

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

August 4, 1965.

BULLETIN 1626

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

BULLETIN 1626

August 4, 1965

1. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - NO APPEARANCE BY LICENSEE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

FARLEY & DANIELI, INC.)
t/a JOLI LOUNGE)
924 South Orange Avenue)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-168, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

No appearance on behalf of licensee.

Morton B. Zemel, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Charge was preferred against the licensee as follows:

"On March 29, 1965, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz., one quart bottle labeled 'Rare J & B Blended Scotch Whisky, 86 Proof'; in violation of Rule 27 of State Regulation No. 20."

Copy of the charge mailed to the licensee by certified mail addressed to the licensed premises having been returned by the Post Office as "Unclaimed", personal service of copy of the charge was made on Albert Calo, president of the licensee corporation.

No plea to the charge was entered by the licensee, nor did it appear by any of its officers or by attorney at the scheduled hearing. Accordingly, the hearing was held and proof was presented ex parte.

Agent M, an employee of the Division, testified that on March 29, 1965, pursuant to his duties, he visited the licensed premises and proceeded to check the bottles of whiskey in back of the bar. Albert Calo, the president of the licensee corporation, was in charge. In response to the agent's inquiry, Calo stated he had no other stock. Upon entering the back room, the agent observed two bottles of Muirhead scotch, one half filled, one empty, and a funnel. Upon asking Calo how long he had been using Muirhead scotch, Calo responded that "he had gone out Saturday night and purchased these two bottles of Muirhead scotch and poured them into J and B bottles." The agent then seized the only bottle of J and B that had anything in it and submitted it to the Division chemist for analysis.

The Division chemist testified that the contents of the bottle were 82.4 proof by volume. The label on the bottle indicated that the contents should have been 86 proof.

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

In view of the licensee's failure to appear at the hearing, it is recommended that the license be revoked. Re Monkey Club, Inc., Bulletin 1511, Item 1.

Conclusions and Order

No 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 exhibit, and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendations. In particular, I concur that revocation of license is not only amply warranted but is commanded in any case in which the licensee, as here, has completely ignored the process of the Division by failure to plead to the charge, failure to appear at the hearing, and failure to respond to an adverse Hearer's report.

Accordingly, it is, on this 27th day of May 1965,

ORDERED that Plenary Retail Consumption License C-168, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Farley & Danieli, Inc., t/a Joli Lounge, for premises 934 South Orange Avenue, Newark, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ORDER MODIFYING PREVIOUS ORDER OF REVOCATION.

In the Matter of Disciplinary Proceedings against)

FARLEY & DANIELI, INC.)
t/a JOLI LOUNGE)
934 South Orange Avenue)
Newark, N. J.)

AMENDED ORDER

Holder of Plenary Retail Consumption License C-168, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and extended during the pendency of these proceedings to)

ROBERT E. COWEN, RECEIVER,)

for the same premises.)

Robert E. Cowen, Receiver, Pro se.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On May 27, 1965 I entered an order herein revoking the license, effective immediately, after the licensee failed (1) to enter any plea to the charge (dated April 7, 1965, alleging that on March 29, 1965 it possessed an alcoholic beverage in one bottle not truly labeled), (2) to appear at the hearing scheduled for April 19, 1965 and adjourned by Division to April 29, 1965, and (3) to file any exception to the adverse Hearer's Report dated May 10, 1965. Re Farley & Danieli, Inc., Bulletin 1626, Item 1.

It now appears from verified petition filed by Robert E. Cowen, Receiver, that, in a receivership proceeding in the Superior Court (Chancery Division, Essex County), he was appointed on May 16, 1965 as custodial receiver and on May 21, 1965 as statutory receiver for the licensee corporation, whereupon he sought and obtained extension of the license to himself as receiver by the Newark Municipal Board of Alcoholic Beverage Control, pursuant to contemplation and authorization of R.S. 33:1-25, on May 26, 1965, the day before the date of the order of revocation.

The receiver now petitions for modification of the order of revocation, indicating that he had no notice or knowledge of the pendency of the proceeding at the time of his appointment (and in fact first learned of it on May 28, 1965), and that, if he had such knowledge timely, he would have entered a confessional plea to the charge in anticipation of imposition of the established minimum penalty in similar cases (suspension of license for ten days with remission of five days for the plea entered, leaving a net suspension of five days. Cf. Re Zaktansky, Bulletin 1615, Item 5).

Under all of the circumstances, including consideration of the confessional plea offered to be entered, and the lack of any previous record of the licensee, I shall grant the petition and modify the order of revocation to an order of suspension of the license for five days. Re Zaktansky, supra.

Admittedly, the licensed business was discontinued by the licensee for some unascertained time prior to the appointment of the receiver, and its conduct is not presently contemplated by the receiver. Thus no effective penalty can be imposed at this time. Hence the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of business under the license or any renewal thereof shall have been fully resumed on a substantial basis by the receiver or any successor in interest.

Accordingly, it is, on this 10th day of June 1965,

ORDERED that the previous order of revocation of license heretofore entered herein be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-168, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Farley & Danieli, Inc., t/a Joli Lounge, for premises 934 South Orange Avenue, Newark, and extended to Robert E. Cowen, Receiver, during the pendency of these proceedings, be and the same is hereby suspended for five (5) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - CRIMINALLY DIS-QUALIFIED EMPLOYEE - PERMITTING PERSON OF ILL REPUTE ON LICENSED PREMISES - MINORS EMPLOYED WITHOUT PERMIT - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary Proceedings against

THOMAS GIAQUINTO
t/a SILVER SLIPPER
235 Buffalo Avenue
Paterson, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption License C-173, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Harrison & Ferrante, Esqs., by Joseph M. Harrison, Esq.,
Attorneys for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that he (1) on January 22, 1965, sold drinks of beer to two minors, both age 19, in violation of Rule 1 of State Regulation No. 20; (2) on December 5, 11 and 19, 1964, and January 8, 20 and 22, 1965, employed Bart Barrecchia, disqualified by reason of conviction of crime involving moral turpitude, in violation of Rule 1 of State Regulation No. 13; (3) on the same dates permitted Barrecchia, a person of ill repute, on the licensed premises, in violation of Rule 4 of State Regulation No. 20; (4) and (5) on January 22, 1965, and February 5, 1965, employed minors as musicians without requisite employment permits, in violation of Rule 3 of State Regulation No. 13, and (6) on February 5, 1965, hindered investigation by local police officers by furnishing false information, in violation of R.S. 3:1-35.

Licensee has a previous record of suspension of license by the Director for twenty-five days, effective February 8, 1965, for violations similar to those alleged in Charges 3, 4 and 5, involving the same persons, viz., Bart Barrecchia between the dates of June 4, 1963 and August 21, 1964, and the minors on August 21, 1964. Re Giaquinto, Bulletin 1605, Item 3.

Under all of the circumstances, and considering the licensee's record of suspension of license for similar violations, as well as the confessional plea entered, the license will be suspended for one hundred twenty days.

Accordingly, it is, on this 27th day of May, 1965,

ORDERED that Plenary Retail Consumption License C-173, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Thomas Giaquinto, t/a Silver Slipper, for premises 235 Buffalo Avenue, Paterson, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 3 a.m. Thursday, June 3, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Friday, October 1, 1965.

JOSEPH P. LORDI
DIRECTOR

4. APPELLATE DECISIONS - HACKENSACK MOTEL CORPORATION v. LITTLE FERRY.

HACKENSACK MOTEL CORPORATION,)
Appellant,)
v.)
MAYOR AND COUNCIL OF THE)
BOROUGH OF LITTLE FERRY,)
Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

Walter H. Jones, Esq., by Marvin H. Gladstone, Esq., Attorney
for Appellant.
Robert S. Krause, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent whereby it denied a plenary retail consumption license to appellant for premises on Bergen Turnpike, north of Route 46 Traffic circle, Borough of Little Ferry.

A stipulation entered into by the parties herein discloses that on April 7, 1965 appellant filed an application for the license in question for a motel containing one hundred twenty sleeping rooms and complied with all preliminary statutory requirements in the matter. No notice was given to appellant of any hearing, and appellant had no knowledge that the respondent had, on its own motion (Rule 8 of State Regulation No. 2), denied the application for the license until a copy of the minutes was received by appellant. Said minutes pertaining thereto read as follows:

"Application of the Hackensack Motel Corporation for a Plenary Retail Consumption License, Bergen Turnpike, Holiday Inn, Little Ferry, N.J. Applicant advertised in The Record of Hackensack, N.J. in its issues of April 9, 1965 and April 16, 1965. Mayor Heinige stated that this application was thoroughly discussed by the Mayor and members of the Council in Finance-Executive session on April 10, 1965 and all Councilmen are in accord that the Boro of Little Ferry has already exceeded the maximum number of Plenary Retail Consumption Licenses. Motion to deny application by C/Rostan, second by C/Ebenau. All Councilmen voted in the affirmative."

Since, according to Division records, Little Ferry has not adopted any ordinance limiting the number of licenses to be issued, it is apparent that the reference to the "maximum number" being

exceeded is to maximum fixed by the State limitation law (R.S. 33:1-12.14 et seq.).

Although R.S. 3:1-12.14 provides that:

"Except as otherwise provided in this act, no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than 1 for each 2000 of its population as shown by the last then preceding Federal census...." (Little Ferry has issued and existing 10 plenary retail consumption licenses; its 1960 Federal census population is 6175.),

R.S. 3:1-12.20 provides that:

"Nothing in this act shall prevent the issuance in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms or who may hereafter construct and establish a new hotel containing at least fifty sleeping rooms."

Thus it is apparent that the respondent failed to consider the exception to the limitation law.

Since the sole reason advanced by respondent for its action is based on a misapprehension of law, I have no alternative but to recommend that the case be remanded to respondent for a hearing on the merits of appellant's application.

Conclusions and Order

After submission of the Hearer's Report to the attorneys representing the respective parties herein, they waived exceptions to the report.

Having carefully considered the stenographic record and the Hearer's Report, I concur in the findings and conclusions expressed by the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of June 1965,

ORDERED that the matter be remanded to the respondent for further consideration in accordance with the conclusions herein.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

WEIGNER'S, INC., t/a GOLDEN GOOSE 241 Stevens Street Camden, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-195, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Friedman & Talbott, Esqs., by Nathan A. Friedman, Esq., Attorneys for Licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On February 3, 4, 5, 6, 10 and 11, 1965, 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' in violation of Rule 7 of State Regulation No. 20.
- "2. On February 3, 4, 5, 6, 10 and 11, 1965, 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; in violation of Rule 6 of State Regulation No. 20."

Three Division agents participated in the investigation leading to the charges preferred in this matter. Agent J, who had extensive experience in the investigation of gambling, particularly numbers and horse bets, testified that, pursuant to specific assignment, he entered the licensed premises on February 3, 1965, at about 1:15 p.m., and went up to the bar which was being serviced by Mrs. Lulu Adams (a barmaid employed by the licensee).

He observed a male (subsequently identified as "Bobby") seated at the bar about ten feet away from him accept money from two individuals, and write something on a piece of paper while Mrs. Adams was behind the bar standing somewhere between him and Bobby. Having observed this activity, the agent proceeded to Bobby and said, "I had a couple of numbers I wanted to play", to which Bobby responded, "O.K." The following colloquy and action then took place:

"Q What did you say?
A I then said, '513 and 118 for a dollar.'

Q What did the man do?

A He took the mentioned piece of paper from his pocket and wrote the numbers on the piece of paper, and I gave him two one dollar bills.

Q Will you describe or explain this transaction you had with this man?

A Yes. As I said, he wrote the two mentioned numbers I gave him on a piece of paper, which would be a lottery slip, and I paid him.

Q What kind of activity was this?

A Gambling.

Q What kind of gambling?

A Lottery, numbers."

Prior to departing shortly thereafter, he testified that he witnessed two other apparent number bets in the same manner as the first two take place with Bobby.

Agent J re-entered the licensed premises on February 4, 1965, at approximately 2:25 p.m. Mrs. Adams was tending bar; Bobby was at the rear of the bar with no food or drink in front of him. He proceeded over to Bobby and stated he wanted to play the same numbers he played the day before. The agent testified that Bobby accepted the numbers play, wrote the numbers on a piece of paper, and took \$2 from him. He observed two other persons confer with Bobby, hand him money and then Bobby would write something on a piece of paper. It was his opinion that the activity appeared to be numbers betting.

On February 5, 1965 he entered the licensed premises at approximately 11:40 a.m., went to the bar and asked Mrs. Adams (who was tending bar) "Where was the man who took the numbers", to which she replied, "He would be in soon." The same male, Bobby, came in about 11:50 a.m. and proceeded to the bar next to the agent. The agent then gave numbers play to Bobby at the bar, and departed shortly thereafter.

On February 6, 1965, he entered the tavern at 11:25 a.m.; tending bar was Mrs. Adams; Bobby was at the far end of the bar. After a period of time the agent went up to Bobby and proceeded to give him some numbers play.

As to the occurrence of February 10, 1965, Agent J was accompanied by Agent T and Agent Jo. Agent T entered the licensed premises at 11:50 a.m.; Agent J entered at 12:30 p.m. and sat next to Agent T; Mrs. Lulu Adams was tending bar. Shortly thereafter a male known as "Milt" also went behind the bar and waited upon some patrons. The following significant colloquy occurred between him and Mrs. Lulu Adams:

"Q Did you speak to Lulu about Bobby?

A I did.

Q What did you say?

A I asked her, 'Where was the short fellow because I wanted to get my number bet in?'

Q Did she answer you?

A Yes, she did.

Q What did she say?

A 'Oh, you mean Bobby! He will be in soon.'"

Milt departed from behind the bar at 12:40 p.m.; proceeded to a table. He observed a male proceed to Milt and hand him a piece of paper and some money. Another male then proceeded to

the table, engaged in conversation with Milt. Milt wrote something on a piece of paper which he took from his pocket, and received money from this person. After having made this observation, the agent left his seat at the bar, proceeded to the table, and gave Milt some numbers play which Milt wrote on a piece of paper. Milt accepted money from the agent in payment therefor. The agent departed shortly thereafter, leaving Agent T at the bar.

On February 11, 1965, agents J, T and Jo returned to the vicinity of the licensed premises at 11:50 a.m. Agent T entered immediately. Agent J went in at 12:50 p.m. and sat next to Agent T at the bar. Mrs. Lulu Adams was tending bar. Upon asking Mrs. Lulu Adams as to whether or not she had seen Bobby "because I had a couple of bets to play with him", Agent J received the response that "he was in not too long ago and should be back soon." Thereafter Bobby came to the bar, and Agent J gave some numbers to Bobby to play, and handed him two one-dollar bills. After a while, Bobby proceeded to the table and wrote something on a piece of paper which he had taken from his pocket and handed the paper to an unidentified male. Thereafter Bobby departed from the premises, followed by Agent T. Agent J left at 1:15 p.m.

On cross examination Agent J admitted that, as to the occurrence of February 3, 1965, he did not hear the conversation between Bobby and the male person; could not see the writing, and did not know the purpose for which the money was being exchanged, and that he surmised from what he saw that he was taking bets. He initiated the contact with Bobby, and stated he had a couple of numbers he wanted to play. He further stated that the conversation he had with Bobby was in a normal tone of voice, and Mrs. Adams was engaged in tending to the needs of the patrons. As to the occurrence of February 4, 1965, he stated that he went to Bobby to play numbers, talked in normal tone, and Mrs. Adams was again tending to the needs of the patrons.

Again, on February 5, 1965, he initiated the numbers taking by Bobby. The agent also admitted that he did not try to place a bet with Mrs. Adams, and neither did she solicit him for any gambling. The balance of the cross examination mainly served to corroborate the evidence given upon direct.

Agent T testified that, in the course of investigation, he went to the licensed premises on February 10 and 11, 1965. He mainly corroborated the testimony of Agent J as to the essential facts related by him.

In its defense the licensee first called on William D. Weigner (an officer and major stockholder). He admitted that Mrs. Lulu Adams was employed at the licensed premises as a barmaid from 10 a.m. to 6 p.m.; that Milt, or Milton Stokes, was a night bartender and cleans up during the day; that he worked mostly in the package store adjoining the barroom. He declared that he never saw or would permit gambling upon the premises.

Mrs. Lulu Adams admitted seeing Agents J and T on various days; denied that Agent J asked her "Where was the short fellow because I wanted to get my number bet in", and that she replied, "Oh, you mean Bobby! He will be in soon." On the other hand, she claimed that she was very busy in the package store at the time and he came to the door separating the barroom from the package store, and the conversation was as follows: "Lulu, have you seen my boy?" to which she replied, "Who do you mean?"; he

said, "You know, the little, clean-cut guy. You recollect the guy. You saw me talking to him at the table." Her reply was, "No, I don't think I remember who you mean." He said, "You know. What is his name? The little guy, the clean guy." She stood at the cash register at that time, which was at the entrance-way between the back of the bar and the package store, and shook her head. He then said, "You know." Her reply was, "No, I don't think I remember." He said, "You know, Bobby." She replied, "No, I haven't seen him." He asked, "Are you expecting him?" to which she replied, "Not really. I'm not really expecting anybody." In response to the question, "Do you know whom he meant by 'Bobby'?", she responded, "No, not really...." In addition, she denied that she ever had any conversation with Agent J concerning numbers, and that on the dates in question she heard anything that would indicate there was gambling on the licensed premises.

I have related quite fully much of the material and vital testimony adduced herein in order that we may develop a proper perspective of the factual issues involved in this proceeding.

In disciplinary proceedings the licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Rule 33 of State Regulation No. 20.

It is a basic 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. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was restated in the case of Howard Tavern, Inc. v. Division 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 licensee argues it did not allow, permit or suffer the acceptance of bets even if gambling took place on the premises.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not escape or avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3, Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Co. v. Hock, 136 N.J.L. 28.

Considering the circumstances, and after carefully considering and evaluating all of the facts 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 believable evidence. I therefore recommend that the licensee be found guilty of said charges.

Licensee has a prior adjudicated record. The local issuing authority suspended the license for fifteen days, effective June 17, 1964, for sales to a minor.

It is, therefore, further recommended that the prior record for dissimilar violation occurring in 1964 be considered, and that an order be entered suspending the license for sixty-five days. Ré Marcus, Bulletin 1612, Item 5.

Conclusions and Order

The attorney for the licensee advised that no exceptions to the Hearer's Report would be filed.

I have carefully considered the record herein, including the transcript of the testimony, the argument of counsel at the hearing and the Hearer's Report. I find no merit in the legal arguments raised at the hearing by the attorney for the licensee. Hence, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 26th day of May, 1965,

ORDERED that Plenary Retail Consumption License C-195, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Weigner's, Inc., t/a Golden Goose, for premises 241 Stevens Street, Camden, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 2:00 a.m. Wednesday, June 2, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Friday, August 6, 1965.

JOSEPH P. LORDI
DIRECTOR

7. MORAL TURPITUDE - CONVICTION OF RECEIVING STOLEN GOODS HELD TO INVOLVE MORAL TURPITUDE - STATUTORY ELEMENTS OF CRIME DETERMINE WHETHER OR NOT CONVICTION INVOLVES MORAL TURPITUDE AND NOT BACKGROUND FACTS AND CIRCUMSTANCES.

Re: Eligibility No. 739

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 June 1, 1962, following a plea of guilty in the Somerset County Court to an accusation of knowingly receiving stolen goods of the total value of \$4,897.35, in violation of N.J.S. 2A:139-1, he was sentenced to serve a term of three to five years in New Jersey State Prison (suspended), fined \$1,500 and placed on probation for five years.

At the outset of the hearing the attorney for the applicant stated that he intended to call Joseph Karkowski (a county detective) as a witness on behalf of the applicant; that Mr. Karkowski was in charge of the investigation of the case which resulted in the applicant's conviction; that he was also familiar with the facts and circumstances surrounding the applicant's guilty plea; and that Mr. Karkowski was presently confined to a hospital. Applicant's attorney further stated that, if present, Mr. Karkowski would testify that on March 18, 1962, applicant was arrested on the aforesaid charge; that applicant had informed the arresting officers that he had purchased the merchandise in question from R and R (brothers), employees of Westinghouse Electric Corp. at Edison, N. J.; that applicant knew R and R for a long time; that they are members of a reputable family in the community; that to his knowledge R and R had a clean record; that R and R had told the applicant that they received the merchandise as rejects from Westinghouse aforesaid; that the articles had slight defects with which they were familiar, and that they "had restored the merchandise so that it was in perfect condition."

The attorney further stated that Mr. Karkowski would testify that the applicant's cooperation led to the arrest of R and R who were subsequently indicted, tried and acquitted for receiving the same stolen goods described in applicant's accusation and that, on the date of his arrest, the applicant gave a statement denying that he knew or had reason to believe that the goods were stolen property at the time he purchased the same from R and R.

The attorney placed in evidence a photostat of the aforesaid accusation and judgment of conviction against the applicant, photostats of the indictments against R and R, and a judgment of acquittal as to both R and R, and a letter dated January 8, 1965, signed by the aforementioned detective setting forth therein that applicant's cooperation led to the arrest of R and R.

Applicant's attorney agreed to produce Mr. Karkowski if the Director required him to appear and testify.

Based on the attorney's representation and for the purpose of expediting these proceedings, I recommend that the attorney's aforesaid statements be considered as testimony of Mr. Karkowski as if given at the hearing herein.

At the hearing held herein, applicant (41 years old) testified that he was fully aware of the contents of the accusation; that he had

discussed the same with his then attorney; that his attorney advised him to enter a plea of guilty; that, before entering his plea, the court had informed him of its consequences; and that in his presence and in open court his attorney had related all the facts and circumstances of the case to the judge. Applicant further testified that he was a witness for the State in the trial of R and R; that he did not know or have reason to believe that at the time he purchased the goods in question they were stolen property and that, on the day of his arrest, he had so informed the prosecutor's office.

In view of his confessional plea in the criminal proceedings, the guilt or innocence of applicant cannot be redetermined herein. Re Elig. #634, Bulletin 947, Item 8.

The attorney for the applicant contends that, in cases involving convictions of the crime of receiving stolen goods, the background in each case may be considered in determining whether or not the element of moral turpitude is present and, in support thereof, refers to Re Case No. 194, Bulletin 577, Item 6 (decided July 14, 1943) and Re Weinstein, Bulletin 1393, Item 3 (a disciplinary proceeding decided April 24, 1961). In other words, the applicant's attorney is asking that we go behind the record (the accusation, the guilty plea and the sentence) and examine the surrounding facts and circumstances in the case to ascertain whether or not the crime involves moral turpitude. This is no longer the policy of this Division. See Re Case No. 1727, Bulletin 1545, Item 4; Re Case No. 1815, decided August 5, 1964, not reported in bulletin.

In view of the crime here involved, we do not have to probe beyond the statutory elements thereof. Under current judicial decisions, a conviction of the crime of receiving stolen goods per se involves the element of moral turpitude. See Weinstein v. Div. of Alcoholic Beverage Control et al., 70 N.J. Super. 164 (App.Div. 1961); Severini v. Div. of Alcoholic Beverage Control, 82 N.J. Super. 1 (App.Div. 1964). I have nevertheless carefully considered the background in this case and find no reason which merits a conclusion that applicant's aforesaid conviction did not involve the element of moral turpitude.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director 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.

I. Edward Amada,
Attorney

Dated: June 2, 1965

Approved:

Joseph P. Lordi
Director

8. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBER - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against PRIDE OF CAMDEN LODGE #83 I.B.P.O.E. of W. 711 Kaighn Avenue Camden, N. J.

CONCLUSIONS AND ORDER

Holder of Club License CB-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Licensee, by Joseph L. Wilson, Sr., Exalted Ruler, Pro se. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 2, 5, 6 and 20, 1965, it sold alcoholic beverages to a non-member, in violation of Rule 8 of State Regulation No. 7.

Licensee has a previous record of suspension of license by the Director for ten days effective March 6, 1950, for sale during prohibited hours (Re Pride of Camden Lodge #83, Bulletin 869, Item 8) and for ten days effective March 18, 1963, for sale to non-members (Re Pride of Camden Lodge #83, Bulletin 1506, Item 4).

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded but the record of suspension for similar violation within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Nobile Social Club, Inc., Bulletin 1481, Item 6.

Accordingly, it is, on this 14th day of June 1965,

ORDERED that Club License CB-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Pride of Camden Lodge #83, I.B.P.O. E. of W., for premises 711 Kaighn Avenue, Camden, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1965, commencing at 7 a.m. Monday, June 21, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7 a.m. Friday, July 16, 1965.

Handwritten signature of Joseph P. Lordi, Director.