STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2230 June 21, 1976

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - ROB-DEE CORPORATION v. SOUTH AMBOY.

Rob-Dee Corporation t/a The Brave Bull, Appellant, v. Common Council of the City of South Amboy, Respondent.	On Appeal CONCLUSIONS AND ORDER

Benedict and Orban, Esqs., by Joseph J. Benedict, Esq., Attorneys for Licensee
Convery & Convery, Esqs., by Clark W. Convery, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The Common Council of the City of South Amboy (hereinafter Council) suspended appellant's Plenary Retail Consumption License C-11, for premises 115 North Feltus Street, South Amboy, for fifty days, following a finding that appellant sold alcoholic beverages to a minor, age 14, on September 21, 1974.

Appellant appealed, contending that the Council was in error in that: (1) it prejudiced appellant's rights by an inordinate delay between the date of the offense and the date of the hearing, i.e., August 27, 1975; (2) the proofs upon which the Council relied were inadequate and insufficient to base such finding; (3) there was no proof of a sale of alcoholic beverages in that no alcoholic beverages were introduced into evidence; (4) in view of the fact that a charge against the holder of the capital stock of appellant corporation and its principal officer was dismissed in the Municipal Court, the parallel charge against the appellant before the Council subjects appellant to "double jeopardy"; (5) the Council had prejudged the guilt of appellant, as evidenced by the notice to appellant that a confessive plea would not necessarily be recognized in mitigation of the offense; and (6) the suspension imposed of fifty days was grossly excessive in view of the appellant's unblemished record of twenty-two years in the alcoholic beverage industry.

The Council denied all of appellant's contentions and averred that its determination was based upon the evidence before it.

A de novo hearing was held in this Division at which all the parties were permitted to introduce evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. However, in lieu of the presentation of witnesses, counsel stipulated that they would rely upon the transcript of the testimony taken before the Council, at the hearing herein, in accordance with Rule 8 of said Regulation.

It may be noted here that appellant was initially charged with a further violation of failing to have its license to purvey alcoholic beverages in open view. Although a finding of guilt resulted on this charge, no sanctions were imposed against the appellant. The issue of failure to have had the license in view will therefore not be considered herein, in view of the absence of any penalty imposed by the Council.

The transcript of the proceedings held by the Council contains the testimony of two police officers and the minor. The officers recount having been on duty on September 21, 1974 in a radio car, when they observed two young men, one carrying something under his jacket, departing from appellant's premises. A short distance away, the young man, with the package concealed under his jacket, was accosted. He was found to be carrying a six-pack of Michelob beer.

That person carrying the beer appeared to be a minor, and the officers returned with him to appellant's premises where his age was determined to be fourteen years. The barmaid on duty conceded that she had sold him the beer.

The minor testified that he is fourteen years old and was born on December 18, 1959. He refused to be interrogated further on grounds of possible self-incrimination.

The barmaid, Betty Forman, testified that she made no sale to the minor; had no recollection of the boy being in the establishment; never admitted to the police officers that she had made such sale; and, had the minor desired to make a purchase, proper proofs of age from him would have been required. She was assisted, on the evening in question, by a Catherine McKenna, now deceased, who, if present at the hearing would have testified that she did not recognize the boy.

The principal owner of appellant's corporate stock, Leslie G. Lentz, testified as to instructions given to his employees, and affirmed that sales of package goods were not made to patrons without such goods being placed in paper bags.

The sole and critical issue herein is: was the Council in error in determining, upon the credible evidence presented, that a sale of alcoholic beverages had been made by appellant to a minor, in violation of the applicable statute and regulation?

I

Appellant contends that conflicts in the testimony of the two police officers place such doubt upon their credibility, that their respective testimony should be discounted, and inferences to be drawn from such testimony should be resolved in favor of the appellant. Such contention is without merit. The testimony of the respective officers was given out of the presence of one another and the alleged "differences", although present, were not significant. One officer, Joseph Dooling, estimated that the youths were four hundred feet away from him when he made a first observation, The other officer, Leo McCabe, made his observation fifteen feet away from them. Such difference does not destroy credibility.

Relating to the confrontation by Officer Dooling of the barmaid, he testified as follows:

> "Q. What did she say?
> A. Yes, I did. I then asked Betty Forman if she knew how old this individual was.
> Q. What did she say to that?
> A. She said, 'He is eighteen'. I asked her, 'Did you ask for any identification?' She said, 'No'."

The same confrontation as described by Officer McCabe was as follows:

> "A...Then Patrolman Dooling brought to her attention that the youth was fourteen years old and I believe he advised her that a complaint would be signed against her for the sale. At that time, Miss Forman turned and there was a couple of patrons in the bar and she turned and she started saying so that we could hear her--I mean Patrolman Dooling and myself--and she says, 'I told you he wasn't eighteen. That is why he left the money on the bar and he walked out'...."

That the second officer testified in greater detail than the first does not nullify the testimony of the first.

II

Admittedly there was no production of the bottles of beer which were alleged to have been purchased. The beer was described as having been in unopened bottles of Michelob, in a six-pack container. The beer was discovered in the possession of the minor immediately upon his leaving appellant's premises and was still in his possession when he was returned there by the police. Appellant never contended that Michelob beer was not sold in its establishment or that the bottles returned had been consumed. Hence, the contents of the identified bottles can be considered "Michelob beer" and, as such, an alcoholic beverage, as defined by N.J.S.A. 33:1-1 (b). See State v. Marks, 65 N.J.L. 84; Holmes v. Cavicchia, 29 N.J. Super. 434 (3) (App. Div. 1954); E.A. V. Liquors & Bar, Inc. v. Paterson, Bulletin 1702, Item 1.

Appellant denies the sale to the minor. By inference, it maintains that the minor entered the premises, placed money on the bar, removed the six-pack of beer and departed without the knowledge of or participation by the barmaid. Appellant claims such position is supported by the testimony of the police officers in that the barmaid was not in the barroom when they returned with the minor, admittedly only a few moments after the alleged sale; and one of the officers, McCabe, related the barmaid's reaction to their presence as:

> (to the couple of patrons in the bar) " 'I told you he wasn't eighteen. That is why he left the money on the bar and he walked out'."

However, when the barmaid was asked on cross-examination concerning being confronted by the officer, her testimony was as follows:

> "Q. Now, he asked you the question: did you serve the boy, isn't that true?
> A. Yes.
> Q. What did you answer?
> A. I don't remember exactly. I mean, like I say, I was so nervous, I couldn't remember what I had done wrong, and it upset me. I don't even remember what I said to him, now."

The response of the barmaid did not reflect the possibility that the minor came into the premises, removed a six-pack after placing money on the bar, and departed without her knowledge. Had that been the case, it is inconceivable that she would have responded as above indicated to the officer's question. Logically, if some person had entered, removed beer from the box and placed money on the bar and departed, all inview of patrons but not the barmaid and all of this were followed by the immediate arrival of police with the minor, any barmaid or agent of a licensee under those circumstances, would have vehemently protested and requested the corroboration of the patrons who observed the taking.

The officers both testified that the barmaid admitted that she had sold the alcoholic beverages to the minor.

III

Appellant charges that the long delay in bringing the sale to a minor to hearing was so prejudicial as to require dismissal.

In the matter of Chris-Crescendo Corp. v. Newark, Bulletin 2180, Item 2, a delay of four years in bringing the matter to fruition was considered to be so prejudicial to the appellant as to require dismissal. In that matter, the Director commented: "Neither at the hearing before the Board nor at this Division was any reason given by the Board for the long delay in bringing the matter to hearing. The ancient axiom 'justice delayed is justice denied' is clearly applicable."

However, in the instant matter, it was explained to the Council that, following the incident, the appellant charged the minor in the appropriate forum of having made an illegal purchase of alcoholic beverages. Concomitantly, a charge was brought in the Municipal Court against the agent of the licensee. The action of the Council awaited the outcome of both, which were eventually dismissed. Hence, the appellant was aware, by its own participation, of the developments following the incident giving rise to these charges. Therefore, the appellant cannot now be claimed to have been prejudiced.

Additionally, the assertion of prejudice because of the delay was made by the appellant by reason of the subsequent death of Mrs. McKenna, the other employee. To offset such difficulty, the appellant was permitted to advance whatever testimony the deceased witness would have given, into the record, in favor of appellant. In view of the Council's acquiescence to such admission, there is nothing prejudicial to the appellant because of the delay.

IV

The contention of the appellant that, having been required to respond to a summons of the Municipal Court for an alleged violation stemming from the same incident, i.e., sale to the minor, it is subject to "double jeopardy" is specious. It has long been held that the criminal charges resulting from some violation in licensed premises and the regulatory charges stemming from the same violation are completely different. One is criminal and the other is civil. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The criminal charges must be proven beyond a reasonable doubt;

the civil charges require a preponderance of the credible evidence only. Additionally, the charges made in the Municipal Court were against an individual; the charges herein were against the license.

V

Appellant's contention that it was prejudiced in that the charges preferred against it contained a reference to the effect of a confessive plea is utter nonsense. As the Council correctly noted, the form of the charge followed the form in general use by this Division. Such forms generally contain references to the effect of confessive pleas. Additional notice to a charged licensee does not in any way indicate that a determination upon the charge had been prematurely made.

I find that appellant has failed to sustain its burden of establishing that the action of the Council was erroneous and should be reversed, as required under Rule 6 of State Regulation No. 15. To the contrary, from the evidence adduced before it, it is clear that the Council, having the benefit of seeing the witnesses and evaluating their credibility, properly determined that the charges were proven by a fair preponderance of the believable evidence. I recommend that the action of the Council be affirmed.

VI

Appellant finally contends that the penalty imposed by the Council was excessive. It advances the argument that, in view of the fact that the record of appellant is unblemished, the penalty imposed should be minimal to serve merely as a warning.

Appellant should be advised that the penalty imposed, i.e., fifty days, is the identical minimum penalty imposed, under the present revised policy, by the Director of this Division in disciplinary proceedings on sale to a fourteen-year old minor. In short, the Council has used a minimum penalty in the imposition of the suspension.

It is, accordingly, recommended that the action of the Council be affirmed, the appeal be dismissed, and the suspension of license for fifty days, which suspension was stayed by order of the Director of this Division pending the appeal, be reimposed.

Conclusions and Order

Written Exceptions to the Hearer's report, with supportive argument, were filed by the appellant pursuant to Rule 14 of State Regulation No. 15.

I have carefully analyzed and evaluated the said exceptions and find that they have either been considered and clearly resolved in the Hearer's report or are lacking in merit.

It should be emphasized, with respect to the contention in the said exceptions that the recommended penalty is "unfair and excessive", that the said penalty recommended by the Hearer is the minimum penalty imposed under present Division policy for sale of alcoholic beverages to a fourteen-year old minor in licensed premises.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report and the exceptions filed thereto, I concur in the findings and recommendation of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 25th day of March 1976,

ORDERED that the action of the respondent Common Council of the City of South Amboy, be and the same is hereby dismissed; and it is further

ORDERED that my order dated September 24, 1975 staying the respondent's order of suspension be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-11, issued by the Common Council of the City of South Amboy to Rob-Dee Corporation, t/a The Brave Bull for premises 111 North Feltus Street, South Amboy, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m. on Thursday, April 8, 1976 and terminating at 2:00 a.m. on Friday, May 28, 1976.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - CLUB RAZ-MOR, INC. v. PASSAIC.

Club Raz-Mor, Inc., t/a Mr. L's Place Appellant v. Municipal Board of Alcoholic Beverage Control of the City of Passaic, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Joseph M. Keegan, Esq., Attorney for Appellant
Michael A. Konopka, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) which, on June 24, 1975, denied renewal of Appellant's Plenary Retail Consumption License C-29, for premises 122 Central Avenue, Passaic.

The Board grounded its denial of renewal upon the appellant's past record and a series of four incidents which occurred in the 1974-75 licensing year, which consisted of an incident of gambling and three incidents involving acts of violence in the licensed premises.

The appellant contends that there was insufficient evidence before the Board upon which such incidents were based which would justify the conclusions reached. The Board in its Answer maintains that its conclusions were reasonable and proper, and in the best interests of the public welfare.

On June 27, 1975, the Director of this Division extended appellant's license pending the determination of this appeal.

An appeal de novo was heard in this Division in which the parties were afforded full opportunity to introduce evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

The Board introduced the testimony of Passaic Police Detectives Michael Gergats and Nathan Levit who offered copies of police reports related to appellant's premises. These reports reflected investigations of three incidents, i.e.; one, on September 27, 1974 when a young man allegedly told police he was hit in the face with a glass while in the premises; another, on October 30, 1974, when a man contended he was robbed and cut in the mouth and face while in the premises; and the third incident, on January 8, 1975, when a man required twenty-one stitches on his face resulting from a "cutting" within appellant's premises.

Lois Allen, Chairman of the Board, testified that the reports of those incidents eventually filtered their way to the Board and were considered by the Board when the appellant's renewal application was before it. She admitted that no disciplinary proceedings eventuated from the incidents; she explained the failure to institute such disciplinary proceedings was due to the heavy work-load of the Board.

A record of the Police Department relative to a gambling investigation of appellant's premises was introduced into evidence. This revealed that, on February 7, 1974 the sole owner of the capital stock of appellant corporation, Lorenzo Hansford, was arrested and charged with maintaining a gambling resort, working for a lottery and possession of lottery slips. He was found guilty in the Passaic County Court.

Hansford testifying on behalf of appellant admitted the charge and conviction; he was sentenced to three consecutive terms of a year-less-a-day, which sentences were suspended, and was placed on two years probation and fined $500.00.

By virtue of N.J.S.A. 33:1-25, the holder of the capital stock of appellant corporation, Lorenzo Hansford, is ineligible to hold a license; and the corporation in which he holds a beneficial interest of 10% is similarly ineligible. That statute states, in part, "No license of any class shall be issued to any individual...or to any person who has been convicted of a crime involving moral turpitude...." The statute further restricts corporate licensees where an officer director or holder of more than 10% of the stock would fail to qualify as indicated. Hence, the appellant may not hold a license to sell alcoholic beverages.

The alleged acts of violence ascribed to appellant licensee were not followed by any police investigation upon which charges could be preferred against appellant. Even, arguendo, that the acts of violence as described by the victims did take place, there was no evidence offered by any one of them that the appellant's agents allowed, permitted or suffered such acts to take place. The Board, on learning of such incidents, neither initiated any investigation nor disciplinary charges by which a determination of responsibility could be made. Hence, the sole charge upon which the Board could base its denial of renewal of appellant's license was the conviction of its principal stockholder of a crime involving moral turpitude. Cf. Eligibility Case No. 727, Bulletin 1563, Item 6.

However, although the appellant has no right to continue to operate the licensed premises due to the conviction of its principal stockholder, it is not unusual in such instances for the Board or the Director of this Division to permit such stockholder a reasonable opportunity to divest himself of the corporate stock to a bona fide transferee of the stock. Cf. J.K.J. Corporation v. Paterson, Bulletin 2136, Item 1; J & K Bar, Inc. v. Wallington, Bulletin 2146, Item 3; Artend v. Elmwood Park, Bulletin 2179, Item 1; Malone v. Union, Bulletin 2187, Item 3. Under the facts and circumstances herein, I recommend that appellant be given the opportunity to do so, within 60 days from the date of the Director's order herein.

It is,accordingly, recommended that the action of the Board in denying renewal of appellant's license be reversed solely to permit appellant's principal stockholder to divest himself, within sixty days, of the capital stock of appellant corporate licensee to a bona fide transferree; and, further, that the Board be directed to renew the said license nunc pro tunc with condition endorsed thereon that the license shall not be delivered, but shall be held by the Board until such time as the Board receives notice of and approves of the said transfer of the capital stock.

It is further recommended that, in the event, the said stock is not transferred to a bona fide transferree within the time limited, then, in the event, the said license shall be cancelled.

Conclusions and Order

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

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

Accordingly, it is, on this 13th day of April 1976,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Passaic, be and the same is hereby reversed, expressely subject to the following conditions:

(1) Within sixty days from the date of this order, the appellant's principal stockholder shall divest himself of the capital stock of the corporate appellant by a transfer thereof to a bona fide transferee;

(2) The Board be and is hereby directed to renew the said license, nunc pro tunc; however, the license shall be delivered but shall be held by the Board until such time as the Board receives notice of and, by resolution, approves the said transfer of the capital stock;

(3) In the event that the said stock is not transferred to a bona fide transferee within the time limited herein, or such extension thereof as may be granted by the Board or the Director of this Division, the said license shall be cancelled.

Samuel Gold
Acting Director

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) ON LICENSED PREMISES - PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 95 DAYS.

In the Matter of Disciplinary Proceedings against

Edward M. Pabian
t/a Mike & Eddie's
491 Southard Street
Trenton, N.J.,

Holder of Plenary Retail Consumption License C-171, issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

Benjamin A. Poreda, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to the following charges:

1. On July 31 and August 6, 1975, 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 July 31 and August 6, 1975, 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.

Testifying on behalf of the Division, ABC Agent V gave the following account: On July 31, 1975, at about noon, he entered the licensed premises and seated himself at the bar. He ordered an alcoholic beverage from the licensee, Edward M. Pabian, who was the bartender on duty; and he then went over to the pool table and started to play pool.

A person, later identified as John Scott, approached him and asked him whether he wanted to play any "numbers". He agreed to play one dollar on number 888 and went over to the bar and obtained from Pabian a sheet of paper, on which he wrote the number 888-50-50. This was written in the presence of and in front of the licensee, after which he gave the money and the "numbers" slip to Scott, the bookie, at the bar. He resumed his game of pool and left the premises at about 12:30 p.m.

On August 6, 1975, at about 12:45 p.m., the Agent made another visit to the said premises. Prior to his entry he arranged with other ABC Agents and local police for them to take a position at a point of observation and enter the premises at a prearranged signal.

Fortified with "marked" money, he took a seat at the bar and asked the licensee, who was again on duty as a bartender, where the bookie Scott was. Pabian stated that Scott has just left the premises but would return shortly.

Within a few minutes thereafter, Scott entered the premises and this witness went over to him and said to him: "I will see you within a few minutes." He obtained from Pabian a pencil and paper which he informed Pabian he needed so that "I can put my bet in with Scott." Pabian said "okay", and he wrote in front of Pabian and Scott the number 888 for two dollars, which represented a "numbers" bet. He handed the two "marked" one dollar bills and the bet slip to the bookie in the presence of Pabian, who was about two and a half feet from him and directly in front of him. He left the premises, and gave the prearranged signal to the other ABC Agents and the local police officers.

ABC Agent D testified that on August 6, 1975, at about 12:35 p.m., he arrived in the vicinity of the said premises in the company of other agents and local police officers, and formulated plans for the investigation of alleged gambling at these premises. "Marked" money was handed to ABC Agent V. He arrived shortly thereafter and entered the said premises. After receiving the prearranged signal from Agent V, the agents and the local police entered the premises; the local police served a warrant, and arrested Scott. Several bet slips were recovered from the pockets of Scott, one of which contained the bet previously played by Agent V.

Agent D, who has had twelve years of experience in undercover work involving about 150 gambling investigations, as well as a substantial educational background in courses related to gambling procedures, identified the slips as bet slips; and he explained the methods of "numbers" betting.

Police Officer Prince Patterson, Jr., of the Special Services Unit of the Trenton Police Department, testified that he accompanied Agent D on August 6, 1975 at about 1:17 p.m. Accompanied by Agent D, he entered the premises upon a prearranged signal, and served an arrest warrant on Scott. He searched him and seized from his pants pocket three slips and $21.00 in U.S. Currency, of which the two one dollar marked bills were included. The seized slip was thereupon identified by Agent V, and admitted into evidence.

John Scott, testifying on behalf of the licensee, gave this account: He had been unemployed for the past two and a half years because of physical disability. He visits these licensed premises daily but doesn't recall whether he was in the premises on July 31, nor does he remember whether he saw Agent V on that day.

However, on August 6, he saw Agents V and D playing pool. Agent V told him that he wanted to play number 888 and obtained a sheet of paper from the licensee upon which he wrote that number and gave it to him. Shortly thereafter, the other agents and officers entered and placed him under arrest. He explained that while he didn't recall the date of July 31, he did remember that on prior occasions, he took two bets from Agent V.

He explained that he places bets at a Pick-It station at State and Warren Streets in Trenton, and thought it was legal to take bets from individuals and place the same for them as an accommodation. He noted that he accepts bets from friends and neighbors in the neighborhood as a "favor"; and he accepted these bets openly because he didn't think it was illegal.

He admitted that he never inquired of the police department or other authorities whether it was lawful to take "numbers" bets nor did he even inquire of the Pick-It vendor with respect thereto. Finally, while Pabian saw him receive these bets, Pabian never told him not to take "numbers" bets or make any attempt to stop him.

The licensee, Edward M. Pabian, testified that Scott visits his premises daily. He does not remember whether Scott was in his premises on July 31 although he did not deny that Agent V may have been at the premises at that time. With respect to August, he does recall that the agents were in the premises, and that he informed Agent D that Scott would be back in a few minutes.

On cross examination, he stated that Scott had never told him that he was accepting bets for the Pick-It lottery, nor did he ever hear him mention anything about that activity in these premises. Further, this witness stated that he didn't know why Scott was arrested at that time and did not hear Scott say anything by way of explanation to the arresting officers about Scott's voluntarily accepting lottery bets for the Pick-It lottery.

In the adjudication of this matter, we are guided by the basic principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal, and thus, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). Since the matter sub judice presents essentially a factual situation, the credibility of witnesses must be weighed. Testimony, 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 under the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 86 N.J. Super (App. Div. 1961).

I have had the opportunity to observe the demeanor of the witnesses as they testified, and in view of the conflict in the testimony, I have carefully evaluated and assayed their testimony. I am persuaded that the testimony of Agent V is credible and that he presented a forthright and accurate account of what transpired on the dates charged herein. I am equally impressed with the truthfulness of the testimony of Police Officer Patterson and Agent D since their testimony corroborates the account given by Agent V as to what transpired on August 6.

It is clear that the basic issue involved here is not that gambling did or did not take place, since the overwhelming evidence establishes that fact, but rather that, if gambling did take place, whether the licensee knew or should have known that it did. Agent V has clearly inculpated the licensee who served as bartender on duty on the subject dates. He explained that the licensee handed him paper and pencil; that he informed the licensee that he was making bets with Scott; and these bets were made openly. That the bets were actually made is manifested by the fact that the "marked" money and numbers slips made on August 6, were found in the possession of Scott.

I find Scott's testimony to be completely unbelievable. He explains that he was a volunteer collector of lottery bets for the Pick-It lottery, and as such, accepted these bets not only from the Agent but from many people in the area. Strangely enough, he never disclosed this activity to the licensee nor did he ever attempt to ascertain whether such alleged practice was legal or illegal.

It also would have been quite remarkable, however unrealistic, for this person, who had been unemployed for the past two and a half years to embark on such voluntary activity without profit to himself; for clearly, he admittedly did not have a Pick-It license. His credibility is further adversely

affected by the fact that he admittedly was convicted of the crime of sale of narcotics, in 1969, and was sentenced to ten to twelve years in State Prison.

I find the testimony of the licensee to be equally incredible. Scott was a daily visitor to these premises and quite frankly, admitted taking "numbers" bets. Yet, the licensee says that he never saw Scott write anything or accept money from the Agent, although he does not deny that he gave the Agent pencil and paper on both dates, which the Agent used to write the "numbers" bets.

There is such abundance of testimony, both oral and empiric, of repeated acts of gambling that it is inconceivable that such activity could have occurred without the knowledge and consent of the licensee. I, therefore, reject as unbelievable, the testimony of the licensee and his witness.

I find that the charges have been proven by a fair preponderance of the credible evidence, indeed, by substantial evidence, and recommend that the licensee be found guilty of the said charges.

The licensee has a prior chargeable record of suspension of license by the local issuing authority for ten days, effective April 17, 1969 for a similar violation. It is, therefore, recommended that the license be suspended for ninety (90) days on the charges herein, to which should be added five days by reason of the similar violation occurring more than five but less than ten years from the date of the said charges, making a total suspension of ninety-five (95) days. Re LaCalandra, Bulletin 2152, Item 6.

Conclusions and Order

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

It should be noted that I heard this matter as a Hearing Officer, Chief Deputy Director. In my present capacity as Acting Director, I had the advantage of observing the demeanor of the witnesses as they testified.

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

Accordingly, it is, on this 29th day of April 1976,

ORDERED that Plenary Retail Consumption License C-171, issued by the City Council of the City of Trenton to Edward M. Fabian, t/a Mike & Eddie's, for premises 491 Southard Street, Trenton, be and the same is hereby suspended for the balance of its term, i.e., midnight, June 30, 1976, commencing at 2:00 a.m. Monday, May 10, 1976; and it is further

ORDERED that any renewal of the said license which may be granted be and the same is hereby suspended until 2:00 a.m. Friday, August 13, 1976.

Joseph H. Lerner
Acting Director

4. STATE LICENSES - NEW APPLICATIONS FILED.

Goya Foods, Inc.
100 Seaview Drive
Secaucus, New Jersey
Application filed June 14, 1976
for plenary wholesale license.

Velardi & Son Wine Imports, Inc.
43 Samworth Road
Clifton, New Jersey
Application filed June 17, 1976
for plenary wholesale license.

Morris Nemerofsky
t/a Statewide Distributing
St. Hwy. 57 & Hensfoot Road
Lopatcong Township
PO Phillipsburg, New Jersey
Application filed June 18, 1976
for person-to-person transfer of
Limited Wholesale License WL-62
from R. S. Wood, Inc.

Joseph H. Lerner
Acting Director