

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

BULLETIN 2066

SEPTEMBER 28, 1972

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

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BULLETIN 2066

1. APPELLATE DECISIONS - D'AMBROSIO v. EAST BRUNSWICK.

Dante S. D'Ambrosio,)
Appellant,) On Appeal
v.)
Township Council of the Township) CONCLUSIONS
of East Brunswick,) and
Respondent.) ORDER

-----)
William G. Brigiani, Esq., Attorney for Appellant
Selesky, Kolsky, Kravarik & Epstein, Esqs., by Martin E.
Kravarik, Esq., Attorneys for Respondent Township Council
Garrenger & Rosta, Esqs., by Robert L. Garrenger, Jr. Esq.,
Attorneys for Respondent Joseph Macaluso
Rafano and Wood, Esqs., by Christopher R. Wood, Esq.,
Attorneys for Mikolai Nowicki, Unsuccessful Applicant

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Council of the Township of East Brunswick (hereinafter Council) which denied appellant's application for a new plenary retail distribution license by resolution adopted January 10, 1972.

In addition to his petition of appeal, appellant attached thereto proper notice of service and in consequence an answer was filed by Council alleging that the denial of applicant-appellant's application was based upon a prior criminal record of appellant.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

The appellant Dante S. D'Ambrosio, testified that he was born on May 22, 1917; on September 22, 1935, when he was eighteen years old and a resident of New York, he was arrested on a charge of third degree armed robbery resulting in a finding of guilt and was sentenced to the Elmira State Reformatory in New York. He served eighteen months of his sentence. He could not recall the length of his sentence but a record sheet by the New Jersey State Police was introduced into evidence, which revealed that the sentence was for ten years. Thereafter, he was charged with the offense of "living together in open lewdness" in Passaic County and on his guilty plea was fined one hundred dollars. On cross examination, he admitted an arrest in Freehold on Easter Sunday of 1971, on a minor assault charge to which he plead guilty and was fined twenty-five dollars. Despite these charges, he maintains that he leads an exemplary life, is a good citizen of fine reputation.

Councilman Charles H. Newman of East Brunswick testified that a new plenary retail distribution license became available in his community for which the Council had twelve applicants, of which appellant was one, and the participating rejectee Nowicki was another. Of the applicants, several were rejected initially because their proposed locations would not satisfy the measure of necessity and convenience to this municipality. The remaining applicants were investigated resulting in a police report to the Council containing the record of appellant. On the basis of that record, Council rejected appellant's application.

Of the twelve applicants, five selected the proposed location of "324 Rues Lane" which is contained in a new shopping center which location the Council felt would be the most desirable. Of those five applicants, of which the appellant was one, the application of appellant was rejected for the reasons aforesaid, and of the remaining four, the successful applicant Joseph Macaluso, was awarded the license on the basis of priority of application date.

The primary issue posed herein specifically relates to the reasonableness and proper exercise of discretion of Council's action in rejecting appellant's application due to the prior criminal record. Reasonableness however is not the proper test for the statute (N.J.S.A. 33:1-25) precludes the issuance of any license "...to any person who has been convicted of a crime involving moral turpitude...." "Robbery", "conspiracy to commit armed robbery" and "attempted robbery" all being aspects of the general crime of robbery are crimes that have been determined to involve moral turpitude. See Notice, Bulletin 1846, Item 1. The appellant is therefore disqualified to hold any license covered by the Alcoholic Beverage Law.

However, the attorney for appellant contends that as the crime involved was committed so many years ago, the appellant would have been eligible to apply to the Director for removal of the disqualification (N.J.S.A. 33:1-31.2). However, absent actual removal of the impeding disqualification, the Council was without power to grant the license to appellant even upon condition that the disqualification would be removed.

In a larger sense had the appellant previously obtained removal of the disqualification, returning to the test of reasonableness, the Council could nevertheless have considered the prior crime together with the subsequent infractions as part of their total evaluation of the character of the appellant. It has been held that the removal of the criminal disqualification does not remove from the issuing authority's consideration the criminal record in question. The disqualification removal order lifts the absolute bar to association in the alcoholic beverage industry, but does not create any affirmative right to the issuance of a license. It is still within the discretion of the issuing authority to deny the issuance or transfer of a license upon the basis of said criminal record, and such denial will not be reversed, so long as its exercise of judgment and discretion was reasonable. Jay & Jay Realty Corp. v. Long Branch, Bulletin 1602, Item 2. The elimination of appellant's application for a proposed site where four others for the same site were not similarly disqualified was not unreasonable, arbitrary or capricious.

A secondary issue posed by the interjection at the hearing de novo by another rejected applicant for the same site, lends itself to examination, or review of the total action by the Council with the same test of reasonableness.

"...No person is entitled to [a license] as a matter of law...If the motive of the governing body is pure, its reasons, whether based on morals, economics or aesthetics, are immaterial" Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960) aff'd 33 N.J. 404 (1960).

The Council upon discarding the application of appellant, narrowed the remaining applicants to four. Testimony of Councilman Newman disclosed the methods by which the successful applicant was selected:

"A Two of the four remaining applicants at at this point were relatable to employees of the Township. They were, in fact, wives of some of our police officers. The council did not want to put the license or move the license on that it would have been favoritism, and we did not think it was a proper judicial move on our part. We eliminated the two wives of the police officers.

Q Was your conclusion essentially that this constituted a conflict of interest.

A Yes. We now had two applicants left, and basically the decision revolved on who had submitted the earliest application of the two, as well as going to both two individuals."

The two remaining applicants above referred to were objector Nowicki and the successful applicant. A difficult decision faced the Council which they resolved by awarding the license to the earliest applicant.

In a recent case, Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970), the court stated:

"Although the Director conducts a de novo hearing in the event of an appeal, the rule has been long established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record." (underscoring added)

Certainly faced with a Solomonic problem the selection between two equal aspirants on the basis of priority of application is not unreasonable.

Lastly, appellant contends in his petition of appeal (joined in this contention by objector Nowicki) that he was denied procedural due process in that he was not granted a public hearing. Absent written objections filed with the Clerk, the Council is not required to afford a public hearing where there is a denial of such application. Rule 8 of State Regulation No. 2. Cf Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957). However, the lack of necessity of a public hearing does not absolve the requirement for the Council to have made a thorough investigation. As above noted, that had been done.

A review of the entire record advanced within the framework of this de novo hearing does not reveal that either appellant or objector was denied any procedural rights.

Accordingly, I find that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous, unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

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 entire record herein, including 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 8th day of August 1972,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Robert E. Bower
Director

2. APPELLATE DECISIONS - FEMJO, INC. v. MONROE TOWNSHIP.

Femjo, Inc., t/a The Outer)
Circle,)
Appellant,)

On Appeal

v.)

CONCLUSIONS and ORDER

Township Committee of the)
Township of Monroe (Middlesex)
County),)
Respondent.)

-----)
Appellant, by Robert Maglies, President, Pro se
No appearance on behalf of Respondent

BY THE DIRECTOR:

A Hearer's report having been waived by the parties hereto, the matter now comes before me for determination.

This is an appeal from action of the Township Committee of the Township of Monroe (hereinafter Committee) which by resolution dated June 19, 1972 renewed (for 1972-73 license period) plenary retail consumption license issued to appellant Femjo, Inc. for premises 83 East Lincoln Avenue, Jamesburg, Monroe Township, with conditions imposed thereon as follows:

- "1. No live music or entertainment or no mechanical reproduction of music from sources such as juke boxes, record players, tape recorders, etc., shall be permitted.
- "2. No activities outside the building constituting the licensed premises shall be permitted at any time."

Appellant in its petition of appeal contends that the imposition of the conditions as they relate to a juke box are unreasonable in that a juke box has been an integral part of the licensed premises for the past twenty years, and in its operation disturbs no nearby residents. Respondent Committee filed no answer to the petition.

The appeal was filed pursuant to Rule 1 et seq. of State Regulation No. 15, heard in accordance with Rule 6 of said Regulation, and transcript of the testimony of the proceedings before the Committee was made part of the record in accordance with Rule 8 of said Regulation.

Respondent or its representative not having appeared at the de novo hearing held in this Division, the matter was moved ex parte by Robert Maglies, the sole stockholder of appellant-licensee corporation.

An aerial snapshot of the licensed premises, with surrounding area, was introduced into evidence. Maglies testified that he had operated the licensed premises for the past two-and-one-half years as a nite club, featuring live entertainment and live music. He added that a short time ago he had abandoned live entertainment and live music when the closing hours for consumption licensees was retarded from three o'clock a.m. to two o'clock. He had volunteered to the elimination of live music and entertainment as a condition to the renewal of his license. He confirmed that, when live entertainment and music was a feature of his establishment, there were instances of protest by the neighbors, but following the abandonment of such entertainment the major cause of complaint stemming from the crowds and noise of patrons at the late hours was eliminated. He affirmed his belief that the required elimination of the juke box was particularly unfair in that the building containing the licensed premises has no windows, is fully air-conditioned and the within sounds from a juke box are inaudible outside.

An examination of the transcript of the proceedings before the Committee reveals that three nearby neighbors to the licensed premises (Eleanor Bartley, Lucy Governale and Lucy Route) testified to excessively loud noise coming from the interior of the licensed premises and stemming from amplified live music continuously throughout the night until the early morning hours. Sleep was difficult, if not impossible, both from that source and the noise from automobile motors, people conversing in loud tones and, in general, from the crowds hanging about and leaving the licensed premises after closing time. Appellant testified before the Committee that the situation described had been corrected, but a colloquy between him and Eleanor Bartley, interrupted by the Mayor, indicated that she did not believe him and put no faith in his assurances.

Preliminarily, it should be observed that an issuing authority may impose any condition or conditions to the issuance of a license deemed necessary and proper to accomplish the objects of the Alcoholic Beverage Law. N.J.S. 33:1-32; Lubliner v. Paterson, 33 N.J. 428 (1960). Restrictions in licenses against certain music is not uncommon. Live music has been prohibited. Papp v. Trenton, Bulletin 1039, Item 1; Cesar v. Trenton, Bulletin 951, Item 2; music from juke boxes has been eliminated, Marinaccio v. Asbury Park, Bulletin 2009, Item 2. The test of reasonableness is "guided by the test of what is reasonable and serves the best interest of the community." Borko v. Mansfield, Bulletin 1894, Item 3.

A review of the totality of the testimony indicates that the strenuous objections before the Committee surrounded the live music with its attendant amplification; there was no specific objection to juke box music, for as one witness explained, "Well, it wasn't that bad because they only had the jukebox playing." In response to the question "How was the jukebox on the last weekend?" the objector stated, "It wasn't that bad. But believe me, when that music [presumably live music] is there, I got to move and I think I shouldn't be driven out of my home, because we have a business next to us."

As appears from appellant's testimony, other licensees in the Township carry both live entertainment and music as well as a juke box and none carries conditions in the license. While this is not dispositive whatsoever of the right of the issuing authority to limit a particular licensee by conditions, it is indicative that the totality of the conditions were imposed more as a penalty against the licensee rather than as a means of eliminating the complaints. As the testimony before the Committee by the objectors indicated, the harassment to them stemmed from other than the juke box, its exclusion from the premises bore no direct relation to the problem before it.

It is found that the Committee did not act in accordance with the logic and effect of the presented facts and its discretion must be subordinated to the applicable legal principles. *Fanwood v. Rocco*, 59 N.J. Super. 306, 315 (App.Div. 1960), *aff'd* 33 N.J. 404 (1960).

Since fairness is the touchstone of the administrative process, it appears reasonable and in the public interest to afford appellant a fair opportunity to use the juke box in place of the live entertainment and music which was the subject of the aroused protests. By letter dated August 24, 1972, addressed to the Director, the attorney for the Committee represents that the Committee "has no objection to the [appellant] obtaining permission to operate a jukebox on the licensed premises providing the same is not used in such a manner as to be disturbing to the neighbors." And, further, "The [Committee] would not construe any settlement as evidence of a violation and in any event is willing to have the matter disposed of by these terms."

I shall therefore enter an order affirming the action of the Committee conditioned upon the deletion of the aforementioned condition..

Accordingly, it is, on this 31st day of August 1972,

ORDERED that the condition imposed in the resolution renewing Plenary Retail Consumption License C-5, issued to Femjo, Inc., t/a The Outer Circle, for premises 83 East Lincoln Avenue, Jamesburg, Township of Monroe, which prohibits the playing of music within the licensed premises by juke box or other electronic device, be and the same is hereby disapproved and shall be deleted as a license requirement, and that in all other respects the conditions imposed in the license be and the same are hereby affirmed; and it is further

ORDERED that, expressly subject to the matters stated hereinabove, the appeal herein be and the same is hereby dismissed.

Robert E. Bower,
Director.

3. APPELLATE DECISIONS - EDDOR, INC. v. TEANECK.

| | | |
|-----------------------------|---|-----------|
| Eddor, Inc., t/a Stanley's, |) | |
| Appellant, |) | |
| v. |) | On Appeal |
| Township Council of the |) | |
| Township of Teaneck, |) | O R D E R |
| Respondent. |) | |

Callis N. Brown, Esq., Attorney for Appellant
 Schneider, Schneider & Behr, Esqs., by Lawrence Henry Bank, Esq.,
 Attorneys for Respondent

BY THE DIRECTOR:

Appellant appeals from the action of respondent whereby, by resolution dated June 1, 1972, it suspended appellant's plenary retail consumption license for fifteen days effective June 1, 1972, after finding it guilty of permitting gambling, i.e., "dice game", on the licensed premises in violation of Rule 7 of State Regulation No. 20. The effective dates of said suspension were deferred pending an opportunity afforded the licensee to apply to the Director for the imposition of a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971. Re Eddor, Inc., Bulletin , Item .

The within appeal was filed by appellant in order to preserve its rights in the event that the Director did not favorably consider the said application.

On August 30, 1972 I favorably considered the said application and entered an order setting forth that the payment of a fine of \$1,125 by the licensee was accepted in lieu of the suspension of the license for fifteen days. The attorney for appellant, by letter dated June 29, 1972, stated that, after the said application was accepted, he requested that the appeal be withdrawn. Good cause appearing, I shall enter an order dismissing the said appeal.

Accordingly, it is, on this 1st day of September 1972,

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

Robert E. Bower,
 Director.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (PROCUREMENT FOR PROSTITUTION) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against
 The New Rendezvous, Inc.
 t/a New Rendezvous
 58 Church Street
 Paterson, N.J.,
 Holder of Plenary Retail Consumption License C-287 (for 1972-73 license period), issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS and ORDER

 William J. Rosenberg, Esq., Attorney for Licensee
 Walter J. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On December 9, 1971, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you, through a person employed as a barmaid on your licensed premises, allowed, permitted and suffered solicitation by ostensible female customers or patrons of male customers or patrons thereon for prostitution, the making of overtures and arrangements by said females with said male customers or patrons for acts of illicit sexual intercourse, and further, you, through said person employed on your licensed premises as a barmaid, made offers to male customers or patrons on your licensed premises to procure females to engage in acts of illicit sexual intercourse with said male customers or patrons, and in furtherance of such offers made arrangements with and procured females to engage in acts of illicit sexual intercourse with said male customers or patrons, as aforesaid; in violation of Rule 5 of State Regulation No. 20."

At the opening of the hearing, counsel for the licensee requested that prospective witnesses for the Division be removed from the hearing room prior to the introduction of their testimony, which request resulted in the sequestering of all witnesses prior to their testimony.

On behalf of the Division agent D testified that he and agent P were assigned to investigate the licensed premises and on December 9, 1971, at about 2:30 p.m. both agents entered the premises and seated themselves at the bar. A barmaid, later identified as Darlean Cohen, was the only employee present. There were seven males and two female patrons at that time.

After ordering drinks followed by general conversation, agent D introduced the subject of girls, where they were and that he was interested in obtaining the services of a prostitute for his companion. The barmaid became interested in fulfilling the request, went directly to a telephone behind the bar, and made what appeared to be an abortive telephone call.

Returning to the agent, she advised him to telephone a neighboring bar and to ask for "Felicia" or "Joy". Agent D did so and reported back to the barmaid that neither of those girls were there. The barmaid responded that "Felicia" was then outside the premises and she would call her. The barmaid either motioned to Felicia through the window or opened the door and called, for almost immediately, Felicia entered and had a short conversation with the barmaid, who introduced her to the agents. A discussion followed pertinent to illicit sexual intercourse, but Felicia indicated that she was momentarily unavailable because she was enroute to the laundry and would not return for an hour. Upon being advised that the agents could not wait that long, Felicia stated that she would send another girl in promptly.

After Felicia's departure, another female entered who was addressed by the nickname "TC". She sat alongside the agent and immediately began negotiations for illicit sexual intercourse. She stated that her price was twenty dollars and they should visit her at her room at a nearby hotel. She immediately departed.

The agents then engaged in a conversation with the barmaid from whom they made inquiry concerning the girl. The barmaid responded "...she is clean. I know her, she goes with friends of mine." With that, the agents departed the premises. According to prior arrangements made, agent D notified a detective of the Paterson Police Department, of the place of assignation.

Agent D further testified that they went to the hotel, to its fifth floor, and were met by the girl near the elevator. Agent P entered her room and agent D awaited the detective. Upon arrival of the detective, both entered the room, found the girl nude, and removed twenty dollars in "marked" bills previously given her by the agent, from under her wig. The girl was arrested by the detective, taken to police headquarters and duly charged with the offense. The agents returned to the licensed premises.

On cross examination agent D testified that he was in the licensed premises from 2:30 p.m. to about 4:00 p.m. during which time he had about four or five drinks of vodka with Seven-up, and his colleague had about the same.

Agent P gave a substantially similar account as detailed by agent D. When "Dora", the barmaid was noticed of the wishes of agent D for a female to have sexual intercourse with his fellow agent, the barmaid (Darlean Cohen) replied: "I'll take care of it."

The first girl visitor was quoted as having said, "Darlean said that you are looking for a good time. I was just on my way to the laundry. If you want to wait I'll be back in about an hour." Upon being told they couldn't wait, that girl responded that she would send in another girl whom she identified as "TC".

Shortly thereafter, Dora stated to the witness that "TC" is "...a friend of mine. She is all right" and would charge "probably around \$20." When "TC" arrived in the licensed premises, she had a conversation with the barmaid and joined the agents, saying she understood they were "looking for a good time." After arrangements were made and the girl departed, the agents related their conversation to the barmaid, whose response was "TC is clean. She goes out with friends of mine." The agent's testimony relating to the hotel visit, the payment and recoupment of the "marked" money and the arrest of the girl, substantially corroborated that of his fellow agent.

Dora Cohen, the barmaid, testified on behalf of the licensee. She stated that on the day of the agents visit, the bar was crowded. They arrived about 1:30 p.m. and stayed until 4:00 p.m. She recalled that, between them, they spent about \$22 or \$23 drinking successive vodka and Seven-ups.

She recalled that some time during the afternoon, Felicia came into the licensed premises, sat at the bar for about fifteen minutes but drank nothing. "TC" also came in, did not sit down but ordered a vodka and Seven-up, paid for her own drink and then departed. She denied having any conversation with the agents other than receiving their orders for drinks. She had no knowledge of any conversation between them and either Felicia or "TC". The first and only knowledge she had of the subject matter described in the charge was upon the return of the agents on that afternoon, when they identified themselves and informed her of the alleged offense. She described the condition of the agents as being "high". She characterized both Felicia and "TC" as being only occasional patrons. She knew "TC" as a "...customer (who) came in a couple of times."

Testimony was introduced on behalf of the licensee of Ann -- hereinabove referred to in the prior testimony as "TC". Her account of her activities that afternoon is as follows: She was in her room in the hotel when she received a call from Felicia who told her to go to the licensed premises and pick up two men. When she inquired of Felicia the reason for the request, she was advised that Felicia had to go to the laundry and the men wouldn't wait. With that she went to the licensed premises, sat at the bar alongside agent D, ordered a drink and began negotiations toward illicit sexual relations. Those negotiations, done without any knowledge of the barmaid, resulted in the visit by the agents to her hotel room where the twenty dollars in "marked" money, paid to her, was later extracted from her wig. She was there arrested and charged with being a disorderly person. On cross examination she acknowledged that she was a good friend of the barmaid for the past two years.

The president of the licensee corporation, Philip Perrotta, testified that he was not in the licensed premises on that afternoon but returned there at the telephone summons of the barmaid. He described the condition of the agents as being "a little high".

An evaluation of the testimony of all witnesses is made with the recognition that none were present during the testimony of any other, and despite this, their testimony as to many details is markedly similar. The variance between the testimony of the agents and that of the witnesses for the licensee surrounds the participation, or lack of it, of the barmaid to the solicitation and arrangements for the act of prostitution described.

In adjudicating matters of this kind, we are guided by the established principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal 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). It has long been held that solicitation for immoral purposes and the making of arrangements for sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2, aff'd In re 17 Club, Inc., 26 N.J. Super. 43 (App. Div. 1953).

The testimony of the agents was clear and precise; in a great many details it was corroborated by the female "TC". It is noted that the testimony of "Felicia" was not offered by the licensee. The testimony of the barmaid, when tested against any rule of logic, is essentially unbelievable. She denied any conversation with Felicia but admits the woman's presence at the bar, without being served, for fifteen minutes. She contends that the agents drank an average of fourteen drinks during a three-hour period, but not once did she have any conversation with them. Finally, she denied Felicia and "TC" were her friends. However, "TC" readily admitted the barmaid was her close friend for two years. It is patently obvious that the barmaid's testimony was colored to protect the licensee, to the point of being perjurious.

The licensee is clearly inculpated by the misconduct of its employee. Such conduct constitutes a grave threat to the public welfare and morals and, unless eliminated, tends towards the abuse and abasement. Kravis v. Hock, 137 N.J.L. 252 (1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Furthermore, it is a basic principle that, in disciplinary proceedings, the licensee is fully accountable for all violations committed or permitted and suffered by his servants, agents or employees during their employment on the licensed premises. Rule 33 of State Regulation No. 20. Re Carmazino, Bulletin 2044, Item 2.

After carefully considering and evaluating the testimony adduced and the applicable legal principles, I conclude that the Division has established the truth of the charge herein by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty of the charge.

Absent prior record, it is further recommended that the license be suspended for one hundred and eighty days. Re Stefanoni, Bulletin 2035, Item 3.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcripts of the testimony, the exhibit, the Hearer's report and the exceptions filed thereto, which I find to be lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 5th day of September 1972,

ORDERED that Plenary Retail Consumption License C-287 issued by the Board of Alcoholic Beverage Control for the City of Paterson to The New Rendezvous, Inc., t/a New Rendezvous for premises 58 Church Street, Paterson, be and the same is hereby suspended for one hundred and eighty (180) days, commencing at 3:00 a.m. Thursday, September 14, 1972 and terminating at 3:00 a.m. Tuesday, March 13, 1973.

Robert E. Bower
Director

5. APPELLATE DECISIONS - HILLSIDE TAVERN OWNERS ASSOCIATION v. HILLSIDE ET AL.

Hillside Tavern Owners)
 Association,)
 Appellant,)
 v.)
 Municipal Board of Alcoholic)
 Beverage Control of the Township)
 of Hillside, and Italian American)
 Civic Association of Hillside,)
 Respondents.)
 -----)

On Appeal

CONCLUSIONS and ORDER

Ellsworth J. Sterner, Esq., Attorney for Appellant
 Harold Wovsaniker, Esq., Attorney for Respondent Municipal Board
 Goldhor, Meskin and Ziegler, Esqs., by Henry Goldhor, Esq.,
 Attorneys for Respondent Italian American Civic etc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the Township of Hillside (hereinafter Board) which on February 28, 1972 granted a new club license to respondent Italian American Civic Association of Hillside (hereinafter Association) for premises 16-18 Hillside Avenue, Hillside.

Appellant contends that the grant of a new license to the Association was based upon an ordinance of the Township enlarging the number of club licenses so that the Board would have an available license to grant to the Association. It is further contended that there was no need or necessity for the grant of another club license in the community and that the Board's grant to the Association was not made to a bona fide club and, lastly, the determination of the Board was "not supported by the record." Respondent Association denies these contentions and contends that the appeal is not "bona fide" but based on an ulterior motive. Respondent Board filed no answering pleadings.

The appeal was heard de novo in accordance with Rule 6 of State Regulation No. 15, with full opportunity extended for the introduction of testimony and cross examination. Transcript of the testimony before the Board was received in accordance with Rule 8 of said regulation.

Joint exhibits were offered consisting of copies of the existing ordinance, application for license, Board's file, Constitution of Association, proofs of publication of notices and letters from Board to appellant and the Certificate of Occupancy for the club building. Other exhibits introduced either jointly or by appellants included a letter from the Director of this Division, minutes of the Board, membership lists and ledger and other notations concerning the Association's activities.

Testimony was offered of Michael R. Derose who stated that there are presently nineteen plenary retail consumption licenses, six plenary retail distribution licenses and three club licenses issued by the Board for premises in Hillside. Henry Groh testified as follows: He is Secretary of the Board and has been so employed since the beginning of the year. Following

the passage of the ordinance increasing the number of club licenses, the Board received only the application of the Association. At that time there were but two members of the three-man Board; a hearing was held December 28, 1971 on the application, and the minutes of that meeting were transcribed. A further hearing was held on January 31, 1972, by which date the vacancy on the Board was filled by the third member, to whom the witness gave a transcript of the testimony of the December 28 meeting. Upon completion of the second hearing, all of the members of the Board visited the proposed licensed premises and thereafter, on February 28, 1972, adopted the granting-resolution.

Groh denied that any members of the Board were members of the Association or that the determination of the Board was the result of influence by the municipal council members or the Township attorney.

The resolution of the Board granting the license to the Association is, by abstract, reduced to the following:

After hearing the Board finds:

1. The Association was incorporated in 1952 as a fraternal organization, active more than the required time to qualify.
2. The club has not had exclusive use of a clubhouse for at least three years (Rule 4, Regulation No. 7) but has obtained a waiver from the Director dated September 1, 1971.
3. The grant of the license would not be detrimental.
4. "No member of this Board is a member of the applicant and there is no conflict of interest insofar as the issuing Board is concerned. Without determining any possible conflict of interest between the Township Committee and the applicant, we feel that if the regulations permit a member of an issuing authority to also be a member of the applicant for a club license without there being a conflict, the same rule would apply to members of the Township Committee."
5. We have examined the premises, found them satisfactory and suitable for the purpose.
Club License to the Association for 16-18 Hillside Avenue, granted. February 28, 1972.

The financial secretary of the Association (Frank DeSanto) testified that he receives dues and turns receipts over to the treasurer. Although a member for ten or fifteen years, he is unfamiliar with the work of the committees. At an earlier time the Association did try to purchase an existing "C" license.

Vito Volturo (a trustee) admitted earlier testimony in which he had stated the membership of the Association to be 105 but presently is between 80 and 85. \$60,500 was paid for the property with the assistance of a mortgage. An addition is presently being erected which will be 20 by 40 feet. He admitted an installation of a second-hand bar, acquired for \$250 before the license was secured, but the Association had no assurance that the license would be issued to it. He confirmed that an earlier attempt to purchase an existing "C" license had failed.

The treasurer of the Association (Angelo Miserentino) testified that most of the funds of the Association come from various sources such as the Valentine Day dinner dance. Some funds are paid for donations toward the purchase of flags by the Hillside Jaycees. He has been treasurer since 1952. None of the bar receipts have yet been turned over to him as the committee operating the bar have expenses necessary for the completion of their work; as soon as the bar committee has a surplus, he expects to receive it.

John Desanti testified that he is the house chairman and, with the help of other members, operates the bar. While he alleged that he has a complete set of books showing the monies received and spent "down to the penny", he did not bring those books to the hearing. As the bar has been opened for only a short time, no budget has been developed or profits earned. Neither he nor any other member receives compensation for tending bar or any other club endeavor.

Patsy J. Carasia (a Hillside tavern owner) testified that at the request of appellant, he had visited the Association's premises. He described the said premises as containing a three-story building of approximately 3,000 square feet and a parking area for "about" 100 cars.

From the testimony adduced and the exhibits offered, it is apparent that appellant's contention that the issuance of the license by the Board was tainted with self-interest is groundless. The testimony of the secretary of the Board that there was no interjection by any member of the Township Committee upon the Board refutes the contention. The members of the Board entertained the sole application of the Association, made their own investigation, conducted two separate hearings and came to their own evaluation of the merits of the application. No evidence to the contrary was introduced either before the Board or at the hearing in this Division. Upon passage of the ordinance increasing the availability of club licenses by one, the Township Committee passed the responsibility of issuing the available license to the Board for appropriate action. Absent proof of influence of any kind, the action of the Board became its own responsibility, which it reasonably discharged. Cf. Blanck v. Magnolia, 38 N.J. 484 (1962).

A club license is a peculiar creature of the statute (N.J.S.A. 33:1-12(5)) and such licenses may be issued only to corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain, and comply with all conditions which may be imposed by the Director of this Division in accordance with rules and regulations. Those rules and regulations pertaining to club licenses are found in State Regulation No. 7, adopted by the Director of this Division on July 1, 1967. That regulation permits club licenses to be issued by a municipality to organizations of sixty or more persons associated for objects set forth in the statute. No requirement exists by statute or regulation that the license be based upon "need or necessity" or that such be shown as a precedent for approval. Commenting upon the unique position of club licenses, the first Director (then Commissioner) held:

"... The obvious purpose i.e., [the creation of the category of club licenses] was to recognize these clubs as a natural outlet for man's innate desire for fellowship with his own kind and to afford them the opportunity to furnish their bona fide members and guests with alcoholic beverages for a nominal fee amidst self-regulated, decent, home-like surroundings...."
Societa Operaia Di Mutuo Soccorso Villaalba v. Trenton,
 Bulletin 41, Item 5.

Hence the contention that there was no "need" for the issuance of the license to the Association is without merit.

Appellant challenged the Association as not being a bona fide club. From the testimony introduced it is uncontroverted that the Association has been in existence since August 14, 1952, and presently has 80 to 85 members, a list of whom was provided the Board. It acquired its clubhouse at a cost of over \$60,000, part of which was obtained by a loan from a local bank. No officer or member was shown to receive personal profit or gain from the Association's activities. From the testimony of the witnesses who were officers of the Association, it may safely be concluded that the Association appears to be typical of fraternal organizations, similar in structure to the majority of club licensees. Appellant's contention that the Association is not bona fide is without merit.

Appellant's final contention that the determination of the Board was not supported by the evidence before it is similarly without merit. From the transcript of testimony of the hearings before the Board and the testimony before this Division of Henry Groh, secretary of the Board, it is obvious that the Board weighed the merits of the application, gave attentive ear to the objectors, inspected the premises and came to its own independent findings.

"... Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...." Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292, 303 (1970).

Peripheral attack made upon the Board by appellant surrounded the challenge to the Board's action following the appointment of a new member to the Board. Prior to that appointment the Board (then consisting of two members) held the first hearing of the instant matter in December 1971. A transcript of the testimony received at that hearing was made available to the new member on his appointment and he subsequently participated in the second hearing held in January, joined in the inspection of the proposed location, and deliberated the issue with the other members of the Board. The vote of the new member was clothed with the same force as that of his fellow members.

"... The proper rule is that all board members need only be sufficiently informed of all matters before the board prior to a decision so as to insure an intelligently advised vote...." Arlington Assoc. v. Tp. Coun. Parsippany-Troy Hills, 118 N.J. Super. 418, 421 (App.Div. 1972).

The Board has in my opinion understood its full responsibility and has acted circumspectly and with a reasonable exercise of its discretion in granting the license. I do not find the objections to have merit, and thus conclude that appellant has failed to sustain the burden of establishing that the action of the Board was arbitrary, unreasonable, erroneous or an abuse of its discretion.

I therefore recommend that the action of the Board be affirmed, and that the appeal be dismissed. Rule 6, State Regulation No. 15.

Conclusions and Order

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

After careful consideration of the entire record herein, including transcript of the testimony, the exhibits and the Hearer's report, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 6th day of September 1972,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the Township of Hillside be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.



Robert E. Bower,
Director.