

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

BULLETIN 1879

October 15, 1969

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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 1879

October 15, 1969

1. COURT DECISIONS - IN RE HILLSBORO BAR-LIQUORS, INC. (v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL) - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-1373-67

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

HILLSBORO BAR-LIQUORS, INC.  
390 Route 206 South Hillsboro  
Township P. O. Somerville, N. J.

HOLDER OF PLENARY RETAIL CONSUMPTION  
LICENSE C-3 ISSUED BY THE TOWNSHIP  
COMMITTEE OF THE TOWNSHIP OF HILLSBORO

---

Argued September 8, 1969 -- Decided September 12, 1969.

Before Judges Goldmann, Lewis and Matthews.

On appeal from the Division of Alcoholic  
Beverage Control.

Mr. Donald C. Chase argued the cause for  
appellant (Messrs. Chase & Chase, attorneys).

Mr. Herbert K. Glickman, Deputy Attorney  
General, argued the cause for respondent  
(Mr. Arthur J. Sills, Attorney General,  
attorney).

PER CURIAM

(Appeal from the Director's decision in Re Hillsboro  
Bar-Liquors, Inc., Bulletin 1796, Item 1. Director affirmed.  
Opinion not approved for publication by the Court committee  
on opinions.)

2. APPELLATE DECISIONS - ISHMAL v. NEWARK.

Johnnie Mae Ishmal,	)	
t/a Back Room,	)	
	)	On Appeal
Appellant,	)	
	)	SUPPLEMENTAL ORDER
v.	)	
	)	
Municipal Board of Alcoholic	)	
Beverage Control of the City	)	
of Newark,	)	
	)	
Respondent.	)	

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Kohn, Kirsch & Needle, Esqs., by Leslie S. Kohn, Esq.,  
Attorneys for Appellant  
Philip E. Gordon, Esq., Attorney for Respondent

BY THE DIRECTOR:

On October 22, 1968, I entered Conclusions and Order herein affirming respondent's revocation of appellant's license, dismissing the appeal and revoking the license effective immediately. Ishmal v. Newark, Bulletin 1829, Item 3.

On October 25, 1968, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the revocation until the outcome of the appeal. Thereafter, the case was remanded to the Director for amplified findings and conclusions. Ishmal v. Division of Alcoholic Beverage Control, not officially reported, recorded in Bulletin 1847, Item 1.

On May 13, 1969, by supplemental Conclusions and Order I reaffirmed my previous determination with effective date of revocation withheld until determination of the appeal. Ishmal v. Newark, Bulletin 1866, Item 1.

On June 30, 1969, the court affirmed my action. Ishmal v. Division of Alcoholic Beverage Control, not officially reported, recorded in Bulletin 1872, Item 1. Mandate on affirmance having been received, the revocation may now be reimposed notwithstanding expiration and non-renewal of the license. Rule 1 of State Regulation No. 16.

Accordingly, it is, on this 14th day of August, 1969,

ORDERED that Plenary Retail Consumption License C-113 for the 1968-69 license period, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Johnnie Mae Ishmal, t/a Back Room, for premises 132 Orchard Street, Newark, be and the same is hereby revoked, nunc pro tunc, effective June 30, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Dale Rose, Inc.  
t/a "Dale's"  
708 Broadway  
Camden, New Jersey

)  
)  
) CONCLUSIONS  
AND ORDER  
)

Holder of Plenary Retail Consumption License C-49 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden

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Cahill, Wilinski, Coruzzi & Suski, Esqs., by Robert Wilinski, Esq.,  
Attorneys for Licensee  
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, June 22, 1969, it sold 78 12-ounce cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Although the licensee has no previous record of suspension of license, the license then held in the Borough of Bellmawr by Dale Rose (48% stockholder in the licensee corporation) was suspended by the municipal issuing authority for five days effective June 6, 1938, for local hours violation, and by the Commissioner for ninety days effective June 24, 1940 (modified on appeal from revocation of license), for local hours violation and permitting known criminals on the licensed premises. Rose v. Bellmawr, Bulletin 411, Item 9.

The prior record of suspensions for similar and dissimilar violations occurring respectively more than ten and five years ago disregarded, 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 Rosenfield and Carlson, Bulletin 1864, Item 3.

Accordingly, it is, on this 18th day of August, 1969,

ORDERED that Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Dale Rose, Inc., t/a Dale's, for premises 708 Broadway, Camden, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. Monday, August 25, 1969, and terminating at 7:00 a.m. Thursday, September 4, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB PREMISES - DEPOSIT ON STIPULATION RETURNED TO INNOCENT CLAIMANT - COMMINGLED CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure	)	Case No. 12,127
on November 9, 1968 of a quantity	)	
of alcoholic beverages, \$137.65	)	On Hearing
in cash, various fixtures, fur-	)	
nishings and equipment at 440	)	CONCLUSIONS and ORDER
Pennington Avenue, in the City	)	
of Trenton, County of Mercer	)	
and State of New Jersey.	)	

Frank Wade, claimant, Pro Se.  
Despina Papalios, claimant, Pro Se.  
Harry Gross, Esq., appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 67 containers of alcoholic beverages, two refrigerators, a meat slicer, a cash register, a juke box, a fan and \$137.65 in cash, as set forth in a schedule attached hereto, made part hereof and marked Schedule "A", seized on November 9, 1968 in unlicensed premises at 440 Pennington Avenue, Trenton, constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$125.00 deposited by Despina Papalios, under protest, with the Director, under the aforesaid stipulation, representing the appraised retail value of the aforementioned fixtures, furnishings and equipment which were returned to the said Despina Papalios, should be forfeited or returned to her.

The seizure was made by ABC agents, in cooperation with local police officers, because of alleged unlawful sales of alcoholic beverages in the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, Frank Wade appeared pro se and sought the return of the seized alcoholic beverages and the cash.

Mrs. Despina Papalios appeared pro se and sought the return of the money deposited by her under the aforesaid stipulation.

The file of this Division which includes the affidavit of mailing, the affidavit of publication, the complete inventory, chemist's report, the "marked" money and the stipulation was admitted into evidence by stipulation of the claimants herein.

The said file, which included reports of ABC agents and other documents discloses the following: Pursuant to a specific assignment to investigate unlawful sales of alcoholic beverages at the aforementioned premises, ABC Agents M, Ma and S, fortified with a "marked" ten-dollar bill, arrived in the vicinity of the premises on November 9, 1968 at about 2:20 A.M. At about 2:40 A.M. Agent M, with the "marked" ten-dollar bill in his possession, entered the premises while Agents S and Ma

remained at a post of observation. The premises are located in a stucco building on a corner at the above address.

Agent M followed several persons who entered through a rear alleyway to a rear door. At the rear door entrance an unidentified male sold Agent M a ticket for \$1.00 and advised him and the other patrons that they had to be "careful". At the request of this unidentified male, Agent M wrote his name on the ticket. He then entered the premises and proceeded through a small room into a large room located in the front of the said premises. He observed three males, later identified as Frank Wade, a claimant herein, Melvin Arthur Petersen and Leonard Sellers, waiting on patrons both at the bar and in and about the premises. The patronage at the time consisted of approximately 150 persons. The bartenders were observed serving alcoholic beverages and collecting money for the said drinks.

At about 2:50 A.M. Agent M ordered and was served a bottle of Schaefer beer by Wade and paid therefor the sum of 40¢ with a "marked" ten-dollar bill.

At about 3:34 A.M. Agents S and Ma, accompanied by local police, entered the premises, identified themselves and informed Wade, Sellers and Petersen of the violation. A search was made of Wade and the "marked" ten-dollar bill was found in Wade's pocket commingled with other money. The agents seized the cash from his pocket, as well as from the cash register. Wade was thereupon arrested, charged with the sale and possession of alcoholic beverages without a license in violation of R.S. 33:1-50(a) and (b). Sellers and Petersen were also arrested, charged with aiding and abetting in the sale of alcoholic beverages without a license in violation of R.S. 33:1-50(e).

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Wade, Petersen or Sellers, or for the premises where the violation took place.

Samples of two cans of beer seized by the agents were analyzed by the Division chemist whose report, certified by the Director, established that they are alcoholic beverages fit for beverage purposes with alcohol by volume, respectively of 4.50% and 4.13%. Since there was no permit or license authorizing the sale of alcoholic beverages to any person at the aforementioned premises or for the premises in question, they are illicit because they were intended for sale without a license. Such alcoholic beverages, personal property and the cash as set forth in Scheduled "A" herein, constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 12,092, Bulletin 1856, Item 3. This applies with equal force to the cash found in the possession of Wade which was admittedly commingled with the "marked" bill received from the agent in payment for his purchase of beer. Seizure Case No. 11,182, Bulletin 1568, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Frank Wade, testifying in support of his claim for the return of alcoholic beverages and the seized cash, gave the following account: These premises were occupied by the Midway Cooperative Democratic Club of which he is president. The alcoholic beverages were contributed to the club and he admits that they were sold to the patrons. The net proceeds were to be used in furtherance of the political activities of this organization. He admits that the club had no permit or license to sell

alcoholic beverages. With respect to the cash, he explained that \$65.00 of the cash seized was money which he received from his employer. However, he admits that the "marked" ten-dollar bill was commingled with the cash when it was seized from his person by the ABC agents.

From the evidence, it is clear that this claimant sold alcoholic beverages without a license and his organization was clearly inculpated by his unlawful act.

The seized alcoholic beverages are obviously illicit because they were intended for sale without a license.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith and did not know or have any reason to believe that the property would be used in unlawful liquor activity. It is not clear whether the alcoholic beverages actually belonged to this claimant or to the club of which he was president. Nevertheless, in the absence of a showing of good faith, the Director is without authority to return such property. This is equally true of the commingled cash which this claimant frankly admits was commingled with the "marked" money. Thus, all of the money is subject to forfeiture. Seizure Case No. 11,182, Bulletin 1568, Item 5. It is, accordingly, recommended that the claim of Frank Wade be rejected, and that an Order be entered forfeiting the seized alcoholic beverages and the cash.

Despina Papalios, testifying in support of her claim for the return of the money deposited by her, with the Director, under protest, under the aforementioned stipulation, gave the following account: She is the owner of the building at the said address and rented the store to the Midway Cooperative Democratic Club as of November 1, 1968. The seizure took place on November 9th. She asserted that the club was in the process of re-building the store for use as a club and "I had no idea the place was being used that night".

She denies ever going to the premises after renting the store to this Democratic Club because she felt that the store was not in condition or readied for operation. In fact, "...the furnace wasn't put in yet". She was informed by Wade that the store was to be used as a club headquarters, and she was unaware that the premises were to be used for unlawful liquor activity.

She further states that the juke box which was included in the stipulation does not belong to her, and the meat slicer and the refrigerators, also included in the stipulation, are not her property.

I have had an opportunity to observe the witness as she testified and to evaluate her testimony. I am persuaded that she did not know or have any reason to believe that her property would be used in unlawful liquor activity. It is, therefore, recommended that the monies deposited by her upon the said stipulation be returned to her. Seizure Case No. 12,092, *supra*; Seizure Case No. 11,821, Bulletin 1742, Item 5; R.S. 33:1-66(f).

Conclusions and Order

No exceptions were taken to the Hearer's Report pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 15th day of August, 1969

DETERMINED and ORDERED that the said \$125.00, representing the appraised retail value of certain fixtures, furnishings and equipment which were returned to the claimant, Despina Papalios, paid under protest pursuant to the stipulation signed by her shall be returned to her; and it is further

DETERMINED and ORDERED that the seized cash and the alcoholic beverages shall be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, and that they shall be retained for the use of hospitals and State, county and municipal institutions or destroyed, in whole, or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH M. KEEGAN  
DIRECTOR

SCHEDULE "A"

- 67 - containers of alcoholic beverages
- 2 - refrigerators; 1 - meat slicer
- 1 - cash register; 1 - juke box; 1 - fan;
- \$137.65 - cash

5. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against )

Beachwood Tavern, Inc. )  
t/a Cook's Bar )  
Atlantic City Blvd. bet. Ship Ave. and Beach Ave. )  
Beachwood, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-1, issued by the Board of Commissioners of the Borough of Beachwood. )

-----  
Citta, Gasser & Carluccio, Esqs., by Robert A. Gasser, Esq., Attorneys for Licensee  
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On November 16, 18, 20 and 22, 1968, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races and on November 21, 1968, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda and other writings pertaining to horse race betting activity; in violation of Rule 7 of State Regulation No. 20."

The Division offered the testimony of two State police officers in substantiation of the charge.

Trooper James Ryan, who had been employed by the State Police for approximately five years and possessed ample experience in conducting gambling investigations including horse race betting, testified that he entered the licensed premises (which he characterized as having the appearance of a neighborhood bar) on November 16, 1968 at approximately 11:30 a.m. and sat at the bar with his back facing the front door of the barroom. A male identified as Edward Citta (president of the corporate licensee) was tending bar. The patronage consisted of approximately five or six males.

He heard Citta conversing over a telephone, mention names which to him did not seem to be names of persons, and at same time write on a white pad measuring approximately 4" x 4", located "in the center of the bar." He would then fold the slips into small squares and drop them into a coffee can located "underneath the shelves where the liquor was stored in the center of the bar."

At approximately 12:30 p.m. the Trooper informed Citta that he wanted to bet on a certain horse and asked him if he knew where he could get the bet in. Citta responded that "he didn't know me and he wasn't going to talk to me about it." The Trooper then testified as follows:

"Q All right. Then what did you say?

A Oh, I told him, you know, that I was sorry that I approached him and to forget about it. He had walked out from behind the bar and started leaving the joint and he turned around. I called him again. I said, 'Well, look, if I was a cop, I could have had you a long time ago. I hear action coming into the place. This is the only reason I'm asking you would you take the bet.' So he looked at me a little while and then he said, 'Well, what do you want?' So I told him I wanted \$10 to win on Saguaro at Garden State, and he took the \$10.

Q You gave him \$10?

A Yes."

Citta placed the money in his pocket and, shortly thereafter, was relieved by another bartender. Trooper Ryan left the premises at approximately 1:15 p.m.

The Trooper returned to the premises on November 18 at approximately 11 a.m. and sat at the bar in the same area as on the previous day. Citta was tending bar. He observed Citta answer the telephone, make notations on a pad, and throw the paper in a coffee can. After some general conversation Citta asked the Trooper as to whether or not he came in to place a

bet. The Trooper then placed "\$5 to win on a horse named Jice in the fifth race at Garden State and also a five-dollar win bet on Lauralation, ninth race at Garden State, and both of these bets were accepted by the bartender, Mr. Citta." Citta accepted a \$10 bill from the Trooper and placed it in his pocket. The Trooper departed from the premises at approximately 1:00 p.m.

Trooper Ryan revisited the barroom on November 20 at approximately 10:45 a.m., sat at "the back of the bar by the rear wall and I started talking to Mr. Citta." He mentioned that the horse Jice had been scratched and that he wished to bet \$5 on a horse named Scotch Run in the first race at Aqueduct that day. Observing the presence of a stranger at the bar, Citta said, "follow me" and led the Trooper into the kitchen area of the premises. The bet on Scotch Run was confirmed in the kitchen. Ryan departed from the premises at approximately 12:30, 12:45 p.m.

The Trooper re-entered the premises on November 22 at approximately 10:30 a.m., proceeded to the rear of the bar and told Citta he "wanted \$10 to win on a horse named San Rogue in the seventh at Aqueduct." Citta accepted the \$10 in the kitchen area. When questioned concerning other conversations had with Citta on November 22, the Trooper replied, "Oh, he [Citta] also advised me that the day prior he had gotten hit by the State Police. They had raided his establishment. And he was laughing. He said, 'They didn't find anything. They hit me too late.'"

The Trooper left the premises at approximately noontime.

On cross examination the Trooper asserted that the primary purpose for going to the licensed premises was to see if he could place a bet. He did not observe the bartender accept bets from any other patron on the days mentioned in the charge.

Trooper Henry T. Feeney, of the New Jersey State Police, testified that he participated in a raid of the licensed premises on November 21, 1968. A search made in execution of a search warrant did not reveal any incriminating evidence.

In defense of the charge George A. Reidy, who is employed as a liquor salesman, testified that, in pursuit of his employment, during the month of November 1968 he stopped at the licensed premises every Monday, Tuesday and Thursday. He usually entered the tavern at approximately 11:30 a.m., had lunch, wrote his orders and left at approximately 1:00 p.m. Citta was there most of the time. He never observed or heard Citta accept a bet in all of his visits to the tavern which commenced in 1967.

David B. Roche, Jr. testified that he patronized the licensed premises during the year 1968 and more specifically during the month of November 1968, "maybe three times a week, on Saturday, possibly at night, maybe one or two nights for a couple of hours." He never saw or heard Citta accept a bet.

On cross examination the witness testified that he did not specifically recall being in the tavern on any of the dates mentioned in the charge. His employment precluded him from patronizing the licensed premises during the daytime hours of eleven to one except on rare occasions.

Kenneth Y. Norrington testified that he frequented the licensed premises almost daily for a period of many years including the month of November 1968, and that he frequented the tavern

"many times throughout the course of the day to check on whether or not" deliveries of certain items he uses in his business have been left for him at the tavern. He has never seen Citta accept a bet.

On cross examination Norrington testified that he did not recall ever seeing Trooper Ryan in the tavern.

Citta did not testify.

The attorney for the licensee argued that the evidence was insufficient to sustain a conviction.

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

In appraising the factual picture presented herein the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the 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.

I am imperatively persuaded that Trooper Ryan's testimony, wherein he graphically depicted the horse race betting activity engaged in by Citta with the Trooper on November 16, 18, 20 and 22, 1968, was credible.

It is noteworthy that the principal officer of the corporate licensee (Edward Citta) failed to take the witness stand although he was present at the hearing. From this I draw an inference that he could not truthfully rebut the testimony offered by Trooper Ryan in behalf of the Division.

After carefully considering 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 adjudged guilty of said charge.

Licensee has a prior adjudicated record of suspension of license by the local issuing authority for ten days effective February 4, 1963 for sale to minors.

The prior record of suspension of license for a dissimilar violation disregarded because occurring more than five years ago, it is further recommended that the license be suspended for sixty days. Re Tube Bar, Inc., Bulletin 1852, Item 2.

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, 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 18th day of August, 1969,

ORDERED that Plenary Retail Consumption License C-1, issued by the Board of Commissioners of the Borough of Beachwood to Beachwood Tavern, Inc., now t/a Citta's Beachwood Tavern, for premises on Atlantic City Blvd. between Ship Avenue and Beach Avenue, Beachwood, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, August 25, 1969, and terminating at 2:00 a.m. Friday, October 24, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

6. APPEAL CASES -- JULY 1, 1968 THROUGH JUNE 30, 1969.

Undecided June 30, 1968	17	
Filed July 1, 1968 through June 30, 1969	<u>73</u>	
Total.....		90

Disposition

Affirmed . . . . .	38	
Reversed . . . . .	19	
Remanded . . . . .	0	
Withdrawn (after hearing)	1	
Withdrawn (no hearing)	13	
Undecided (10 cases heard) ( 9 " not " )	<u>19</u>	
Total.....		90

EMERSON A. TSCHUPP  
DEPUTY DIRECTOR

Dated: August 19, 1969

7. DISCIPLINARY PROCEEDINGS - EMPLOYEE WORKING WHILE INTOXICATED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against )  
 )  
 Big John's Tavern, Inc. )  
 t/a Big John's Tavern )  
 891-893 Lyons Avenue )  
 Irvington, N. J. )  
 Holder of Plenary Retail Consumption License C-4 issued by the Municipal Council of the Town of Irvington )  
 )  
 ----- )

CONCLUSIONS AND ORDER

Smith, Kramer & Morrison, Esqs., by Lester Handler, Esq.,  
 Attorneys for Licensee  
 Louis F. Treole, Esq., Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Tuesday, April 1, 1969, you allowed, permitted and suffered a person actually or apparently intoxicated to work in and upon your licensed premises; in violation of Rule 24 of State Regulation No. 20."

Agent S testified that at about 1:30 p.m. on April 1, he and Agent St entered the licensed premises and sat at the bar; that there were seven males and one female in the premises and a man identified as Raymond Dryburgh was tending bar. Agent S observed the bartender standing at the end of the bar between the bar and a small cooler and he appeared to be in a "drowsy condition, his head was down, he was holding his head." After a few minutes, the bartender approached him and his fellow agent and, in response to their order, served a glass of beer to each agent. The bartender turned around at the cash register and asked, "How much was that you gave me? Ten or five?" and when Agent St said it was a five dollar bill, the bartender "returned the proper change." As the bartender approached them "he swayed from side to side, he was hitting the back bar and bar, but he did not fall down at any time. He was very incoherent in his speech. He was mumbling, jumbling to himself. You couldn't make out what he was saying." When Agent S ordered another round of beer, the bartender "took a dollar bill and went to the register and rang up the sale and returned the change but this time he gave the change to another male" at the agent's right, who told the bartender it was not his change. He observed the bartender pour some orange juice into a glass and, after tasting it, exclaim, "Boy! This is pretty flat! I'll add something to it." He then poured about two ounces from a bottle labeled vodka into the orange juice and consumed almost all of the drink.

At one time the bartender requested a female patron to check a delivery of alcoholic beverages. Later the same patron left the tavern and returned with coffee for the bartender, saying, "This will do you good; sober you up." However, the bartender refused to drink it. Later, she brought

him soup and a sandwich and "he started to sip some of the soup." Calling him "rigor mortis", the female said to the bartender, "You know you are bombed. You know you should be home." As other patrons came into the premises, they remarked in loud voices, "Gee, he is loaded" and an elderly patron beside the agent said, "Boy, he really had it."

Agent S identified himself to the bartender and requested that he "get out from behind the bar" at which time the bartender asked the female to call the licensee. Several minutes later, John Karwacki entered and, when informed that the bartender was apparently intoxicated and not fit to tend bar, Karwacki said, "I agree with you one hundred percent. He is drunk. He shouldn't be tending bar." Karwacki added that the bartender had "called up earlier on the phone and he sounded drunk then and at that time he should have come down and sent him home, he was in no condition to tend bar, and he was very disappointed in him, seeing his condition." Karwacki further said that he had left a written note on the bar for the bartender advising that the bartender had become a new grandfather, that his daughter had given birth to a child.

Licensee's attorney cross-examined Agent S at length but the agent adhered to his testimony given on direct examination.

Agent St corroborated the testimony given by Agent S as to the bartender's condition and the various incidents which occurred while he and Agent S were in the licensee's premises on the date in question. Although Agent St was also cross-examined at length concerning his testimony on direct examination, the licensee's attorney failed in his efforts to change in any material way the agent's account of what had occurred on April 1, 1969, in the licensed premises.

Raymond Dryburgh testified that he was employed as a part-time bartender by the licensee and was on duty on April 1, arriving at the tavern at 6:45 a.m. that day. He found a sign near the cash register advising him that his daughter had given birth to a son and he became excited at the news of his first grandchild. During the previous August, he had had a coronary malfunction with hypertension and since then, by virtue of a doctor's prescription, he had been taking pills from time to time for that condition. The after effects of these pills caused him to "get dizzy and very unstable" and also affected his vision, causing him to stagger from side to side. He took one of the pills at twelve noon on the day in question and attributed to the pill his dizziness, stumbling and being bleary-eyed. Around 2:30 p.m. he had a drink of orange juice and vodka, although he was forbidden by his doctor ever to consume alcohol. When the agents requested him to come from behind the bar and said he was unfit to tend bar, he said nothing by way of explanation to them concerning his condition. When he left the licensed premises with Margaret Stockman, who is his landlady, "she was holding onto me because I was dizzy."

Margaret Stockman testified that on April 1 at about 1:15 p.m., she entered the licensed premises and observed that Dryburgh's face was "bright red", that he appeared groggy and dizzy and staggered when he walked behind the bar. Being aware that he took medication, she asked him whether he had taken a pill and, in response thereto, received an affirmative answer. Agent St sat near her and she told him that Dryburgh was

"celebrating about the baby"; that she observed Dryburgh as "he made vodka and orange juice"; that at no time, in her opinion, was he intoxicated. She assisted him to his home "because he got more excited after everything happened."

John A. Karwacki testified that he is president and treasurer of the licensee corporation and, in response to a telephone call on April 1, he immediately came to the licensed premises. When he entered, he was informed by Agent S that Dryburgh was intoxicated but he did not make the remarks about Dryburgh's condition attributed to him by the agents. He told the agents "they could do whatever they want to do; I don't want to know from nothing." He had seen Dryburgh in that condition and thought he was sick. He had seen him take pills "many times" and, in his opinion, Dryburgh was not intoxicated at the time in question.

On cross examination, Karwacki estimated that he had seen Dryburgh in the condition they had described "not more than twice. The man is only working for me a short time."

In matters such as that under consideration, we are guided by the 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. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super 242 (App. Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, recorded in Bulletin 1491, Item 1.

In weighing the evidence wherein the situation is merely factual, the credibility of witnesses must be taken into consideration. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the 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 grounded on competent legal evidence and must be based on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. There is no doubt in my mind but that the agents have given a true and accurate description of the bartender on the date in question. When the bartender was directed by Agent S to come from behind the bar, he did not at any time mention his taking of a pill which may have caused his condition. However, he was observed by the agents consuming a drink of orange juice and vodka. Although the Division witnesses were subjected to intensive cross examination by counsel for the licensee, their testimony remained unshaken.

On the other hand, after hearing the testimony of John Karwacki, an officer of the licensee corporation, I am of the opinion that, although denied by him, he did make the remarks to the agents attributed to him with reference to the bartender's condition. On his own representation, he stated to the agents that they could do whatever they wanted to do as he did not want to know "from nothing." I am not impressed with Miss Stockman's opinion that Dryburgh was not intoxicated since she fully acknowledged that he appeared to be intoxicated.

In disciplinary proceedings a licensee is fully accountable for all violations permitted or committed by his servants, agents or employees. Rule 33 of State Regulation No. 20; cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). I am satisfied that the bartender was actually intoxicated, as well as apparently intoxicated, at the time in question and should not have been permitted to be on duty in his condition.

In the absence of a prior record, I recommend that the licensee be found guilty of the charge preferred herein and that its license be suspended for twenty days. Re Morrin, Bulletin 1705, Item 3.

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 testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2d day of September, 1969,

ORDERED that Plenary Retail Consumption License C-4, issued by the Municipal Council of the Town of Irvington to Big John's Tavern, Inc., t/a Big John's Tavern, for premises 891-893 Lyons Avenue, Irvington, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, September 9, 1969, and terminating at 2:00 a.m. Monday, September 29, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

William Bromley )  
t/a The Golden Slipper )  
841 Genesee Street )  
Trenton, New Jersey )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-34 issued by the City Council of the City of Trenton )  
----- )

Licensee, Pro se  
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 1, 1969, he sold a six-pack of cans of beer to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license then held for premises 600 S. 6th Street, Camden, by the Director for ten days effective January 9, 1961, for sale in violation of State Regulation No. 38, by the municipal issuing authority for

fifteen days effective June 15, 1964, for sale in violation of State Regulation No. 38 and sale to minors, and by the Director for twenty days effective March 11, 1969, for sale to a minor. Re Bromiley, Bulletin 1850, Item 11.

The prior record of suspension of license for dissimilar violation in 1961, more than five years ago, disregarded, the license will be suspended for fifteen days (Re Bowlocheer, Inc., Bulletin 1867, Item 7), to which will be added ten days by reason of the record of suspension for similar violation in March 1969 within the past five years (Re Koval, Bulletin 1861, Item 8) and five days by reason of the suspension for similar violation in June 1964, more than five but less than ten years ago (Re Bartone & Cusimano, Bulletin 1846, Item 9), 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 29th day of August, 1969,

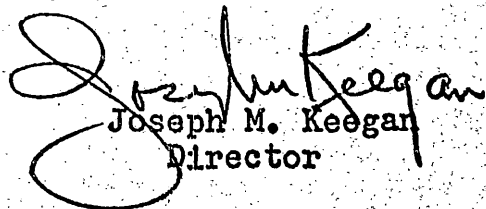
ORDERED that Plenary Retail Consumption License C-34, issued by the City Council of the City of Trenton to William Bromiley, t/a The Golden Slipper, for premises 841 Genesee Street, Trenton, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, September 8, 1969, and terminating at 2:00 a.m. Friday, October 3, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Pearl Brewing Company of America  
t/a Pearl  
312 Pearl Parkway  
San Antonio, Texas

Application filed October 14, 1969 for person-to-person transfer of Limited Wholesale License WL-34 from Pearl Brewing Company, t/a Pearl.

  
Joseph M. Keegan  
Director