Mr. Ambrose

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

December 7, 1961

BULLETIN 1424

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

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BULLETIN 1424

1. COURT DECISIONS - F. & A. DISTRIBUTING COMPANY v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPREME COURT OF NEW JERSEY
A-3 September Term 1961

F. & A. DISTRIBUTING COMPANY, A CORPORATION,

Appellant

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND WILLIAM HOWE DAVIS, DIRECTOR,

Respondents

Argued September 25, 1961 Decided November 6, 1961

Mr. Leo Yanoff argued the cause for the appellant. (Messrs. Green & Yanoff, attorneys; Mr. H. Kermit Green, of counsel.)

Mr. Samuel B. Helfand argued the cause for the respondents. (Mr. David D. Furman, Attorney General of New Jersey, attorney; Mr. David M. Satz, Jr., Assistant Attorney General, of counsel; Mr. David S. Piltzer, on the brief.)

The opinion of the Court was delivered by FRANCIS, J.

The Director of Alcoholic Beverage Control suspended the wholesale liquor license of F. & A. Distributing Company, a corporation, for 25 days. The action resulted from a finding that F. & A. had violated Rule 4(a) of Regulation 39 which prohibits sale and delivery of alcoholic beverages on credit to any retail licensee who, at the time of the sale, is on the Default List published by the Division. An appeal from the order was taken to the Appellate Division of the Superior Court, but we certified it before argument there.

On February 23, 1945, the then Director of Alcoholic Beverage Control promulgated Regulation 39, Rule 4(a) of which now provides:

> "No manufacturer or wholesaler shall sell or deliver any alcoholic beverages except for payment in cash on delivery to any retail licensee who is at the time of the delivery listed on the Default List."

The Default List is made up of retail licensees who have not made payments for their liquor purchases in accordance with certain rules also prescribed by the Director.

Extension of credit as an evil to be controlled in the business of selling intoxicating drink has long been a matter of public concern. See Act, February 24, 1797, Paterson's Laws 235. The Director issued Regulation 39 because of a belief that the granting of credit in

the situation described would undermine an orderly market "within the trade itself" and would eventuate in public harm. There can be no reasonable doubt as to his authority in the matter. N.J.S.A. 33:1-23; 33:1-39. Appellant does not suggest the contrary.

In the administration of Rule 4(a) of Regulation 39, the Director adopted a policy under which, in the absence of aggravating circumstances and any violation of other rules or regulations, an offending wholesaler might be granted a "special permit". This designation implied that in such cases formal disciplinary proceedings would not be instituted; instead, the violator would be permitted to pay a monetary penalty in a sum fixed by the Director. That course was not followed in this case.

The record reveals also that on February 1, 1958, the Director notified the industry of a change in attitude

> "regarding many so-called 'technical violations' of Regulations Nos. 34 and 39 *** which in the past were the subject of warning letters or special permits in lieu of proceedings. In the future, aggravated violations of this kind *** will be the subject of disciplinary proceedings resulting in suspension or revocation of license or solicitor's permit where guilt is found." Bulletin 1207, Item 3.

F. & A. is a wholesaler of alcoholic beverages. The evidence adduced in the Division shows conclusively that over a substantial period of time credit was granted for purchases made from F. & A. by two retailer who were on the Default List. The defense interposed in the disciplinary proceeding was that the credit was extended by the solicitor or salesman without the knowledge or authorization of any of its officers or supervisor personnel. There is no need to detail the proof on this aspect of the case. We agree that it was ample to put the credit manager on inquiry as to the salesman's method of operation. And we have no doubt that the slightest investigation would have disclosed the violation of Rule 4(a) to him. The Hearer, who saw and heard the witnesses, reported to the Director that: "It is difficult to believe that such improper tactics on the part of the solicitor employed by defendant took place over such a long period of time without anyone in authority having knowledg thereof." After reviewing the testimony, the Director approved the Hearer's report, saying, "at the least, the defendant's credit manager received such information that reasonably should have put him on notice that the Division's credit regulation probably was being violated."

It is not necessary in situations like the present one to establish actual or constructive notice on the part of the licensee, or circumstances imputing notice to it on principles of respondeat superior, of violation of the regulation by an agent or employee. For reasons of public policy it has long been the law of this State that the licensee is responsible for such infraction regardless of notice; in fact, even if the offending conduct had been engaged in contrary to the licensee's instructions. X-L Liquors v. Taylor, 17 N.J. 444,450 (1955); In Re Olympic, Inc., 49 N.J.Super. 299,305 (App.Div.1958), certif.den. 27 N.J. 279; Mazza v. Cavicchia, 28 N.J.Super. 280,284 (App.Div.1953), rev. on other grounds 15 N.J. 498 (1954); and see Beckanstin v. Liquor Control Commission, 140 Conn. 185, 99 A.2d 119 (1953).

F. & A. contends further that the action of the Director in instituting disciplinary proceedings against it was discriminatory, and that the penalty of license suspension for 25 days was arbitrary, excessive and also discriminatory. More particularly, the claim is that the administrative policy to treat violations of Rule 4(a) as so-called special permit cases to be resolved by the imposition of a monetary

penalty, rather than punishment in the form of loss or suspension of license, was capriciously departed from in the treatment of the transgression. Any such contention must be evaluated in the light of the well known and broad discretion possessed by the Director in the regulation of traffic in liquor. There is no doubt that arbitrary discrimination in the treatment of licensees similarly situated for the same regulation infraction, cannot be justified. But a conclusion of arbitrary discrimination cannot be drawn from the fact that the Director chose to follow one of two procedures in the handling of a particular case, or because he did not impose uniform penalties for the same type of violation where the penalty actually imposed is within the ambit of his authority, or simply because the penalty meted out seems to the offender to be more severe than that imposed in some other cases. It must be remembered that there is a strong presumption of validity of the administrative order. He who undertakes to impugn the action necessarily bears a heavy burden. That is particularly true where, as here, appellant frankly concedes that the Director's course does not represent personal animus or malice or overstepping of the statutory limits of authority with respect either to procedure or punishment. See Butler Oak Tavern v. Division of Alcoholic Beverage Control, 36 N.J. Super. 512 (App.Div. 1955), aff'd 20 N.J. 373 (1956).

In support of the claim of discrimination, appellant refers to a number of allegedly similar cases appearing in various Bulletins issued by the Division. They are said to indicate arbitrariness in this prosecution because of the Director's refusal to follow the special permit rather than the strict or formal disciplinary procedure, and in suspending the license rather than assessing a monetary penalty. Some of the cases were cited in the Division hearing and additional ones were culled from the records and included in the Appendix in this Court. Those called to the Director's attention he found to be dissimilar, warranting different treatment in respect to both procedure and penalty. No adequate showing to the contrary has been made to us. Other instances from the Bulletins (as distinguished from court proceedings) given to us are insufficient to demonstrate administrative error of the nature charged. In this connection limitations on our opportunity to compare situations must be kept in mind. When the entire record of Bulletin cases is not before us and has not been called to the Director's attention for purposes of comparison by him (where discrimination is alleged), it is practically impossible for this Court on appeal to make an efficient evaluation of the criticism. See In re Masiello, 25 N.J. 590,598-600 (1958). In any event, to the extent that such cases are described factually in the Bulletins, they do not, in our judgment, sustain the allegation of discrimination or excessive penalty.

In Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra, a license revocation case, a similar charge was made of discrimination through failure to follow an established administrative pattern of treatment. Although the penalty meted out to the licensee appeared to be more severe than was usually given in such cases, this Court found no justification for judicial intervention. The opinion observed that the Director is not absolutely bound by the doctrine of stare decisis and that liquor control laws must be administered in the light of changing conditions; that prior measures of enforcement may have fallen short of their mark, and that the penalty imposed may reflect an administrative attitude that more stringent enforcement is necessary. 20 N.J. at 382. The late Justice Burling referred to Federal Communications Commission v. WOKO, Inc., 329 U.S. 223, 91 L.Ed. 204 (1946), for a comment which is also relevant to the present case:

> "The mild measures to others and the apparently unannounced change of policy are considerations appropriate for the Commission in determining whether its action in

> this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable." 329 U.S. at 227,228.

In the instance before us, the Director had previously warned that violations of Rule 4(a), which in his judgment were aggravated, would be treated more seriously in the future. Moreover, two of the Bulletin cases cited by F. & A. involved wholesaler license suspension. Re Garden State Liquor Wholesalers, Inc., Bulletin 1262, Item 1, and Re Jersey National Liquor Company, Bulletin 1262, Item 3. The former (occurring about six months before the announcement of possible sterner treatment for future aggravated violations) resulted in a suspension of 20 days, and the latter (a year after the announcement) of 30 days. Although the full factual record is not before us in either case, and so we do not know all of the circumstances or considerations which may have motivated the Director's order, what we do have indicates some analogy between Garden State Liquor Wholesalers, Inc. and the case at bar, and perhaps a more aggravated offense in Re Jersey National Liquor Company. But, as we have indicated, neither these cases nor any of the others relied upon would warrant a conclusion that appellant was the victim of an abuse of discretion or of discrimination because of the 25-day suspension.

The fact that F. & A. does a substantial business as a wholesaler and thus will suffer a heavy pecuniary loss, all of which was known to the Director, cannot be a controlling factor in our appraisal of his order. As the former Supreme Court said, in Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408, 410-411 (1943):

> "Although the sale was not accomplished in purposeful violation of the regulations it was such an act as would have been avoided had the prosecutor's clerks performed their duty; and in any event it was a flat violation of lawful regulations duly promulgated and fully grounded in the statute. Prosecutor does a large business. But it operates under a unit license and the fact that it does a large business, from which it presumably makes commensurate profits, is not a reason why, when it violates the law, it should not be punished by an interruption of the license by grace of which that business is done."

We find no basis for a determination of discrimination or of abuse of discretion by the Director in the manner of disposition of appellant's case, or for a finding of error on any of the other grounds urged.

The order of suspension is affirmed.

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

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-581-60

MATTHEW WEINSTEIN AND RUTH WEINSTEIN,

Appellants,

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND WILLIAM HOWE DAVIS, DIRECTOR,

Respondents.

Argued October 23, 1961. Decided November 2, 1961

Before Judges Price, Sullivan and Leonard.

Mr. Gregory J. Castano argued the cause for appellants (Mr. Thomas E. Durkin, Jr., attorney).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondents (Mr. David D. Furman, Attorney General, attorney; Mr. Helfand, of counsel).

The opinion of the court was delivered by PRICE, S.J.A.D.

Appellants (husband and wife) seek reversal of an order of the Director of the Division of Alcoholic Beverage Control, Department of Law and Public Safety, suspending their plenary retail distribution license "for the balance of its term." The license had been issued by the Borough Council of the Borough of Palisades Park. The Director's order also provided that if "the license is transferred to a duly qualified person, or in the event that" appellant "Matthew Weinstein is no longer a licensee or connected with the said business in any capacity whatsoever," application might be made by "verified petition to lift said suspension," with the further proviso that "in no event shall an order be entered to lift the suspension prior to the expiration of forty-five days from the effective date" thereof. Later, upon appellant Matthew Weinstein's withdrawal as one of the licensees, leaving as the sole licensee appellant Ruth Weinstein, an order of this Court granted a stay of the execution of the suspension pending the disposition of the appeal.

The challenged order of the Director followed appellants' exceptions to the report of a Division "Hearer" who had conducted a hearing of four charges against appellants, determined that the proofs sustained all of them, and recommended the aforesaid license suspension. The Director concurred in the Hearer's findings and adopted his recommendations. N.J.S.A. 33:1-31 authorizes the Director to suspend or revoke a license upon a finding of guilt of any of the charges here involved.

The initial charge made against appellants by the Director on September 6, 1960, was based on the alleged violation of the provisions of N.J.S.A. 54:45-1, in that from September 1958 to December 1959, inclusive, appellant Matthew Weinstein, the sole licensee during that period, had filed with the Director of the Division of Taxation (Beverage Tax Bureau) inaccurate and untruthful monthly reports of purchases of

alcoholic beverages.

During the pendency of the proceedings appellants were charged with three additional violations stemming from the conviction on November 4, 1960, of appellant Matthew Weinstein in the United States District Court, District of New Jersey, for possessing on or about December 29, 1958, "goods stolen from interstate shipment *** knowing the same to have been *** stolen," in violation of Title 18, U.S.C. ss659. The additional charges were (a) failure to file with the aforesaid Borough Council, "within ten days" after November 4, 1960, "written notice" of the aforesaid conviction "in violation of R.S. 33:1-34"; (b) conviction of the aforesaid crime, asserted to be one "involving moral turpitude" and which, had the conviction occurred before appellant's application for the aforesaid license, would, by virtue of the provisions of N.J.S.A. 33:1-25 have prevented its issuance; and (c) employment of appellant Matthew Weinstein in, or his connection "in a business capacity" with, such licensed operation, contrary to the provisions of Reg. No. 13, Rule 1 of the Division and N.J.S.A. 33:1-25 and N.J.S.A. 33:1-26, in that he was a person convicted of a crime (Title 18, U.S.C. ss659) involving moral turpitude.

Appellants, attacking the propriety of the Division's finding with reference to the aforesaid initial charge, contend that there was no proof that the filing of the aforesaid inaccurate reports by appellant Matthew Weinstein was done fraudulently. The shortages in the reported quantities of alcoholic beverages purchased for the period in question totaled approximately 11,000 gallons. Weinstein's principal defense to the charge encompassing the filing of the aforesaid grossly inaccurate reports was that it was his practice to sign the reports "in blank" and give them to his accountant to complete and file. He asserted that he was personally unfamiliar with the preparation of the reports. He suggested that possible loss or misplacement of some of the invoices which he customarily sent by messenger to his accountant might explain the discrepancies. Although the Division's charges were not predicated upon fraudulent inaccuracy in the reports, motivation for the false reports was suggested by proofs of sale of large quantities of alcoholic beverages by Weinstein to persons described as "proprietors" of "speakeasies" in New York City, which proofs were assertively offered as having a bearing on the penalty to be imposed, if guilt were determined.

The Division's determination of Weinstein's guilt of the aforesaid charge was fully sustained by the evidence. No justification exists for appellants' contention, as expressed in their brief, that fraud, "bad faith, intentional wrongdoing and a sinister motive" had to be shown before a sustainable determination of guilt of filing inaccurate and untruthful reports could be made. The pertinent statutes, N.J.S.A. 54:45-1 and N.J.S.A. 33:1-31(d), contain no such requirement. The statutory provision is violated on finding that the required reports are inaccurate and untruthful. Fraud, in the legal sense, is not a necessary element of the infraction. The required filing of the reports enables the Division to maintain a check upon the distributors who are liable for the payment of the tax. The necessity that the reports be accurate is apparent. As a consequence, although we determine that respondents are correct in their contention that violation of N.J.S.A. 54:45-1 may be found to exist in the absence of proof of fraud, the record before us demonstrates that the Director's approval and adoption of the report of the Hearer, who found Weinstein's "explanation feigning ignorance of the inaccurate and untruthful disclosures *** unacceptable," was fully justified.

Appellants next contend that Matthew Weinstein's conviction, on his plea of guilty of possession of "goods or chattels, knowing the same to have been *** stolen from an interstate shipment (Title 18, U.S.C. ss659), did not relate to a crime involving "moral turpitude." We find no merit in that contention. In view of the crime here involved we do

not have to probe beyond the statutory elements thereof. Compare, State Bd. of Medical Examiners v. Weiner, 68 N.J.Super. 468 (App. Div. 1961). Not only is the crime, for the commission of which he was convicted, one which necessarily involves moral turpitude, but the record reveals that Weinstein admitted the acts of wrongdoing, which formed the basis for the conviction, and which, in themselves, involved moral turpitude. Under cross-examination at the hearing in the Division he admitted that part of the stolen "goods" (cigarettes which constituted the subject of the theft were alleged in the indictment to be of the value of "approximately $75,000") was, with his knowledge that the "goods" were stolen, stored on property owned by him; that he had given "permission" for said storage and testified: "I had guilty knowledge of it."

As to the aforesaid charge that appellants failed to comply with the statutory requirement (R.S. 33:1-34) that they give written notification of Matthew Weinstein's conviction to the issuing authority within ten days after such conviction, there can be no doubt of appellants' guilt. They admit such failure.

The charge that Matthew Weinstein continued his connection with the retail operation in question "in a business capacity" following his conviction on November 4, 1960, is clear from the proofs. In fact in an affidavit dated November 21, 1960, signed by him and received in evidence at the hearing, he answered a question as to his occupation by stating: "I own and operate the liquor store."

Finally, appellants contend that the "imposition of [a] single 45-day penalty for all four violations was improper under the circumstances and a separate penalty should have been imposed for each charge." The law is to the contrary. In Middleton v. Div., etc., Dept. of Banking and Ins., 39 N.J.Super. 214, 220-221 (App. Div. 1956), we said:

> "The imposition of a single penalty for all the violations is not improper under the circumstances. The Commission has broad discretionary control over the matter. Having reached the conclusion of guilt on each infraction, the overall demonstration of unworthiness might properly be met with a single penalty. The present doctrine in criminal cases which makes separate sentences advisable for individual convictions (Cf. State v. Kaufman, 18 N.J. 75, 83 (1955)) cannot be applied strictly to administrative regulatory proceedings of this type."

See also, Maple Hills Farms, Inc. v. Div. N.J. Real Estate Comm., 67 N.J.Super. 223, 233 (App. Div. 1961).

In the case at bar we determine that the Division's adjudication of guilt as to each of the offenses charged and the imposition of the aforesaid penalty were fully justified. The order of the Division is affirmed.

3. APPELLATE DECISIONS - DOUGHTY v. NEWARK.

CAIN GRANT DOUGHTY, trading as WHISKEY GLASS BAR & GRILL, Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

David Weinick, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent, whereby, on May 17, 1961, it suspended appellant's license for a period of fifteen days, effective June 5, 1961, after finding appellant guilty of a charge alleging that he permitted and suffered a brawl and act of violence in and upon his licensed premises, in violation of Rule 5 of State Regulation No. 20. Appellant's premises are located at 179 Orange Street, Newark.

"Upon the filing of the appeal, an order was entered by the Director on June 2, 1961, staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellant, in his petition of appeal, alleges substantially that (1) the charge herein was not proved by a preponderance of the evidence, (2) that the respondent failed to give proper consideration to the evidence and (3) that the penalty imposed was excessive.

"Respondent, in its answer, alleges that it acted within its sound discretion after a full hearing on the charges preferred against the appellant.

"The hearing on appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted pursuant to notice proscribed by Rule 8 of State Regulation No. 15, which was supplemented at this hearing by testimony of witnesses on behalf of the appellant.

"It appears from the transcript of testimony taken below that on October 23, 1960, one Ulysses Sherman, a patron at the licensed premises of the appellant, was involved in an argument with an unnamed and apparently unknown assailant, as the result of which he received a stab wound. He was taken by ambulance to the Martland Medical Center at the direction of local radio police officers, who responded to a telephone call for assistance, and was confined to the hospital for a period of seven days. As a result of that incident, the charge referred to above was preferred against appellant. The transcript further indicates that there was a preliminary hearing held in the matter by respondent on April 26, 1961, and that after hearing the testimony of witnesses for the respondent, it set a formal hearing on the charge and further testimony was then taken with respect thereto at a hearing held on May 17, 1961.

"At the hearing below, Patrolman Leo Kosloski testified that as a result of an order received over the police radio, he, together with

his fellow officer, Patrolman Fred Allen, proceeded to the appellant's licensed premises a few minutes after 2:00 a.m. on the above date, and found Ulysses Sherman on the sidewalk in front of the tavern; 'his shirt was full of blood, he was cut on the back; the tavern was closed'; that he entered the tavern, spoke to the appellant and received the information that no disturbance occurred within the tavern, and made observation of the physical condition of the premises. He testified that 'the stools were in order and the men were cleaning up the bar; there was no trace of blood on the floor, no signs of any disturbance in the place'. He then ordered Ulysses Sherman removed to the hospital.

"Ulysses Sherman testified that on the night in question, he visited the licensed premises with his brother and arrived there at approximately 10:00 p.m. It further appears from his testimony that shortly before 2:00 a.m. he left the premises with an old boyhood friend named Jessie Burroughs. Burroughs then proceeded toward his home across the street from the said premises and Sherman then returned to the tavern, and apparently accosted a girl sitting at the bar, and asked her fo a dance. His version is that some man did not like the way he was talking to this woman and that person stabbed him. The next thing he knew, some person shouted, 'Get him out of here' and two men then picked him up bodily and threw him onto the sidewalk. He estimates that the whole incident lasted approximately three minutes. He states that he was drinking during the night but 'wasn't too drunk to know what was going on'. He, however, did not know the people involved, nor could he recognize any of the men who threw him out of the tavern.

"Louise Padgett, a witness called on behalf of the respondent, testified that she was in appellant's premises on October 23, 1960; that she first saw Sherman after he had been stabbed in the premises and she noticed that his shirt was all bloody; and that he was immediately pushed outside by several men. She, too, could not identify any of the men and stated that she did not know whether the bartender or licensee had anything to do with the actual ejection. She stated that she tried to make a telephone call to summon help, but that the bartender told her that it was 2:00 a.m., that the tavern was closed, and suggested that she make her call from a public telephone booth located directly at the left front of the tavern.

"Earl Sherman, the brother of the casual, testified that he did not see the actual stabbing but did know that his brother had been stabbed inside the tavern. He, too, estimates that the whole incident took two to three minutes. He was asked by a member of the respondent Board whether there was loud noise or loud talking to which he answered, 'Yes, but the juke box was on loud'. He further stated that after the stabbing, his brother was thrown out of the tavern. He further recalled that, about 11:00 o'clock, the casual was warned by the licensee that if he didn't behave himself he would be thrown out of the tavern; that he did thereafter behave himself and caused no further commotion until the incident complained of, around 2:00 a.m.

"Cain Grant Doughty, the appellant, testifying both at the hearing below and at the present hearing, denied that he had ever had any conversation with Sherman on the night in question, or that there was any scuffle, fight, or altercation, or anything unusual that took place inside the licensed premises on the date, as alleged. He further denied that anyone was stabbed in the tavern and that if that incident had occurred in the tavern, he would have known about it.

"He further testified that the first he learned that someone was hurt was when he went to close the door to his premises shortly before 2:00 a.m. and was approached by Mrs. Padgett, who requested the use of the inside telephone to make a call. He told her that the phone on the outside of the tavern was nearer to her and that he was in the process of closing the premises. He saw Sherman lying on the sidewalk, and there was a crowd

gathered around him. A photograph submitted into evidence shows a public telephone booth directly to the left of the premises, and adjacent thereto, on Orange Street.

"John Foster, Jr., a witness called on behalf of the licensee, testifying at the hearing below and at this hearing, similarly denied any altercation or stabbing or brawl inside the tavern. He worked as a bartender on that evening, and states that he could not tell whether Sherman was stabbed inside the tavern or not. He asserted, however, that the lights were quite bright and that if there had been a stabbing, he would have seen it. He admitted that he refused to admit Mrs. Padgett into the premises to make a telephone call because it was time for closing.

"James Doughty, the brother of the licensee, stated that he was present all evening in the premises and denied that there was any argument, commotion or stabbing that took place inside the said premises.

"Jessie Burroughs, the boyhood friend of Sherman, testified that he entered the licensed premises with his wife, Earl Sherman and Ulysses Sherman, at about 10:00 p.m. on the night in question and about a quarter to two, left the premises with Ulysses Sherman. They spoke for a few minutes on the sidewalk, and he proceeded to his home across the street. He then believes that Sherman returned to the tavern, and the next incident that was called forcefully to his attention was a scuffle outside the tavern, which he observed from his apartment window, directly opposite these premises. He stated that he saw his friend lying in front of the tavern surrounded by a large number of people, but that he did not return to the scene of this incident.

"William E. Stephens similarly testified on behalf of the appellant that he was in the tavern on the night in question and was in a position to observe the activities therein, but saw no fight, argument, loud noise, cutting or anything of that nature. He testified that he saw a couple of 'guys fighting' outside the tavern upon his leaving said premises but he decided 'there was no sense me waiting around'; and so he left.

"The contention of the appellant is that there was no disturbance act of violence or brawl upon his premises; that if the proofs do show that something happened on the premises, it occurred on a spur of the moment, before the licensee or his agents and employees could do anything about it.

"I am persuaded from the evidence adduced herein that an act of violence occurred in and upon the appellant's licensed premises on the date alleged in the charge. I am convinced that Sherman was stabbed inside the premises, as a result of a remark or action on his part, and that he was forthwith ejected from the premises by persons.

"The only issue, therefore, in my view, to be decided is whether the evidence supports a finding by the respondent that appellant 'allowed, permitted and suffered' the violation to occur. In Conner v. Fogg, 75 N.J.L. 245 (Sup. Ct. 1907) the court said: 'To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W. Rep. 4), but the term "permit" has been often used synonymously with "suffer", so that it may be said that one who suffers the doing of a thing which he might have prevented, permits it.' In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947) the court said: 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee regardless of knowledge where there is a failure to prevent prohibited conduct by those occupying the premises with his authority.' Gustamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. 2d 140.

"This is the crux of the matter. The common sense rule must be applied in each given situation, namely, whether the licensee, acting under the obligation of the tremendous responsibility which is reposed in him as the holder of a liquor license, exercised that degree of care consistent with such obligation in keeping his place free from brawls and disturbances. A licensee is not an insurer, nor can he be expected to anticipate any sudden flare-up, but it is well-settled that a licensee must keep his place and his patronage under his control, and is responsible for conditions inside and outside his premises. Seidell v. Upper, Bulletin 1246, Item 1. The reason for the imposition of such a strict rule is that the liquor business is an exceptional one, and courts have always dealt with it exceptionally. See X.L. Liquors v. Taylor, 17 N.J. 444, 449 (1955); Mazza v. Cavicchia, 15 N.J. 498, 505 (1954); Paul v. Gloucester County, 15 N.J.L. 585, 595 (E. & A. 1888).

"An analysis of the evidence appears to indicate that Sherman, the casual, was in the tavern for approximately 3½ hours and then left the licensed premises with his friend, Burroughs. The uncontroverted testimony is that he conversed with Burroughs for a few minutes on the sidewalk in front of these premises, and then Burroughs proceeded to his home, across the street from the tavern. Sherman then returned to these premises, and immediately accosted a female patron seated at the bar. It seems clear that something spoken to her was offensive to the man who accompanied her, and a flare-up occurred during which Sherman was stabbed. It is also uncontroverted, by the testimony of the witnesses for both appellant and respondent, that the whole incident took no more than two to three minutes, at the end of which time several male patrons present lifted Sherman bodily and ejected him from these premises.

"The impression is manifest that the whole incident occurred so quickly that the licensee or his employees may not have realized that the incident occurred, or have had any opportunity to prevent its occurrence. It should be borne in mind that there were many patrons present at that moment, and the juke box was being played quite loudly. One also gets the impression that, because it was so close to closing time, spirits were generally high and conversation was at a high Saturday night pitch.

"In any event, if the testimony of all witnesses is to be believed, there would have been nothing that the licensee could have done that was not already executed by several male patrons, who, rather expeditiously took direct, unilateral action in terminating this disturbance by throwing the casual on to the sidewalk.

"There is no testimony by any witness to the effect that this incident was called to the attention of the licensee or his agents, servants or employees, and that they declined to act, vis-a-vis the peace and quiet of other patrons, or failed to act in pursuance thereto. In short, there is no affirmative evidence by any witness inculpating the licensee, his servants or employees. The only reference to the licensee or his employees was with respect to the usage of the telephone within the premises. Louise Padgett, who appears to be the girlfriend of Sherman, testified on behalf of the respondent that she sought to use the telephone within the premises but was restrained from so doing because of the lateness of the hour and the proximity of a telephone booth within a few feet from where she was standing on the outside of the premises.

"The choice of accepting or rejecting the testimony of witnesses rests with this Division and the record herein has been carefully canvassed to determine whether the evidence, as presented, is reasonable and adequate to support the conclusion. Hornauer v. Division of ABC, 40 Super. 501, 504 (1956). I have had an opportunity to observe the demeanor of the appellant on the stand and I am impressed with his forthright testimony. He states that he noticed no commotion in the premises, and the first time that he knew that anyone was involved in a fracas was when he looked

outside and saw a crowd gathered about Sherman. He further asserts that he had never seen Sherman before that night. His testimony is supported by the other defense witnesses who have also testified that they saw no disturbance inside the premises. Since the evidence points to the occurrence of this incident within the premises, I have concluded that it was the result of a sudden flare-up, and these witnesses might well believably have been present and have not witnessed this occurrence. Cf. Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3.

"A licensee must assume full responsibility where he, or his employees, fail to take appropriate action to prevent the occurrence of a brawl or disturbance on the licensed premises. Re Johnson, Bulletin 603, Item 9. However, in this case, the evidence fails to involve the licensee or his employees with the disturbance or resulting stabbing. Cf. Re Club Washington, Inc., Bulletin 683, Item 9.

"Furthermore, there is nothing in the testimony to show that the licensee had any reason to anticipate the trouble which occurred. Engel v. Belleville, Bulletin 654, Item 5. Sudden flare-ups arising out of conventional barroom conversation between two patrons, previously unacquainted, with blows struck in the absence of the licensee and without any reasonable opportunity to prevent such disorderly conduct, were held to be circumstances insufficient to sustain a finding of guilt. Schaefer & Wyatt v. Newark, Bulletin 1140, Item 1. The liability of licensees for disturbances which occur on licensed premises presents grave problems. Manifestly, it would be unfair to hold a licensee liable where a disturbance occurs without warning, or the occurrence of an event which could reasonably be construed as a warning; and his action cannot be considered to be unreasonable under the circumstances. Zicherman v. Newark, Bulletin 613, Item 1; Woodland Rod and Gun Club v. Belleville, supra.

"In view of the aforesaid, I find that a fair preponderance of the believable evidence herein clearly establishes that the appellant did not allow, permit or suffer a brawl or act of violence in and upon his licensed premises. I conclude that the circumstances in this case are insufficient to sustain a finding of guilt. Cf. Iannello & Casetta v. Hackensack, Bulletin 108, Item 1. I recommend, therefore, that the action of the respondent be reversed. Cf. Schaefer & Wyatt v. Newark, supra.; Ferdinand v. Newark, Bulletin 1084, Item 3; Kandell v. Newark, Bulletin 1081, Item 3; Rule 6 of State Regulation No. 15."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

However, on my own motion, pursuant to the aforesaid Rule, I heard oral argument.

After carefully considering the evidence, exhibits and oral argument herein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 25th day of October, 1961,

ORDERED that respondent's action in finding appellant guilty of the charge hereinabove referred to and suspending his license for a period of fifteen days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

ACTIVITY REPORT FOR OCTOBER 1961

ARRESTS:
Total number of persons arrested - 21
Licensees and employees - - - - - - - - - - 13
Bootleggers - - - - - - - - - - - - - - - - 8

SEIZURES:
Motor vehicles - cars - 3
Distilled alcoholic beverages - gallons - 14.00
Wine - gallons - 5.00
Brewed malt alcoholic beverages - gallons - 5.62

RETAIL LICENSEES:
Premises inspected - 501
Premises where alcoholic beverages were gauged - 689
Bottles gauged - 10,968
Premises where violations were found - 53
Violations found - 69
Unqualified employees - - - - - - - - 30
Reg. #38 sign not posted - - - - - - - 13
Application copy not available - - - - 13
Improper beer taps - - - - - - - - - - 3
Prohibited signs - - - - - - - - - - 2
Other mercantile business - - - - - 1
Other violations - - - - - - - - - - 7

STATE LICENSEES:
Premises inspected - 26
License applications investigated - 12

COMPLAINTS:
Complaints assigned for investigation - 391
Investigations completed - 386
Investigations pending - 146

LABORATORY:
Analyses made - 125
Refills from licensed premises - bottles - 20
Bottles from unlicensed premises - 16

IDENTIFICATION:
Criminal fingerprint identifications made - 11
Persons fingerprinted for non-criminal purposes - 266
Identification contacts made with other enforcement agencies - 249
Motor vehicle identifications via N. J. State Police - 8

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities - 8
Violations involved - 8
Sale during prohibited hours - - - - - 3
Sale to minors - - - - - - - - - - - - 3
Possessing chilled beer (DL licensee) 1
Permitting hostesses on premises - - - 1

Cases instituted at Division - 30*
Violations involved - 35
Possessing liquor not truly labeled - 7
Sale to minors - - - - - - - - - - - - 5
Sale during prohibited hours - - - - - 4
Permitting lottery activity (numbers) - 3
Fraud and front - - - - - - - - - - - 3
Permitting gambling (cards, darts) - - 2
Solicitor-permittee engaging in conduct prohibited to employer - - - 2
Beverage Tax Law non-compliance - - - 1
Unqualified employees - - - - - - - - 1
Failure to keep true books - - - - - 1
Conducting business as a nuisance - 1
Permitting female impersonators - - 1
Sale to intoxicated persons - - - - 1
Sale on credit to retailer in default 1
Permitting bookmaking on premises - 1
Permitting immoral activity - - - - 1

*Includes one cancellation proceeding -- license improvidently issued to club not bona fide

Cases brought by municipalities on own initiative and reported to Division - - - - - - - - - - - - - - 20
Violations involved - 24
Sale to minors - - - - - - - - - - - 14
Sale during prohibited hours - - - - - 4
Permitting brawls on premises - - - - 3
Permitting foul language on premises - 1
Conducting business as a nuisance - - 1
Possessing chilled beer (DL licensee) - 1

HEARINGS HELD AT DIVISION:
Total number of hearings held - 44
Appeals - - - - - - - - - - - - - - - - - 3
Disciplinary proceedings - - - - - - - - - 23
Eligibility - - - - - - - - - - - - - - - - 8
Seizures - - - - - - - - - - - - - - - - - 6
Tax revocations - - - - - - - - - - - - 4

STATE LICENSES AND PERMITS ISSUED:
Total number issued - 1,981
Licenses - - - - - - - - - - - - - - - - - 2
Solicitors' permits - - - - - - - - - - - 80
Employment " - - - - - - - - - - - - 292
Disposal " - - - - - - - - - - - - - 63
Social affair " - - - - - - - - - - - - 537
Wine Permits - - - - - - - - - - - - - 553
Miscellaneous permits - - - - - - - - 159
Transit insignia - - - - - - - - - - - 260
Transit certificates - - - - - - - - - 35

OFFICE OF AMUSEMENT GAMES CONTROL:
Enforcement files established - 54
Disciplinary proceedings brought by municipalities and reported to Division - - - - - - - - - - - - - - 1
Violation involved: Operating unlicensed game
Hearings held at Division - 2

WILLIAM HOWE DAVIS
Director of Alcoholic Beverage Control
Commissioner of Amusement Games Control

Dated: November 3, 1961

5. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR - SALE OF ALCOHOLIC BEVERAGES FROM VEHICLE ON A PUBLIC STREET - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
JOHN BOHL, JR. AND ARTHUR BOHL t/a BOHL BEVERAGE CO. 260 Crystal Street North Arlington, N. J.	)	CONCLUSIONS AND ORDER
Holders of State Beverage Distributor's License SBD-74, issued by the Director of the Division of Alcoholic Beverage Control.	)	

Leo J. Berg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On Saturday, July 15, 1961, you sold an order of alcoholic beverages (one case containing twenty-four 12-ounce cans of Schaefer beer) to a consumer from a vehicle standing in and about the vicinity of No. 48 Birchwood Drive, North Arlington, New Jersey, a public street; in violation of Rule 4 of State Regulation No. 17."

On Saturday, July 15, 1961, John Bohl, Jr. (co-licensee) sold to an ABC agent twenty-four (a case) 12-ounce cans of Schaefer beer and in payment thereof accepted $4.40.. The sale in question took place from defendants' motor vehicle parked on a public highway in North Arlington.

Defendants, as such, have no prior adjudicated record. However, when the license was held for the same premises by John Bohl, Sr., John Bohl, Jr. and Arthur Bohl, it was suspended by the Director, effective February 9, 1959, for five days for sales at prices below the minimum resale price. Re Bohl, Bulletin 1267, Item 9. I shall suspend defendants' license for ten days on the charge herein (Re Burlington Beverages, Inc., Bulletin 1160, Item 7) and for an additional five days for the prior dissimilar violation which occurred within the past five years (Re Ott's Incorporated, Bulletin 1411, Item 3), making a total suspension of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 25th day October 1961,

ORDERED that State Beverage Distributor's License SBD-74, issued by the Director of the Division of Alcoholic Beverage Control to John Bohl, Jr. and Arthur Bohl, t/a Bohl Beverage Co., for premises 260 Crystal Street, North Arlington, be and the same is hereby suspended for ten (10) days, commencing at 7 a.m. Monday, October 30, 1961, and terminating at 7 a.m. Thursday, November 9, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - PREMISES CLOSED - EFFECTIVE DATES TO BE FIXED BY FURTHER ORDER

In the Matter of Disciplinary Proceedings against THE BRIELLE CORPORATION, INC. t/a BRIELLE YACHT CLUB 1 Ocean Avenue Brielle, N. J. Holder of Seasonal Retail Consumption License CS-1, issued by the Mayor and Council of the Borough of Brielle.	CONCLUSIONS AND ORDER

Robert J. Novins, Esq., Attorney for Defendant-licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to the following charge:

"On September 23, 1961, you served and allowed permitted and suffered the service of alcoholic beverages other than ordered; in violation of Rule 23 of State Regulation No. 20."

Acting on a specific complaint that this licensee was substituting so-called "slow-mover" scotch whisky in place and stead of orders for drinks of a certain more locally popular brand of scotch, Division agents made an undercover investigation at the premises on Saturday night, September 23, 1961. On two separate occasions one of the agents, while seated at a table with a companion, ordered from the waiter (by brand name) a round of two drinks of the so-called "popular" brand scotch for himself and companion. On each occasion the waiter went to the service bar, merely asked the bartender for "two scotches" and, pursuant thereto, was given two drinks of cheaper scotch whisky of a brand other than that ordered by the agent, which drinks he served to the agent and his companion without first notifying them of the "switch" in brand of the drinks.

After the second service the agents identified themselves to the waiter and to the manager who is also a vice president of the corporate-licensee. The waiter admitted that each order was for the specific "popular" brand scotch; that he had merely asked the service bartender for "two scotches"; that the bartender prepared and gave him scotch drinks other than the "popular" brand and that he served such drinks to the table. The waiter added that he did not think it "important" to name the brand when ordering drinks from the service bartender; and the manager-vice president, while claiming all waiters were expected to ask the service bartender for exact brands ordered by table patrons, nevertheless, apparently exhibited little concern, stating he could not "understand" why the matter of "switching" brands should be made a subject for investigation by the Division.

By way of mitigation, the attorney for the licensee has sent me a letter which I have carefully read together with and in light of the reports of the agents. While the attorney states, among other things, that the violation "was not one of design or profit", it may be noted that, recently, there has come to the attention of the Division situations from which it may appear that some licensees may have adopted a plan or scheme,

as in this instance, of the waiter, when transmitting his order to the bartender, merely asking for the type of drink, viz., scotch, rye, etc., without specifying the brand ordered, with the understanding that, in such cases, the bartender will prepare the drinks with a so-called "bar" or less popular brand of liquor. Withholding any comment or conclusion as to the "design" of the licensee in this instance, suffice it to state that I do not find any extenuating circumstances in this case which would impel me to impose less than the usual minimum penalty in cases of this kind.

Defendant has no prior adjudicated record. Accordingly, I shall suspend the license for fifteen (15) days, the minimum penalty imposed for the violation charged herein. Re Barrett, Bulletin 1311, Ite 9. Five days will be remitted for the plea entered, leaving a net suspension of ten days.

Since the licensed business is now being operated only on a limited basis and the license expires on November 1, 1961, no effective suspension can be imposed at this time. Therefore, the effective dates for the suspension will be imposed by further order after defendant obtain a license for the 1962 season.

Accordingly, it is, on this 30th day of October 1961,

ORDERED that any renewal of License CS-1, held by The Brielle Corporation, Inc., t/a Brielle Yacht Club, for premises 1 Ocean Avenue, Brielle, be suspended for ten (10) days, the effective dates to be fixed by subsequent order, as aforesaid.

William Howe Davis
Director