

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

BULLETIN 1901

March 26, 1970

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STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - CHARLIE'S CAPRI, INC. v. EAST NEWARK.

CHARLIE'S CAPRI, INC.)	
t/a CAPRI,)	
)	ON APPEAL
Appellant,)	CONCLUSIONS
)	AND ORDER
v.)	
)	
BOROUGH COUNCIL OF THE)	
BOROUGH OF EAST NEWARK.)	
)	
Respondent)	

Lewis Stein, Esq., Attorney for Appellant
Joseph F. McCarthy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent (Council) whereby it unanimously voted to deny appellant's application for renewal of plenary retail consumption license for 1969-1970 for premises 423 North Third Street, East Newark. The resolution denying renewal was not introduced into evidence, nor has it been presented for inclusion in the record as requested after the date of the hearing herein.

Upon the filing of the appeal an order dated June 30, 1969 was entered by the Director extending the term of appellant's 1968-1969 license until further order herein.

Appellant's petition of appeal alleges that the action of the Council was erroneous because (a) it was not afforded a hearing on its application for renewal and (b) that the action of the Council was "arbitrary, capricious and unreasonable." Council's answer sets forth that the denial of the said application was based on the allegations that (a) the "continuing record of the licensee indicates that it is a perennial 'trouble spot'" and (b) because of the "seriousness of the present charges pending against the licensee under complaint lodged by the A.B.C."

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

The transcript of the de novo hearing which was heard first on the return date of an order to show cause why the license should not be extended pending the determination of this appeal and the plenary hearing will be considered as a whole in my determination.

Preliminarily the first contention in the petition may be summarily rejected. Appellant alleges that it was not afforded a hearing on its application for renewal of its license. Rule 8 of State Regulation No. 2 sets forth that "No hearing need be held if no such objections shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

No objections were lodged. The Council was authorized by the said applicable rule to deny the application without granting a hearing thereon. As noted hereinabove, the resolution was not produced and therefore I don't know whether reasons for respondent's action were stated. I assume that the reasons set forth in the Council's answer are the same as those set forth in the resolution.

The Council on the plenary de novo hearing relied solely upon the testimony of William B. Knowles, the Chief of Police. He testified from police records to incidents which occurred during the 1968-1969 licensing period. The record reflects that the appellant was found guilty in disciplinary proceedings before the Council for allowing and permitting brawls on the licensed premises on July 14, 1968 and July 28, 1968 and appellant's license was suspended for fifteen days.

On appeal to this Division the charge with respect to the alleged brawl on July 14, 1968 was reversed because the Director found that the Council had failed to establish the said charge by a fair preponderance of the credible evidence. However, the Director affirmed the conviction based upon the July 28, 1968 incident. The suspension of appellant's license for fifteen days was affirmed and reimposed. Charlie's Capri, Inc., v. East Newark, Bulletin 1853, Item 3. An appeal to the Appellate Division of the Superior Court was taken by the appellant from the order of the Director, and is presently pending before that court.

On January 28, 1969 the ABC pursued an investigation of the said licensed premises which ultimately resulted in disciplinary proceedings against appellant on a charge of permitting unlawful activity on the licensed premises.

On February 28, 1969 the Police Department received a call that there were after-hours sales of alcoholic beverages. No action was taken thereon.

On June 12, 1969 Commissioner Hotaling informed the Chief of Police that he desired to make a complaint against Charles Augustine, president of the licensee corporation, for making a false accusation against him, and for using foul language. However, this matter was amicably settled and no complaints were signed. On June 14, 1969 a patron was arrested outside the licensed premises for being drunk and disorderly.

On cross examination, part of the record in the matter now on appeal in the Superior Court was introduced in the record. The witness acknowledged that in the hearing held

on the appeal before this Division with respect to the appeal on the charges relating to July 14, 1968 and July 28, 1968, he was asked the following questions and gave the following answers:

- "Q You testified when you were asked whether --- you were asked if you considered the place a nuisance, and you used the term 'semi-nuisance,' is that correct?
- "A Yes.
- "Q And you said because of the fact that it was in a residential area?
- "A Yes.
- "Q Now, you have had occasions to speak with Mr. Augustine prior to this tavern affair over the last several years in your duties as chief?
- "A Yes.
- "Q And would you say that he has done everything possible to maintain his business in a peaceful and proper manner?
- "A Yes, I would.
- "Q And that he has called upon your department to assist him at any time when there was any possibility of a disturbance?
- "A That's right. Just this past summer, the Mayor had a complaint such as a faulty door that was banging, and putting bottles in the alley, and I just went to his home instead of sending a man down, I went to Mr. Augustine myself and I got pretty good results."

Knowles asserted that the licensed premises are at a disadvantage, together with the other taverns, because "the noise alone from entertainment would be cause to cause people to call and ask us to see about it." The witness further testified that at a public hearing in July 1968 he could not understand why the Council had repeatedly renewed this license if it considered this facility to be operated as a nuisance.

Charles P. Augustine (president of the corporate appellant) testified that he works as a bartender in these premises and that the premises are operated properly and in compliance with the rules and regulations of this Division. He never received any notification from the Police Department of any alleged improper operations of his premises from July 1, 1968 to June 30, 1969, with the exception of the charges hereinabove referred to, and he insisted that the Council acted improperly in denying appellant's application for renewal of its license.

In evaluating the totality of the record herein it is desirable to restate the general principles involved in the determination of this matter. It is well established that there is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). If denied on reasonable grounds, such action will be affirmed. Cf. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. However, it is equally well established that an application for renewal of a license may not be denied capriciously, but must be based on reasonable grounds or it will be reversed. Costa v. Red Bank, Bulletin 133, Item 5; Tompkins v. Seaside Heights, Bulletin 1398, Item 1. Where a license has been

renewed for prior licensing periods, a refusal to renew thereafter must be founded upon valid and substantial grounds supported by the weight of the evidence. As Commissioner Driscoll stated in Monesson v. Lakewood, Bulletin 657, Item 1:

"If, during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted...."

Since appellant's license for the said premises has been renewed for the 1968-69 licensing period, its conduct in the operation of the said premises during that period is the critical determinant. The record reflects two significant episodes which required careful investigation and examination by the Council at the time of its consideration of the subject application for renewal. The first consisted of the charge brought in disciplinary proceedings which related to the alleged brawls on July 14 and July 28, 1968. After hearing the testimony with regard thereto, the Council, by resolution dated October 15, 1968, suspended the appellant's license for fifteen days effective November 1, 1968. On appeal to this Division the conviction with respect to the July 14, 1968 incident was reversed but the conviction with respect to the incident on July 28, 1968 was affirmed and the same penalty was reimposed. Charlie's Capri, Inc. v. East Newark, Bulletin 1853, Item 3. Since, as noted hereinabove, this matter is presently on appeal to the Appellate Division of the Superior Court, judgment must be reserved thereon until its ultimate determination is resolved. The other incident involves the investigation of alleged immoral activity on January 28, 1969. This was a matter initiated by this Division and not by the Council. At the time the Council considered this application for renewal, no charges had been brought with respect thereto against appellant. I therefore feel that, since no final adjudication had been made of any offenses allegedly occurring during the 1968-69 licensing year, common fairness dictates that the license should have been renewed when it was considered by the Council. Cf. Salmanowitz v. Hightstown, Bulletin 807, Item 2; B & L Tavern, Inc. v. Bayonne, Bulletin 1561, Item 1, aff'd Bayonne v. B & L Tavern, Inc., 42 N.J. 131.

I have also taken into consideration the fact that at this plenary de novo hearing the only witness produced by the Council was Police Chief Knowles who testified that in his opinion the licensed premises were not conducted as a nuisance and was not a "trouble spot". It is regrettable that none of the members of the Council was produced or testified; such testimony would surely have been influential.

I am, of course, not unmindful of the fact that subsequent to the date of the action of the Council denying this license and after partial hearing before this Division on charges brought by this Division against the appellant, the appellant pleaded non vult to a serious charge involving lewdness and immoral activity on its licensed premises. By order of the Director dated November 13, 1969, its license was suspended for one hundred eighty days commencing November 28, 1969 and terminating May 27, 1970. Re Charlie's

Capri, Inc., Bulletin 1891, Item 3. This, of course, will be a matter for another day when the Council is called upon to consider appellant's application for renewal of its license for the 1970-71 licensing period. On the basis of that charge, and taking into consideration appellant's total record, the Council will undoubtedly act within the reasonable exercise of its circumspect discretion.

In the present factual complex, however, I find that the action of the Council in denying renewal of appellant's plenary retail consumption license for the 1969-70 licensing period was unreasonable and arbitrary. I therefore recommend that the action be reversed and that respondent be directed to renew appellant's plenary retail consumption license for the 1969-70 licensing period, in accordance with the application filed therefor.

Conclusions and Order

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

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

Accordingly, it is, on this 5th day of February 1970,

ORDERED that the action of the respondent be and the same is hereby reversed, and that the respondent is hereby directed to renew appellant's plenary retail consumption license for the 1969-70 licensing period in accordance with the application filed therefor.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - BARONE'S LOUNGE, INC. v. PATERSON.

Barone's Lounge, Inc.,)	
Appellant,)	
v.)	On Appeal
Board of Alcoholic Beverage Control for the City of Paterson,)	CONCLUSIONS and ORDER
Respondent.)	

Goodman & Rothenberg, Esqs., by Robert I. Goodman, Esq.,
Attorneys for Appellant.
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On May 28, 1969 respondent Board of Alcoholic Beverage Control for the City of Paterson (Board) granted appellant's application for renewal of its plenary retail consumption license for the 1969-70 licensing period for premises 217-219 Straight Street, Paterson. Thereafter, on June 25, 1969 the Board conducted a hearing without notice to the appellant based upon allegedly new facts communicated to it by the local Police Department. It then adopted the following resolution reversing its prior action. The resolution reads as follows:

"WHEREAS, this Board, on May 28, 1969, granted the renewal of Plenary Retail Consumption license C-105, heretofore issued to Barone's Lounge, Inc., for premises situated at 217-219 Straight Street, Paterson, New Jersey; and,

"WHEREAS, this matter having come before this Board on the motion of the Police Department of the City of Paterson and the Honorable Lawrence F. Kramer, Mayor, for review of the determination made May 28, 1969; and

"WHEREAS, this Board having heard testimony of witnesses and having been apprised of numerous violations not previously reported to this Board; and,

"WHEREAS, it appears that the grant of May 28, 1969, was a result of a mistake of fact; and,

"WHEREAS, it appears that the premises sought to be licensed constitute a public nuisance and a detriment to the health and safety of the people of the City of Paterson; NOW, THEREFORE,

"BE IT RESOLVED, that the renewal of Plenary Retail Consumption license C-105, granted May 28, 1969, is hereby rescinded and said renewal be and the same is hereby denied."

Appellant challenges the latter action of the Board and alleges that such action was erroneous because (1) there was "no basis either in law or in fact in the revoking (sic) of said license" and (2) that such action infringes upon appellant's constitutional rights and "was a denial of due process."

The Board in its answer admits that it rescinded its said action on June 25, 1969. It defends that the reason for its latter action was "an evaluation of the past police record of the tavern, the testimony of the Police Department and others as shown in the transcript and the record of the tavern as contained in the files of the Board of Alcoholic Beverage Control."

Upon the filing of the appeal, an order was entered by the Director extending the term of appellant's 1968-69 license until further order herein.

This is an appeal de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded both parties to present testimony herein and cross-examine witnesses.

Before considering the testimony adduced at this hearing, a critical jurisdictional issue has been raised by the appellant which, if sustained, requires a reversal of the Board's action. Appellant contends that the Board was without power to reverse its earlier action in granting the renewal of the said application in the absence of a clear mistake of law and fact. It asserts that there was no such mistake of law or fact in the Board's action in granting renewal on May 28, 1969 and, consequently, the action of the Board in reversing said action was erroneous.

The rule is well established that when an issuing authority reaches a final determination on an application for a license for renewal thereof, it then has no jurisdiction to reconsider its action at a subsequent meeting in the absence of mistake of law or fact and fraud perpetrated upon it. Cascio v. Roselle Park, Bulletin 1579, Item 1; Ashen v. Elizabeth, Bulletin 1553, Item 2; Essex County Retail Liquor Stores Association v. Newark and Willner's Liquors, A Corp., Bulletin 1457, Item 3; White v. Atlantic City, 62 N.J.L. 644. This doctrine has been followed in this Division since the beginning of its administration of alcoholic beverage control. See Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City, et al., Bulletin 80, Item 11. It was most recently followed in 111 Park Street Corporation v. Orange, Bulletin 1859, Item 2.

In the syllabus in Gulnac v. Freeholders of Bergen, 74 N.J.L. 543 (E. & A. 1906) it is stated "The right of a deliberative body to reconsider its action in a matter of judicial or quasi-judicial character ceases when a final determination has been reached."

In a memorandum presented by the attorney for the Board, he argues that, since the said license did not take effect until July 1, 1969, the Board was authorized to reconsider its earlier action. This argument clearly lacks merit because it relates to an action with reference to the same licensing period for which the said license was renewed.

The Board further argued at this de novo hearing that the reason it did not have the "facts" upon which it decided to rescind its earlier action was that there was a lack of proper communication between the Board and the Police Department. There is no contention that such facts were not available to the Board when it acted on the application for renewal on May 28, 1969 or that it could not have reasonably obtained such facts prior to the said action. Obviously there was no fraud perpetrated upon the Board by the appellant or by any one else and its failure to obtain the record relating to appellant's operation of its licensed premises does not justify its latter action, nor should such failure operate to the prejudice of the appellant.

The Board is not without power to proceed against the appellant in disciplinary proceedings even after granting the renewal of the license. If the Board feels that this facility is being operated as a nuisance, and such conduct warrants disciplinary action, it may institute such proceedings by complying with R.S. 33:1-31, which states in pertinent part as follows:

"Any license, whether issued by the director or any other issuing authority, may be suspended or revoked by the director, or the other issuing authority may suspend or revoke any license issued by it, for any of the following causes:

a. Violation of any of the provisions of this chapter;

* * * * *

g. Any violation of rules and regulations;

* * * * *

j. For any other cause designated by this chapter.

No suspension or revocation of any license shall be made until a 5-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him."

If such action is instituted the appellant will be afforded due process and a fair opportunity to meet the said charges. In Lantz v. Hightstown, 46 N.J.L. 102, 107, the court stated:

"Now I am of opinion that when a license is granted at a session of a body constituted like the common council, and there is no reconsideration of that action during the session, there can be no review of that action at a subsequent meeting, on the ground that the body which granted the license erred upon some question of the law or fact, unless the power of revocation is conferred by legislation ..."

Finally the Board argues that "administrative agencies have inherent power comparable to that possessed by the courts to rehear and reconsider. 'Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 59 N.J. Super. 419, modified 33 N.J. 428.'" Counsel for the Board has apparently misunderstood the thrust of Lubliner. In Lubliner the court held that the Board is free to alter an earlier policy determination, and this is particularly true where such determination was made by predecessor members who no longer hold office. By this is meant that in a succeeding licensing period the Board may change an earlier policy practice. Nowhere, however, does Lubliner authorize the Board to reverse its final determination with respect to a renewal application for the same licensing period.

Since I conclude that the Board made a final determination with respect to the renewal application, by its May 28, 1969 action, it is unnecessary to consider on this appeal the merits of the substantive charges presented at this hearing in support of its latter determination.

It is therefore recommended that the action of the Board be reversed, without prejudice to its right to institute disciplinary proceedings upon compliance with the procedural statutory requisites.

In view of the voluminous testimony of witnesses reflected in the transcript on this plenary de novo hearing, it is further recommended that, in the event disciplinary proceedings are instituted by the Board against the appellant for suspension or revocation of its license, under R.S. 33: 1-31, the transcript and exhibits herein be made available to the Board for its consideration in such proceedings, with both parties afforded an opportunity to introduce such supplemental testimony as would afford a full and fair hearing on the merits.

Conclusions and Order

A written exception to the Hearer's report was filed by the respondent's attorney pursuant to Rule 14 of State Regulation No. 15.

The filing of a blanket exception without specificity and without supportive argument lacks merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report and the exception filed thereto, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 5th day of February 1970,

ORDERED that the action of respondent be and the same is hereby reversed, and that respondent is hereby directed to renew appellant's plenary retail consumption license for the 1969-70 licensing period in accordance with the application filed therefor.

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - 71 HOUSE, INC. v. BRIELLE AND SCHULER - APPEAL WITHDRAWN.

71 House, Inc.,)
 Appellant,)
 v.)
 Mayor and Council of the Borough)
 of Brielle, and Toni Lynn Schuler,)
 Individually and as Administratrix)
 C.T.A. of the Estate of Theodore)
 E. Schuler, Deceased,)
 Respondents.)

On Appeal

O R D E R

Gertner & Silverman, Esqs., by Robert B. Silverman, Esq.,
 Attorneys for Appellant.
 Stephen T. Keane, Esq., Attorney for Respondent Borough of
 Brielle.
 Abraham Frankel, Esq., Attorney for Respondent Toni Lynn
 Schuler.

BY THE DIRECTOR:

Appellant appeals from the grant on October 27, 1969 by respondent Borough of Brielle of transfer of Plenary Retail Consumption License C-1 from 71 House, Inc. to Toni Lynn Schuler for premises 110 Union Avenue, Brielle.

Prior to hearing, appellant's attorneys advised me that the appeal was withdrawn.

Accordingly, it is, on this 10th day of February, 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

4.

ACTIVITY REPORT FOR FEBRUARY 1970

ARRESTS:			
Total number of persons arrested	-----		14
Licensees and employees	7		
Bootleggers	7		
SEIZURES:			
Still - 50 gallons or under	-----		2
Alcohol - gallons	-----		43.11
Mash - gallons	-----		185
Distilled alcoholic beverages - gallons	-----		1.60
Wine - gallons	-----		1,104
Brewed malt alcoholic beverages - gallons	-----		25.05
RETAIL LICENSEES:			
Premises inspected	-----		525
Premises where alcoholic beverages were gauged	-----		384
Bottles gauged	-----		5,835
Premises where violations were found	-----		120
Violations found	-----		171
No Form E-141-A on premises	48	Prohibited signs	1
Form E-141-A incomplete	30	Other mercantile business	1
Unqualified employees	29	No disposal permit	1
Application copy not available	18	Other violations	43
STATE LICENSEES:			
Premises inspected	-----		11
License applications investigated	-----		4
COMPLAINTS:			
Complaints assigned for investigation	-----		305
Investigations completed	-----		334
Investigations pending	-----		207
LABORATORY:			
Analyses made	-----		70
Refills from licensed premises - bottles	-----		26
Bottles from unlicensed premises	-----		8
IDENTIFICATION:			
Persons fingerprinted for non-criminal purposes	-----		296
Identification contacts made with other enforcement agencies	-----		337
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities	-----		3
Violations involved	-----		3
Sale to minors	3		
Cases instituted at Division	-----		25
Violations involved	-----		26
Beverage Tax Law non-compliance	7	Permitting lottery acty. on premises	1
Sale to minors	6	Unqualified employee	1
Possessing liquor not truly labeled	4	Fraud and front	1
Permitting immoral acty. on premises	3	Failure to file notice of change	
Sale during prohibited hours	2	in lic. application	1
Cases brought by municipalities on own initiative and reported to Division	-----		20
Violations involved	-----		23
Sale to minors	10	Hindering investigation	1
Permitting brawl on premises	3	Sale during license suspension	1
Permitting gambling on prem.	2	Perm. narcotic acty. on premises	2
Fraud in application	1	Permitting persons of ill repute	
Fail. to close prem. dur.proh. hrs.	1	on premises	1
Fail. to display copy of lic. cert.	1		
HEARINGS HELD AT DIVISION:			
Total number of hearings held	-----		43
Appeals	8	Elibility	5
Disciplinary proceedings	23	Tax revocations	7
STATE LICENSES, AND PERMITS:			
Total number issued	-----		1,088
Licenses	1	Wine permits	1
Solicitors' permits	51	Miscellaneous permits	267
Employment permits	230	Transit insignia	124
Disposal permits	47	Transit certificates	23
Social affair permits	344		
OFFICE OF AMUSEMENT GAMES CONTROL:			
Licenses issued	81		
Enforcement files established	2		

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: March 6, 1970

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

In the Matter of Disciplinary)
Proceedings against)

Weaver's Orange Room (A Corp.))
580 Orange Street)
Newark, New Jersey)

CONCLUSIONS
and
ORDER.

Holder of Plenary Retail Consumption)
License C-178 (for the 1968-69 and)
1969-70 license periods), issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

- - - - -

Paul E. Parker, Esq., Attorney for Appellant
Louis F. Treole, Esq., Appearing for the 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 April 23, 25, May 14 and 23, 1969, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', and on said date of May 23, 1969, you also 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 April 23, 25, May 14 and 23, 1969, 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 on said date of May 23, 1969, you also 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."

The Division relied on the testimony of two ABC agents in substantiation of the charges.

Agent R (who possessed wide experience in gambling investigations, including numbers betting activity) testified that he entered the licensed premises (containing a bar and booths) on April 23, 1969 at 1:20 p.m. and sat at the center of the bar. A male known as George was tending bar. The patronage consisted of approximately seven males.

Agent R engaged in conversation with George and eventually he conversed with him relative to numbers betting. The following testimony was then elicited:

"Well, we were speaking of betting numbers, and I said, 'I would like to get my numbers in before it is too late.' And George replied to me, 'Give them to me. What are they?' I said, 'Give me 363 for 50 and 50 and 539 for 50 and 50.' George went to the back bar and removed a pad from the back bar. He wrote the numbers on a slip and put the pad back on the back bar. At that time I gave him \$2 for the number bets."

George placed the slip on the back bar and the currency in his pants pocket. After being advised by George to return the following afternoon in the event that he hit the number, Agent R departed from the premises.

On April 25 at 11:30 a.m. Agent R returned to the licensed premises accompanied by Agent G and sat at the bar. George was again tending bar. A male, whom he knew as Kirk, walked over to where the agents were positioned. Kirk asked Agent R, "You want your regular number?" Agent R replied, "That is right. Give me 363 for 50 and 50." Agent G bet 318 for 50¢ and 50¢ with Kirk.

Agent R continued his testimony as follows:

"At that time Kirk said to us, both G and myself, he said, 'If I am not here' -- George was serving us a drink -- 'If I am not here give your bets to George. We are partners.'"

Agent R then said to Kirk, "I know. I was here the other day and George told me that." At the time this conversation took place George was behind the bar directly in front of where the ABC agents and Kirk were positioned.

Accompanied by Agent G, Agent R revisited the licensed premises on May 14, 1969 at 9:30 a.m. and sat at the bar. George, who was again tending bar, informed the agents that he and Kirk had hit a number for \$125. In reply Agent R said, "Give me 363 for half and half; maybe I'll get lucky and hit a number." Agent G then bet 318 for 50¢ and 50¢. George removed a pad from the back bar, requested the agents to repeat their numbers, wrote the numbers on a pad, took two dollar-bills from the money that the agents had on the bar, placed the money in his pocket and returned the pad to the back bar.

In the early morning of May 23, 1969, ABC Agents R and G met with Prosecutor's office detectives Palma, Scanlon and Gregory to formulate plans involving the licensed premises and to prepare a marked-money list of three one-dollar bills.

Agents R and G entered the licensed premises on that day at 8:50 a.m. and sat at the bar. Detectives Palma and Scanlon were outside the premises awaiting a signal. Detective Gregory was already seated at the bar to the right of entry. Agent G ordered drinks from George who was tending bar. When George brought the drinks, Agent R informed George that he wanted number bets on "363 for 50 and 50 and 318 for 50 and 50 and 539 for 50 and 50." George went to the back bar for a pad and, upon George's return and at his request, Agent R repeated

the bets. George wrote the bets on a slip of paper. Agent R then handed George the three one-dollar bills, the serial numbers of which had been recorded on the marked-money list. Agent G then left the premises.

Thereafter, Detectives Palma and Scanlon entered the premises and identified themselves to George. Detective Gregory also identified himself to George. Detective Gregory went behind the bar and recovered what was identified by Agent R as the bet slip for the numbers betting he had engaged in with George that morning. Detectives Scanlon and Palma recovered the three marked one-dollar bills that were used by Agent R in paying George for the numbers bets from George's left front pants pocket. The marked-money list, the marked money and the numbers bet slip were received in evidence.

Despite a lengthy cross examination, Agent R's testimony did not vary from the testimony adduced on direct examination.

It was stipulated that the testimony of Agent G would be cumulative.

In defense of the charges, Ernest W. Weaver testified that he usually commences working at the licensed premises at noontime and he is also usually there at closing. He had never seen either of the ABC agents in the tavern. To his knowledge George never booked numbers, "George wouldn't do nothing like that." George is still employed at the licensed premises.

George was not produced as a witness.

It is basic that, in matters of this nature, 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); Freud v. Davis, 64 N.J. Super 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

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. 32A C.J.S. Evidence, sec. 1042.

The evidence is not only overwhelming but also uncontroverted that George, an employee of the corporate licensee, accepted numbers bets from Agent R on April 23, May 14 and May 23, 1969. My view is strongly buttressed by the finding of the numbers bet slip on the back bar of the licensed premises and the marked money in George's possession on May 23.

It is also uncontroverted that on April 25 a male known as Kirk accepted numbers bets from Agent R in the immediate presence of George.

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

I conclude that a fair evaluation of the evidence clearly and reasonably preponderates in favor of a finding of guilt of the charges alleged.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for sixty days. Re Bonanni, Bulletin 1893, Item 1.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 11th day of February 1970,

ORDERED that Plenary Retail Consumption License C-178, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Weaver's Orange Room (A Corp.), for premises 580 Orange Street, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Thursday, February 19, 1970, and terminating at 2 a.m. Monday, April 20, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. STATE LICENSES - NEW APPLICATIONS FILED.

Alfred Maiolino

t/a Frank Boccanera Beverage Service
195 North Munn Avenue

East Orange, New Jersey

Application filed March 16, 1970 for
place-to-place transfer of State

Beverage Distributor's License SBD-62

from 14 Mitchell Street, West Orange, New Jersey.

Kerns Distillers Products Corporation

1 Peerless Place

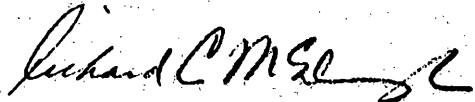
Newark, New Jersey

Application filed March 19, 1970 for
place-to-place transfer of Plenary

Wholesale License W-61 from North Alley

rear of 302-04-06-08 North Broad Street

& 302 North Broad Street, Trenton, New Jersey.



Richard C. McDonough
Director