

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2277

February 1, 1978

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1. APPELLATE DECISIONS - JAY BEE'S PUB, A CORPORATION v. IRVINGTON.

#4103

Jay Bee's Pub, A Corporation,  
t/a Jay Bee's Pub,

Appellant,

v.

Municipal Council of the Town  
of Irvington,

Respondent.

CONCLUSIONS  
AND  
ORDER

.....  
Albert F. Dalena, Esq., Attorney for Appellant.  
Henry E. Rzemieniewski, 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 the Municipal Council of the Town of Irvington (hereinafter Council) which, on February 8, 1977, found appellant guilty of violating Section 3-3(a) of the Irvington Town Code and suspended its Plenary Retail Consumption License, C-7, for fifteen days.

The subject ordinance provides as follows:

(a) No person shall sell or serve any alcoholic beverages between the hours of 2:00 A.M. and 7:00 A.M. on weekdays, and between 2:00 A.M. and 12:00 noon on Sundays; and no place or establishment licensed under the provisions of sections 33:1-1 to 33:1-96 of Revised Statutes and any amendments thereof and supplements thereto shall be open during the above prohibited hours; except that restaurants, drugstores and establishments where the principal business is other than the sale of alcoholic beverages may remain open during the prohibited hours for such other purposes only; and, except further, that on New Year's Eve, the licensee may remain open an additional three hours from 2:00 A.M. to 5:00 A.M. The hours herein mentioned refer to Eastern War Time, Standard

Time, or Daylight Saving Time, whichever time shall be then in effect and shall apply hereto. (emphasis added)

The appellant alleges in its petition of appeal that the action of the Council was erroneous in that, the Resolution of the Council failed to state the reasons for finding appellant guilty, the hearing violated the New Jersey Open Public Meetings Act, and the proofs failed to support a finding that appellant was "open" during prohibited hours.

In its answer, the respondent denies the allegations.

Upon the filing of the appeal, the Director, by Order dated February 28, 1977, stayed the Order of Suspension imposed by the Council pending determination of the appeal.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. In lieu of testimony, the transcript of the proceedings before the Council on January 11, 1977, was admitted into evidence, supplemented by oral argument, in accordance with Rule 8 of State Regulation No. 15.

From the transcript of the testimony, the following factual situation, upon which the Council's findings were predicated, emerges.

On August 11, 1976, at approximately 2:40 A.M., Patrolman Richard Jewusiak of the Irvington Police Department observed the interior lights on and five persons present within the subject licensed premises. Accompanied by his partner, Patrolman John Zulpanky, he knocked upon the locked door and was admitted to the barroom.

He observed therein the corporate stockholder-manager John Boyle; the bartender, William Mellillo; a female go-go dancer, Camille Grant; and two males, unrelated to the operation of the tavern. The two males were later identified as John Gallicchio, a friend of the go-go dancer, who was there to provide her with transportation home, and Stephen A. Bernt, a friend of the bartender.

The go-go dancer had completed her last dance at 1:00 A.M. and was seated at the bar with a glass in front of her. The contents of the glass are disputed.

Appellant argues that, there was no proof of any alcoholic beverage being served or consumed after 2:00 A.M.; that the door was bolted while the manager completed clean up and settling financial matters while others waited; and, that, in general, there was no intention to remain open to the public.

Further, it contends that if it were the licensee's intention to serve alcoholic beverages after-hours, its actions would not have been so conspicuous, nor would its employees have admitted the police.

Credibility is not at issue; the only issue being the interpretation of Section 3-3(a) of Irvington's Town Code.

As to the applicability of the ordinance in question, there were patrons in the tavern during the prohibited hours which, thus, constitutes a clear violation of the ordinance. This ordinance enjoins a licensee from permitting its licensed premises to be open during the above prohibited hours (between the hours of 2:00 A.M. and 7:00 A.M.).

These ordinances have uniformly been interpreted to mean that if there be anyone (of the public), found on the said premises, it shall be deemed a violation of the said ordinance. As used in this ordinance, the closing-of-premises provisions mean that all members of the public must be excluded. Town House, Inc. v. Montclair, Bulletin 792, Item 3; Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3. The then-Commissioner Hock in Town House, Inc. v. Montclair, supra, in construing a similar ordinance emphasized that it is meant that all members of the public must be excluded; ... keeping open (which is the same as not being closed) requires only proof that the licensee continues to entertain the public." In re Zenda, Bulletin 271, Item 5; Re Casarico, Bulletin 268, Item 1.

The mere presence of members of the public on licensed premises during prohibited hours constitutes, prima facie, a violation of the local ordinance. The objective of such regulation is to implement the effective enforcement of the ban of sales of liquor during prohibited hours and to eliminate any possible subterfuges or opportunities for violation of the provision. The ordinance, of course, must receive a reasonable interpretation. Circumstances may exist in a given case where, because of a suddenly arising emergent situation, it would be unreasonable to fasten responsibility on a licensee therefor.

In the instant case, however, a clear violation of the ordinance is disclosed for which the applicant is strictly accountable. I do not find that the purported justification for the presence of non-employees, i.e., fear of men lingering outside licensed premises and friends waiting for employees, constitutes a "suddenly arising emergent situation".

My examination of the facts and the applicable law generates no doubt whatsoever that the charge was established by a preponderance of the believable evidence. I conclude, therefore, that appellant has failed to sustain the burden of establishing that the Council's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that an order be entered affirming the Council's action, dismissing the appeal, and re-imposing the suspension.

#### Conclusions and Order

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

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

Accordingly, it is, on this 12th day of October, 1977,

ORDERED that the action of the Municipal Council of the Town of Irvington, in finding appellant guilty of violating the local municipal "hours" ordinance, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order, dated February 28, 1977, staying respondent's order of suspension of license pending determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-7 issued by the Municipal Council of the Town of Irvington to Jay Bee's Pub, a Corporation, t/a Jay Bee's Pub, for premises 961-963 Chancellor Avenue and 97 40th Street, Irvington, be and the same is hereby suspended for fifteen (15) days, commencing 2:00 a.m. Monday, October 24, 1977 and terminating 2:00 a.m. Tuesday, November 8, 1977.

Joseph H. Lerner  
Director

2. DISCIPLINARY PROCEEDINGS - HOURS AND HINDERING VIOLATIONS - TWO PRIOR  
SIMILAR VIOLATIONS - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary  
Proceedings against

Lahuta, Inc.  
t/a David James  
1400 Rose Street  
Camden, N.J.

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consump-  
tion License C-145, issued by the  
Municipal Board of Alcoholic Beverage  
Control of the City of Camden.

David E. Ferguson, Esq., Attorney for Licensee  
Mart Vaarsi, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads not guilty to the following charges:

- "1. On Wednesday, August 4, 1976, between 2:15 A.M. and 3:10 A.M., you failed to have your entire licensed premises closed and permitted persons other than yourself and your bona fide employees to enter and remain on your licensed premises; in violation of Section 5 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended by Ordinance adopted by the City Council of the City of Camden on January 25, 1968.
2. On Wednesday, August 4, 1976 between 2:30 A.M. and 3:10 A.M., you failed to facilitate, and hindered and delayed and caused the hinderance and delay of an investigation, inspection and examination at your licensed premises, then and there being conducted by inspectors of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of R.S. 33:1-35 and Rule 35 of State Regulation No. 20."

The pertinent sub-section of the Camden City ordinance, which licensee is alleged to have violated, provides as follows:

"5D. No plenary retail consumption or club licensee shall allow, permit, or suffer the consumption of any alcoholic beverage upon the licensed premises directly or indirectly between the hours of 2:15 A.M. and 7 A.M. on any weekday or between 2:15 A.M. on any Sunday and 7 A.M. of the following Monday, said hours being computed according to prevailing time.

During the hours that consumption of alcoholic beverages is hereinabove prohibited the entire licensed premises shall also be closed and no person other than the licensee and bona fide employees of the licensee permitted to enter or remain thereon, but this closing of premises requirement shall not apply to the following:

Restaurant and bona fide hotels (including hotel restaurants) as defined in N.J.S.A. 33:1-1.

Clubs which qualify for club licenses under N.J.S.A. 33:1-12, paragraph 5.

All other establishments where the principal business or activity is other than the sale of alcoholic beverages."

Three ABC agents participated in the investigation leading to the preferment of the charges herein.

Agent B testified that, accompanied by Agents P and C, he arrived in the vicinity of the licensed premises on Wednesday, August 4, 1976, at 1:30 a.m. After checking their watches for accuracy with a radio time signal, Agent B looked through a window of the tavern and observed that David Malinowski, a/k/a David James, was tending bar. Five or six patrons were drinking what appeared to be alcoholic beverages; loud music was emanating from a Juke box and beer bottles could be seen on tables. He then returned to their car, which was parked at a point affording clear observation of the tavern entrance, and surveilled the premises until 2:30 a.m. They did not observe any patrons depart, nor additional ones arrive, during this hour.

At 2:30 a.m., accompanied by Agents P and C, he again approached the premises. The window was still open with the curtains drawn to the side. He observed anew the same five or six persons seated at the bar with what appeared to be alcoholic beverages in front of them.

Agent P knocked on the door and called "ABC, open the door." Instead of complying, David James shouted "ABC, close the windows." The window was then closed and the drape drawn to thwart further view of the interior. Agent P then went to a side door which he found to be locked. The small window there was covered with paper, but he could see the inside clearly through a slit in the paper. Further efforts at obtaining ingress were fruitless.

A Camden Police car with two uniformed officers arrived upon the scene at 2:45 a.m. The agents identified themselves and requested police assistance in gaining admittance. By this time the people inside had gone upstairs and were peering out a second floor window. The Camden Police officers knocked on the locked door, identified themselves and shouted that the door be opened. Someone responded from upstairs "you can't come in unless you have a warrant".

Entrance to the tavern was not gained that evening. The agents departed at 3:10 a.m. after warning that a further charge of hindering might be lodged.

On cross examination, Agent B stated that none of the ABC agents phoned the police; and he could not state by whom they were summoned.

Agent P's testimony was corroborative of Agent B's. Additionally he added "...I took out my I.D., held it up to the diamond-shaped window they have on the door, knocked and announced that I was Inspector P from the ABC, to open the door." It was Agent P who expressly warned the licensee that, if the agents were not granted entry, the licensee might be charged with hindering. This warning was repeated six or seven times.

David Malinowski (a/k/a David James), an officer of the corporate licensee, and its manager, testified that there was no service of alcoholic beverages after "last call" at 1:45 a.m. The patrons had finished their last drinks by 2:00 a.m. He asked them to leave the bar area and go upstairs (not part of licensed premises) to wait while he and his bartender cleaned the bar. They would then depart the building en masse for mutual security, as



the area was unsafe at that hour. Malinowski explained that a licensee, less than one block away, was murdered during a held-up attempt, and Malinowski was robbed twice, in the past year.

Malinowski admitted hearing the knock on the door and his bartender stating "they say they are the ABC", to which he responded, "I don't care who they say they are, I'm not letting them in at this time of night." He then telephoned the police to check upon their identities. He continued to testify that:

"In the meantime, I thought quite a bit about what I was getting myself into here and the police arrived, and they have the agents identify themselves at the door. I had a Police officer in the premises at the time. He was off duty. He was in uniform. This is another means I have of utilizing the police for my own self protection, as if they are off duty, if they can remain in my place in uniform, it deters people from coming in and trying to rob it. So, he was waiting there, also, and when the police came I was putting him on the spot because he's not supposed to be in the licensed premises with his uniform on, and I was just in a quandary. I had remembered being busted before by the ABC for after hours, and the agents were let in that time.... They identified themselves, but I was thinking again of the officer that does me this favor and waits here.... And, it was getting to be quarter to three in the morning, ten to three. He would have come in and take down patrons' names, gather evidence or whatever they wanted to do. I just didn't want to go through it. It was just too much."

On cross examination, Malinowski admitted his awareness of the consequences on his failure to permit access to the ABC agents; and further, his refusal to permit the uniformed Camden police ingress upon demand.

Testifying in behalf of the licensee were George Szymborski, the bartender who assisted Malinowski that evening, and Edward Gorczynski, one of the patrons present that evening. Gorczynski admitted knowing Malinowski since childhood, but denied being "close friends" as adults, although

he often frequented his tavern. The testimony of these latter witnesses was essentially corroborative of the testimony of Malinowski.

Preliminarily, I observe that it is a firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud 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 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. 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); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony.

Concerning charge (1) I am persuaded that the testimony of the agents, presented in a clear and detailed manner, was not a fabrication but was factual and credible and that patrons remained in the bar area after the 2:15 a.m. deadline, as set forth in the Camden ordinance. On the other hand, I am persuaded that Malinowski's testimony, as well as his bartender and childhood friend-patron, was neither persuasive or believable.

It is noteworthy, too, that the investigation was made pursuant to a specific assignment to investigate an alleged closing-hour violation.

It has been long established that a closing hour requirement also carries with it a prohibition against the presence of patrons or guests in the licensed establishment after the proscribed hour. Re Four Hundred Social Club, Inc., Bulletin 242, Item 8; Re Casarico, Bulletin 268, Item 1; Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3.

Relative to charge (2), it is virtually uncontroverted that Malinowski refused to admit the agents for the various reasons already cited hereinabove. Here too, I find the

agents' testimony to be clear, detailed and credible. No justification existed to refuse access to the ABC agents or Camden police, and such conduct is hindering per se.

Accordingly, after a careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, I find that the Division has established the truth of the charges by a fair preponderance or the credible evidence. I, thus, recommend that the licensee be adjudged guilty thereof.

Licensee has a prior adjudicated record of two similar violations; both occurring in 1975. The then Director permitted the licensee to pay fines, in compromise, in lieu of ten and twenty-five days suspensions of license. It is obvious that the licensee has afforded little heed to the alcoholic beverage laws of the City of Camden and the State of New Jersey.

It is admonished that repeated violation of either City ordinances or State rules and regulations may well result in the revocation of its license.

I, therefore, recommend that the license be suspended for fifteen days for each of the two charges herein, to which must be added fifteen days for each of the prior similar violations occurring within two years.

In sum, I recommend that the licensee be suspended for sixty days, and further recommend that any request for the imposition of a fine in lieu of suspension, be denied by the Director.

#### 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 recommendations of the Hearer and adopt them as my conclusions herein.

Therefore, it is, on this 3rd day of October, 1977,

ORDERED that Plenary Retail Consumption License C-145, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Lahuta, Inc., t/a David James, for premises 1400 Rose Street, Camden, be and the same is hereby suspended for sixty (60) days commencing 2:00 a.m. Monday, October 17, 1977 and terminating 2:00 a.m. Friday, December 16, 1977.

JOSEPH H. LERNER  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - LEWDNESS - INDECENT MOTION PICTURES - PENALTY  
MITIGATED FOR UNUSUAL CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary  
Proceedings against

Ralph Austin and Tommy J. Fulcher, Jr.  
t/a Hermitage  
430 Broad Street  
Newark, N.J.

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consump-  
tion License C-238, issued by the  
Municipal Board of Alcoholic Beverage  
Control of the City of Newark,

Lofton, Lester & Smith, Esqs., by Oliver Lofton, Esq.,  
Attorneys for Licensee.

Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensees plead "not guilty" to the following charge:

"On August 28, 1976, you allowed, permitted and suffered in and upon your licensed premises and had in your possession and viewed to your patrons and customers, obscene, indecent, filthy, lewd, lascivious and disgusting motion pictures; in violation of Rule 17 of State Regulation No. 20."

Pursuant to a specific assignment to investigate an allegation that lewd motion pictures were being shown at the subject premises, ABC Agents V, M and D visited the premises on August 28, 1976, at approximately 8:45 p.m. The premises consisted of a two story motel-type brick building containing numerous sleeping rooms and a bar with a band area. The bar was serviced by a bartender and a barmaid.

Agents V and M proceeded to the desk clerk, and were assigned a room upon payment therefor. They then proceeded to the barroom where Agent D was seated. After having a drink, the three agents proceeded to the assigned room. Agent V, having observed a sign in the lobby which read to the effect, "[ask] us about our indoor movies, Channel 3, Channel 6, no children admitted", turned on Channel 6. Receiving no picture thereon, he turned on Channel 3. The motion picture shown thereon, which was later confiscated, viewed by this Hearer and by the Director at the hearing held herein, and was, in the opinion of this Hearer, unquestionably lewd and obscene, and violative of Rule 17 of State Regulation No. 20. The film showed a nude male and female engaging in acts of normal sexual intercourse and in oral sexual acts.

Upon viewing the films, the ABC Agents proceeded to the manager's office, which was located in close proximity to the desk clerk's office, and confronted the night manager, a Mr. Mohammed. Upon request, Mohammed accompanied the agents to the projection room where a number of films,

including the subject film, were seized by the agents. After the subject film was projected in the hearing room and identified by ABC Agent V, it was admitted in evidence.

On cross examination, Agent V explained that at the agents' request, Mohammed summoned one of the co-licensees to his (the manager's) office. Both the long form and the short form license applications, which were admitted in evidence, disclosed that the entire building which housed the bar, the restaurant and the motel rooms, was licensed for the sale, service or storage of alcoholic beverages. The long form application also revealed that the licensed premises are leased from Lincoln Motel, Inc., 430 Broad Street, Newark; and further, that the license was transferred to the subject licensees from the Lincoln Motel, Inc.

A co-licensee, Ralph Austin appeared at the manager's office in consequence of the summons. Austin declared that there are no telephones in the motel rooms, nor are drinks served in the motel rooms. Agent V did not observe a telephone in the motel room the agents rented.

The testimony of Agents M and D was mainly corroborative of the testimony elicited from Agent V. None of the agents observed any equipment for the projection of motion pictures in the cocktail lounge.

In defense of the charge, the licensees, Tommy J. Fulcher, Jr. and Ralph E. Austin, Jr. testified that, their licensed premises is confined to the cocktail lounge and certain other areas, not including, however, the lobby or any of the rooms of the motel. There are no telephones in the rooms hence, if any guest wished to obtain alcoholic beverages, a visit to the bar area would be required. Both indicated that they had protested to the landlord the showing of the films and the lobby sign which they feared would hurt their business. Neither of them authorized the placement of the sign in the lobby advertising the showing of films in the motel rooms. Under the terms of their lease, they were prohibited from placing signs anywhere.

The following testimony was elicited from Fulcher:

- Q. In the license application form itself, under Question 6, where it says, "Description of premises to be licensed," it says, "Bar, restaurant, ballroom, pool area and two hundred motel rooms." Did you intend by that answer that is in there to indicate that you would have jurisdiction over these motel rooms?
- A. No. We knew we didn't have jurisdiction over them, but the lease gave us the right to sell liquor in them even though we didn't have jurisdiction over them.

The licensees denied that any films were ever shown in the cocktail lounge, or that they had any financial interest in the films. They further denied that they, in anywise, participated in the operation of the motel rooms, or that they employed anyone who "had any jurisdiction" over what took place in the motel rooms; and further, Mohammed was never in their employ. They asserted that they requested the landlord to cease showing the subject movies and to remove the sign in the lobby. Austin explained that a guest in a motel room could pick up a drink at

the bar and bring it to his room.

The issue herein has been narrowed to the primary question: Does the lease arrangement between landlord and licensees, which prohibits the licensees' intrusion into the management of the "motel", sufficient to exculpate them from the subject charge as relating solely to the motel rooms?

For the purposes of determining this narrow issue, it can be accepted that (a) the license application form includes the entire "motel" and (b) that the lease between the motel owner and the licensees limits the area of the licensees' control to the bar, lounge and banquet rooms only.

Preliminarily, I observe that although statutes penal in character normally must be strictly construed, the Legislature enjoined the courts otherwise in N.J.S.A. 33:1-73 which is captioned, "Intention and Construction of law" and provides:

This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed.

See, Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct.), rev'd on other grounds, 136 N.J.L. 161 (E. & A. 1947). Further, Chief Justice Case, speaking for the court in Hudson Bergen, &c., Assn. v. Hoboken, 135 N.J.L. 502, 506-507 (E. & A. 1947) said:

The sale of intoxicating liquor has from the earliest history of our state been dealt with by legislation in an exceptional way. In its legal significance it is sui generis. "it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied." Paul v. Gloucester County, 50 N.J.L. 585, 595. "The sale of intoxicating liquor is in a class by itself." Bumball v. Burnett, 115 Id. 254. "The right to regulate the sale of intoxicating liquor by the legislature, or by municipal or other authority under legislature power given, is within the police power of the state, and is practically limitless. It may extend to the prohibition of the sale altogether. A license is not a contract. It is a mere privilege." Meehan v. Excise Commissioners, 73 Id. 382; affirmed 75 Id. 557. "There is no inherent power in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the state or of a citizen of the United States. As it is a business attended with danger to the community it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils." Crowley v. Christensen, 137 U.S. 86; 34 L Ed. 620. "The liquor business is peculiarly subject to strict governmental control." Franklin Stores Co. v. Burnett, 120 N.J.L. 596.

Later the court stated, at pp. 507-509:

The reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes from early colonial times .... Thus, through nearly 250 years the legislature has struggled with the conditions arising out of the sale of liquor. The current statute is to be construed in the light of the long series of statutes of which it is the culmination and of the decisions of the courts regarding those statutes. Meticulous technicalities should not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil. The state authorities should be given every reasonable opportunity to work out the mandate of the legislature.

This language was quoted approvingly by the court in Greenbrier, Inc. v. Hock, 14 N.J. Super 39, 43 (App. Div. 1951). See also In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 61 (App. Div. 1954); Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super 405 (App. Div. 1957).

In McFadden's Lounge v. Division of Alcoholic Beverage Control, supra, Judge Jayne pointed out at p. 62:

Experience has firmly established that taverns where wine, men, women, and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuance of their individualized privilege and concession.

An in justification of the stringency of an analogous rule, Rule 5 of State Regulation No. 20, he stated at p. 66:

[A] ... disciplinary rule governing the conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location ... must be measured in its relation to the reasonably apprehended evils of the trade.

In a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the various statutes and the rules and regulations pertaining thereto. A relaxation from the requirements of the provisions contained in the Alcoholic Beverage Law and the rules and regulations of this Division would be contrary to their intentment and against the dictates of sound public policy. A public convenience should not be allowed to degenerate into a social evil. See Jeanne's Enterprises, Inc. v. State of N.J. etc., 93 N.J. Super. 230 (App. Div.), aff'd 48 N.J. 359 (1966).

In evaluating a crucial issue raised herein, i.e., the extent of the licensed premises and whether the motel rooms constitute a part thereof; I refer to N.J.S.A.33:1-1(k) which defines "licensed premises" as "[any] premises for which a license under this chapter is in force and effect."

In arriving at a determination herein, I note that the application for renewal of the subject license, in effect at the time of the alleged violation and executed by the licensees (Item No. 6), clearly states that two buildings, the grounds adjacent thereto, and the "bar, restaurant, ballroom, 200 motel rooms" constitute a description of the licensed premises. From the inception of this Division, it has been uniformly ruled that the description delineated in the application of the premises will determine what constitutes the licensed premises. Re Cohen, Bulletin 295, Item 3; Krump v. Caldwell, Bulletin 507, Item 4; New Jersey Tavern Owners, Inc. v. Belleville, Bulletin 1182, Item 2.

The records of this Division reflect that when the subject plenary retail consumption license was first issued to a predecessor motel corporation, the local issuing authority imposed a special condition thereon, which provided that "no renewal or transfer except for or to a hotel or motel containing at least 50 sleeping rooms". This condition was never abrogated and presently remains in full force and effect. I have also noted that the lease executed between the licensees and their landlord contains a provision entitling the licensees to provide guests occupying rooms in the motel with food and beverages, including alcoholic beverages.

The licensees' hypothesis that, because their lease limited their ability to control the motel room area, it therefore follows that, this limitation similarly reduced their culpability for infractions that would occur in that area, is without foundation. The licensees could obtain no exemption from the statutory mandate and the regulatory provisions by the terms of a lease. Their responsibility for alcoholic beverage control violations occurring within the entire licensed premises is identical with any other licensee. There is no authority for a licensee to abrogate or rescind this paramount obligation under such license by virtue of a commercial lease agreement.

A licensee may not enjoy all of the privileges conferred by his license and disclaim the responsibilities which attach thereto. Krump v. Caldwell, supra.

To rule otherwise would subvert the beneficent intendment of the Alcoholic Beverage Law and hinder proper enforcement thereof.

After a careful consideration of the entire record, I find that the charge herein has been established by a fair preponderance of the credible evidence. I, therefore, recommend that the licensees be found guilty of the said charge.

In evaluating the entire circumstances relative to a prospective penalty, it is noted that the licensees have no prior record and were not themselves, or through their employees, participants in the showing of the lewd film. Although they may not escape responsibility therefore, as indicated supra, the unusual circumstances present here should be considered in mitigation of the offense. Hence, I further recommend that the license be suspended for thirty days.



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 recommendations of the Hearer and adopt them as my conclusions herein.

Therefore, it is, on this 30th day of September, 1977,

ORDERED that Plenary Retail Consumption License C-238, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ralph Austin and Tommy J. Fulcher, Jr., t/a Hermitage, for premises 430 Broad Street, Newark, be and the same is hereby suspended for thirty (30) days commencing 2:00 a.m. Monday, October 10, 1977 and terminating 2:00 a.m. Wednesday, November 9, 1977.

JOSEPH H. LERNER  
DIRECTOR

4. STATE LICENSES - NEW APPLICATIONS FILED.

Farber Distributing Corporation  
990 Brighton Street  
Union, New Jersey

Application filed January 18, 1978  
for place-to-place transfer of  
State Beverage Distributor's  
License SBD-118 from 661 South 11th  
Street, Newark, New Jersey.

The Kristen Distributing Co.  
570-590 Bercik Street  
Elizabeth, New Jersey

Application filed January 30, 1978  
for an additional warehouse license  
for premises 560 Bercik Street,  
Elizabeth, N. J., under Limited  
Wholesale License WL-48.



Joseph H. Lerner  
Director