

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

May 9, 1967.

BULLETIN 1729

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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 1729

May 9, 1967

1. APPELLATE DECISIONS - SOUTH JERSEY RETAIL LIQUOR STORES  
ASSOCIATION v. CAMDEN and MESTRO.

South Jersey Retail Liquor Stores )  
Association, )

Appellant, )

v. )

ON APPEAL

Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Camden, and John Mestro, )

O R D E R

Respondents. )

----- )  
Richman, Berry & Ferren, Esqs., by Grover C. Richman, Jr., Esq.,

Attorneys for Appellant.

Joseph M. Nardi, Jr., Esq., Attorney for Respondent Municipal  
Board of Alcoholic Beverage Control.

John R. Bennie, Esq., Attorney for Respondent John Mestro.

BY THE DIRECTOR:

Appellant appeals from grant on January 9, 1967 by  
respondent Municipal Board of Alcoholic Beverage Control of  
transfer of Plenary Retail Distribution License D-10 from  
Edward Mattleman, 1705 Broadway, to respondent John Mestro for  
premises 2881 Mt. Ephraim Avenue, Camden.

Prior to the hearing of the appeal, appellant's at-  
torneys advised me by letter dated February 27th that the appeal  
was withdrawn. No reason appearing to the contrary,

It is, on this 2nd day of March 1967,

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

JOSEPH P. LORDI  
DIRECTOR

2. APPELLATE DECISIONS - GETER'S, INC. v. TRENTON.

Geter's, Inc., t/a Geter's Bar, )  
 Appellant, )  
 v. )  
 City Council of the City of )  
 Trenton, )  
 Respondent. )

ON APPEAL  
 ORDER

-----)  
 Teich, Groh and Robinson, Esqs., by William C. Groh, Esq., Attorneys  
 for Appellant.  
 Joseph P. Merlino, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from denial on February 6, 1967,  
 by respondent of its application for transfer of its plenary  
 retail consumption license from premises 601 South Warren Street  
 to premises 301 Third Street, Trenton.

Prior to hearing of the appeal, appellant's attorneys  
 advised me by letter dated March 7, 1967 that the appeal was  
 withdrawn. No reason appearing to the contrary,

It is, on this 8th day of March 1967,

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

JOSEPH P. LORDI  
 DIRECTOR

3. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - AGGRAVATING CIRCUM-  
 STANCES - SECOND SIMILAR CHARGE DEEMED EQUIVALENT TO SECOND SIMILAR  
 OFFENSE FOR PENALTY PURPOSES - PRIOR DISSIMILAR RECORD - LICENSE  
 SUSPENDED FOR 95 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF  
 SUSPENSION.

In the Matter of Disciplinary )  
 Proceedings against )  
 SABAR, INC. )  
 t/a PENGUIN CLUB )  
 933 Atlantic Avenue )  
 Atlantic City, New Jersey )  
 Holder of Plenary Retail Consumption )  
 License C-192, issued by the Board )  
 of Commissioners of the City of )  
 Atlantic City. )  
 -----)

CONCLUSIONS  
 and  
 ORDER

Edwin H. Helfant, Esq., and Sherman L. Kendis, Esq., Co-counsel,  
 Attorneys for Licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to original Charge 1 alleging

that on December 16-17, 1966 it permitted female entertainers to accept drinks at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20, and additional Charge 2 alleging similar violation on February 11, 1967, while the original charge was pending.

Reports of investigation disclose that, on the dates alleged, female entertainers drank at the expense of male patrons splits (6.4 ounces) of the cheapest domestic sparkling wine (retailing at 59¢) at a charge of \$7 each.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective September 14, 1964 for sale to minors.

Deeming the violations aggravated, the license will be suspended on the first charge for thirty days (Re Ask, Inc., Bulletin 1709, Item 2) and on the second charge, deemed equivalent to a second similar offense within the past five years since it occurred while the previous charge was pending, for sixty days (cf. Re Beef and Bird, Inc., Bulletin 1711, Item 1) to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Ask, Inc., Bulletin 1712, Item 3), or a total of ninety-five days, with remission of five days for the plea entered, leaving a net suspension of ninety days.

Admittedly the licensed business is not now being operated and transfer of the license is in contemplation. Thus no effective penalty can be imposed at this time. Hence the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the business under the license shall have been fully resumed on a substantial basis by the licensee or any successor in interest.

Accordingly, it is, on this 7th day of March 1967,

ORDERED that Plenary Retail Consumption License C-192, issued by the Board of Commissioners of the City of Atlantic City to Sabar, Inc., t/a Penguin Club, for premises 933 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for ninety (90) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI  
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - PRIOR DIS-SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS - DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against  
RE METH, INC.  
t/a SURF BAR  
1000 Ocean Avenue  
Belmar, New Jersey  
Holder of Seasonal Retail Consumption License CS-5, issued by the Board of Commissioners of the Borough of Belmar.

CONCLUSIONS  
and  
ORDER

-----)

Lynch, Murphy, Mannion & Lynch, Esqs., by John A. Lynch, 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 August 26, 1966, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of a shuffle - bowling machine game for stakes of money; in violation of Rule 7 of State Regulation No. 20."

The Division's case was presented through the testimony of two ABC agents specifically assigned to an investigation of the licensed premises; their version of what occurred on August 26, 1966 may be summarized as follows: The agents entered the licensed premises at approximately 9:00 p.m. and seated themselves at the bar. The barroom contained a shuffle-bowling machine which can be played by four persons, and the agents observed four males engaged in several games on the machine. A person later identified as John McHorney entered the premises with an unidentified male who wore a cast on his leg. They seated themselves at the bar near the said shuffle-bowling machine.

McHorney was heard to state, in a loud voice, to the patrons engaged in the game "We'll play the best two in the house for a sawbuck." This challenge was made twice and, after the second time, a patron identified as Walter Coulter replied, "O.K., but put the money up first." During this exchange the bartender, identified as George McHorney (brother of John), was tending bar about two feet away from Coulter and was noted to observe the actions of these patrons. John McHorney went to the area of the bowling machine where a game was in progress and shouted, "Is that the best in the house?" The player did not answer him.

McHorney returned to the shuffle-bowling machine and again in a loud voice said, "I'll play the best in the house for a sawbuck" placing what was later ascertained to be a ten dollar bill on the bar in the area of the said machine. He engaged in conversation with Coulter, after which Coulter and McHorney played two games. After McHorney won the first game, Coulter took some bills from his pocket and handed one to McHorney.

While this game was in progress, Agent S asked the bartender (George McHorney) what the stakes were in the game. "What are they playing for? Ten dollars?" McHorney replied, "I don't know what is going on."

After the second game, which Coulter won, John McHorney took some bills from his pocket and handed one to Coulter. During these games, the bartender observed the play with interest. At the conclusion of the second game, Agent S asked the bartender, "What are they playing for now?"; replied the bartender, "I don't know if it is for a fin or a sawbuck. I can't get all the information."

McHorney played a game with another person, identified as Francis Pardey, and, when the agent asked the bartender what the stakes were, he replied that he did not know what they were playing for. At the conclusion of this game, John McHorney approached Pardey, who had then resumed his place at the bar, and handed him some money. McHorney said pointedly to Coulter, Pardey and another male patron, "I would like to have some real action. I'll play for \$5, \$10 and \$15", to which Coulter replied, "Oh, come on now! What are you trying to do around here? We are all friends." George, the bartender, added, "Oh, come on now! We are all friends here."

While Pardey and McHorney played another game, Agent B telephoned the Belmar police headquarters. While the game was still in progress, Detective Philip Burger entered the premises and took a position near the shuffle-bowling machine. Apparently, the unidentified male patron with the cast on his leg recognized the detective, called the bartender over and whispered something in his ear. The bartender immediately went to the machine, spoke to the players and they dispersed. The agents and Detective Burger thereupon identified themselves and questioned the bartender, who denied knowing if wagering was taking place.

Pardey, McHorney and Coulter were arrested, charged with violation of R.S. 2A:112-1 (playing on a device for money) and were released in bail pending arraignment in the Belmar Municipal Court.

On cross examination, the agents were closely questioned as to the proceedings in the municipal court. Although the disposition of any criminal actions against the licensee or the patrons is irrelevant to these proceedings, the attorney for the licensee insisted upon developing what had transpired there. According to the agents' testimony, no hearing was held in the municipal court. The magistrate felt that the statutory penalty for the charge in the signed complaint would be out of proportion to the violation charged. Thereupon, the magistrate permitted the withdrawal of the complaint, which had been executed, did not entertain any evidence either on behalf of the local police or the agents, and terminated the action.

Reginald Methner, testifying on behalf of the licensee, stated that he was present for most of the time on the night of the date charged herein and denied seeing any gambling take place at these premises. On cross examination, he admitted leaving the premises on three or four occasions during that evening, but insisted that he was out of the premises for no more than a total of ten minutes.

John R. McHorney, testifying on behalf of the licensee, categorically denied participating in any gambling activities and specifically denied the conversations testified to by the agents. He admitted playing eight or ten games of shuffleboard but denied that he challenged anyone to play for money. He was asked the following:

"Q Did you go over to the machine at one time and say to somebody in the group, 'Is this the best you got in the house?'

A I doubt it."

He explained that the money he put on the bar was for the purpose of paying for his drinks and not for use in gambling. He

also denied that he told the detective that he did not even play the shuffleboard, but insisted that he was playing for amusement.

Michael Medric denied participating in any gambling activities or betting on the premises at the shuffleboard machine or seeing any money exchanged after the games were played. On cross examination, he denied seeing John McHorney play any games because "I wasn't watching him." He explained further that if there were any gambling activity going on, he would have known it because, although he was not paying any attention, his friends would have told him.

George R. McHorney, the bartender on this occasion, similarly denied that anyone played the shuffle-alley machine for money or drinks. He also denied seeing his brother take money from his pocket to give to Pardey or anyone else. He explained that when his brother came into the premises, he put a ten dollar bill on the bar to pay for drinks which were ordered from time to time. On cross examination, he denied hearing any conversation between his brother and any of the other patrons because he was busy tending bar. The only thing he heard his brother say was "Hello" when he entered. When he was asked what the agent said to him, his answer was: "As I was walking by, I think I just served him another bottle of beer, he said 'What are they playing for?' I said 'I don't know.'" Asked the same question a second time, he replied, "I said the same as I told you before, 'I don't know. Go over and find out.'" He admitted that he uses the expressions "a fin" meaning \$5 or "a sawbuck" meaning \$10, that they are routine expressions of his vocabulary.

In rebuttal, Agent B testified that when John McHorney was questioned at police headquarters about his activity at the licensed premises, he "denied playing the game at all."

In evaluating the testimony adduced herein and its legal impact, the following principles of law should be restated: We are dealing with a purely disciplinary measure and its alleged infraction. Such measures are civil in nature, and not criminal. Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956); Atkinson v. Parsekian, 37 N.J. 143 (1962).

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 arising from a fair consideration of the evidence. The testimony, 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; Gallo v. Gallo, 66 N.J. Super. 1.

The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508. No testimony need be believed but, rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899).

I have had an opportunity to observe the demeanor of the witnesses as they testified herein, and to evaluate the credibility of their testimony. I am persuaded that the account given by the ABC agents was a forthright and credible one and truly portrayed

what actually occurred at the premises on the date in question. On the other hand, I would be less than frank if I did not state that the testimony of the licensee's witnesses, particularly that of the bartender and his brother, lacked candor and did violence to the realities of the situation.

An example of such testimony which supports this characterization is the following: McHorney admitted that on three separate occasions he was asked by an agent "What are they playing for?" and his answer was "I don't know." It is obvious that the agents were referring to the wagering; nor was the bartender so naive as not to grasp the sense of the inquiry. The testimony of the agents in this regard is more probable and has a greater ring of truth. Agent S testified that he asked the bartender on the second occasion, "What are they playing for now?" and the bartender said, "I don't know if it is for a fin or a sawbuck." McHorney admitted that this is language that is part of his vocabulary and I am convinced that they were the words actually used by him in response to the inquiry. The inculpatory thrust of these conversations is strong.

I am equally unimpressed with that part of the bartender's testimony which stated, in effect, that he was too busy to hear any of the conversation relating to the alleged wagering. It was testified that the challenges made by his brother were made in a loud voice, clearly heard by the agents. It is my conviction that the bartender could not avoid hearing the same. Similarly, I do not believe the substance of the testimony of John McHorney. I note particularly that when questioned at police headquarters, he denied even playing the game.

Some of the other witnesses for the licensee had been charged with gambling and it is readily understandable that they would have testified as they did at this hearing. Further, implicit in the testimony of the witnesses for the licensee is the theme that the version of what occurred on the date charged herein given by the agents was a complete fabrication. This is countered by the fact that the agents visited the licensed premises pursuant to assignment to investigate alleged sales to minors; and in the course of this routine assignment, they found the alleged gambling violation. There has been no suggestion at any point that they were improperly motivated. Thus, the aforementioned contention must be rejected.

I am satisfied that the bartender knew that wagering was taking place at these premises and that he, in fact, observed such activity. It is well established that a licensee is responsible for the misconduct of its employees and is fully accountable for their activity during their employment on licensed premises. Rule 33 of State Regulation No. 20. 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 Town Tavern of Bound Brook, Inc., Bulletin 1680, Item 4. The responsibility of the bartender thus becomes the responsibility of the licensee. Essex Holding Corp. v. Hock, 136 N.J.L. 28.

It is unnecessary to make any further comment with respect to the criminal proceedings in the magistrate's court against the individuals mentioned hereinabove (where, without hearing any evidence, the magistrate permitted Detective Burger to withdraw a fully executed complaint and ordered a dismissal) since we are not concerned with whether the licensee's activity constituted an

indictable common law or statutory crime. In re Schneider, 12 N.J. Super. 449, at 457, and cases cited therein. This action involves a purely disciplinary measure and its alleged infraction. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948).

Under all of the circumstances appearing herein, I find that the licensee allowed, permitted and suffered gambling in and upon its licensed premises, viz., the playing of a shuffle-bowling machine game for stakes of money, in violation of Rule 7 of State Regulation No. 20. I conclude that the Division has established the truth of the said charge by a fair preponderance of the credible evidence and I, therefore, recommend that the licensee be found guilty of the said charge.

Licensee has a prior adjudicated record. Effective June 3, 1963, its license was suspended by the municipal issuing authority for ten days for sale to minors and allowing minors in a barroom without parents in violation of local regulation.

It is further recommended that an order be entered suspending the license for fifteen days (cf. Re Town Tavern of Bound Brook, Inc., supra), to which should be added five days by reason of the record of suspension for dissimilar violation occurring within the past five years (Re Eisenhower's Musical Bar, Inc., Bulletin 1706, Item 7), making a total suspension of twenty days.

#### Conclusions and Order

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

Having carefully considered the transcript of the proceedings and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

The summer seasonal retail consumption license held by the licensee expired by its terms on November 1, 1966, in consequence of which no business is presently being conducted under the license. In view of the current non-operation of the licensed business, no effective penalty can be imposed at this time. Hence the effective dates of the suspension will be fixed by the entry of a further order herein after the operation of the licensed business has been fully resumed on a substantial basis if and when the licensee obtains a renewal of its license for the 1967 summer season. State Regulation No. 16, Rules 1, 2 and 3.

Accordingly, it is, on this 1st day of March, 1967,

ORDERED that Seasonal Retail Consumption License CS-5, issued by the Board of Commissioners of the Borough of Belmar to Remeth, Inc., t/a Surf Bar, for premises 1000 Ocean Avenue, Belmar, be and the same is hereby suspended for twenty (20) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI  
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - ACT OR HAPPENING OCCURRING AFTER ISSUANCE (CONVICTION OF CRIME INVOLVING MORAL TURPITUDE) - FAILURE TO FILE NOTICE OF CHANGE IN FACTS IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO LIFT AFTER 25 DAYS UPON PROOF OF CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary Proceedings against  
 JOHN F. GIORDANO  
 t/a JOHNNIE'S TAVERN  
 87 Water Street  
 Morristown, New Jersey

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Board of Aldermen of the Town of Morristown.

Schenck, Price, Smith & Kind, Esqs., by William R. Albrecht, Esq.,  
 Attorneys for Licensee.  
 David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to Charge 1 and guilty to Charge 2, as follows:

"1. On July 8, 1966, you were convicted in the Morris County Court Law Division of the crime of knowingly possessing lottery slips, in violation of N.J.S. 2A:121-3, a crime involving moral turpitude, such conviction being an act or happening occurring after the time of your making application for your current plenary retail consumption license which if it had occurred before said time, would have prevented the issuance of said license, since such issuance would have been contrary to R.S. 33:1-25.

"2. You failed to file with the Board of Aldermen of the Town of Morristown, within ten (10) days after the occurrence thereof, written notice of change in fact set forth in answer to Question No. 33 of your hereinabove mentioned current license application, dated May 30, 1966, such change being that on July 8, 1966, you were convicted in the Morris County Court Law Division of the crime of knowingly possessing lottery slips, in violation of N.J.S. 2A:121-3; your failure to file such notice being in violation of R.S. 33:1-34."

In substantiation of Charge 1, the Division introduced in evidence a certified copy of Indictment No. 139-65-J of the Superior Court of New Jersey, Morris County, in the case of The State of New Jersey vs. John F. Giordano, together with certified copy of the judgment of conviction on said indictment of Count 1 of the indictment alleging that said defendant on November 12, 1965, in the Town of Morristown, County of Morris, did unlawfully and knowingly possess a slip or memorandum that pertains to the business of lottery, in violation of N.J.S. 2A: 121-3.

It was conceded that the licensee pleaded guilty to the indictment on July 8, 1966.

The Hearing resolved itself mainly into an inquiry of the underlying facts to determine whether there existed moral turpitude in the commission of such crime. State v. McNally, 91 N.J. Super. 513 (App. Div. 1966).

ABC Agent B testified that on November 9, 1965, he entered the licensed premises (a tavern) at approximately 12:20 p.m. The licensee was tending bar. After noting four males enter the tavern, hand Giordano money and a piece or pieces of paper and leave immediately without ordering beverages, the agent handed Mr. Giordano a one dollar bill and asked him to put in two numbers for him. Giordano answered, "O.K."

The agent returned to the tavern on Friday, November 12, 1965, at approximately 2:05 p.m. and handed Giordano six marked one dollar bills and a slip of paper with four numbers on it. The questioning of the agent revealed the following:

"Q What did Mr. Giordano do with the slip of paper?

A He accepted the money and paper. At the time I told him to put \$2 on the first 2 numbers and \$1 each on the others. He said 'O.K.' After that I ordered a bottle of beer.

Q What did Mr. Giordano do then?

A He then went over to the cash register, and I saw him jotting down on a piece of paper. He then took another piece of paper, appeared as if it was the same paper I had given him, and he then threw the paper in a green plastic garbage can.

Q Where was this garbage can?

A On the left-hand side of the bar."

About five minutes thereafter, other ABC agents and local law enforcement officers entered the licensed premises and recovered from the green plastic garbage can the slip given to Giordano by Agent B along with another slip identified as a numbers bet slip.

ABC Agent F, who participated in the investigation of the licensed premises on November 12, 1965, not only confirmed the finding of the numbers bet slips in the green garbage can but, in addition, testified to the finding of other slips which he identified as tally sheets used in numbers betting. Both ABC agents had experience in investigations concerning gambling, including numbers betting. Neither agent could, however, identify the handwriting on the slips. In response to the agent's questioning, Giordano denied the handwriting was his and stated he had no idea as to how the slips got into the trash can.

In defense of the first charge, the licensee, John F. Giordano, testified that he knew nothing about the slips found in the trash basket except for the slip handed to him by Agent B. Concerning the transaction he had with Agent B on November 12, 1965, Giordano testified as follows:

"Q You say he [Agent B] gave you several dollar bills; is that it? Or several bills, currency?

A They were all folded up on the bar like this, and then he gave me a dollar bill for the beer, and I gave him change back.

Q How about the bills he handed you?

A Those bills, he told me to put those numbers in. I took the bills and put them in my pocket.

Q So you accepted numbers bets?

A That is the way it is.

Q I show you this slip with four numbers bets recorded on it. Is that the slip in question you received from him?

A It was something similar to this but I can't be sure on it. I tell you the truth, I don't remember.

\* \* \*

Q Was this the first numbers bet you ever accepted from any one?

A Well, I wouldn't say it was the first, but some times people come in, they can't see the numbers writer, they hand it to me, and I give it to him. That is all. I don't play around with them.

Q Had you been doing that during this period of time in and about November 12, 1965.

A I did it November 12 for this gentleman.

Q Had you been doing it for other patrons who came into your tavern?

A Not that day because I was busy anyway.

Q How about the week prior to that day?

A I done it a couple of times. People stop in early in the morning and give it to me, and I give it to somebody else.

Q To whom were you giving numbers?

MR. ALBRECHT: I object to that.

THE HEARER: I will allow it for background.

A The numbers writer would come in and pick it up. Could be any one.

Q Who was the numbers writer?

A Could be any one. Different ones every day.

Q How would you know he was a numbers writer?

A He presented himself.

Q He would come in and tell you he is the one accepting the numbers bets?

A That is right."

Continuing the licensee testified as follows:

"Q What did you receive in return for service in taking numbers?

A Nothing.

Q You were not receiving payment of any sort?

A No.

Q How did you come to get involved in this accepting of numbers bets, Mr. Giordano?

A I don't know what to tell you on that one. I don't know.

Q You don't know how you started doing this? Did some one come up and ask you to do it?

A No. Some customer of mine, you know, I don't open until 8:30, a quarter to 9, and they can't see anybody at that time in the morning, they hand me a slip and some money, and when I see the man I give it to him.

Q When you first started doing this how did you know to whom to give the numbers bets?

A The man would come in and say, 'Have you got anything?'

Q How long had you been doing this prior to your arrest?

A Maybe a week, week and a half.

Q About how many numbers bets had you received during the week or week and a half?

A I couldn't tell you that either.

Q Approximately.

A I don't know. Fifteen or twenty.

Q A total of fifteen or twenty?

A Yes."

Later, the licensee denied that the agents showed him numbers bet slips, denied knowing anything about them, and denied knowing how they got into the garbage can. Additionally, the licensee denied that he was in business for himself in the placing of bets or that he received compensation for handling bets.

It is my view, after a thorough review of the testimony, that the crime committed by the licensee involved moral turpitude. The licensee admitted accepting a number of numbers bets from various patrons and turning over the bets to a "numbers writer."

Whether or not he engaged in this activity for a direct pecuniary profit or merely as a convenience to his patrons is immaterial. In attempting to retain the good will of his patrons by engaging in this activity, he not only promoted his own business interests to his intended advantage but, additionally, he engaged in the greater evil of assisting someone who was engaged in a gambling activity which has been held by our Supreme Court in State v. Ivan, 33 N.J. 197 (1960) to be an ancient foe of society, a destroyer of men and homes.

The testimony of Agent B clearly buttresses my view that the licensee was prone to assist or cooperate in promoting the numbers lottery activity.

The following quotations from the opinion of Judge Jayne in In re Schneider, 12 N.J. Super. 449, 455-6 (App. Div. 1951), are peculiarly applicable herein:

"Anent the intent and construction of the Alcoholic Beverage Control Law the Legislature declared, 'This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed.' R.S. 33:1-73.

\* \* \*

"The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement.' Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947), reversed on other grounds, 136 N.J.L. 161 (E. & A. 1947).

"The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner.' Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946)."

After due consideration of the testimony adduced at this hearing, the record of conviction, the legal precedents cited, and Re Elig. No. 749, Bulletin 1697, Item 6, I conclude that the Division has sustained the burden of proving the truth of Charge 1 and I recommend that the licensee be found guilty of that charge.

The licensee has a previous record of suspension of license by the Director for fifty-five days effective January 4, 1966, for permitting acceptance of numbers bets on the licensed premises. Re Giordano, Bulletin 1656, Item 6.

It is further recommended that the license be suspended for twenty days (cf. Re Greenwell, Bulletin 1680, Item 6; Re Cameron, Bulletin 1643, Item 6), to which should be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Ask, Inc., Bulletin 1712, Item 3), or a total of twenty-five days, without remission for the confessional plea entered to one charge when another is contested (Re Your Girls, Inc., Bulletin 1713, Item 2).

Since it appears that the unlawful situation continues to exist, it is further recommended that an order be entered suspending the license for the balance of its term, with leave granted to any bona fide transferee of the license to apply by verified petition for lifting of the suspension whenever the

unlawful licensing situation has been corrected, but in no event sooner than twenty-five days after the commencement of the suspension.

Conclusions and Order

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

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

Accordingly, it is, on this 6th day of March, 1967,

ORDERED that Plenary Retail Consumption License C-19, issued by the Board of Aldermen of the Town of Morristown to John F. Giordano, t/a Johnnie's Tavern, for premises 87 Water Street, Morristown, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1967, effective at 2:00 a.m. Monday, March 13, 1967, with leave to any bona fide transferee of the license to file verified petition establishing correction of the unlawful situation, for lifting of the suspension of the license on or after 2:00 a.m. Friday, April 7, 1967.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EDISON'S INCORPORATED  
t/a ED'S PLACE  
601-603 Kaighn Avenue  
Camden, New Jersey

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-188, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

-----)  
Licensee, by Edward G. Cotter, President, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 9, 1966 it purchased thirty-nine bottles of assorted alcoholic beverages from another retail licensee, in violation of Rule 15 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Jakley, Bulletin 1715, Item 4.

Admittedly the licensed business is not now being operated and transfer of the license is in contemplation. Thus no

effective penalty can be imposed at this time. Hence the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the business under the license shall have been fully resumed on a substantial basis by the licensee or any successor in interest.

Accordingly, it is, on this 7th day of March 1967,

ORDERED that Plenary Retail Consumption License C-188, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Edison's, Incorporated, t/a Ed's Place, for premises 601-603 Kaighn Avenue, Camden, be and the same is hereby suspended for fifteen (15) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI  
DIRECTOR

7. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #301 )  
In the Matter of a Petition to Lift )  
the Automatic Suspension of Plenary )  
Retail Distribution License D-10, )  
Issued by the Common Council of the )  
City of Ventnor City to )  
Ventnor Delicatessen and Liquor )  
Shop, Inc. )  
6503 Ventnor Avenue )  
Ventnor City, N.J. )

ON PETITION  
O R D E R

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on January 25, 1967, Abraham Feldman, president and treasurer of the licensee-petitioner, was fined \$50 in the Ventnor Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on January 14, 1967, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that in disciplinary proceedings conducted by the municipal issuing authority, the license was suspended for five days effective 12:01 a.m. March 6, 1967, and terminating at 12:01 a.m. March 11, 1967, on a charge alleging sale of alcoholic beverages to the same minor, which sale was the subject of the previous criminal conviction. Hence I shall lift the automatic suspension in anticipation of the service of the municipal suspension. Re Velky, Bulletin 1715, Item 8.

Accordingly, it is, on this 9th day of March, 1967,

ORDERED that the statutory automatic suspension of said license D-10 be and the same is hereby lifted effective 12:01 a.m. March 11, 1967.

JOSEPH P. LORDI  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

BIG MIKE'S (A Corp. of N.J.), 199 Rose Street Newark, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-268, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Rosenbloom & Itzikman, Esqs., by Martin Itzikman, Esq., Attorneys for Licensee Philip Margulies, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 4, 1966, it possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Hawrylak, Bulletin 1704, Item 8.

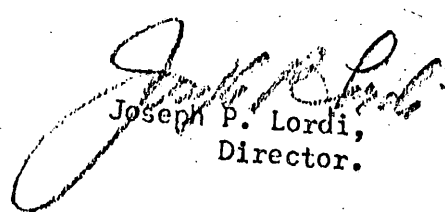
Accordingly, it is, on this 21st day of March 1967,

ORDERED that Plenary Retail Consumption License C-268, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Big Mike's (A Corp. of N.J.), for premises 199 Rose Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, March 27, 1967, and terminating at 2 a.m. Thursday, April 6, 1967.

JOSEPH P. LORDI  
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED

Raymond Baurkot  
815-817 So. Main Street  
Phillipsburg, New Jersey  
Application filed May 3, 1967 for plenary wholesale license.



Joseph P. Lordi,  
Director.