

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

February 20, 1970

BULLETIN 1898

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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

February 20, 1970

BULLETIN 1898

1. COURT DECISIONS - DELABU, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1751-68

DELABU INC.
t/a STEVE BRODY'S BAR,

Appellant,

v.

DIVISION OF ALCOHOLIC BEVERAGE
CONTROL, DEPARTMENT OF LAW AND
PUBLIC SAFETY, STATE OF NEW
JERSEY,

Respondent.

Argued January 5, 1970 - Decided January 14, 1970.

Before Judges Sullivan, Carton and Halpern.

On appeal from Division of Alcoholic Beverage
Control.

Mr. Robert M. Hanlon argued the cause for appellant
(Messrs. Hanlon, Argeris & Amdur, attorneys).

Mr. Richard C. Camp, Deputy Attorney General,
argued the cause for respondent (Mr. Arthur J.
Sills, Attorney General, attorney).

PER CURIAM.

(Appeal from Decision in Re Delabu, Inc., t/a Steve
Brody's Bar, Bulletin 1873, Item 4. Director affirmed.
Opinion not approved for publication by the Court Committee
on Opinions.)

2. COURT DECISIONS - IN RE TUBE BAR, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-940-68

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST TUBE BAR,
INC., t/a TUBE BAR
12 Concourse,
Jersey City, New Jersey

HOLDER OF PLENARY RETAIL
CONSUMPTION LICENSE C-184
ISSUED BY THE MUNICIPAL
BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF JERSEY
CITY

Argued January 19, 1970 -- Decided January 30, 1970.

Before Judges Kilkenny, Labrecque and Leonard.

On appeal from determination and order of the
Director, Division of Alcoholic Beverage Control.

Mr. Samuel J. Davidson argued the cause for
appellant, Tube Bar, Inc.

Mr. Richard C. Camp, Deputy Attorney General argued
the cause for respondent, the Director of the
Division of Alcoholic Beverage Control (Mr. Arthur
J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM

(Appeal from Director's decision in Re Tube Bar,
Inc., Bulletin 1852, Item 2. Director affirmed. Opinion not
approved for publication by the Court Committee on Opinions.)

3. COURT DECISIONS - IN RE FINBAR (A CORPORATION) - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-938-68

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST FINBAR, a
corporation trading as
FINBAR
Journal Square Terminal
Jersey City, New Jersey

Holder of Plenary Retail
Consumption License C-462
issued by the Municipal Board
of Alcoholic Beverage Control
of the City of Jersey City.

Argued January 19, 1970 -- Decided February 2, 1970.

Before Judges Kilkenny, Labrecque and Leonard.

On appeal from determination and order of the
Director, Division of Alcoholic Beverage Control.

Mr. Thomas J. Kilcoyne argued the cause for
appellant Finbar.

Mr. Richard C. Camp, Deputy Attorney General,
argued the cause for respondent Director,
Division of Alcoholic Beverage Control (Mr.
Arthur J. Sills, Attorney General of New Jersey,
attorney).

PER CURIAM

(Appeal from Director's decision in Re Finbar,
A Corporation, Bulletin 1851, Item 3. Director affirmed.
Opinion not approved for publication by the Court Committee on
Opinions.)

distributor of its nationally advertised products until February 28, 1969, when it terminated its distributorship; that it, in effect, decided to "go exclusive", and designated Garden State as its exclusive distributor in New Jersey, effective March 1, 1969. It also admits that Bombay Gin and Bombay Dry Vermouth are nationally advertised brands of alcoholic beverages and that F & A has the present ability to pay for the merchandise ordered and has in the past paid for all the merchandise ordered and delivered to it.

In separate defenses Carillon alleges that (1) F & A is the exclusive distributor in New Jersey of Bengal Gin, a nationally advertised brand distributed by House of Seagram, Inc., which is a competitive brand; (2) its product (Bombay Gin) "is a very small part of the volume of the products distributed by [F & A];" (3) the "performance" of F & A in the sale of Carillon's products was below the performance of other distributors in the country as a whole; and that the termination of the distributorship was made "in good faith and in the exercise of good business judgment and business policy;" (4) since Carillon is a relatively small importer, its conduct in discontinuing this distributorship "cannot promote 'domination' of wholesalers by distillers."

It was stipulated at the outset of the plenary hearing herein that Bombay Gin and Vermouth are nationally advertised brands of alcoholic beverages; that F & A is a duly licensed wholesaler in the State of New Jersey and was an authorized distributor of its products through February 28, 1969; that F & A has the present ability to pay for such merchandise as it may order.

It should be further noted that, at the inception of the hearing of this petition, Carillon agreed to sell alcoholic beverages to F & A on terms usually and normally required by Carillon until the ultimate determination of this matter.

Myron Feldman, vice president and general manager of F & A, testified that F & A distributed Bombay Gin and Bombay Vermouth throughout the State of New Jersey since 1962 and during these years the sales of Bombay Gin within the State of New Jersey increased substantially from a relatively unknown product to its present annual sale of over 1,000 cases, and from a relatively unknown product of Bombay Vermouth to a product now selling hundreds of cases per year. He further testified that F & A has a sales force of over sixty persons, has thirty-two vehicles of its own, with at least twenty-one trucks operating daily servicing approximately 6,200 accounts within fifteen counties of the State of New Jersey. It has a physical plant in Bayonne consisting of a 102,000 square foot building located on a ten-acre tract of land.

Moreover, F & A has conducted a complete advertising and promotion campaign geared to promote its products including the Bombay Gin and Vermouth. It has also cooperated in every respect in its promotional work with Carillon and its promotional efforts have helped to increase the sales of these products. He added that, although Bombay Gin and Vermouth may comprise a minor percentage of its overall business, it would be economically prejudiced by the said termination of its distributorship after the efforts which it expended over the years in promoting and selling the said products. Finally he stated that, from a comparative standpoint, F & A has more personnel, larger physical facilities, more vehicles and more overall accounts

than Garden State, and that the termination of this distributorship was both illogical and poor business judgment.

Harold Rosenfeld, secretary-treasurer and general manager of Garden State testified that his company started to distribute Bombay Gin in 1967. Garden State has 70-75 salesmen (of whom 14 are employed by its affiliate, Crown, Ltd.) who service approximately 6,000 accounts in New Jersey. Its total sales volume is "slightly below" that of F & A.

Garden State operates from 2 warehouses, owns 28 trucks and its credit is good. It handles nationally advertised brands of alcoholic beverages including products of the Seagram Company. The above figures represent the total of both Garden State and Crown, Ltd.

Albert Singer, vice president and general sales manager of Carillon, testified that, while in 1966 New Jersey was the fifth largest consumer of gin and in 1967 and 1968 was the fourth largest consumer of gin, its progress in sales was less in New Jersey than that of other areas in the country. As a result of its survey, Carillon decided that its best interests would be served by making Garden State the exclusive distributor because F & A was already distributing a competitive gin for Seagram's. Thus it felt that Garden State would devote more efforts to the promotion of its product. On cross examination he admitted that, in the letter sent to F & A by Carillon discontinuing its distributorship, there was contained the following sentence:

"Rest assured that this is no reflection on your performance but simply a matter of company policy."

He explained, however, that that expression was merely a polite expression and that in fact there was "an unsatisfactory performance in the State of New Jersey for Bombay Gin."

The factual complex in the matter sub judica is similar to that in American B.D. Company and National Wine & Liquor Company v. House of Seagram's, Inc., Bulletin 1845, Item 2. In those matters which were tried jointly similar arguments were advanced on behalf of the respondent in its attempted justification of its decision to "go exclusive." There, too, the petitioner was discontinued as a distributor of nationally advertised brands of alcoholic beverages, together with other distributors, and the sole distributorship by the respondent was invested in one exclusive distributor for the State of New Jersey.

The Director held that the substitution of the statutory language in Chapter 59 from the prior repealed statute "altered" the standard by which prohibited discrimination is to be determined by changing the term "arbitrary discrimination" to "discrimination." Such change eliminated an area of convenience in which a wholesaler's supplier may justifiably refuse to sell to another such wholesaler if, in good faith, he uses a reasonable method of selection, objectively documented, notwithstanding the absence of any impropriety by the wholesaler. The standard now is discriminatory sales treatment of an authorized wholesaler or wholesalers. Prima facie all authorized wholesalers must continue to be sold nationally advertised brands, and no mere convenience of the supplier will justify the elimination of any such wholesaler.

The Director articulated another basic distinction of the present statute prohibition from that contained in the first statute. The original statutory prohibition against discrimination in sales of nationally advertised brands of alcoholic beverages to wholesalers, N.J.S.A. 33:1-93.1, applied to all wholesalers, whereas the 1966 amendment to the statute (the present statute) restricted its applicability to wholesalers then or thereafter authorized by importers, distillers and rectifiers to handle their products. On appeal from the order of the Director requiring the respondent therein to sell and continue to sell its petitioner all its alcoholic beverage products distributed in New Jersey, the Appellate Division affirmed the determination of the Director. American B.D. Co. v. House of Seagrams, Inc. and National Wine & Liquor Co. v. House of Seagrams, Inc., 107 N.J. Super. 264 (App. Div. 1969). In its decision at p. 267 the court stated:

"We agree with the Director's interpretation of discrimination as used in the amendment. The original statutory provision relating to discrimination in sales of alcoholic liquors to wholesalers required the Commissioner (now Director) to determine whether a refusal to sell to a wholesaler was 'arbitrary' or not. N.J.S.A. 33:1-93.2. In Canada Dry Ginger Ale, Inc. v. F. & A. Distrib. Co., 28 N.J. 444 (1958), decided under the original statute, it was held that a distiller's initial decision to reduce its number of wholesalers within the State did not of itself contravene the statute, and might not be arbitrary if the distiller showed that the selection of certain wholesalers to the exclusion of others was made on the basis of a standard reasonably related to the legitimate business goal sought to be achieved and not conducive to the evils which the act was designed to prevent. The standard, said the court, must be of such a tangible or objective nature as will enable the Director to determine from the proofs whether its application to the wholesalers in question is reasonable.

"The 1966 amendment restricted the Director's scope of inquiry to a determination of whether or not the refusal to sell was 'discriminatory.' N.J.S.A. 33:1-93.7. It seems clear that the Legislature, after limiting the class of wholesalers to whom the statute was applicable, extended the prohibition of the statute so as to bar any discrimination as to wholesalers in the protected class.

"The Director's interpretation gives a clear and workable formula for application and has the virtue of taking the Division of Alcoholic Beverage Control out of the difficult position of evaluating and determining what is or is not a legitimate business judgment based on tangible and objective standards with all of the problems that such a determination entails."

Carillon reasons a posteriori that it had a right to terminate this distributorship because F & A was the largest distributor in the State of New Jersey of the products of Seagram, among which products are Bengal Gin, a competitive product. This is obviously no valid reason for discontinuing F & A's distributorship herein under the effect and force of the present statute.

Carillon also maintains that Bombay Gin, which was distributed by F & A, constitutes a very small part of the volume of the products distributed by F & A for Seagram and represents an even smaller part of its total sales. It is crystal clear that this argument lacks merit.

Carillon further contends that F & A's performance in sales was highly unsatisfactory and substantially below the performance of comparable distributorship in the middle Atlantic Division of the United States, as well as in the country as a whole. There is no affirmative contention that F & A disparaged its products; and in fact the overwhelming testimony adduced at this hearing supports the contention of F & A that it has effectively promoted and substantially increased the sale of Carillon products during the period of its distributorship; and it has certainly not disparaged its products. Such contention was considered by the court in American B.D. which stated at p. 266:

"The Director recognized that an importer, distiller or rectifier would have the right to terminate a business relationship with a wholesaler who disparaged the product, showed unfair preferment in sales effort for those of a competitor, or engaged in improper or proscribed trade practices. However, no such contention was made in the present case. In the absence of any such contention, the Director held that it would be discrimination within the meaning of the amendment for Seagrams to eliminate American and National, even though the decision to do so was the result of a business judgment that the sale of Seagrams' products would be stimulated by 'going exclusive' in distributorship."

As noted hereinabove, there is no evidence of any disparagement of sales efforts. Further, Carillon asserts that its termination of the said distributorship was made in good faith, in the exercise of good business judgment and business policy.

In his memorandum on behalf of Carillon, its attorney states forthrightly that "Economic reasons and only economic reasons motivated the termination of petitioner's agency." This argument was effectively answered in the words of the Appellate Division as recited hereinabove. The Court thus sustained the Director's ruling that economic factors are not germane to the issue of whether or not there was discrimination on behalf of Carillon. Although Carillon decided to reside its distributorship in one wholesaler, it cannot discriminate against other wholesalers who definitely qualify within the statutory guidelines. What Carillon seems to suggest is that, on the basis of its objective criteria, it reached a sound business judgment in its determination to eliminate F & A as its distributor. In disposing of a similar contention in American B.D. the court stated, at p. 267:

"Even if it be held that discrimination has a meaning other than that given it by the Director, and that the holding in Canada Dry, 28 N.J., at 444, is applicable to the present statutory provision, our review of the record leads us to conclude that Seagrams has failed to demonstrate that its decision to eliminate American and National was made on the basis of tangible and objective

standards reasonably related to legitimate business goals and not conducive to the evils which the act seeks to prevent.

"In essence, all that was shown was a subjective decision to go exclusive in an effort to increase sales. Moreover, no consideration was given to the impact on the industry as a whole and the effect it would have on the wholesalers eliminated. The Director's decision herein points out that the record 'dramatically demonstrates' that the smaller wholesalers proposed to be eliminated...."

The testimony in this matter dramatically demonstrates that, even on the basis of objective criteria, Carillon would not be justified in eliminating F & A as a distributor. As the Director stated:

"the total concept of objective criteria must be discarded in favor of the specific statutory criteria as defined in the present statute."

And further:

"The rationale inherent in the imperative language of the statute is clear. It seeks to restrain the distiller from changing or eliminating distributors at will and thereby destroy the independence of wholesalers. This could leave many distributors, who would be affected by such eliminations, in serious economic difficulty. This in turn might compel them to resort to some of the practices frowned upon under the concepts of proper alcoholic beverage control."

I am persuaded that the argument with respect to objective criteria is gratuitous and unnecessary, since such measure is irrelevant in the ultimate determination of this matter. However, as hereinabove indicated, even on the basis of those factors, the petition would prevail. See Joeli Wine Distributors, Inc. v. Browne-Vintners Company, Bulletin 1845, Item 1.

Finally, as the court stated in Grand Union Co. v. Sills, 43 N.J. 390, 407 (1964):

"...if the legislature believes that the restrictions 'will reduce the volume of sales and tend to promote temperance rather than intemperance,' then it may not be said as a matter of law 'that such a conclusion has no connection with the public welfare, safety or morals.'"

I have considered the other arguments challenging the integrity of the applicability of the aforementioned statute to the facts sub judice and find them lacking in merit.

Under all of the facts and circumstances herein, it is recommended that an order be entered determining that the action of Carillon is discriminatory, and directing Carillon to sell nationally advertised brands of alcoholic beverages to F & A on terms usually and normally required by Carillon; and that, in the event Carillon refuses to comply with the terms of said order, a further order be entered in accordance with the provisions of R.S. 33:1-93.9.

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."

The Division relied on the testimony of two ABC agents in substantiation of the charges.

Agent P testified that he entered the licensed premises (characterized as a neighborhood tavern) on February 28, 1969 at approximately 11:30 a.m. and sat at the bar. The licensee, Anthony J. Garby (Tony), was tending bar. His wife, Stella (a co-licensee), was working in the kitchen. Some time later, after conversing with Tony, he "asked him if I could get a couple of horses in, I got a good tip." Tony responded, "I am trying to get away from this horse racing. I am getting too scared." After serving some patrons, Tony informed Agent P "If you want to get horses in give it to John." Continuing the investigation, he prepared a slip with two horse bets and a numbers play and gave it "to a friend of John's to give to John." He did not see the slip being passed to John. Later, when the lunch was over, he observed a patron give Tony a slip of paper and money and say, "that is \$8 there for the daily double." After looking at the slip of paper and the money, he put them in his pants pocket. He then testified as follows:

"Then I told Tony, I says, Hey Tony! Here is \$2.50 for the bets I got in. And Tony asked me if I got the bet in. I said, yes. He mentioned the 50 cents. I said the 50 cents was for a numbers bet. He said, all right."

Agent P revisited the tavern on March 5, 1969. Tony was tending bar. After engaging Tony in conversation concerning horse racing, he informed Tony that he would like to play a \$2 daily double and \$2 to win on Dark Trojan and handed Tony a \$5 bill. Tony accepted the money and gave Agent P \$1 change. He then observed Tony make notations of the horse bets on the racing section of the Daily News. Immediately thereafter he departed from the premises.

On March 14, 1969 Agent P entered the licensed premises at 12:15 p.m. and positioned himself at the bar. Tony and his father were tending bar. At approximately 12:30 p.m. (after most of the lunch-time customers had left the premises) Agent P offered Tony a slip containing horse bets written thereon. Tony appeared perturbed and said, "Don't give me any slip with horses on it. If you want a slip yourself, O.K., but tell me which numbers you want to play." Tony handed Agent P the Daily News. Agent P picked numbers 7 and 8, gave the \$2 daily double at Aqueduct and \$2 "to win" on number 8. Tony took a slip of paper out of his pocket, recorded the bets, and placed the paper and Agent P's money in his pocket. Agent P then departed from the premises.

Prior to re-entering the licensed premises on March 20, 1969, Agent P and two other ABC agents met with local police officers and members of the county prosecutor's staff to formulate plans for a raid. A marked-money list containing the serial numbers of a \$5 bill and four \$1 bills was prepared by Agent P. Additionally, Agent P had prepared a horse bet slip. Agent P entered the licensed premises alone at 12:10 p.m. and sat at the bar. Tony and his father were behind the bar serving approximately thirty patrons. Agent B entered the licensed premises shortly

thereafter and sat approximately four bar stools to Agent P's right.

Later, Agent P informed Tony that he wanted to place some horse bets. Tony pointed to the other ABC agent and said, "Not now; there is a stranger in the place. Let's see what he does." Agent P signaled the other agent to leave the barroom for a short time. After Agent B left, Tony returned to Agent P and said, "Now, what do you want now?" Agent P gave Tony a daily double bet, a reverse bet on horses in the first and second races, and a bet on a horse in the second race. Tony made notations of the bets on a brown paper bag that was near the cash register. Agent P then handed the marked money in payment of the bets to Tony in the presence of Agent B who had re-entered the barroom. In accepting the money Tony said, in a loud voice, "This is the money you owe me." Shortly thereafter he left the licensed premises and signaled the other law enforcement officers.

Despite an intensive cross examination, Agent P's testimony was substantially corroborative of the testimony adduced on direct examination.

Agent H testified that, prior to participating in the raid of the licensed premises on March 20, 1969, he met with ABC agents P and B, local police officers and members of the county prosecutor's staff. He had seen the marked money, the marked-money list and the bet slip that was in Agent P's possession. Shortly after receiving a signal from Agent P at approximately 12:43 p.m., he entered the licensed premises accompanied by other law enforcement officers, and observed Agent B seated at the bar and Garby (Tony) standing behind the bar. Garby hurried toward an opening in the bar. Although Agent H announced that they were law enforcement officers and for him to stop, Garby continued on until he was apprehended at a doorway. Agent H identified himself to Garby. Detectives Haines and Mason who were in the raiding party informed Garby that they had a search warrant. Agent H observed the detectives receive from Garby a five-dollar bill and three of the marked one-dollar bills that had been in Agent P's possession. Agent H also found alongside the cash register a stack of brown paper bags. The top bag contained notations identical to the notations contained on the photo-copy of the paper bag which was received in evidence as D-4.

No witnesses were presented by the licensees in defense of the charges.

Principally, the attorney for the licensees argued that (1) the Division has the burden of proving the guilt of the licensees beyond a reasonable doubt and (2) the testimony produced by the Division was insufficient to warrant a finding of guilt.

Licensees' first contention is without merit. This is a civil and not a criminal proceeding. We are bound 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); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, 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.

It is apparent that on February 28 Tony (a co-licensee) accepted \$8 from a patron for a daily double horse bet and that he accepted the sum of \$2.50 from Agent P for a horse and numbers bet he had given to a patron to give to another patron known as John.

The evidence is incontrovertible that on March 5 Tony accepted a daily double bet and a bet on a horse to win and accepted the sum of \$4 in payment thereof. Again on March 14 Agent P placed a daily double bet and another bet on a horse to win. The finding of the \$8 in prerecorded currency on Tony's person on March 20 furnished ample corroboration of Agent P's testimony that he had placed a total of \$8 in horse bets with Tony on that day.

It is also noteworthy that, although the co-licensee Anthony J. Garby, was present at the hearing, he failed to take the witness stand. I may reasonably draw therefrom an inference that he could not truthfully rebut the testimony offered by the agents in behalf of the Division. Re Kaelin, Bulletin 1828, Item 4.

I conclude that a fair evaluation of the evidence clearly and reasonably preponderates in favor of a finding of guilt of the charges alleged.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the licensee be suspended for sixty days. Re Truncala, Bulletin 1882, Item 3.

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, the exhibits, the argument of counsel, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of January 1970,

ORDERED that Plenary Retail Consumption License C-212, issued by the City Council of the City of Elizabeth to Stella Garby and Anthony J. Garby, t/a Club Garby, for premises 246 First Street, Elizabeth, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Thursday, January 22, 1970, and terminating at 2 a.m. Monday, March 23, 1970.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GEORGE HAHNER)
t/a George's Tavern)
8A Rose Avenue)
Jersey City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensee, Pro se
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) that on divers days between March 31, 1969 and July 9, 1969 he permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifteen days, effective January 5, 1959, for (1) sale of alcoholic beverages in their original containers for off-premises consumption during prohibited hours in violation of Rule 1 of State Regulation No. 38 and (2) employing a bartender who had not been issued an identification card, in violation of a municipal ordinance.

The prior record of suspension of license for dissimilar violations occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Schneider, Bulletin 1890, Item 4.

Accordingly, it is, on this 14th day of January 1970,

ORDERED that Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to George Hahner, t/a George's Tavern, for premises 8A Rose Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Thursday, January 22, 1970, and terminating at 2 a.m. Wednesday, March 18, 1970.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

GILBERT WARD)
t/a Prince's Bar)
35-37 N. Michigan Avenue)
Atlantic City, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-195, issued by the Board of Commissioners of the City of Atlantic City.)

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 5, 1969 he possessed alcoholic beverages in two bottles which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Commissioner for fifteen days effective January 9, 1946 for possession of alcoholic beverages in bottles not truly labeled (Re Ward, Bulletin 689, Item 5) and by the Director for fifty-five days effective September 28, 1966 for permitting acceptance of numbers bets on the licensed premises (Re Ward, Bulletin 1701, Item 7).

The prior record of suspension for similar violation in 1946 occurring more than ten years ago disregarded but the record of suspension for dissimilar violation in 1966 occurring within the past five years 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 Montmartre Night Club, Inc., Bulletin 1868, Item 7.

Accordingly, it is, on this 14th day of January 1970,

ORDERED that Plenary Retail Consumption License C-195, issued by the Board of Commissioners of the City of Atlantic City to Gilbert Ward, t/a Prince's Bar, for premises 35-37 N. Michigan Avenue, Atlantic City, be and the same is hereby suspended for fifteen (15) days, commencing at 7 a.m. Thursday, January 22, 1970, and terminating at 7 a.m. Friday, February 6, 1970.

JOSEPH M. KEEGAN
DIRECTOR

8. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #324)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Consumption License C-71,) ON PETITION
 issued by the Municipal Board of) ORDER
 Alcoholic Beverage Control of the)
 City of Clifton to)

 PETER CHIZMAR)
 t/a Chizmar's Tavern)
 405 Lexington Avenue)
 Clifton, N. J.)

 Sam Monchak, Esq., Attorney for Petitioner

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on December 31, 1969 the licensee-petitioner was fined \$50 and \$5 costs in the Clifton Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on Sunday, November 30, 1969, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Dopart, Bulletin 1733, Item 7.

Accordingly, it is, on this 13th day of January 1970,

ORDERED that the aforesaid automatic suspension of license C-71 be stayed pending the entry of a further order herein.

JOSEPH M. KEEGAN
 DIRECTOR

By: *Richard C. McDonough*
 Richard C. McDonough,
 Director.