

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

BULLETIN 2201

October 15, 1975

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

BULLETIN 2201

October 15, 1975

1. APPELLATE DECISIONS - CHIAFULLO v. LONG BRANCH.

Anthony Chiafullo,
t/a Tony's Tomato Pies,

Appellant,

v.

City Council of the City
of Long Branch,

Respondent.

Golden and Golden, Esqs., by John J. Golden, Esq., Attorneys for
Appellant

Robert L. Mauro, Esq., Attorney for Respondent
Anschelewitz, Barr, Ansell & Bonello, Esqs., by Richard B. Ansell,
Esq., Attorney for Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the City Council of the City of Long Branch (hereinafter Council) which, on February 25, 1975, denied appellant's application for a place-to-place transfer of Plenary Retail Consumption License C-11, from premises 259-261 Morris Avenue to 251 Morris Avenue, Long Branch.

The appellant contends that the action of the Council was erroneous and capricious. The Council denied these contentions and defended that its action was within its sound discretion, based upon evidence it had received at the hearing held by it.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The attorney for the Council offered into evidence the transcript of the proceedings before the Council, which was admitted pursuant to Rule 8 of State Regulation No. 15.

The transcript of testimony taken before the Council reveals that, at the hearing on appellant's application, one objector, a competitor retail licensee whose premises was diagonally opposite the proposed location, was the sole witness against appellant's application. His principal objection was to the effect that competition would be increased for his business if the transfer were granted.

The appellant described the premises from which he was forced to vacate as a rundown building which his landlord refused to repair. The proposed transfer site is located one hundred and eighty-one feet from the present premises along the same street; the premises are one-third smaller, but would more efficiently permit the service to his patronage.

The Council denied appellant's application on the grounds that: (a) the transfer would place a liquor license in closer proximity to another licensee; (b) there would be "some increase in traffic problems"; and (c) there is "no need for an additional licensed premises in the general area to which the license transfer is sought".

At the hearing in this Division, Mayor Henry R. Cioffi testified that, as Mayor, he does not vote on alcoholic beverage license applications; jurisdiction in these matters is vested exclusively in the Council. However, he was in disagreement with the conclusions reached by the Council in that he considered the new location would present no greater problems than those of the prior location; on the contrary, the new location would be a distinct improvement. No new traffic problems would arise and a cleaner or newer type building would be more desirable.

The City Engineer of Long Branch, Charles C. Wittis, testified that the new location has a sidewalk frontage of 22 feet, in contrast to a sidewalk of about 10 feet at the present site. The transfer site is further distance from a nearby school than the present location.

Jennie C. DeFazio, City Clerk, testified that no request had been made of her by the Council for a traffic study relating to the new and present premises; nor did she receive any objections to appellant's application other than from the aforementioned objector.

The Building Inspector, Harry J. Wilson, testified that he had inspected the building containing the licensed premises at its former location two years ago, and described the building as evidencing signs of deterioration. A subsequent owner has since remodeled the building and rebuilt the first floor with substantial renovation and rehabilitation.

Etta Chiafullo, wife of appellant, testified that she and her father had been in charge of the licensed premises when it was operating. The premises (referring to the present location from which the transfer was sought) had been operated as a tavern by a very aged man who still owns the building.

He strenuously objected to any attempt which the licensee made to improve the interior of the premises. The floors were wavy, the window frames were rotted, heat was inadequate,

lighting fixtures are in a dangerous condition, and the bar itself tilted so badly that bottles would slide off. The business itself was less than a minimum operation, and she and the licensee felt that it could not be improved unless the landlord permitted total renovation of the premises. As that was not permitted, the licensee felt that he had no alternative but to move.

Abraham Simoff, a consultant traffic engineer, testified that he made a study of the traffic conditions surrounding the present and new locations, and questioned as to whether he agreed with Council's conclusions that there would be increased traffic problems at the proposed location, he responded:

"No, I don't. As a matter of fact, close proximity to the intersection effectively would help the application because it would afford the benefit of the traffic signal for crossing. It would prevent jaywalking."

An associate of Simoff, Daniel Levy, testified that, in his opinion, there were no negative aspects to the proposed location.

The objector, Joseph N. Tuzzio, testified that he has three reasons for his objection: (a) there are too many bars in the area; (b) the proposed transfer site is directly across from his premises; and (c) it is economically disadvantageous to him. He asserts that there is a parking problem now on the street and he has the only viable parking lot available, which is too often filled by nearby factory workers, and not by his patrons. He believes that the parking problem would be exasperated if the proposed transfer were granted.

Supporting the objector, John T. Moran, president of the local Licensed Beverage Association and a local tavern owner, testified that the proposed location would constitute an undue concentration of licenses in the area. He felt that, although the prior owner ran a "limited operation", the new location would attract more patronage. He admitted that he did not register any objection at the hearing before the Council, and gave his present testimony at the request of the objector who is a member of the association.

Appellant introduced sixteen photographs into evidence which depicted the exterior of the present and proposed premises, along with views of both on-street and off-street parking facilities.

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, if the denial is unreasonable, arbitrary or capricious, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1.

As was stated in Hightstown v. Hedy's Bar, 86 N.J. Super 561 (App. Div. 1965) the court said (at p. 562):

"The standards of review controlling the Director and the court on appeal are set out in Borough of Fanwood v. Rocco, 33 N.J. 404 (1960), affirming 59 N.J. Super. 306 (App. Div. 1960). The court there pointed out that under New Jersey's system of liquor control the municipality has the original power to pass on an application for an alcoholic beverage license or the transfer thereof. However, its action is subject to appeal to the Director of the Alcoholic Beverage Control Division. On such appeal the Director conducts a de novo hearing and makes the necessary factual and legal determinations on the record before him... However, where the municipal action was unreasonable ...or improperly grounded...the Director will grant such relief or take such action as is appropriate...."

From all of the evidence, it is patently clear that the Council's action was founded on the belief that the proposed location of appellant's premises could be economically injurious to the business of the objector. The allegation of the prospect of increased traffic stemming from the lateral movement of the premises less than two hundred feet up the street is unrealistic and lacks factual foundation.

A review of all the testimony discloses that the licensed premises had been operated by the aged former owner for the benefit of a few of his cronies. When appellant attempted to rehabilitate the premises, and demanded correction of the crippling conditions, he was met with such total denial as to require closure. The proofs indicated that a new tenant or owner, as the case may be, completed a reconstruction project before commencing another type of business at that location.

It has been held that "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). Appellant had paid thirteen thousand dollars for the prior business at that site. He has located a smaller store on the same side of the same street within two hundred feet. The new location is farther away from a local school and has a sidewalk width almost twice that in front of the old location. He would be in a more modern building with proper sanitary facilities and the potential of cleanliness. Off-street parking, difficult at best in that area, would not be significantly compounded.

The general location contains industrial and commercial buildings amid a sprinkling of residences, and its character would be unaffected by the said transfer.

The testimony of the Mayor was convincing. His lifelong residency both in the area and in the community indicated a concern for the public interest rather than for the speculative loss of profits by one tavern owner. He maintained that a grant of appellant's application would not be adverse to the public welfare.

The objector operates a busy establishment for which he has provided an ample parking area. To his dismay, however, that parking lot is constantly occupied by other than his patrons, including employees of a nearby factory. It is his despairing belief that appellant's new location, diagonally opposite that parking lot, would add to the parking woes. Obviously the objector has other remedies curative of that problem; but objection to appellant's application is not one that should be recognized.

In considering appellant's contentions, I find that inasmuch as the liquor licensed premises (present and proposed) are fairly adjacent, it is apparent that the transfer of the license could not result in the creation of an additional license or increase the number of present licenses in the area. Hudson-Bergen Package Stores Ass'n. et al v. Bayonne, Bulletin 2012, Item 1.

Thus, I find that appellant has sustained his burden of establishing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Accordingly, I recommend that an order be entered reversing the action of the Council, and directing that it grant the said transfer in accordance with the application filed therefor.

Conclusions and Order

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

Having examined 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 13th day of August 1975,

ORDERED that the action of the respondent, City Council of the City of Long Branch, be and the same is hereby reversed; and it is further

ORDERED that the said Council be and the same is hereby directed to approve the aforesaid transfer of his plenary retail consumption license, from premises 250-261 Morris Avenue to 251 Morris Avenue, Long Branch, in accordance with his application filed therefor.

Leonard D. Ronco
Director

2. DISCIPLINARY PROCEEDINGS - GAMBLING PERMITTED ON LICENSED PREMISES -
NUMBERS GAME - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary)
Proceedings against)

331 Broad Avenue Corp.)
330-332 Broad Avenue)
Palisades Park, N.J.,)

Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Mayor and Council of the Borough)
of Palisades Park.)

CONCLUSIONS
AND
ORDER

Patrick J. Tansey, Esq., Attorney for Licensee
David S. Piltzer, 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 amended
charge:

"On October 11, 14, 15, 16 and 21, 1974, you
allowed, permitted or suffered gambling in or
upon the licensed premises, viz., the making and accepting
of bets on horse racing and the conduct of a
lottery commonly known as the 'numbers game'; and
on the aforesaid dates you allowed, permitted or suffered
slips, tickets, books, records, documents, memoranda and
other writings pertaining to such gambling, in or
upon your licensed premises; in violation of Rules 6
and 7 of State Regulation No. 20."

In behalf of the Division, Dominick Polifron, an
investigator employed by the Bergen County Prosecutor's office,
testified that he entered the licensed premises on October 11, 1974
at 12:10 p.m. The premises may be described as being long and
rectangularly shaped, a kitchen, which provided food service to
the patrons is located immediately to the rear of the barroom,
and restrooms are situated to the right of the kitchen. The
restrooms and the kitchen are separated by a corridor.

Upon entry on the said date, Polifron observed that
Althea Marttine, president and a major stockholder of the
corporate licensee, was tending bar. He also observed the
presence therein of Rocci (Rocky) Marttine, husband of Althea,
sitting at the bar; and he assisted in the preparation of
sandwiches.

Polifron ordered a drink and a sandwich of Althea. At approximately 12:45 p.m. he observed a male, identified as Peter (Pete) Merlino, enter the barroom. Between the time of Merlino's entry and the time of his departure at 1:20 p.m. he saw Merlino receive seven telephone calls at an unenclosed pay telephone. Polifron explained that, on occasions, he was sitting at the bar where he could see the telephone, and on one occasion, he proceeded "a few feet away from the pay phone", en route to the men's room, when he observed Merlino record "numbers" bets. He observed Merlino remove a pad and pencil from a shirt pocket and write figures on the pad. The telephone is located on a wall in a large foyer or hallway unenclosed by a door.

Polifron again entered the tavern alone on October 15, 1974 at 12:30 p.m. Althea was tending bar. Rocky was in the tavern. Shortly after entry, he saw Merlino enter the barroom. He witnessed Merlino place four outside calls on the telephone. Between 12:40 p.m. and 1:05 p.m., he saw Merlino receive five telephone calls, and on each occasion, he observed him remove a pad and pencil from his shirt, place the pad against the wall, and make notations on the pad. In passing by, again en route to the men's room, he saw a pair of numbers on the pad which appeared, to Polifron, to be illegal lottery wagers.

Polifron revisited the tavern on October 16, 1974 at 12:15 p.m. Althea was again tending bar. Rocky was sitting on the patrons' side of the bar, and later, relieved his wife in tending bar. Prior to his departure at 1:20 p.m., he saw Rocky on five occasions, pick up the telephone located on the back bar and heard him explain that Merlino was not there, that he did not know what had happened to him that day.

The witness reentered the bar on the same day at 6:15 p.m. An individual known as Nick was tending bar. Rocky was in the tavern. Nick answered the telephone behind the bar on eight occasions and told Merlino to pick up the wall telephone. On each occasion that Merlino answered the telephone, he saw him pull out pad and pencil and observed him writing on the pad.

On the same visit, Polifron saw Merlino standing by the pay telephone. Four patrons left the bar; walked up to Merlino, conversed briefly with him and handed him United States currency while he (Merlino) inscribed numbers on the pad.

Thereafter, while Merlino and Rocky were standing together on the floor of the barroom in back of where Polifron was positioned at the bar, he saw an unidentified male walk up to Merlino and hand him money. Merlino made a notation on the pad.

Polifron visited the licensed premises on October 21, 1974 at 12:40 p.m. and positioned himself at the bar near the kitchen. He observed that Althea was again tending bar. Rocky

was seated at the bar. Merlino was in the back of the tavern writing on a pad. Shortly thereafter, the telephone on the back bar rang on two occasions. On each occasion, Althea answered and pointed to Merlino, who then picked up the pay telephone in the rear. While talking, he made notations on a pad.

At 1:10 p.m. upon transmitting a pre-arranged signal, other law enforcement officers entered and executed a search warrant upon Merlino and Rocky. Since Polifron's activity in the subject investigation was undercover, he did not participate in the execution of the search warrants.

On cross examination, Polifron testified that he usually positioned himself at the bar at a location where he could observe the telephone located at the rear of the premises.

The rear room where the wall telephone was located was sufficiently illuminated as to enable him to observe the occurrences.

Nicholas Gallo, a detective, on the staff of the Prosecutor of Bergen County, testified that, pursuant to an official assignment, he entered the licensed premises on October 14, 1974 and sat at the bar near the front part thereof. Althea Marttine was tending bar; her husband Rocky was walking back and forth from the kitchen to the bar serving food; Peter Merlino was sitting at the bar.

On ten occasions, he heard the telephone ring; saw Althea pick up the telephone who would then call Merlino and point to the rear room. Merlino would thereupon walk to the rear room and pick up the telephone. On each occasion, while answering the telephone, he would take out of his pocket what appeared to be a piece of paper or a pad and a pen or pencil and make notations. He did not hear what Merlino said nor see what he wrote.

At one point, a male patron known as Whitey proceeded to the rear with Merlino. Gallo walked to the rear to enter the men's room. Then Merlino returned to the bar. Whitey dialed the telephone and called in a numbers bet, 217, for \$12.00, for one week.

Henry Skolski, who is employed as a County detective, testified that he entered the licensed premises on October 21, 1974, at 1:10 p.m. in order to execute a search warrant directed against the licensed premises and Peter Merlino. A search of Merlino's person revealed that he had in his coat pocket a 3 inch by 5 inch notebook which contained various lottery "numbers" bets written therein. The "numbers" writings were admitted into evidence.

Charles J. Lange, who was also employed as a County detective, testified that he participated in the raid conducted at the licensed premises on October 21, 1974. The phone in the rear rang and he answered it. The caller asked for Pete. Lange

informed the caller that Pete was busy and that "...he can't come to the phone, you want me to take it." The caller then said that he had a few numbers for Pete for the week and gave four numbers bets to Lange.

In defense of the charge, Althea Marttine testified that during the month of October 1974, she was engaged in tending bar during the luncheon period at the subject tavern.

Peter Merlino had patronized the licensed premises almost daily for almost a year prior to October 1974, arriving at lunch time. She was under the impression that Merlino is engaged in the women's garment business. There are other customers who patronize the tavern daily.

There is a public phone on the back wall in the foyer in the rear of the tavern with an extension behind the bar. On an incoming call, both phones ring. When she answers the phone behind the bar she can also see the public phone. The public phone cannot be viewed from any place except an area covering approximately the middle portion of the bar.

The witness recalled that Polifron patronized the licensed premises in October 1974. On occasions he was seated at areas where he could not observe the public phone.

She answers the phone fifty to sixty times daily while on duty. Several customers, who patronize the tavern daily, receive numerous telephone calls during their stay in the tavern. In addition to Merlino, others who receive numerous calls are Fitzsimmons, Quinn and Wilkens.

Althea's husband is present at the tavern daily at lunch time. He helps in the kitchen and serves sandwiches. He is engaged in the construction business.

She has never seen Merlino accept any bets, or seen him exchange monies with other patrons, or heard him place bets on the telephone. She was not aware that he was using the telephone to place bets.

On cross examination, the witness admitted that she was aware that Fitzsimmons had a criminal conviction for gambling; and only recently learned that Merlino had been convicted of a gambling charge.

The witness conceded that, on some of the days in October 1974, when Merlino patronized the tavern, he received as many as seven telephone calls. She would point to him and then pursue her business of tending bar. She never saw him take out a pad and pencil while at the telephone. She never made any attempt to find out the nature of the telephone calls.

Joseph Senft, a retired police officer, testified that he has been acquainted with Rocci Marttine for twenty-five years. He patronizes the licensed premises approximately every other day. In addition to Merlino, he has seen other steady patrons of the tavern receive a number of telephone calls therein.

He has never seen anyone take or place a bet.

Ed Wilkens testified that during the month of October 1974, he was in the tavern every day. He was employed part time in the tavern at that time and also assisted Rocci Marttine in the maintenance of his buildings.

He explained that as many as a hundred telephone calls are received in the tavern in one day. Many of the steady patrons, including Merlino, would receive at least several calls during the course of one day. He has never seen anyone, including Merlino, accept numbers bets. The area where the wall telephone is located is dark. It was his impression that Merlino was a semi-retired ladies' garment manufacturer.

Hugh Fitzsimmons testified that he has been acquainted with Rocci Marttine for almost twenty years; that he patronized the licensed premises at lunch time daily during the month of October 1974; he has received several calls daily during his visits either from his service station or from his wife; when Althea would answer the call she would usually point to the person for whom the call was intended; he has seen Merlino receive telephone calls; he has never seen Merlino take out a pad and write numbers on it; and he has never seen Merlino solicit any bets in the tavern or seen him write any lottery bets.

He denied ever calling in a numbers bet while on the telephone.

William A. Catona, a detective in the local police force testified that he frequents the subject tavern occasionally. He has never witnessed any unlawful activity therein.

Paul J. Quinn, who operates an automobile service station across the street from the licensed premises testified that during the month of October 1974 he patronized the tavern almost daily at lunch time and also at other times of the day. He has seen Merlino receive telephone calls, but not bets.

Quinn explained he has received an average of five to seven telephone calls during his stay at the tavern at lunch time. He has seen other steady patrons receive telephone calls in the tavern. The wall telephone is located where it could be seen from only a small portion of the bar.

Rocci Marttine whose wife, Althea, and his mother own all of the stock of the corporate licensee, testified that he is

present at the tavern at lunch time, almost every day. Merlino frequented the tavern almost every day at lunch time during October 1974. He was under the impression that Merlino was engaged in the dress business. Merlino drank and had lunch while in the tavern.

Several of his steady patrons receive telephone calls at the tavern daily. The rear telephone is located in a dark area and is visible from only one stool at the bar. Marttine had no knowledge that Merlino was a bookmaker. He never saw Merlino place or accept bets in the tavern.

After observing Officer Polifron in the tavern it was Marttine's impression that Polifron was working as an undercover man.

Marttine has seen Merlino proceed to the rear room to answer the telephone. However, he could not see the telephone unless he sat at a certain stool at the bar. He did not know how many telephone calls Merlino received in the tavern. He never saw Merlino take out a pad and pencil prior to answering the telephone.

Concerning the night of October 16, Marttine testified that he had no knowledge that Merlino received eight telephone calls. Questioned whether Merlino took out a pad and pencil prior to answering the calls, Marttine replied, "Not to my knowledge. I didn't pay any attention really."

He did not see four males proceed to the rear and hand Merlino currency. Marttine denied that a male patron walked up to Merlino while he (Marttine) and Merlino were standing together, and handed money to Merlino, after which Merlino made a notation on a pad.

Concerning the day of the raid and immediately prior thereto, Marttine explained that he did not observe that Merlino was called to answer the telephone on two occasions, and that on each occasion Merlino took out a pad and pencil and made notations thereon.

The crucial inquiries in this proceeding are two: (1) was "numbers" betting activity engaged in upon the licensed premises; and (2) if such betting activity was engaged in upon the licensed premises, was there sufficient evidence to warrant a finding that the licensee "allowed, permitted and suffered" the violation charged against it.

Preliminarily, I observe that we are dealing with a purely disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a factual situation, 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 the opportunity to observe the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony.

I have set forth in considerable detail the testimony in the record in order to objectively arrive at a determination herein.

I am imperatively persuaded that the testimony of Investigator Polifron relative to the "numbers" betting activity engaged in by Merlino upon the licensed premises on the dates mentioned in the charge, except for the date of October 14, when he did not investigate the premises, is factual, clear and credible. It is uncontroverted that Merlino was called by Althea Marttine, a principal officer of the corporate licensee, on numerous occasions to answer the telephone. Merlino was then seen by Polifron, on each occasion, to answer the call in the back and to take out a pad and pencil while answering the telephone. On two occasions Polifron observed males walk up to Merlino and hand him money. This was followed by the notations on a pad made by Merlino.

On one of these occasions Merlino and Rocci Marttine were standing together. Polifron's testimony that, on two occasions, he witnessed Merlino writing numbers bets was buttressed by the fact that on the day of the raid, the pad confiscated from Merlino contained numbers betting activity thereon. Polifron's testimony of Merlino's receipt of numerous telephone calls was confirmed by Detective Gallo who testified that, on October 14, he saw Althea Marttine summon Merlino to answer the telephone on ten occasions; and he also saw Merlino make notations on paper.

Both Marttines explained that it was not their business to listen to conversations. I am totally unimpressed by their testimony to the effect that they were unaware of Merlino's gambling activity. It is apparent the licensee failed in its obligation to supervise the premises adequately. Mazza v. Cavicchia, 15 N.J. 498, 507 (1954); Benedetti v. Board of Commissioners of Trenton, 35 N.J. Super. 30, 34 (App. Div. 1955); Davis v. Newtown Tavern, 37 N.J. Super. 376, 378, 379 (App. Div. 1955).

While there is no requirement that the proscribed activities be "open and notorious", I find substantial credible evidence which unmistakably demonstrates that the licensee's agents knew or should have known of the existence of such proscribed activities. In Mazza the court held that the knowledge of the licensee is not necessary to sustain a conviction of the charge.

Said the court (at p. 509):

"The rule in question comes clearly within the delegated authority of the Director as a reasonable regulation in the field of alcoholic beverage control. The Director has the power to make the licensee responsible for the activities upon the licensed premises. In fact, it is difficult to see how the Division could properly maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director promulgated thereunder and would make the enforcement of the law an impossibility."

The cases in this Division are legion which hold that a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

Additionally, it is basic that in disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by his agents, servants or employees. Rule 33 of State Regulation No. 20. Cf. in re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Accordingly, after a careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, I conclude and find that the Division has established the truth of the charge, and recommend that it be adjudged guilty thereof.

Licensee has no prior chargeable record. I, further, recommend that the license be suspended for forty-five 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, the memoranda in summation by the attorneys for the respective parties herein 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 29th day of July, 1975

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Palisades Park to 331 Broad Avenue Corp. for premises 330-332 Broad Avenue, Palisades Park be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. on Monday, August 11, 1975 and terminating at 3:00 a.m. Thursday, September 25, 1975.

LEONARD D. RONCO
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - AMENDED ORDER.

In the Matter of the Seizure	:	
on December 23, 1974 of a quantity	:	Case No. 13,170
of alcoholic beverages, a 1973	:	
Chrysler 4-door sedan at Highway	:	On Hearing
295, Mile Post 11, Logan Town-	:	
ship, Mantua, County of Gloucester	:	AMENDED ORDER
and State of New Jersey.	:	
.....	:	

Granite and Granite, Esqs., by Alvin L. Granite, Esq., Attorneys
for claimant, Sidney Weiner.
Carl L. Wyhopen, Esq., Appearing for Division.

BY THE DIRECTOR:

On July 1, 1975 Conclusions and Order were entered herein determining inter alia that the seized 1973 Chrysler 4 door sedan bearing Serial and Registration numbers as set forth in Schedule "A", attached thereto and made part thereof, constitutes unlawful property, and was forfeited in accordance with the provisions of N.J.S.A. 33:1-66. The Order further provided "that it be offered for sale at public sale pursuant to State Regulation No. 29 and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained".

The Order omitted a provision that the said motor vehicle may be retained by the Director, or otherwise disposed of in accordance with law. I shall, therefore, enter an Amended Order to that effect.

Accordingly, it is, on this 14th day of August, 1975

ORDERED that my Order dated July 1, 1975 is amended in pertinent part as follows:

DETERMINED and ORDERED that the seized 1973 Chrysler 4 door sedan bearing Serial and Registration numbers as set forth in Schedule "A", attached thereto and made part thereof, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of N.J.S.A. 33:1-66 and that it be retained by the Director, or otherwise disposed of in accordance with law, at the direction of the Director of the Division of Alcoholic Beverage Control.

LEONARD D. RONCO
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - CHARGE NOLLE PROSSED.

In the Matter of Disciplinary)
Proceedings against:)

Hilldale Social Club, Inc.)
1609 Derousse Avenue)
P.O. Delair)
Pennsauken Township, N.J.)

ORDER

Holder of Club License CB-4,)
issued by the Township Com-)
mittee of the Township of)
Pennsauken.)

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Frank M. Lario, Esq., Appearing for Licensee.
David S. Piltzer, Esq., Appearing for Division.

BY THE DIRECTOR:

The licensee pleaded "not guilty" to the following charge:

"From on or about January 1, 1974, to on or about August 30, 1974, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed premises, viz., a record of all monies received, a record of the source of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made; in violation of Rule 36 of State Regulation No. 20."

Subsequent to the institution of these proceedings, but before hearing held with respect to the said charge, the attorney for the licensee, in a conference with a representative of this Division provided a satisfactory explanation of the alleged discrepancies in the books of account. It further appears that proper record-keeping methods have now been established.

Since the technically violative situation has been corrected, and the substantive nature of the violation was minimal, I have determined that the said charge should be nolle prossed.

Accordingly, it is, on this 14th day of August, 1975

ORDERED that the charge herein be and the same is hereby nolle prossed.

Leonard D. Ronco
Leonard D. Ronco,
Director