Ambrose

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

BULLETIN 1826 November 18, 1968

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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 1826 November 18, 1968

1. APPELLATE DECISIONS - ONDINA CORP. v. NEWARK.

ONDINA CORP., t/a Luso-American Tavern & Grille, Appellant,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	)	

Myron P. Maurer, Esq., Attorney for Appellant
Philip E. Gordon, Esq., by Anthony J. Iuliani, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of respondent (hereinafter Board) which suspended appellant's license for twenty days effective May 13, 1968, after finding appellant guilty of charges alleging that it sold or permitted the sale, service and delivery of alcoholic beverages to one Ann Marie ---, a minor, and allowed, permitted and suffered the consumption of the said alcoholic beverages by the said minor on the licensed premises on February 3, 1968, in violation of Rule 1 of State Regulation No. 20.

Appellant's petition of appeal alleges that the action of the Board was erroneous and against the weight of the evidence.

The Board's answer denies the said allegation and states that its decision was based upon the factual testimony before it from which it, "in its sound discretion, concluded that the penalty imposed substantiated such action."

Upon the filing of the appeal, the Director entered an order staying the Board's order of suspension until the entry of a further order herein.

The appeal was heard de novo upon the transcript of the proceedings before the Board and upon additional testimony presented on behalf of appellant.

The record before me discloses the following: ABC Agent M entered the licensed premises on February 3 at about 10:55 p.m. At about 11:05 p.m. the female minor was first observed entering the premises, and seated herself at the bar. She ordered a rum and coke from the bartender and then went into the ladies' room. Upon returning to the bar, she re-ordered the drink but the bartender did not serve her at that time. Shortly thereafter,

her two male friends who were seated with her at the bar ordered drinks, including a rum and coke for her. After she had consumed part of it, the agent confronted her and seized the said drink. The contents of the drink were analyzed by the Division chemist, who established that it was an alcoholic beverage fit for beverage purposes.

The agent stated that after the minor bought the drink, he left the premises, contacted his partner who returned with him to the premises, and questioned the said minor. She showed him a document purporting to represent her age as being above twenty-one.

ABC Agent F testified that he entered the premises upon being summoned by Agent M. He questioned the minor, who insisted that she was 22 years of age and showed him identification. He was asked:

> "Q Did you asd him [the bartender] whether he had obtained from the minor any cards dealing with her age?
> A No, I did not.
> Q Did you ask him whether or not he obtained from her any written statement regarding her age?
> A No."

He further stated that the minor showed him an I.D. card which, in his opinion, "did bear her name, address and her age [22]."

Ann Marie --- testified that she was born on May 6, 1950, that she is 5 feet 6-3/4 inches tall and weighs 185 pounds. On a prior occasion during the latter part of January or February, she showed the bartender at these premises identification which reflected that she was 22 years of age. The bartender then on duty (whom she could not identify) requested that she sign a representation that she was over 21 years of age and, in the presence of Tony Pinho who witnessed her signature, she signed the said representation.

On February 3 she entered the premises and showed the bartender her identification which reflected her age as 22 years. Cross-examined as to why she did not set forth at the time of her appearance before the Board that she had theretofore signed a written representation of her age, she answered, "I forgot all about it. I was all nervous and scared about it." She explained additionally that the representation was not signed for the bartender on the date charged, that the representation was signed for another bartender known to her as "Manuel". She was never asked whether she signed anything for anyone other than Mr. Manuel. When she signed the writing, she understood that she falsely represented her age for the purpose of inducing the bartender to serve her alcoholic beverages.

Anthony Pinho, Jr. testified that he was a patron in these premises sometime in January when Ann Marie was sitting at the bar. Manuel Simoes, the bartender, asked him to witness her signature to a slip representing that she was over the age of 21 and he, accordingly, did so. On cross examination he stated that Manuel Marques was also on duty at that time, but was at the other end of the bar taking care of other patrons.

After the hearing, a motion was made by appellant's attorney to admit into evidence the written representation and statement of age of this minor, which he had inadvertently failed

to offer at the time of this hearing. A copy of the said notice of motion was served upon counsel for the Board, who, I am advised, does not and did not object to the grant of the said motion. In fairness to appellant, the statement will be received in evidence. It contains, in part, the following:

> "I hereby represent and state for the purpose of inducing ONDINA CORP., trading as LUSO AMERICAN BAR & GRILL, 71-71½ Ferry Street, Newark, N. J., to sell, serve or deliver alcoholic beverages to me, that I was born on May 6, 1945 and am 22 years of age."

It was signed by the minor and witnessed as hereinabove set forth.

The guiding rule in these matters is that a 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 credible evidence. 34 C.J.S. Evidence, sec. 1042; Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373. While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Cf. Walter v. Alt, 152 S.W.2d 135, 141.

In order to establish a complete defense to these charges, R.S. 33:1-77 provides that appellant must affirmatively prove that the minor falsely represented herself in writing to be of age; that the minor's appearance was such that an ordinary prudent person would believe her to be of age; and that the sale was made in reliance on such written representation and appearance and in the reasonable belief that the minor was 21 years of age or over. The representation in writing required by the Alcoholic Beverage Law is a writing made by the minor at or prior to the time of sale or service. See Special Note at p. 86 of Rules and Regulations of the Division, in explanation of Rule 1 of State Regulation No. 20.

I have had an opportunity to observe the appearance and the demeanor of the said minor as she testified at this de novo hearing. Her height and weight give her the appearance of being a person of statutory maturity and I find that an ordinary prudent person would believe her to be 21 years of age. I also note that she was quite nervous and somewhat slow-witted; it is probable that in the atmosphere of confrontation, she was confused and nervous and then failed to mention the false representation which she had made on the prior occasion.

It should be noted that when the Board reached its determination, it did not have before it the written representation of age and the supportive testimony with respect thereto which was produced at this hearing. However, at this de novo hearing, the determination must be based not only upon the matters before the Board, but also upon the additional proofs herein adduced. See Florence Methodist Church v. Florence Township, 38 N.J. Super. 85, 90.

Under the totality of the evidence presented, including the written representation and the unequivocal testimony of the witness to the signing thereof, I cannot say that I am persuaded with a reasonable certainty that the charges have been proved.

In disciplinary proceedings, a preponderance of the evidence is necessary to support and justify a finding of guilty and doubtful questions of fact must be resolved in appellant's favor. Re Keansburg Steamboat Company, Bulletin 1287, Item 2. Cf. Perlowski v. Jersey City, Bulletin 1458, Item 1; Lysaght v. Denville, Bulletin 1490, Item 1; Re Kit-Kat Club, Inc., Bulletin 1697, Item 5.

I conclude that the finding of guilt was not supported by a fair preponderance of the evidence on the total record now before me. It is, therefore, recommended that an order be entered reversing the action of the Board and dismissing the said charges.

Conclusions and Order

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

Having carefully considered the entire record, including the transcripts, the exhibit and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 8th day of October 1968,

ORDERED that the action of respondent be and the same is hereby reversed and the charges be and the same are hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

2. PETITION PROCEEDINGS - DISCRIMINATION AGAINST WHOLESALER - PETITION DISMISSED.

HOFFMAN IMPORT & DISTRIBUTING COMPANY, a corporation,

PETITIONER,

v.

S. S. PIERCE CO., a corporation,

RESPONDENT.

SUPPLEMENTAL CONCLUSIONS AND ORDER

Saltzman and Swartz, Esqs., by Edward H. Saltzman, Esq., Attorneys for Petitioner
Norman Bruck, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Supplemental Hearer's Report

On August 21, 1968, Conclusions and Order were entered herein directing that a supplemental hearing be held in this matter wherein the petitioner Hoffman Import & Distributing Company (hereinafter Hoffman) sought relief under R.S. 33:1-93.6-10. Hoffman Import & Distributing Company v. S. S. Pierce Co., Bulletin 1818, Item 3.

In its petition Hoffman (a duly licensed New Jersey wholesaler of alcoholic beverages) contended that Pierce (a distributor

and importer of alcoholic beverages) discriminated against it in the sale of nationally advertised alcoholic beverages and sought to obtain an order determining that there was such discrimination; directing Pierce to sell alcoholic beverages to Hoffman on terms usually and normally required by Pierce; and that in the event Pierce refuses to comply with the terms of said order, a further order be entered in accordance with the provisions of the aforementioned statute.

Following the submission of the Hearer's report recommending the entry of such order, exceptions to the Hearer's report and answers to the said exceptions were filed and oral argument was had before the Director, in accordance with the provisions of Rule 5 of State Regulation No. 15A.

In his Conclusions and Order, the Director noted that the exceptions of Pierce took "issue" with the fact that the Hearer precluded Pierce from cross-examining petitioner's witnesses, and also disputed factual findings of the Hearer, particularly the finding that Pierce's products are "nationally advertised."

It was also noted that since Pierce (a corporation) appeared pro se, its vice president, who appeared on its behalf and who was not an attorney, was not permitted to cross-examine Hoffman's witnesses. He was, however, otherwise permitted to participate fully in the conduct of the hearing. Pierce thus sought to reopen the hearing for the purpose of cross-examining Hoffman's witnesses.

Although the Director found that Rule 5 of State Regulation No. 15A "is not intended specifically to authorize a corporate party to appear at contested hearings pro se", this has in fact "been the Division practice."

Accordingly, the Director concluded that a supplemental hearing must be held to afford Pierce the right to cross examination of Hoffman's witnesses and that at the hearing the "parties may also introduce additional testimony on the question whether respondent's products are 'nationally advertised', particularly as to (1) the actual geographical area of distribution of the editions of the Boston Herald newspaper, Life magazine, The Saturday Evening Post and Sports Illustrated which carried its advertisements of the products in question, (2) the particular products so advertised and (3) the period of time these products were so advertised."

At the supplemental hearing, Hoffman's attorney stated that it did not intend to introduce any additional testimony and was willing to stand on the testimony given at the previous hearing. Further, he stated that Hoffman's witnesses refused and would refuse to subject themselves to cross examination. He argued that the original hearing took place more than a year before and that "it would be manifestly unfair to question these witnesses on cross examination for testimony given over a year ago." He added that he did not appear as attorney of record at that time and that he has made an effort to obtain the transcript "which I am unable to get." Accordingly, he refused to participate in these proceedings and thereupon withdrew from the hearing.

So far as the transcript is concerned, I consider the allegation that he was "unable" to get the transcript of the prior proceeding to be irresponsible and inconsistent with his own statements. He had ample opportunity to obtain a copy from

the court reporter, or to examine the transcript which is always available and was available to him at the Division office. More likely, he failed to take advantage of such availability because he admits that "I did not feel it was necessary [to have the transcript]. I think to August 22 or 21, the date of the decision for the purposes of taking cross examination, I did not have a transcript of any kind, never thought it was necessary, because in the factual situation and in the memorandum which I submitted to the Division I assumed and still assume the testimony taken before you as Hearer I abide by all that testimony and it was unnecessary for me to go into the factual aspects of the matter because I felt that the factual aspects heard by you as the Court are certainly satisfactory to me."

I find the argument advanced by Hoffman's attorney for refusing to participate in this supplemental hearing irrelevant and without merit.

Hoffman's attorney argues that the time lapse between the original hearing and the supplemental hearing encroached upon his client's rights to a fair determination of this matter. As to this, I find nothing in the record to support any charge of prejudice suffered by Hoffman during this period, nor has there been any contention by Hoffman of prejudice by reason of the time lapse.

Hoffman seeks affirmative relief, and is certainly imperatively obligated to abide by the order of the Director. Its failure to submit its witnesses to cross examination in definace of and in direct violation of the terms of the order requires, and I so recommend, that an order be entered dismissing said petition.

Furthermore (and although not necessary to disposition of this matter), it is appropriate to add that testimony adduced at this supplemental hearing on behalf of Pierce with respect to the question whether its products are "nationally advertised" now clearly establishes that they are not so nationally advertised and thus mandates the denial of the petition.

Edwin R. Dewing, Jr., called as a witness on behalf of Pierce, testified as follows: He is vice president of Harold Cabot and Company of Boston, and is account supervisor in the Pierce account. He supervises the marketing and advertising recommendations for Pierce, which is primarily a distributor of canned goods in the Boston area. He stated that until 1964 Pierce had only one brand of liquor--the S.S. Pierce Red Label Bourbon--which was advertised in Massachusetts papers primarily, and occasionally in New Hampshire and Maine. Starting in 1964 Pierce embarked upon an advertising program consisting of rotogravure advertisements in the three Boston Sunday newspapers. It had some subway posters in the Boston area and avertised in the northeastern regional issues of Life magazine. He explained that Pierce advertisements appeared in the edition of this magazine circulated in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island and upper New York State. Life magazine, The Saturday Evening Post and Sports Illustrated, all having national circulation, permit companies to advertise regionally, and those advertisements are carried only in those limited regions --and in no others.

Similarly, advertisements were placed in the regional editions of The Saturday Evening Post in 1965 and 1966, which were distributed in the same area. At no time did Pierce advertise the Talisman manhattan cocktails, the S.S. Pierce

chablis or S.S. Pierce gin. He further explained that the Sunday Boston Herald and Traveller is a regional newspaper which has a circulation in a thirty-mile radius of Boston and is not considered a national advertising medium. In 1965 Pierce also advertised in Sports Illustrated, in its regional edition distributed in New Hampshire and Massachusetts; and subsequent editions distributed in sixteen states carried the last of the advertisements on October 11, 1966. In 1965 and 1966, Pierce spent a total of $200,000 for advertising and allocated no money for advertising after 1966.

Finally, he concluded that, in his opinion, in order to have national advertising in a national medium, "you must have distribution in at least seventy-five percent. of the major markets of the United States with your distribution." S.S. Pierce distributed only one market in the United States, namely, the New England market, or eight per cent. of the total national market.

On the basis of this supplemental testimony given by a witness with long experience and expertise in advertising matters, I am persuaded, and find, that Pierce's products are not nationally advertised brands of alcoholic beverages and thus are not embraced within the orbit of the applicable statute.

It is, accordingly, recommended that an order be entered dismissing the said petition.

Conclusions and Order

No exceptions were taken to the supplemental Hearer's report pursuant to Rule 5 of State Regulation No. 15A.

Having carefully considered the entire record, 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 recommendation.

Accordingly, it is, on this 9th day of October, 1968,

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

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against	)	
SAMUEL BERELMAN, INC. t/a Payton's Place 629 Ferry Avenue Camden, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-160 for the year 1967-68 and C-196 for the year 1968-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden	)	

Richman, Berry & Ferren, Esqs., by Henry J. Tyler, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On March 30, 1968, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of a pool game for stakes of money; in violation of Rule 7 of State Regulation No. 20."

The Division relied upon the testimony of two ABC agents in substantiation of the charge.

Agent C testified that he entered the licensed premises (characterized as a neighborhood tavern) on March 30, 1968 at approximately 1 a.m. The interior was described as consisting of two rooms, not divided. The front contains a "long odd-shaped bar" and to the rear "is a general service area, consisting of numerous tables and chairs, a juke box in this area, and also a pool table to the rear of the service area."

Agent B, who had preceded him in entering the tavern, was seated "near the end of the bar close to the service area." C positioned himself to B's left approximately fifteen feet distant from the pool table. In the service area he observed "from time to time four to six patrons, and two males shooting pool in the rear." Three females were tending bar including a female identified as Joan L. Payton, the president of the licensee corporation and a ninety-eight per cent. shareholder. He observed a male known as "Corky", who identified himself to the agent as "Mr. Harry Jones" and who was later identified as Raymond Payton (Joan Payton's husband) "clearing tables of bottles and glasses and return them to the bar, go behind the bar, place empty bottles or empty glasses under the bar, place empty glasses on the drain board, I observed him serve drinks to patrons in the service area, bottles of beer and mixed drinks, and then at times order

drinks from the barmaid Miss Chinn and return the money to her at the bar." Additionally, when last call for drinks was announced, he observed that Payton "locked the rear door, extinguished some of the interior lights, and went to the pool table and terminated that game and turned off the light over the table." Later he saw him checking out the cash register with Mrs. Payton.

When the agent first entered the licensed premises he observed two males (later identified by Payton as Billy Moore and Jimmy Hold) engaged in a game of pool. Corky (Payton) was observed to be standing at the pool table holding paper currency in his hand.

The following significant testimony was then elicited:

"Q Did you see the termination of the first game?
A Yes.
Q What did you observe when the game ended?
A I observed this Mr. Payton, Corky, counting out ten bills on the pool table, and one of the participants, the winner of the game, picked up the bills.
Q What was your next observation?
A I observed both of the participants count out five bills each on the table, and Mr. Payton picked it up and put it in his pocket, and the game resumed.
Q Did you see the end of the second game?
A Yes.
Q Will you tell us what you observed?
A I observed the same routine on that occasion and two other occasions. At one time Corky was away from the pool table performing some duties when he was called by one of the participants because the game had terminated, and he went down and paid the money to the winner. After the last game after the pay-off, which was approximately 1:50, 1:55 a.m., he pulled the light out and told the fellows that was all for tonight."

It was the agent's opinion that Corky was a stake-holder for the participants of this pool game.

Upon confronting Mr. and Mrs. Payton, Mrs. Payton denied being aware of the gambling; Payton merely shrugged his shoulders.

Division agent B corroborated the testimony offered by C. Additionally, he testified that he had been in the licensed premises on March 16, 1968, and observed Corky tending bar.

In defense of the charge, Joan L. Payton testified that she and another female were tending bar on the night in question. Her husband, Raymond Payton (also known as Corky) was claimed by her as not working there that night. He was "just wiping the tables off. He had gone to get change for me, and he was just there keeping every one quiet ... he could have been serving tables."

She did not and could not see money on the pool table. The pool table was on a raised platform and the top of the table was recessed. She informed C that she does not permit gambling in the licensed premises.

After reviewing the factual complex presented herein, I perceive that two basic issues are presented for adjudication. First, was Raymond Payton an employee of the corporate licensee as construed by Division precedents and, second, has the Division met the burden of proving the licensee guilty by a fair preponderance of the credible evidence.

In considering the second question first, I observe that it is a 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).

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 reviewing the testimony I find that the testimony of the Division agents C and B, depicting the playing of pool for money and further depicting that Raymond Payton was acting as a stakeholder for the players, was not only explicit and convincing but was also uncontradicted by the licensee.

In adjudicating the first question, I again find that the testimony of the agents, wherein they clearly depicted Raymond Payton performing various duties commonly performed by an employeee of a tavern premises (which I have quite fully set forth), clearly and convincingly demonstrates that Payton was an employee of the licensee corporation within the intendment of the Division rules and regulations.

In Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948), the court, in considering the matter of employment, stated (p. 255):

> "Webster defines the word 'employ:' 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.' The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts. Mr. Justice Perskie has emphasized this judicial determination in Cino v. Driscoll (Supreme Court, 1943), 130 N.J.L. 535, 540, where he said:

"'Moreover, the Legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N.J.L. 329; 22 Atl. Rep. (2d) 523.'"

It therefore follows that Payton's conduct is the responsibility of the licensee. It is a well established and fundamental principle that a licensee is responsible for the misconduct of persons employed and is fully responsible for their activities during their employment on licensed premises. In re Olympic, Inc., 49 N.J. Super. 299; In re Schneider, 12 N.J. Super. 449; Rule 33 of State Regulation No. 20. Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961).

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 convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charge herein.

Licensee has a prior adjudicated record. Its license was suspended twice by the Director as follows: (1) for ten days effective January 8, 1962, for possessing liquor not truly labeled and (2) for thirty-nine days effective April 13, 1964, for false statement (front) in license application. Re Samuel Berelman, Inc., Bulletin 1431, Item 9; Bulletin 1562, Item 3; Bulletin 1569, Item 10.

It is further recommended that the prior record of suspension of license for dissimilar violation in 1962 occurring more than five years ago be disregarded and the license suspended for fifteen days (Re Norato, Bulletin 1807, Item 3), to which should be added five days by reason of the record of suspension for dissimilar violation in 1964 within the past five years (Re Meadow View Inn, Inc., Bulletin 1811, Item 7), or a total of twenty days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee pursuant to Rule 6 of State Regulation No. 16, limited solely to the claim that the Hearer's recommendation of the added five-day penalty by reason of the suspension for dissimilar violation in 1964 was erroneous on the ground that "the violation charged in the previous disciplinary proceeding occurred on June 14, 1962 which is more than five years prior to the alleged instant violation."

As to this, I find the Hearer's recommendation to be consonant with the Division's long-established practice and policy, that is, the five-year period is computed from the date of the commencement of the suspension, rather than the date of the violation resulting in the suspension.

Consequently, having considered the entire record herein, including the transcript of the testimony, the Hearer's report

and the exceptions and argument 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 9th day of October, 1968,

ORDERED that Plenary Retail Consumption License C-196, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Samuel Berelman, Inc., t/a Payton's Place, for premises 629 Ferry Avenue, Camden, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Wednesday, October 16, 1968, and terminating at 2:00 a.m. Tuesday, November 5, 1968.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - FRONT - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against HARILAOS PAPPANASTASIOU, also known as HARRY P. SKOPELITIS t/a Skopas Bar & Grill 225 Brunswick Ave. Trenton, N. J. Holder of Plenary Retail Consumption License C-172, issued by the City Council of the City of Trenton.	CONCLUSIONS AND ORDER

Kelsey, Kelsey & Perlman, Esqs., by Seymour W. Perlman, 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) and (3) alleging that since August 7, 1967, he farmed out his license to one John E.V. Nichols and permitted him to retain all of the profits of the licensed business on payment of a stipulated weekly fee, in violation of R.S. 33:1-25 and 52.

During the pendency of these proceedings the unlawful situation was corrected by termination of the former relationship of the licensee and Nichols and the employment of Nichols as manager on a fixed salary basis.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective November 17, 1958, and again for fifteen days effective April 24, 1961, both for sale during prohibited hours, and for ten days effective April 12, 1965 and again for twenty days effective January 24, 1966, both for permitting minors to loiter on the licensed premises, in violation of local ordinance.

The prior record of suspensions of license for dissimilar violation in 1958 and 1961 occurring more than five years ago disregarded, and the unlawful situation having been corrected, the license will be suspended for twenty days (Re Tied, Inc.,

Bulletin 1796, Item 7), to which will be added ten days by reason of the record of two suspensions of license for dissimilar violation in 1965 and 1966 within the past five years (Re Sajdik, Bulletin 1817, Item 7), 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 14th day of October 1968,

ORDERED that Plenary Retail Consumption License C-172, issued by the City Council of the City of Trenton to Harilaos Pappanastasiou, also known as Harry P. Skopelitis, t/a Skopas Bar & Grill, for premises 225 Brunswick Avenue, Trenton, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, October 21, 1968, and terminating at 2 a.m. Friday, November 15, 1968.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)
FREDERICK A. & MARGARET A. WOOD t/a Grove Inn 207 Walker Street Cliffside Park, N.J.	) CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-15 issued by the Mayor and Council of the Borough of Cliffside Park	)

Louis Eisenstein, Esq., Attorney for Licensees
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to charges (1) and (2) alleging that on divers dates between April 16 and July 3, 1968, they 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 Zarafu, Bulletin 1812, Item 5.

Accordingly, it is, on this 15th day of October, 1968,

ORDERED that Plenary Retail Consumption License C-15, issued by the Mayor and Council of the Borough of Cliffside Park to Frederick A. and Margaret A. Wood, t/a Grove Inn, for premises 207 Walker Street, Cliffside Park, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Thursday, October 17, 1968, and terminating at 3:00 a.m. Wednesday, December 11, 1968.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary Proceedings against EUGENE S. FLAHERTY, JR. 15-17 Ann Street Harrison, N. J. Holder of Plenary Retail Consumption License C-63, issued by the Town Council of the Town of Harrison	CONCLUSIONS AND ORDER

Joseph F. McCarthy, Esq., Attorney for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on September 7, 1968, he 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 Zarafu, Bulletin 1812, Item 5.

Accordingly, it is, on this 15th day of October, 1968,

ORDERED that Plenary Retail Consumption License C-63, issued by the Town Council of the Town of Harrison to Eugene S. Flaherty, Jr. for premises 15-17 Ann Street, Harrison, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, October 22, 1968, and terminating at 2:00 a.m. Monday, December 16, 1968.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - SALE TO A MINOR - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
MONTMARTRE NIGHT CLUB, INC. 2522 Bergenline Avenue Union City, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-59 issued by the Board of Commissioners of the City of Union City	)	

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

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that (1) on June 21-22 and 28, 1968, it permitted gambling, viz., wagering on a Cuban dice game known as "Charade" utilizing a six number laydown board, on the licensed premises, in violation of Rule 7, State Regulation No. 20, and (2) on June 28, 1968, sold drinks of beer to a minor, age 19, 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 Homestead Inn, Inc., Bulletin 1699, Item 1) and on the second charge for fifteen days (Re Hardin, Bulletin 1806, Item 8), 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 14th day of October, 1968,

ORDERED that Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the City of Union City to Montmartre Night Club, Inc. for premises 2522 Bergenline Avenue, Union City, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, October 21, 1968, and terminating at 3:00 a.m. Friday, November 15, 1968.

JOSEPH M. KEEGAN
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL.

In the Matter of Disciplinary Proceedings against	)	
C. & E. Corp. t/a Edghill's Lounge 1700-02-04 Baltic Avenue Atlantic City, New Jersey	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-111 for the year 1967-68 and C-120 for the year 1968-69 issued by the Board of Commissioners of the City of Atlantic City	)	

Feinberg & Ginsburg, Esqs., by Isaac C. Ginsburg, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On April 29, 1968, I entered Conclusions and Order herein suspending the license for ten days effective May 6, 1968, for possession of alcoholic beverages not truly labeled. Re C. & E. Corp., Bulletin 1797, Item 7.

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

On October 15, 1968, the appeal was dismissed by consent. The suspension may now be reimposed.

Accordingly, it is, on this 21st day of October, 1968,

ORDERED that the ten-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-120, issued by the Board of Commissioners of the City of Atlantic City to C. & E. Corp., t/a Edghills Lounge, for premises 1700-02-04 Baltic Avenue, Atlantic City, commencing at 7:00 a.m. Monday, October 28, 1968, and terminating at 7:00 a.m. Thursday, November 7, 1968.

JOSEPH M. KEEGAN
DIRECTOR

9. STATE LICENSES - NEW APPLICATIONS FILED.

Party Tyme Products, Inc.
t/a Party Tyme, Glass Street, Bridgeton, N. J.
Application filed November 7, 1968 for plenary wholesale license.

Delaware Valley Distributors, Inc.
1434 Parkside Ave., Ewing Township, PO Trenton, N. J.
Application filed November 12, 1968 for place-to-place transfer of Limited Wholesale License WL-72 from 403 Samuel Street, Hamilton Township, PO Trenton, New Jersey.

Joseph M. Keegan
Director