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

BULLETIN 1971 May 11, 1971

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ITEM

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

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BULLETIN 1971

1. APPELLATE DECISIONS - DANNY MURPHY v. RED BANK ET AL.

DANNY MURPHY, t/a DANNY'S ITALIAN RESTAURANT, Appellant, v. BOROUGH COUNCIL OF THE BOROUGH OF RED BANK, and LUIGI'S ENTERPRISES, INC., t/a LUIGI'S, Respondents.	)	ON APPEAL CONCLUSIONS AND ORDER

Wise, Wise, Wichmann & Blankenhorn, Esqs., by Frederick L. Blankenhorn, Esq., Attorneys for Appellant.
Doremus, Russell, Fasano & Nicosia, Esqs., by Benedict R. Nicosia, Esq., Attorneys for Respondent Borough.
Albert T. Berich, Esq., Attorney for Respondent Luigi's Enterprises, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Borough Council of the Borough of Red Bank (hereinafter Council) which granted the application of respondent Luigi's Enterprises, Inc. (hereinafter Luigi's) for place-to-place transfer of its plenary retail distribution license from premises at 21 White Street to 244 West Front Street, Red Bank.

Appellant alleges in his petition of appeal that the action of the Council was erroneous for the following stated reasons:

(a) There is no need and necessity for an additional license in this area;

(b) There is a safety problem if the respondent is allowed to relocate to the proposed premises. There is no adequate parking available to handle this new business in this location.

The Council denied that its action was erroneous; that need and necessity are necessary to grant transfer; that there was no evidence offered upon which denial could be based; that there is a disproportionate concentration of licenses in the area of transfer.

By stipulation, the minutes of the meeting held before the Council at its meeting held on November 30, 1970, and a copy of the zoning map of the Borough of Red Bank on which were marked locations of many taverns and package stores, including that of the appellant, and the prior and intended locations of Luigi's, were admitted into evidence. A further map, introduced at the Council

meeting, was not available at the hearing herein but has been received and is now made part of the record.

There being no transcript of the meeting of the Council, a hearing was held de novo in accordance with Rule 6 of State Regulation No. 15.

The appellant introduced testimony of William Mari (president of Monmouth County Package Stores Association) who was offered as an expert as to licensed premises with emphasis on plenary retail distribution licenses. He stated that he examined and was familiar with the locations of the many licensed premises near to Luigi's new location. He indicated that there were twelve licensees, nine "C" and three "D", within a four-block area in which Luigi's will open. By statute, there should be only four licenses where there are now forty-nine in the community. The thrust of his testimony was that, while Luigi's license could be properly moved, it was permitted to be moved into an area already too congested with taverns and liquor stores.

On cross examination he admitted that the four blocks alluded to in direct testimony were in actuality sixteen blocks. Further, upon being shown the prospective floor plan of Luigi's restaurant, which was thereafter introduced into evidence, he admitted that, had he seen such building plan before, his opinion might be changed but a thorough inspection of plans would be required.

The appellant Daniel Murphy, Jr., testified that he owns a restaurant at 11 Bridge Avenue, Red Bank. He is very familiar with the area and the new location of Luigi's is around the corner from his establishment. There is no on-street parking permitted on Front Street; parking is a problem in the area although he has sufficient off-street parking for his own use. Traffic is very heavy in this area and is compounded by the great lack of off-street parking.

On behalf of Luigi's, testimony was obtained of Louis Zacerra, one of the principal officers, who offered the proposed plan of the building and indicated that the new premises would be a restaurant with about ten tables, and parking facilities for twenty-five cars. A building permit has been received and he believes the parking area to be a legal use of that property; in any event, they are going ahead with their plans for opening very soon.

Deputy Chief of Police William F. Patterson, Jr., evaluated the traffic situation on Front Street based upon his twenty-five years in the police department. He indicated that there was congestion in the area but it would not be substantially increased by the new location of Luigi's. Furthermore, the prior occupant of that site was a lamp store which had a faster turnover of parked cars than would a restaurant where the patrons remain longer. He asserted that the licensed premises in the area were well maintained and posed no police problem.

The burden of establishing that the action of the Council in granting the transfer was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15. It has been consistently ruled that no one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck,

5 N. J. Super. 172 (App. Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests, in the first instance, within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen et als., Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed. Paul v. Brass Rail Liquors, Inc., 31 N.J. Super. 211 (App. Div. 1954). A local issuing authority has been held to possess wide discretion in the transfer of a liquor license subject, of course, to review by this Division in the event of abuse thereof. Passarella v. Atlantic City et als., 1 N.J. Super. 313 (App.Div. 1949); Blanck v. Magnolia, 38 N.J. 484 (1962).

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1. In other words, the action of the municipal issuing authority may not be reversed by the Director unless he finds the act to have been clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et als., 135 N.J.L. 502 (1947).

In the recent case of Lyons Farms Tavern, Inc. v. Newark, et al., 55 N.J. 292, at 303 (1970), the court stated:

> "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

The testimony adduced by appellant is silent as to any showing of unreasonableness by the Council. That the area has more licensed premises than other areas of the community, as testified to by Mari, does not in itself preclude the Council from exercising its determination. The minutes of the meeting of the Council, reveal that the judgment of the Council, while not unanimous, was the result of its deliberation, before whom objectors had made known their views. From all of this the Council made its own determination, which I find to be neither arbitrary nor unreasonable.

Counsel for appellant, in his memorandum in summation, advanced the thesis that it was incumbent upon the Council to reject the transfer as such transfer would negatively affect the business of the appellant. In support of this argument, reference was made to Twp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462 (App.Div. 1955) in which the action of the municipality was rejected in that the interest of the appellant was not protected.

Using a course of logic, this position assumed that, since the appellant was in business at the general location about to be entered by Luigi's prior to the present action, priority should have been controlling should such transfer allegedly injure the appellant. There is no substance to this thesis. The test in granting or withholding a transfer by an issuing authority is public good, not the benefit or detriment to a licensee. This doctrine, as exemplified in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 33 N.J. 404 (1960), held against the Director who had overtunred the municipal action in refusing a transfer. The Director grounded his action on the view that the objections advanced by the municipality were insufficient since the proposed new location was in a business section. The municipality had rejected the new location because it did not want any licensed premises in that business area. The Court upheld the action of the municipal issuing authority against the asserted advantage to the licensee.

Luigi's declared that the proposed premises would be used for a restaurant, pizza and cocktail lounge and there would be off-street parking for twenty to twenty-five cars. In view of this declaration and upon its dependence by the Council, the license should be conditioned upon completion and maintenance of the restaurant and provision for off-street parking. "The resolution granting the transfer in the instant matter should have expressly embodied such a condition (be operated and conducted as a bona fide restaurant) as well as a condition requiring the maintenance of suitable off-street parking facilities for patrons." Lubliner v. Board of Alcoholic Beverage Control of Paterson, 33 N.J. 428 (at 447) (1960).

Therefore, after considering all of the evidence herein, including the transcript of the testimony, the exhibits and the briefs of counsel, it is concluded that appellant has failed to sustain the burden of establishing that the action of the Council was unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15.

It is recommended that an order be entered affirming the action of the Council, and dismissing the appeal, subject to the special conditions:

1. Completion of premises in accordance with the plans submitted; and

2. That the licensed premises be operated as a bona fide restaurant, etc.

Conclusions and Order

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

Having carefully consdered 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 recommendation.

Accordingly, it is, on this 23rd day of March 1971,

ORDERED that the action of respondent Borough Council of the Borough of Red Bank be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed, subject to the following conditions:

1. That respondent, Luigi's Enterprises, Inc., t/a Luigi's complete proposed licensed premises in accordance with submitted plans; and

2. That the licensed premises shall be operated as a bona fide restaurant having provision for seated patrons.

RICHARD C. McDONOUGH
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SOLICITATION FOR PROSTITUTION - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against)

ROCKY'S CLUB, INC.)
t/a Rocky's Club)
2203 Atlantic Avenue)
Atlantic City, N. J.)

Holder of Plenary Retail Consumption License C-208, issued by the Board of Commissioners of the City of Atlantic City.)

CONCLUSIONS AND ORDER

Affirmed on appeal 1973

Gorson, Lazarow,& Aron, Esqs., by Joseph Lazarow, 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 charge:

"On August 9, 1970, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse; in violation of Rule 5 of State Regulation No. 20."

Four ABC agents participated in the investigation of alleged solicitation for prostitution at the subject licensed premises pursuant to a specific assignment.

ABC agent D gave the following account: In the company of agent De, he entered the said premises on August 9, 1970 at approximately 1:20 a.m. Two other ABC agents entered the premises shortly thereafter and seated themselves at the bar. There were two bartenders on duty, one of whom was identified as George McGonigle. Agent D noted that there were present about twenty-four male and eight female patrons.

In conversation with McGonigle, in the course of which he informed him that he came into the premises "looking to get laid", McGonigle made certain embarrassing remarks about one of the female patrons seated at the bar. The agent ordered a drink for her, identified as Judy--, and McGonigle said "She thinks you are

cute. Why don't you go over and sit with her." The agent walked over to where Judy was seated, and in the course of the conversation Judy asked whether he wanted to engage in sexual intercourse. She stated that her price would be $35 plus $5 for the room.

The agent thereupon summoned the bartender and said "Let me have another drink before I go with Judy to get laid." After serving Judy another drink the bartender went over and conversed with her in private, looking meaningfully toward agent D. Shortly thereafter the witness and Judy left the premises and proceeded to a nearby hotel. There they registered under a fictitious name as husband and wife and entered one of the hotel rooms.

Within a few minutes thereafter, ABC agent De, accompanied by agents Z, B and local police officers, knocked on the door and were admitted into the room. They found agent D there with Judy, who admitted to them that she had come there for the purpose of having sexual intercourse. The "marked" money which agent D had given her for this purpose was surrendered by Judy to the police officers, at their request.

Upon returning to the premises they identified themselves to Sidney Soifer, a principal officer of the corporate licensee and informed him of what had transpired. He stated that he had instructed his bartenders not to permit such activity on the premises. McGonigle was also questioned, and denied any knowledge of the solicitation by Judy.

The testimony of this agent was corroborated with respect to the activities in the premises by agent De.

Agents Z and B also substantially corroborated the activities in the premises on the date charged herein, although they did not hear some of the conversation. They followed agent D and Judy to the hotel and participated in the confrontation in the hotel room as described hereinabove.

Sidney Soifer, the corporate licensee's secretary, testified that the licensee purchased this facility on July 2, 1970, which is approximately five weeks prior to the date alleged herein. McGonigle had been employed as a bartender during this period, and he was a "very well qualified bartender." McGonigle and the other employees were instructed to discourage any solicitation for prostitution in these premises.

On the date alleged, he first entered the premises at 2:40 a.m. and, thus, was not present at the time of this alleged incident. He was then asked the following question by the licensee's attorney:

> "Q Did you have any reason to believe at any time there was any solicitation for prostitution going on in the premises?
>
> A Well, I am sure there was some of it going on. The only thing I can say is where I found it was going on I instructed the bartenders I wouldn't allow it and asked the people to leave."

He asserted that prostitution was a problem in the entire area in which these premises are located.

Martin Shafer, president of the corporate licensee testified that he arrived at the premises at about 12:45 a.m. on the date alleged herein and remained there for about two hours. However

he was not in the section of the bar at the time of the alleged incident referred to hereinabove and, therefore, was unaware of what had transpired. Moreover he did not see any evidence of any solicitation for prostitution during his stay at the premises.

George McGonigle, the bartender, admitted serving Judy a drink at the request and expense of agent D but denied that there was any solicitation for prostitution. Further, he did not know that Judy was in fact a prostitute. He stated that some of the off-color remarks that he directed at several of the female patrons were done in a "kidding" manner; but he did not recall the agent stating to him that he came into the premises "to get laid", or that the agent stated "I hope I come back in one piece. This is costing me forty dollars."

In my evaluation of the testimony herein, I am guided by the principle that this is a purely disciplinary measure which is civil in nature, and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); The Panda v. Driscoll, 135 N.J.L. 164 (E. & A. 1946). Thus the Division is required to establish its case by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

During the course of this hearing, I have had the opportunity to observe the demeanor of the witnesses as they testified and to assess their credibility. I am guided by the basic principle that no testimony need be believed but, rather, the hearer must credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899). Evidence, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

Applying the crucible of these principles, I am persuaded that the testimony presented by the Division agents was credible, forthright, factual and was unshaken under cross examination by the licensee's attorney.

The violation charged herein is embraced within Rule 5 of State Regulation No. 20 which provides as follows:

> "No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy, indecent or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The specific charge herein alleges that the licensee has violated this rule by allowing, permitting and suffering lewdness and immoral activity in and upon its licensed premises, viz., solicitation for prostitution and the making of overtures and arrangements for acts of illicit sexual intercourse. Our courts have consistently maintained that "the commission of an overt act on the licensed premises in furtherance or promotion or encouragement of an illicit purpose is, in itself, an immoral activity comprehended by the scope of the regulatory rule." In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

There is no doubt that the solicitation and arrangements for prostitution took place on the licensed premises. This was empirically evidenced by the marked money which admittedly was taken from the person of Judy, the alleged prostitute, and the hotel registry card. Further, the testimony showed that upon returning to the premises Judy, in the presence of the licensee's witnesses and the agents, admitted that such arrangements had been made.

Furthermore, Soifer, a principal officer of the licensee, admitted that he knew that solicitation for prostitution had occurred from time to time at these premises. The fact is, as the agents testified, girls came into these premises unaccompanied by males, left with male patrons and returned, unaccompanied, shortly thereafter.

While this does not establish the specific charge herein, the general atmosphere, as suggested by the testimony, lends credence to the alleged occurrence. I am persuaded that McGonigle, the bartender, was fully aware of the solicitation and arrangements for prostitution which agent D made with Judy. Thus, it became his duty and obligation to take affirmative action to discourage this activity. Not only did he not do so, but he permitted the arrangements to be made willingly. His failure, on behalf of the licensee, to take affirmative action with respect thereto, was clearly an abrogation of his responsibility under these circumstances, and constituted conduct denounced by the applicable regulation.

I, therefore, conclude that this Division has established the truth of the charge by an overwhelming preponderance of the credible evidence, and I recommend that the licensee be found guilty of this charge.

It has always been held that the solicitation for immoral purposes and the making of arrangements for sexual intercourse cannot and will not be tolerated on licensed premises. The public is entitled to protection from these sordid and dangerous evils. Re 17 Club, Inc., Bulletin 949, Item 2. In fact, where it has been established that a licensee or his employee actually procured a female or made offers to male patrons to procure a female to engage in acts of sexual intercourse, this Division has unhesitatingly revoked the license. See Re Tiny's Bar & Grill, Inc., Bulletin 1718, Item 1. This dimension is not embodied in this charge, but it is manifest that the licensee, through its bartender, did permit and suffer the solicitation for prostitution to take place on its licensed premises.

Licensee has no prior adjudicated record. It is, further, recommended that the license be suspended for ninety days. Re Stewart, Bulletin 1886, Item 3.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorneys for the licensee pursuant to Rule 6 of State Regulation No. 16.

I have fully considered the matters contained in the said exceptions and find that these matters have either been considered by the Hearer in his report or are without merit.

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

Accordingly, it is on this 22nd day of March, 1971,

ORDERED that Plenary Retail Consumption License C-208, issued by the Board of Commissioners of the City of Atlantic City to Rocky's Club, Inc., t/a Rocky's Club, for premises 2203 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1971 commencing at 7:00 a.m. Tuesday, April 6, 1971; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Monday, July 5, 1971.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (LOTTERY - NUMBERS) - LICENSE SUSPENDED FOR 60 DAYS - NOTICE INCREASING PENALTY FOR GAMBLING OFFENSES.

In the Matter of Disciplinary Proceedings against	)	
JEAN ARNONE t/a J & G Tavern 51 Bryant Avenue Jersey City, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-72, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	)	

John W. Yengo, Esq., Attorney for Licensee
Edward F. Ambrose, 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 1, 6, 11, June 12 and 13, 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' on said dates of June 12 and 13, 1969 and on horse races on said dates of May 1, 6, June 11 and 13, 1969, and further on said date of June 20, 1969, 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 horse race gambling activity; in violation of Rule 7 of State Regulation No. 20.

"2. On June 12 and 13, 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; in violation of Rule 6 of State Regulation No. 20."

In substantiation of the charges, Robert J. Gaugler (a detective of the New Jersey State Police, having qualified as to his expertise in gambling investigations) testified he visited the licensed premises on five occasions beginning on May 1, 1969. At 1:30 p.m. on that day he entered the premises, a typical neighborhood tavern, presided over by a sole bartender (later identified as Carmine Constagna). A patron, whom the witness identified as "Tony" answered the telephone at the end of the bar. The witness heard the patron take a bet. Shortly thereafter, another patron spoke to the bartender saying "Carmine, I want $4 on this one" and handed the bartender four one dollar bills, which he put in his pants pocket.

The witness returned to the licensed premises on June 6, 1969, saw a patron whom he identified as "Nick" take a bet and later saw another patron, whom he identified as "Pop", take a bet. Thereafter, he returned on June 11, when he saw Carmine, this time sitting as a patron, take a bet. Later Carmine gave Nick the total of the bet money. On June 12, 1969, he again saw Carmine take bets. On June 13, he observed Pop take bets and later Carmine took another numbers bet. The witness personally made a bet with Carmine, on a number, describing this activity: "Upon writing the number, Carmine placed my dollar into his pocket along with the piece of paper and walked away."

On cross examination, the witness admitted he never saw the licensee in the premises at any one of his visits, nor did he confiscate any of the slips.

George H. Friery, another New Jersey State Police detective, qualified as an expert in gambling matters, testified that he visited the licensed premises on June 20, 1969 at 1:40 p.m. armed with a search warrant. The premises were searched, and in a room behind the bar, they found a table with a telephone on it which was connected to the telephone at the bar. On the table the witness found what was referred to as a "scratch sheet" meaning a daily listing of horse races used by bettors. In addition, there was found twenty to twenty-five bet slips. Most of them were for horse bets; but a few were for football bets. There was a metal file cabinet in front of which were numerous scratch sheets. While the search was in progress, the telephone rang and the voice on the other end attempted to place a numbers bet. Numerous bet slips and betting paraphernalia were received into evidence.

The licensee, Jean Arnone, testified that she has a lot of part time bartenders, no chief bartender; and Carmine is not a bartender, only a patron. She stated that from May 1, to June 12, 1969 she was not in the tavern, having been sick at that time. However, her custom was to visit the tavern on Sunday, pick up the money and the register tapes from the safe and "pay whoever I had to pay". She claimed not knowing a "Nick" or "Tony". Her bartenders were "boys from the neighborhood" and she didn't know what Carmine did for a living nor what he was doing tending bar in her tavern. She denied that her business was ever used for gambling purposes, and that she runs a strict tavern according to the Law and regulations.

Counsel for the licensee moved for dismissal of the charges, basing his argument upon what he claimed was a defect in the search warrant. Such argument is spurious. It has been long held that a search warrant is unnecessary in connection with a search of licensed premises and paraphernalia was admissible against the licensee in bookmaking prosecution. State v. Zurawski, 89 N.J. Sup. 488 (1965), aff'd 47 N.J. 160.

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.

From the testimony of the two State Police detectives, it appeared obvious that the licensed premises were being used as a betting parlor. The presence of bookies, or at least runners, in the premises, their free use of the bar telephone, the taking of a bet by the bartender, the horse room in the back with the metal file containing scratch sheets, all point to a convenient place of operations for the betting fraternity in that area. With the quantum of evidence adduced it is astonishing that any defense to the charges was interposed, leading to the conclusion that counsel is under the impression the physical absence of the licensee from the premises immunizes her from culpability. This impression is gleaned from a colloquy between counsel revolving about the question "...do you know whether or not Jean Arnone allowed, permitted and suffered gambling at the licensed premises?", to which the witness was eventually permitted to answer after long argument, and did so by saying "To my knowledge, sir, no sir."

Rule 33 of State Regulation No. 20 states:

> "The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charge preferred in such disciplinary proceedings."

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 they 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, being away from the licensed premises during the whole period of the investigation, may not have known how her tavern was being used. However, by her own admission, she placed no one in full charge and allowed a series of part time bartenders to act as they would without supervision and with impunity. She thus exposed herself, as a licensee, to risk that the regulations, as well as the statute, would not be adhered to. She now cannot avoid the responsibility for their acts.

It is, therefore, concluded that the charges herein have been proven by a fair preponderance of the credible evidence. It is, accordingly, recommended that the licensee be found guilty of the 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

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 proceedings, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

I have noted with concern that there has been an increase in the number of complaints received alleging that bookmaking and numbers activities are occurring on retail licensed premises, primarily in taverns. As was stated in the Notice to All Retail Licensees, dated April 24, 1964 (Bulletin 1560, Item 6, cited in Re Mellolark, Inc., Bulletin 1573, Item 2), "commercialized bookmaking and numbers gambling, by its very nature, requires that kind of organization which breeds corruption and affects the moral fibre of the community. The prime evil is not so much the gambling in and of itself, but rather the syndicated structure which has for its underlying purpose the violation of our laws against bookmaking and lotteries."

The said notice warned licensees that, from that date "the penalty to be imposed on gambling cases involving bookmaking and numbers activity will be greater (irrespective of the plea entered) than the penalty which would have been imposed heretofore in the same situation."

The minimum penalty heretofore imposed, pursuant to the said Notice for a similar unaggravated first offense case wherein the licensee had no previous record of adjudicated violations, has been suspension of license for sixty days, with remission of five days for confessive plea. See, for example, Venezia's Tavern, Inc., Bulletin 1946, Item 2.

Apparently, the present schedule of minimum penalties has not effectively deterred violations of this kind. Perhaps stiffer penalties will help. Although the present penalty will be imposed in the matter sub judice, notice is hereby given that, henceforth, the minimum penalty will be ninety days, with customary remission of five days for confessive plea, entered prior to hearing.

Accordingly, it is, on this 23rd day of March 1971,

ORDERED that Plenary Retail Consumption License C-72, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Jean Arnone, t/a J & G Tavern, for premises 51 Bryant Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Thursday, April 8, 1971, and terminating at 2:00 a.m. Monday, June 7, 1971.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (FOOTBALL POOL) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BERTHA DEMSKY
t/a Beatty's Tavern
811 Beatty Street
Trenton, N. J.

Holder of Plenary Retail Consumption License C-69, issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

Lewis, Siegel & Wood, Esqs., by Richard I. Wood, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to Charge (1) and (2) alleging that on divers dates between September 16 and October 8, 1970, she permitted various kinds and types of gambling, including the acceptance of football pool bets, and possessed tickets in such football pools, on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Reports of the investigation disclose that the football pool betting herein was by means of tickets, listing approximately thirty football games on a stated date, from which the bettor indicated his choice of the winning teams from three to ten of the games, for an amount of money fixed and paid by him, on which odds, varying from five-to-one to two-hundred-to-one were to be paid by the operator, calculated on the number of winning teams selected by the bettor. Pool betting, such as this, is deemed part and parcel of commercialized gambling activity equivalent to illegal horse race or numbers betting gambling activity.

Although this licensee has no previous record of violations, a license held by her in partnership with Leonard Demsky for the same premises was suspended by the municipal issuing authority for three days, effective May 11, 1964, for sales to minors.

On March 23, 1971, the Director entered an order in Re Arnone, Bulletin 1971, Item 3, wherein licensees were notified that, henceforth, the minimum penalty to be imposed on gambling cases involving bookmaking and numbers activity, where the same constitutes an unaggravated first offense and the licensee had no previous record of adjudicated violations, will be ninety days, with customary remission of five days for confessive plea, entered prior to hearing.

Since the new policy is prospective, the penalty to be imposed herein will be in accordance with that imposed heretofore in the same situation.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re McGuire Holiday Motel (A New Jersey Corporation), Bulletin 1884, Item 1.

Accordingly, it is, on this 24th day of March 1971,

ORDERED that Plenary Retail Consumption License C-69, issued by the City Council of the City of Trenton to Bertha Demsky, t/a Beatty's Tavern, for premises 811 Beatty Street, Trenton, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, April 13, 1971, and terminating at 2:00 a.m. Monday, June 7, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR VIOLATIONS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
LEO & SUE COSTELLO t/a Silver Inn 725 South East Avenue Vineland, N. J.	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-5, issued by the City Council of the City of Vineland.	)	

Licensees, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on December 3, 1970, they sold a six-pack of beer to two minors, both age 19, in violation of Rule 1 of State Regulation No. 20.

Licensees have a previous record of two suspensions of license by the municipal issuing authority for similar violation, one for fifteen days effective January 29, 1961 and the other for five days effective August 29, 1966.

The license will be suspended for fifteen days (Re Koval, Bulletin 1861, Item 8), to which will be added fifteen days by reason of the record of the two suspensions for similar violations, the one in August 1966 being within the past five years and the other in 1961 being more than five but less than ten years ago (Re Bromiley, Bulletin 1879, Item 8), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 22nd day of March 1971,

ORDERED that Plenary Retail Consumption License C-5, issued by the City Council of the City of Vineland to Leo & Sue Costello, t/a Silver Inn, for premises 725 South East Avenue, Vineland, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, April 5, 1971, and terminating at 2:00 a.m. Friday, April 30, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
JOY-KEN CORP. 2117 Summit Avenue Union City, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the City of Union City.	)

Licensee, by Kenneth D. Sheppard, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 12, 1970, it possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for ten days, effective October 19, 1970, for sale of alcoholic beverages for off-premises consumption during hours prohibited by state regulation. Re Joy-Ken Corp., Bulletin 1940, Item 10.

The prior record of dissimilar violation occurring within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Mack, Inc., Bulletin 1911, Item 11.

Accordingly, it is, on this 22nd day of March 1971,

ORDERED that Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the City of Union City to Joy-Ken Corp., for premises 2117 Summit Avenue, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Tuesday, April 6, 1971, and terminating at 3:00 a.m. Monday, April 26, 1971.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Y & H TAVERN, INC.)
t/a Old Mill Inn)
373 Straight Street)
Paterson, N. J.)

Holder of Plenary Retail Consumption License C-20, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

CONCLUSIONS AND ORDER

Licensee, by Henry Hobbel, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, December 13, 1970, it sold a pint bottle of Canadian Whisky for consumption off the licensed premises, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days, effective May 28, 1968, for a similar offense. Re Y & H Tavern, Inc., Bulletin 1800, Item 6.

The prior record of suspension of license for similar violation occurring within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Rubin's Tavern, A Corp., Bulletin 1837, Item 7.

Accordingly, it is, on this 23rd day of March 1971,

ORDERED that Plenary Retail Consumption License C-20, issued to Y & H Tavern, Inc., t/a Old Mill Inn, for premises 373 Straight Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Thursday, April 8, 1971, and terminating at 3:00 a.m. Monday, May 3, 1971.

Richard C. McDonough
Director