two stipulations, recording of the "marked" money and the "marked" one-dollar bill.

The Division file, supplemented at this hearing by the testimony of ABC Agent M established the following: On March 31, 1968 at about 2:15 P.M. two ABC agents in possession of "marked" money, entered the premises in question. The premises are located on the ground floor of a multi-storied brick building. The room contained tables and chairs, a counter and a coffee urn where coffee and soda were dispensed. It also contained two pinball machines, three pool tables, a cash register and a refrigerator.

Agent M observed about 35 male patrons on the premises, all of whom were drinking from coffee cups and some were playing cards. Manuel Esteves, the claimant herein, was behind the counter dispensing coffee from the coffee urn, in the course of which he poured some contents of a bottle on the counter, wrapped in a paper bag, into coffee cups served to patrons.

After observing the same for about 40 minutes, during which time at least seven cups had this additional liquid added by Esteves, the agent ordered and was served a cup of coffee with a shot of whiskey and a coke, in payment for which he gave Esteves a "marked" one-dollar bill. Esteves gave the agent 60¢ in change.

Shortly thereafter, local police and another agent entered the premises, a search and seizure followed and Agent M seized the bottle hereinabove referred to, which bore the label, "Shop-Rite Blended Whiskey". They also seized the "marked" one-dollar bill which was found commingled with the sum of \$78.35 in the cash register.

On cross-examination, this agent explained that he ordered a cup of coffee, a shot of whiskey and a coke, and the cost was as follows: 30¢ for the coffee and shot of whiskey and 10¢ for the soda.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to have been issued to Manuel Esteves or for the premises where the violations took place.

On April 5, 1968 a sample of the contents of the alcoholic beverages purchased by this agent and seized in the aforesaid premises was analyzed by the Division chemist who established that it is an alcoholic beverage, fit for beverage purposes, with an alcoholic content by volume of 15.87%. The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the commingled cash as set forth in Schedule "A" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 10,985, Bulletin 1516, Item 6.

Manuel Antonio Esteves, testifying in support of his claim, gave the following account: He admits serving the alcoholic beverages to Agent M, but denies serving any whiskey to anyone else during the time that the agent was present. He

explained that the reason he served the agent was that he "...asked for it...". He also admitted that he served other patrons because "they asked for it..." but he doesn't charge them, he just serves them "to please them". He added that he felt that he would lose his customers if he did not serve them whiskey, and he served them merely as an accommodation. Also "...they like to have a different taste in the coffee, and they ask for it". And "that's what they like in their coffee."

On cross-examination, he admitted that he charges 15¢ for the cup of coffee and the additional 15¢ for the shot of whiskey which he adds to the coffee. He further added that the four one-half gallon bottles of whiskey seized herein, were primarily on the premises for his own consumption.

His attorney, in further explanation of his client's activity, stated that Esteves caters to a Portuguese clientele; "Portuguese...sometimes like a little coffee with a little spike to it." Esteves didn't know that what he was doing was against the law. He was merely accommodating his patrons. The dispensing of liquor was done "for convenience of the patrons and only on special request."

It is abundantly clear, beyond peradventure of doubt, that this claimant was selling whiskey unlawfully, was charging therefor, and possessed the alcoholic beverages with the intention to sell the same unlawfully. The fact that he was doing this as an accommodation or as a convenience to his patrons is no legal defense to the possession, sale and service of alcoholic beverages without lawful permit. In fact, there is no denial of the said sale by this claimant except to weakly admit he did not really know the law. Therefore, the alcoholic beverages, the personal property and the commingled cash are subject to forfeiture.

The attorney for this claimant argues that certain of the furnishings and fixtures included in the stipulation were not directly involved with this unlawful activity and therefore should not be included in the said seizure. This argument disregards the clear and imperative language of R.S. 33:1-66(b), which states in pertinent part as follows:

"All alcoholic beverages, fixtures and personal property located in or upon any premises, building, yard or inclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept, are hereby declared unlawful property and shall be seized, forfeited or disposed of" (Emphasis added).

Accordingly, I recommend that this claim be denied; that the monies deposited under the stipulation signed by Esteves, the alcoholic beverages, the commingled cash seized herein, and the balance of the personal property, be ordered forfeited. Seizure Case No. 11,860, supra; R.S. 33:1-66(f); State Regulation No. 28.

Joseph M. Dino, president of J. & T. Vending Co., Inc., testified in support of a claim for the return of monies deposited in a stipulation signed on behalf of the J. & T. Vending Co., Inc., based upon the retail value of two pinball machines and a pool table as appraised for the Director, seized on the said premises.

He gave the following account: This claimant has been in the vending business for five years, servicing approximately 25 accounts. It has never been involved in any seizure nor has this witness been aware of any such action by this Division. He explained that prior to placing his equipment at these premises he had an application for a license executed by Esteves and sent to the Newark License Bureau. Thereupon, the Police Department makes an investigation and if they approve, he assumes that the applicant, as in this case, had no prior criminal record or record of unlawful liquor activity.

He visited these premises about once a week and never observed any liquor dispensed in any form, nor did he have any knowledge that there was any unlawful liquor activity taking place thereat. This claimant produced evidence supporting his title and ownership to the said property.

On the basis of the evidence presented, I am persuaded that the claimant relied upon the investigation presumably made of Esteves by the local Police Department. There is no affirmative evidence to indicate that he knew of unlawful activities carried on at these premises. Although he did not make any personal investigation of the background of Esteves, I believe that, under the circumstances herein, this claimant should be given the benefit of the doubt. I, thus, conclude that this claimant did not know or have any reason to believe that the alcoholic beverages were being sold in these premises.

I, therefore, recommend that its claim for the return of the deposit posted under the aforesaid stipulation be recognized.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions and I adopt them as my conclusions herein.

Accordingly, it is on this 21st day of October, 1968

DETERMINED and ORDERED that the sum of \$300.00, representing the appraised retail value of a pinball machine and a pool table which were returned to the claimant, J. & T. Vending Co., Inc., paid under protest pursuant to the stipulation signed by the said claimant shall be returned to it; and it is further

DETERMINED and ORDERED that certain fixtures, furnishings, and equipment, claimed by Manuel A. Esteves, as set forth in Schedule "A" attached hereto, constitutes unlawful property and the sum of \$550.00, representing the retail value of the said personal property which was returned to him, paid to the Director of the Division of Alcoholic Beverage Control by Manuel A. Esteves be and the same is hereby forfeited in accordance with law; and it is further

DETERMINED and ORDERED that the cash in the sum of \$79.35 and the alcoholic beverages seized herein, constitute unlawful property, and the same be and hereby are forfeited, and retained for the use of State, county and municipal institutions or destroyed,

in whole or in part, at the direction of the Division of Alcoholic Beverage Control.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 4 - containers of alcoholic beverages
Miscellaneous fixtures, furnishings and
equipment
\$79.35 - cash

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE
SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

Otto Joseph Kaelin
t/a Van Buren Alleys & Bar
6103 Van Buren Place
West New York, New Jersey

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-31, issued by the Board of Commissioners of the Town of West New York

-----)
Leonard Meyerson, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On February 19, 28, March 22 and April 4, 1968, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', and on said date of April 4, 1968, you also possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memorandum and other writings pertaining to the aforementioned gambling activity and to other gambling activity, viz., horse race betting; in violation of Rule 7 of State Regulation No. 20.
- "2. On February 19, 28, March 22 and April 4, 1968, 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 on said date of April 4, 1968, you also 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."

The Division offered the testimony of two State Police officers in substantiation of the charges.

Nicholas Roon, Jr., who had been employed as an investigator by the State Police for twelve years and possessed ample experience in conducting gambling investigations, including horse and numbers betting, testified that he visited the licensed premises for the first time on February 19, 1968 at 1:05 p.m., sat at the bar and ordered a drink. The licensee Otto Joseph Kaelin, who was tending bar, served Roon the drink. At approximately 1:15 p.m. he heard an unidentified male seated immediately to the trooper's right say, "Dutch, 039 for a buck." He then observed the licensee take a dollar from the male, write on a three-by-five white pad which was kept on a shelf on the cash register, and place the dollar in the cash register. He identified "Dutch" as being the same person whom he had identified as the licensee. Shortly thereafter he observed the licensee take the slip on which he had written off the pad, proceed from behind the bar and ascend a stairway outside the barroom. When the licensee was approximately three feet distant of the witness, he (the witness) saw numbers written on the slip of paper. He could not identify the numbers.

The trooper revisited the licensed premises on February 28 at approximately 12:05 p.m. When asked to state what he observed, the trooper responded:

"As I entered, the telephone rang, which is located in the back of the bar, right next to the register. And I observed the licensee answer it. And I also observed the licensee write on a three-by-five pad located on the register. And then approximately five minutes later I observed an unknown white male wearing a dark suit and having dark, wavy hair, and he said to the licensee at this time, 'Here, Dutch', and handing the licensee a dollar bill, 'I'll play 321.'"

The licensee accepted the money and wrote on the same pad he had written on when responding to the telephone call. He placed "the pad back on the register and placed the money in his right pants pocket."

The witness returned to the licensed premises on March 22 at approximately 12:35 p.m. The licensee was tending bar and was also engaged in "going up and down the stairs with dinners that he had prepared for customers." Roon observed an unidentified male positioned approximately five feet to his left. He then testified:

"...while Dutch was busy running back and forth, he said, '246, fifty cents straight; and 271, fifty cents straight.' The unknown white male handed the licensee a dollar, or a bill. And the licensee accepted the dollar and he went over to the cash register and wrote on a three-by-five pad."

Shortly thereafter the licensee answered the telephone and was heard to say, "yeah, yeah, yeah" and "Do you want any combo on the numbers or just straight?"

Finally, the trooper testified it was his opinion "that persons were placing number bets with the licensee, that he was accepting number play."

On cross examination the trooper asserted that it was not his intention at any time to attempt to place a bet. He did not ascertain the identity of the persons who engaged in betting activities with the licensee. He admitted that he did not know what Kaelin wrote on the pad while answering the telephone on March 22. He went into the licensed premises on at least three other occasions; however, he did not observe any proscribed activities on those occasions.

Detective John J. Maziekien (who is connected with the Criminal Investigation Section of the New Jersey State Police and who has had ample experience in gambling investigations) testified that, accompanied by three other State troopers, he entered the licensed premises on April 4 at 12:55 p.m. for the purpose of executing a search warrant. He identified himself and the other officers to the licensee, who was tending bar, and informed him of the purpose of his visit.

The detective found no slips or writings pertaining to gambling activity on the person of the licensee. In the barroom the detective found slips bearing "fifty to a hundred" four-digit numbers, the last digit in each case being a zero. Some of the four-digit numbers were written on a three-by-five pad found on the cash register in the barroom. It was the detective's opinion that the four-digit numbers constituted a numbers lottery play and that the zero used as the last digit of each number was used for two purposes - - (1) to camouflage the fact that it was a numbers play and (2) that the play was for one dollar.

No witnesses were produced in behalf of the licensee.

In adjudicating this matter I am completely disregarding the writings and memoranda found in an upstairs apartment for the reason that I do not consider the apartment a part of the licensed premises.

In matters of this nature we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein 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.

I am imperatively persuaded that Trooper Roon's testimony, wherein he graphically depicted the numbers betting activity engaged in by the licensee with unknown males on February 19, February 28 and March 22, 1968, was credible. My view is buttressed by the finding of numerous items described as numbers bets in the licensed premises by Trooper Maziekien who searched the barroom pursuant to a search warrant on April 4, 1968. Furthermore, by reason of the fact that the licensee failed to take the witness stand although present at the hearing, I draw an inference that he could not rebut the testimony offered by the troopers in behalf of the Division.

After carefully considering all of the evidence adduced herein and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of said charges except that part of charge (1) which refers to "horse race betting" because Detective Maziekien could not identify any writing as pertaining to a horse race bet.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for sixty days. Re Zarafu, Bulletin 1812, Item 5.

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 his recommendations.

Accordingly, it is, on this 21st day of October 1968,

ORDERED that Plenary Retail Consumption License C-31, issued by the Board of Commissioners of the Town of West New York to Otto Joseph Kaelin, t/a Van Buren Alleys & Bar, for premises 6103 Van Buren Place, West New York, be and the same is hereby suspended for sixty (60) days, commencing at 3 a.m. Monday, October 28, 1968, and terminating at 3 a.m. Friday, December 27, 1968.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Raymond Charles Strollo t/a Strollo's Bar 188 Westwood Avenue Long Branch, New Jersey)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-36, issued by the City Council of the City of Long Branch.)

Licensee, Pro se Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on September 27, 1968 he sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective February 1, 1960 for similar violation.

The prior record of suspension of license for similar violation 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 Cunningham & McKeon, Bulletin 1795, Item 7.

Accordingly, it is, on this 17th day of October 1968,

ORDERED that Plenary Retail Consumption License C-36, issued by the City Council of the City of Long Branch to Raymond Charles Strollo, t/a Strollo's Bar, for premises 188 Westwood Avenue, Long Branch, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Thursday, October 24, 1968, and terminating at 2 a.m. Friday, November 8, 1968.

JOSEPH M. KEEGAN DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING)- LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Walker-Dyer Post No. 181 - American Legion) South Virginia and Park Avenues Penns Grove, New Jersey)

CONCLUSIONS and ORDER

Holder of Club License CB-1, issued by the Borough Council of the Borough of Penns Grove.)

Licensee, by John R. Sammon, Chairman, Board of Trustees, Pro se Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 27, 1968 it permitted gambling, viz., the playing of a card game for money stakes, on the licensed premises, in violation of Rule 7 of State Regulation No. 20

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 Snyder's Bar, Inc., Bulletin 1807, Item 5.

Accordingly, it is, on this 17th day of October 1968,

ORDERED that Club License CB-1, issued by the Borough Council of the Borough of Penns Grove to Walker-Dyer Post No. 181 - American Legion, for premises South Virginia and Park Avenues, Penns Grove, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, October 22, 1968, and terminating *at 2 a.m. Friday, November 1, 1968.

JOSEPH M. KEEGAN DIRECTOR

*By order dated October 23, 1968, the suspension was lifted for two days, viz., October 25 and 26, 1968, and the termination date was extended to 2 a.m. Sunday, November 3, 1968.

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

In the Matter of Disciplinary Proceedings against)

Travascio's (A Corp.))
t/a Paul Massey's Seafood House)
8-10-12-14-16-18 43rd Street)
Sea Isle City, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-5 issued by the Board of Commissioners of the City of Sea Isle City)

Anthony M. Lario, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 16, 1968, it possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Esposito's, Inc., Bulletin 1819, Item 5.

Accordingly, it is, on this 4th day of November, 1968,

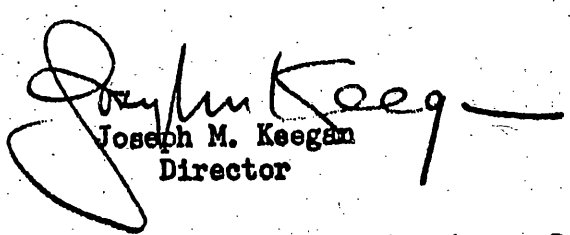
ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the City of Sea Isle City to Travascio's (A Corp.), t/a Paul Massey's Seafood House, for premises 8-10-12-14-16-18 43rd Street, Sea Isle City, be and the same is hereby suspended for fifteen (15) days, commencing at 1:30 a.m. Monday, November 11, 1968, and terminating at 1:30 a.m. Tuesday, November 26, 1968.

JOSEPH M. KEEGAN
DIRECTOR

8. STATE LICENSES - NEW APPLICATIONS FILED.

Bohl Beverage Company, Inc.,
260 Crystal Street, North Arlington, New Jersey
Application filed November 20, 1968 for person-to-person transfer of State Beverage Distributor's License SBD-74 from John Bohl, Jr. and Arthur Bohl, t/a Bohl Beverage Co.

Monsieur Henri Wines, Ltd. t/a Henri Wines, Ltd., Henri & Co., Ltd., Henri Ltd., Elite Wine, Wine Merchants Importing Co.
131 Morgan Avenue, Booklyn, New York
Application filed November 22, 1968 for place-to-place transfer of warehouse, operated under Wine Wholesale License WW-2, from 350 Warren Street, Jersey City, N. J. to 497 Raymond Boulevard, Newark, New Jersey.


Joseph M. Keegan
Director