

MR. ZEMEL

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1586

November 5, 1964

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2. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - FOUL LANGUAGE - HOSTESS ACTIVITY - NO REMISSION FOR PLEA ENTERED AFTER PARTIAL HEARING - LICENSE SUSPENDED FOR 80 DAYS.

In the Matter of Disciplinary Proceedings against)

Subar, Inc.)
t/a Pink's Bar)
818 Broadway)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-153, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

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Joseph Asbell, Esq., Attorney 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 first two charges, and non vult (at the conclusion of the Division's case) to the third charge, as follows:

- "1. On May 27, 1964, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in any upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. On May 27, 1964, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.
- "3. On May 27, 1964, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

The Division's case was established through the testimony of two ABC agents, and the theme of their testimony is as follows: They made two visits to the licensed premises, the first of which was on the evening of May 26, 1964. They returned several hours thereafter, at 12:45 a.m. on May 27, 1964. Agent C entered the tavern first and sat at the bar in the front of the premises. He observed about twenty males seated and standing at that portion, and about thirty males and females seated in the service area at the rear. The bar was tended by a person later identified as Bernard Silver (secretary and treasurer of the corporate licensee). A waitress, later identified as Elizabeth Emmons, was serving alcoholic beverages to the

patrons in the front portion. Agent C particularly noted that a number of male patrons appeared to be intoxicated and were loud and obscenely boisterous. He described a patron known as "Davey" (Davey Crockett) who "had a cap on with the peak sometimes on the side, sometimes on the back, sometimes over his eyes, his shirt tail was out and partly unbuttoned, his pants they were slipping down below the hip line, tugging at them to keep them up, general face flushed, slobbering slightly at the mouth...." Davey would go from table to table singing and purporting to dance; he attempted to sing in a loud voice and danced alone on the dance floor, often stumbling. Davey was served pitchers of beer by Mrs. Emmons, which he consumed. During the hour that Agent C had him under observation, at least four or five pitchers of beer were served to and consumed by him.

Agent C also noted that another patron, identified as Mr. Wilson, appeared to be intoxicated. He was slouched over the bar, frequently sliding off the stool and unable to control himself. "His hair was all mussed up, he had a jacket on that was kind of off the shoulder partly, and his face was flushed, eyes glassy, he slobbered when he attempted to talk." He also used obscene language, as set forth in the record. No useful purpose would be served by repeating the said language in this Report.

During all of this time Silver was behind the bar, within ten feet of the agent and within four or five feet of Wilson. Silver continued to serve beer to this patron. Wilson consumed the beer and "appeared to get drunker." He staggered and swayed when he went to the men's room, stumbled, fell against the juke box on his journey, and staggered back to his stool at the bar in a "very erratic" manner. Agent C also testified that, as Wilson staggered toward the men's room, a female patron seated at a table said to Silver, "When I get that drunk throw me out;" that Silver "grinned and shook his head in affirmative motion."

Agent J had entered these premises about five minutes after Agent C's entry and had gone to the rear service portion thereof. Because he had visited these premises on a prior investigation and believed that he would be recognized by Silver, he put on a disguise consisting of dark glasses, a cap and a mustache, "I usually wear and brush up the growth on my chin." He tried to keep outside the line of Silver's vision in order to avoid recognition but he had a full view of the premises and heard the loud, lewd and obscene language emanating from all parts of the premisses.

The testimony of Agent J was essentially corroborative of that of Agent C except that he described Wilson's approach to the men's room in the following language:

"He staggered and fell up the steps and acted like a punch-drunk fighter just floundering around, had difficulty getting to where he wanted to go.

Q Did you see him come back?

A Yes.

Q How?

A The same way, fell down the landing, but he arrived anyway in stumbling fashion."

He further noted that, when Wilson returned to the bar, Silver served him another shot of whiskey, which he partly consumed.

Agent J also observed another patron who appeared to be asleep at a table with his head resting thereon. Mrs. Emmons served him another drink and he raised his head with some effort and consumed the same. Still another patron led the agent to believe he was apparently intoxicated because of "his appearance, he appeared to be drunk, his eyes, his complexion, the way he turned his body, the way he spoke, slobbered at the mouth, and he was incoherent." This man, who was seated in the rear service area, was also served by Mrs. Emmons and consumed a portion of the whiskey served to him.

During the hour that Agent J was on the premises he heard a considerable amount of lewd and filthy language. The agents testified that at least twenty-five per cent of the total of fifty patrons used loud, profane and indecent language and disgusting expressions which were audible to everyone in the tavern.

During this time the waitress (Mrs. Emmons) consumed at least four drinks within one hour which were purchased for her by male patrons. At 1:45 a.m. she consumed a drink purchased for her by Agent C.

Shortly thereafter Agent J removed his make-up and the agents confronted Silver with the alleged violations, particularly with respect to the service of alcoholic beverages to intoxicated persons. He denied that this had occurred but admitted that he had accepted money from the agent for the drink consumed by the waitress. His explanation was that "that wasn't vodka; that was a shot of water."

Henry A. McLane, testifying on behalf of the licensee, stated that he customarily visits the tavern but he did not think he was there at the time of the agents' visit. He stated, however, that he has seen Davey (also known as Davey Crockett) and considers him "a 'kibitzer,' or somebody that isn't exactly all there." He could not recall this specific evening and therefore could not describe Davey's appearance on that evening. On cross examination he stated, "When I come to a date I really cannot say I have been there. I may have been there and I may not."

Bernard Silver testified that he is the holder of forty-nine shares of the licensee's corporate stock and is a part owner. He insisted that the first time he saw Agent J was when he was about to close the premises. He looked out the side door and saw Agent J coming up the side street and shortly thereafter Agent J came in the front door. The agent immediately identified himself, with Agent C, and "the first thing he said to me was 'You were serving apparently intoxicated people.' And I said, 'Who was I serving who was apparently an intoxicated person? Point them out.'" He also insisted that the agents mentioned nothing to him about the use of foul, filthy and obscene language by any of the patrons.

The witness was questioned with respect to Davey Crockett. He stated that Davey had been coming into his tavern for the past three years. He did not recall whether on the date in question Davey was just drinking beer or having shots of whiskey as well. However, he insisted that Davey was just a "show-off" and his conduct on this night was no different from that on any other night. He added, "Davey usually yells quite a bit. He tries to dance. It is his way of blowing off steam but I did not hear him curse."

Silver denied hearing Wilson use any foul or obscene language while seated at the bar. He further testified that, since his license was suspended for similar violation, he had "flagged about thirty percent of my trade." He also had asked the police to visit his premises nightly to help him eliminate trouble, and the police are still making these visits.

Elizabeth Emmons also testified on behalf of the licensee that she did not hear any loud, foul, obscene language as described by the Division witnesses. She served Davey beer but denied that he was drunk. "Davey is always slap-happy and jumping around the place sober or drunk. He was drinking pitchers of beer." On cross examination she was asked the following question:

"Q I noticed you said before he acts this way drunk or sober. What do you mean by that?

A He is always bounding around, jumping around, always jumping around, hollering real loud, everything, you know."

I have carefully examined the testimony of the witnesses in this case and I am persuaded and conclude that the testimony given by the Division agents is credible, forthright and accurately depicts the situation that existed on the night in question in support of the charges herein. On the contrary, the testimony of the licensee's witnesses is unconvincing and quite incredible. I am particularly unimpressed by Silver's testimony that he saw Agent J on the outside of the premises and was certain that this agent was not in the premises during the time testified by him. He stated on cross examination that Agent J entered the tavern through the front door and immediately went to where this witness was standing and accused him of selling liquor to apparently intoxicated persons. The agent also accused him of permitting the barmaid to accept drinks at the expense of male patrons. He was then asked the following question:

"Q Was there any reason, Mr. Silver, why when he made these accusations you didn't say, 'How do you know about that, J? You weren't in here. You just came in a minute ago'?

A I did mention the fact the he could not show me anybody that was apparently intoxicated."

I then pressed him further on this point since he insisted that, when he closed the door immediately prior to closing the tavern, he noted this agent for the first time outside the tavern. He said that, as soon as Agent J came in, he made his accusation. I asked him the following:

"Q When he accused you of selling to apparently intoxicated persons did you ask him whether he had seen it or how he knew about it?

A No, I did not. I asked him to show me somebody who looked apparently drunk, but I did not think to ask him at that particular moment whether he was there or could point out the fact he was there.

Q You knew he was not there?

A I saw him on the street.

Q You knew he was not there?

A I knew he was not there."

The version given by Silver of this incident does violence to common experience of human behavior. I am satisfied that Agent J was in the premises during the time, as testified to by him, and that he saw these occurrences before the actual confrontation was made.

With respect to the charge of service to apparently intoxicated persons, it should be noted that Agent C was very carefully and closely examined; and he pointed out at least six persons, two of whom were women, who were actually or apparently intoxicated. With respect to one of the women he described her as being incoherent. Asked, "How do you define 'incoherent'", he answered:

"Her general conversation at the table. Normal conversation with the parties at the table was not completely discernible in that she slurred words and so forth, so that at this time when she made this particular statement I made reference to it was a provoked statement with more vigor and was understandable."

He also stated that, when she attempted to dance, she staggered and lost her balance. Her face was flushed, her eyes glassy, she talked very slowly, and from all of these indications he concluded that she was apparently intoxicated.

His description of Davey Crockett and Wilson satisfies me that these persons appeared to be intoxicated. The description of the actions, demeanor and appearance of these persons are consistent by ordinary experience with the definitive test of actual or apparent intoxication at the time the drinks were served to them. It is well established that whether a man is sober or intoxicated is a matter of common observation, not requiring any special knowledge or skill. Castner v. Sliker, 33 N.J.L. 95; McHugh v. Borough of Hasbrouck Heights, 144 Atl. Rep. 799.

The cardinal issue with respect to the first charge in this case is not whether Davey or Wilson or the women were actually intoxicated at the time drinks were served to them. It is generally understood that one who is actually or apparently intoxicated must be so far under the influence of liquor that his conduct and demeanor are not up to standard and such conduct and demeanor should be reasonably discernible to a person of ordinary experience. State ex rel. Gutter v. Hawley, Ohio App. 41, N.E. 2nd 815.

Mrs. Emmons testified that Davey acts in a "slap-happy" manner whether he is sober or drunk. Although she denied that he was drunk, she admitted that he acted in a loud manner throughout his stay. Certainly the actions of Wilson, as described by the agents, clearly come within the definition of a person apparently intoxicated. It is sufficient to show that the sale, service or delivery was made to persons apparently intoxicated, without the necessity for showing that the person was actually intoxicated. Re Carbone and Benedetto, Bulletin 1236, Item 8.

I am also persuaded that the lewd, offensive and obscene language actually took place on that night although Silver denied that he heard it on the date in issue. Liquor licensees operate their businesses by way of privilege rather than as a

right, and are under strict obligation to control their premises, to regulate them properly to prevent these objectionable activities and behavior. They have a primary obligation not to serve alcoholic beverages to apparently intoxicated patrons. This provision was intended not only for the benefit of the apparently intoxicated patrons, but for the protection of the general public as well. Cf. Rappaport v. Nichols (Sup.Ct. 1959), 31 N.J. 188; Sorenson v. Olde Milford Inn (App.Div. 1964), 84 N.J. Super. 372.

One further note: Silver stated that he has flagged about thirty per cent. of his trade or, in other words, has eliminated many of his offensive and undesirable patrons. He has not done a satisfactory job, in my opinion. The patrons, particularly women, should not be subjected to the annoyances and the conduct which was clearly manifest in these premises on the date in question.

Under all of the circumstances herein, I am constrained to conclude that the Division has sustained the burden of proof of the licensee's guilt by a fair preponderance of the believable evidence. It is recommended, therefore, that the licensee be found guilty as charged. Cf. Re Russell, Bulletin 1357, Item 1.

Licensee has a prior adjudicated record. Effective October 3, 1962, its license was suspended by the Director for forty days for sale to minors, sale to intoxicated persons, serving women over the bar and foul language. Re Subar, Inc., Bulletin 1481, Item 5. I further recommend that an order be entered suspending the license on the first charge for forty days (Re Markowitz, Bulletin 1538, Item 1); on the second charge for twenty days (Re Markowitz, *supra*), and on the third charge for twenty days (Re D'Ambola, Bulletin 1494, Item 8), or a total suspension of eighty days, without remission for the plea of non vult to the third charge since it was entered after partial hearing (Re Milchman, Bulletin 1571, Item 3).

Conclusions and Order

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

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

Accordingly, it is, on this 15th day of September, 1964,

ORDERED that Plenary Retail Consumption License C-153, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Subar, Inc., t/a Pink's Bar, for premises 818 Broadway, Camden, be and the same is hereby suspended for eighty (80) days, commencing at 2:00 a.m. Tuesday, September 22, 1964, and terminating at 2:00 a.m. Friday, December 11, 1964.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against)
 Charles J. Suk and Florence Suk)
 t/a Chic's Tavern)
 5519 Hudson Avenue)
 West New York, N. J.,)
 Holders of Plenary Retail Consumption License C-25, issued by the Board of Commissioners of the Town of West New York.)
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CONCLUSIONS and ORDER

Joseph Stanziale, Esq., Attorney for Licensees
 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

The licensees pleaded not guilty to the following charge:

"On May 26, 1964, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

To substantiate the charge the Division called Agents S and O as its witnesses.

Agent S testified that he and Agent O were assigned to investigate a complaint that gambling was taking place at the licensed premises; that at 11:45 a.m. on Tuesday, May 26, 1964, he, in possession of five marked one-dollar bills, and Agent O entered the licensed premises and took seats at the lower end of an L-shaped bar; that Edward Parker was tending bar which was occupied by six males and one female; that he observed two of the male patrons (one of whom was later identified as Allen Warn) "consulting a scratch sheet at the bar" in the presence of Parker; that Parker gave Warn a pad; that Warn's companion (unidentified) made a notation on one of the slips of paper taken from the pad, gave it to Parker and said "Give this slip of paper to Fred", following which Warn and his companion left the premises; that about five minutes later Warn, followed by a male (later identified as Fred Luckau) returned to the premises, and that in the interim he and Agent O took positions at the upper end of the bar at the "L".

Agent S further testified that Warn and Luckau joined him and Agent O; that Warn took a seat to his left; that Luckau occupied a stool between him and Warn; that Agent O sat to his right; that Parker was standing opposite them behind the bar; that Warn and Luckau produced scratch sheets from their pockets, placed them on the bar and, while perusing the same, Warn

obtained a white pad from Parker; that Warn made a notation on one of its slips; that Warn, in full view of Parker, handed the slip together with three one-dollar bills over the bar to Luckau; that at this juncture Agent O yelled to Warn, also known as Red, "Hey, Red! The 9th at Garden, White Chapel, bet on it;" that Parker remained silent throughout the aforesaid activities; that Warn, at the request of Agent O, passed the scratch sheet to him (Agent O); that he and Agent O consulted the same; that he then obtained the pad from Warn; that ". . . I started writing '9th at Garden, White Chapel,' and I put '5' on there" when Parker warned, "No horse betting on top of the bar," and continued to say "If a stranger ever walks in here with all of this horse betting on top of the bar we'll all be in trouble;" and that he completed the writing of his horse racing bet underneath the bar; that, upon completion of the same, he waved the slip in front of Parker and simultaneously therewith stated to him, "I have a good horse for today . . . This is a winner."

Agent S continued to testify that, in full view of Parker, he counted the five one-dollar bills over the bar and openly handed the same with his betting slip to Luckau; that Luckau, in the presence of Parker, read the slip, placed it and the money in his shirt pocket and commented "This is a long shot. If you win you will have a lot coming back," following which Luckau left the premises; that he and Agent O followed Luckau into the street, stopped him and identified themselves; that he and Agent O escorted Luckau back to the premises, identified themselves to Parker and summoned two local police officers; that Luckau, at the request of the officers, produced his (Agent S's) betting slip together with the five one-dollar marked bills from his shirt pocket; that he questioned Parker in detail with respect to all of the aforementioned gambling activities, and that Parker stood mute.

On cross examination Agent S denied that Parker directly stated to him, Agent O, Warn or Luckau "There is to be no gambling in this place. There is to be no writing in this place. If you want to do any gambling or writing go outside."

Agent O was called to testify and it was stipulated by counsel (1) that, if examined, his testimony on direct and cross examination would corroborate the testimony of Agent S, and (2) the licensees' attorney would be permitted to further cross examine Agent O.

Agent O denied that Parker stated there was to be no gambling in the premises; denied that Agent S threw his bet into the lap of Luckau and further testified that the only comment made by Parker was "No horse betting on the bar. If somebody came through that door we'll be in trouble."

Edward Parker, on behalf of the licensee, denied he saw Agent S hand a slip to Luckau; denied he knew Luckau as a bookmaker; and further testified that he observed Luckau enter the premises, join Warn and the agents at the upper end of the bar; that he heard Luckau and the others begin a conversation about horses; that he believes it was at this point that Warn asked for his pad; that "I didn't think nothing of it because I was serving people at the bar;" that he then served each of the aforesaid a drink; that, when he returned to the other patrons at the bar, he suddenly heard them discussing horses; that he told them "I don't care about talking about horses all you want in here, but I don't want no writing or gambling."

Don't write nothing on no slip. If you want to write anything . . . I said, 'Get the hell out of here and do it out on the street. I don't want nothing going on in here.' I said to Luckau and Warn, 'You come in here. You ought to know better;' that they were sitting at the upper end of the bar for about forty-five minutes; that he had spent very little time in their presence, and that he had been busy serving eight or nine patrons seated at the lower end of the bar.

On cross examination Parker denied that he observed Warn in the premises on the day in question prior to seeing him with the agents at the upper end of the bar; denied that he was given a slip of paper by a patron for delivery to Luckau; denied he gave the pad to any patron except Warn; denied he saw any scratch sheets on the premises; denied that he saw any bet writing; denied that he heard Agent O suggest a bet on "White Chapel" to Warn; denied he saw Agent S write a bet on a slip of paper, wave the slip in front of him, hand the slip to Luckau and say to him (Parker) "This is a good bet;" and further testified that the unidentified patron referred to by the agents was his brother; that his brother gave him a white slip of paper; that it bore a message to call his mother at her new telephone number; that he made a mental note of the same and threw it into the garbage can; that a thorough search of the premises was made by the police and the agents and that they did not find any evidence of gambling in the premises or in his possession.

Allen J. Warn, on behalf of the licensees, testified that at about 12 Noon on the day in question he entered the licensed premises; that he greeted Parker and took a seat at the upper end of the bar in the immediate vicinity of Luckau and the two agents; that he invited Luckau to the race track; that Luckau declined the invitation; that one of the agents suggested that he make a bet on "White Chapel" running at Garden State; that he selected two races from a newspaper, wrote them on a slip of paper and gave the slip to Luckau; that the agents continued to discuss the prospects of "White Chapel;" that at this juncture Parker ordered them to cease their horse racing conversation and to leave the premises; that "With that, this guy [pointing to Agent S] -- you asked for the pad;" that he gave Agent S the pad; that he observed Agent S writing on the pad in his lap underneath the bar; that Agent S, out of the presence of Parker, took some bills from his pocket, rolled them into a slip of paper taken from the pad and placed the same in the lap of Luckau; that he did not observe any scratch sheet on the bar, and that later the agents found a scratch sheet and a betting slip in his possession.

On cross examination Warn substantially reiterated his direct testimony; admitted that on the day in question he made two visits to the premises; denied that on his first visit he was in conversation with a patron at the bar; denied that he had asked Parker for the pad on this visit; denied that he had heard a patron say to Parker "Give this to Fred [Luckau] when you see him;" denied that Agent S waved his betting slip in front of Parker, stating "I have a good horse bet in today;" denied that he or Parker stated "No writing bets on the bar;" denied that Parker stated that they "Cut out the gambling on top of the bar. If a stranger walked in we'll be in trouble;" and further testified that he was in the premises for about two minutes on his first visit; that he left the same unaccompanied by any patron;

that five minutes later he returned to the premises with a container of coffee, took a seat at the upper end of the bar; that he was joined by the two agents and Luckau; that he was looking at a scratch sheet (two newspapers) from which he selected two horse races -- one at Aqueduct and the other at Garden State; that he intended to go to one of the tracks; that he obtained a pad from Parker; placed it in his lap, wrote the two races on each of two slips, retained one and gave the other with some money to Luckau; that he and Luckau were to play these races as partners; and that he was not sure whether Luckau would visit a track that day.

Warn continued to testify that, because of the bar's arm rest, it was impossible to write upon the same from a sitting position; that no one suggested to Agent S that he write his bets underneath the bar; that Agent O told him that "White Chapel" running at Monmouth was a long shot; that he believes that Parker was serving ten or eleven patrons at the bar when aforesaid gambling activities were taking place; that, after Agent S had placed his slip in Luckau's lap, he and Luckau, as ordered by Parker, went into the street where they were stopped by one of the agents and were brought back into the premises.

Joseph Cauvet, on behalf of the licensees, testified that he and a female companion entered the licensed premises at about 11 a.m. on May 26 aforesaid; that they sat at the lower end of the bar about fifteen feet from where the agents, Warn and Luckau were sitting; that he heard Parker say to them, "I don't care how much you talk about horses or anything, but no gambling in this bar. The licensed premises, he has to protect it. Anything to be done out in the street," and that he observed no evidence of any gambling activities in the premises.

On cross examination Cauvet testified that he is employed as a part-time bartender on Sundays by the licensee; that during his aforesaid visit to the premises he was sitting at the bar with his back partially turned to its upper end; that he was engaged in conversation with his female companion; that by reason thereof he was unable to observe any of the activities taking place in the upper section of the bar; that he heard conversations dealing with horses emanating from that area; that he heard the name "White Chapel" mentioned; that he heard Parker loudly address the aforesaid group as testified by Parker and that at the time he did not observe Parker's position behind the bar.

Alfred Palmieri, the owner of a drycleaning business, testified that at about 10:45 a.m. on May 26 aforesaid he entered the licensed premises and sat at the bar alongside Cauvet; that during his visit he did not observe any gambling activities in the premises and that he was aware of the presence of some patrons at the upper section of the bar and that he heard Parker, as hereinabove testified by him (Parker), warn these patrons as to their gambling activities.

On cross examination Palmieri testified that he did not know whether any gambling activity was taking place at the premises; that he did hear everything the bartender had said during his visit to the premises, and that he was unable to state that the bartender did not instruct the agents "Don't write any bet on top of the bar."

Fred Luckau, on behalf of the licensees, denied that he is a bookmaker; denied he saw a scratch sheet on the bar; denied there were any betting slips on the bar; denied that on his previous visits to the premises he accepted bets therein

from anyone; denied that Agent S at any time stated to him, "I want to place this bet with you" and further testified that for the past sixteen years he has been employed by a large steel corporation; that he has no other means of a livelihood; that he visits the licensed premises almost daily; that at about 12 Noon on May 26, 1964, he entered the licensed premises and took a seat at the upper section of the bar between Warn and Agent S; that Warn and Agent S were engaged in conversation; that he had no conversation with either Agent S or Agent O; that he and Warn were going to the track; that Warn suggested "Let's play a couple of horses;" that Warn obtained a pad from the bartender; that the bartender came back to them and said, "No writing, no betting, no horse playing in this place. If you want to play horses get out;" that he thereupon said to Warn, "Let's get out of here. The guy don't want you in here;" that in the interim he observed Agent S making a notation, underneath the bar on the pad which he had obtained from Warn; that Agent S placed a folded slip of paper in his lap; that he picked up the slip and walked into the street because he was irked by Parker's remark and that the agent escorted him back into the premises.

On cross examination Luckau testified that Warn gave him a betting slip for three horse races running at three different tracks (one at Garden State in Camden, one at Aqueduct in Brooklyn, and one at Arlington in Chicago); that he was in possession of a scratch sheet (The National Program, dated May 26, 1964) which listed the three bets; that he planned to visit either Garden State or Aqueduct with Warn; that he and Warn were to play the races as partners; that he did not intend "at this time" to place the bets with a bookmaker; that the three bets could not be made at one track; that "they would have to be placed with a bookmaker;" that he surrendered Warn's slip, the scratch sheet and Agent S's slip to the police officer at the licensed premises; that, when questioned with respect to the same, he stated, "I have nothing to say;" that Warn and Agent S had prepared their slips before Parker had ordered them to leave the premises; that \$5 was folded in Agent S's slip.

Following the aforesaid examination of Luckau, I asked him the following questions:

"Q What were you going to do? Were you going to place the bets with some one else?

A I wanted to give it back to Warn because I didn't want to place it. He knows bookmakers. I don't. He gambles more.

Q Why would he give it to you?

A Because he thought I could place it better. I only know a bookmaker in Hoboken where I go to work. That is three-thirty I get there. He sits in a car. And I told him I didn't want to place that bet."

Charles Suk (one of the licensees) testified that he and Florence Suk, as partners, operate the licensed business; that on the day in question Fred Parker was employed as bartender at the licensed premises, and that he never authorized Parker, or any other of his employees at the licensed premises or its patrons, to engage in any gambling activities.

At the conclusion of the hearing the attorneys for the litigants submitted on the record.

I have carefully considered all the evidence in the case and find as a fact that on May 26, 1964, the licensees

allowed, permitted and suffered the making and accepting of horse race bets in and upon the licensed premises in violation of Rule 7 of State Regulation No. 20. Both Warn and Luckau admit that on the day in question they engaged in gambling activities in the licensed premises previous to the alleged warning against the same by Parker. 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. Most certainly Parker "suffered" the aforesaid gambling activities to take place on the licensed premises. Essex Holding Corp. v. Hock, 136 N.J.L. 28. I find that the agents gave an accurate and truthful account of what transpired in this case, and am unable to find any inconsistencies or defects in their testimony. I do not believe that they would conspire against the licensees. Under the circumstances I conclude that the Division has sustained the burden of establishing the licensees' guilt by a fair preponderance of the believable evidence. Since the licensees cannot escape the consequences of the acts of their agents (Rule 33, State Regulation No. 20), it is recommended that the licensees be found guilty as charged.

The licensees have a prior-dissimilar adjudicated record. Effective August 21, 1962, their license was suspended by the Director for twenty days for an "hours" violation and for permitting obscene language and conduct in the licensed premises (Re Suk, Bulletin 1477, Item 5).

Considering the prior record, it is further recommended that an order be entered suspending the license for sixty-five days. Re Mellolark, Inc., Bulletin 1573, Item 2.

Conclusions and Order

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

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 conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 16th day of September 1964,

ORDERED that Plenary Retail Consumption License C-25, issued by the Board of Commissioners of the Town of West New York to Charles J. Suk and Florence Suk, t/a Chic's Tavern, for premises 5519 Hudson Avenue, West New York, be and the same is hereby suspended for sixty-five (65) days, commencing at 3 a.m. Wednesday, September 23, 1964, and terminating at 3 a.m. Friday, November 27, 1964.

JOSEPH P. LORDI
DIRECTOR

4. DISQUALIFICATION REMOVAL PROCEEDINGS - STAKEHOLDING - ORDER ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to)
Remove Disqualification because of)
a Conviction, pursuant to R.S. 33:)
1-31.2)

CONCLUSIONS
and
ORDER

Case No. 1851)
-----)

BY THE DIRECTOR:

Petitioner's criminal record discloses that on October 21, 1936, following a plea of non vult in the Essex County Court of Quarter Sessions to an indictment charging him with acting as stakeholder with respect to horse race bets, he was given a suspended sentence and was placed on probation for three years. It further appears that petitioner was convicted in a local magistrate's court on June 12, 1943, for violation of municipal ordinance (possession of horse race sheets) and on June 7, 1952, under the Disorderly Persons Act (possession of lottery slips); that on his first of said convictions he was fined \$150 and on his second conviction he was given a six-months suspended sentence in the county penitentiary and was fined \$200.

The crime of stakeholding may or may not involve the element of moral turpitude depending upon the facts in the case. Petitioner admits that for a period of six months previous to his aforesaid conviction as a stakeholder he was a "runner", accepting bets on horse races on a commission basis from his co-employees at a factory where he had been employed and turning over the bets and proceeds to a "collector."

Since it appears that petitioner engaged in commercialized gambling in connection with his conviction as a stakeholder, such conviction, in my opinion, involves the element of moral turpitude (Re Elig. Case No. 726, Bulletin 1558, Item 3) and he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein petitioner (55 years old) testified that for the past twenty-two years he has lived in the same municipality where he presently resides; that for the past ten years he has operated a plastics business; that he has also been employed as a part-time bartender for the past four and one-half years and that, until recently when notified by this Division, he had no knowledge that he may be disqualified from engaging in the alcoholic beverage industry in this State because of his conviction in 1936.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction on October 21, 1936, he has not been convicted of any crime or arrested except as aforesaid.

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

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

The only hesitation I have to grant the relief sought herein is based on the fact that the petitioner, although disqualified, worked on a licensed premises in this State. I am, however, favorably influenced by four factors -- (a) the testimony of the character witnesses, (b) petitioner's sworn testimony that he was unaware of his ineligibility to be employed by a licensee, (c) that petitioner has not been convicted of any crime since October 21, 1936, and (d) his present attitude. Knowledge of the law, moreover, is not an essential prerequisite in removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all of the aforesaid facts and circumstances, I am satisfied that the petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 16th day of September 1964,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33: 1-31.2.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HARDY'S BABY BAR (A Corporation))
5 - 16th Avenue)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-76, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Elias I. Cohen, Esq., Attorney for Licensee.
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 23, 1964, it possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Six Steps Down, Inc., Bulletin 1572, Item 5.

Accordingly, it is, on this 13th day of October 1964,

ORDERED that Plenary Retail Consumption License C-76, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Hardy's Baby Bar (A Corporation), for premises 5 - 16th Avenue, Newark, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, October 19, 1964, and terminating at 2 a.m. Saturday, October 24, 1964.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 JANE BOGATIN)
 Germantown & Verona Avenues) CONCLUSIONS
 Egg Harbor Township) AND ORDER
 PO West Atlantic City, N. J.)
 Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Egg Harbor.)

 Licensee, Pro se.
 Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 25, 1964, she possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Six Steps Down, Inc., Bulletin 1572, Item 5.

Accordingly, it is, on this 13th day of October 1964,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Egg Harbor to Jane Bogatin, for premises Germantown & Verona Avenues, Egg Harbor Township, be and the same is hereby suspended for five (5) days, commencing at 7 a.m. Monday, October 19, 1964, and terminating at 7 a.m. Saturday, October 24, 1964.

JOSEPH P. LORDI
 DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Cameron Craig Ltd.
 t/a Cameron International Ltd., International Brands & Imported Beers Ltd.

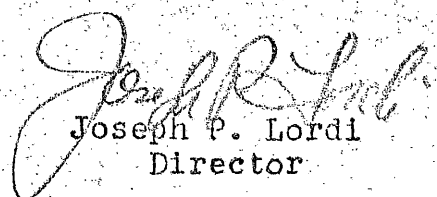
Room 1704, 60 Park Place
 Newark, New Jersey

Application filed November 2, 1964 for place-to-place transfer of Plenary Wholesale License W-102 to include a warehouse at 122 North 11th Street, Newark, New Jersey.

Monsieur Henri Wines, Ltd.
 t/a Henri Wines, Ltd., Henri & Co., Ltd., Henri Ltd., Elite Wine & Merchants Importing Co.

131 Morgan Avenue
 Brooklyn, New York

Application filed November 4, 1964 for place-to-place transfer of Wine Wholesale License WW-2 to include a warehouse at 350 Warren Street, Jersey City, New Jersey.



Joseph P. Lordi
 Director