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

BULLETIN 1669 APRIL 21, 1966

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ITEM

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BULLETIN 1669

April 21, 1966

1. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against	)	
RICHARD C. and CHRISTINE STEEL t/a CAP'S CAFE 312-14 Jersey Ave. Gloucester City, N. J.	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-12 for the year 1964-65 and Plenary Retail Consumption License C-30 for the year 1965-66, issued by the Common Council of the City of Gloucester City.	)	

Frank M. Lario, 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

Licensees pleaded not guilty to the following charges:

"1. On November 17, 19, 23, 24 and December 3, 1964, 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' on all said dates, and on horse racing on said dates of November 17, 19, 23 and December 3, 1964; in violation of Rule 7 of State Regulation No. 20.

"2. On November 17, 19, 23, 24 and December 3, 1964, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises and on all said dates and on December 15, 1964, you allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Two New Jersey State Police officers participated in the investigation leading to the charges preferred herein.

Detective Jack Hayes, who had extensive experience in the investigation of gambling, including bookmaking and lottery activities, in his capacity as a police officer, testified that pursuant to specific assignment he visited the licensed premises on several occasions. He entered the licensed premises the first time on November 17, 1964, at 12:20 p.m., and went to the end of the bar. A "couple" of bartenders were tending bar. There were ten

or fifteen patrons in the premises. To his right a patron had on top of the bar and in front of him a slip of paper and four $1 bills. The patron said to the patron next to him, "You are sure you don't want to get on this for a few bucks? This is a winner." The other patron responded, "They're all winners till they finish. I'll save my money."

The officer noted that there was written on the slip the following: "8 AQ, Tobir 2-2-0." It was the officer's opinion that the slip was a horse bet slip. It was within clear view of either bartender. He then observed the patron who was invited to make a horse bet slide a quarter on top of the bar to the patron who had the slip in front of him and say to him, "Put a quarter straight on 721." The patron who had the slip of paper in front of him then took out a yellow pad and wrote on it "721-25." The officer testified that this transaction constituted a numbers bet. The patron who wrote the number went to a table in the rear room about ten or eleven feet away where a man identified as Harry Pursglove was seated. The patron handed Harry Pursglove $4.25 and a slip of paper. Pursglove put the money in his trousers pocket and the slip of paper on the Armstrong scratch sheet lying on top of the table. Thereafter both patrons left the tavern.

A person identified as Clifford Owens took a position at the bar next to the officer. A person went to Owens and said, "Cliff, ten cents on 041 for five days and fifty on 046 today." He then handed Owens one dollar. The officer described this transaction as a numbers bet. The officer then slid two quarters to Owens and said, "I'd like this number 046. I'll put 50 cents on it." Owens put the money in his trousers pocket and wrote what the officer described as a numbers transaction on the pad lying in front of him on the bar. Owens was then called away from his position at the bar by a person identified as Homer Clark. Owens and Clark went into a dining room to the right rear of the licensed premises. He saw Owens hand Clark some slips, paper currency and coins. It was the officer's opinion that Clark was engaged as a "pickup man" in the gambling activity. The officer left the tavern at 12:45 p.m.

Detective Hayes returned to the licensed premises on November 19, 1964, at approximately 12:17 p.m., and stationed himself at the bar near the rear. Two or more bartenders were on duty. The tavern was almost filled with patrons. He heard two men to his right discuss placing a bet of $5 each on a horse named "Man of Kent" running in the seventh race at the Pimlico track. One of the men took two $5 bills to the rear room where Harry Pursglove was seated at a table and gave Pursglove the money. Pursglove glanced at a scratch sheet, wrote on a piece of paper lying on the table, and placed the money in his trousers pocket.

Thereafter, at approximately 12:28 p.m., Clifford Owens entered the tavern and, after conferring with two patrons, he stood at the bar next to the officer. The bartenders were serving the patrons, including the officer. The officer gave Owens a $1 bill and requested him to play it straight on 185. Owens wrote the number on a pad on top of the bar. Homer Clark then entered the tavern and conferred with Pursglove who was still seated in the rear room. Upon Clark's emerging from the rear room and re-entering the barroom, Owens handed him some money and slips of paper of various size. It was the officer's opinion that the slips were numbers slips. Owens returned to his position at the bar, standing next to the officer. The officer then wrote on a slip of paper on the top of the bar, "Gloucester 4th, A 2-2-0." He

gave the slip of paper and a $5 bill to Owens. The officer described the transaction as a horse bet. Owens went to Clark and gave him the slip and the money and then returned to the officer and gave him $1 change.

The officer next entered the licensed premises on November 23, 1964, at approximately 12:20 p.m. Two or more bartenders were serving the patrons. Owens entered the premises about five minutes later. After conferring with some patrons at the front of the barroom, he stood at the bar next to a patron who was at a position next to the officer. The patron told Owens, "I want Big Kim in the eighth for a $2 win." Owens noted the transaction on a small pad which he took from his pocket. The witness described the transaction as a horse bet. The officer then slid $2 across the bar to Owens and told him he wanted to play the same horse. Owens wrote the transaction on the same pad used to record the previous horse bet and asked the officer whether or not he had a number to play. The officer answered, "Not right now. Maybe later."

Owens then entered the rear room and, after handing Homer Clark some small slips of paper and some money, he returned to the bar next to the officer. The officer placed a fifty-cent bet on number 691 with Owens. Owens wrote the transaction on a small pad of paper on top of the bar and took the fifty cents. Owens took the slip and the fifty cents to Homer Clark who was standing in the rear room. The officer left the tavern shortly thereafter.

On November 24, 1964 Detective Hayes entered the licensed premises at 12:15 p.m. and went to the rear of the bar. Owens entered the tavern shortly thereafter and, after taking some coins and slips of paper from two patrons seated at tables in the front, he stood at the bar and ordered a drink for the officer. The officer handed Owens a $1 bill and placed a numbers bet for $1 on number 185. Owens wrote the number on a small pad on the edge of the bar while a drink was being served.

Detective Hayes re-entered the licensed premises on December 3, 1964, at 12:02 p.m., and took a position at the same place at the bar. Again more than one bartender was serving the patrons. The officer observed that Harry Pursglove was seated at the table in the rear room and a scratch sheet was on the table. Hayes walked to the table and handed Pursglove five $1 bills and informed him he wanted to bet $5 on a horse named "Miss Kisco" running in the sixth race at Pimlico. After examining the scratch sheet, Pursglove wrote the horse bet on a small piece of paper and took the money. Shortly thereafter the officer left the tavern.

Detective Hayes identified one of the licensees (Richard Steel), Leroy Higginbotham and a very slim man as the bartenders who were on duty most of the time. Every time he was in the premises there were at least two bartenders serving the patrons.

On cross examination the officer admitted that he was assigned to conduct an investigation pertaining to gambling; that each time he entered the licensed premises there were two or more bartenders; that he had no reason to seek their identity, and that he did not see anyone in back of the bar place or accept a bet.

Detective Michael Beckish (a member of the criminal investigation section of the New Jersey State Police, who also has a substantial background in gambling investigations involving bookmaking, horse race betting and lotteries) testified that he entered the licensed premises on December 15, 1964, at 12:30 p.m.

in order to execute a search warrant. Upon entering a side door he saw Clifford Owens six or seven feet away, and Harry Pursglove seated at the table to the rear. A search of the person of Clifford Owens revealed that he had on his person the sum of $82.15 and numerous papers containing numbers bets and horse bets. Nothing was found on the person of Harry Pursglove. On the table at which the latter was seated were found a currently dated Armstrong Daily News Review, a publication pertaining to horse racing information, and a slip of paper containing three horse race bets. On top of a radiator about an arm's-length away from where Pursglove was seated, two slips were found containing $5 bets.

On cross examination Detective Beckish admitted that he did not know in whose handwriting the various numbers and horse racing slips were and he did not note any illegal activity being carried on in his presence. He further admitted that the horse race bets did not pertain to any horses running on that day. He conceded that Pursglove denied ownership of the Armstrong sheet and the slips and that the slips could have been written for reasons not of an illegal nature.

In defense of the charges the licensees called as their first witness Clifford Owens. He testified that he visits the licensed premises "every once in a while, maybe a couple times a week." In response to the following question asked on direct examination, "How long have you known either Richard C. Steel or his father, Charles Steel?", Owens answered, "Oh, I'll say about two and a half years, three years." He denied that he ever engaged, directly or indirectly, in the playing of numbers or betting of horses on the dates mentioned in the charges or on any other date. He denied ever talking or having dealings with or ever seeing Detective Hayes until seeing him in the hearing room.

On cross examination Owens testified that he did not know Harry Pursglove "too well" and he saw him in the licensed premises "once in a great while." He denied knowing any person named Homer Clark and further denied having any contact or conversation with either of these men on the dates in question.

On redirect examination the witness stated that between the hours of 12 noon and 1 p.m. Richard Steel (one of the licensees) usually made sandwiches and was not behind the bar. On recross examination the witness could not recall with definiteness whether or not he was in the licensed premises on November 17, 19, 23, 24 or December 3, 1964.

On direct examination Harry Pursglove testified that he did not on November 17, 19, 23, 24 or December 3, 1964, engage in horse race and numbers betting. He never saw Detective Hayes in the licensed premises, nor did he ever engage in any betting activity with him. He had visited the licensed premises "a few times" and between the hours of 12 noon and 1 p.m. he visited the licensed premises "a couple of times." During that hour the patronage was generally twenty-five or thirty people. During the lunch hour Richard Steel made sandwiches and did not tend bar.

In response to the question "Now, can you tell us whether you were in the tavern on November 17th, 19th, 23rd, 24th, December 3rd, 1964, between twelve o'clock and one o'clock?", he answered "I doubt it. I don't think I was." In addition he stated that, except for the occurrence of December 15, 1964, he was a victim of mistaken identity. He had nothing to do with the

horse race bets found on the table where he was seated on December 15, 1964, and he did not know how they got there. He knew Clifford Owens slightly. He did not know Homer Clark at all. He stated that there are two or three tables in the barroom and no stools.

Charles Steel testified that he had operated the licensed premises until March 1964 when he conveyed his interest therein to his wife Christine Steel and his son Richard C. Steel (the present licensees); that he was in the licensed premises every day at noontime; that the patronage was heaviest at noontime due to many plants in the neighborhood letting out their employees for lunch (averaging between twenty-five and thirty-five patrons). He further testified that he never knew or saw Harry Pursglove or Clifford Owens prior to December 15, 1964, and never knew or saw a Homer Clark; that on the dates in question Leroy Higginbotham was the only person employed at the licensed premises as a bartender in the daytime hours by the licensees; that he never saw Detective Hayes in the tavern and he never witnessed or heard any gambling taking place in the licensed premises; that Harry Pursglove and Clifford Owens walked in the tavern shortly prior to the officer's entrance therein; that he did not know where the Armstrong sheet or the paper identified as a numbers slip found near Pursglove came from.

On cross examination the witness, in the main, repeated the testimony he gave on direct examination.

Leroy Higginbotham testified that he had been employed as a bartender at the licensed premises for twenty-one years and that he was the only bartender so employed during the daytime hours on all the dates in question. There never were three bartenders working there, either at lunch time or any other time. Richard C. Steel makes the sandwiches. The witness did not see Detective Hayes in the licensed premises at any time. He never saw Harry Pursglove prior to December 15, 1964. He never saw or heard any patrons playing numbers or horses in the tavern, and he never saw Clifford Owens transact any business with Pursglove. He was not acquainted with any person named Homer Clark. He did not on any of the dates mentioned in the charges see any patron, employee or anyone else engage in or participate in horse race betting or numbers betting in the licensed premises. On December 15, 1964, Clifford Owens and Harry Pursglove entered the licensed premises immediately prior to the State Trooper's entry therein.

On cross examination Higginbotham reiterated that Detective Hayes was never in the licensed premises. He further reiterated that he had never seen Clifford Owens or Harry Pursglove in the licensed premises prior to December 15, 1964.

Richard C. Steel testified that he and his mother (Christine Steel) are co-owners of the licensed premises and that on each of the dates in question his father was in the premises at noontime and Leroy Higginbotham served as the bartender.

Steel further stated that prior to December 15, 1964, he had never seen Clifford Owens or Harry Pursglove in the licensed premises nor was he acquainted with either one, nor had he at any time seen Detective Hayes in the premises. He had never seen Homer Clark nor was he acquainted with him. He denied that he or his mother ever permitted gambling in the premises. He denied allowing, permitting or suffering numbers or horse race gambling on the dates mentioned in the charges. He denied having knowledge of any betting paraphernalia found on the persons of Clifford Owens

or Harry Pursglove or in the licensed premises, and denied that he allowed, permitted and suffered lottery tickets of any kind in the licensed premises on December 15, 1964.

On cross examination Steel maintained that, if Detective Hayes had been in the licensed premises as frequently as he said he was, he would have seen him. Furthermore, he knew the identity of every patron of the tavern at noontime on the dates in question. He alleged that neither Clifford Owens nor Harry Pursglove had ever been in the licensed premises prior to December 15, 1964. Further, he never saw Detective Hayes until he met him in the hearing room. Although he was that attentive to his business that he knew, saw and heard everything that went on in the premises, he did not see or hear anything as to which Detective Hayes testified concerning the events of November 17, 19, 23, 24 and December 3, 1964.

In brief, the licensees argued that (1) there is insufficient evidence to sustain a finding of guilt; (2) there is insufficient evidence to warrant a finding that the licensees "allowe permitted and suffered" the violations charged against them; and (3) the testimony of Detective Michael Beckish should be stricken from the record as not being connected with the licensees.

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Evidence, 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 in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

I am imperatively persuaded that the version given by Detective Hayes as to the occurrences to which he testified in so direct a manner is credible, factual and a true version. It is obvious that he was not improperly motivated in testifying as he did, nor did he have any personal animus against the licensees. The testimony as to the numbers and horse race betting activity engaged in by Clifford Owens and Harry Pursglove upon the licensed premises on November 17, 19, 23, 24 and December 3, 1964, was clear and convincing. On the other hand, I was totally unimpressed by the testimony of the witnesses for the licensees.

The testimony of Clifford Owens, Harry Pursglove, Charles Steel, Leroy Higginbotham and Richard C. Steel to the effect that they never saw Detective Hayes in the licensed premises is totally incredible. The testimony of Charles Steel,

Leroy Higginbotham and Richard C. Steel that they never saw Clifford Owens or Harry Pursglove on the licensed premises prior to December 15, 1964, is contradictory to the evidence given by Clifford Owens and Harry Pursglove, who testified that they had been in the licensed premises on occasions previous to December 15, 1964.

The testimony given by Detective Hayes, wherein he so graphically described the betting activities at the bar, amply justifies the conclusion that the proscribed activities were carried on in such an open manner that the licensees and their employees could have, or should have, observed such activity.

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

After due consideration, I am compelled to reject the arguments of the licensees hereinabove quoted.

Although Detective Beckish's testimony is insufficient to establish the guilt of the licensees as to the date of December 15, 1964, in the second charge, the physical evidence of gambling paraphernalia found by him clearly fortifies and buttresses the testimony of Detective Hayes as to the gambling activity carried on in the licensed premises.

A careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, compel me to conclude that the Division has established the truth of Charge 1 as to all dates mentioned therein, and the truth of Charge 2 as to all dates mentioned therein except for the date of December 15, 1964, and I so find. I recommend that the licensees be found guilty of said charges, except for the date of December 15, 1964.

As to the date of December 15, 1964, in Charge 2, I am of the opinion that there is lacking the necessary proponderance of evidence to find guilt. Hence I recommend that the licensees be found not guilty as to the date of December 15, 1964, referred to in Charge 2.

The licensees have no prior record of suspension of license. I further recommend that the license be suspended for sixty days. Re Main Street Bar, Bulletin 1617, Item 4.

Conclusions and Order

Pursuant to Rule 6 of State Regulation No. 16, exceptions to the Hearer's report and argument thereto were filed by the licensees.

The principal bases upon which the licensees take exception to the Hearer's recommendations are as follows: (1) the Hearer failed to rule on several motions and objections made by the

attorney for the licensees during the hearings, (2) the Hearer relied on evidence obtained by an unlawful search, (3) the Hearer improperly considered the events of December 15, 1964 as bearing on the guilt of the licensees with respect to prior dates, (4) verbal bets are not violations of the Division rules in question, and (5) Detective Hayes' failure to identify the particular bartenders who were on duty at the licensed premises on each of the dates in question is fatal to the charges preferred against the licensees.

I have examined the record herein and find no merit in the licensees' exceptions concerning motions and objections made during the hearings. In this connection, it is noted that the filed exceptions do not point out any specific motions or objections other than a general allegation.

As to the unlawful search and seizure question, it would be inappropriate for an administrative agency to review the lawfulness of a search warrant issued by a court of competent jurisdiction, as contended by the licensees. The proper forum in which should be raised the issues of the sufficiency of the affidavit upon which the search warrant was issued, and the consequent suppression of evidence obtained from such search, is not this Division. See R.R. 3:2A-6(a) of the Rules of Criminal Practice promulgated by the New Jersey Supreme Court, providing in certain situations for exclusive recourse to a pretrial motion in the County or Superior Court to determine such issues. See also State v. Fioravanti, 78 N.J.Super. 253 (App.Div. 1963).

As to the events of December 15, 1964 involving Detective Beckish's execution of the search warrant, a "court may receive aid from evidence which in itself is not relevant to any issue in the case, but which is corroborative of other evidence on a disputed point." 22A C.J.S. Criminal Law, sec. 600, p. 395. The gambling evidence found by Detective Beckish and the physical presence and identification of Owens and Pursglove on December 15th may be considered as they relate to the credibility of Detective Hayes in that the licensees disputed whether Hayes in fact was in their licensed premises on the five prior dates and also disputed whether Owens and Pursglove were in fact the persons who Hayes asserted accepted bets on such dates. See State v. Grillo, 11 N.J. 173 (1952), and State v. Catania, 102 N.J.L. 569 (Sup.Ct. 1926), on the question of the admissibility of such evidence for a limited purpose, notwithstanding its establishment of a separate criminal offense not part of the charges.

The contention that verbal bets are not within the proscription of the Division rules need not be considered in view of the fact the record discloses a recording of bets on paper.

The final point raised by the licensees I also find to be without merit. It is not fatal in disciplinary proceedings against a licensee that a particular employee or employees have not been identified by name as having committed the violation or permitted the prohibited activity to occur. Re LaCorte, Bulletin 469, Item 1. Licensees are responsible for the acts or omissions of their employees or any persons to whom they have entrusted charge of their licensed premises. Rule 33 of State Regulation No. 20.

I have most carefully considered the entire record herein and, as a result, I find that the guilt of the licensees on both charges, except for the date of December 15, 1964 in Charge 2, has

been established by more than a preponderance of the believable evidence. I shall accept the Hearer's recommendation that a suspension of license for sixty days be imposed.

Accordingly, it is, on this 7th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-30, issued by the Common Council of the City of Gloucester City to Richard C. and Christine Steel, t/a Cap's Cafe, for premises 312-14 Jersey Avenue, Gloucester City, be and the same is hereby suspended for sixty (60) days commencing at 7:00 a.m. Monday, March 14, 1966, and terminating at 7:00 a.m. Friday, May 13, 1966.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS - NO REMISSION FOR PLEA ENTERED TO ONE CHARGE WHEN ANOTHER IS CONTESTED AND GUILT FOUND.

In the Matter of Disciplinary Proceedings against	)
DUGOUT, INC., 106 Moonachie Avenue Moonachie PO RFD Wood-Ridge, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Moonachie.	)

Alexander A. Abramson, 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 Charge 1 and guilty to Charge 2, as follows:

"1. On Sunday, September 26, 1965, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Frank ---, age 17; in violation of Rule 1 of State Regulation No. 20.

"2. In your application filed with the Borough Council of the Borough of Moonachie and upon which you obtained your current plenary retail consumption license, you failed to disclose in answer to Question No. 41 therein, that plenary retail consumption license held by you for the 1963-64 period, for these same premises had been suspended by the Director of the Division of Alcoholic Beverage Control for fifteen (15)

days effective April 6, 1964, for a violation of Rule 1 of State Regulation No. 38; such evasion and suppression being in violation of R.S. 33:1-25."

The Division sought to substantiate the first charge by offering the testimony of the minor, in addition to the testimony of two of its agents.

It was stipulated between the attorney for the Division and the attorney for the licensee that a sale was made to the alleged minor (Frank ---); that the beverage sold was beer; that the container was that of the licensee; that the person who sold the beer to the minor did not question him as to his age nor obtain a written acknowledgment from him.

With respect to the contested Charge 1, Frank --- testified that he was eighteen years of age at the time of the hearing on November 19, 1965; that he was born on November 7, 1947, and that on September 26, 1965 he was seventeen years of age.

On cross examination Frank testified that he entered the tavern at approximately 12:30 a.m., the tavern was dimly lit, he was married, was 6 feet 3 inches tall, and at the time he purchased the beer from John J. Cuff (president and major stockholder of licensee corporation) he hadn't shaved since the previous day. Further, he testified that at the time of the purchase, which took place at approximately 12:32 a.m., the two ABC agents and Cuff were in the tavern and no one else. The ABC agents witnessed the sale of the beer. He left the tavern, sat in his car a minute or two, re-entered the tavern and ordered another container of beer. The ABC agents were still in the tavern. Upon being advised that there were no more containers, Frank again departed from the tavern. After proceeding about an eighth of a mile or less, the ABC agents pulled alongside of the car in which he was riding and ordered him to stop. Upon stopping, Frank was questioned as to his age and then taken back to the licensed premises. An interval of ten minutes elapsed between the time of the purchase and the stopping of the car.

Agent D testified that, accompanied by Agent M, he entered the licensed premises on Sunday, September 26, 1965, at 12:45 a.m. John Cuff was tending bar. Frank --- entered the tavern at approximately 1:15 that morning. He noted the sale of the container of beer by Cuff to Frank, after which Frank departed from the tavern and Cuff went to the window. The two agents departed with Cuff still at the window and, as they walked to their car, Agent D noted that Frank re-entered the tavern and departed shortly thereafter. Frank entered a car and, after the car proceeded a distance, he stopped the car and questioned Frank as to his age.

On cross examinaton he stated that there were three other patrons in the licensed premises. Although he was in a position to intercept Frank sooner, he did not intercept him until he left the parking lot and proceeded upon the public highway. It was his opinion that Frank --- appeared to be under twenty-one years of age.

Agent M's testimony was mainly corroborative of the testimony given by Agent D. He was of the opinion that Frank appeared to be under twenty-one years of age, more specifically no more than nineteen years old. Despite that opinion he permitted Frank to leave the premises with the container of beer.

In behalf of the licensee, John J. Cuff testified that the two Division agents entered the premises at about 12:30 a.m. and sat at the bar. Frank --- came in at about 12:45 a.m., "It could have been later" and, upon request, he was served a container of beer. Frank was dressed in work clothes. Due to his general appearance, height and build, he was of the opinion that Frank was twenty-three or twenty-four years of age. The sale took place close to where the ABC men were seated. The agents remained in the tavern for about ten minutes after Frank made his exit therefrom, and the first time they advised the witness that he committed a violation was about a half-hour later when the agents returned with Frank. He declared that he knew the regulations and that, if he had any doubt at all as to Frank's age, he would not have served him.

It was stipulated by the attorney for the licensee and the attorney for the Division that the testimony of the wife of John J. Cuff (who was in the premises at the time of the sale) would be similar with respect to the appearance of Frank's age.

The attorney for the licensee argued throughout the hearing that the minor's appearance was that of a person over twenty-one years of age; that he would appear to be in excess of twenty-one years of age to any reasonably prudent man and, therefore, the licensee was excused from obtaining a written representation as to age. As to this, it is noteworthy that Frank appeared to the agents to be a minor -- otherwise they would not have questioned his age. In addition, Frank appeared to me to be a minor, perhaps older than his actual age, but definitely under twenty-one.

As to Charge 1, we are confronted with a strictly legal question. The licensee, through its president and by stipulation, admitted serving alcoholic beverages to the minor Frank, and sought to excuse and defend its action for the reason that the aforementioned minor appeared to be over the age of twenty-one years. The opinion as to the apparent age of the minor was buttressed by the opinion of an additional witness. The licensee's attorney argued that the licensee should not be found guilty of this charge because R.S. 33:1-77 contains the wording "...that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one(21) years of age or over...."

This argument must be rejected. Although it has been the uniform practice of the Director to recognize the legislative intent expressed in the enactment and to permit the statutory proviso to constitute a defense to a like charge in disciplinary proceedings conducted in the Division, nevertheless the enactment must be considered in its entirety. R.S. 33:1-77 provides as follows:

> "Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of <u>all</u> of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) <u>that the minor falsely represented in writing</u> that he or she was twenty-one (21) years of age or over, <u>and</u> (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, <u>and</u> (c) that the sale was made in good faith relying upon such written representation

and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." (Underscoring ours.)

To constitute a valid defense to such a prohibited sale it has been invariably held that the licensee must establish not some but all of the factual elements enumerated in the enactment. See Re Butera, Bulletin 606, Item 4; Re Cedar Bar of Bergen County Inc., Bulletin 942, Item 5; Re Wedemeyer, Bulletin 1050, Item 8; Eighty-Nine Clinton, Inc. v. Atlantic Highlands, Bulletin 1591, Item 2; Sportsman 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488 (App.Div. 1956), reprinted in Bulletin 1143, Item 1.

In Re Wedemeyer, supra, the Director said:

"Experience in cases similar to this indicates that for some reason licensees or their agents are reluctant to 'embarrass' a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect...."

Hence I conclude that the Division has established the truth of Charge 1 by a fair preponderance of the evidence, and I recommend that the licensee be found guilty of said Charge 1.

Licensee has a previous record of suspension of license by the Director for a dissimilar violation for fifteen days effective April 6, 1964 (Re Dugout, Inc., Bulletin 1560, Item 8), the subject of Charge 2.

It is therefore further recommended that an order be entered suspending the license on the first charge for twenty days (Re Samjo Corporation, Bulletin 1650, Item 1) and on the second charge for ten days (Re John Johnson Lodge #587, Bulletin 1652, Item 5), without remission for the plea entered to Charge 2 in view of the contest on Charge 1 (Re S. Amster, Inc., Bulletin 1657, Item 4), to which should be added five days for the record of suspension of license for dissimilar violation occurring within the past five years (Re Club Ali-Baba, Inc., Bulletin 1654, Item 4), making a total suspension of thirty-five days.

Conclusions and Order

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

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

Accordingly, it is, on this 7th day of March 1966,

ORDERED that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Moonachie to Dugout, Inc., for premises 106 Moonachie Avenue, Moonachie, be and the same is hereby suspended for thirty-five (35) days, commencing at 3 a.m. Monday, March 14, 1966, and terminating at 3 a.m. Monday, April 18, 1966.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - FOUL LANGUAGE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
RIELLY'S SPORTSMANS INN, INC. t/a BRASS RAIL 280 Madison Avenue Perth Amboy, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-84, issued by the Board of Commissioners of the City of Perth Amboy.	)	

Seaman, Williams & Seaman, Esqs., by Albert W. Seaman, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on February 3-4 and 9, 1966, it sold drinks of alcoholic beverages to apparently intoxicated patrons, in violation of Rule 1 of State Regulation No. 20, and (2) on February 3-4, 1966, permitted foul, filthy and obscene language by patrons on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for twenty days and on the second charge for ten days (Re DiFrank, Bulletin 1661, Item 2), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 8th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-84, issued by the Board of Commissioners of the City of Perth Amboy to Rielly's Sportsmans Inn, Inc., t/a Brass Rail, for premises 280 Madison Avenue, Perth Amboy, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, March 14, 1966, and terminating at 2:00 a.m. Friday, April 8, 1966.

JOSEPH P. LORDI
DIRECTOR

4. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #275 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Distribution License D-2 Issued by the Borough Council of the Borough of Jamesburg to CHARLES NOVAK AND STEVE KAPITAN 63 E. Railroad Avenue Jamesburg, N. J.	ON PETITION ORDER

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on March 1, 1966, Steve Kapitan, one of the licensees-petitioners, was fined $50 and $5 costs in the Jamesburg Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on February 7, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' 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 licensees because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioners after such disciplinary proceedings have been concluded. In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Kornblau, Bulletin 1662, Item 7.

Accordingly, it is, on this 9th day of March, 1966,

ORDERED that the aforesaid automatic suspension of license D-2 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE TO A MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH S. VENESKY and JOHN G. MACHADO
t/a CAFE AU-JOH-JO
246 Straight Street
Paterson, N. J.

Holders of Plenary Retail Consumption License C-175, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

Licensees, by John G. Machado, Pro se.
Edward F. Ambrose, Esq. Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead guilty to charges alleging that (1) on February 18, 1966, they sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) on February 17-18, 1966, they sold drinks of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Lekas and Paroby, Bulletin 1659, Item 12) and on the second charge for ten days (Re Mill's Triangle Bar & Grill, Inc., Bulletin 1661, Item 9), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 10th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-175, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Joseph S. Venesky and John G. Machado, t/a Cafe Au-Joh-Jo, for premises 246 Straight Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Thursday, March 17, 1966, and terminating at 3:00 a.m. Wednesday, April 6, 1966.

JOSEPH P. LORDI
DIRECTOR

6. STATE LICENSES - NEW APPLICATIONS FILED.

Reitman Industries
300 Frelinghuysen Avenue
Newark, N. J.
Application filed April 12, 1966 for Additional Warehouse License for premises 711 to 717 Pine Street, also known as 616-620 Newton Avenue, Camden, New Jersey, in connection with Plenary Wholesale License W-42.

Fleming & McCaig, Inc.
1 Peerless Place
Newark, New Jersey
Application filed April 12, 1966 for Additional Salesroom License for premises 711 to 717 Pine Street, also known as 616-620 Newton Avenue, Camden, New Jersey, in connection with Plenary Wholesale License W-36.

S & S Beverage Co., Inc.
800 N. New York Avenue
Atlantic City, N. J.
Application filed April 14, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-134 from 321 North Rhode Island Avenue, Atlantic City, N. J.

Affiliated Distillers Brands Corp.
1290 Avenue of the Americas
New York, New York
Application filed April 15, 1966 for additional warehouse and salesroom license for premises 1835 Burnet Avenue, Union, New Jersey, in connection with Plenary Wholesale License W-41.

The House of Seagram, Inc.
23 Willett Street
Bloomfield, N. J.
Application filed April 18, 1966 for additional salesroom license for premises 1021 Route #22, Mountainside, New Jersey, in connection with Plenary Wholesale License W-85.

Joseph P. Lordi
Director