Deputy Director Saum

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

BULLETIN 1727 April 25, 1967

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ITEM

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

BULLETIN 1727 April 25, 1967

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

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 1082-65

JOSEPH MATTERA, JR.
t/a COUNTRY LIQUOR STORE

Plaintiff-Appellant,

vs.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL in the State Department of Law and Public Safety,

Defendant-Respondent.

Argued March 13, 1967 - Decided March 23, 1967

Before Judges Sullivan, Kolovsky and Carton

On appeal from the Division of Alcoholic Beverage Control.

Mr. Charles W. Sandman, Jr. argued the cause for appellant.

Mr. Stephen Skillman, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney.)

PER CURIAM.

Appeal from the Director's decision in Re Mattera, Bulletin 1686, Item 2. Director affirmed. Opinion not approved for publication by the Court committee on opinions.

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

In the Matter of Disciplinary Proceedings against	)	
JOSEPH MATTERA, JR. t/a COUNTRY LIQUOR STORE Wildwood Blvd. near Rt. 9 1/10 mile to Rio Grande Middle Township PO Rio Grande, N. J.	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Middle	)	

Charles W. Sandman, Jr., Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On June 20, 1966, I entered an order herein suspending the license for twenty-five days commencing June 27, 1966, for sale of alcoholic beverages to a minor. Re Mattera, Bulletin 1686, Item 2.

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

The court affirmed my action on March 23, 1967. Mattera v. Division of Alcoholic Beverage Control (App.Div. 1967), not officially reported, recorded in Bulletin 1727, Item 1.

Although mandate on affirmance has not yet been received, licensee's attorney has advised that no further appeal would be taken and has requested that the penalty be imposed as soon as possible. Hence, the suspension may now be reimposed.

Accordingly, it is, on this 30th day of March, 1967,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Middle to Joseph Mattera, Jr., t/a Country Liquor Store, for premises Wildwood Boulevard near Route 9, Middle Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a.m. Monday, April 3, 1967, and terminating at 9:00 a.m. Friday, April 28, 1967.

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - DI TULLIO v. CRANFORD and R. J. PAMM CO., INC.

FRANK DI TULLIO,

Appellant,

v.

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANFORD, AND R. J. PAMM CO., Inc., t/a CRANFORD GOLF CLUB,

Respondents.

ON APPEAL
ORDER

Alfred K. Frigola, Esq., Attorney for Appellant.
Donald R. Creighton, Esq., Attorney for Respondent Township Committee.
Arthur W. Brinkmann, Esq., Attorney for Respondent R. J. Pamm Co., Inc.

BY THE DIRECTOR:

Appellant appeals from grant by respondent Township Committee on November 22, 1966 of a plenary retail consumption license to respondent R. J. Pamm Co., Inc. for premises 27 North Avenue, East, Cranford.

Prior to the hearing of the appeal, appellant's attorney advised me by letter dated February 14th that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 16th day of February, 1967,

ORDERED that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 95 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
BLUE DIAMOND CORP. 73 Academy St. Newark, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark	)

Louis R. Cerefice, 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) on September 23, 1966, it sold drinks of alcoholic beverages to sixteen minors, four age 17, nine age 18 and three age 19, in violation of Rule 1 of State Regulation No. 20, and (2) in its current application for license, failed to disclose its record of prior license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the Director for fifteen days effective April 5, 1965, for sale to minors (Re Blue Diamond Corp., Bulletin 1614, Item 10), nondisclosure of which being the subject of the second charge.

Considering the ages and the number of minors involved, the license will be suspended on the first charge for seventy-five days (cf. Re Ricci and Nappa, Bulletin 1510, Item 1; Re Polish Peoples Home, Inc., Bulletin 1137, Item 1) and on the second charge for ten days (Re Turner, Bulletin 1709, Item 6), to which will be added ten days by reason of the record of license suspension for similar violation occurring within the past five years (Re Schipani, Bulletin 1701, Item 8), or a total of ninety-five days, with remission of five days for the plea entered, leaving a net suspension of ninety days.

Accordingly, it is, on this 27th day of February, 1967,

ORDERED that Plenary Retail Consumption License C-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Blue Diamond Corp. for premises 73 Academy Street, Newark, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m. Monday, March 6, 1967, and terminating at 2:00 a.m. Sunday, June 4, 1967.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LOTTERY (50-50 CLUB AND RAFFLE) - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
FRANK S. FARKAS and VIOLA M. FARKAS t/a Frank & Vi's Tavern 1299 E. State Street Trenton, N. J.	) CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-117, issued by the City Council of the City of Trenton	)

Harvey L. Stern, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that (1) and (2) on November 26, December 10, 17, and 31, 1966, they permitted acceptance of numbers bets and on December 31, 1966, possessed tickets in a raffle for a half-gallon bottle of whiskey and a "50-50 club" lottery and permitted acceptance of horse race bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20, and (3) on December 31, 1966, hindered investigation (by attempted destruction of evidence) then being conducted by Division agents, in violation of R.S. 33:1-35.

Absent prior record, the license will be suspended on the first and second charges for sixty days (Re Sutera, Bulletin 1683, Item 1) and on the third charge for ten days (Re Farrelly, Bulletin 1681, Item 8) 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 27th day of February, 1967,

ORDERED that Plenary Retail Consumption License C-117, issued by the City Council of the City of Trenton to Frank S. Farkas and Viola M. Farkas, t/a Frank & Vi's Tavern, for premises 1299 E. State Street, Trenton, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. Monday, March 6, 1967, and terminating at 2:00 a.m. Wednesday, May 10, 1967.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - CHARGE OF LEWDNESS AND IMMORAL ACTIVITY (ROOM RENTING) DISMISSED - LOTTERY (RAFFLE) - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against	)
LAWRENCEVILLE CORP. t/a "NEW COLONY MOTOR HOTEL" R.D. #2, Rt. #22 Bridgewater Township PO Somerville, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Bridgewater.	)

Harrison & Jacobs, Esqs., by Joseph M. Jacobs, 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 Saturday night, April 30th into Sunday morning, May 1 and on Friday night, May 6, 1966, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting of rooms, the offering to rent, and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20.

"2. On Saturday night, April 30th into Sunday morning, May 1, 1966, you allowed, permitted and suffered lotteries, commonly known as 'raffles' or 'drawings' to be conducted and tickets and participation rights in such lotteries to be sold and offered for sale, in and upon your licensed premises, and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; contrary to and in violation of Rule 6 of State Regulation No. 20."

The licensed premises, owned and operated by the licensee herein, consist of a motel containing two separate parallel two-story buildings with 112 sleeping units, a separate office building in which registrations are made for the said units, and another building containing a barroom and lounge, a dining room, a coffee shop and a meeting room.

As to the First Charge

Three ABC agents participated in the investigation of these premises on the dates set forth in this charge. Their testimony may be summarized as follows: On the evening of April 30, 1966, at about 10:25 p.m., Agents Z and R entered the barroom and observed approximately thirty-five patrons seated or standing at the bar. In the course of a conversation with Walter Quinn,

one of two bartenders on duty, Agent Z asked Quinn if there were "any stag girls around", to which he responded, "There's nothing, no stag girls around, and very few girls do stop in the barroom." The agent then asked Quinn whether there were any motel rooms available because he and his companion wanted "to shack up for a couple of hours" and what the price of rooms was. Quinn said rooms cost $12 a couple, but that they could probably get a single room and "sneak in" the girls. The agents thereupon left the premises.

After conferring with their supervisor and informing him that they felt "a room renting job could be established here," the agents were directed to and did return on the evening of May 6, 1966.

Arriving at the barroom at 9:15 p.m. on that evening, they noted that Quinn was tending bar but that there were no patrons in the barroom. They confided in Quinn that they had a couple of married women who were not their wives and they desired to rent two rooms in the motel. Quinn informed them that all they had to do was go to the motel office and register. "All you have to do is just show your driver's license at the desk. They don't ask any questions, and you won't get into any trouble."

Agent Z asked whether there was room service because he wanted to purchase some drinks and take them to the room, and was advised there was no such service. They then told Quinn they were going to register and would pick up the drinks upon their return. He answered that when they came back to the barroom after registering, he would mix drinks for them. The agents thereupon left the barroom and went to the motel office, which was located in another building about 150 feet from the barroom.

Fred Benson, the clerk on duty at that time, handed the agents registration cards. They did not engage in any conversation with Benson other than to tell him they wanted two double rooms. Agent R signed a registration card as Mr. and Mrs. Peter Monticello with a Bloomfield, N. J. address, and gave the name of a company by which he was presumably employed. Agent Z signed a registration card as Mr. and Mrs. Richard Rillo and gave a Perth Amboy address. They did not inform Benson that they had previously been in the barroom or had had any conversation with Quinn, nor did Benson request that they produce any driver's license for identification purposes.

Upon paying for the rooms and receiving the keys, the agents returned to the barroom, purchased four drinks, and took the drinks with them to the motel units. Shortly after they entered the rooms, Inspector F, in the company of Quinn and a local police officer, knocked on the door of the unit occupied by Agent Z. He was questioned as to his purpose in renting the room and he told them he "was going to shack up for a couple of hours" with a girl friend who was not his wife. The same confrontation took place in the room occupied by Agent R.

Returning to the barroom, Quinn recalled that part of the conversation about renting a room "to shack up for a couple of hours" but he stated that "he thought that your agents...were a couple of nuts because we asked him so many times about renting the rooms, that we weren't going to get into any trouble."

Michael Stroukoff, principal stockholder of the corporate licensee, testifying in defense of this charge, gave the following account: He is 83 years of age and comes to the motel daily from

10:00 a.m. to 3:00 p.m. He was not present on the nights alleged in the said charge. The motel is used primarily by major commercial and industrial concerns and their patronage represents approximately 95% of its business. The motel office is manned 24 hours a day by three room clerks who work in three shifts. These room clerks are the only employees authorized to rent motel rooms, and they follow the usual procedure involved in registering patrons. Quinn has been employed as a bartender since July 1, 1965; his sole function is to act as a bartender, i.e., to serve drinks and accept payment therefor.

Walter T. Quinn, testifying on behalf of the licensee, acknowledged that there was no sharp conflict between his recollection of what transpired and the testimony of the agents. However, he asserted that they repeatedly talked about women; "they're always looking for girls and I though they were just pulling my leg." He was then asked:

> "Q When they asked you for rubbers, did you still think they were kidding?
>
> A I said, 'Are you crazy?' I didn't know what they were talking about."

He denied telling the agents to register and he would prepare the drinks. His version was that after they registered and came back to the barroom, the agents ordered and paid for the four drinks. Asked whether, upon their return, he didn't question them about the reason for their ordering four drinks, his answer was, "I don't know what I could say. It could have been their wives. I don't know who. They have been pulling my leg every time they go in there about women."

My examination of the record discloses no violation as set forth in Charge 1 on Saturday night, April 30, and Sunday morning, May 1. The only contact with the agents and Quinn on that occasion was a conversation in which Quinn informed the agents that rooms were rentable at the motel at $12 per couple or $8 for a single person. Although the agents mentioned that they intended to use the said rooms for immoral purposes, this concluded the conversation and the agents departed. Accordingly, the elements in this charge were completely lacking on April 30-May 1 thus, we turn to the episode on Friday evening, May 6.

In order to sustain this allegation, it seems fundamental that the elements contained in the charge must be established in toto, i.e., the licensee must have "allowed, permitted and suffered lewdness and immoral activity in an upon the licensed premises", namely, (1) the making of arrangements for the renting of rooms, (2) the offering to rent, and (3) the renting of rooms for the purpose of illicit sexual intercourse. In considering this charge in the light of the facts herein, we are guided by a principle expressed in In re Schneider, 12 N.J. Super. 449, 456, wherein the court stated:

> "The responsibility of a licensee may in some circumstances be imposed where, regardless of his knowledge, there is a failure to prevent the prohibited conduct by those entrusted with the management of the licensed premises. Essex Holding Corp. v. Hock, supra [136 N.J.L. 28]; Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947); Galsworthy, Inc. v. Hock, 3 N.J. Super 127 (App. Div. 1949)." (Emphasis supplied)

Thus the mere renting of rooms for illicit purposes by those entrusted with the management of licensed premises is conduct proscribed by Rule 5 of State Regulation No. 20 and has been so held by the Director and by the Appellate Division of the Superior Court. In the most recent contested case, Re Edna W. Fuller Company, Bulletin 1545, Item 3, the barmaid, whose duties included the serving of drinks and renting of rooms, rented rooms to agents in a building which was not part of the licensed premises. There the Director held that the guilty knowledge, as evidenced both by her conduct and remarks, came within the proscribed activity. For other similar examples of activities in which the licensee or his agents entrusted with the management engaged in the proscribed activity, we point to Re Denti, Bulletin 835, Item 8 (the licensee himself agreed to rent rooms to agents for immoral purposes); Re Schneider, Bulletin 892, Item 3 (the licensee and his wife were active participants); Re Hartman, Bulletin 904, Item 2 (the bartender in charge of the entire premises introduced the agents to the licensee's wife, stating their immoral purpose to her, and were shown by her to a room above the bar); Re Molenaro, Bulletin 910, Item 1 (guilty knowledge of the bartender who was the sole person in charge and who rented the room to the agent); Re Old Wagon Wheel Inn, Inc. Bulletin 922, Item 3 (the principal stockholder of the licensee admitted that the bartender "had full authority to rent the rooms when she is not available" and did, in fact, rent the room); Re Larsen, Bulletin 919, Item 12 (the bartender rented the rooms and told the agents "just sign Ben Franklin or John Smith, but put Mr. and Mrs.").

As further examples of such activity, compare Re Mazza, Bulletin 972, Item 1, where a waiter was authorized to rent rooms and the waiter and the bartender asked the patron to wait a short time until a room became available for avowed immoral purposes. In Mazza v. Cavicchia, 15 N.J. 498, 534 (1954), the evidence was clear, in the words of the dissenting justice that "rooms had 'freely and brazenly' been rented for ostensibly immoral purposes and that contraceptives had been sold."

See also Re Haley, Bulletin 975, Item 1 (the licensee was in charge and willingly and knowingly rented upstairs rooms to the agents); Re Rossini, Bulletin 1088, Item 3 (the bartender and the licensee himself jointly rented the rooms, telling the agents to sign fictitious names and knew the express purpose for which the said rooms were rented); Re Molenaro, Bulletin 1265, Item 4 (the bartender rented the rooms and told the agents the girls could come in through a rear door unobserved); Re Scavone, Bulletin 1316, Item 2 (both licensees rented the rooms in what they said was "a real lovers lane back there"); Re Juhls, Bulletin 1337, Item 3 (the licensee did the room-renting with guilty knowledge); Re Mello-D-Club, Inc., Bulletin 1536, Item 1 (the renting of rooms by a principal of the corporate licensee).

The factual distinction in the above cases from the complex of facts in the matter sub judice appears abundantly clear. There seems to be no question about Quinn's employment as a bartender and his competence within the barroom. He was no more authorized to make arrangements for the renting of rooms or to rent rooms than he was, say, to authorize proscribed activity at the swimming pool, or to execute a deed for the motel. My evaluation of the conversation between the agents and Quinn satisfies me that there was nothing more than that--just conversation, with Quinn trying to impress the agents with his sophistication.

To arrange is defined in Webster's New World Dictionary as "to come to an agreement (with a person, about a thing). to make plans; provide or prepare (with for or an infinitive)."

It is difficult to conceive how any such arrangement was made between the parties hereto. The agents merely informed Quinn of their proposed plan to rent rooms for an immoral purpose. Quinn, who apparently did not believe them, nevertheless gave them the information that if they went to the motel office and presented identification, undoubtedly a room would be rented to them for certain set prices. This information was not a secret; the agents could have obtained the same information from the gardener, the porter, a waiter in the restaurant or, indeed, from any prior patron of this motel.

The record is absent of any communication between Quinn and the room clerk and of any overt act which Quinn made in furtherance thereof. Quinn did not offer to register the agents or to make any contact with the registration clerk, nor did he offer to rent rooms to the agents. It is quite evident, therefore, that if, after the conversation, the agents had departed the premises, no one could argue that any violation, as contemplated in this charge, had occurred. Cf. Re Cameron, Bulletin 1138, Item 6.

It is similarly unarguable that Benson, who was the only person authorized to rent rooms at that time, rented the rooms in a routine manner without any awareness that the same were to be used for immoral purposes. The fact that he did not require the agents to show identification, other than the execution in proper form of the registration cards, is no indication of irregularity since it is well known that in most hotels and motels the registration procedure used herein was usual and routine. There was no conversation between Benson and the agents, nor did the agents inform Benson that they had had a prior conversation with Quinn or that they had been in any other part of the premises theretofore.

I therefore find that the rooms were not rented "with the belief and intention that they will be occupied for the purposes of illicit sexual intercourse." In re Schneider, supra, 12 N.J. Super.at p. 457.

The prosecutor for the Division, in a memorandum submitted in summation, projects the thesis that "A licensee must be held responsible in disciplinary proceedings for all acts of violations committed by all his employees--not just some of each. Here, licensee is willing to be responsible for any acts by the room clerk but not for all the acts of the bartender." Such proposition would be valid if there were, in fact, a violation. Since I have determined, however, that no arrangements had actually been made by the bartender, that no offering of rooms was made by him, and that the room-renting was made in a routine fashion without any belief or intention that they would be occupied for illicit purposes, this principle would appear to be inapplicable to the facts in this case, and untenable.

The prosecutor further argues that the licensee suffered this violation to occur because the bartender, knowing or suspecting that the rooms would be rented for an unlawful purpose, did not communicate with the room-renting clerk with respect thereto, citing Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1. The short answer to this contention is that Quinn

did not know or believe these agents were going to rent the rooms for such purpose. Quinn emphasized that he thought the agents were "a couple of nuts" or "pulling my leg." Since he had no certain knowledge that they intended to rent rooms for immoral purposes, and since renting rooms was not within his competence or authority, his failure to communicate his suspicions to the room clerk located in another building does not, in my opinion, constitute a sufferance or come within the contemplation of Rule 5 of State Regulation No. 20.

Finally, it is difficult for me to believe that the licensee, which operates a motel costing in excess of one million dollars and catering to the type of patronage as hereinabove described, would permit the renting of rooms for immoral purposes. Cf. Re Bird, Bulletin 1384, Item 1.

I therefore conclude that the Division has filed to establish the guilt of the licensee on Charge 1 by a fair preponderance of the credible evidence and I recommend that the said charge be dismissed.

As to the Second Charge

In support of this charge, ABC Agents Z and R gave the following account: On their visit to these premises on Saturday night, April 30, extending into Sunday morning, May 1, 1966, they seated themselves at the bar and observed approximately 150 patrons in the premises. It appeared that a large affair was being held in the dining hall adjacent to the barroom under the auspices of the Copper Mine Swim Club. An announcer on the stage in the dining room informed the patrons that there were "several raffle drawings and also a fifty-fifty raffle this evening." Agent Z approached one of the persons selling these raffles and purchased eight tickets for a total of $2. He showed them to a bartender on duty, whom he identified as Joe, and informed him of the purchase. Shortly thereafter, an announcement was made of the winner of the drawing and a bottle of burgundy wine was opened by Quinn, the bartender, and handed to a waitress who, in turn, presented it to the winner in the dining room. Quinn informed the agent that the wine was donated by the licensee, as a door prize.

Allowing, permitting or suffering the conduct of a raffle on licensed premises is prohibited by Rule 6 of State Regulation No. 20, except where an appropriate license has been first obtained under the Raffles Licensing Law (R.S. 5:8-50). In order to establish a defense to this charge, it is incumbent upon the licensee to prove that it comes within the exception.

The crucial facts as hereinabove recited are not challenged or denied by the licensee. However, counsel for the licensee, in his brief submitted in summation, maintains that it was incumbent upon the Division to prove that the Copper Mine Swim Club did not hold the appropriate raffles license to conduct the drawing, since the cited rule is inapplicable where such license is obtained. This contention must be rejected. The Division has established a prima facie case in support of the alleged violation and there was no evidence adduced by the defense by any affirmative showing that it prevailed under the applicable exception contained in the said regulation. Cf. Re Reilly, Bulletin 323, Item 12.

I am satisfied that a raffle was conducted and tickets in a lottery were sold and offered for sale on the licensed premises, contrary to Rule 6 of State Regulation No. 20. Accordingly, it

is recommended that the licensee be found guilty of Charge 2.

Absent prior record, I further recommend that an order be entered suspending the license on the second charge for ten days. Re Santora, Bulletin 1663, Item 3.

Conclusions and Order

No exceptions to the Hearer's report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the memoranda of counsel for the licensee and the Division in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 21st day of February, 1967,

ORDERED that Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Bridgewater to Lawrenceville Corp., t/a New Colony Motor Hotel, for premises on Route #22, Bridgewater, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, February 28, 1967, and terminating at 2:00 a.m. Friday, March 10, 1967.

JOSEPH P. LORDI
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against	)
Paul Dorf t/a Metuchen Inn 424 Middlesex Avenue Metuchen, New Jersey	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Metuchen	)

Kleinberg, Moroney & Masterson, Esqs., by Martin D. Moroney, Esq., Attorneys for Licensee.
David S. Piltzer, 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 charge:

"On March 21, 1966, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

One 4/5 quart bottle labeled 'Grant's Blended Scotch Whisky, 8 Year Old, 86 Proof', and

One 4/5 quart bottle labeled 'John Begg Blended Scotch Whisky, 86.8 Proof';

in violation of Rule 27 of State Regulation No. 20."

Agent P testified that on March 21, 1966, he visited the licensee's premises and tested all of the open bottles of alcoholic beverages found therein. He seized, among other bottles of liquor, the aforesaid bottles of scotch whisky after his preliminary tests indicated that the contents of the respective bottles did not correspond with their labels. He testified that the said bottles were brought to the Division's laboratory for chemical analysis.

John P. Brady, a qualified chemist, testified that in behalf of the Division he made an analysis of the Grant's Blended Scotch Whisky, 8 Year Old, 86 Proof, and the test disclosed that it contained 38.7 percent of alcohol by volume, 77.5 proof, 16.8 grams per 100 liters of acids, 104 grams per 100 liters of solids and had a color reading of 350. He further testified that analysis of a genuine bottle of said Grant's Scotch Whisky showed 86.4 proof, its solids vary from 60 to 79.2, its acids vary from 14.4 to 15.6 and it has a color reading of 395. Mr. Brady stated that in his opinion, the open bottle of Grant's Scotch Whisky in question was not genuine as labeled. When asked how he came to the opinion that the bottle of Grant's Scotch Whisky in question was not genuine whisky of that brand, he stated, "The alcohol varies from normal down to 38.7. Of course, the proof of 77.5 is 9 points below the proof of the regular liquor. Its acids retain their same volume. The solids have increased to 104, where the high solids in Grant's is 79.2. The color reading of 350 is lower than the normal color reading of Grant's of 390."

Mr. Brady further testified that with respect to the bottle labeled John Begg Blended Scotch Whisky, he found the following: "It contains 27.8 percent alcohol by volume which would give you 55.6 proof. Its acids were 90.2 grams per 100 liters. It had 141.2 grams per 100 liters solids. Color reading of 475." He also stated that although he had analyzed John Begg Scotch Whisky on many occasions, he did not maintain records in his office for this particular brand. However, he was satisfied from the analysis he made that the contents of the bottle of John Begg Blended Scotch Whisky 86.8 Proof was not genuine as labeled.

On cross examination, Mr. Brady testified that "If the top was left off the bottle there could be some degree of evaporation, loss of alcohol, and loss of water, too." He also testified that evaporation "would tend to increase the acidity and increase the solids and also increase the color." When questioned further, Mr. Brady stated, "Evaporation could cause less alcohol," but with the reduction of nine points in proof as in the bottle of Grant's whisky in question, the acids would go up materially, or "3 or 4 grams per 100 liters", whereas the increase in acids in the present open bottle was only 1.2 grams. He also said in response to a question whether the findings made by his analysis of the Grant's Scotch Whisky could have resulted from evaporation, "I don't say they could have. If they could have you would have a high color reading and high acid reading and solids might be speaking for themselves and so might the alcohol, but how are you going to add up the other two?" Mr. Brady further testified that he had not analyzed any John Begg Scotch Whisky "in a couple of years" and that the bottle in question contained only five ounces of liquid when submitted to him for examination. Mr. Brady stated that if the bottle was not capped securely or was placed near a lamp, the evaporation would tend to increase but not to the

extent to cause a reduction of proof as disclosed by the analysis of the contents of the said bottle of John Begg.

Robert W. Townley, a consulting chemist, testified on behalf of the licensee. He stated that on August 25, 1966, he made an analysis of the respective bottles of Grant's and John Begg Scotch Whisky. He further testified that the analysis of the contents of the Grant's bottle disclosed it to be 80.8 proof, whereas the label showed it to be 86 proof; that the solids were 104 grams per 100 liters and ash 13.2 grams per 100 liters; that he did not examine the whisky for color or acid. Dr. Townley stated that in his opinion, the loss in proof of the Grant's bottle could be caused by evaporation.

Dr. Townley further testified that the John Begg bottle contained a clip-type cap which "would turn with considerable freedom, more freedom that it should", and "would cause leakage of the product...mainly alcohol and water." He said that in his opinion, "evaporation is the principal cause" of the "drop in alcohol proof and increase in solids and same thing about the color." He also pointed out that he observed "rings around on the inside" of the bottle which indicated to him to be "evaporation rings." Dr. Townley further stated that he tested two samples of the water used at the licensed premises and as a result of his findings was of the opinion that no water was added to the liquor in question. In so far as to whether any alcoholic beverage was added, he said, "I do not have at hand the authentic data on many different types of spirits which the ABC has, and I had no way to check this, so I did not check it."

On cross examination Dr. Townley, in answer to a question as to whether the contents of the bottle of Grant's Scotch Whisky was genuine as labeled, said, "Inasmuch as it is not 86 proof, that being the main basis, the main determination, I would say it does not now contain Grant's Blended Scotch Whisky as per the authentic samples now running." Also when the same question was asked regarding the contents of the bottle of John Begg Whisky, he stated, "Again my reply would be the same. It is not 86 proof and it is not the Begg requirement."

A licensee is responsible for any alcoholic beverages not truly labeled found upon his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156. As the court stated in that case at p. 159:

> "We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration."

The licensee testified that he has no employees, but operates and works in the licensed premises alone; that when he obtained the license in 1946, the bottle of John Begg Scotch Whisky was in the licensed premises and he never had a call for that brand of whisky; that he never tampered or diluted any of the liquor in his establishment. The licensee further said that he had sold drinks from the bottle containing the Grant's Scotch Whisky.

Although the licensee was apparently sincere in his contentions, his sincerity left unchallenged the testimony of both chemists to the effect that the two bottles bore labels

which did not truly describe the alcoholic beverages contained therein.

Knowledge on the part of the licensee is not a prerequisite to a finding of guilt.

A careful examination of the testimony leads to the conclusion that the Division has established the truth of the charge herein by a fair preponderance of the evidence, and it is recommended that the licensee be found guilty of the charge. Cf. Re Ayrer, Bulletin 1709, Item 7.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for fifteen days. Re Ayrer, supra.

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, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 15th day of February 1967,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Metuchen to Paul Dorf, t/a Metuchen Inn, for premises 424 Middlesex Avenue, Metuchen, be and the same is hereby suspended for fifteen (15) days, commencing at 1 a.m. Wednesday, February 22, 1967, and terminating * at 1 a.m. Thursday, March 9, 1967.

JOSEPH P. LORDI
DIRECTOR

* By order dated February 24, 1967, the suspension was lifted for one day, viz., from 1 a.m. Friday, March 3, 1967, to 1 a.m. Saturday, March 4, 1967, and the termination date was extended to 1 a.m. Friday, March 10, 1967.

8. NOTICE TO MUNICIPAL ISSUING AUTHORITIES RE TRANSCRIPTS OF TESTIMONY IN LICENSING AND DISCIPLINARY HEARINGS.

March 14, 1967

TO ALL MUNICIPAL ISSUING AUTHORITIES:

It has come to my attention that in the hearing of a recent appeal to the New Jersey Supreme Court from municipal action on a zoning ordinance by the board of adjustment, the Court indicated its concern that no stenographic transcript of testimony before the board had been taken.

In view of the feeling of the Court that such transcripts should be taken, it is suggested and strongly urged that all municipal issuing authorities, in all alcoholic beverage licensing and disciplinary matters, have testimony taken stenographically so that transcript thereof will be available in the event of appeal to this Division and possible further appeal to the courts.

In this connection, it is pointed out that in the event of such appeal, the matter may be submitted on the transcript below, pursuant to Rule 8 of State Regulation No. 15, thus obviating the municipal expense resulting from the necessity of again presenting at the appeal hearing the testimony of the witnesses below.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)	
MARTIN SIERRA t/a MARTY'S TAVERN 133 Pacific Street Newark, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-313, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	)	

Simandl and Leff, Esqs., by Robert H. Simandl, Esq., Attorneys for Licensee.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 6, 1966, he possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Sohanchak, Bulletin 1697, Item 10.

Accordingly, it is, on this 13th day of March, 1967,

ORDERED that Plenary Retail Consumption License C-313, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Martin Sierra, t/a Marty's Tavern, for premises 133 Pacific Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, March 20, 1967, and terminating at 2:00 a.m. Saturday, March 25, 1967.

Joseph P. Lordi
Director