

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

BULLETIN 1955

March 8, 1971

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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 1955

March 8, 1971

1. COURT DECISIONS - RE CLUB "D" LANE, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-1116-69

In Re: In the Matter of Disciplinary  
Proceedings against

CLUB "D" LANE, INC.  
t/a CLUB "D" LANE  
2005 East Linden Avenue  
Linden, New Jersey

Holder of Plenary Retail Consumption  
License C-12, issued by the Municipal  
Board of Alcoholic Beverage Control  
at the City of Linden

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Argued October 27, 1970 - Decided January 4, 1971.

Before Judges Lewis, Matthews and Mintz.

On appeal from the Division of Alcoholic Beverage  
Control.

Mr. Louis M. Minotti argued the cause for appellant  
(Mr. Donald W. Rinaldo, attorney).

Mr. William Bayers, Deputy Attorney General, argued the  
cause for respondent (Mr. George F. Kugler, Jr.,  
Attorney General of New Jersey, attorney; Mr. Stephen  
Skillman, Assistant Attorney General, of counsel).

The opinion of the court was delivered by

MINTZ, J.A.D.

(Appeal from Director's decision in re Club "D"  
Lane, Inc., t/a Club "D" Lane, Bulletin 1900, Item 3.  
Director affirmed. Opinion not approved for  
publication by the Court Committee on Opinions).

2. DISCIPLINARY PROCEEDINGS - AFFIRMED - SUPPLEMENTAL ORDER -  
SUSPENSION REIMPOSED.

In the Matter of Disciplinary Proceedings against )

CLUB "D" LANE, INC. )  
t/a Club "D" Lane )  
2005 East Linden Avenue )  
Linden, N. J. )

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden. )

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Donald W. Rinaldo, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On February 5, 1970 Conclusions and Order were entered herein suspending the license for thirty days effective February 11, 1970, after finding licensee guilty of allowing, permitting and suffering lewdness and immoral activity on its licensed premises. Re Club "D" Lane, Inc., Bulletin 1900, Item 3. By subsequent order dated February 10, 1970 (noted in the said bulletin), the suspension was deferred to commence on February 23, 1970.

Prior to the effectuation of suspension, upon appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until determination of the appeal.

The court affirmed the action of the Director on January 4, 1971 (In re Club "D" Lane, Inc., (App.Div. 1970)), not officially reported, recorded in Bulletin 1955, Item 1. The suspension may now be reimposed.

Accordingly, it is, on this 11th day of January 1971,

ORDERED that Plenary Retail Consumption License C-12, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Club "D" Lane, Inc., t/a Club "D" Lane, for premises 2005 East Linden Avenue, Linden, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Tuesday, January 26, 1971, and terminating at 2:00 a.m. Thursday, February 25, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

3. APPELLATE DECISIONS - ELMORA LIQUORS, INC. v. ELIZABETH.

ELMORA LIQUORS, INC.,	)	
t/a OLD COLONY WINE & LIQUOR STORE,	)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS
	)	AND ORDER
CITY COUNCIL OF THE CITY OF	)	
ELIZABETH,	)	
Respondent.	)	

-----  
Margulies & Kochanski, Esqs., by Philip Margulies, Esq.,  
Attorneys for Appellant  
Edward McGrath, Esq., by Daniel J. O'Hara, Esq., Attorney  
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent whereby it imposed a fifteen-day suspension of its plenary retail distribution license issued by respondent for premises 611-613 Westfield Avenue, Elizabeth, effective December 3, 1969, after finding appellant guilty of the following charge:

"On July 24, 1969, you sold, served and delivered alcoholic beverages to the following person in and upon your licensed premises; William Riney, the above sale of alcoholic beverages having taken place after the hour of 10:00 P.M. on July 24, 1969, in violation of State Regulation #38, Rule 1."

Upon the filing of the appeal, an order was entered by the Director on November 3, 1969, staying respondent's order of suspension until entry of a further order herein.

Appellant in its petition of appeal alleged that the action of respondent was erroneous in that said sale actually took place before 10:00 p.m. on said July 24, 1969.

Respondent in its answer denied the aforesaid allegation of appellant.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

On behalf of respondent, Edward Szpond, a local police officer, testified that on the night in question, he went on duty at 9:00 p.m. and was assigned on foot patrol to the White Castle lot at the corner of Westfield and Elmora Avenues, located directly across the street from the licensed premises. While standing in the lot he observed a male exit from the licensed premises at approximately 10:05 p.m. and approximately four or five minutes thereafter he observed another male exit therefrom. Both were carrying packages. The following testimony was then adduced:

"Q All right. What next did you observe?

A I observed another white male, about twenty, come out of the establishment, and I called the Police Headquarters, talked to the dispatch sergeant, and I told him that I had observed a violation taking place and I requested permission to leave my post and to dispatch a support cruiser.

Q and what time was that?

A This was at ten-thirty."

The officer walked fifteen or twenty feet from where he had been standing to a telephone booth, called Police Headquarters and requested the desk sergeant to send a support cruiser. He crossed the street and followed the male who had exited last from the premises and intercepted him in front of his residence approximately 125 feet from the liquor store. He was identified as William Riney. The officer observed a bottle of Cutty Sark Whiskey and a six-pack of Pepsi-Cola in the bag. At the officer's request, Riney stated that he had purchased it at Elmora Liquors (the licensed premises) and accompanied the officer to the liquor store. Riney identified the salesman as John Schlaugh. It was approximately "sixteen, seventeen after ten". As he was entering the licensed premises the radio car arrived with Officers Forrester and Ticken. They remained there two or three minutes.

Schlaugh admitted selling Riney the liquor. Schlaugh made a telephone call to Warren Marcus, president of the corporate licensee and the officer conversed with him.

On cross examination, Officer Szpond testified that he had synchronized his watch at 9:00 p.m. that night when he called in at Headquarters. His watch kept accurate time. He reiterated that the first male exited from the liquor store at 10:05 p.m. He made a note of that on a hamburger wrapper. Four or five minutes later he observed another male. He jotted that down on the same wrapper and resumed normal patrol. He then observed another male standing inside the doorway carrying a package. He was conversing with Schlaugh at the doorway. It was at this time that the officer called headquarters. That call was made at 10:12 p.m. Again he made a written notation of the time. The witness did not produce the written record. He confronted Riney after he had called headquarters. He was admitted in the liquor store by Schlaugh at approximately 10:15 p.m. He did not observe Riney enter the liquor store, nor did he observe anyone else enter the liquor store prior to or after 10:00 p.m. Schlaugh admitted the sale to Riney, and asserted that the sale was made prior to 10:00 p.m.

Sergeant Eugene R. Ahern, who was assigned to communications detail on the evening of July 24, testified that he received a telephone call from Officer Szpond at 10:12 p.m. that night. Szpond reported to him that he had witnessed an ABC violation at Elmora Liquors, requested permission to leave his post and requested that a radio car be dispatched to the scene. The time of the telephone call was recorded on a police card kept for such purposes by the Police Department. The card was received in evidence.

Officer Ticken testified that, on the night in question, accompanied by Officer Forrester, he was in a patrol car when he received an assignment by radio at 10:12 p.m. to proceed to

Elmora Liquors. Upon arriving there he conferred with Officer Szpond, and upon being satisfied that no arrest was involved, proceeded across the street to White Castle to cover for Officer Szpond.

The testimony of Officer Robert D. Forrester was mainly corroborative of the testimony elicited from Officer Ticken.

In behalf of appellant, John Schlaugh testified that he was employed as a sales clerk evenings and Saturdays by the licensee and was on duty on the night of the alleged offense. There is a clock in the liquor store.

On the night in question he had Station WABC on his radio at 9:30 p.m. He had sent the driver to make his last delivery between 9:00 p.m. and 9:15 p.m. The driver returned a "couple of minutes before ten." At approximately 9:30 p.m. William Riney entered the store to make a purchase. After Riney made his purchase, three or four more people entered the store. He attended to these patrons and from 9:45 p.m. on he was alone with Riney. He then described his movements, as follows:

"Well, I was to the rear of the store and I was speaking to Mr. Riney, and I noticed it was getting late. And we walked over to the door, and we were speaking, and about five minutes to ten which is when the news came on, I proceeded to put out the front lights, and I locked the store, and Mr. Riney stood in the doorway and we were talking."

He "let Mr. Riney out probably two minutes before ten while the news was still on as the driver entered the store." The door was locked when he let the driver in. After letting the driver in and Riney out, he went to the rear of the store to straighten accounts. He heard a knock on the door and saw Officer Szpond with Riney. Officer Szpond informed him that he had made an illegal sale. Schlaugh denied the allegation. This occurred "a couple of minutes after ten." He called the owner and had the officer speak with the owner. No other officers entered the store nor did he observe any other officers looking into the store. He did see Officer Szpond leave the store for "a couple of minutes" and return. He did not know his reason for leaving or returning.

William Riney testified that he entered the licensed premises on July 24 at approximately 9:30 p.m. and made a purchase. He engaged in conversation with Schlaugh. Other patrons came in and left while he was still in the premises. The driver returned to the store a minute or two before 10:00 p.m. Schlaugh opened the door to let the driver in and Riney left the premises at that time. When he approached the walk in front of the house in which he resided, he was confronted by Officer Szpond, and he and Szpond returned to the liquor store. While in the store and during the course of the investigation, the officer looked at the clock on the wall and all agreed that it was 10:10 p.m.

Detective Terrence F. Brennan, who is assigned to the Confidential Squad, testified that he interviewed Schlaugh at the police station relative to the alleged "after hours" sale to Riney. He handed Schlaugh Officer Szpond's report to read and after Schlaugh read the report, Schlaugh said:

"...that there was a little mistake in it as to the time ... He said it was closer to ten after ten than thirteen minutes after ten when Mr. Riney left the premises."

Schlaugh said that he sold the liquor at 9:45 or 9:50 p.m. and that he was ignorant of the fact that it would be illegal for the patron to leave after the closing hour.

Police Officer James Winters testified that he was assigned to interview William Riney concerning the occurrence of July 24. Upon being questioned as to what Riney said of the occurrence, the officer testified:

"He informed me that he arrived at the liquor store sometime after nine-thirty. He ordered a six-pack of soda and a bottle of Scotch, and he remained in the store speaking to the salesman. He was in the store at ten o'clock at which time the salesman locked the door and he remained in the store. They were having a discussion, and at approximately ten-thirteen or ten-fifteen, thereabouts, the delivery man returned to the store and knocked on the door. As the salesman opened the door for the delivery man, this is when Mr. Riney left the premises."

Despite an intensive cross examination, Winter's testimony did not vary. I find as a fact that Officer Szpond's testimony, adequately buttressed by the testimony of the other officers of the local Police Department and by the physical evidence of the card used by the department to record the time that calls are received, established that the licensee was guilty as charged.

Upon carefully weighing the testimony presented herein, I conclude that appellant has failed to sustain the burden of establishing that respondent's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is, therefore, recommended that an order be entered affirming the action of respondent, dismissing the appeal, vacating the order heretofore entered staying the said suspension, and fixing the effective dates for the suspension imposed by respondent and stayed pending the entry of further order herein.

#### 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 30th day of December 1970,

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

ORDERED that my order dated November 15, 1969, staying respondent's order of suspension pending the determination of the appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License D-5, issued by the City Council of the City of Elizabeth, for premises 611-613 Westfield Avenue, Elizabeth, be and the same is hereby suspended for fifteen (15) days commencing at 9:00 a.m. Tuesday, January 12, 1971, and terminating at 9:00 a.m. Wednesday, January 27, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

4. APPELLATE DECISIONS - COLASANTI v. HARRISON.

CHARLES C. COLASANTI, )

Appellant, )

v. )

ON APPEAL  
ORDER

MAYOR AND COUNCIL OF THE TOWN )

OF HARRISON, )

Respondent.

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Joseph F. McCarthy, Esq., Attorney for Appellant  
Walter Michaelson, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from the action of the respondent whereby on June 23, 1970, it denied the application of appellant for renewal of his plenary retail consumption license for the 1970-71 licensing period for premises 419 Warren Street, Harrison; and

It appears that a stipulation was entered into by the attorneys for the respective parties and filed with this Division on November 17, 1970, wherein it appears that respondent approved a person-to-person transfer of License C-27 from appellant to Carol A. Sarnel; and

It further appears that the said attorneys have consented to a dismissal of the appeal filed herein;

Accordingly, it is, on this 6th day of January 1971,

ORDERED that the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON -  
 LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )

SOMERSET INN, INC. )  
 507 Hamilton Street )  
 Franklin Township (Somerset Co.) )  
 PO Somerset, N. J. )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption )  
 License C-12, issued by the Township )  
 Council of the Township of Franklin. )

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 Ozzard, Rizzolo, Klein, Mauro & Savo, Esqs., by George A.  
 Mauro, Jr., Esq., Attorneys for Licensee  
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

By order dated September 23, 1970, the Director vacated  
 an order of suspension heretofore entered herein, upon a plea  
 of non vult to the charge herein:

"On May 9, 1970, you sold, served and delivered  
 and allowed, permitted and suffered the sale,  
 service and delivery of alcoholic beverages,  
 directly or indirectly, to a person actually or  
 apparently intoxicated and allowed, permitted and  
 suffered the consumption of alcoholic beverages  
 by such person, in and upon your licensed premises; in  
 violation of Rule 1 of State Regulation No. 20."

This order authorizing the change of plea of not guilty  
 was entered after the licensee's present attorney advised the  
 Director that the confessional plea was entered in error by the  
 licensee [then appearing pro se] resulting from a misunderstanding.  
Re Somerset Inn, Inc., Bulletin 1938, Item 10. The matter,  
 accordingly, was set down for hearing.

The Division's presentation was developed through the  
 testimony of two ABC agents who were specifically assigned to  
 investigate alleged ABC violations at the subject premises.

The testimony of ABC agent P, which by stipulation of  
 counsel was corroborated by ABC agent D, may be summarized as  
 follows:

On May 9, 1970, at approximately 10:30 p.m. the agents  
 entered the said premises and seated themselves at the bar.  
 They observed a patron, later identified as Edward Yanchuck,  
 engaged in a loud, boisterous argument with several other male  
 patrons. It was the opinion of the agents that he was intoxicated  
 because of his general appearance and actions: his clothes were  
 disheveled, his pants were down below his hips, his hair was all  
 mussed up. Shortly after they entered the premises, Yanchuck  
 staggered toward the men's room, and when he returned he

staggered toward the bar. When he arrived at the bar he continued his argument with the other patrons.

At this point, Yanchuck was served a glass of Nemes Kadar Hungarian wine and club soda, for which he paid the bartender. Once again he staggered toward the men's room and on his return walking unsteadily, he took his position at the bar and nodded his head on the bar as if in a daze. Thereupon, he started to sway and fall back, knocking down a stool, and hit his head. Several patrons picked him up and placed him back on the seat at the bar. At this point, the bartender, later identified as John Varga, stated "I am not going to serve him any more. He had too much already."

Thereupon the agents identified themselves, seized the unconsumed portion of Yanchuck's drink and requested the bartender and Yanchuck to accompany them to the office area in the rear of the premises in order for them to complete their investigation. Actually Yanchuck was helped to the office because he "wasn't too steady on his legs." At that point during the investigation Yanchuck was asked for identification. The witness described his condition:

"He was incoherent. He was just mumbling. He tried to get his wallet out of his pocket, which must have took ten minutes. When he finally did get it out and we got his driver's license I asked him what day he was born. He couldn't understand. I asked him a couple of times. All he said was, 'I want to see my business agent'."

The principal officers of the corporate licensee, Lawrence Collier and Anthony J. Pritz, were summoned by the bartender and arrived shortly thereafter. They observed the condition of Yanchuck and stated to the agents that if they were present they would never have permitted Yanchuck to become intoxicated. The bartender also admitted to the agents that Yanchuck was intoxicated, that he knew he lived upstairs, and he wasn't driving, that was why he continued to serve him alcoholic beverages.

Varga admitted that Yanchuck had been on the premises since 6:00 p.m. and had consumed three bottles of wine.

On cross examination, the agents denied that Yanchuck had mentioned to them that he had been to the doctor early that day and had been treated for a back condition.

They also asserted that Collier and Pritz arrived at the premises at about midnight. Yanchuck was consuming wine when they first entered the premises and was served the second drink in their presence after he returned from his trip to the men's room at 11:40 p.m. When Yanchuck fell to the floor they thought he was injured because he apparently hit his head on a beer cooler. From their long experience they were both satisfied that he was definitely intoxicated.

Lawrence Collier, testifying on behalf of the licensee, gave the following account: He is a fifty percent stockholder in the said license and was summoned to the premises by his associate, Pritz. When he arrived at the premises, he spoke to Agent D, who informed him that Yanchuck had not been served any

alcoholic beverages since about 11:05 or 11:10 p.m. and that he had been refused service by the bartender because of his condition.

From his observation he did not believe that Yanchuck was intoxicated although "his eyes were quite dilated. His speech was fair, I wouldn't say blurred but fair. He didn't sound intoxicated." He denied telling the agent that he would not have served Yanchuck in his condition. He admitted saying that Yanchuck's "eyes look terribly dilated, something wrong with him, but I didn't make any appraisal as to intoxication, no."

Anthony J. Pritz, the other principal officer of the corporate licensee testified that he arrived at the premises at about 1:00 a.m. on May 10, 1970 and was assured by the agents that this was not a serious matter; that Yanchuck had fallen and hit his head against the beer cooler. He noted that Yanchuck was very upset, due undoubtedly to the blow he received when he fell on the floor.

John Varga, one of the bartenders on duty on the date alleged herein, stated that he went on duty at approximately 6:00 p.m. The agents arrived at 6:30 p.m. and during their stay on the premises consumed about six or seven beers. Yanchuck arrived at around 6:00 p.m. and was served spritzers, which he defined as a mixed drink, half wine and half club soda.

During the course of the evening, he recalled serving him four or five drinks, and the other bartender served him three or four drinks. After Yanchuck consumed these drinks, he noticed that Yanchuck "appeared very tired." He then refused to serve him any additional alcoholic beverages, but did serve him club soda. He denied that there was any loud argument between Yanchuck and the other patrons. He explained that when Yanchuck returned from the men's room he seated himself at the bar. Shortly thereafter, he tried to get up because his back was bothering him and he slipped off the stool and hit his head. Yanchuck's eyes were drooping and he felt that he was merely tired because he had worked "all night" at his regular employment.

On cross examination he admitted telling Yanchuck that he had had enough to drink and that he was not going to serve him any more.

Edward A. Yanchuck gave the following account: He is a tenant in that building and frequently patronizes this establishment.

On this day, he worked until 1:30 a.m. and returned home. His back was bothering him so he went to his doctor that morning and received medical treatment; "...he gave me a shot in the back and what not to relieve the pain in the back." He also received pills for the pain.

When he entered the tavern he started to drink spritzers and assumed that he had about ten drinks during that evening. He was feeling "woozy" and started to lose his balance, whereupon he fell off the stool on to the "ground". Several people picked him up. He admitted that he was arguing with one of the patrons and that "shook" him up. When he went to the office with the agents he was asked to produce identification and had difficulty finding the identification because his wallet was full

of papers. He did not think that he was intoxicated because he considers that his condition was due to "A combination of the drugs I was taking plus the shots I was given by the physician."

On cross examination, he admitted that he did not mention anything about drugs or a visit to the doctor to the agents upon confrontation. However, he insisted that he had been to the doctor at about 10:00 a.m. that morning.

Referring to his argument with the other patron he admitted that his conversation was not normal "...but I wouldn't say that it was real loud either."

In rebuttal ABC agent D produced a time sheet which shows that he arrived at the premises at 10:25 p.m. He emphatically denied that he and his partner entered the premises at 6:30 p.m. The time sheet supported his assertion that he did not arrive in the vicinity of these premises until 10:25 p.m. Finally he stated that the agents were in the office of these premises from 12:20 a.m. until they departed and that Pritz and Collier arrived about fifteen or twenty minutes thereafter.

Doctor Howard E. Adler was not subpoenaed by the licensee and did not testify at this hearing. However, a written statement by the doctor set forth that Yanchuck was treated by him for his back condition on April 10, April 13, May 2, May 15, June 5 and June 20, 1970. The doctor's certificate does not show any treatment given to this person on the date alleged herein.

In adjudicating this matter we are guided by the long 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).

I have had the opportunity to observe the demeanor of the witnesses, and to assess their testimony. Testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super 1; Spagnuolo v. Bonnett, 16 N.J. 546 (1956). 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. The trier of facts may disbelieve a witness whenever there is reason therefor. Meyer v. Blocker, 120 N.J. Eq. 35.

From my evaluation of the testimony herein, I am persuaded that the ABC agents gave a forthright and accurate recital of the facts in support of the said charge. The agents pursued this investigation upon a specific assignment and there is no suggestion in the record that they had any preconceived prejudice against the licensee. Their account of what transpired and their testimony that Yanchuck was served alcoholic beverages while actually or apparently intoxicated appears fully supported by their observations and detailed description of his demeanor and conduct.

On the other hand I find the testimony of the licensees'

witnesses to be inconsistent and, indeed, incredible. For instance, Varga, the bartender, denied that there was any loud argument between Yanchuck and some other patrons. Yet Yanchuck readily admits that he engaged in just such argument with another patron in a loud manner. Further, Varga denies that Yanchuck was intoxicated, yet he acknowledges that, at some time during the evening, he determined that Yanchuck had had enough to drink, and thereafter served him club soda.

I take this testimony with a grain of salt since it does violence to my sense of reality under the facts and circumstances herein.

Yanchuck's testimony is similarly contradictory under scrutiny. I disbelieve his explanation of why he felt dizzy and fell to the ground during the late evening hours on this date. He claims that he was not intoxicated, but that it was due to certain medication which he had taken earlier that day. He states that he was treated by Doctor Adler at 10:00 a.m. Yet the certificate of Doctor Adler clearly establishes that Yanchuck did not receive any treatment nor did he visit the doctor on May 9, 1970.

Further, this witness testified that he had had at least ten drinks of alcoholic beverages (wine and club soda). It was abundantly evident that he was unable to absorb that many drinks, without becoming intoxicated.

In any event, the description by the agents of Yanchuck staggering to and from the men's room; his hair disheveled; his pants hanging below his hips; swaying; knocking down a stool; unable to rise unassisted; and finally, under questioning by the agents, unable to intelligibly respond to their questions, leaves no doubt that this person was intoxicated.

The agents had testified that the principal officers admitted to them that they would not have permitted service of alcoholic beverages to Yanchuck in his condition, although this is denied by them. Their testimony does not have the ring of truth.

With respect to the service of alcoholic beverages to persons actually or apparently intoxicated it is well to re-state the comment of then-Commissioner Burnett in Re Pasukonis, Bulletin 173, Item 12:

"Serving alcoholic beverages to customers who have all too apparently consumed their 'quota' is a very poor way of building up the liquor business to a respected and high plane.... Conscientious licensees evince as much disgust at the practice of serving a 'drunk', who may later stagger out into the public street, as to the general public who witness such a pitiable spectacle.

"...To permit such practices to continue without adequately deterring punishment invites disaster."

And, as the court stated in Rappaport v. Nichols, 31 N.J. 188, at p. 201-202 (Sup. Ct. 1959):

"In furtherance of the legislative policy, the Division of Alcoholic Beverage Control has by its Regulation No. 20, Rule 1, provided that no licensee

shall permit or suffer the sale to or consumption by any person actually or apparently intoxicated! It seems clear to us that these broadly expressed restrictions were not narrowly intended to benefit ... intoxicated persons but were wisely intended for the protection of members of the general public as well."

Thus, it is to the public's best interest that a licensee be held strictly accountable for keeping his place and his patronage under proper control. Seidel v. Upper Freehold, Bulletin 1246, Item 1; Re Sabe, Inc., Bulletin 1706, Item 2.

After carefully considering the testimony herein, the conclusion is inescapable that the charge has been established by a fair preponderance of the credible evidence, indeed, by substantial evidence. Accordingly, I recommend that the licensee be found guilty of the charge. Cf. Augie's Tavern, Inc., Bulletin 1889, Item 4.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for twenty days. Re Petitó, Bulletin 1849, Item 4.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorneys for the licensee pursuant to Rule 6 of State Regulation No. 16.

I have carefully considered the matters contained in said exceptions and find that these matters have either been considered by the Hearer in his report or are without merit.

I particularly want to note that the testimony of Yanchuck that he was treated by Dr. Adler on the morning of the date charged herein is contrary to the Doctor's affidavit which omits any reference to any alleged treatment given to Yanchuck on the said date. Thus, even if the Doctor were produced personally, his testimony would be of no value with reference to the actual condition of Yanchuck on the date and time alleged herein.

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

Accordingly, it is, on this 8th day of January 1971,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Council of the Township of Franklin to Somerset Inn, Inc., for premises 507 Hamilton Street, Franklin Township (Somerset County), be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Friday, January 22, 1971, and terminating at 2 a.m. Thursday, February 11, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against

VENEZIA'S TAVERN, INC.  
1057-59-61 West Side Ave.  
Jersey City, N. J.

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-87 (for 1969-70 and 1970-71 license periods), issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

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Louis E. Saunders, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On October 29, 1970 an order was entered herein suspending the license for sixty days effective November 9, 1970, after finding the licensee guilty of allowing, permitting and suffering gambling, viz., the making and accepting of bets in a lottery, commonly known as the "numbers game", and on horse races. Re Venezia's Tavern, Inc., Bulletin 1946, Item 2.

Prior to the effectuation of the suspension, upon appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal. The court affirmed the action of the Director on January 11, 1971. In re Venezia's Tavern, Inc. (App.Div. 1970), not officially reported. The suspension may now be reimposed.

Accordingly, it is, on this 11th day of January 1971,

ORDERED that Plenary Retail Consumption License C-87, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Venezia's Tavern, Inc., for premises 1057-59-61 West Side Avenue, Jersey City, be and the same is suspended for sixty (60) days, commencing at 2 a.m. Thursday, January 14, 1971, and terminating at 2 a.m. Monday, March 15, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

7.

ACTIVITY REPORT FOR JANUARY 1971

ARRESTS:

Total number of persons arrested - - - - -		24
Licensees and employees - - - - -	11	
Bootleggers - - - - -	1	
Others (Minors) - - - - -	12	

SEIZURES:

Distilled alcoholic beverages - gallons - - - - -		5,795
Wine - gallons - - - - -		7,775
Brewed malt alcoholic beverages - gallons - - - - -		35.71

RETAIL LICENSEES:

Premises inspected - - - - -		597
Premises where alcoholic beverages were gauged - - - - -		479
Bottles gauged - - - - -		9,029
Premises where violations were found - - - - -		136
Violations found - - - - -		207
Unqualified employees - - - - -	52	No Disposal Permit - - - - - 6
Application copy not available - - - - -	37	Other mercantile business - - - - - 2
No Form E-141-A on premises - - - - -	29	Prohibited signs & practices - - - - - 1
Form E-141-A incomplete - - - - -	29	Other violations - - - - - 51

STATE LICENSEES:

Premises inspected - - - - -		7
License applications investigated - - - - -		8

COMPLAINTS:

Complaints assigned for investigation - - - - -		381
Investigations completed - - - - -		346
Investigations pending - - - - -		321

LABORATORY:

Analyses made - - - - -		104
Refills from licensed premises - bottles - - - - -		73
Bottles from unlicensed premises - - - - -		3

IDENTIFICATION:

Criminal fingerprint identifications made - - - - -		5
Persons fingerprinted for non-criminal purposes - - - - -		287
Identification contacts made with other enforcement agencies - - - - -		228

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -		6
Violations involved - - - - -		6
Sale to minors - - - - -	4	
Sale during prohibited hours - - - - -	2	
Cases instituted at Division - - - - -		24
Violations involved - - - - -		32
Sale during prohibited hours - - - - -	8	Permitting immoral acty. on prem. - - - - - 3
Sale to minors - - - - -	6	Beverage Tax Law non-compliance - - - - - 2
Possessing liquor not truly labeled - - - - -	4	Perm. illegal acty. (narcotic) on prem. - - - - - 1
Fraud in application - - - - -	4	Fail. to close prem. during proh. hrs. - - - - - 1
Permitting misc. gambling on prem. - - - - -	3	
Cases brought by municipalities on own initiative and reported to Division - - - - -		11
Violations involved - - - - -		13
Sale to minors - - - - -	5	Fail. to afford view into premises
Fail. to close prem. dur. proh. hrs. - - - - -	2	during prohibited hours - - - - - 1
Sale during prohibited hours - - - - -	1	Conducting business as a nuisance - - - - - 1
Permitting gambling on premises - - - - -	1	Perm. loitering by minors unaccomp. - - - - - 1
Permitting brawl on premises - - - - -	1	by adults (local reg.) - - - - - 1

HEARINGS HELD AT DIVISION:

Total number of hearings held - - - - -		52
Appeals - - - - -	8	Seizures - - - - - 2
Disciplinary proceedings - - - - -	29	Tax revocations - - - - - 4
Eligibility - - - - -	9	

STATE LICENSES AND PERMITS:

Total number issued - - - - -		1,179
Licenses - - - - -	3	Wine permits - - - - - 6
Solicitors' permits - - - - -	52	Miscellaneous permits - - - - - 311
Employment permits - - - - -	244	Transit insignia - - - - - 179
Disposal permits - - - - -	78	Transit certificates - - - - - 20
Social affair permits - - - - -	286	

OFFICE OF AMUSEMENT GAMES CONTROL:

Licenses issued - - - - -	57
Enforcement files established - - - - -	5

RICHARD C. McDONOUGH  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

Dated: February 8, 1971

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

In the Matter of Disciplinary Proceedings against

GIULIANO'S TAVERN, a N.J. Corporation  
685-687 No. 6th St.  
Newark, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-263, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

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Mario V. Farco, Esq., Attorney for Licensee  
Francis P. Meehan, Jr., Esq., Appearing for Division

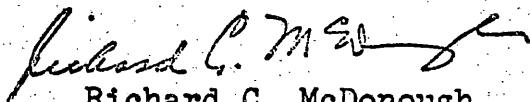
BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers days in November 1970 it permitted the 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 O'Grady, Bulletin 1939, Item 4.

Accordingly, it is, on this 12th day of January 1971,

ORDERED that Plenary Retail Consumption License C-263, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Giuliano's Tavern, a N. J. Corporation, for premises 685-687 No. 6th St., Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, January 19, 1971, and terminating at 2 a.m. Monday, March 15, 1971.



Richard C. McDonough  
Director