

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

BULLETIN 1698

November 1, 1966

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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

BULLETIN 1698

November 1, 1966

1. APPELLATE DECISIONS - NEW PEPPERMINT LOUNGE, INC. v. NEWARK.

NEW PEPPERMINT LOUNGE, INC.,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

New Peppermint Lounge, Inc., Appellant, by Richard A. Pereira,
President, Pro se.

Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of Plenary Retail Consumption License C-307 for the year 1965-66 for premises 303 Lafayette Street, Newark, was found guilty by respondent of charges alleging that it (1) failed to draw all curtains preventing a clear view of the interior of the licensed premises from the street between the hours of 2:00 a.m. and 7:00 a.m., in violation of local ordinance, and (2) hindered investigation of its licensed premises, in violation of R.S. 33:1-35, whereupon its license was suspended for twenty days effective January 24, 1966. It filed this appeal challenging such conviction, and an order was entered on January 21, 1966, staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

(Subsequently, the license was revoked by the Director, effective February 10, 1966, for permitting procurement for prostitution, sale of alcoholic beverages for resale, aiding and abetting sale without license and permitting unlawful use of its vehicle bearing transit insignia. Re New Peppermint Lounge, Inc., Bulletin 1679, Item 3. Notwithstanding the revocation, appellant is nevertheless entitled to a determination of this appeal on the merits.)

In its petition of appeal appellant alleged that respondent's action was erroneous in that "the finding of guilt was against the weight of the evidence."

In its answer respondent entered a general denial and asserted that the grounds upon which its decision was made were based upon the "factual testimony before the Board from which it, in its sound discretion, concluded that the penalty imposed substantiated such action."

The hearing on appeal was based upon the transcript taken in proceedings before respondent, pursuant to Rule 8 of State

Regulation No. 15. Appellant, which was represented by counsel before respondent, appeared pro se by its president and principal stockholder at this de novo hearing and presented additional testimony through him.

The transcript and the testimony on the appeal reflect the following: On May 3, 1965, at 2:36 a.m., Newark Police Officer Francis Collins, who was accompanied by Police Officer Wolocin, while on routine patrol observed that the drapes on the front windows of appellant's licensed premises were "tightly closed and didn't afford a clear view of the tavern." The officer stood on the ledge of the window and looked into the tavern where he noticed some movement in the rear of the premises.

A person (later identified as Richard Pereira, president of the corporate licensee) approached in response to the officer's knock on the door but refused to open the door when requested to do so. At least five times the officers, who were in uniform, requested that he permit them to enter the premises but Pereira refused to do so. They thereupon contacted police headquarters and summoned assistance. Sergeant Thomas A. Evans, of the Newark Police Department, responded at approximately 2:45 a.m. and they finally gained entrance to the premises.

They questioned the owner and also sought to interrogate a female who was standing in the rear of the said premises. When they sought responses to their questions, however, Pereira answered for her and refused to permit her to answer any questions. She did, however, state to the police sergeant her name and address but was prohibited from answering any further questions by Pereira. The officers further observed that there were numerous unwashed glasses and empty beer bottles on the bar.

Sergeant Evans testified that he responded to a call from Patrolman Collins and went to the tavern. He noted that both police officers were in front of the tavern, and they informed him that Pereira had refused them admittance. He also observed that the curtains were drawn on all of the windows of the tavern, excluding that in the door. He knocked on the door and waited and, shortly thereafter, Pereira came to the window and Evans informed him that he wanted to inspect the premises. Pereira opened the door and he entered. At this point Pereira stated that he would permit only Evans to enter the premises and not the other police officers. However, all three officers entered together. Evans sought to question a woman (later identified as Mrs. Hilda Marera) but "every time I questioned her, Pereira injected himself into the conversation." He then requested that Pereira show him his license application, but he failed or refused to produce the same.

Richard Pereira (erroneously identified as Richard Ferrara in the transcript of proceedings before respondent), on behalf of the licensee, gave the following account: Shortly after 2:00 a.m. he "drew the drapes for a few minutes, to close the drapes", because he wanted to withdraw the money from the cash register. He noticed the officers in uniform outside, but he refused their request for admittance "until the superior officer came down." He explained that he did not recognize these police officers "and I thought I wanted to see a superior officer. I didn't see them as the normal usual patrolmen in the area. And as soon as the Sergeant arrived, I opened the door and it happened that he is a Sergeant from the Third Precinct."

He further explained that police officers have been called on previous occasions to these premises on unwarranted complaints, and he believed that this was another such instance.

On cross examination, he admitted that the officers were in uniform but, notwithstanding that, he refused them admittance. However, he denied that he refused admittance to the officers after the sergeant arrived. He further asserted that he was under the impression that he had the right "to request a superior to come down for some reason you didn't have to open the door until the superior came down and then open it." He could not state where he had obtained such information. Finally, he added that the drapes were closed for just a few minutes and he opened them after the police officers knocked on the door.

My evaluation and analysis of the testimony herein convince me that the said charges were proved by a clear preponderance of the credible evidence. The witness for appellant admits that the drapes were closed. It seems incredible that these drapes should have remained closed for approximately forty-five minutes after the closing hour of 2:00 a.m. for the alleged reason that appellant's agent wanted to withdraw money from the cash register. His actions seem to refute this purported explanation.

With respect to the charge of hindering the investigation, it is very clear that appellant's agent interfered with the lawful right of the local police officers to enter the premises. His stubborn refusal to permit them to enter, even after the sergeant arrived at the said premises, indicates that he intended to hinder a proper investigation. Furthermore, by his interference with the questioning of Mrs. Marera and his failure or refusal to produce the license application, he unmistakably hindered and failed to facilitate such investigation.

The wording of the statute is precise and definitive. R.S. 33:1-35 provides, among other things, that licensees, their agents and employees, shall facilitate investigations "as far as may be in their power so to do...and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever" (emphasis supplied). Cf. Vogellus v. Division of Alcoholic Beverage Control, notofficially reported, reprinted in Bulletin 1537, Item 1; Gay Jak Corp. v. Newark, Bulletin 1614, Item 2.

These police officers observed that the drapes were closed and no clear view was afforded of the interior of the premises. Their lawful duty required that they make a prompt investigation in the interest of the public and, indeed, in the best interests of the licensee itself. Law enforcement agents are not required to subject themselves to hostile or uncooperative agents or employees of licensees. A license is a privilege granted to the few and denied to the many. Those who receive that privilege are required to live up to not only the letter but the spirit of the law. Since these charges were established by substantial evidence, I conclude that appellant has failed to sustain its burden of establishing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of respondent and dismissing the appeal.

Since the license has been revoked during the pendency of this appeal, and was thereafter suspended by the Director by order dated May 2, 1966, for ten days for sale to minors prior to the revocation, with effective date to be fixed if and when the licensee again obtained a license (Re New Peppermint Lounge, Inc., supra), it is further recommended that the effective date of the suspension herein be fixed if and when the licensee again obtains a license after the expiration of its two-year statutory ineligibility (R.S. 33:1-31) resulting from the revocation of its license, and after the effective date of the ten-day suspension imposed but not fixed as aforementioned.

Conclusions and Order

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

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

Accordingly, it is, on this 12th day of September, 1966,

ORDERED that the action of respondent be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-307, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to New Peppermint Lounge, Inc. for the year 1965-66, for premises 303 Lafayette Street, Newark, be and the same is hereby suspended for twenty (20) days, the effective date of such suspension to be fixed if and when the licensee again obtains a license after the expiration of its two-year statutory ineligibility (R.S. 33:1-31) resulting from the revocation of its license and after the effective dates of the ten-day-suspension imposed but not fixed in the order dated May 2, 1966.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary
Proceedings against

JOSEPH F. HAGEN, JR. AND
MARY E. HAGEN
t/a HAGEN'S TAVERN
63-65 Stuyvesant Avenue
Newark, New Jersey

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption
License C-65, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Newark.

Thomas E. Durkin, Jr., Esq., by John Flynn, 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 January 7, 11, 12, 14, 18, 20, 25 and 26, 1966, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of horse race bets on said dates of January 11, 12, 14, 18, 20, 25 and 26, 1966, and in a lottery, commonly known as the 'numbers game' on said dates of January 7 and 26, 1966; in violation of Rule 7 of State Regulation No. 20.

"2. On January 7 and 26, 1966, 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 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."

Three ABC agents participated in the investigation leading to the charges preferred herein.

Agent B testified that pursuant to specific assignment, he visited the licensed premises, described as a neighborhood tavern, on several occasions. On January 26, 1966, accompanied by two other ABC agents and by two detectives of the Newark Police force, he arrived in the vicinity of the licensed premises at approximately 11:55 a.m. The agent had in his possession one \$5 bill and five \$1 bills, the serial numbers of which had been pre-recorded. He and Agent C entered the tavern and took a position at the left side of the oval-shaped bar. Serving the patrons was Mary Hagen, a co-licensee. After an exchange of greetings, Mrs. Hagen mentioned that the agent had money due him because of a horse race bet made the previous day and that a male whom she referred to as "Lou" had not been in yet with the winnings. A conversation ensued concerning horses running that day. Agent B then informed Mrs. Hagen that he was going to leave for a few minutes and, upon his return, he would pick a horse. He left the tavern at approximately 12:15 p.m. and returned at approximately 12:25 p.m., sitting next to Agent C. After scanning the racing section of a newspaper, he informed her of a horse named "Kenilworth." Mrs. Hagen suggested that the agent team up that horse with a horse named "Red & Black" as a daily double and said she too would play that daily double. The wager being agreed upon Mrs. Hagen recorded the bet on a slip of paper. Subsequently, the agent and Mrs. Hagen consulted the racing section of a newspaper and a copy of the Armstrong scratch sheet, after which Mrs. Hagen recorded several horse race bets. Having completed that, she asked Agent B as to what horses he wanted to play that day. He picked two horses and Mrs. Hagen recorded the bets on the back of the same sheet of paper. After recording the bets, Mrs. Hagen informed the agent that she was going to call in the horse race bets to a person known as "Cowboy", subsequently identified as John G. Roy. Mrs. Hagen went to the telephone booth located about eight to ten feet away and made a call. She left the door to the booth open. The testimony revealed the following:

"Q And what if anything did you hear Mrs. Hagen say?

A I heard Mrs. Hagen talk to someone on the other end of the phone whom she identified as 'Cowboy', and she stated that I was on the premises, stating, 'Tony wants to talk to you about picking up some action.' She then continued her conversation and added, 'You better take this double bet now: Red & Black and Kenilworth for \$4. I'll give you the rest when you get here.'"

Cowboy entered the tavern at approximately 1:10 p.m. and sat approximately a foot and one-half to the right of Agent B. Mrs. Hagen conferred with Cowboy and gave him the slip of paper upon which she had previously recorded her bets and the agent's bets. She also handed Cowboy a blank slip of paper for Cowboy to copy the bets heretofore recorded by Mrs. Hagen. The agent walked to the right of Cowboy and watched him record the bets. It was agreed between Cowboy and Agent B that Agent B owed \$10 on account of the horse race bets. At this point, Agent B placed a

numbers bet on No. 106 for one dollar. Mrs. Hagen was about four or five feet away on the patrons' side of the bar at the time the numbers bet was made. Agent B paid Cowboy the sum of \$11, using the marked five dollar bill, the five marked one dollar bills and a one dollar bill the serial number of which had not been previously recorded.

Agent B left the premises at approximately 1:20 p.m. and, after a moment or two, returned with Agent D and two detectives of the Newark police department. He pointed out John Roy (Cowboy) to the police and the agents identified themselves to Mrs. Hagen. The bet slips and the paper currency bearing the recorded serial numbers were found on the person of John Roy.

As to the visit of January 25, 1966, the agent testified that he arrived at the vicinity of the licensed premises at approximately 11:35 a.m. He was accompanied by ABC Agents D, S, H and C and two Newark police detectives. Upon arrival, Agents B and C entered the tavern and took a position near the opening at the left side of the bar. Mrs. Hagen was tending bar. The patronage consisted of one male known as "Al." Mrs. Hagen and the agents conversed about several horses racing that day. She exclaimed, "I wonder what happened to Cowboy. He's usually here by now." At approximately 12:30 p.m. Mrs. Hagen tried to communicate with Cowboy by telephone without success. She returned to the position where the agents were seated and asked, "What horses do you want to play today? I think I'll be able to call someone else." After Agent B picked two horses, Mrs. Hagen made a telephone call to a person referred to as "Joe." Mrs. Hagen was apparently informed that "Joe" did not take horse race bets. Al suggested to Mrs. Hagen that she call "Lou the Mustache" and gave her the telephone number. Upon Mrs. Hagen's completing the telephone call, the agent handed her \$8 to cover payment of the horse race bets. She placed the money on the back bar and stated to Al, "If Lou comes in later, the money's here." The agents departed the premises at about 1:10 p.m.

On January 20, 1966, Agent B, accompanied by Agents C and H, arrived at the vicinity of the tavern at approximately 11:30 a.m. Agent B entered the tavern with Agent H and sat at the rear of the bar area near the telephone booth. Mrs. Hagen was tending bar. Shortly after 12 o'clock, Mrs. Hagen said, "I wonder what happened to Cowboy. He's usually here by now," followed by, "What do you like today?" Agent B joined Mrs. Hagen at her position at the bar and consulted a racing sheet. After expressing a belief that Cowboy was not coming in that day, she asked the agent, "Is there anything you want today? I'll call it in." The agent then gave her the name of a horse running that day and handed her \$4 for a \$2-win and a \$2-place bet. Mrs. Hagen recorded the bet on a pad and took the \$4. Mrs. Hagen went to the telephone and, at her request, the agent handed her a newspaper opened to the racing section. Agent B did not hear the conversation. The agents departed the premises at 1:40 p.m.

On the occasion of January 18, 1966, Agents B and C entered the licensed premises at approximately 11:30 a.m. At the time there were no patrons in the tavern. Mrs. Hagen was tending bar. At approximately 12:10 p.m. Cowboy entered the premises. Cowboy and Mrs. Hagen had a copy of the Armstrong scratch sheet (a paper devoted almost exclusively to the selection of race horses) and a conversation ensued concerning several horses. Mrs. Hagen asked Agent B which horses he liked that day and, after making his selections, he went to Cowboy's position at the bar and gave him

the names of two horses and the money to cover the bets. Cowboy recorded the bets on a beer coaster and thereafter went to the telephone booth. Cowboy then left the premises.

Earlier, the agent, in gaining admittance, informed Mrs. Hagen that he had burned his hand and Mrs. Hagen said, "You should play Fabulous Flame in the first at Hialeah...In fact you should play the daily double and team up with Tobir in the second." After the agent agreed to play the daily double, Mrs. Hagen stated, "If you want to play it, I will call it in for you." Mrs. Hagen made notations on a slip of paper, took ten cents from the cash register and made a telephone call. The agent did not hear the conversation. He made payment to her of \$2 for the bet.

Relative to the visit of January 14, 1966, Agent B testified that he entered the licensed premises with Agent C. Mrs. Hagen again was tending bar. Immediately upon entering, Agent B mentioned "Oldest Girl" and Mrs. Hagen "made a shushing motion, putting her finger to her mouth, and made a nod to a male that was seated at the bar." After the patron left at about 1:20 p.m., Mrs. Hagen said, "I didn't know that guy." In response to the agent's inquiry, Mrs. Hagen informed Agent B that Cowboy had left the premises shortly prior to the agent's arrival. She also informed him that Cowboy had left \$20 for him, which represented the winnings of a horse race bet the agent made on January 11. Mrs. Hagen then went to the cash register and took out four \$5 bills and placed them on the bar in front of Agent B. Agent B asked whether or not Cowboy was returning because he "had some action for him." Mrs. Hagen responded that he was not returning but that she would telephone him at home and asked the agent what horses he wanted to play. She then gave him the Armstrong scratch sheet that was on top of the bar. The agent scanned the scratch sheet, chose two horses running that day and made his selections known to Mrs. Hagen. Mrs. Hagen suggested the selection of a third horse and Agent B acquiesced. Mrs. Hagen went to the cash register, returned with an envelop and asked, "How do you want them? I'll call them in for you." Mrs. Hagen recorded the horse race bets, asked for and received the sum of \$10 in payment of the bets, and went to the telephone booth where she remained a period of three or four minutes.

Concerning the visit of January 12, 1966, Agent B was accompanied by Agent C. They entered the licensed premises at approximately 1:05 p.m. Mrs. Hagen was tending bar. After conversing about horses, Mrs. Hagen asked, "What are you playing today?" The agent chose two horses and said he wanted to wait for Cowboy. Mrs. Hagen suggested playing two additional horses. Inasmuch as Cowboy did not appear, at approximately 2:00 p.m. Mrs. Hagen furnished Agent B with Cowboy's telephone number. Agent B called the telephone number and the person called identified himself as Cowboy, whereupon the agent quoted the horse race bets to him. Shortly thereafter, the agents left the premises.

On January 11, 1966, Agent B visited the licensed premises with Agent C. They entered the tavern at approximately 12:40 p.m. The patronage consisted of two males, one of whom was identified as John Roy, alias "Cowboy." Cowboy and the other patron were reading the racing section of a newspaper and conversing about horses running that day. Later, Agent B stopped at Cowboy's position at the bar and looked at the racing section of the newspaper. Cowboy handed him his scratch sheet and the two conversed about horses in the immediate presence of Mrs. Hagen. After scanning both the racing section and the scratch sheet, the agent remarked to Cowboy,

"I like Ask Gus in the eighth at Tropical. Do you think you can get it in?" To this Cowboy replied, "Sure. How do you want it?" Cowboy recorded the horse race bet on top of the bar on a slip of paper which he removed from his pocket. Mrs. Hagen was in the immediate group at the time of the conversation concerning horses. Cowboy went to the telephone booth and dialed a number. The agent heard him call in the horse race bet and, upon his return, Agent B handed him a \$10 bill in payment of the bet. Upon leaving shortly after 2:00 p.m. and as the agent was approaching the door, Cowboy called out that if the horse won, he would see him at the tavern and to ask for Cowboy. At the time, Mrs. Hagen was several feet away from Cowboy.

Relative to the visit of January 7, 1966, Agents B and C entered the licensed premises at approximately 8:40 p.m. and sat at the front of the bar. The patronage consisted of fourteen males, which increased to twenty-two males and one female. Mrs. Hagen was on duty behind the bar. Shortly after 9:00 p.m. Agent B heard Mrs. Hagen ask a patron referred to "Val" or "Vel" "what the number was for the day." The reference was to an activity known as the numbers game or lottery. Thereafter, he observed a male enter, approach Val and say to him "Give me 129", and place fifty cents on the bar in front of Val. He observed another male approach Val and both of them consult the racing section of a newspaper. Mrs. Hagen was attending to her duties as barmaid.

On cross examination, Agent B testified as follows concerning an incident which occurred on January 7:

"Q Now, concerning January 7th, you testified that you heard Mrs. Hagen ask a Val, 'What is the number for the day'?"

A Yes, sir.

Q Now, at that time could you identify her meaning in that statement, or is it merely a surmise on your part?

A I could identify that, sir.

Q You can identify the words, but the meaning of the words, you are surmising the meaning, aren't you?

A Yes, sir."

The agent did not recall Mrs. Hagen's exact position behind the bar when someone said to Val, "Give me 129." She was not part of that conversation. Later the agent testified, upon additional questioning, that he did not know whether or not she was aware of this transaction.

As to the incident of January 11 wherein he had testified that Mrs. Hagen placed money on the bar in front of Cowboy after overhearing conversation concerning horse racing, the agent admitted that, while he did not actually see a bet being made, he did observe what appeared to be a horse race bet. He based his opinion upon the fact that he observed the making of notations from a scratch sheet, the acceptance of money from Mrs. Hagen and the making of a telephone call.

Despite a lengthy and intensely probing cross examination, the agent's testimony was unchanged. He admitted that most of the bets made upon the licensed premises had to be called in by telephone.

It was stipulated by counsel that the testimony of Agents C and H would be the same on direct and on cross examination as to the dates on which they were involved in this investigation.

The licensees offered no witnesses in defense of the charges. They argued, firstly, that they did not engage in gambling on the licensed premises because they were not authorized to make "book" and the betting had to be finalized by the making of telephone calls to a point outside the licensed premises. Also Mrs. Hagen and Roy were in fact merely acting as agents for the Division investigators, who were actually engaged in gambling. In each instance, a telephone call to a place outside the premises had to be made. Secondly, the licensees argued that they were entrapped into placing bets for the agents.

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.

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.

In answer to the first argument, it is apparent that the licensees misconceived the legal principles applied in these cases. Regardless as to whether or not the bets had to be telephoned to some point outside the licensed premises, the gambling activity proscribed by Rules 6 and 7 of State Regulation No. 20 actually originated, was conceived and took place in the licensed premises.

Indisputably, the gambling activity was engaged in and recorded upon the licensed premises. The factual picture presented by the Division amply justifies such a conclusion. Any other conclusion would be totally unwarranted by the evidence. The fact that the Division agents participated in the gambling activity makes the licensees no less guilty of the offenses charged. It is obvious that the Division agents engaged in gambling in furtherance of their investigative duties pursuant to standard procedure.

The licensees' defense of entrapment is devoid of factual substantiation. It will be recalled that Mrs. Hagen kept upon the premises items commonly known as "scratch sheets" which are used by persons who indulge in horse race betting. Obviously, she welcomed into the tavern persons such as "Cowboy", who was apparently at least a "runner" in the horse race gambling activity, and had his telephone number readily available so that bets could be consummated.

The solicitation by the representatives of the Division was readily accepted; their activity, although planned in advance, merely afforded the licensees the opportunity to perpetrate in specific instances what the evidence indicates they were prepared to do as a matter of routine practice. See State v. Rosenberg, 37 N.J. Super. 197 (App. Div. 1955), certif. denied 20 N.J. 303 (1956). See also Highlander Hotel Corp. v. Div. of Alcoholic Beverage Control (App. Div. 1963), not officially reported, reprinted in Bulletin 1533, Item 1.

I find no evidence from which it could be inferred that the agents implanted an unlawful design in the minds of the licensees or that the agents practiced any trickery, persuasion or fraud to induce them to commit a wrongful act. The agents did not envisage the offense, plan it, and activate its commission by one not theretofore intending its perpetration. They did not lure or entrap the licensees into committing an offense which they otherwise would not have committed. Rather, the agents, acting in good faith and in the pursuit of their duties, merely furnished the opportunity for the commission of the offense. The mere solicitation to place horse race or numbers bets was not in itself an entrapment. The rationale of Masciale v. United States, 356 U.S. 386, 2 L. ed. 2d 859, 78 S.Ct. 827 (1958), affirming 236 F. 2d 601 (2 Cir. 1956), rehearing denied 357 U.S. 933, 78 S.Ct. 1367 (1958), is applicable. Hence, under the principles of established law, as above indicated, there was no entrapment herein.

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and overwhelming preponderance of the evidence. I therefore recommend that the licensees be found guilty of Charge 1 which particularly refers to the dates of January 11, 12, 14, 18, 20, 25 and 26, 1966, and of Charge 2 which particularly refers to the date of January 26, 1966. I am not convinced that the Division has met the required measure of proof as to that part of the charges which refers to the date of January 7, 1966, and I further recommend that the licensees be found not guilty as to that part of the charges which refers to the date of January 7, 1966.

When the license was issued to Joseph F. Hagen, Jr. individually (one of the licensees herein), such license was suspended by the Director for five days effective October 19, 1959, for sale to minors. Re Hagen, Bulletin 1309, Item 10. It is recommended that the prior record of suspension of license for dissimilar violation be disregarded because occurring more than five years ago, and that the license be suspended for sixty days. Re Lipnicki, Bulletin 1683, Item 3.

Conclusions and Order

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

Having carefully considered the 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 12th day of September 1966,

ORDERED that Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph F. Hagen, Jr. and Mary E. Hagen, t/a Hagen's Tavern, for premises 63-65 Stuyvesant Avenue, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, September 19, 1966, and terminating at 2 a.m. Friday, November 18, 1966.

JOSEPH P. LORDI,
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - HINDERING INVESTIGATION - FALSE STATEMENTS IN LICENSE APPLICATION - EMPLOYING CRIMINALLY DISQUALIFIED PERSON - EMPLOYING FEMALE BARTENDERS - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary
Proceedings against

CARNIVAL LOUNGE, INC.
6406 Bergenline Avenue
West New York, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-32, issued by the Board of
Commissioners of the Town of West
New York.

Robert W. Bazzani, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on May 21, 1966 it (1) and (2) sold alcoholic beverages after 3 a.m. during hours prohibited by local ordinance, (3), (4) and (5) hindered investigation by Division agents by its employees committing assaults and batteries upon such agents and directing foul and filthy language to them, in violation of R.S. 33:1-35 and Rule 5 of State Regulation No. 20, (6) in its application for current license made false statements with respect to stockholdings in the corporation, in violation of R.S. 33:1-25, and between July 1, 1965 and May 21, 1966 (7) employed a criminally disqualified person, in violation of Rule 1 of State Regulation No. 13, and (8) employed female bartenders, in violation of local ordinance.

Absent prior record and considering the variety and totality of the charges alleged, as well as the confessional plea entered, the license will be suspended for ninety days.

Accordingly, it is, on this 20th day of September 1966,

ORDERED that Plenary Retail Consumption License C-32, issued by the Board of Commissioners of the Town of West New York to Carnival Lounge, Inc., for premises 6406 Bergenline Avenue, West New York, be and the same is hereby suspended for ninety (90) days, commencing at 3 a.m. Thursday, September 22, 1966, and terminating at 3 a.m. Wednesday, December 21, 1966.

JOSEPH P. LORDI
DIRECTOR

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1965 TO JUNE 30, 1966 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 57 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20)

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Licen- ses Expired		Licen- Surren- dered Revoked	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	485	\$ 199,810.00	74	\$ 28,075.00	31	\$ 2,670.00							2	588	\$ 230,555.00
Bergen	816	327,644.66	301	91,322.00	150	13,980.00	50	\$ 2,419.50	10	\$ 2,797.50	5			1322	438,163.66
Burlington	198	90,499.21	43	14,410.00	51	7,025.00	1	50.00						293	111,984.21
Camden	458	225,456.31	85	35,335.00	80	7,930.00			1	450.00	1			623	269,171.31
Cape May	138	77,000.00	13	4,700.00	17	2,200.00								168	83,900.00
Cumberland	80	41,100.00	15	4,200.00	32	4,250.00								127	49,550.00
Essex	1292	737,820.82	348	210,805.48	96	13,252.67	26	1,300.00	3	2,250.00	3			1762	965,428.97
Hampden	109	39,460.00	15	3,845.00	22	2,020.00								146	45,325.00
Hudson	1464	663,781.24	298	122,400.00	80	9,532.28	60	2,550.00					2	1900	798,263.52
Interdon	78	28,880.00	14	8,168.00	14	1,500.00								106	38,548.00
Jersey	421	262,500.00	51	22,510.00	64	9,044.80			1	111.78	1		1	535	294,166.58
Middlesex	632	319,301.78	88	30,155.00	125	10,479.23	4	200.00					1	848	360,136.01
Newmouth	549	265,579.12	126	44,850.00	63	6,715.13	10	492.00	42	22,015.90	25			765	339,652.15
orris	361	150,494.95	105	43,359.00	72	6,593.18	15	750.00	8	2,580.00	4			557	203,777.13
Sean	192	105,411.46	50	22,147.00	39	4,433.36								281	137,991.82
Passaic	849	352,412.98	170	52,685.00	50	5,775.00	7	350.00					2	1074	411,222.98
W.lem	50	22,430.00	8	1,640.00	19	1,625.00								77	25,695.00
W.erset	190	89,433.75	41	12,975.00	37	4,105.27								268	106,514.02
Essex	162	45,587.47	20	3,995.00	14	815.00	1	50.00	2	450.00	1			198	50,897.47
ion	551	319,146.00	144	74,176.00	89	9,485.00	26	1,280.00						810	404,087.00
arren	146	42,860.00	20	4,435.00	29	2,950.00			4	713.40	2			197	50,958.40
Total	9221	\$4,406,609.75	2029	\$836,187.48	1174	\$126,380.92	200	\$ 9,441.50	71	\$31,368.58	42		8	12645	\$5,409,988.23

Atlantic Co. 1 C revoked - 1 C over-count
Hudson Co. 1 C revoked - 1 D revoked
Mercer Co. 1 CB cancelled
Middl. Co. 1 CB cancelled
Passaic Co. 1 CB surrendered - 1 C revoked

Joseph P. Lordi, Director

September 20, 1966

5. MORAL TURPITUDE - CONVICTION OF POSSESSION OF LOTTERY SLIP HELD TO INVOLVE MORAL TURPITUDE.

Re: Eligibility No. 750

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of a crime.

Applicant's criminal record discloses that on January 5, 1966, following a plea of guilty in the Essex County Court for unlawful possession of a lottery slip in violation of N.J.S. 2A:121-3, he was sentenced to serve six months in the county penitentiary and fined \$500. A hearing was held at the Division to inquire into the "underlying facts to determine whether there existed moral turpitude" in the commission of such crime. State v. McNally, 91 N.J. Super. 513.

At the hearing held herein applicant testified that he was employed as a "numbers" writer by "John;" that he did not know John's surname; that he worked on a commission basis of twenty-five per cent.; that he engaged in such illegal activities for a period of about two months previous to his arrest; that he worked five days a week and that his commissions averaged from \$25 to \$30 a week.

Applicant further testified that his modus operandi was to accept numbers bets on the street from individuals who knew that he was writing numbers bets; that he recorded their bets on a slip of paper, delivered the slip and the proceeds of their wagers to John and that he would, when the occasion arose, identify the winners to John for the purpose of paying them their winnings.

A report received by this Division discloses that, at the time of his arrest, the applicant was in possession of a lottery slip listing numbers bets totaling \$78.

Based on the indictment, the guilty plea, the sentence and the sworn testimony of the applicant, it is my opinion that the crime of which applicant was convicted on January 5, 1966 involves the element of moral turpitude. See State v. Ivan, 33 N.J. 197, 202 (1960). Re Elig. No. 749, Bulletin 1697, Item 6, and cases cited therein. See also Re Elig. No. 726, Bulletin 1558, Item 3.

Under the circumstances I recommend that applicant be advised that (1) in the opinion of the Director he has been convicted of a crime involving moral turpitude, (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provides that no licensee shall employ or have connected with him in any business capacity whatsoever a person so disqualified.

I. Edward Amada
Attorney.

Approved:

Joseph P. Lordi
Director

Dated: September 19, 1966

6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR
DISSIMILAR RECORD - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

JOHN LEWIS BARNES

t/a LEW'S BAR

1418 Baltic Ave.

Atlantic City, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-152, issued by the Board
of Commissioners of the City of
Atlantic City.

Licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers days between June 23 and July 1, 1966, 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 municipal issuing authority for five days effective September 23, 1963 and again for five days effective September 14, 1964 for sale during prohibited hours.

The license will be suspended for sixty days (Re The Bamark Corp., Bulletin 1691, Item 3), to which will be added ten days by reason of the record of two suspensions of license for dissimilar violation occurring within the past five years (Re Sussman, Bulletin 1674, Item 5), or a total of seventy days, with remission of five days for the plea entered, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 21st day of September, 1966,

ORDERED that Plenary Retail Consumption License C-152, issued by the Board of Commissioners of the City of Atlantic City to John Lewis Barnes, t/a Lew's Bar, for premises 1418 Baltic Avenue, Atlantic City, be and the same is hereby suspended for sixty-five (65) days, commencing at 7:00 a.m. Wednesday, September 28, 1966, and terminating at 7:00 a.m. Friday, December 2, 1966.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

BUNK'S BAR, INC.
t/a BUNK'S BAR
1024 Baltic Avenue
Atlantic City, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 for the year 1965-66 and C-25 for the year 1966-67, issued by the Board of Commissioners of the City of Atlantic City.

Gorson, Lazarow & Aron, Esqs., by Harris Aron, Esq., Attorneys
for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between June 18 and July 1, 1966, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, 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 Pamrapo Tavern, Inc., Bulletin 1689, Item 4.

Accordingly, it is, on this 14th day of September 1966,

ORDERED that Plenary Retail Consumption License C-25, issued by the Board of Commissioners of the City of Atlantic City to Bunk's Bar, Inc., t/a Bunk's Bar, for premises 1024 Baltic Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing, * at 7 a.m. Wednesday, September 21, 1966, and terminating at 7 a.m. Tuesday, November 15, 1966.

JOSEPH P. LORDI
DIRECTOR

* By order dated September 19, 1966, the effective dates of suspension were deferred to commence at 7 a.m. Wednesday, October 19, 1966, and to terminate at 7 a.m. Tuesday, December 13, 1966.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Louis A. Benanito and Gladys Benanito
t/a LAB Soda and Beer Distributors
808 Amboy Avenue
Perth Amboy, New Jersey

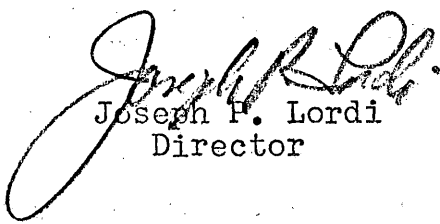
Application filed October 26, 1966 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-20 from Joseph Bruno, t/a Bruno's Soda & Beer Distributors, S/S Cliffwood Avenue, approximately 250' East of N.W. & L.B. RR, West of Locust Street, Matawan Township, New Jersey.

Ernest Tangeri
t/a Atlantic Bottling Works
890 King George Road
Woodbridge Township
PO Fords, New Jersey

Application filed October 27, 1966 for place-to-place transfer of State Beverage Distributor's License SBD-179 from 436 rear, 438-440 Grove Street, Perth Amboy, New Jersey.

Herminio N. Ramirez, Victor Zayas and Manuel A. Rodriguez
t/a Ramirez, Zayas & Co.
2021 - 40th Street
North Bergen, New Jersey

Application filed October 28, 1966 for limited wholesale license.



Joseph P. Lordi
Director