

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

BULLETIN 1810

September 5, 1968

TABLE OF CONTENTSITEM

1. COURT DECISIONS - CICCONE v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.
2. DISCIPLINARY PROCEEDINGS (Lyndhurst) - ORDER REIMPOSING SUSPENSION STAYED DURING PENDENCY OF APPEAL.
3. DISCIPLINARY PROCEEDINGS (Trenton) - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - CRIMINALLY DISQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.
4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - CLAIM OF OWNER OF MOTOR VEHICLE REJECTED ABSENT GOOD FAITH - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.
5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB PREMISES - CLAIM FOR RETURN OF VENDING MACHINES REJECTED ABSENT GOOD FAITH - PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.
6. STATE LICENSES (Lyndhurst) - OBJECTIONS TO RENEWAL - RENEWAL GRANTED.
7. DISCIPLINARY PROCEEDINGS (Jersey City) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Trenton) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
10. MORAL TURPITUDE - BOOKMAKING - COLLATERAL ATTACK ON CONVICTION REJECTED - CONVICTION HELD TO INVOLVE MORAL TURPITUDE.
11. DISCIPLINARY PROCEEDINGS (Trenton) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1810

September 5, 1968

1. COURT DECISIONS - CICCONE v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No. A-587-67

FRANK W. CICCONE,  
t/a TORCH LOUNGE,

Defendant-Appellant,

v.

STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF ALCOHOLIC BEVERAGE CONTROL  
CONTROL,

Plaintiff-Respondent.

Argued May 20, 1968 -- Decided May 31, 1968

Before Judges Sullivan, Foley and Leonard

On appeal from the Division of Alcoholic  
Beverage Control.

Mr. Charles T. Hock argued the cause for  
Defendant-Appellant (Messrs. Mills, Doyle  
& Muir, attorneys).

Mr. Howard M. Kaplan, Deputy Attorney  
General, argued the cause for Plaintiff-  
Respondent (Mr. Arthur J. Sills, Attorney  
General of New Jersey, attorney).

PER CURIAM

(Appeal from Director's decision in Re Ciccone, Bulletin  
1780, Item 6. Director affirmed. Opinion not approved for publi-  
cation by the Court committee on opinions.)

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING PENDENCY OF APPEAL.

In the Matter of Disciplinary Proceedings against )

Frank W. Ciccone )  
t/a Torch Lounge )  
535 Ridge Road )  
Lyndhurst, N. J., )

O R D E R

Holder of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the Township of Lyndhurst. )

Mills, Doyle & Muir, Esqs., by Charles T. Hock, Esq., Attorneys for Licensee )  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control )

BY THE DIRECTOR:

On January 4, 1968, Conclusions and Order were entered herein suspending the license for twenty days for purchasing or obtaining alcoholic beverages from another retail licensee. Re Ciccone, Bulletin 1780, Item 6.

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

The court affirmed the Director's action on May 31, 1968. Ciccone v. Division of Alcoholic Beverage Control (App.Div. 1968), not officially reported, recorded in Bulletin 1810, Item 1. Mandate on affirmance having now been received, the suspension may be reimposed.

Accordingly, it is, on this 28th day of June 1968,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the Township of Lyndhurst to Frank W. Ciccone, t/a Torch Lounge, for premises 535 Ridge Road, Lyndhurst, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, July 2, 1968, and terminating at 2:00 a.m. Monday, July 22, 1968.

JOSEPH M. KEEGAN  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - CRIMINALLY DISQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Mack's In-Crowd Bar, Inc. )  
t/a Mack's In-Crowd Bar )  
123 Sweets Avenue )  
Trenton, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-140 issued by the City Council of the City of Trenton )

Stanley E. Rutkowski, Esqs., Attorney for Licensee  
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to the following charges:

"1. In your application dated June 1, 1966, filed with the City Council of the City of Trenton, upon which you obtained your 1966-67 plenary retail consumption license, in answer to Question No. 22, you falsely listed Sarah Benjamin, Tom Johnson, Jr., and Marial Marshall, as the holders of all of your issued and outstanding stock and, in answer to Question No. 23, you falsely stated that no one other than said stockholders had any beneficial interest, directly or indirectly, in said stock, whereas in truth and fact McKiver Johnson was the true and beneficial owner of all of your said stock; in violation of R.S. 33:1-25.

"2. In your aforesaid license application you falsely stated 'No' in answer to Question No. 31, which asks: 'Have you agreed to pay (by way of rent, salary or otherwise) to any employee or other person, any portion or percentage of the gross or net profits of income derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit McKiver Johnson to retain all of the profits and income derived from your licensed business; in violation of R.S. 33:1-25.

"3. In your notice dated December 21, 1966, by which you amended your answer to your above mentioned then current license application, you falsely stated and misrepresented that Della Mae Johnson was then the owner of 18 (90%) of your shares of stock, whereas in truth and fact McKiver Johnson was the true and beneficial owner of all of your said stock; in violation of R.S. 33:1-25.

"4. In your application dated May 28, 1967, filed with the City Council of the City of Trenton, upon which you obtained your current plenary retail consumption license, in answer to Question No. 21, you falsely listed Della Mae Johnson, Tom Johnson, Jr., and Marial Marshall as the holder of all of your issued and outstanding stock and, in answer to Question No. 22, you falsely stated no one other than said stockholders had any beneficial interest, directly or indirectly, in said stock,

whereas in truth and fact McKiver Johnson was the true and beneficial owner of all of your said stock; in violation of R.S. 33:1-25.

"5. From April 27, 1966 to date, you aided and abetted McKiver Johnson to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52.

"6. From April 27, 1966 to date you employed and had connected with you in a business capacity McKiver Johnson, a person who had been convicted on May 4, 1956 in the Mercer County Court of a crime involving moral turpitude, viz., breaking and entering with intent to steal; in violation of Rule 1 of State Regulation No. 13."

The facts are sufficiently set forth in the quoted charges.

By affidavit dated June 7, 1968, signed by Della Mae Johnson, president of the corporate licensee, it appears that a correction of the unlawful situation has been accomplished.

Absent prior record, the license will be suspended for ninety days (Re Scott's Tavern, Inc., Bulletin 1733, Item 2), with remission of five days for the plea entered, leaving a net suspension of eighty-five days.

Accordingly, it is, on this 1st day of July, 1968,

ORDERED that Plenary Retail Consumption License C-140, issued by the City Council of the City of Trenton to Mack's In-Crowd Bar, Inc., t/a Mack's In-Crowd Bar, for premises 123 Sweets Avenue, Trenton, be and the same is hereby suspended for eighty-five (85) days, commencing at 2:00 a.m. Monday, July 8, 1968, and terminating at 2:00 a.m. Tuesday, October 1, 1968.

Joseph M. Keegan  
Director

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - CLAIM OF OWNER OF MOTOR VEHICLE REJECTED ABSENT GOOD FAITH - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure :  
on December 18, 1967 of a :  
quantity of alcoholic beverages : On Hearing  
and a 1959 Cadillac sedan on :  
the northbound lane of the New : CONCLUSIONS AND ORDER  
Jersey Turnpike, Milepost 17½ :  
East Greenwich Township, County :  
of Gloucester and State of New :  
Jersey. :

John J. Crawley, Jr., Esq., appearing for claimant, James Franklin Rothermel.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

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 84 containers of alcoholic beverages and a Cadillac sedan described in a schedule attached hereto, made part hereof and marked Schedule "A" seized on December 18, 1967 in the northbound lane of the New Jersey Turnpike, Milepost 17½, East Greenwich Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66 James Franklin Rothermel, represented by counsel, sought the return of his motor vehicle and the alcoholic beverages.

The Division's file, which was submitted into evidence with the consent of the claimant herein, established the following facts: On December 18, 1967 at about 8:30 a.m. a New Jersey State Trooper stopped the motor vehicle in question on the Turnpike as aforesaid.

The automobile was operated by the claimant, in whose name the vehicle was registered bearing Pennsylvania Registration 792-94-A. At that time, Rothermel was driving at an excessive speed and the vehicle appeared to have a heavy load in the trunk. Upon questioning, Rothermel told the trooper that the trunk contained Christmas presents of alcoholic beverages and, at his request, Rothermel opened the said trunk. The trooper observed in the trunk of the vehicle seven large boxes, six of which were wrapped in brown paper. The unwrapped box contained 12 bottles of Canadian Club Whiskey. Rothermel admitted that he had no transportation license or permit authorizing the transportation of his alcoholic beverages nor did he possess an invoice pursuant to the Rules and Regulations of this Division. There was no transit insignia on the car or any indicia showing that the car was one authorized to transport liquor.

He was thereupon arrested, and the motor vehicle and the alcoholic beverages were thereafter turned over to the agents of this Division.

Rothermel explained to the State Trooper that he met a stranger, unknown to him, on the New Jersey side of the Delaware Memorial Bridge, and this person gave him the whiskey to deliver to a wrestling promoter in Philadelphia, for which Rothermel was to receive either \$15.00 or \$20.00.

Upon being charged with the possession and transportation of alcoholic beverages over the lawful amount permitted under R.S. 33:1-2, and R.S. 33:1-50, he was released in bail for arraignment in the East Greenwich Municipal Court.

The file of the Division includes the affidavit of mailing, affidavit of publication and the inventory.

James F. Rothermel, testifying in support of his claim, gave the following account: After being stopped by the State Trooper on a charge of speeding, he opened the trunk after being questioned by the trooper with respect to its contents. He then explained to the trooper that the bottles of whiskey were being transported by him to Philadelphia to be distributed by a wrestling promoter as gifts. This transportation was just done as a favor and he received no monetary consideration therefor.

On cross-examination, he elaborated on this charge. He testified that he was employed as a utility man by the wrestling association and, pursuant to his employer's instructions, purchased the seized whiskey in Washington, D.C. for delivery to Philadelphia. He had no invoices or any other instrument indicating such purchase.

He admitted telling the State Trooper the false story as hereinabove set forth because "This is the first time I ever delivered something like that. After that, when I was stopped, I knew I was doing something illegal. That is when I first found out I was doing something illegal hauling this stuff, these gift packages."

From my examination of the testimony, it is clear that the claimant herein knowingly transported a quantity of alcoholic beverages in violation of R.S. 33:1-2; did not have a transportation license or permit nor did he have on him any invoice or instrument pursuant to the Rules and Regulations of this Division; nor did the vehicle have a transit insignia affixed thereto or inscription painted thereon, in violation of Rule 2 of State Regulation No. 17.

We can take judicial notice of the fact that the sale price for standard brands of whiskey in Washington, D.C. is less than that in the City of Philadelphia. This, clearly, was the reason why this claimant was directed by his principal to travel this substantial distance to buy the 84 containers of alcoholic beverages.

R.S. 33:1-66(e) and Rule 3(b) of State Regulation No. 28 provide that an application may be made for the return of the seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law by presenting evidence to that effect at the hearing. I find, however, that the claimant knowingly violated the law and sought to explain such transportation by a transparent alibi.

In the absence of good faith, the Director has no authority to relieve the claimant of forfeiture. Seizure Case No. 10,913, Bulletin 1507, Item 2; Seizure Case No. 11,156, Bulletin 1557, Item 5. From the evidence before me, I am satisfied that the alcoholic beverages were transported in New Jersey in violation of R.S. 33:1-2 and thus are illicit. R.S. 33:1-1(y).

Accordingly, I recommend that the claim of Rothermel for the return of the alcoholic beverages and the motor vehicle in which they were transported and seized be denied, and that an order be entered directing the forfeiture of the said Cadillac automobile and the alcoholic beverages.

#### Conclusions and Order

No exceptions to the Hearer's report were filed within the time limited by 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 the same as my conclusions herein.

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

DETERMINED and ORDERED that the property seized herein, including

the alcoholic beverages, as set forth in Schedule "A", constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of R.S. 33:1-66 and 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"

- 84- containers of alcoholic beverages
- 1- Cadillac sedan, Serial No. M12993814, Engine No. 59J011644, Pennsylvania Registration 792-94-A.

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB PREMISES - CLAIM FOR RETURN OF VENDING MACHINES REJECTED ABSENT GOOD FAITH - PERSONAL PROPERTY, CASH AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure	:	
on October 6, 1967 of a quantity	:	
of alcoholic beverages, various	:	On Hearing
furnishings, fixtures, equipment,	:	
and \$72.35 in cash at the unlicensed	:	CONCLUSIONS AND ORDER.
premises of Puerto Rican Veterans Club	:	
located at 326 Montgomery	:	
Street, in the City of Jersey City,	:	
County of Hudson and State of New	:	
Jersey.	:	

..... ..

Francisco Morales Cartagena, Pro Se.  
Edward F. Zampella, Esq., by Marshall J. Wofsy, Esq., appearing for Yankee Vending Corporation.  
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

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 and State Regulation No. 28 to determine whether a quantity of alcoholic beverages, various furnishings, fixtures and equipment and \$72.35 in cash, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on October 6, 1967 at the unlicensed premises of the Puerto Rican Veterans Club located at 326 Montgomery Street, Jersey City, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises.

When the matter came on for hearing pursuant to State Regulation No. 28, the Puerto Rican Veterans Club, represented by its treasurer, appeared pro se, and sought the return of the seized cash. However, during the course of his testimony with respect to the said claim, after admitting that there were unlawful sales of alcoholic beverages and that the said club did not have a permit or license authorizing the sale thereof, he stated that he had decided to withdraw and abandon his claim for the return of its seized property.

At a continued hearing of this matter the Yankee Vending Corporation, represented by counsel, entered a claim for the return of two pool tables, a pinball machine and a juke box.

The file of this Division, which was admitted into evidence by stipulation of the said claimants was supplemented by testimony of ABC agents, and established the following facts: On October 6, 1967, at about 10:50 P.M. ABC Agent M entered the premises of the Puerto Rican Veterans Club at the above-stated address and made two purchases of beer from Cartagena. He was charged 30¢ for each bottle of beer which was accepted by Cartagena who put the money in his pocket. Shortly thereafter, this agent was joined by two other ABC agents and local police officers, whereupon he identified himself to Cartagena and Juan Benitez, the president of this club.

A search of the premises and seizure of the property were thereupon made by agents of this Division. Cartagena and Benitez were then arrested; Cartagena was charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-50 (b). They were held in bail for arraignment in the Jersey City Municipal Court, pleaded guilty and were fined.

A sample of the beer sold to the agent was analyzed by the Division chemist and his report shows that it is an alcoholic beverage fit for beverage purposes with an alcoholic volume of 5.01%.

The records of this Division do not disclose any license or permit for the sale to Cartagena, Benitez or for the premises where the violation took place.

The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the commingled cash, as set forth in Schedule "A" constitute unlawful property and are subject to forfeiture. R.S. 33:1-1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 11,911, Bulletin 1781, Item 2.

Raymond DiGiovine, the president of the Yankee Vending Corporation testifying in support of its claim for the return of two pool tables, a pinball machine and a juke box, seized herein, gave the following account: This claimant, a vending machine operator, placed the said equipment at these premises about eight months prior to the date of the seizure. DiGiovine, who made the original arrangements with the said club, was under the impression that this was a social and athletic club.

He visited the premises every Saturday afternoon for the purpose of obtaining the receipts from the machines and would also repair the machines, when necessary, on other occasions. He did not observe any liquor being dispensed or consumed on any of his visits. He was then questioned as to proof of ownership of this claimant's seized property and was unable to produce any indicia thereof. He explained that the machines were purchased as part of a large order under a "sort of contract with the people and pay them off by the month."

He claimed that he bought this equipment from Runyon Sales Company but was unable to state the exact purchase price or even give the location of the seller; nor was he able to tell whether, in fact, he had paid for these machines and was the present owner thereof.

At my suggestion, counsel agreed to produce the documents establishing the title to these seized machines in this claimant.

On April 19, 1968 I sent a letter to the claimant's attorney advising him that on the date of the hearing he represented that documents supporting title of the seized property allegedly owned by this claimant would be forwarded to this Division in order to complete the record of the hearing. Up to the date of this report, no reply was received to this communication, nor have these documents been received. Thus, it has not been established whether the seized property claimed are actually the property of this claimant or of the Runyon Sales Company. It is significant to note that DiGiovine testified that he notified the sales director of the Runyon Sales Company of the fact of seizure, and no one has appeared at this hearing on behalf of the said Runyon Sales Company. In view of the fact that this claimant has not proved its title to the said property, its claim for the return of the seized property, cannot be recognized.

Furthermore, it appears that the only matter that concerned this claimant in placing these machines at these premises, related to the percentage of profits to be derived therefrom. There is no evidence that this claimant made a reasonable investigation of the background of Cartagena, Benitez or of the premises in question to determine whether or not they had been previously involved in unlawful liquor activity.

This claimant was well aware of the necessity for such investigation since it had been recently involved in a similar proceedings before this Division wherein it presented a claim for the return of its seized property. See Seizure Case No. 11,850, Bulletin 1749, Item 6.

I thus conclude that this claimant did not establish title to the seized property nor did it prove that it had acted in good faith and did not know or have any reason to believe that the property would be used in unlawful liquor activity. R.S. 33:1-66(f). Under these circumstances, I am imperatively constrained to recommend that its claim for return of the property be rejected, and that an order be entered forfeiting the same. Seizure Case No. 11,911, supra; Seizure Case No. 11,715, Bulletin 1706, Item 3.

It is further recommended that an order be entered forfeiting the balance of the seized property, including the cash and the alcoholic beverages.

#### Conclusions and Order

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

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 them as my conclusions herein.

Accordingly, it is on this 2nd day of July, 1968

DETERMINED and ORDERED that the seized property as set forth in Schedule "A", including the alcoholic beverages and cash, constitute unlawful property and the same are hereby forfeited, and 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"

206 - containers of alcoholic beverages,  
 1 juke box, 1 piano, 1 record player,  
 2 refrigerators, 2 pool tables, 1  
 pinball machine, 1 floor polisher,  
 36 - chairs, 7 tables, \$72.35 - cash.

## 6. STATE LICENSES - OBJECTIONS TO RENEWAL - RENEWAL GRANTED.

In the Matter of Objections to the )  
 Renewal of State Beverage Distri- )  
 butor's License SBD-173 issued to )

Peter, Joseph, Julian, Arthur Mustardo )  
 t/a Lyndale Beverage Co. )  
 650 Valley Brook Avenue )  
 Lyndhurst, New Jersey )

CONCLUSIONS

Licensees, by Peter J. Mustardo, Pro se -  
 Objectors, Pro se

BY THE DIRECTOR:

On December 14, 1965, the application of Peter, Joseph, August, Julian and Arthur Mustardo for place-to-place transfer of their state beverage distributor's license was granted subject to the completion of all statutory requirements and further subject to the express condition that no deliveries of alcoholic beverages to consumers be made on the licensed premises. These statutory requisites were complied with, and the licensees have operated since that time at 650 Valley Brook Avenue, Lyndhurst, in accordance with the terms thereof. Their license has been renewed for the years 1966-67 and 1967-68.

Objections have been filed by local residents to the renewal of the license for the year 1968-69 for reasons which may be summarized as follows:

- (1) The area in which the licensees conduct their business is a residential area zoned for one- and two-family houses and the business is therefore operated as a non-conforming use.
- (2) Their building was altered in violation of the zoning ordinance.
- (3) An adjoining lot is being used for storing boxes and bottles, contrary to agreement with this Division.
- (4) The licensees engage in illegal parking.
- (5) They have expanded their business operation contrary to representations made at the time the application for transfer was granted.

A petition was presented at the hearing held herein, signed by nine neighbors who testified to the above objections. They felt that the present operation is detrimental to the health and safety of the residents of the area and particularly to children who attend a parochial school located about three hundred feet from the property. The objectors further asserted that deliveries of the licensee's products have increased considerably during the past year, which expansion affects the "safety and comfort of the neighbors."

Peter Mustardo, a co-licensee, testified that Lyndale Beverage Co. is doing less business today than formerly, and he generally denied the complaints hereinabove set forth. He admitted that the licensees operate eight trucks, whereas in 1965 they operated six trucks, this increase being occasioned by their purchase of the accounts of the Ideal Beverage Company. However, he insisted that over one thousand accounts were lost in Lyndhurst alone during the past two years. He specifically denied making any alterations and stated that the lot on which some of the material is stored was purchased in 1964. He also denied the illegal parking and excessive noise and countered that in fact the noise was caused by other facilities in the neighborhood.

So far as the zoning question is concerned, that was resolved in the prior order which stated:

"... the Supreme Court in Lubliner v. Paterson, 33 N.J. 428, has held that it is without the jurisdiction of this Division to determine zoning matters. Zoning matters are left to the municipal authorities and, in the event that such business is impermissible under the local zoning ordinance, they may take action consistent with such ordinance. Re Lutz, Bulletin 1401, Item 5."

It is significant to note that no objection has been filed with this Division by the municipality to the renewal of this license.

The matters raised at this hearing have been considered and resolved in the conclusions dated December 14, 1965. Re Mustardo, Bulletin 1654, Item 5. I find no substantial merit to the present objections.

The licensees are, however, cautioned to take these objections into consideration in the future operation of their business and to fully comply with the representations made at the time the original application for transfer was granted.

After considering all of the evidence, I shall grant the application for renewal, subject to the express condition that no deliveries of alcoholic beverages to consumers be made on the licensed premises.

Joseph M. Keegan  
Director

Dated: June 28, 1968

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

In the Matter of Disciplinary Proceedings against  
Mathilda Trackewicz, Exec'x of the Estate of Edward Trackewicz  
t/a Tracey's Tavern  
807 Newark Avenue  
Jersey City, N. J.  
Holder of Plenary Retail Consumption License C-142, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

-----  
Licensee, Pro se  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 25, 1968, she 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 Gropp's Tavern, Inc., Bulletin 1794, Item 5.

Accordingly, it is, on this 2nd day of July 1968,

ORDERED that Plenary Retail Consumption License C-142, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Mathilda Trackewicz, Executrix of the Estate of Edward Trackewicz, t/a Tracey's Tavern, for premises 807 Newark Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, July 9, 1968, and terminating at 2:00 a.m. Friday, July 19, 1968.

Joseph M. Keegan  
Director

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED  
- LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
Elizabeth Lupsa  
t/a Veterans Tavern  
82 Jersey Street  
Trenton, N.J.  
Holder of Plenary Retail Consumption License C-139, issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

-----  
Benjamin A. Poreda, Esq., Attorney for Licensee  
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 13, 1968 she possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Sanderson, Bulletin 1794, Item 9.

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

ORDERED that Plenary Retail Consumption License C-139, issued by the City Council of the City of Trenton to Elizabeth Lupsa, t/a Veterans Tavern, for premises 82 Jersey Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, July 15, 1968, and terminating at 2:00 a.m. Saturday, July 20, 1968.

Joseph M. Keegan  
Director

9. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Fred Sims  
348-350 First Street  
Jersey City, N. J.

)  
)  
) CONCLUSIONS  
) AND ORDER  
)

Holder of Plenary Retail Consumption License C-130, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

-----  
Licensee, Pro se  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on May 10 -11, 1968, he sold drinks of alcoholic beverages to three minors, ages 18, 20 and 20, in violation of Rule 1 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 The Derby, Inc., Bulletin 1724, Item 5.

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

ORDERED that Plenary Retail Consumption License C-130, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Fred Sims, for premises 348-350 First Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Tuesday, July 16, 1968, and terminating at 2:00 a.m. Wednesday, July 31, 1968.

Joseph M. Keegan  
Director

10. MORAL TURPITUDE - BOOKMAKING - COLLATERAL ATTACK ON CON-  
VICTION REJECTED - CONVICTION HELD TO INVOLVE MORAL  
TURPITUDE.

Re: Eligibility No. 766

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

Applicant's criminal record discloses that, following a trial of four days in the Morris County Court, a jury found him guilty of bookmaking between May 14 and May 28, 1966 and on August 23, 1967, he was sentenced to serve six months in the county jail. A hearing was held at the Division to inquire into the "underlying facts to determine whether there existed moral turpitude" in the commission of such crime. State v. McNally, 91 N.J. Super 513 (App.Div. 1966) certif. denied 48 N.J. 351 (1966).

Reports received by this Division disclose that applicant's conviction followed his arrest on May 28, 1966; in a gambling raid at a licensed premises where he was employed as a bartender; that the arresting officers found \$63.00 in possession of the applicant; that said sum included \$8.00 in "marked" money used by an undercover agent to place horse racing bets with the applicant and that the officers also confiscated a sheet of paper listing bets on horse races after the applicant had torn the same in the presence of the officers.

It further appears that on May 18, 19, 24 and 25, 1966, applicant accepted bets on horse races from an undercover agent.

At the hearing held herein, applicant denied he had accepted the aforesaid wagers; denied that he had been in the licensed premises on three of the dates outlined above and further testified that the seized sheet of paper listed only some of his personal bets; that he had been employed on the licensed premises for about eighteen months prior to his arrest; that from December 1965 or January 1966 through May 28, 1966, he had accepted bets on horse races only from employees of a hotel which housed the tavern where he was employed; that he was a gambler; that he played the horses to win money to support his family; that he would call in his personal bets together with those placed with him by aforementioned employees and that the weekly bets placed with him ranged from sixty to one hundred dollars.

Applicant further testified that the telephone number he called to place these bets was given to him by a runner; that the recipient of his calls was known to him only as "Joe"; that the runner would pick up the money he received to cover the bets placed with him and carry the same to "Joe"; that if he or his players were successful in their wagers, the winnings would be delivered to him by the runner and that he would then distribute the same to the successful players based on a daily statement he received by telephone from "Joe".

The applicant further testified that all of his aforesaid unlawful activities were performed as an accommodation to the players; that he received no remuneration for the same; that he was neither employed on a salary or commission basis by anyone with respect to his bookmaking activities.

Applicant's conviction cannot be collaterally attacked in these proceedings. Re Elig. No. 239, Bulletin 305, Item 9; Re Elig. No. 711, Bulletin 1587, Item 6.

"The type of gambling described herein by its very nature requires that kind of organization which breeds corruption and affects the moral fibre of the community. It is apparent that the applicant herein was an integral part of such group and that his services facilitated the operation of such a syndicate. The prime evil in question is not so much the gambling in and of itself but, rather, the syndicated structure which has as its underlying purpose the violation of our gambling statute."

See also State v. Ivan, 33 N.J. 197, 202 (1960), wherein the opinion of Chief Justice Weintraub stated:

"The gambling racket is an ancient foe of society. It bilks the weak. It wrecks homes and destroys men. It spawns embezzlement, larceny and crimes of violence. It corrupts officialdom. It is reputed to be allied with other illicit traffic. The 'easy' money it yields doubtless finds its way under cover into legitimate fields, there to continue its polluting course."

It is apparent that the applicant herein was an integral part of "the gambling racket" and that his services facilitated its operation. Applicant "worked at the fingertips of the hand which directed and controlled the criminal enterprise", State v. Hoyer, 19 N.J. 301, 209 (1955); he acted as an agent or representative, linking the "betting transactions between the bettor and 'bookmaker'", State v. Kugnitz, 36 N.J. Super. 521, 530 (App.Div. 1955); he participated in a bookmaking combination, which has been judicially characterized as holding "great power for evil", State v. Lannon, 3 N.J. 337, 343 (1949).

Based on the indictment, the guilty verdict, the sentence of the court, the background facts and the sworn testimony of the applicant, it is my opinion that the crime of which applicant was convicted involves the element of moral turpitude. Re Elig. No. 749, Bulletin 1697, Item 6, Re Elig. No. 752, Bulletin 1714, Item 6; aff'd, Noce v. Division of Alcoholic Beverage Control, App.Div. 1957, not officially reported, recorded in Bulletin 1734, Item 1.

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

I. Edward Amada  
Attorney

Approved:

JOSEPH M. KEEGAN  
DIRECTOR

Dated: July 19, 1968

