

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

BULLETIN 1750

September 8, 1967

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September 8, 1967

1. APPELLATE DECISIONS - COLLINS v. CLIFTON.

Dorothy C. Collins, t/a)
Collins Tavern,)

Appellant,)

v.)

On Appeal

Municipal Board of Alcoholic)
Beverage Control of the City)
of Clifton,)

CONCLUSIONS AND ORDER

Respondent.)

Giordano and Miller, Esqs., by Charles E. Miller, Esq.,
Attorneys for Appellant
Arthur J. Sullivan, Jr., Esq., by Victor Shorr, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from twenty-day suspension effective October 10, 1966, imposed by respondent on her plenary retail consumption license issued for premises 59 Yearance Avenue, Clifton, after finding appellant guilty of charges as follows:

"1. On November 26, 1965, you allowed, permitted or suffered a patron conducting a lottery in or upon the licensed premises in violation of Rule 6, of State Regulation No. 20.

"2. On November 26, 1965, you allowed, permitted or suffered gambling, viz, the making and accepting of horse race bets in and upon the licensed premises in violation of Rule 7 of State Regulation No. 20."

Upon the filing of the appeal an order was entered by the Director on October 10, 1966 staying respondent's order of suspension until the entry of a further order herein.

Appellant in her petition of appeal alleges that the action of respondent was erroneous in that (a) it was contrary to the weight of the evidence and (b) the imposition of the suspension is harsh, arbitrary and capricious.

Respondent's answer denies the aforesaid allegations contained in appellant's petition of appeal and in substance avers that the finding of guilt by respondent was justified upon the evidence adduced at the time the matter was heard pursuant to the charges herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

At the hearing herein, Detective William Hamer, a

member of the gambling squad of the local Police Department, testified that on November 26, 1965, at approximately 11:45 a. m., he entered appellant's premises; that he took a seat at the bar and saw Joseph Buono seated at the extreme end of the bar near the kitchen "having something to eat and drink;" that he (Detective Hamer) observed persons who entered the barroom approach Buono, converse with him, "exchange money" and then leave the premises without making any purchases; that at about 12:30 p.m. a man approached Buono and both then proceeded to the opposite side of the barroom, looked at a newspaper, and then Buono wrote something on a piece of paper and the man left appellant's premises.

Detective Hamer stated that he went over to Buono and "observed two slips of paper with money lying on the bar;" that he then identified himself to Buono and "told him he was under arrest." Detective Hamer stated that Buono, upon request, emptied his pockets and that in his wallet was a piece of paper on one side of which were "numbers with figures" and on the other side there was written "2 New York Artist Town" and "9 Lincoln Skillogolee." Detective Hamer said that in his opinion the two names written thereon represented "horse bets."

One of the white slips of paper (Exhibit R-4) had numbers written thereon and a "yellow torn paper [Exhibit R-6] was removed from a basket in the rear of the bar." The yellow piece of paper had written thereon "(431) 25¢ St. Mon. Straight Tues Wed. (888) 25¢ Sat Mon Tues Wed."

Detective Hamer stated that the white paper and yellow paper contained numbers and other data which in his opinion represented "numbers and amounts played on them and the days played." He showed the pieces of paper to the licensee and to John Ambrose (the bartender) but both disclaimed knowledge as to what the writings represented. Detective Hamer also testified "I asked if she [the licensee] knew Mr. Buono. She said she knew him as a window washer, and he was in the window washing business, and he had been coming in the tavern some time, a few times a week, and had something to eat and drink." Detective Hamer stated that at no time did he see the licensee or Ambrose converse with Bruno.

Dorothy C. Collins (the licensee) testified that Buono had been coming to her place of business as a patron for three or four weeks previous to the date in question and it was her understanding that he was a window washer. She said that on one evening he visited her place of business accompanied by his wife. On November 26, 1965 the licensee stated that she was in the kitchen from 11 o'clock to approximately 12:30 preparing sandwiches for patrons, and that she never had any knowledge whatsoever that Buono was engaged in gambling activities.

John Ambrose also testified that on the day in question he was on duty at the bar and had no knowledge whatsoever that Buono was engaged in any illegal activities. Ambrose further said that Buono had been coming into the establishment for about five weeks, usually at lunch time, and would order drinks and a sandwich. He also remembered Buono and his wife on two occasions being in the premises in the evening. Ambrose stated that at lunch time Buono usually sat at the end of the bar where there was "a lot of traffic."

There is apparently no denial concerning the fact that Buono had been accepting bets or had been engaged in the writing of numbers. Thus it is inconceivable that during a period of approximately four weeks neither the licensee nor the bartender

suspected Buono of being engaged in gambling activities. According to the testimony of Detective Hamer, Buono apparently made no attempt to conceal his activities when moving about the premises and conversing with various persons, some of whom made no purchases during their stay on the premises. Even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of the incident related herein on the licensed premises. It is no defense that the licensee or her employees have not actually participated in the violation as licensees may not avoid their responsibility for the conduct of their premises by merely closing their 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. Vide Bilowith v. Passaic, Bulletin 527, Item 3; Re One-thirty-five Mulberry Street Corp., Bulletin 892, Item 2. It is quite apparent that both the licensee and the bartender "suffered" the numbers writing and other means of gambling to take place on the licensed premises.

As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140."

Under the circumstances appearing herein, and after careful examination of the evidence, I am satisfied and find as a fact that the licensee suffered the gambling activities which occurred on the licensed premises as charged. I conclude that appellant has failed to sustain the burden that respondent's action was erroneous and against the weight of the evidence as required by Rule 6 of State Regulation No. 15.

In so far as the allegation that the twenty-day suspension of the license was "harsh, arbitrary and capricious", i.e., excessive, it is pointed out that it is the Director's policy, in unaggravated first offense cases of this kind, to impose a minimum suspension of license for sixty days. See, for most recent example, Re Englund, Bulletin 1717, Item 4.

It is therefore recommended that an order be entered affirming the action of respondent and dismissing the appeal, and fixing the effective dates for the suspension imposed by the Board and stayed pending the entry of the order herein.

Conclusions and Order

Exceptions to the Hearer's report and argument in support thereof were filed by the attorneys for appellant, pursuant to Rule 14 of State Regulation No. 15, wherein it is contended, among other things, that, since the appellant and her bartender were busy serving a steady stream of patrons coming and going in the licensed premises, they had no knowledge or control of Buono and his activities on the licensed premises.

This contention lacks substance and must be rejected. The responsibility of the licensee to control the conduct of patrons on licensed premises is a continuing one. It is not abated nor may it be avoided on the pretext that other duties and services are more pressing and immediate. Lack of knowledge is not a prerequisite to a finding of guilt if it can be

shown from the evidence that the proscribed conduct could have been discovered with reasonable diligence. In the instant case the facts disclose that Buono carried on his unlawful activities without any attempt at concealment. Upon the basis of the evidence herein, common sense dictates that the licensee and the bartender knew or should have known of Buono's activities at the time he was under observation by Detective William Hamer of the Clifton Police Department.

I have examined and considered each of the other exceptions of the appellant and find them to be without merit.

Having carefully considered all of the evidence adduced herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 5th day of July 1967,

ORDERED that the action of respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Dorothy C. Collins, t/a Collins Tavern, for premises 59 Yearance Avenue, Clifton, be and the same is hereby suspended for twenty (20) days, commencing at 3 a. m. Wednesday, July 12, 1967, and terminating at 3 a. m. Tuesday, August 1, 1967.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - INDECENT ENTERTAINMENT - HOSTESS ACTIVITY - SALE TO A MINOR - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 125 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Steve Fletcher & Gary Kiel
t/a Corner Pocket Tavern
113 Passaic Street
Passaic, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-37 issued by the Board of Commissioners of the City of Passaic)

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

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on March 3-4, 1967, they (1) permitted lewdness and immoral activity (foul, filthy and obscene language and conduct) on the licensed premises, in violation of Rule 5 of State Regulation No. 20; (2) permitted a female entertainer to drink at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20; (3) sold mixed drinks of alcoholic beverages to a minor, age 18, in violation of Rule 1 of State Regulation No. 20; and (4) on February 24 and March 3, 1967, permitted gambling, viz., the playing of pool games for money stakes, in violation of Rule 7 of State Regulation No. 20.

With respect to the first charge, reports of investigation disclose that a female entertainer, of the go-go type, performed in a suggestive and indecent manner, including the baring of her breasts, the indecent fondling of male patrons and the engagement in simulated sexual intercourse with one of the licensees, to the accompaniment of comments and exhortations of the patrons in gutter language.

Absent prior record, the license will be suspended on the first charge for seventy-five days (cf. Re Parnes, Bulletin 1530, Item 2), on the second charge for twenty days (Re Key Hole Bar, Bulletin 1732, Item 1), on the third charge for fifteen days (Re Fox, Bulletin 1733, Item 5), and on the fourth charge for fifteen days (Re Gary's Bar, Inc., Bulletin 1691, Item 6), or a total of one hundred twenty-five days, with remission of five days for the plea entered, leaving a net suspension of one hundred twenty days.

Accordingly, it is, on this 5th day of July 1967,

ORDERED that Plenary Retail Consumption License C-37, issued by the Board of Commissioners of the City of Passaic to Steve Fletcher & Gary Kiel, t/a Corner Pocket Tavern, for premises 113 Passaic Street, Passaic, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 3 a. m. Wednesday, July 12, 1967, and terminating at 3 a. m. Thursday, November 9, 1967.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 110 DAYS - NO REMISSION FOR PLEA ENTERED AFTER PARTIAL HEARING.

In the Matter of Disciplinary)
Proceedings against)
Kearny Yacht Club (A Corp.))
427 Passaic Ave.)
Kearny, N. J.)

Holder of Plenary Retail Consumption License C-11 issued by the Mayor and Council of the Town of Kearny)

CONCLUSIONS
AND ORDER

Norman Fischbein, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

After partial hearing, licensee pleaded non vult to charges alleging that on October 5, 1966 it (1) sold mixed drinks of alcoholic beverages to three minors, age 18, in violation of Rule 1 of State Regulation No. 20, (2) hindered investigation by an officer, director and stockholder offering a money bribe to agents then conducting the investigation, in violation of R.S. 33:1-35, and (3) on May 17, 1967 (while disposition of the previous charges was pending after partial hearing) sold mixed drinks of alcoholic beverages to two minors, ages 18 and 19, in violation of Rule 1 of State Regulation No.20.

Licensee has a previous record of suspension of license by the Director for ten days effective July 3, 1966 for sale to minors. Re Kearny Yacht Club, Bulletin 1685, Item 9.

The license will be suspended on the first charge for twenty days (Re Glitter Club, Inc., Bulletin 1726, Item 6), to which will be added ten days by reason of the prior record of suspension of license for similar violation in July 1966 (Re Blue Diamond Corp., Bulletin 1727, Item 4); on the second charge for thirty days (Re Key Hole Bar, Bulletin 1732, Item 1); and on the third charge for fifteen days (Re Morrin, Bulletin 1705, Item 3), to which will be added twenty days (Re Woodland Grove, Inc., Bulletin 1625, Item 4 by reason of the prior record of suspension of the license for similar violation in July 1966 and the occurrence of the similar violation in October 1966 (Re Sabar, Inc., Bulletin 1729, Item 3), and an additional fifteen days by reason of the aggravating circumstance of the occurrence of the 1967 violation while the charge of the 1966 violations was pending (cf. Re McDermott, Bulletin 1692, Item 6), or a total of one hundred ten days, without remission for the plea entered after partial hearing (Re Samjac, Bulletin 1728, Item 2).

Accordingly, it is, on this 10th day of July 1967,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Town of Kearny to Kearny Yacht Club (A Corp.), for premises 427 Passaic Avenue, Kearny, be and the same is hereby suspended for one hundred ten (110) days, commencing at 2 a. m. Monday, July 17, 1967, and terminating at 2 a. m. Saturday, November 4, 1967.

JOSEPH P. LORDI
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LOTTERY (RAFFLE) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Charles & Paul Riviera Lounge, Inc.)
310-312 Main Street)
Hackensack, N. J.)

Holder of Plenary Retail Consumption License C-20 issued by the City Council of the City of Hackensack)

CONCLUSIONS
AND ORDER

Ralph C. DeRose, Esq., Attorney for Licensee)
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control)

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between October 24 and November 10, 1966, it variously permitted the acceptance of numbers and horse race bets and the conduct of a raffle on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Farkas, Bulletin 1727, Item 5.

Accordingly, it is, on this 5th day of July 1967,

ORDERED that Plenary Retail Consumption License C-20, issued by the City Council of the City of Hackensack to Charles & Paul Riviera Lounge, Inc., for premises 310 -312 Main Street,

Hackensack, be and the same is hereby suspended for fifty-five (55) days, commencing* at 2 a. m. Wednesday, July 12, 1967, and terminating at 2 a. m. Tuesday, September 5, 1967.

JOSEPH P. LORDI
DIRECTOR

*By order dated July 11, 1967, the suspension was deferred to commence at 2 a. m. Wednesday, September 13, 1967 and to terminate at 2 a. m. Tuesday, November 7, 1967.

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

In the Matter of Disciplinary Proceedings against)

Carmen Yaccarino)
96 River Street)
Hoboken, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-185 for the year 1966-67)
and C-178 for the year 1967-68,)
issued by the Municipal Board of)
Alcoholic Beverage Control of the)
City of Hoboken)

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

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on May 24, 25, 26 and June 1, 1967 he permitted the acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Beres, Bulletin 1717, Item 8.

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

ORDERED that Plenary Retail Consumption License C-178, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Carmen Yaccarino, for premises 96 River Street, Hoboken, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a. m. Thursday, July 13, 1967, and terminating at 2 a. m. Wednesday, September 6, 1967.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Anthony & Anna Rodilosso)
t/a Old Ship Inn)
222 Haddon Avenue)
Berlin Township)
PO West Berlin, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Berlin)

David Novack, Esq., Attorney for Licensee)
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control)

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on June 13, 1967 they (1) sold alcoholic beverages to a minor, age 19, in violation of Rule 1 of State Regulation No. 20, and (2) sold six 12-ounce bottles of Schmidt's beer for off-premises consumption and permitted the removal of the same in their original containers from the licensed premises, in violation of Rule 1 of State Regulation No. 38.

Licensees have a previous record of suspension of license by the municipal issuing authority for five days effective October 26, 1959, for violation of Rule 1 of State Regulation No. 38. The prior record of suspension of license for a similar violation of Charge 2 occurring more than five but less than ten years ago considered, the license will be suspended on the first charge for fifteen days (Re Key Hole Bar, Bulletin 1732, Item 1) and on the second charge for twenty days (Re Kusy and Drag, Bulletin 1706, Item 5), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 5th day of July 1967,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Berlin to Anthony & Anna Rodilosso, t/a Old Ship Inn, for premises 222 Haddon Avenue, Berlin Township, be and the same is hereby suspended for thirty (30) days, commencing at 2 a. m. Wednesday, July 12, 1967, and terminating at 2 a. m. Friday, August 11, 1967.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against John Stark, Inc. 506 Boulevard Bayonne, N. J.

Holder of Plenary Retail Consumption License C-144 issued by the Municipal Council of the City of Bayonne

CONCLUSIONS AND ORDER

Licensee, by John Stark, President, Pro se Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to charge (1) alleging that on March 14, 1967 it 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, and non vult to charge (2) alleging that in its current application for license it failed to disclose its suspension of license for twenty-five days effective February 17, 1964, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective February 24, 1959 for sale during prohibited hours, by the Director for twenty-five days effective February 17, 1964 for possession of alcoholic beverages not truly labeled, non-disclosure of which being the subject of the second charge (Re John Stark, Inc., Bulletin 1555, Item 4), and by the municipal issuing authority for forty-five days effective February 15, 1965 for permitting gambling on the licensed premises.

The prior record of suspension of license for dissimilar violation in 1959 disregarded because occurring more than five years ago, but the prior record of suspension for similar violation in 1964 within the past five years considered, the license will be suspended on the first charge for twenty days (Re Strenger & Endlich, Bulletin 1602, Item 8) and on the second charge for ten days (Re Blue Diamond Corp., Bulletin 1727, Item 4), to which will be added five days by reason of the record of suspension of license for dissimilar violation in 1965 (Re Lake, Inc., Bulletin 1732, Item 7), or a total of thirty-five days, with remission of five days for the confessional pleas entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 5th day of July 1967,

ORDERED that Plenary Retail Consumption License C-144, issued by the Municipal Council of the City of Bayonne to John Stark, Inc., for premises 506 Boulevard, Bayonne, be and the same is hereby suspended for thirty (30) days, commencing at 2 a. m. Wednesday, July 12, 1967, and terminating at 2 a. m. Friday, August 11, 1967.

JOSEPH P. LORDI DIRECTOR

8. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)

Columbia Tavern, Inc.)
341 Jackson Avenue)
Jersey City, N. J.)

Holder of Plenary Retail Consumption License C-305 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)

CONCLUSIONS AND ORDER

Raymond A. Brown, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On March 7, April 15, 22 and 28, 1966, 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 March 7, April 15, 22 and 28, 1966, 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 and on said date of April 28, 1966, you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Two members of the New Jersey State Police participated in the investigation which led to the preferment of the charges. Trooper Leon Adams, who was amply experienced in gambling investigations, testified that during the course of the investigation, he entered the licensed premises (a neighborhood tavern) on several occasions.

On March 7, 1966, he entered the tavern at approximately 1:00 p. m. and sat at the bar. Thomas High, who had been employed by the licensee as a bartender for sixteen years, was behind the bar attending to a patronage of approximately fifteen persons. On this day the trooper remained in the tavern making observations for "approximately half an hour, forty-five minutes." He observed the activities of a person known as "Hut" who was later identified as Charles Hutton.

Concerning the three transactions that he observed wherein Hutton was involved, the trooper testified as follows:

"Q Can you give us in detail the observations and particulars of these transactions in which Hutton was involved?"

A Well, the gentlemen would call Mr. Hutton over, and I heard this gentleman state that he wanted a particular number bet placed, and he would repeat a three digit number, a sum of money with it, and Mr. Hutton would always repeat the number and the sum of money, and Mr. Hutton would proceed to the rear of the barroom at which time he removed a small slip of paper, and I observed Mr. Hutton recording these three digit numbers on the slip of paper with the sum of money.

Q Where did all these transactions take place, the statement of the number and the acceptance of the money?

A This took place at the bar, sir.

Q Where did the actual writing take place?

A Then Mr. Hutton proceeded to the rear of the barroom, and he would record the number bet using the wall as a desk more or less.

* * *

Q And during all this time did you observe where Mr. High, the bartender, was?

A Yes. He was working behind the bar, sir."

When asked as to how close to his area the transactions occurred, the witness responded:

"Well, I obtained a seat approximately near the door upon entering the bar, and the first transaction took place was approximately ten feet away, and then a gentleman sitting directly to my right on the stool next called Mr. Hutton over and placed the bet which was a matter of feet, inches, and then the gentleman near the door also placed a bet which I was able to hear, and I was approximately ten feet away too, sir."

The trooper next entered the licensed premises on April 15, 1966 at 2:00 p.m. and sat at the bar. Again, High was the bartender on duty. The trooper remained in the tavern for "about a half an hour, forty-five minutes" during which time Hutton entered and departed from the premises. He noted High call Hutton to the telephone on three occasions. High handed the telephone (which was behind the bar) to Hutton on each occasion. He heard Hutton repeat three digit numbers and sums of money into the telephone. Hutton would then make recordings on a slip of paper in the rear of the barroom.

On the same date, the trooper engaged Hutton in conversation and made what is known as a straight and combination numbers bet on 826 for the total sum of \$2.00. Hutton removed a piece of paper from his pocket, went to the rear of the room to record the bet and returned to the trooper's position at the bar.

On April 22, 1966, Trooper Adams entered the bar. Seconds later Hutton entered the tavern. High was tending bar. A patron seated two or three stools removed from the trooper called Hutton over and repeated several three digit numbers and sums of money and handed Hutton some money. Hutton went to the rear and wrote on a piece of paper against the wall. The

trooper could not place the bartender's position behind the bar at the time of this transaction.

Later the trooper called Hutton to his position at the bar and gave him a dollar to bet on a number. Hutton went to the rear wall of the tavern and wrote on a piece of paper on the wall. The trooper could not identify the writing on the paper.

Concerning the incident of April 28, 1966, Adams testified that he entered the licensed premises at approximately 12:00 noon and took a seat close to Hutton at the bar. Again, High was tending bar. By pre-arrangement with another State Police officer, he had in his possession a "marked" dollar bill. He stayed in the tavern approximately ten to fifteen minutes. During his stay he placed a numbers bet with Hutton. Hutton removed a slip from his pocket and recorded the bet while seated at the bar.

On cross examination the trooper testified that he had never been in the licensed premises prior to March 7, 1966. Hutton was described as a Negro male, approximately 5'4" tall, weighing 150 pounds. Later he testified that Hutton was approximately fifty-six years of age. The tavern was in a predominantly Negro area and Hutton was not distinctive in appearance. Photographs were admitted in evidence which depicted the interior of the tavern as being long and narrow. To reach the men's room a turn would have to be made to the left in a foyer located at the right rear of the premises and, to reach the wall telephone, a turn would have to be made to the right of the foyer in the rear of the premises. The wall on which the rear telephone was located was in the foyer at the right rear of the barroom and was not visible from behind the bar. The telephone was positioned on the wall which was on the left side of the alcove as a person would enter therein, and ran parallel with the bar.

Referring specifically to the date of March 7, 1966, the trooper testified that Hutton did not write numbers on the bar proper, he did the writing on the wall which was facing the left alcove. The trooper went to the rear alcove and saw Hutton writing on a piece of paper containing digits. The paper was placed against the wall the ran parallel with the bar. From that position he could see High behind the bar. The trooper had no recollection of where High was located at the time that a patron conferred with Hutton concerning a bet. The trooper admitted that Hutton engaged in general conversation with other patrons of the bar and made purchases across the bar. Some writings were made on the rear wall within the trooper's view and other writings would be made not within the trooper's view. On any of the occasions testified to by the trooper, he could state only that High was behind the bar. The trooper could not offer an opinion as to whether High could or could not see what Hutton was doing against the wall. Concerning the incident of April 28, 1966, the trooper admitted that he had no knowledge as to High's whereabouts at the time he placed a numbers bet with Hutton.

On re-direct examination, the witness admitted that although he conversed with High, he made no mention to him of his activities or observations or numbers playing.

John J. Toth, a Detective Sergeant in the Criminal Investigation Section of the State Police, testified that, accompanied by two other members of the State Police, he entered the licensed premises on April 28, 1966 at 1:30 p. m. He had in his possession a search warrant. He approached Charles Hutton who was seated next to Trooper Adams and identified himself to Hutton in a "loud, clear voice." The tavern was cleared of patrons including Adams who "was told to leave as a patron." He noticed the bartender, Thomas High,

who was behind the bar, take a brown pouch out of his pocket and drop it on the floor. The search warrant was read to High and Hutton and a complete search was made of the premises, including High and Hutton. The "marked one dollar bill along with some other moneys" were found in Hutton's possession. A piece of paper containing notations of numbers betting (including the number 826, played by Adams) was also found in Hutton's possession. High admitted ownership of the pouch on the floor. The pouch contained four slips of paper each containing three digit numbers.

On cross examination, it was revealed that the piece of paper containing the number 826 was inside Hutton's undergarments. Further, the sergeant testified that based upon his experience, knowledge and expertise, he could not state with certainty as to whether the slips found in High's pouch were personal memoranda or lottery slips. Later the testimony revealed that High told the State Police officers that the slips found in the pouch "were just numbers that he wrote down."

Nicholas Caruso, the president and major stockholder of the licensee corporation, testified that he operated the tavern for a period of sixteen years and that Thomas High had been in his employ as a day bartender and manager since he first purchased the tavern. He goes to the tavern "once or twice a day." He is acquainted with Charles Hutton as a patron and he has observed him as much as any other patron. In response to his attorney's question, "Have you at any time seen any activity on his part that would indicate to you that he in any way whatsoever was playing numbers, taking numbers, or doing anything unlawful in that tavern?", Caruso replied, "No, sir; I haven't."

Additionally, he testified that he had instructed and cautioned his employees, including High, concerning illegal activities. All of the monies found in the cash register by the police officers pertained to the tavern business and had no connection with lottery plays. The bar proper measures fifty feet in length and the distance from the front door to the rear area where the television and clock are located is fifty-five feet. The television is in constant use.

A careful consideration of the testimony of the State Police officers herein leads me to the inevitable conclusion that numbers bets were accepted by a numbers writer on the licensed premises on the dates alleged. However, the testimony concerning the circumstances surrounding the placement and the acceptance of the bets considered (particularly Trooper Adams' testimony on cross examination) leaves me with a serious doubt as to whether the Division has established that the licensee "allowed, permitted and suffered" the acceptance of the bets as alleged. Since there appears to be a lack of the necessary preponderance of the evidence to find the licensee guilty of the charges, I recommend that the licensee be found not guilty and that the charges be dismissed.

Conclusions and Order

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

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

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

ORDERED that the charges herein be and the same are hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against)

DE LUCA TAVERN, A CORPORATION)
8 Front Street)
Hammonton, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7 issued by the Town Council of the Town of Hammonton)

Licensee, by Alfred L. DeLuca, President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers dates between May 25 and June 8, 1967, it permitted the acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days (Re J. & J. Paszkewicz & Son, Inc., Bulletin 1725, Item 1), with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

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

ORDERED that Plenary Retail Consumption License C-7, issued by the Town Council of the Town of Hammonton to DeLuca Tavern, a Corporation, for premises 8 Front Street, Hammonton, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, August 8, 1967, and terminating at 2:00 a.m. Monday, October 2, 1967.

JOSEPH P. LORDI
DIRECTOR

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 HIGH COUNTRY MOTOR INN, INC.
 t/a High Country Motor Inn
 State Highway 10
 Parsippany-Troy Hills
 PO Morris Plains, N. J.
 Holder of Plenary Retail Consumption License C-26, issued by the Township Council of the Township of Parsippany-Troy Hills.

CONCLUSIONS
AND ORDER

 Licensee, by Alphonso Tirella, President, Pro se
 Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 25, 1967 it possessed alcoholic beverages in five 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 twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Club 435 Incorporated, Bulletin 1728, Item 10.

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

ORDERED that Plenary Retail Consumption License C-26, issued by the Township Council of the Township of Parsippany-Troy Hills to High Country Motor Inn, Inc., t/a High Country Motor Inn, for premises on State Highway 10, Parsippany-Troy Hills, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Tuesday, August 8, 1967, and terminating at 3 a.m. Monday, August 28, 1967.

JOSEPH P. LORDI
DIRECTOR

11. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR
25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ALICE Y. SIMON, ADMINISTRATRIX OF)
THE ESTATE OF JOSEPH SIMON, JR.)
t/a Village Grove Inn)
848 Amboy Avenue)
Perth Amboy, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-68, issued by the Board of)
Commissioners of the City of Perth)
Amboy.)

Licensee, Pro se.
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

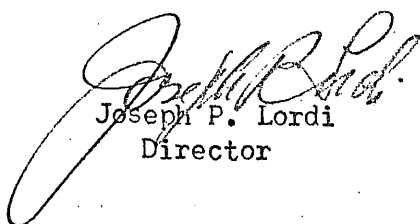
Licensee pleads non vult to so much of a charge
alleging that on April 14, 1967 she possessed alcoholic beverages
in four bottles bearing labels which did not truly describe their
contents, in violation of Rule 27 of State Regulation No. 20,
the balance of the charge in so far as it alleged possession of
a fifth bottle having been nolle prossed.

Licensee has a record of suspension of license by the
municipal issuing authority for five days effective June 22,
1967 for sale during prohibited hours.

The record of suspension of license for dissimilar
violation within the past five years considered, the license
will be suspended for twenty-five days, with remission of five
days for the plea entered, leaving a net suspension of twenty
days. Re Labato's 7 Seas Cafe, Inc., Bulletin 1605, Item 5.

Accordingly, it is, on this 2nd day of August 1967,

ORDERED that Plenary Retail Consumption License C-68,
issued by the Board of Commissioners of the City of Perth Amboy
to Alice Y. Simon, Administratrix of the Estate of Joseph
Simon, Jr., t/a Village Grove Inn, for premises 848 Amboy
Avenue, Perth Amboy, be and the same is hereby suspended for
twenty (20) days, commencing at 2 a.m. Tuesday, August 8, 1967, and
terminating at 2 a.m. Monday, August 28, 1967.


Joseph P. Lordi
Director