Jarvis

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

BULLETIN 1969

April 29, 1971

TABLE OF CONTENTS

ITEM

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

BULLETIN 1969 April 29, 1971

1. APPELLATE DECISIONS - VANGELAS v. PATERSON.

NICHOLAS VANGELAS, t/a JERRY'S BAR, Appellant,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondent.	)	

Bruno L. Leopizzi, Esq., Attorney for Appellant
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant (holder of a plenary retail consumption license for premises 1139 Main Street, Paterson) was found guilty by respondent (hereinafter Board) of allowing, permitting and suffering the sale, delivery and consumption of an alcoholic beverage at his licensed premises to a minor, in violation of Rule 1 of State Regulation No. 20, and his license was suspended for ten days effective July 27, 1970.

In his petition of appeal appellant alleged that the action of the Board was erroneous in that the decision was against the weight of the evidence.

The Board in its answer denied the substantive allegations contained in the petition.

Upon the filing of this appeal an order was entered by the Director on July 28, 1970, staying the Board's order of suspension pending determination of this appeal.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses. The Board relied upon the stenographic transcript of the proceedings held before it, which transcript was admitted into evidence pursuant to Rule 8 of State Regulation No. 15.

In support of the charge the record reflects the following: Anthony --- testified that he was nineteen years of age on June 3, 1970 (the date alleged). He observed Officer Edmonds enter the tavern that evening. He denied consuming alcoholic beverages.

On cross examination the witness asserted that he entered the tavern alone at approximately 11 p.m. He did not recall seeing Officer Edmonds prior to entering the tavern. He was in the tavern less than five minutes before Officer Edmonds' entry therein.

Anthony asserted that he proceeded to the rear of the tavern and conversed with a male who was playing pool. He ordered and was served a coke. He did not order nor was he served an alcoholic beverage. No one purchased an alcoholic beverage for him, nor did he consume any. Upon being questioned, he informed the officer that he was drinking coke. While the officer was in the telephone booth, he finished his drink and departed from the tavern.

Police Officer Richard Edmonds testified that he first saw Anthony on the date in question at the corner of Main Street and Knickerbocker Avenue at approximately 10:45 p.m. He detected a strong odor of alcohol. Anthony's eyes were glassy, watery and bloodshot. He "kind of staggered." He advised his companion to take him home.

Approximately a half-hour later he again saw Anthony standing on the corner of Main Street and Knickerbocker Avenue and, as the officer approached the corner, Anthony walked ahead. Few business establishments were open at the time. The officer entered appellant's tavern, and:

> "As I opened the door, ... Anthony ... was at the rear of the bar, just above the turn of the bar. He was facing the pool table which was directly across from that area. He had a glass in his hand and he was lifting it. He had a drink at the time. It appeared to be beer. As I got closer, it was a beer glass with beer in it.
>
> * * * * * * *
>
> "He turned and put the glass down, put it directly in front of him.
>
> * * * * * * *
>
> "There was a small amount of beer left at the bottom."

At the time that Anthony had placed his glass down, he was half the distance of the bar distant from Anthony. While he was making a telephone call to his headquarters, Anthony departed from the tavern.

On cross examination the officer testified that, upon entry, he observed Anthony in the rear of the tavern and that an adult male was standing near Anthony in the area of the pool table. Upon proceeding to the rear, he saw two glasses in the immediate area of the two males. One contained beer and the other coke. From a distance it appeared to be beer. He did not test the contents of the glass. Anthony informed him that he was drinking coke.

In behalf of appellant, Donald Null (who was employed as a part-time bartender by appellant) testified that he was the only bartender on duty on the night in question. He observed Anthony conversing with an acquaintance. At his friend's insistence to order something, Anthony ordered a coke. He was served a coke. He denied serving Anthony an alcoholic beverage. He informed the police officer that he did not check Anthony's identification because he had given him a coke. After handing the police

officer the license application he and the officer engaged in the following conversation:

> "He says, 'I have to make a report. Just routine report that the kid was in here.'
> I said, 'Well, he wasn't drinking.'
> He says, 'I know, I am entering in my report that he is drinking Coke.'"

At this de novo hearing the Board relied solely upon the transcript of the testimony taken at the hearing held before the Board, and appellant produced two additional witnesses.

Joseph Murcko testified that he patronizes the licensed premises regularly and that, on the night in question, he was positioned at the far end of the bar. A male, known to him as "Joe", was seated to his left. Murcko was drinking beer, Joe was drinking seven and seven. At approximately 11:30 p.m. Anthony entered the tavern and positioned himself to the right of the witness. Anthony ordered and was served a coke. The coke was placed in front of Anthony and to the left of where he (Murcko) was positioned. He did not observe whether or not Anthony consumed any of the coke. He observed the police officer question Anthony and thereafter making a telephone call. When the officer walked in he had a beer in front of him and Anthony had a coke.

The charge must established by affirmatively satisfactory evidence. A finding of guilt may not be based upon mere suspicion, no matter how reasonably inferable such suspicion may be. Re Doyle, Bulletin 469, Item 2.

Doubtful questions of fact must be resolved in appellant's favor. Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Wasserman v. Newark, Bulletin 1590, Item 1.

After carefully examining the transcript of the proceedings below and the testimony adduced at the within hearing, I find an absence of substantial credible evidence to support a finding of appellant's guilt.

In view of the fact that the factual findings in this case were not supported by substantial evidence, I conclude that the Board failed to sustain the burden of establishing the finding of guilt by a preponderance of the evidence, and I therefore recommend that the action of the Board be reversed and the charge be dismissed. Kurschner v. Newark, Bulletin 1508, Item 2.

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 the transcript of the testimony and the Hearer's report. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2nd day of March 1971,

ORDERED that the action of respondent be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - FELDMAN v. IRVINGTON.

AUGUST FELDMAN & ANNA FELDMAN, t/a TOWN TAVERN, Appellants, v. MUNICIPAL COUNCIL OF THE TOWN OF IRVINGTON, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Maurer & Maurer, Esqs., by Myron P. Maurer, Esq., Attorney for Appellants.
Herman W. Kurtz, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants, holders of a plenary retail consumption license for premises 982 Springfield Avenue and 16 Myrtle Avenue, Irvington were found guilty in disciplinary proceedings by respondent (Board) of allowing, permitting or suffering a brawl and acts of violence to take place in and about the licensed premises on May 15, 1970 in violation of Rule 5 of State Regulation No. 20, resulting in a suspension of their license for fifteen days, effective September 21, 1970.

Upon the filing of this appeal, an order was entered by the Director on September 14, 1970 staying the Board's order of suspension pending determination of this appeal.

In their petition of appeal, appellants allege that the Board's action was erroneous because it was against the weight of the evidence.

The Board, in its answer, denies appellants' allegations and contends that its findings and conclusions were based upon the testimony adduced at the hearing before it and was predicated upon the preponderance of the credible evidence.

The appeal was presented solely on the stenographic transcript of the proceedings held before the Board on July 7, 1970 and September 8, 1970 pursuant to Rules 6 and 8 of State Regulation No. 15. Counsel for the appellants and respondent appeared before the Division for oral argument only.

The transcript reflects testimony regarding an incident which took place at the licensed premises on May 15, 1970 at approximately 9:00 p.m.

William Connell testified on behalf of the Board as follows: Approximately twenty minutes after his arrival at 8:30 p.m. on May 15, 1970 he observed a "Puerto Rican fellow pushing this white man on the floor. The man was on the floor and I seen him kicking him about the head." The incident consumed about five minutes. August Feldman (co-licensee) was at the far end of the bar. Connell looked toward him and assumed that Feldman wanted

him to call the police, which he did forthwith. The police responded almost immediately and found the victim still on the floor, bleeding profusely.

On cross examination he testified that apart from this altercation there was no other disturbance and the premises was generally orderly. He asserted that the incident occurred very quickly, and that it was a sudden flare-up.

On redirect examination, he asserted that the incident was all over within a few minutes.

Three other witnesses testified that they had arrived together and saw a man on the floor being kicked by another man. The police responded immediately. The transcript indicates that all three of these witnesses suffered severe language handicaps and their testimony did not significantly buttress the Board's case.

The Board introduced the victim, James Struck who testified that the altercation was between himself and a co-worker whom he had known for eight or ten years. He added that the tavern was quite crowded and that "it happened so fast that it was over in a minute...."

Four local police officers testified that they arrived as the result of a radio call. Their testimony was confined to events following the altercation and they were unable to shed light on the events which preceded their arrival.

August Feldman testified that on the evening in question he was tending bar and was aware of the presence of Struck and his unidentified assailant. He had admonished both men during an earlier verbal argument to desist. He was next made aware of their presence some time later when it was brought to his attention that one was administering a severe beating to the other at the far end of the bar. He immediately asked Connell to call the police.

On cross examination he repeated that he had no knowledge that the incident was taking place, and upon being apprised unhesitatingly requested Connell to call the police, who responded almost immediately.

It having been established beyond question that a brawl or act of violence occurred on the licensed premises, the sole dispositive issue is whether the action of the Board was erroneous in concluding that these licensees did allow, permit or suffer the proscribed act, within the intendment of Rule 5 of State Regulation No. 20.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such measure 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 preponderance of the credible evidence. Butler Oaks Tavern v. Division of Alcoholic Beverage Control 20 N.J. 373 (1956). In order for appellants to prevail in the instant matter it must appear from the record upon which the parties rely that the evidence did not preponderate in support of the determination of the Board.

The testimony of Connell is to the effect that the admitted altercation was of a spontaneous nature. Indeed, during cross examination he characterized the incident as a sudden flare-up.

Struck, the unfortunate victim characterized the incident as having "...happened so fast that it was over in a minute...."

The testimony of Feldman indicates that upon being apprised of the incident he took immediate steps to summon the local police.

Respecting the terminology of the rule, did licensee "allow, permit or suffer...."

> "To permit is defined as meaning to authorize or give leave (McHenry v. Winston 49 S. W. Re. 4) but the term 'permit' has been used often synonymously with 'suffer' so that it may be said that one who suffers the doing of a thing which he might have prevented (emphasis added) permits it." Connor v. Fogg 75 N.J.L. 245 (1907), at p. 247.

To "permit" is synonymous with "to suffer" which has been defined as follows:

> "Although the word 'suffer' may require a differentt interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority." Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31.

While there is a tremendous responsibility imposed upon the licensee wherein he is required to use his eyes and ears in the exercise of full control of the premises (Snug Tavern, Inc., v. Orange, Bulletin 1425, Item 1), the circumstances must be sufficient to show that the situation was brought to his attention or that he might have reasonably become aware of its existence. Hardy v. Newark, Bulletin 1578, Item 2. Compare Jackson v. Newark, Bulletin 1600, Item 2.

My review of all the testimony which was presented before the Board convinces me that, considered in its most favorable light it leaves serious doubt that these licensees could reasonably have prevented this admittedly spontaneous outburst.

To be in doubt is to be resolved. Such doubt must be resolved in favor of the appellant. Lysaght v. Denville, Bulletin 1490, Item 1.

I therefore recommend that the action of the Board be reversed and the said charge be dismissed.

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 the transcript of the testimony, the argument of counsel and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2nd day of March 1971,

ORDERED that the action of respondent be and the same is hereby reversed, and the said charge be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - DeVRIES v. PASSAIC.

ANN DeVRIES t/a HARRISON HOUSE, Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF PASSAIC, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Margaret B. Feltman, Esq., by Martin C. Mareiniss, Esq., Attorney for Appellant
August C. Michaelis, Esq., by William P. Schey, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the determination of respondent Municipal Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) which, by resolution dated May 6, 1970 suspended appellant's plenary retail consumption license for fifteen days effective June 8, 1970, after finding her guilty in disciplinary proceedings of a charge alleging that appellant allowed, permitted and suffered acts of violence in or upon the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Appellant in her petition of appeal contends that the action of the Board was erroneous in that the resolution was contrary to the facts, and the weight of the evidence; the decision was arbitrary, capricious and unreasonable. Appellant further contends that the decision represented a compromise.

Respondent's answer admits the jurisdictional allegations in the petition and denies the substantive contentions.

The order of suspension of the Board was stayed by the Director by order dated June 1, 1970 pending the determination of the appeal.

The attorneys for the respective parties agreed to submit the appeal on the transcript of testimony taken in proceedings before respondent Board, pursuant to Rule 8 of State Regulation No. 15.

While the initial charge embraces a complaint surrounding an occurrence in the licensed premises on November 6 and November 13, 1969, as well as one on January 24, 1970, the finding of guilt was based solely on the alleged occurrence of January 24, 1970.

The transcript of the hearing before the Board reveals that counsel for appellant stipulated that acts did occur on the premises; hence the Board called no witnesses to testify what

had happened on any of the occasions. We are, therefore, required to determine whether the charge was established on the basis of the testimony adduced in behalf of appellant.

Florin DeVries, appellant's son, and who manages the licensed premises, testified that on January 24 about 1:45 a.m. the premises were crowded and he was mingling with the patrons when one Lee Jackson entered. Jackson was told by the witness to leave because he had been previously told not to come in. Jackson started to walk out; the witness walked back toward the bar, whereupon there was a loud explosion. He was across the bar, possibly five feet away, when the shooting occurred. The weapon involved was a sawed-off shotgun which was apparently concealed under Jackson's coat. It was a short weapon, twelve to fourteen inches in length. It was with this weapon that Jackson wounded a patron named Elam.

Patrolman Robert Hanna testified that on January 24, 1970, about 1:45 a.m. he was off duty and a patron of the premises, when Jackson entered. DeVries (the prior witness) told Jackson to leave and, while he said "Yes. O.K.", he inserted a quarter in the pool table and left. The witness also left at the same time, walked outside and talked to some friends. He saw Jackson cross the street. While talking to friends he heard a shot, returned to the tavern and found Elam lying on the floor. The witness affirmed that Jackson did not obtain anything to drink in the licensed premises.

The bartender, Bernard Smith, testified that he was on duty that morning and saw Lee Jackson put an object back under his coat following an "explosion", and saw Elam fall to the floor. On his way in, Jackson requested a drink of whiskey. The bartender informed him he was not allowed in. He did not recall any conversation between DeVries and Jackson. He testified further that he went to the men's room and had asked DeVries to cover for him. It was on leaving the men's room that the shooting occurred.

The barmaid, Myra Johnson, testified that she too was on duty on January 24 at 1:45 a.m., looked up and saw Lee Jackson there. DeVries had told him to leave, Jackson started toward the door and her attention was diverted. Then she heard an explosion about six or seven feet from her, saw Elam fall to the floor and Jackson put a shiny object under his coat, and leave. On cross examination she estimated the time between first seeing Jackson to the time of the blast as between eight to ten minutes.

The bartender's wife, Florence Smith, testified that on January 24, 1970 at 1:45 a.m. she was a patron at the bar. She didn't see Jackson walk in but did see him when she went to the juke box. He "had put something in before" and was talking to Elam, told him that he owed him $5. She took a couple of minutes to make her selections on the juke box, then returned to her seat at the far end of the bar. She then heard the explosion. When this occurred, she went to the ladies' room.

Another witness, a former bartender, gave testimony about another shooting in November 1969, at which time a cook working for the licensee was shot by someone who came in apparently just for that purpose. Since the Board indicated its finding was based solely on the occurrence of January 24, no value is placed upon this testimony and reference to it hereinafter will only be in connection with appellant's argument relating to it.

The major point of inquiry is whether in fact the appellant through its "agents, servants and employees" allowed, permitted and suffered an infraction of Rule 5 of State Regulation No. 20 to take place.

The Board concluded that matter with a finding of guilty, apparently predicated upon a feeling that the manager, DeVries, was not diligent enough in evicting the assailant. By not being diligent in this regard, the licensee did permit violence to occur.

The appellant urged that the resolution of the Board was contrary to the weight of the evidence. To determine what actually occurred in the licensed premises on January 24 can be arrived at only by inference. The entire testimony, all introduced by the appellant, fails to reveal a credible sequence of events. If there was manifest incredibility in the testimony, such militated to the detriment of the appellant, not the Board. The manager and the barmaid testified that Jackson was not permitted in the premises because, sometime in late summer, he had entered without a shirt. For this act, four months later, both the manager and the bartender told him to leave. Despite the admonition to leave and his acquiescence, he inserted money in the pool table and/or the juke box. The police officer stated Jackson left, and by implication from the other witnesses he did leave. No one apparently saw him return if he, in truth, did leave. The victim was shot when the manager was five feet distant and the barmaid six or seven feet distant.

Jackson was on the premises for two minutes, according to the manager, long enough for the bartender to have gone to and return from the men's room. He was there for two or three minutes, according to the barmaid; sufficiently long to have put money in the juke box and discuss indebtedness with the victim, as the bartender's wife described it.

In order to meet the burden required by Rule 6 of State Regulation No. 15 appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts. That burden was not met here. Hudson-Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947).

Appellant argues that the decision of the Board resulted from compromise. To support this position, counsel vehemently argued that if a guilty finding did not result from the shooting in November, it should not have resulted from the January occurrence.

The Board heard the testimony of the bartender and cook who were present at the November incident, and concluded that this was a situation that had no relationship with the business itself; it was strictly a personal matter between the assailant and cook. There was no parallel to the second situation; there was no testimony that the culprit came looking for the victim; to the contrary, he asked to go to the men's room, asked for a drink, put money in the pool table or juke box; in short, he conducted himself as would any patron. It is significant that the testimony of the victim, Elam, was not produced or his absence explained. In the absence of his testimony, the Board arrived at its judgment on the basis of the testimony presented.

The Board apparently concluded that there must have been strong reason for DeVries to have wanted Jackson out; what suspicions DeVries had of Jackson was not shown in the testimony, which suspicion was substantiated by the act of violence done

by Jackson. In view of this the Board indicated DeVries should have augmented his direction to leave with far more potency, and, had he done so, the tragedy might not have occurred. Since he did not take reasonable steps to prevent the said occurrence, he thus suffered the act of violence. Taken in this light the decision of the Board is well founded. See Jackson v. Newark, Bulletin 1600, Item 2.

A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (1888); Mazza v. Cavicchia, 15 N.J.498 (1954). In the exercise of that power, the Legislature invested the issuing authority (Board) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violation of the law or of State or local regulations. R.S. 33:1-31.

Accordingly, it is recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective dates of suspension, previously stayed pending the entry of a further order herein.

Conclusions and Order

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

I have carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of March 1971,

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

ORDERED that Plenary Retail Consumption License C-45, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Ann DeVries, t/a Harrison House, for premises 896 Main Avenue, Passaic, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Thursday, March 18, 1971, and terminating at 3:00 a.m. Friday, April 2, 1971.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against Mary T. Burke t/a Jimmy's Log Cabin 659 Lake Shore Drive Parsippany-Troy Hills PO Lake Parsippany, N. J., Holder of Plenary Retail Consumption License C-9, issued by the Township Council of the Township of Parsippany-Troy Hills.	CONCLUSIONS and ORDER

O'Donnell, Conway, Leary & Belsole, Esqs., by Bernard F. Conway, Esq., Attorneys for Licensee
Francis P. Meehan, Jr., 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 charges:

"1. On May 26, June 4, 6, 8, 9, 10, 11, 12, 13, 15, 16 and 17, 1970, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races on all of said dates, and in a lottery, commonly known as the 'numbers game', on said dates of June 9, 10, 12, 15 and 17, 1970, and further, on June 19, 1970, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda and other writings pertaining to the aforementioned gambling activity; in violation of Rule 7 of State Regulation No. 20.

"2. On June 9, 10, 12, 15 and 17, 1970, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises and further, on June 19, 1970, you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

In substantiation of the charges Robert Bickley (an investigator in the office of the Prosecutor of Morris County, having qualified as to his expertise in gambling investigations) testified he visited the licensed premises on thirteen occasions beginning on May 26, 1970. At 3:45 p.m. on that day he entered the premises, which contained a J-shaped bar, presided over by a sole bartender (later identified as Thomas O'Mara). There were eleven male patrons present. He saw the bartender take slips and money from a patron called John (later identified as John Peragallo), following which the radio was turned on to the racing results. The volume was very loud and apparently a horse called

"Sally" won and paid $18. John said loudly, in full hearing of everyone, that he had "that bitch himself and it wasn't bad." A conversation among patrons (later identified as Ray Dragoes and another named Frankie, whose last name is unknown) resulted in an argument with Frankie saying "Are you trying to screw me? That bitch paid $18.00." The witness testified further that what apparently was a pay-off took place directly in front of the bartender.

On June 4, 1970 he returned to the bar, sat next to two male patrons and overheard a conversation between them and the bartender in which the patron placed a bet with the bartender O'Mara.

On June 6, 1970, at 1 p.m., he returned to the licensed premises, conversed with the same bartender and placed a bet with him on the fifth race at Roosevelt Raceway, wrote it on a piece of paper, gave it to the bartender who stuck it in his shirt saying he would give it to "the man." Thereafter, determining the "man" was not coming in, he placed the bet by phon

The witness then recounted nine additional visits or calls he made to the licensed premises on June 8, 9, 10, 11, 12, 13, 15 and 17. On each occasion his contact was either by visit or by phone and on all occasions he made some bet on horses or numbers or both. It would serve no useful purpose to cite each occurrence. Suffice to say that the testimony was complete for each occasion, giving the names of horses, the track, the race and the amount of the bet. All of the bets were made with the same person (the bartender O'Mara). Each horse bet was invariably accompanied by a numbers bet. The investigator bet more than $50 over the period encompassed by the charged dates.

The witness then testified as to a raid that was scheduled for June 19. A search warrant was secured and the raid was arranged through the cooperation of the State Police and the local police. Under the direction of Detective Lieutenant John Dunne a raid was conducted, immediately prior to which the witness entered the premises, made a bet with marked money and previously prepared slips which he gave to the bartender. The raid and search revealed the bet slips and the money, which money is presently sequestered by the Morris County Prosecutor's office to be used in connection with the pending criminal indictment against the bartender.

On cross examination the witness admitted he never saw the licensee behind the bar, but he did see her on four or five occasions in the licensed premises.

Francis Spann, Jr. (Morris County Prosecutor's Detective) testified he visited the premises on May 26, 1970, and his observations were similar to those of Bickley. On cross examination he admitted he saw no money transferred between the parties in conjunction with betting.

Detective Lieutenant John Dunne (of the Morris County Prosecutor's office) testified he was in charge of the gambling squad and coordinated the raid of the premises. He entered the premises on June 19 at 3:45 p.m., served the warrant, searched the bartender and the licensed premises. He found slips pertaining to bets on the bartender, particularly those bets made by Bickley, as well as others, together with the marked

money. On cross examination he admitted finding nothing of consequence pertaining to the raid other than on the person of the bartender.

Mary T. Burke (the licensee) described herself as a maiden lady in her late fifties who never tends bar and who is rarely in the barroom, preferring to remain in a private kitchen off the bar. There is a wall opening as well as a door between them. She prepares no food for the customers, and her only contact with the bar is to give the bartender coffee, bring change, and perform related chores. She used to open only in the evenings, but about a year ago the bartender O'Mara offered to help her if she would open from 3:30 p.m. to 6 p.m., so she hired him for that period as well as additional help on weekends. While she felt he was fine and honest, she never suspected what he was doing and discharged him immediately upon his arrest. On cross examination she stated that she never heard race results on the radio or ever saw anything in her place in connection with horse betting.

At the conclusion of the testimony counsel for the licensee pressed for dismissal of the charges, basing his argument upon the licensee's ignorance of the activity of the bartender, as she rarely came into the bar and had no idea that any gambling was going on. In support of this thesis, the argument was advanced that there was no testimony that any gambling matter of any kind was found on the premises (only on the person of the bartender) and that she had discharged the bartender immediately following the said raid. Hence she was fully innocent of the violations.

In adjudicating this matter it is observed that, in evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042.

That gambling took place on the premises was not disputed by the licensee. The defense was bottomed on the contention that the bartender, being the sole participant in the gambling affair, would relieve the licensee from responsibility. However, it has been well settled that, in disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee to show that the violation was committed by an employee of the licensee. Rule 33 of State Regulation No. 20; Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951). Furthermore:

> "A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related on the licensed premises. A licensee may not escape or 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."

Re DiMattia, Bulletin 1645, Item 1; Re Perla's Inc., Bulletin 1946, Item 3.

It is persuasive that the licensee, in closeting herself away from the bar area, may not have observed what she should have observed and could have readily observed by the expenditure of some management effort. She hired the bartender, placed him solely in charge of the bar, hence now cannot avoid the responsibility for his acts. "However, it is the duty of every licensee to strictly adhere to the rules and regulations of the Division at all times." Re Steinweiss, Bulletin 1401, Item 7. I therefore conclude that the charges herein have been proved by a fair preponderance of the credible evidence. It is accordingly recommended that the licensee be found guilty of said charges.

Absent prior record of licensee, it is recommended that the license be suspended for a period of sixty days. Re Venezia's Tavern, Inc., Bulletin 1946, Item 2.

Conclusions and Order

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

I have carefully examined the exceptions and find that they have either been considered and answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of March, 1971,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Council of the Township of Parsippany-Troy Hills to Mary T. Burke, t/a Jimmy's Log Cabin for premises 659 Lake Shore Drive, Parsippany-Troy Hills, be and the same is hereby suspended for sixty (60) days, commencing at 3:00 a.m. Thursday, March 18, 1971 and terminating at 3:00 a.m. Monday, May 17, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - PRIOR SIMILAR AND DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
EMBERS LOUNGE, INC. t/a Embers Lounge 100 Market Street Paterson, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-3, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	)

Joseph G. Sproviere, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 22, 1971, it permitted a female entertainer and a barmaid to drink at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days, effective June 1, 1967, for conducting the business as a nuisance and in violation of municipal hours ordinance, and by the Director for thirty days, effective January 5, 1970, for permitting hostess activity on the licensed premises. Re Embers Lounge, Inc., Bulletin 1894, Item 6.

This prior record of suspensions for dissimilar and similar violations both considered, since occurring within the past five years, the license will be suspended for forty days by reason of the record of such similar violation (Re Talvacchia, Bulletin 1833, Item 4), to which will be added five days by reason of the record of suspension for the dissimilar violation (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 10th day of March 1971,

ORDERED that Plenary Retail Consumption License C-3, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Embers Lounge, Inc., t/a Embers Lounge, for premises 100 Market Street, Paterson, be and the same is hereby suspended for forty-five (45) days, commencing at 3 a.m. Monday, March 15, 1971, and terminating at 3 a.m. Thursday, April 29, 1971.*

RICHARD C. McDONOUGH
DIRECTOR

* Order dated March 11, 1971 corrects the above order making the total suspension of 45 days with remission of 5 days for the plea entered leaving a net suspension of 40 days.

6. DISCIPLINARY PROCEEDINGS - EMPLOYEE WORKING WHILE INTOXICATED - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MORNING GLORY, INC.
t/a Heidelberg Inn
84 White Horse Pike
Mullica Township
PO Egg Harbor, N. J.

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of Mullica Township.

CONCLUSIONS AND ORDER

Licensee, by Margaret Dobrovick, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to charges alleging that on Saturday, January 9, 1971, it (1) permitted a person to work as a bartender on its licensed premises while actually or apparently intoxicated, in violation of Rule 24 of State Regulation No. 20, and (2) sold a pint bottle of gin for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended on the first charge for twenty days (Re Big John's Tavern, Inc., Bulletin 1879, Item 7), and on the second charge for fifteen days (Re Joy-Ken Corp., Bulletin 1940, Item 10), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 10th day of March 1971,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of Mullica Township to Morning Glory, Inc., t/a Heidelberg Inn, for premises 84 White Horse Pike, Mullica Township, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Wednesday, March 24, 1971, and terminating at 3:00 a.m. Friday, April 23, 1971.

RICHARD C. McDONOUGH
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Rosa Wine Co.
830 Raymond Boulevard
Newark, New Jersey
Application filed April 27, 1971 for plenary winery license.

Richard C. McDonough
Director