

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

BULLETIN 1645

November 30, 1965

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1645

November 30, 1965

DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUS-  
PENDED FOR 60 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

Marie L. DiMattia and Louis DiMattia )  
t/a Walnut Cafe )  
950 S. 5th St., )  
Camden, N. J., )

CONCLUSIONS  
and  
ORDER

Holders of Plenary Retail Consumption )  
License C-164, issued by the Municipal )  
Board of Alcoholic Beverage Control of )  
the City of Camden. )  
----- )

Frank M. Lario, Esq., Attorney for Licensees  
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

Licensees pleaded not guilty to the following charges:

1. On October 13, 29, November 9, December 1 and 15, 1964, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the "numbers game"; in violation of Rule 7 of State Regulation No. 20.

2. On October 13, 29, November 9, December 1 and 15, 1964, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the "numbers game" to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.

The Division offered the testimony of two New Jersey State Police officers in substantiation of the charges.

The testimony of Trooper Raymond Feldherr, who had substantial experience in investigating gambling, including numbers and bookmaking activities in his capacity as a New Jersey State Police officer, may be summarized as follows: Pursuant to specific assignment he visited the licensed premises on several occasions; he entered the licensed premises the first time on October 13, 1964, at 12:05 p.m. and sat at the bar; Louis DiMattia, one of the licensees, was tending bar; on the wall on the serving side of the bar there hung a "private type" telephone; after being at the bar about five minutes, Louis DiMattia answered the telephone and said, "It is for you, Dominick." Dominick (who was later identified as the brother of this licensee) went behind the bar to the cash register which is located in the center of the bar, tore a page off the top of a pad, took the

pad and walked to the telephone at the end of the bar and answered the 'phone with the word "Yeah." He repeated the word "Yeah" several times and made notes on the pad at the same time. After the call was finished, he placed the paper he had been writing on in his pocket and walked back to a table where he had been seated.

About five minutes thereafter, a person identified as Joe entered the tavern and walked up to the bar where Dominick DiMattia was standing at the time. The officer was about seven to ten feet from the pair. A conversation ensued, and Joe was heard to say to Dominick DiMattia "642 for \$2 and 734 for \$3." He was unable to hear all of the conversation; however, he did hear some numbers mentioned. Dominick DiMattia, who had been writing on a paper while talking, looked over the paper, turned to Joe and said, "It comes to \$12.50." Joe said "Right" and handed Dominick DiMattia some paper money and change. It was the opinion of the witness that the transaction he described was a numbers bet. The officer remained in the tavern for about twenty minutes and then departed.

On October 29, 1964, the witness entered the licensed premises at approximately 12:35 p.m. and went to the bar. Rene DiMattia (another brother of Louis DiMattia) was tending bar. Seated at a table was Dominick DiMattia, heretofore identified. The witness made observations for about fifteen to twenty minutes before departing. Rene answered the telephone and said, "It is for you, Dominick." Dominick DiMattia got up from the table, walked behind the bar, picked up the white pad lying alongside the cash register, and answered the telephone. He repeated the words "Yeah" and "O.K." intermittently and kept writing on the pad. When the conversation terminated he walked back to the register and held the paper which he tore off the pad open so that the witness, who was standing at the bar two and one-half or three feet away, could discern a list of three-digit numbers written thereon. He then folded the paper and placed it in his pocket. The officer asserted that, based upon his experience, it was his opinion that numbers bets were taken on the telephone.

On November 9, 1964, the officer returned to the licensed premises at 12:35 p.m. and again sat at the center of the bar. Louis DiMattia was tending bar. Dominick DiMattia was again seated at a booth behind the witness about seven or eight feet away. A white male entered the bar, walked directly over to the booth where Dominick DiMattia was seated, and said in a loud voice, "944 for 50 cents and a quarter the other 2 ways." Dominick pulled out a piece of paper from his jacket and wrote on it. Shortly thereafter Dominick DiMattia departed from the licensed premises. Then a male entered the licensed premises and asked for Dominick. Another male, who was seen there on previous occasions by the officer and known as Chiz, said to the man who just entered, "I'll take whatever you got and give it to him when he gets back." The male answered, "O.K. 806 for 50 cents." The officer stated that, in his opinion, the two transactions about described were numbers bets. Upon Dominick's return to the licensed premises shortly thereafter, Dominick went to the bar and Chiz slid the money across the bar to Dominick and said, "Here, 806." The officer remained in the licensed premises on this occasion a period of about fifteen minutes.

Officer Feldherr returned to the licensed premises on December 1, 1964; went up to the center of the bar and stayed for a period of about fifteen minutes. Louis DiMattia was tending bar and Dominick DiMattia was sitting at one of the

tables. He observed a male enter the tavern and sit at the table where Dominick was seated. He heard him play the following numbers with Dominick: 342, 280, 432 and 382. He was unable to hear the amounts played on each number but saw the male hand Dominick some paper currency. It was the officer's opinion that the transaction he described was a numbers bet. Shortly thereafter another male entered the tavern and went to Dominick who was seated at the same table. He was heard to play 348 for fifty cents straight. Again, it was the officer's opinion that a numbers bet was transacted.

An exhaustive cross examination of this witness proved to be mainly corroborative of the direct testimony. In addition, the officer testified that it seemed apparent that the bartender Louis DiMattia (one of the licensees) had observed the gambling activity which he described as having occurred on October 13, 1964. Further, he stated that the bar was about twenty feet long and that, generally, the persons tending bar (viz., Louis or Rene DiMattia) were somewhere behind the bar.

Officer Harry Patterson (who is connected with the investigation section of the New Jersey State Police and who has had experience in investigating gambling, including numbers and bookmaking activities) testified that he entered the licensed premises on December 15, 1964, at approximately 12:40 p.m., in the company of two other State Police officers, identified himself to Rene DiMattia (who was tending bar) and proceeded to execute a search warrant. While Officer Patterson was behind the bar, the telephone behind the bar rang at 12:45 p.m. and the officer answered it. A female voice asked for Dominick. Upon being told that Dominick was indisposed and that he would take any action she might have, the female proceeded to give a list of numbers plays. At 1:30 p.m. the telephone rang again and the officer again answered it. The caller asked for Dominick and, upon being advised that Dominick was indisposed, the caller proceeded to call off some numbers plays.

Under vigorous cross examination Officer Patterson's testimony did not vary.

Marie L. DiMattia (one of the licensees) testified that she is the wife of the bartender Rene DiMattia and that the co-licensee Louis DiMattia is her husband's brother. She denied that Dominick DiMattia ever conducted gambling on the licensed premises or that she had any knowledge of gambling occurring therein. She admitted that she was not on the licensed premises on any of the occasions that the State Troopers stated they were in the tavern.

Louis DiMattia (the co-licensee) testified that he never saw or heard his brother Dominick DiMattia engage in numbers writing or gambling activity of any kind; no pads were kept on the back bar; Dominick was not permitted behind the bar; he did not remember Trooper Feldherr ever coming into the licensed premises. In addition, he denied Trooper Feldherr's statement that each time he entered the licensed premises there would be no more than three or four patrons at the bar. He alleged that at noon time there were always more patrons than three or four at the bar; that the side door was closed for a period of two years and only the main door to the barroom was open. On cross examination he denied that he called Dominick to the telephone as recited by Officer Feldherr, and that he ever allowed Dominick to go behind the bar.

Rene DiMattia testified that he was the husband of the co-licensee Marie DiMattia and a brother of the co-licensee Louis DiMattia. He was employed as a bartender at the licensed

premises. He stated that noon time was the busiest time at the tavern and that there was a back room where some of the luncheon patrons were accommodated. He denied that his brother Dominick was ever permitted behind the bar. He stated that the scratch pads on the back bar were used for noting petty cash. He further denied that Dominick ever did anything of a suspicious nature in the tavern. On cross examination this witness admitted that he knew that his brother Dominick was convicted of gambling in the year 1949.

The licensees, in brief, argue that (1) there is insufficient evidence to sustain a finding of guilt; (2) there is insufficient evidence to warrant a finding that the licensees "allowed, permitted and suffered" the violations charged against them; (3) that the telephone conversations of December 15, 1964, should not be admitted into evidence as binding against the licensees; and (4) that the evidence obtained by use of the search warrant be suppressed as against the licensees.

In evaluating the testimony and its legal impact we are guided by the basic and 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); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was restated in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1, where the court said:

"The truth of charges in a proceeding before an administrative agency need be established only by a preponderance of the believable evidence, not beyond a reasonable doubt. Atkinson v. Parsekian, 37 N.J. 143, 149 (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 as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I have carefully evaluated and considered all of the material testimony presented in this proceeding. I am persuaded that the version given by Officer Feldherr as to the occurrences to which he testified in so positive a manner is a credible, factual and true version. It is obvious that he had no improper motive in testifying as he did, nor did he have any personal animus against the licensees. The testimony as to the numbers playing indulged in by Dominick DiMattia (a brother of one of the licensees, Louis DiMattia and a brother of the bartender Rene) upon the licensed premises was clear and convincing. On the other hand, I was totally unimpressed by the testimony of the licensees and their bartender. I cannot believe the testimony given by Louis DiMattia wherein he stated that he did not remember Officer Feldherr ever coming into the licensed premises and that he never called his brother Dominick to the telephone. His denial that he ever kept pads on the back bar was refuted by his brother Rene who testified that the scratch pads on the back bar were used to note petty cash. The testimony amply justified the conclusion that Dominick carried on the proscribed activities in such an open manner that the licensees could have, or should have, observed his conduct.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related on the licensed premises. A licensee may not escape or avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Co. v. Hock, 136 N.J.L. 28.

Although the attorney for the licensees may argue with justification that the testimony relating to telephone conversations had by Officer Patterson on December 15, 1964, do not prove a violation on the part of the licensees as to that particular date, those conversations are definitely corroborative of the fact that numbers playing was allowed, permitted and suffered on the other dates specified in the charges. It is significant to note that both callers asked for "Dominick" (the first name of Dominick DiMattia) prior to giving numbers play over the telephone to the State Police officer. Hence I reject this argument. See Re Tumulty, Bulletin 1502, Item 3. Tel

I need not refer to the fourth argument or motion made by licensees' attorney for the reason that I feel there is insufficient proof to warrant a finding of guilt of the charges based upon the occurrence of December 15, 1964.

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensees be found guilty of said charges which particularly refer to the dates of October 13, 29, November 9 and December 1, 1964, and I further recommend that there be a finding of not guilty as to that part of the charges which relates to December 15, 1964.

The licensees have no prior adjudicated record of suspension of license. I further recommend that the license be suspended for sixty days. Re Kochanowicz, Bulletin 1625, Item 1.

#### Conclusions and Order

Written exceptions to the Hearer's report and argument with reference thereto were filed with me by the attorney for the licensees within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of testimony, the Hearer's report and the exceptions and arguments filed with reference thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations. Hence I find the licensees guilty as charged and shall suspend their license for a period of sixty days.

The Hearer's report amply answers all the arguments advanced by the attorney for the licensees both orally at the hearing and in his written exceptions. However, two of the

*Search*

arguments, viz., that the Hearer erred in admitting (1) testimony concerning the search of the licensed premises by officers of the New Jersey State Police, testimony concerning the search warrant and the introduction of the search warrant, and (2) the testimony of telephone conversations had by New Jersey State Police Officer Patterson on December 15th, deserve additional comment. With respect to (1) above, by legislative mandate (R.S. 33:1-35) and the voluntary consent of the licensees to inspection and search of their licensed premises by authorized officers (when they executed their application for said license), the right of search and inspection of their licensed premises by authorized officers, e.g., Officer Patterson, is patent and unarguable, albeit the officers may have had a search warrant with them at the time and regardless of any questions which may be raised as to the sufficiency of the warrant. Cf. Re Bacsco, Bulletin 1632, Item 1, and authorities cited therein. With respect to (2) above, detailed considerations and language in Re Tumulty, Bulletin 1502, Item 3, cited by the Hearer as authority for the admissibility of the telephone conversations, appear noteworthy of emphasis in so far as the instant case is concerned. Re Tumulty, supra, recognizes the degree of care needed to be exercised before testimony in form of telephone conversations may be admitted, citing, among other court decisions, State v. O'Donnell, 8 N.J. Super. 13. In that case the court stated (at p. 16):

*TD*

*Admitted Pursuant to precedent*

"... The nature of the conversation made it competent as a material circumstance in the case. Of course, such evidence should be admitted with caution (because of the ease with which it may be counterfeited) and, should not be received at all, except when the circumstances rebut every suspicion that it may be spurious. Commonwealth v. Prezioso, 41 A. 2d 350 (Pa. Sup. Ct. 1945). Here there is nothing to suggest that the evidence is not genuine. Identification of the person calling is not, in a case of this kind, essential to the admissibility of the conversation. What is said by one initiating a call, by disclosing intimate knowledge, may so identify him and the person whom he calls as associates in the enterprise, as to make the whole conversation admissible. Commonwealth v. Prezioso, supra; Commonwealth v. Palace, 63 A. 2d 511 (Super. Ct. of Pa. 1949). The admissibility of evidence of this kind, has been inferentially recognized by our courts, in cases of this nature. State v. Meola, 6 N.J. Super. 214 (App.Div. 1950)."

*TD*

In the case sub judice the surrounding facts and circumstances detailed by the Hearer in his report and in the record of testimony unquestionably establish that the telephone in the licensed premises and the licensed premises had been used and employed on divers days prior to December 15, 1964, in the operation and conduct of the "numbers game" and additionally rebut every suspicion that the telephone calls may have been spurious and, in total, support the Hearer's finding that the nature of the telephone conversations made them competent as a material circumstance and properly admissible as evidence in the case.

Accordingly, it is, on this 4th day of October, 1965,

ORDERED that Plenary Retail Consumption License C-164, issued by the Municipal Board of Alcoholic Beverage Control of



the City of Camden to Marie L. DiMattia and Louis DiMattia, t/a Walnut Cafe, for premises 950 S. 5th Street, Camden, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, October 11, 1965, and terminating at 2 a.m. Friday, December 10, 1965.

JOSEPH P. LORDI,  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )  
  
Vincent Sawicki )  
t/a V & Z Tavern )  
215 Paterson Avenue )  
Wallington, New Jersey )  
  
Holder of Plenary Retail Consump- )  
tion License C-32, issued by the )  
Mayor and Council of the Borough )  
of Wallington )  
----- )

CONCLUSIONS  
and  
ORDER

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

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that (1) on September 3, 1965, he permitted gambling (wagering at cards) on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) in his current application for license, failed to disclose his record of prior license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for sixty days effective December 16, 1963 (affirming similar suspension by the municipal issuing authority) for sale to a minor. Sawicki v. Wallington, Bulletin 1546, Item 3.

The license will be suspended on the first charge for fifteen days (Re Auryanson, Bulletin 1611, Item 7) and on the second charge for ten days (Re Scangarello, Bulletin 1631, Item 6), 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 Hauge, Bulletin 1629, Item 3), 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 27th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-32, issued by the Mayor and Council of the Borough of Wallington to Vincent Sawicki, t/a V & Z Tavern, for premises 215 Paterson Avenue, Wallington, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, October 4, 1965, and terminating at 3:00 a.m. Friday, October 29, 1965.

JOSEPH P. LORDI,  
DIRECTOR



3.

ACTIVITY REPORT FOR SEPTEMBER 1965

ARRESTS:				
Total number of persons arrested - - - - -				18
Licensees and employees - - - - - 17				
Bootleggers - - - - - 1				
SEIZURES:				
Motor vehicles - cars - - - - -				1
Distilled alcoholic beverages - gallons - - - - -				.58
Wine - gallons - - - - -				4.43
Brewed malt alcoholic beverages - gallons - - - - -				2.15
RETAIL LICENSEES:				
Premises inspected - - - - -				769
Premises where alcoholic beverages were gauged - - - - -				592
Bottles gauged - - - - -				9,756
Premises where violations were found - - - - -				82
Violations found - - - - -				138
Unqualified employees - - - - - 70				
Reg. #38 sign not posted - - - - - 6				
Application copy not available - - - - - 13				
Prohibited sign - - - - - 3				
Other mercantile business - - - - - 10				
Improper beer taps - - - - - 1				
Disposal permit necessary - - - - - 7				
Other violations - - - - - 28				
STATE LICENSEES:				
Premises inspected - - - - -				16
License applications investigated - - - - -				7
COMPLAINTS:				
Complaints assigned for investigation - - - - -				397
Investigations completed - - - - -				377
Investigations pending - - - - -				204
LABORATORY:				
Analyses made - - - - -				122
Refills from licensed premises - bottles - - - - -				63
Bottles from unlicensed premises - - - - -				4
IDENTIFICATION:				
Criminal fingerprint identifications made - - - - -				6
Persons fingerprinted for non-criminal purposes - - - - -				369
Identification contacts made with other enforcement agencies - - - - -				257
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities - - - - -				11
Violations involved - - - - -				13
Sale during prohibited hours - - - - - 6				
Failure to close premises during prohibited hours - - - - - 2				
Sale to minors - - - - - 5				
Cases instituted at Division - - - - -				16
Violations involved - - - - -				22
Sale to minors - - - - - 5				
Permitting foul language on premises - - - - - 1				
Sale during prohibited hours - - - - - 4				
Permitting gambling on premises - - - - - 1				
Possessing liquor not truly labeled - - - - - 3				
Sale below filed price - - - - - 1				
Beverage Tax Law non-compliance - - - - - 2				
Sale to intoxicated person - - - - - 1				
Fraud in application - - - - - 2				
Failure to close premises during prohibited hours - - - - - 1				
Conducting business as a nuisance - - - - - 1				
Cases brought by municipalities on own initiative and reported to Division - - - - -				17
Violations involved - - - - -				19
Sale to minors - - - - - 15				
Failure to afford view into premises during prohibited hours - - - - - 1				
Failure to close premises during prohibited hours - - - - - 1				
Sale during prohibited hours - - - - - 1				
Hindering investigation - - - - - 1				
HEARINGS HELD AT DIVISION:				
Total number of hearings held - - - - -				48
Appeals - - - - - 3				
Seizures - - - - - 3				
Disciplinary proceedings - - - - - 29				
Tax revocations - - - - - 2				
Eligibility - - - - - 11				
STATE LICENSES AND PERMITS ISSUED:				
Total number issued - - - - -				1,453
Licenses - - - - - 2				
Social affair permits - - - - - 522				
Solicitors' permits - - - - - 39				
Miscellaneous permits - - - - - 216				
Employment permits - - - - - 396				
Transit insignia - - - - - 178				
Disposal permits - - - - - 81				
Transit certificates - - - - - 19				
OFFICE OF AMUSEMENT GAMES CONTROL:				
State Fair Licenses issued - - - - - 165				
Premises where violations were found - - - - - 68				
Premises inspected - - - - - 373				
Number of violations found - - - - - 51				
Enforcement files established - - - - - 55				

JOSEPH P. LORDI  
Director of Alcoholic Beverage Control  
Commissioner of Amusement Games Control

Dated: October 6, 1965

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALES OF ALCOHOLIC BEVERAGES AT PICNIC AREA - LEIN CLAIM OF INNOCENT LIENOR RECOGNIZED - ILLICIT ALCOHOLIC BEVERAGES AND COMMINGLED CASH ORDERED FORFEITED.

In the Matter of the Seizure )  
 on June 13, 1965 of a quantity )  
 of alcoholic beverages, a Ford )  
 pickup truck, and \$22.95 in cash )  
 in an open area at Fenwick Station )  
 Road, Pilesgrove Township, County )  
 of Salem and State of New Jersey. )

Case No. 11,516

On Hearing

CONCLUSIONS  
 and  
 ORDER

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 Wilbur S. Russell, Pro Se.  
 Green and Lasky, Esqs., by Robert B. Silverman, Esq.,  
 appearing for Universal C.I.T. Credit 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 the provisions of R.S. 33:1-66 and State Regulation No. 28 to determine whether 24 bottles of wine, 42 cans of beer, one tank condenser, \$22.95 in cash and a Ford pickup truck, more particularly described in an inventory attached hereto, made part hereof, and marked Schedule "A", seized on June 13, 1965 at Fenwick Station Road, Pilesgrove Township, New Jersey, constitute unlawful property and should be forfeited.

At the said hearing, Wilbur S. Russell appeared and sought return of the Ford truck.

The Universal C.I.T. Credit Corporation, represented by counsel, sought recognition of its lein claim on the said motor vehicle.

No one opposed forfeiture of the alcoholic beverages, tank condenser or the cash.

Reports of ABC agents and the other documents in the file admitted into evidence with the consent of the claimants herein disclose the following facts: ABC agents were specifically assigned to investigate alleged illegal sales of alcoholic beverages at an open picnic area at Fenwick Station Road, at Pilesgrove Township where a revival meeting was taking place on Sunday, June 13, 1965.

When the agents arrived, they noted that there were about 3,000 persons in attendance. They further observed that Wilbur S. Russell, a claimant herein, was selling alcoholic beverages from a 1965 Ford pickup truck referred to in Schedule "A". Fortified with "marked" one-dollar bills, the serial numbers of which had been previously recorded, the agent purchased three cans of beer from Russell and paid for each can as purchased with the "marked" bills.

They also observed Russell making similar sales of beer to other individuals, which beer was taken from the truck and handed to those individuals upon payment. The last purchase was made by an agent at 3:45 p.m.

Other agents and a State trooper thereupon joined this first agent, identified themselves, seized the truck, alcoholic beverages and \$22.95 in cash, which included \$1.00 of the "marked" bills found on the person of Russell. The truck bore New Jersey license plates XRR-877 registered in the name of Wilbur Russell. Russell was arrested and charged with the illegal sale and possession of alcoholic beverages as defined by R.S. 33:1-2, and in violation of R.S. 33:1-50 (a & b). He was then arraigned in the Pilesgrove Township Municipal Court and held in bail for action by the Salem County Grand Jury. The seized alcoholic beverages, the other personal property and the motor vehicle were adopted by this Division.

On June 25, 1965 an analysis of a sample of the contents of one of the cans of beer by the Division chemist disclosed that it is an alcoholic beverage fit for beverage purposes with an alcoholic content by volume of 5.3%.

The records of this Division disclose that there was no license authorizing Russell to sell alcoholic beverages nor was there a permit or license authorizing the sale of alcoholic beverages at these premises. The file includes an affidavit of mailing, affidavit of publication, chemist's report and the inventory.

Wilbur S. Russell, testifying in support of his claim, admitted that he sold alcoholic beverages at the place and time in question without a license. His primary reason for entering this claim was because this vehicle was his only means of transportation. He further stated that he purchased the truck in November, 1964 for \$2,000.00, on a trade-in deal for which he was allowed \$500.00 and he had now made a total of six monthly payments in the sum of \$74.19 per month on the said truck.

On cross-examination, he admitted that he had been convicted of possession of an illicit still in 1936 in Wilmington, Delaware and was sentenced to 60 days in jail.

The seized beer is illicit because it was intended for unlawful sale. R.S. 33:1-1(i). Such illicit beer, the commingled cash, the tank and the motor vehicle in which the said beer was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 10,759, Bulletin 1469, Item 5.

Since the evidence clearly supports the charge that the seized alcoholic beverages are illicit, because they were intended for illegal sale and were transported unlawfully, I recommend that these beverages, the cash and the tank be forfeited. R.S. 33:1-1(x & y); R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 10,646, Bulletin 1435, Item 5; Seizure Case No. 10,918, Bulletin 1504, Item 3.

John J. Schwab, called as a witness on behalf of the claimant, Universal C.I.T. Credit Corporation, testified that he is the collection manager at the Haddonfield, New Jersey branch of the said claimant; that the claimant purchased a conditional sales contract covering the said motor vehicle; that the claimant presently holds the certificate of ownership of the motor vehicle referred to, with the lien of this claimant endorsed upon it. He stated that Russell is presently in default on his payments and there is presently due on account of the said contract \$2,151.51.

He further explained if the contract were to be paid off in full on the date of the hearing, the amount due to this claimant, after all allowances, would be the sum of \$1,905.06; however, if it were paid off between August 10th and September 10th, the amount due to it, after allowances made would be \$1,923.56.

This witness further testified that he has been engaged in the finance business since 1962 and is familiar with the value of the type of vehicle herein involved. He estimates that the range of value of this Ford pickup truck presently is between \$1,595.00 and \$1,795.00, depending upon the condition; if it is in good condition, it has a fair retail market value of \$1,795.00.

The evidence adduced from this witness discloses that this is the third credit transaction involving purchase of an automobile by Russell; that his credit was approved in these cases after the usual investigation; and that no violation of liquor law was revealed in these investigations.

According to the usual practice of this company, when a prior credit investigation has been made on a customer's account, they merely investigate his present employment and accept the credit on that basis. Such investigation disclosed Russell was employed, owned his own home, was married and was earning a salary of \$132.60 per week; that he was slow in payments on a prior account and was considered a borderline credit risk.

While it is true that there is no evidence to suggest that Russell's prior involvement in illegal liquor activity was ever brought to the attention of this claimant, it is equally clear that Russell was not questioned about the same during these investigations. A simple question put to him might have revealed such prior activity. It is suggested that, in the future, such lienors make it a practice to make specific inquiry in order to fully protect themselves in these situations. This witness stated very candidly that if he knew that Russell was involved in the possession of a still and had been convicted thereof, he would not have considered him a good risk; and it is logical to infer that this credit would not have been extended.

Nevertheless, I am satisfied, on the basis of the evidence presented, that this claimant did not know nor did it have any reason to believe that Russell was engaged in illegal liquor activity or that the motor vehicle might have been used in connection therewith. Accordingly, I recommend that the lien claim of the Universal C.I.T. Credit Corporation against the said motor vehicle be recognized to the extent of the present outstanding balance in the sum of \$1,826.64.

It appears likely that the amount realized at public sale will not exceed the amount of the lien claim and the costs of seizure and storage. Since this lien claimant has indicated its willingness to accept the return of the motor vehicle upon payment of the costs of seizure and storage in full satisfaction of its claim, I therefore recommend that the said motor vehicle be returned to the Universal C.I.T. Credit Corporation.

#### Conclusions and Order

No exceptions were taken to the Hearer's Report 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 I adopt them as my conclusions herein.

Accordingly, it is on this 1st day of October, 1965,

DETERMINED and ORDERED that if, on or before the 15th day of October, 1965, the Universal C.I.T. Credit Corporation pays the costs of seizure and storage of the said 1965 Ford pickup truck, more particularly described in the annexed schedule, said Ford truck will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property, more particularly described 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 that they 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 P. LORDI,  
DIRECTOR

SCHEDULE "A"

- 24 - bottles of wine
- 42 - cans of beer
- 1 - tank condenser
- \$22.95 in cash
- 1 - 1965 Ford Pick Up Truck, Serial No. 02906,  
N.J. Registration XRR-877

5. CANCELLATION PROCEEDINGS - LICENSEE NON-CITIZEN OF UNITED STATES OR COUNTRY WITH RECIPROCAL TRADE TREATY - ORDER TO SHOW CAUSE DISCHARGED ON CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Cancellation )  
Proceedings against )

Edward Darrow & Stanislaw Dudek )  
t/a Ed & Joe's Tavern )  
4522 Park Avenue )  
Weehawken, New Jersey, )

CONCLUSIONS  
and  
ORDER

Holders of Plenary Retail Consumption )  
License C-5, issued by the Township )  
Committee of the Township of Weehawken.)

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Samual Moskowitz, Esq., Attorney for Licensees  
David S. Piltzer, Esq., Appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Licensees plead no contest to an order to show cause why their license should not be cancelled and declared null and void for the following reason:

"The license was improvidently issued in violation of R.S. 33:1-25 in that Stanislaw Dudek, one of your partners, failed to qualify in all respects as an individual applicant for your retail license since he was not a citizen of the United States."

Reports of investigation disclose that Stanislaw Dudek is a national of Poland, with which country the United States does not have a reciprocal trade treaty (see Bulletin 1485, Item 7), in consequence of which he is ineligible to hold a retail license for lack of United States or equivalent citizenship. However, his lack of citizenship was disclosed in the application for license and was not concealed by any false statement therein.

During the pendency of these proceedings the license was transferred to the partnership of Edward Darrow and Christine Dudek, the latter being the wife of Stanislaw Dudek and apparently fully qualified, especially with respect to United States citizenship. Hence the unlawful situation no longer exists and the order to show cause will be discharged. Cf. Re Sea Star Corp., Bulletin 1589, Item 7.

Accordingly, it is, on this 30th day of September, 1965,

ORDERED that the order to show cause herein be and the same is hereby discharged.

JOSEPH P. LORDI,  
DIRECTOR

6. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION SUBJECT TO FUTURE SERVICE OF SUSPENSION IN DISCIPLINARY PROCEEDINGS.

Auto. Susp. #267 )  
In the Matter of the Automatic )  
Suspension of Plenary Retail )  
Consumption License C-9, issued )  
by the Mayor and Borough Council )  
of the Borough of Seaside Heights )  
to )

O R D E R

Triple T. Inc. )  
t/a Kit-Kat Bar )  
133-135 Hamilton Avenue )  
Seaside Heights, N. J. )  
----- )

BY THE DIRECTOR:

On August 30, 1965, Leo Elmer Tracey (also known as Leo Tracey, Jr.), president of the licensee corporation, was fined \$400 in the Seaside Heights Municipal Court after plea of guilty to a charge alleging that he had sold alcoholic beverages to five minors on June 20, 1965, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1.

By order dated September 9, 1965, I suspended the license for the balance of its term commencing May 16, 1966 until June 30, 1966, and further suspended any renewal license that might be granted from July 1 to July 25, 1966, thus imposing a total suspension of seventy days in disciplinary proceedings involving, inter alia, a charge alleging that the Licensee sold alcoholic beverages to the same minors plus two other minors. Re Triple T. Inc., Bulletin 1639, Item 2. Under the circumstances, I shall, on my own motion, enter an order lifting the statutory automatic suspension in anticipation of the service of the order of suspension in the disciplinary proceedings. Cf. Re Royce, Bulletin 1614, Item 4; Re Tom's Cafe & Tavern, Inc., Bulletin 1613, Item 7.

Accordingly, it is, on this 28th day of September, 1965,

ORDERED that the statutory automatic suspension of said license C-9 be and the same is hereby lifted and said license is restored to full force and operation effective immediately, subject, of course, to the suspension order referred to hereinabove.

JOSEPH P. LORDI,  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

John H. Wilson )  
t/a Kurilla's Cafe )  
139 Genesee Street )  
Trenton, New Jersey )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consump- )  
tion License C-201, issued by the )  
City Council of the City of Trenton )

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

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on September 10, 1965, he sold a mixed drink of an alcoholic beverage and a drink of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for twenty days effective January 30, 1962, for permitting acceptance of numbers bets on the licensed premises. Re Wilson, Bulletin 1437, Item 5.

The prior record of suspension of license for dissimilar violation occurring within the past five years considered, 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 Paulin, Bulletin 1459, Item 5.

Accordingly, it is, on this 28th day of September, 1965,

ORDERED that Plenary Retail Consumption License C-201, issued by the City Council of the City of Trenton to John H. Wilson, t/a Kurilla's Cafe, for premises 139 Genesee Street, Trenton, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Tuesday, October 5, 1965, and terminating at 2:00 a.m. Wednesday, October 20, 1965.

JOSEPH P. LORDI,  
DIRECTOR



8. MORAL TURPITUDE - WILLFUL FAILURE TO PAY SPECIAL OCCUPATIONAL TAX (BOOKMAKING) - CONVICTION HELD TO INVOLVE MORAL TURPITUDE.

Re: Eligibility No. 745

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 a conviction of a crime.

Applicant's criminal record discloses that on February 23, 1965 the U.S. Attorney for the District of N. J. filed a criminal information in six counts against the applicant charging him with violations of the Internal Revenue Code of 1954. On August 6, 1965 applicant, following a plea of guilty to the second count (engaged in the business of accepting wagers and willfully failed to pay the special occupational tax imposed by Section 4411 of the Code (26 U.S.C. 4411) in violation of Title 26 U.S.C. Section 7203), was sentenced to 6 months in the custody of the Attorney General (suspended), placed on probation for 5 years and fined \$1500. The remaining five counts were dismissed. A report received by this Division discloses that an Internal Revenue agent placed five horse race bets with applicant during the month of January 1963, the last of which was made on January 17, 1963.

At the hearing held herein, applicant (49 years old) verified aforesaid report and further testified that for a number of years prior to December 1962 he was in the habit of placing horse race bets and number bets with bookmakers; that on occasions, as an accommodation for some friends, he placed similar bets for them; that between December 17, 1962 and January 17, 1963 he was engaged in the business of accepting bets on horse races and numbers on his own behalf; that his unlawful venture averaged about \$500 a week; that he operated from his home; that he knew he was required to pay the tax and that he failed to do so because it would result in his arrest.

Applicant further testified that he is presently employed as a bartender and manager in a licensed premises.

A conviction of the crime of failure to pay the special occupational tax imposed by Section 4411 of the Internal Revenue Code of 1954 (26 U.S.C. 4411) may or may not involve the element of moral turpitude. Cf. Re Case No. 1737, Bulletin 1507, Item 4. Since the instant case included the element of willfulness, it is my opinion that the aforesaid conviction involved the element of moral turpitude. Re Case No. 1737, supra. See Re Case No. 1711, Bulletin 1478, Item 5, Re Case No. 1794 not reported in bulletin.

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 P. Lordi,  
Director

Dated: October 1, 1965

9. STATE REGULATIONS - REGULATION NO. 34, RULE 11 AND REGULATION NO. 35, RULE 3 - INTERPRETATION - PRIOR BULLETIN ITEM CLARIFIED.

Distillery, Rectifying, Wine and Allied  
Workers' International Union of America, Local 19  
Newark, New Jersey 07102

I have your letter of October 20th in which you ask for a clarification of former Director Cavicchia's ruling of April 14, 1953 in Bulletin 965, Item 2, wherein he interpreted Rule 8 of State Regulation No. 34 (now Rule 11 of State Regulation No. 34) and Rule 3 of State Regulation No. 35, which in general prohibit the furnishing of any gift, rebate or allowance of money or any thing of value or other discount or inducement to retailers.

You inquire if solicitors may give small gifts to retail licensees, their managers or bartenders who may be involved in a christening, barmitzvah, confirmation, wedding or similar festive occasion. You also inquire if it would be permissible to send mass cards or flowers to funerals.

The primary objective of the rules in question is to prevent covert methods of circumventing the intent of the regulations leading to unfair competition and eventually to a chaotic market.

The cited ruling does not prohibit:

1. The purchase of drinks and other merchandise (such as cigars, meals, etc.) on retail licensed premises by manufacturers, wholesalers and their solicitors for themselves and their bona fide guests in normal and usual course and in reasonable degree.

2. The purchase of drinks and cigars on retail licensed premises for retail licensees, their managers and bartenders, in normal and usual course and in reasonable degree.

I can see no reason why a more liberal construction may not be placed upon the rules referred to so that your request for the presentation of gifts may, under certain conditions be granted.

Accordingly, on a trial basis, I will have no objection to a gift of nominal value by solicitors to licensees, their managers or bartenders when that person or one of his immediate family is involved in that type of affair where he would normally be the recipient of a gift. Likewise, flowers or mass cards could be permissibly sent to a bereaved if the occasion should arise.

Under no condition, however, could any gift consist of an alcoholic beverage or cash. Neither may birthdays or holidays be considered as occasions when the offering of a gift is warranted.

If it should be found that any solicitor is taking undue advantage of the relaxation of the ruling, immediate steps will be taken to rescind the privilege.

JOSEPH P. LORDI  
DIRECTOR

10. STATE LICENSES - NEW APPLICATION FILED.

Carlo C. Gelardi, Inc., 14-16 Elm St., Somerville, N. J.  
Application filed November 24, 1965 for place-to-place transfer of State Beverage Distributor's License SBD-51 to include additional space at 14 Elm St., Somerville, N. J.

New Jersey State Library

*Joseph P. Lordi*  
Joseph P. Lordi