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

BULLETIN 1789

April 29, 1968

TABLE OF CONTENTS

ITEM

1. TRANSPORTATION - TRANSIT INSIGNIA - HEREIN OF SPECIAL PERMITS AVAILABLE TO AUTHORIZE TRANSPORTATION OF ALCOHOLIC BEVERAGES IN PRIVATE PASSENGER VEHICLES IN LIEU OF AFFIXING INSIGNIA TO VEHICLE.
2. DISCIPLINARY PROCEEDINGS - (PATERSON) - CRIMINALLY DISQUALIFIED EMPLOYEE - SALE TO MINORS - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE REVOKED.
3. APPELLATE DECISIONS - CLUB RAMAR, INC., v. CLIFTON.
4. DISCIPLINARY PROCEEDINGS (ASBURY PARK) - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.
5. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
6. (DISCIPLINARY PROCEEDINGS (LONG BRANCH) - FALSE STATEMENT (IN LICENSE APPLICATION - NO PENALTY IMPOSED IN VIEW OF CANCELLATION OF LICENSE.  
 (CANCELLATION PROCEEDINGS - LICENSE ISSUED IN VIOLATION (OF LIMITATION LAW - LICENSE CANCELLED.
7. STATE LICENSES - NEW APPLICATIONS FILED.

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1. TRANSPORTATION - TRANSIT INSIGNIA - HEREIN OF SPECIAL PERMITS - AVAILABLE TO AUTHORIZE TRANSPORTATION OF ALCOHOLIC BEVERAGES IN PRIVATE PASSENGER VEHICLES IN LIEU OF AFFIXING INSIGNIA TO VEHICLE.

NOTICE TO WHOLESALE AND RETAIL LICENSEES:

Petitions have been received from trade organizations to permit transit insignia issued for private passenger vehicles owned by, or leased to licensees to be carried in such vehicles when transporting alcoholic beverages in lieu of the insignia being affixed to, or an inscription being painted on, the vehicles as presently required by Rule 12 of State Regulation No. 17. The basis of the requested change is the apprehension of a great many licensees that the appearance of transit insignia visible on their vehicles parked in certain areas of the State, increases the possibility of robbery and physical attacks.

Having carefully considered the submitted matter, I have decided that remedial action is appropriate. In order to alleviate the described situation, permits, for the period May 1, 1968 to April 30, 1969, at a fee of \$20.00 per vehicle, will be issued by the Division to cover such transportation. Since transit insignia, effective May 1, 1968, have already been prepared and issued at a fee of \$8.00 each, and since such insignia do not identify the particular vehicle for which they are issued (except in our records), the permit, at an additional fee of \$12.00, will authorize the transportation of alcoholic beverages when the transit insignia is attached to the permit and carried in the vehicle for which issued.

If an application is received in the Division on or before May 1, 1968, transit insignia for which the permit is applied may be carried in the covered vehicle pending actual issuance of the permit to authorize the transportation of alcoholic beverages during such period.

If the insignia has been affixed to the vehicle and permit subsequently applied for, the insignia must be destroyed and the Director so notified. The fee of \$8.00 paid for the insignia will be credited to the permit fee.

Permits as described herein are not transferable and fees are not pro-rated. The application for, and issuance of said permit, will affect only Rule 12 of State Regulation No. 17. All other requisites must be complied with.

JOSEPH M. KEEGAN  
DIRECTOR

Dated: April 22, 1968

2. DISCIPLINARY PROCEEDINGS - CRIMINALLY DISQUALIFIED EMPLOYEE - SALE TO MINORS - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

Thomas Giaquinto t/a Silver Slipper 235 Buffalo Avenue Paterson, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-173, issued by the Board of Alcoholic Beverage Control for the City of Paterson )

No appearance on behalf of 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 11, April 1 and 8, 1967, you employed and had connected with you in a business capacity one Bart Barrecchia, a person who had been convicted of crimes involving moral turpitude; in violation of Rule 1 of State Regulation No. 13.
"2. On April 8, 1967, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Sharon E., age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Prior to the hearing an additional charge, to which he entered a plea of not guilty, was preferred against the licensee as follows:

- "3. On Saturday night, September 9, 1967, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Flora, age 19, and Rosilyn, age 18, and allowed, permitted and suffered the

consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

The original notice of charges and hearing was dated May 9, 1967, and the additional charge was contained in a notice dated September 22, 1967. At least seven adjournments were granted to the licensee at his request. By letter dated November 29 the licensee was notified that this matter was set down for hearing on December 18. By letter dated December 14, 1967, Charles C. Festa, Jr., attorney for the licensee, informed this Division that he was withdrawing as the licensee's attorney because of a disagreement with regard to the payment of counsel fee.

On December 13, G. George Addonizio, Esq. advised the Director that he had been retained as associate counsel with Festa and Marino, Esqs., and consulted with the Division attorney with respect to this matter. He was advised that the letter of November 29 notified the licensee that this matter would be heard peremptorily on December 18. On December 15, Mr. Addonizio advised the Division by telephone that he was withdrawing from the case.

On the morning of the hearing, on December 18, the licensee informed the Division attorney by telephone that Mr. Festa and Mr. Addonizio were no longer his attorneys, that he was shopping around for an attorney, and that someone would contact this office as soon as possible. Neither the licensee nor any witnesses on his behalf appeared at the hearing. The hearing, which was scheduled for 10 a. m. commenced at 11:30 a. m.

On December 22, 1967, a letter was received from Anthony R. LaDuca, an attorney, requesting that the hearing be re-opened for the limited purpose of permitting cross examination of the Division witnesses and to present a defense on behalf of the licensee. The Director granted the request that the hearing be re-opened for the limited purpose requested, and Mr. LaDuca was advised that the matter would be heard peremptorily on January 12, 1968, at 10 a. m. He was also advised that his request for a copy of the transcript was denied for the reason that this Division does not offer transcripts to licensees, but that the transcript would be made available to him for his examination at the Division offices. At no time, either prior to the hearing on January 12 or to the date of this report, has the licensee or any attorney representing him availed himself of the opportunity to examine the said transcript.

In the afternoon of January 11, 1968, the Division attorney received a telephone call from a woman who stated that she was employed in the office of Mr. LaDuca, and that he was not feeling well, and requested an adjournment of the hearing. She was advised that, in view of the history of the case, the number of adjournments that had been previously granted, the fact that witnesses had already been subpoenaed, and the other factors which appeared in the record, no adjournment would be granted. She informed the Division attorney that she would convey this message to Mr. LaDuca. Neither the licensee nor his attorney appeared at the hearing, nor was any written communication received requesting a further adjournment.

At 11:15 a. m. on January 12, the rescheduled hearing, which was set for 10 a. m., was opened and, in view of the fact

that no testimony was offered, a brief statement was made for the record by the Division attorney, and the hearing herein was closed.

The ex parte hearing on December 18, 1967, reflected the following picture through the testimony of four ABC agents and two minors. Agents S and R visited the licensed premises on March 11, 1967, pursuant to a specific assignment. They noted a bartender on duty who was later identified as Bart Barrecchia. He served patrons alcoholic beverages and received payment therefor which he rang up on the cash register. The agents had information with respect to Barrecchia to the effect that he was a criminally disqualified employee.

The agents returned to these premises on April 1 at about 1 a. m. and seated themselves at the bar. On this occasion there were two bartenders, one of whom was the said Barrecchia. There were about forty-five patrons at the height of the activity, and Barrecchia was engaged as a bartender serving drinks to patrons upon order and receiving payment therefor. He also appeared to act in a managerial capacity, occasionally ejecting persons and giving directions to the "go-go girl" performers. He also served alcoholic beverages to the agents.

On April 8 these two agents revisited the premises in the company of Agent D and observed that there were approximately twenty-two male and female patrons. Barrecchia was behind the bar performing duties as a bartender, and was assisted by another bartender later identified as James Graham. Barrecchia served drinks, took orders, accepted payment for the said drinks, and performed other duties in his said capacity.

Three female patrons attracted Agent S's attention because they appeared to be minors. They were part of a group who spent a considerable amount of time dancing and then returned to the bar. The agents observed Sharon --- consume a portion of a bottle of beer and subsequently order a rum and Coca Cola drink. Graham prepared the drink by pouring an ounce of Brugal rum into a glass of Coca Cola and ice, and served it to Sharon. Agent S confronted the minor and informed her that he had seen her being served and consume alcoholic beverages. At first she insisted that she was over twenty-one years of age but, upon further questioning, admitted that she was eighteen years of age. She was then taken to her home by Paterson police, and her mother verified her true age. (Sharon testified at this hearing that she was eighteen years of age and was born in New York City on November 13, 1949.)

On April 8 Graham was placed under arrest, and Barrecchia (who assumed authority as manager and spokesman) protested this action, stating, "What is this? A shakedown?" He also asked the officers whether they would forget about the arrest, adding "We'll take the rap on the minors but you don't have to arrest the guy."

The agents retained the unconsumed portion of the drink and it was subsequently submitted to the Division chemist. The certified chemical analysis established its contents as an alcoholic beverage fit for beverage purposes.

On September 9, 1967, ABC Agents S and N entered the licensed premises at about 9:10 p. m. and stationed themselves at the middle of the bar. They observed several female patrons enter the premises, one of whom was Flora ---. Since she appeared to be a minor, they kept her under surveillance. Shortly after entering the premises Flora approached Agent S and requested that he purchase Tom Collinses for her and her friend. The agent refused her request and Flora then ordered two bottles of beer. Upon being served the beer, she paid the bartender (later identified as George Carabis) who accepted the payment and rang it up on the cash register. She was not asked for any proof of age, nor was she required to make any written representation with respect thereto.

After observing Flora and her friend consume part of the beer, Agent S telephoned the local Police Department, and immediately thereafter identified himself to Flora and her friend. The bartender, also informed of the alleged violation, denied selling any beer to these girls. Flora and her friend were taken to police headquarters, where they admitted purchasing and consuming the alcoholic beverages at these premises.

Flora testified at this hearing that she is nineteen years of age and was born in Passaic, New Jersey on August 17, 1948.

A sample of the unconsumed contents of the seized bottle of beer was submitted to the Division chemist who certified that it was an alcoholic beverage fit for beverage purposes.

The files of this Division establish that Bart Barrecchia (whom the agents identified at this hearing) is the same person who had been heretofore found ineligible to be employed on licensed premises. By order dated February 17, 1960, Barrecchia was ruled disqualified by reason of criminal convictions. Among other things, the file reveals that he was convicted on June 7, 1957 by a jury of conspiracy to make book, fined \$1,000 and placed on probation until the fine was paid, and he was also convicted on a charge of impersonating a police officer, a crime involving moral turpitude. The Director's decision in Re Case No. 1524, Bulletin 1331, Item 7, concludes:

"Since five years have not elapsed from the time that applicant was convicted on June 7, 1957, as aforesaid, I shall deny his application."

Barrecchia has not applied to this Division for any further order. Certified copies of various convictions of Barrecchia have been offered into evidence.

The testimony herein established the truth of the charges preferred by a fair preponderance of the credible evidence and it is therefore recommended that the licensee be found guilty of all three charges.

Licensee has a prior adjudicated record. The license was suspended by the Director for twenty-five days effective February 8, 1965 (the balance of twenty days being stayed after service of five days, pending appeal taken to the Appellate Division of the Superior Court, and reimposed effective October 1, 1965) for permitting a person of ill repute

(Barrecchia) on the premises and employing minors without requisite permit. Re Giaquinto, Bulletin 1605, Item 3; Bulletin 1630, Item 5. In addition, the license was suspended by the Director for one hundred twenty days effective June 3, 1965, for sale to minors, employing a criminally disqualified person (Barrecchia), permitting the said Barrecchia, a person of ill repute, on the licensed premises, employing minors without requisite permit, and hindering investigation. Re Giaquinto, Bulletin 1626, Item 3.

A liquor license is a mere privilege. Mazza v. Cavièchia, 15 N.J. 498 (1954). As was stated in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App. Div. 1953):

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

Re Kaczka, Bulletin 1126, Item 3; Zicherman v. Driscoll, 133 N.J.L. 586.

It is quite obvious that this licensee has shown a callous disregard for the rules and regulations of this Division and has flagrantly and wantonly abused the privileges of his license.

Had this licensee studiously planned the quickest and surest method of relieving himself of his licensed privileges, he could hardly have adopted any more prodigious means than that which he employed on the occasions in question. His continued employment of the same criminally disqualified employee and his repeated sales to minors despite the recent prior suspensions of his license for these offenses manifest an utter disregard and disrespect for the law.

In view of the facts and circumstances herein, including the licensee's prior record, and particularly considering his inexcusable and cynical failure to appear at the hearing herein, it is clear that the continuation of this license would be contrary to the public interest.

It is, therefore, recommended that the only proper and justifiable penalty herein is outright revocation of this license. Re Farley & Danieli, Inc., Bulletin 1626, Item 1; Buckley v. Wallington, Bulletin 1772, Item 1; cf. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

#### 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 record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations. In particular, I concur that revocation of license is not only amply warranted but is commanded in any case in which the licensee, as



4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against )

John-Tom, Inc. )  
t/a Jack Kennedy's )  
700 Emory Street )  
Asbury Park, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-69 issued by the City Council of the City of Asbury Park )

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Stout and O'Hagan, Esqs., by D. Joseph DeVito, Esq., Attorneys for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On September 7, 8, 12, 14, 16, 19, 26 and 27, 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 September 7, 8, 12, 14, 16, 19, 26 and 27, 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 September 27, 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."

Three New Jersey State Police officers, each possessing a substantial background in conducting investigations involving gambling activities, participated in the investigation leading to the preferment of the charges.

Trooper Raymond Feldherr, assigned to the criminal investigation section of the New Jersey State Police, testified that, accompanied by Trooper Thomas B. Gallagher, he entered the licensed premises (described as a "neighborhood tavern") on September 7, 1966, at approximately 1:20 p. m. and they positioned themselves toward the rear of the bar. He observed a male known as "Champ", later identified as Richard J. Hyland, cleaning the floor.

While the Troopers remained in the same positions at the bar, they engaged in a conversation with Champ which eventually led to Feldherr's placing a numbers bet with Champ for three days on the number 487 for half a dollar each day. Feldherr introduced Trooper Gallagher to Champ as "Tom". Champ asked Gallagher "if he wanted to play anything" and upon Gallagher responding that he did not, Champ said that he would remember him.

On cross examination, the witness testified that he had visited the tavern within the week prior to the visit of September 7, for the purpose of conducting an investigation for gambling. On the occasion of this visit, he was introduced to Champ by another patron. He did not attempt to play a number with Champ on that day.

Trooper Thomas B. Gallagher corroborated the testimony offered by Trooper Feldherr as to the numbers betting activity which he alleged took place in the tavern on September 7, 1966 with Champ. When queried as to whether or not he had any conversation with Champ at the time of this occurrence, he replied, "Yes, sir. He asked me if I wanted to make a play, and I told him I'd probably see him tomorrow, and he said, 'Well, I will remember you.'"

Gallagher next visited the tavern on September 8 at approximately 11:00 a. m. and sat at the bar near the entrance. A female, identified as "Kathy", was tending bar. Champ was in the tavern. The testimony proceeded as follows:

"Q Did you have any conversation with him [Champ]?

A Yes, sir.

Q Where did it take place?

A In the bar, while I was sitting at the bar, Mr. Hyland came up and spoke to me, and advised me the number for yesterday was 448, and then I told him, I handed him a dollar bill and said give me 934 for fifty cents straight for the next three days, and he then accepted the currency and placed it in his pocket, and he had a small slip and made a notation on the slip, and he also advised me to get my bet in before eleven o'clock, eleven A.M., because he likes to turn them in early."

The trooper expressed an opinion that the transaction was a numbers play.

On his visit of September 14, he entered the tavern at approximately 10:40 a. m. and sat at the bar. He noted Hyland's presence in the barroom. Kathy was again tending bar. Champ joined him and, after a brief conversation, Gallagher handed Champ a dollar bill and informed Champ that he "wanted to play a numbers play, again fifty cents on 934, and fifty cents on 262 for today." Champ informed the Trooper that "they will have to be for tomorrow, because he had turned his action in already." Champ placed the "dollar bill in his trouser pocket, and he made a notation on a small slip of paper, which he replaced in his pocket." He described the transaction as a numbers play.

Referring to the visit of September 16, Trooper Gallagher testified that he entered the licensed premises at approximately 1:40 p. m. and played the same two numbers (i.e., 934 and 262) for

fifty cents each with Champ. Champ was tending bar on this date. Again, the transaction was characterized as a numbers play.

On the visit of September 19, Gallagher arrived at the tavern at 1:20 p. m. and sat at the bar. Champ was tending bar. The Trooper had in his possession a slip of paper containing twelve numbers plays. At Champ's request, the Trooper transcribed the numbers on another slip of paper and handed it to Champ. Champ retained that copy and returned the original to the Trooper. The Trooper handed Champ the sum of \$4.00 representing the total amount of the numbers play.

The Trooper revisited the tavern on September 26 at approximately 12:55 p. m., sat at the bar and ordered a drink from Champ who was acting as bartender. The questioning of the witness proceeded as follows:

"Q Was there any occurrence between you?

A Yes, sir. On that day I handed Mr. Hyland United States currency and I played two number plays that day, 934 and 262 for fifty cents on each number for tomorrow. He accepted the money and placed it in his pocket, then he told me if I had been five minutes earlier, I could have gotten them in for the day.

Q Where did this occurrence take place?

A Over the bar."

On September 27, Gallagher entered the licensed premises at approximately 1:05 p. m., sat at the bar and ordered a drink from Champ who was tending bar. He had in his possession a slip of paper containing twelve numbers plays for a total sum of \$3.00. He handed the slip and \$3.00 in United States currency to Hyland who accepted the slip and the money and placed them in his pocket. The Trooper consumed his drink and departed from the premises.

Detective Sergeant Walter King, also assigned to the criminal investigation section of the New Jersey State Police, testified that he entered the licensed premises on September 27 at 1:10 p. m. in order to execute a search warrant issued against the licensed premises and Richard Hyland. He identified himself to Hyland (Champ) who was tending bar, read the search warrant to him and requested that he empty the contents of his pockets on the pool table. Champ produced a slip containing twelve numbers bets and United States currency. The numbers on the slip and the amounts bet on each corresponded with the numbers betting activity on the slip given by Gallagher to Champ that day. A search of the closet between the bar and the dining room area produced another numbers bet slip containing twelve plays.

In defense of the charges, Thomas D. Thomas (a fifty per cent. stockholder and president of the licensee corporation) testified that he tended bar seven nights a week, from 6:00 p. m. to 3:00 a. m. Paul McBride was employed as a daytime employee. He denied that Hyland was employed by the licensee corporation, he had known him as a customer. Hyland did not participate in any activities connected with the operation of the business. He had no knowledge of Hyland ever being behind the bar. Thomas had installed a sandwich machine for the convenience of his patrons. Hyland was out of work and approached the licensee's day bartender concerning opening up the kitchen. Thomas refused. Later Hyland approached him, and Thomas thereafter consented to let Hyland "make a few sandwiches." This was

his sole dealing with Hyland. He permitted Hyland to make and sell sandwiches without monetary consideration accruing to the licensee from this arrangement. The arrangement commenced operating during the first week of September 1966. Hyland was there during the day-time only. The licensee kept the sandwich machine on the premises. Thomas had no knowledge of any lottery activities being carried on in the tavern.

Joan Thomas (wife of the previous witness and an officer and stockholder of the licensee corporation) testified that she was the bookkeeper of the tavern business. Hyland was never on the payroll of the licensee corporation, nor were any corporate funds paid to him. Out of sympathy for Hyland, and realizing that he was in dire financial need, they consented to his request to be allowed to make sandwiches on the licensed premises.

Richard J. Hyland (commonly known as Champ because he had been a professional prize fighter) testified that during the month of September 1966 he received permission to make and sell sandwiches to patrons in the tavern. He retained the profits. When asked as to whether he saw Trooper Feldherr on September 7, he responded:

"Not that I remember. I saw him two times outside of the place and he asked me if I knew where he could play a number. I said I don't play. If he wanted to get a bet, I could get it in for him, and he asked me to get it in for him, and I took his bet. It was not in the bar, it was a block and a half away from the place."

He never saw Trooper Gallagher in the tavern, only on the street. He denied taking any bets from him. He recalled seeing Officer King in the tavern on September 27. The two slips in his pocket contained numbers he was going to play for himself. He never took numbers from anyone. He denied that he was behind the bar on September 16 and September 19. On September 27 he was behind the bar "because Paul McBride, the bartender, went to the bank. He had a deposit to make, and he asked me would I stay and watch the place until he come back. It was the only time I was behind the bar." Neither Mr. Thomas nor Mrs. Thomas nor Mr. McBride hired him to do any work there.

In rebuttal, Troopers Feldherr and Gallagher denied giving numbers bets to Hyland anywhere but inside the tavern premises. Officer King testified that during the hour and fifteen minutes that he was in the tavern premises on September 27, he did not see McBride, he saw only Hyland.

In brief, the licensee argued (1) that the Division had failed to meet the burden of proving the licensee guilty, and (2) that Hyland was not an employee of the licensee, the licensee had no knowledge of Hyland's activities and, therefore, the licensee was not answerable for his acts.

In adjudicating this matter, I observe preliminarily that in evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud and Pittala v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern Inc. v. Division of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1191, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I have carefully reviewed and considered the testimony of the witnesses produced by the Division and by the licensee and have carefully observed their demeanor.

The evidence is overwhelming that gambling activities were allowed, permitted and suffered on each of the dates mentioned in Charge 1 except the date of September 12. My view is buttressed by the finding of the numbers slips in the possession of Hyland and in a closet in the licensed premises, as set forth in the testimony of Detective Sergeant King.

It is crystal clear that Hyland's testimony was without substance and was, apparently, a vain effort to exculpate not himself but the major stockholders of the licensee corporation who had obviously befriended him in his hour of need.

Re Hrubec's Bar & Liquor Store, Inc., Bulletin 752, Item 2, and Re Jacobs, Bulletin 935, Item 3, furnish a complete answer to the licensee's argument that inasmuch as Hyland was not employed on the licensed premises and was not on the payroll of the licensee corporation, he was merely a concessionaire and, because no consideration flowed either way as a result of the arrangement between Hyland and the licensee, the licensee was not responsible for Hyland's acts. In Re Hrubec's Bar & Liquor Store, Inc., *supra*, the Commissioner, in construing the term "female employed" in the hostess regulation (Rule 22 of State Regulation No. 20), held:

"The phrase 'female employed' is less restrictive than the phrase 'female employee'. Considering the salutary purpose of the Rule, the phrase 'female employed' covers not only female employees but, in addition, any female employed on the licensed premises in any capacity by any person, including herself. Hence your self-employed female kitchen concessionaire is a 'female employed' on the licensed premises and, consequently, she may not be served drinks at the expense of patrons on your licensed premises."

In Re Jacobs, *supra*, it was held that salary or compensation is not a requisite to employment. This holding was followed in the recent case of Re Neim, Bulletin 1772, Item 2, wherein it was held that the question of compensation is irrelevant to the determination of employment.

In Kravis v. Hock, 137 N.J.L. 252, the court considered this very issue. In that case it was alleged that certain females employed on licensed premises were engaged as independent contractors. In considering the matter of employment, the court stated (p. 255):

"Webster defines the word 'employ:' 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.' The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts. Mr. Justice Perskie has emphasized this judicial determination in *Cine v. Driscoll* (Supreme Court, 1943), 130 N.J.L. 535, 540, where he said:

"Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. *Young v. Civil Service Commissioner*, 127 N.J.L. 329; 22 Atl. Rep. (2d) 523."

I therefore find that Hyland was a person employed within the intendment of the Division rules and regulations and his conduct is the responsibility of the licensee. It is a well established and fundamental principle that a licensee is responsible for the misconduct of persons employed and is fully responsible for their activities during their employ on licensed premises. In re Olympic Inc., 49 N.J. Super. 299; In re Schneider, 12 N.J. Super 449; Rule 33 of State Regulation No. 20. Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961).

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 licensee be found guilty of the charges which particularly refer to the dates of September 7, 8, 14, 16, 19, 26 and 27, 1966, and not guilty of the charges which refer to the date of September 12, 1966.

Licensee has a previous record of suspension of license by the Director for thirty-five days effective November 11, 1963, for possessing liquor not truly labeled. Re John-Tom, Inc., Bulletin 1540, Item 2.

I further recommend that, considering the prior record of suspension for dissimilar violation occurring within the past five years, the license be suspended for sixty-five days. Re Mulhearn, Bulletin 1752, Item 3.

#### Conclusions and Order

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

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

Accordingly, it is, on this 19th day of March, 1968,

ORDERED that Plenary Retail Consumption License C-69, issued by the City Council of the City of Asbury Park to John-Tom, Inc., t/a Jack Kennedy's, for premises 700 Emory Street, Asbury Park, be and the same is hereby suspended for sixty-five (65) days, commencing\*at 3:00 a. m. Tuesday, March 26, 1968, and terminating at 3:00 a. m. Thursday, May 30, 1968.

Joseph M. Keegan  
Director

\*By order dated March 26, 1968, the suspension was deferred to commence at 3:00 a. m. Tuesday, April 9, 1968, and to terminate at 3:00 a. m. Thursday, June 13, 1968.

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

In the Matter of Disciplinary Proceedings against )

Lenron, Inc. )  
t/a Brookside Bowl O Drome )  
450 Main Street )  
Lodi, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-22 issued by the Mayor and Council of the Borough of Lodi )

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Richard M. Glassner, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) and (2) on August 8, 10, 11, and 14, 1967, it permitted 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 Jesswell, Inc., Bulletin 1778 Item 4.

Accordingly, it is on this 5th day of March, 1968,

ORDERED that Plenary Retail Consumption license C-22, issued by the Mayor and Council of the Borough of Lodi to Lenron, Inc., t/a Brookside Bowl O Drome, for premises 450 Main Street, Lodi, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a. m. Tuesday, March 12, 1968, and terminating at 3:00 a. m. Monday, May 6, 1968.

Joseph M. Keegan  
Director

6. DISCIPLINARY PROCEEDINGS - FALSE STATE IN LICENSE APPLICATION - NO PENALTY IMPOSED IN VIEW OF CANCELLATION OF LICENSE.

CANCELLATION PROCEEDINGS - LICENSE ISSUED IN VIOLATION OF LIMITATION LAW - LICENSE CANCELLED

In the Matter of Disciplinary and Cancellation Proceedings against  
 Vento, Inc.  
 t/a The Sun & Shore  
 2 No. Bath Avenue  
 Long Branch, N. J.  
 Holder of Plenary Retail Consumption License C-68 issued by the City Council of the City of Long Branch

CONCLUSIONS AND ORDER

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 Carton, Nary, Witt & Arvanitis, Esqs., by Peter S. Falvo, Jr., Esq.,  
 Attorneys for Licensee  
 David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

"In your application filed with the City Council of the City of Long Branch on January 24, 1966, upon which you obtained the original issuance of your plenary retail consumption license, in answer to Question No. 9(a) you falsely stated and misrepresented that you would conduct a motel on your licensed premises, whereas in truth and fact you, yourself, did not conduct or intend to conduct a motel at said premises; in violation of R.S. 33:1-25."

In addition to the above charge licensee was ordered to show cause why its plenary retail consumption license should not be cancelled and declared null and void for the following reason:

"The license was issued in violation of R.S. 33:1-12.14 in that it was the renewal of a new license issued to you March 26, 1966, at which time the combined total number of plenary and seasonal retail consumption licenses existing in the City of Long Branch was greater than one for each two thousand of its population as shown by the last then preceding Federal census, and that the issuance of your license was not authorized by the exception to said cited statute contained in R.S. 33:1-12.20 in that you were not the person who operated the motel at the address of the licensed premises."

The facts sufficiently appear from the recited charge and order to show cause.

The admitted charge and uncontested order to show cause considered, the license will be cancelled without imposition of penalty of suspension or revocation with respect to the said charge. Cf. Re Ross, Bulletin 1447, Item 5.

Accordingly, it is, on this 5th day of March, 1968,

ORDERED that Plenary Retail Consumption License C-68, issued by the City Council of the City of Long Branch to Vento, Inc., t/a The Sun & Shore, for premises 2 No. Bath Avenue, Long Branch, for the current licensing year, be and the same is hereby cancelled, effective immediately.

JOSEPH M. KEEGAN  
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Somerset Importers, Ltd.  
Room 2010, 744 Broad Street  
Newark, New Jersey

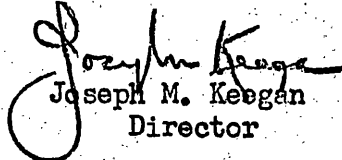
Application filed April 22, 1968 for person-to-person transfer of Plenary Wholesale License W-32 from Canada Dry Corporation, t/a Somerset Importers, Ltd.

deRomeo Brands, Inc.  
979 Lehigh Avenue  
Union, New Jersey

Application filed April 22, 1968 for limited wholesale license.

Ramirez, Zayas & Co.  
2021 - 40th Street  
North Bergen, New Jersey

Application filed April 25, 1968 for person-to-person transfer of Limited Wholesale License WL-66 from Victor Zayas, Herminio N. Ramirez and Manuel A. Rodrigues, t/a Ramirez, Zayas & Co.

  
Joseph M. Keegan  
Director