

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

BULLETIN 1881

October 30, 1969

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1. COURT DECISIONS - HOFFMAN IMPORT & DISTRIBUTING COMPANY
v. S. S. PIERCE CO. and DIVISION OF ALCOHOLIC BEVERAGE
CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-364-68

HOFFMAN IMPORT & DISTRIBUTING
COMPANY, a corporation,

Appellant

v.

S. S. PIERCE CO., a corporation,
and DIVISION OF ALCOHOLIC BEVERAGE
CONTROL, DEPARTMENT OF LAW AND
PUBLIC SAFETY, STATE OF NEW JERSEY,

Respondents

Argued September 15, 1969 - Decided September 30, 1969

Before Judges Kilkenny, Labrecque and Leonard.

On appeal from Order and Judgment of the Division
of Alcoholic Beverage Control of the Department of
Law and Public Safety, State of New Jersey.

Mr. Donald G. Collester, Jr., argued the cause for
appellant (Messrs. Saltzman and Swartz, attorneys).

Mr. Norman Bruck argued the cause for respondent
S. S. Pierce Co.

Statement in lieu of brief was filed by Mr. Arthur
J. Sills, Attorney General of New Jersey, on behalf
of the Division of Alcoholic Beverage Control.

PER CURIAM

(Appeal from Director's decision in Hoffman Import
& Distributing Company v. S. S. Pierce Co., Bulletin 1826,
Item 2. Director affirmed. Opinion not approved for
publication by the Court committee on opinions.)

2. APPELLATE DECISIONS - GUTIERREZ v. UNION CITY.

PEDRO GUTIERREZ,)	
Appellant,)	
v.	)	ON APPEAL
	)	CONCLUSIONS
	)	AND ORDER
BOARD OF COMMISSIONERS OF THE)	
CITY OF UNION CITY,)	
Respondent.)	

 Marvin A. Stern, Esq., Attorney for Appellant
 Cyril J. McCauley, Esq., by Edward J. Lynch, Esq.,
 Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Commissioners of Union City (hereinafter Board) whereby it suspended appellant's plenary retail consumption license for premises 143 - 48th Street for sixty days effective February 14, 1969, after finding him guilty of allowing, permitting and suffering gambling in and upon the licensed premises on January 12, 1968.

Appellant contends in his petition of appeal that the action of the Board was erroneous for reasons which may be summarized as follows:

(a) The resolution and order does not set forth any findings of fact or determinations upon which the suspension was "presumably passed."

(b) The findings were against the weight of the evidence.

(c) The hearing before the Board deprived appellant of his constitutional rights and was contrary to rules and regulations of this Division and New Jersey statutes.

The Board's answer admits the jurisdictional allegations and denies the substantive allegations. It further sets forth that the evidence before it clearly established the charge preferred and fully sustained the action of the Board.

The hearing on appeal was based upon the stenographic transcript of the hearing before the Board, with supplemental testimony offered by appellant, pursuant to Rules 6 and 8 of State Regulation No. 15.

The transcript of the testimony below reflects the following: Captain Frank Scarafile of the Union City Police Department testified that he received many complaints that a game known as "charado", a Spanish gambling game, was being played on these premises. Prior to January 12, 1968, he had spoken to the licensee, informing him of the numerous complaints and warning him that the operation of the game was illegal. On

the date in question, accompanied by other police officers, he entered the premises and observed an individual known to him as Andres Coto in possession of "a magic slate". He instructed an officer to seize the slate and a velvet bag containing wooden blocks numbered from 2 through 9 and 0, together with a "jewelry box with the number 1 in it."

The police searched Coto, one Diego Valdez who was seated next to Coto, and the licensee who was standing behind the bar immediately in front of these individuals. The search revealed that the licensee had \$1,472.15 on his person, Coto had \$178.60 and Valdez \$11.15. All three men were arrested; the licensee was charged with maintaining a gambling house, in violation of State statute. The witness explained that although there were about fifteen or twenty patrons present, he did not observe any gambling taking place at the time of the confrontation and the three persons arrested were charged with possession of gambling paraphernalia.

Captain Scarafile described the manner of playing charado as follows:

"Six of these numbers are used at one time. 1 to 6 or 5 to 10. For example, if you are using 1 to 6 you take out the other numbers and the bag is shaken up and one number is taken out and placed into this box and this is the winner and it is placed behind the bar or a different spot. The six people that are betting, their names would go on the magic slate, the amount they are betting. The winner, for example, if you're using a dollar denomination as a bet would get five dollars and the person that is running the game would get one dollar as a cut."

The witness further noted that when he entered the tavern, several of the articles comprising the game were on the bar in front of the licensee. One of the patrons, Ray Scotti, threw one of the items on the floor. Another was found behind the bar.

On cross examination, Captain Scarafile added that when he first walked into the premises, Coto was holding the slate in his hand and was proceeding to erase and discard the said slate. The licensee was standing behind the bar, about three feet immediately in front of Coto.

Lieutenant Wilbur Nelson testified that he accompanied Captain Scarafile to the tavern after they had received telephone complaints that gambling was taking place on these licensed premises. The licensee could not speak English and, on at least one prior occasion, Coto acted as interpreter and explained to the licensee that complaints had been received, that the gambling "would have to cease or there would be an arrest made." He specifically referred to the game of charado which was the subject of the complaints. The licensee maintained through Coto that this game was being played in "all the Spanish taverns."

Entering the premises on the date alleged herein, Lt. Nelson saw the "magic slate" being thrown to the floor by Coto. He retrieved it from the rear of the bar and also took from the top of the bar the bag containing the wooden blocks. Coto, upon questioning, just stared blankly and said, "I am not doing anything." The licensee was standing behind the bar in the

immediate vicinity of Coto with a glass in his hand.

Police Officer Mark R. Fusco corroborated the aforementioned testimony and added the following: He seized the bag of wooden blocks and the jewelry box after Lt. Nelson picked up the slate. The bag contained nine wooden blocks "from number 2 to number 0 on one side and the other side is the letter A."

Pedro Gutierrez, the appellant, testifying in defense of this charge through an interpreter, categorically denied knowing anything about the game of charado, nor did he have any knowledge of the game being conducted at his premises. He did not remember ever speaking to Captain Scarafile or Lieutenant Nelson at any time prior to January 12, 1968 with respect to any alleged gambling on his premises. If the police officers visited the premises, "he wasn't in the tavern." He has never played the game of charado and does not know who is the owner of the slate or the wooden blocks which were found by the police officers.

No other witnesses were called in behalf of appellant at the hearing before the Board. However, at the plenary de novo hearing, two additional witnesses testified in his behalf.

Pedro Camejo, a neighboring barber who was a patron at the licensed premises on the date charged, gave the following account: He was seated near Mr. Coto but did not see any gambling taking place. He did see the velvet bag and the slate on the bar and is familiar with the game of charado. He remembered seeing the game played in Cuba and admitted that it is usually played for money stakes.

Andres Coto testified that he was never in possession of the slate or any of the blocks which were part of the charado game and that, so far as he knows, the first he saw of them was when one of the detectives showed them to him. He denied being the owner of any of the charado equipment or in possession thereof on the date charged.

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts. That burden was not met here. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947). Appellant has failed to demonstrate or establish any constitutional infirmity or violation of applicable State statutes in the proceedings before the Board, as alleged in his petition of appeal.

In the determination of this matter, which presents a sharp factual conflict in the testimony herein, we are guided by the well established principle that these proceedings are civil in nature and not criminal (Kravis v. Hock, 137 N.J.L. 252) and require proof by a preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, recorded in Bulletin 1491, Item 1.

In evaluating the testimony, the Hearer must credit as much or as little as he finds reliable. 7 Wigmore, Evidence, sec. 2100 (3rd Ed. 1940). Evidence, to be believed, must not

only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). As the court stated in Hornauer v. Div. of Alcoholic Beverage Control (App. Div. 1956), 40 N.J. Super. 501, 506:

"The choice of accepting or rejecting the testimony of witnesses rests, therefore, with the administrative agency. Where such choice is reasonably made, it is conclusive on appeal."

The Board's witnesses readily acknowledge that they did not see any gambling activity taking place, although there is some circumstantial evidence to that effect. However, Rule 7 of State Regulation No. 20 provides:

"No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or allow, permit or suffer any device or apparatus designed for any such purpose, or any machine or device commonly known as a bagatelle or pin ball machine, in or upon the licensed premises, nor shall any licensee possess, have custody of, or allow, permit or suffer in or upon the licensed premises any slip, ticket, book, record, document, memorandum or other writing pertaining in any way to any pool-selling, book-making or any unlawful game or gambling of any kind..." (Emphasis supplied)

From the record herein, I am persuaded that the testimony of the three police officers forthrightly, convincingly and accurately represents the true factual picture. Two of the witnesses testified that on at least one prior occasion (the police captain speaks of two prior occasions), they warned appellant that the Police Department had received complaints that the game of charado was being played for money stakes at his premises. The testimony is also clear that when the officers entered the premises, Coto had the slate used in the game on the bar and, according to the testimony of Lt. Nelson, threw it to the floor when he was approached by the police officers.

It is also abundantly clear that appellant was standing within a few feet of Coto at the time of the confrontation and that several numbered blocks of wood which were part of the game were found on the bar. It was logical for the police to apprehend and ultimately arrest Coto and Valdez, the patron seated next to him, in addition to the appellant. None of the other patrons in the tavern was arrested because they neither had possession of gambling equipment nor were they observed to participate or engage in gambling.

The testimony of appellant's witnesses, on the other hand, is, in my view, impersuasive, incredible, and thus unworthy of belief. Appellant, in his testimony before me, denied that any of the gambling paraphernalia was present in the tavern and seemed to suggest that it was brought in by the police officers. Even counsel for appellant unhesitatingly rejected that version. Positioned as he was, almost immediately in front of Coto, appellant's bland denial that he saw the charado device or the box containing the number behind the bar is preposterous and his

testimony becomes nugatory. Finally, appellant's testimony is unbelievable because, in the face of affirmative testimony by the police officers that they had warned him on prior occasions about gambling, he steadfastly denied that such warnings were given.

Camejo readily admitted that charado is a gambling device and is a game involving money, although he denied that the game was played on the licensed premises at that time.

Coto also denied that he was in possession of any of the gambling equipment and insisted that the first time he saw it was when the detectives displayed it and asked him whether he was the owner. He does not satisfactorily explain why the slate was picked up by the police officers from the floor near him.

I am further persuaded from the testimony that charado is a gambling game and that it is played for money stakes. The record shows clearly that this game consists of ten blocks or cubes numbered from zero to nine. When five of these blocks are removed, the other five blocks are placed in a box and betting takes place by inserting numbers on a slate. I am convinced and find that appellant allowed, permitted and suffered a gambling device on his licensed premises in violation of Rule 7 of State Regulation No. 20 and that the Board, acting reasonably, determined that a violation thereof occurred.

I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was erroneous and should be reversed. It is, therefore, recommended that an order be entered affirming the Board's action, dismissing the appeal and fixing the effective dates of the suspension.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

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

Accordingly, it is, on this 29th day of August 1969,

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

ORDERED that Plenary Retail Consumption License C-151, issued by the Board of Commissioners of the City of Union City to Pedro Gutierrez, for premises 143 - 48th Street, Union City, be and the same is hereby suspended for sixty (60) days, commencing * at 3 a.m. Monday, September 8, 1969, and terminating at 3 a.m. Friday, November 7, 1969.

JOSEPH M. KEEGAN
DIRECTOR

* By order dated 9/5/69, the suspension was deferred to commence at 3 A.M. Monday, October 20, 1969 and to terminate at 3 A.M. Friday, December 19, 1969.

3. APPELLATE DECISIONS - KILLIAN v. PENNS GROVE.

WILLIAM KILLIAN,)	
t/a CIRCLE K RANCH CLUB,)	
Appellant)	
v.	)	ON APPEAL
	)	CONCLUSIONS
	)	AND ORDER
BOROUGH COUNCIL OF THE)	
BOROUGH OF PENNS GROVE,)	
Respondent)	

 David L. Horuvitz, Esq., Attorney for Appellant
 Donald L. Masten, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from suspension of his license by respondent for twenty-five days after its finding of his guilt of two charges, viz., for fifteen days on the first charge alleging that he permitted consumption of alcoholic beverages on the licensed premises during prohibited hours, and for ten days on the second charge alleging that he hindered investigation by local police officers.

At the hearing respondent consented to reversal of the finding of guilt and dismissal of the second (hindering) charge, and reduction of the penalty on the first (hours) charge from fifteen to ten days, whereupon appellant withdrew the appeal.

Accordingly, it is, on this 8th day of September 1969,

ORDERED that the second charge be and the same is hereby dismissed and the finding of guilt on the first charge be and the same is hereby affirmed; and it is further

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Penns Grove to William Killian, t/a Circle K Ranch Club, for premises 42 West Pitman Street, Penns Grove, be and the same is hereby suspended for ten (10) days, commencing at 7 a.m. Monday, September 15, 1969, and terminating at 7 a.m. Thursday, September 25, 1969.

JOSEPH M. KEEGAN
 DIRECTOR

4. APPELLATE DECISIONS - CASEY'S INC. v. KEANSBURG.

CASEY'S INC.)	
t/a "CASEY'S",)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
)	
MUNICIPAL COUNCIL OF THE)	
BOROUGH OF KEANSBURG,)	
Respondent)	

 James F. McGovern, Jr., Esq., Attorney for Appellant
 Howard A. Roberts, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from suspension of its plenary retail consumption license for premises 93-97 Beachway, Keansburg, by respondent for five days effective July 14, 1969, after its finding of the licensee's guilt of a charge alleging that it permitted a brawl on the licensed premises on June 8, 1969.

By order dated July 8, 1969, the suspension was stayed pending determination of the appeal.

Prior to hearing, appellant's attorney advised me that the appeal was withdrawn.

Normally, the suspension would now be reimposed, effective in regular course. However, report of recent investigation discloses that the licensed business is principally summer seasonal and that it is currently being operated only on Wednesday and Friday nights and on Saturdays and Sundays, and then only on a minimal basis. Hence, the effective date of the reimposed suspension will be deferred until operation of the licensed business is resumed full time on a substantial basis.

Accordingly, it is, on this 26th day of September, 1969,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the five-day suspension of Plenary Retail Consumption License C-2, issued by the Municipal Council of the Borough of Keansburg to Casey's Inc., t/a Casey's, for premises 93-97 Beachway, Keansburg, be and the same is hereby reimposed, the effective date of such suspension to be fixed by further order as aforesaid.

JOSEPH M. KEEGAN
 DIRECTOR

5. APPELLATE DECISIONS - KOVAL v. KEANSBURG.

GEORGE KOVAL,)	
t/a "CLUB SHAMROCK",)	
Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS
	)	AND ORDER
MUNICIPAL COUNCIL OF THE)	
BOROUGH OF KEANSBURG,)	
Respondent)	

 James F. McGovern, Jr., Esq., Attorney for Appellant
 Howard A. Roberts, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from suspension of his plenary retail consumption license for premises 94-96 Beachway, Keansburg, by respondent for ten days effective July 14, 1969, after its finding of the licensee's guilt of a charge alleging that he permitted a brawl on the licensed premises and employed a person convicted of crime involving moral turpitude on June 8, 1969.

By order dated July 8, 1969, the suspension was stayed pending determination of the appeal.

Prior to hearing, appellant's attorney advised me that the appeal was withdrawn.

Normally, the suspension would now be reimposed, effective in regular course. However, report of recent investigation discloses that the licensed business is principally summer seasonal and that it is currently being operated only on Wednesday and Friday nights and on Saturdays and Sundays, and then only on a minimal basis. Hence, the effective date of the reimposed suspension will be deferred until operation of the licensed business is resumed full time on a substantial basis.

Accordingly, it is, on this 26th day of September, 1969,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the ten-day suspension of Plenary Retail Consumption License C-11, issued by the Municipal Council of the Borough of Keansburg to George Koval, t/a Club Shamrock, for premises 94-96 Beachway, Keansburg, be and the same is hereby reimposed, the effective date of such suspension to be fixed by further order as aforesaid.

JOSEPH M. KEEGAN
 DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE -
 LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

WILJO, INCORPORATED)
 t/a Broadway Lounge)
 879 Broadway)
 Newark, New Jersey)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-623, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Newark.

 Licensee, by John E. Harris, Secretary-Treasurer, Pro se
 Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 16, 1969 it possessed alcoholic beverages in thirteen bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for thirty-five days effective March 27, 1969 for similar violation (involving eleven bottles). Re Wiljo, Incorporated, Bulletin 1856, Item 6.

The license will be suspended for forty-five days (Re Columbus Bar & Grill, Inc., Bulletin 1809, Item 5), to which will be added ten days by reason of the prior record of suspension for similar violation within the past five years (Re Cleffi's Cafe, Inc., Bulletin 1745, Item 2), and fifteen days by reason of the aggravating circumstance of the occurrence of the instant violation on June 16, 1969 in close proximity to the expiration on May 1, 1969 of the suspension for the prior violation (Re Hausner, Bulletin 1832, Item 5), or a total of seventy days, with remission of five days for the plea entered, leaving a net suspension of sixty-five days.

Accordingly, it is, on this 8th day of September 1969,

ORDERED that Plenary Retail Consumption License C-623, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Wiljo, Incorporated, t/a Broadway Lounge, for premises 879 Broadway, Newark, be and the same is hereby suspended for sixty-five (65) days, commencing at 2 a.m. Monday, September 15, 1969, and terminating at 2 a.m. Wednesday, November 19, 1969.

JOSEPH M. KEEGAN
 DIRECTOR

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1968 to JUNE 30, 1969 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 57 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20)

CLASSIFICATION OF LICENSES

County	PLENARY Retail Consumption		PLENARY Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Licenses Surr. Revoked Retired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	484	\$ 208,000.00	74	\$27,755.00	30	\$ 2,620.00						588	\$ 238,375.00
Bergen	811	352,049.00	301	96,495.00	165	15,032.20	44	\$2,106.50	5	\$ 1,398.75		1326	467,081.45
Burlington	199	94,044.20	43	16,515.00	57	7,412.92	1	50.00				300	118,022.12
Camden	453	242,678.14	87	39,863.00	81	8,187.00			1	450.00	3	619	291,178.14
Cape May	142	78,400.00	13	4,700.00	18	2,250.00						173	85,350.00
Cumberland	82	44,100.00	15	4,450.00	32	4,350.00						129	52,900.00
Essex	1218	783,830.00	338	223,050.00	94	12,825.00	24	1,200.00	2	1,500.00	4	1672	1,022,405.00
Gloucester	110	41,140.00	16	3,998.70	25	2,294.00						151	47,432.70
Hudson	1402	633,895.00	297	121,900.00	79	9,176.22	58	2,450.00			11	1825	767,421.22
Hunterdon	80	33,688.00	16	10,508.00	17	2,090.00						113	46,286.00
Mercer	400	286,275.59	51	27,154.00	64	9,467.57						515	322,897.16
Middlesex	635	322,439.66	89	30,763.50	139	11,315.47	4	200.00			1	866	364,718.63
Monmouth	553	295,093.00	128	46,200.00	66	7,124.05	10	492.00	19	11,267.74		776	360,176.79
Morris	361	154,707.91	105	45,470.00	73	7,332.50	13	650.00	5	1,560.00		557	209,720.41
Ocean	196	113,921.66	52	23,632.00	49	5,500.00						297	143,053.66
Passaic	802	346,909.00	169	54,540.00	51	6,000.00	6	300.00			1	1027	407,749.00
Salem	52	21,130.00	8	1,640.00	21	1,783.50						81	24,553.50
Somerset	190	89,870.00	42	13,855.00	42	4,898.90						274	108,623.90
Sussex	165	47,720.00	20	4,350.00	13	740.00	1	50.00	1	225.00		200	53,085.00
Union	547	327,406.00	144	75,218.00	91	9,786.72	25	1,250.00			1	806	413,660.72
Warren	146	45,060.00	22	5,573.86	32	3,500.00			1	225.00		201	54,358.86
Totals	9028	4,562,357.16	2030	877,631.06	1239	133,686.05	186	8,748.50	34	16,626.49	21	12496	5,599,049.26

Period April 1, to June 30, 1969

New - 4 "C", 7 "CB", 3 "D"

Retired - 4 "C", 1 "CS"

Surrendered - 1 "CB", 4 "C",

Late Renewal - 1 "C"

Total Surr. or Rev. or Ret. since 1968 - 21

All Seasonals in effect

Joseph M. Keegan
Director

September 24, 1969

In the Matter of Disciplinary
Proceedings against

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-32 issued by the Town Council of the Town of Harrison

BY THE DIRECTOR:

Hearer's Report

"1. On January 2, 8, 21, 24, February 3, 7, 14 and 19, 1969, 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', on all of said dates and on horse races on said date of February 7, 1969; in violation of Rule 7 of State Regulation No. 20.

"2. On January 2, 8, 21, 24, February 3, 7, 14 and 19, 1969, 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 testimony of Trocchia further disclosed that on January 8 at approximately 12:15 p.m., he observed Jerry engaged in conversation with a man known as "Joe" who placed a "number bet being 549 with Jerry for \$1 on each race." While in front

of Trocchia, Jerry wrote down the bet on a green slip of paper on which he observed "numerous number bets written on this slip of green paper." Jerry accepted money and then "walked into the rear room and entered the foyer which leads to the side entrance on Hamilton Street" and returned to the barroom shortly thereafter. At approximately 1:00 p.m. the public telephone rang in the rear room and Jerry walked from the bar past the telephone directly into the rear foyer, emerging in a few seconds carrying numerous slips in his hand. Trocchia heard Jerry answer the telephone, "reciting number bets into the telephone."

Trocchia's further testimony disclosed that on the dates of January 21, 24, February 3, 7, 14 and 19, while in the licensed premises, he heard bets being given by various persons to Jerry, who accepted money therefor. On said occasions Trocchia placed numbers bets with Jerry, who accepted money in payment for the bets. The witness had seen the licensee on the premises on two or three occasions but did not observe him engage in any gambling activities.

The licensee presented no testimony in the matter now under consideration.

From the record herein, I find that on the dates set forth in the charges, Jerry, the bartender, accepted numbers bets from patrons on the licensed premises and on several occasions accepted numbers bets from Trocchia. Although there is no testimony that the licensee accepted bets or participated in any way whatsoever in gambling activities, he is responsible in disciplinary proceedings for violations of his agent or employee. Rule 33 of State Regulation No. 20.

Under the circumstances, I conclude that the licensee's guilt has been established by more than a fair preponderance of the believable evidence.

Licensee has a prior adjudicated record. Effective August 15, 1962, his license was suspended by the Director for twenty days for sale of alcoholic beverages to another retailer and below the minimum resale price. Re Meyer, Bulletin 1477, Item 3.

It is recommended that the previous record of suspension for dissimilar violation be disregarded because occurring more than five years ago and that the license be suspended for sixty days. Re Ordike Corporation, Bulletin 1869, Item 5.

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 8th day of September 1969,

ORDERED that Plenary Retail Consumption License C-32, issued by the Town Council of the Town of Harrison to Edward A. Meyer, Jr., t/a Eddie's Tavern, for premises 200 No. 5th Street, Harrison, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, September 15, 1969, and terminating at 2 a.m. Friday, November 14, 1969.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary
 Proceedings against

BERPEG, INC.
 266-268 Park Avenue
 Newark, N. J.

)
) CONCLUSIONS
) AND ORDER
)
)
)

Holder of Plenary Retail Consumption
 License C-78, issued by the Municipal
 Board of Alcoholic Beverage Control
 of the City of Newark.

 Cohen & Meshulam, Esqs., by David J. Meshulam, Esq., Attorneys
 for Licensee
 Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging
 that on divers dates between March 7 and May 23, 1969 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 Ordike
Corporation, Bulletin 1869, Item 5.

Accordingly, it is, on this 9th day of September 1969,

ORDERED that Plenary Retail Consumption License C-78,
 issued by the Municipal Board of Alcoholic Beverage Control of
 the City of Newark to Berpeg, Inc., for premises 266-268 Park
 Avenue, Newark, be and the same is hereby suspended for fifty-
 five (55) days, commencing at 2 a.m. Tuesday, September 16, 1969,
 and terminating at 2 a.m. Monday, November 10, 1969.

JOSEPH M. KEEGAN
 DIRECTOR

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

LOMER ENTERPRISES, INC.
 t/a Con's Tavern
 Route 130 Nortonville
 Logan Township
 PO Swedesboro, N. J.

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption
 License C-1, issued by the Township
 Committee of the Township of Logan

 Licensee, by Paul T. Molinari, Vice President, Pro se
 Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
 June 10, 1969 it 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.

Absent prior record, the license will be suspended for
 twenty days, with remission of five days for the plea entered,
 leaving a net suspension of fifteen days. Re Quinonez, Bulletin
 1874, Item 9.

Accordingly, it is, on this 4th day of September 1969,

ORDERED that Plenary Retail Consumption License C-1,
 issued by the Township Committee of the Township of Logan to
 Lomer Enterprises, Inc., t/a Con's Tavern, for premises Route
 130, Nortonville, Logan Township, be and the same is hereby
 suspended for fifteen (15) days, commencing * at 1 a.m. Thursday,
 September 11, 1969, and terminating at 1 a.m. Friday, September
 26, 1969.

JOSEPH M. KEEGAN
 DIRECTOR

* By order dated September 9, 1969 the suspension
 was deferred to commence at 1 a.m. Thursday,
 September 25, 1969 and to terminate at 1 a.m.
 Friday, October 10, 1969.

11. DISCIPLINARY PROCEEDINGS - PURCHASE FROM RETAILER - FALSE
BEVERAGE TAX BUREAU REPORTS - PRIOR DISSIMILAR RECORD -
LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

CLUB 339, Inc.
339 Mulberry Street
Newark, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-673, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Newark

Licensee, by Domingo Fuentes, President, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

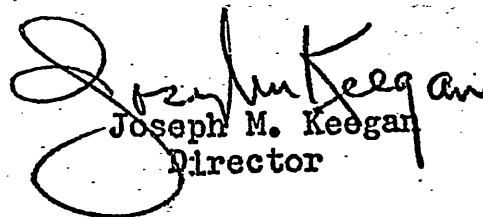
Licensee pleads non vult to charges alleging that (1) on divers dates between January 13, 1969 and June 17, 1969 it purchased alcoholic beverages from other retailers, in violation of Rule 15 of State Regulation No. 20, and (2) for the months of January, February, March and April 1969 it filed false Beverage Tax Bureau reports, in violation of R.S. 54:45-1 and 54:47-3.

Licensee has a previous record of suspension of license by the municipal issuing authority for fifteen days effective March 31, 1969 for sale during prohibited hours.

The license will be suspended on the first charge for fifteen days (Re M. V. Patterson, Inc., Bulletin 1849, Item 5) and on the second charge for ten days (Re Johnson, Bulletin 1880, Item 10), to which will be added five days by reason of the record of suspension of license for dissimilar violation within the past five years (Re Mugil, Bulletin 1867, Item 5), 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 8th day of September 1969,

ORDERED that Plenary Retail Consumption License C-673, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Club 339, Inc., for premises 339 Mulberry Street, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, September 15, 1969, and terminating at 2 a.m. Friday, October 10, 1969.


Joseph M. Keegan
Director