

J. Ambrose
Ambrose

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

BULLETIN 1982

June 29, 1971

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1. APPELLATE DECISIONS - MURRAY v. CLIFTON.

JOSEPHINE V. MURRAY)
t/a MURRAY'S LOUNGE,)

Appellant,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF CLIFTON,)

Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

Simon, Denstman & Noonan, Esqs., by John W. Noonan, Esq.,
Attorneys for Appellant
Arthur J. Sullivan, Jr., Esq., by G. Dolph Corradino, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Clifton (hereinafter Board) which by resolution dated August 26, 1970 suspended appellant's plenary retail consumption license for premises 1104 Main Avenue, Clifton, for sixty days effective September 14, 1970, after finding appellant guilty in disciplinary proceedings of allowing, permitting and suffering bookmaking, maintaining a gambling resort and conspiring to make book on her licensed premises, in violation of Rule 7 of State Regulation No. 20.

Appellant alleged that there was insufficient evidence upon which to sustain a conviction and that the evidence offered was the result of an unlawful search.

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

Upon filing of the appeal an order was entered by the Director on September 11, 1970, staying respondent's order of suspension pending determination of this appeal.

At this plenary de novo hearing on appeal counsel were afforded full opportunity to present testimony and cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15.

Detective Philip Calderaro of the anti-gambling squad of the Clifton Police Department testified that he, in company with Detective Patrick Giaguzzi, visited the licensed premises armed with a search warrant on July 10, 1970. They sat at the bar from 1:35 p.m. to 2:35 p.m., during which period the licensee was tending bar. Her son was laying floor tiles behind the bar and a patron (later identified as Robert Kane) sat a few stools away from them. While the detectives were consuming some drinks, the

telephone rang and the licensee asked the patron (Kane) to answer. Kane requested a paper and pencil and the licensee took from her apron-pocket a three-by-five inch pad of paper, took off the top two sheets, gave Kane the balance of the pad, and returned the top two sheets to her pocket. Kane answered the phone and began to write on the pad. From the tenor of his actions and a glance through the glass panel of the telephone booth door, Detective Calderaro determined that the patron was writing down a bet. The slip being written and the two slips in the pocket of the licensee were seized as evidence upon the arrest of the licensee. The three slips were described as containing bets on horse races, indicating the track, the names of the horses, and the amount plays; the slips combined plays on horse races and baseball games. These slips were admitted into evidence.

Detective Patrick Giaguzzi corroborated the testimony of Detective Calderaro.

Appellant testified that she had the two betting slips in her apron-pocket, but they were her own slips recording bets she placed outside the licensed premises on her way to work. She admitted being an active bettor and indicated that she had won frequently. Her betting, however, was confined to her off-hours and was not transacted in the licensed premises. Kane (the patron) is a long-time friend of hers and helps her occasionally by performing some services in the premises.

The factual differences between the testimony presented by appellant and the Board are very slight. Appellant, by admitting the slips were bet slips and were found on her person, opened no area of factual divergence. The slip seized from Kane, which had been written as result of an incoming phone call, being the same kind of betting slip varying from those in Mrs. Murray's pockets only in detail and handwriting, close the door to any area of doubt.

In appraising the factual pictures presented in these proceedings, 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 common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

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 testimony of the Board's witnesses was clear and precise, leaving no doubt as to what transpired in the licensed premises. The testimony of the licensee strains credulity to breaking point. She would have us believe that she was an inveterate horse player who made bets at an outside pay-phone on the way to work and carried the slips in her pocket. She offered no explanation at all for the bets taken by Kane on the phone. Such defense is too far-fetched to be believed.

The contention that the search by the police officers was illegal is without merit. See State v. Zurawski, 89 N.J. Super. 488 (1965).

I am persuaded and find from the credible evidence adduced that the licensee has violated the applicable regulation

as set forth in the charge in that she did have custody of, and allow, permit or suffer in and upon the licensed premises a slip or other writing pertaining to bookmaking or gambling. I thus conclude that the Board reached a reasonable conclusion based upon the credible evidence. The action of the respondent may not be reversed by the Director unless he finds the action was clearly against the logic and effect of the presented facts. Cf. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947); cf. Blanck v. Magnolia, 38 N.J. 484 (1962).

Appellant has failed to meet the burden of showing that the Board's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15. It is accordingly recommended that an order be entered affirming respondent's action, dismissing the appeal, vacating the order heretofore entered staying the Board's order of suspension, and fixing the effective dates for the suspension of license imposed by the Board.

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 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 28th day of April, 1971,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Clifton 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-135 issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Josephine V. Murray, t/a Murray's Lounge for premises 1104 Main Avenue, Clifton, be and the same is hereby suspended for the balance of its term viz., until midnight June 30, 1971, commencing at 2:00 a.m. Thursday, May 13, 1971; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Monday, July 12, 1971.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - MICWILL v. IRVINGTON.

MICWILL, INC.)	
t/a ELMWOOD LOUNGE,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
MUNICIPAL COUNCIL OF THE)	
TOWN OF IRVINGTON,)	
)	
Respondent.)	

 Mario V. Parco, Esq., Attorney for Appellant.
 Samuel J. Zucker, Esq., by Herman W. Kurtz, Esq., Attorney
 for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant (holder of plenary retail consumption license for premises 1180 Springfield Avenue, Irvington) was found guilty in disciplinary proceedings by the respondent (hereinafter Council) of a charge alleging that it did unlawfully sell or permitted the sale of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20; whereupon its license was suspended for forty-five days effective September 1, 1970. An order entered by the Director on September 1, 1970 stayed the Council's order of suspension pending determination of this appeal.

Appellant alleges that the action of the Council was erroneous as being contrary to the weight of evidence and that its findings were based on matters extraneous to the evidence. The answer of the Council denied that its action was erroneous and states that its findings were based upon the evidence before it.

The matter was presented for determination upon the stenographic transcript of the proceedings held before the Council which was admitted into evidence pursuant to Rule 8 of State Regulation No. 15, and was supplemented by testimony of an additional witness on behalf of appellant.

The transcript reflects the following:

Roman -- testified that he was born on February 27, 1951, and was nineteen years old on the date charged herein. He entered the licensed premises about 10:30 or 11:00 p.m. on May 26, 1970, and remained there until almost 2:00 a.m. the following morning, during which time he was served and consumed fifteen or more drinks of alcoholic beverages, consisting of Remy Martin cognac and Schaefer beer. He described the bartender who served him as well as another man who also acted as a bartender. He described in detail the interior of the premises and its activities; including the performance of a "go-go" dancer. He was not requested to produce any identification, nor did he make any written representation regarding his age. He left before 2:00 a.m., crossed the street to a parking lot and "blacked out"; he remembers nothing further. He awoke in the local jail, charged with being drunk and disorderly. The following day after his arrest, he re-entered the licensed premises with a detective, and identified the bartender who served him.

Officers Daniel DeLucia and Leonard Richardella of the Irvington Police Department both testified that on the morning of May 27, about 2:00 a.m., they responded to a call to the parking lot opposite the licensed premises where they found Roman -- lying on the ground, from which he arose and became foul-mouthed and abusive so that he was placed under arrest as being drunken and disorderly.

Detective Louis Bernheim testified that he visited the licensed premises the day following the incident with Roman --, at which time Roman -- identified the bartender who served him.

The majority stockholder of the corporate licensee (Ida Duteau, known as "Mickey") testified that she alone tends bar in the premises from 5:00 p.m. to 2:00 a.m., except for weekends. May 26 was a Tuesday and was a slow night. At closing she opened the curtain of the window and saw a scuffle of young men taking place in the parking lot across the street. Two or three police cars responded, whereupon she saw Roman -- being placed into a police car. That was the only time she saw him on that evening. Roman -- was not in the licensed premises on the date charged herein.

The transcript includes the testimony of Joseph Weber, Warren Oelschlaeger, William Hayes and John Fitzpatrick, the latter two being part-time bartenders. All testified that they were in the premises from early evening until the closing hour on the date charged herein; at no time was Roman -- in the premises, nor was he served alcoholic beverages.

The testimony of Dr. Angelo Oliva, offered at this plenary de novo hearing, is to the effect that he does not recall seeing Roman -- at the bar or being served alcoholic beverages.

The issue was narrowed by certain undeniable conclusions: Roman -- was a minor, having been born February 27, 1951, and that during the evening of May 26 or the early hours of May 27 he had consumed sufficient alcoholic beverages to make him intoxicated. The sole question then was the place where the minor consumed the alcoholic beverages. The Council, wrestling with that question, came to the unanimous conclusion that the place was appellant's licensed premises and it so found.

In order to prevail on this appeal, the appellant must sustain the burden of establishing that the action of the Council was clearly erroneous and against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n et al. v. Hoboken, et al., 135 N.J.L. 502 (1947). The Director's function in a matter of this kind now under consideration is not to reverse the determination of the local issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Council. Schulman v. Newark, Bulletin 1620, Item 1; Empire Liquor Co. v. Newark, Bulletin 1847, Item 2; Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970).

The members of the Council had an opportunity to observe the demeanor of the witnesses as they testified, to analyze their testimony and evaluate the credibility thereof. Since there was a sharp factual conflict presented by the evidence, the issue of credibility became of critical importance. Although the minor's testimony so far as the actual purchase was concerned was

uncorroborated, the Council chose to believe his testimony which they found credible and persuasive. Actions of this kind, which are civil in nature, 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).

The principal witness for appellant testified that she was the only bartender on weekdays, yet she admitted the minor pointed out one man in the premises who actually was a bartender weekends. She admitted this bartender did work there, yet by his testimony he denied he was an employee. Both witnesses admitted he was there every evening as a patron.

Another bartender testified that he began work there at 10:00 a.m. on the day in question, quit at 5:00 p.m. and thereafter returned as a patron at 9:30 p.m. to remain on the premises until 2:00 a.m. closing, when the minor was arrested by the police. The Council elected to believe the minor who gave a forthright detailed description of his movements, actions and observations during his stay in the tavern until his system, drenched with alcohol, caused him to lose consciousness in the parking lot.

The only witness not heard by the Council, produced before the Division, was Dr. Angelo Oliva who really did not know if the minor was at the bar on the said date. He indicated he saw an incident in the parking lot which he discussed with the woman bartender two or three days later. No reasonable conclusion could be drawn from his testimony that the minor was not in the premises.

A careful consideration of all of the testimony reveals that there has been sufficient proof to sustain the determination of the Council in finding appellant guilty to the said charge. The prevention of sales of intoxicating liquors to minors not only justifies but necessitates the most rigid control. In re Schneider, 12 N.J. Super. 449, 456 (App. Div. 1951).

Thus appellant has failed to meet the burden of establishing that the Council's action was erroneous and should be reversed as required by Rule 6 of State Regulation No. 15.

It is, therefore, recommended that an order be entered affirming the Council's action, dismissing the appeal, vacating the order staying suspension, and fixing the effective dates for the suspension which was stayed by the Director 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.

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 his recommendations.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the action of respondent Municipal Council of the Town of Irvington 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-2, issued by the Municipal Council of the Town of Irvington to Micwill, Inc., t/a Elmwood Lounge, for premises 1180 Springfield Avenue, Irvington, be and the same is hereby suspended for forty-five (45) days, commencing at 2 a.m. Friday, May 14, 1971, and terminating at 2 a.m. Monday, June 28, 1971.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

J & N, Inc.)
t/a Anthony's Port O'Call)
43 South Broadway)
Long Branch, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-40, issued by the City Council of the City of Long Branch.)

Licensee, by James S. Vaccaro, Jr., President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 12, 1970, it sold a mixed alcoholic beverage drink to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Mitchell and Mitchell, Bulletin 1921, Item 5. However, the licensee has made application for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$400 in lieu of the suspension.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the payment of \$400 fine by the licensee is hereby accepted in lieu of a suspension of license of ten days.

RICHARD C. McDONOUGH
DIRECTOR

- 4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - PERMITTING LICENSED PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

Bela Eszlari)
 t/a Central Cafe)
 122 French Street)
 New Brunswick, N.J.,)

CONCLUSIONS
 and
 ORDER

Holder of Plenary Retail Consumption License C-52, issued by the Board of Commissioners of the City of New Brunswick.)

-----)
 Geza A. Stamberger, Jr., Esq., Attorney 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 Sunday, August 2, 1970, between 2:00 A. M. and 2:15 A.M., you permitted the sale of alcoholic beverages on your licensed premises; in violation of Section 22 of an Ordinance adopted by the Board of Commissioners of the City of New Brunswick on February 7, 1939, as amended and supplemented July 5, 1960.
- "2. On Sunday, August 2, 1970, between 2:00 A.M. and 2:15 A.M., you allowed, permitted and suffered the consumption of alcoholic beverages on your licensed premises; in violation of Section 22 of an Ordinance adopted by the Board of Commissioners of the City of New Brunswick on February 7, 1939, as amended and supplemented July 5, 1960.
- "3. On Sunday, August 2, 1970, between 2:00 A.M. and 2:15 A.M., you had your licensed place of business open; in violation of Section 22 of an Ordinance adopted by the Board of Commissioners of the City of New Brunswick on February 7, 1939, as amended and supplemented July 5, 1960.
- "4. On Sunday, August 2, 1970, between 2:15 A.M. and 2:50 A.M., you, directly or indirectly, through agents, servants, persons employed on your licensed premises and other persons in your behalf, failed to facilitate, hindered, delayed and caused the hindrance and delay, and attempted to hinder, delay and cause the hindrance and delay of an investigation and inspection of your licensed business and premises then and there being conducted by an Inspector and an Investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of Rule 35 of State Regulation No. 20."

There was admitted into evidence a copy of the Ordinance referred to in Charges 1, 2 and 3 of the complaint which provides as follows:

"Section 5. That Section twenty-two (22) of an ordinance entitled 'An Ordinance to Regulate the Sale of Alcoholic Beverages in the City of New Brunswick' Adopted February 7, 1939, be and the same is hereby amended to read as follows:

Section 22. No licensee shall permit the sale of alcoholic beverages nor shall any licensee including licensees having both an alcoholic beverage license and a restaurant license, have its place of business open between the hours of 2 A.M. and 6 A.M. on week days, nor between the hours of 2 A.M. and 1 P.M. on Sundays, provided however, that any licensees conducting a hotel, restaurant or club shall have the privilege of remaining open during the aforesaid prohibited hours for the purpose of carrying on their usual activities, excepting the sale of alcoholic beverages.

That during the hours sales are prohibited, no licensee shall allow, permit or suffer the consumption of alcoholic beverages on the licensed premises, whether sold or served by the licensee or brought in by the customer himself.

That the bar and all other such places whence delivery or service of alcoholic beverages is made by the licensee shall be actually and absolutely closed during the hours sales are prohibited and no sale, service or delivery made therefrom."

ABC agent D testified that on specific assignment he arrived at the licensed premises at 1:35 A.M., Sunday, August 2, 1970, in the company of agent P who remained outside at a point of observation. Agent D then entered and seated himself at the bar. Five patrons were present, two of whom were playing pool. He was served a drink by a barmaid later identified as Eva Palicz. He noted the time as 1:35 a.m. by his watch which he and agent P had synchronized with radio time at 1:00 a.m.

At 2:05 a.m. a couple entered the premises and at 2:08 a.m. he ordered and was served a bottle of Schaefer beer by the barmaid. He noted that the clock on the premises indicated 2:10 a.m. The barmaid also served drinks to two patrons at the pool table at 2:05 a.m., and to two male patrons at the bar thereafter.

At 2:14 a.m. a male, later identified as Joseph Kardos, manager of the licensed premises, entered and advised all patrons to leave. Agent P approached the doorway and attempted to enter. Kardos denied him entrance whereupon Agent D joined agent P and Kardos and both agents identified themselves to Kardos. Kardos said "You can't come in. I don't care who the hell you are." Thereafter agent P entered the premises and agent D advised Kardos to order the patrons out.

Agent D then asked Kardos for a bottle cap so that he could preserve the beer he had purchased as evidence; Kardos refused to comply. Agent D then went behind the bar to get a bottle cap for the beer. Kardos approached and "... he shoved me from behind the bar and he told me to 'get the hell away from the God-damned bar.'"

Agent D then informed Kardos that he would call the police. Kardos then attempted to call the police but agent D was not certain that Kardos had completed the call. Agent D then called the police at 2:23 a.m. Five or six policemen responded within a few minutes, but only two remained.

While awaiting the arrival of the police, agent D requested the production of the license application; both Palicz and Kardos refused to produce it. Kardos was very boisterous and disheveled. He advised Palicz not to answer questions and finally ordered her to a back room.

Upon the arrival of the local police and at their request Kardos produced the license application. He nonetheless refused to summon Palicz for questioning. She subsequently returned at 2:50 a.m. and denied making any sales after 2:00 a.m.

Agent D retained a portion of the last drink purchased by him. A certified report of chemical analysis of that sample by the Division chemist was admitted into evidence and established that the sample was an alcoholic beverage fit for beverage purposes with an alcoholic content of 4.28% by volume.

Agent P testified that he arrived at the licensed premises at 1:35 a.m. in the company of agent D and remained outside at a point of observation. He observed a couple enter the premises at 2:05 a.m. At 2:10 a.m. he walked by the door and observed eight patrons inside, including agent D. They were seated around the bar, there were glasses and bottles on the bar. Agent D had a glass of beer in his hand and a female was tending bar. At 2:13 a.m. a lone male, whom he had observed leave a tavern diagonally across the street, entered the premises.

He attempted to enter at 2:15 a.m. and was stopped by Kardos whom he recognized as the lone male who had entered at 2:13 a.m. Agent P identified himself to Kardos who nonetheless refused him entry. Thereupon agent D joined them and identified himself. Kardos continued to be abusive and ordered both men out. Agent D then turned to return to the bar. As agent P tried to follow Kardos "...put his hands on me to try to stop me", and agent P then brushed by. He observed six patrons seated at the bar.

He corroborated the testimony of agent D regarding the attempt to get a cap for the bottle. Kardos advised Palicz not to answer questions; Kardos pushed both men aside, went to the phone, inserted a coin and dialed a number. Agent D then called the police who arrived shortly thereafter and eventually prevailed upon Kardos to produce the license application, as requested by the agents.

Joseph Kardos testified that he left the licensed premises across the street at 1:50 a.m. in the company of Frank Kovics. He noted the time as 1:52 a.m. on the clock of the Magyar Savings Bank, which has a large digital movement, illuminated clock. Intending to join Mr. Kovics for a later supper he entered the door of the subject premises, turned off the light and announced

"No more drinks to nobody." While he waited for the patrons to leave, agent D approached and announced "It is two minutes after two o'clock. I just got served." Agent D became argumentative and kept saying that he was from the ABC, but showed no proof. Kardos ordered the other patrons out and agent P then attempted to gain entry. Agent P then pushed himself through the door, whereupon "I have(sic) to grab him". Agents P and D then showed badges of identification.

All patrons had exited but remained outside the door. He then called the police and while he was speaking with the police, agent D asked to speak to them so "I hand phone to him."

When the police arrived and assured him that agents D and P were in fact ABC agents, he then cooperated fully. Palicz left immediately upon the arrival of the police.

On cross examination he testified that Kovics entered the premises with him; agent D ordered him to get the patrons out; there were two other patrons on the premises at that time, and they were just leaving. He attempted to prevent agent P from entering because agent P had not identified himself; agents D and P merely flashed badges and put them back in their pockets. He was not satisfied that agents D and P were agents of the ABC; therefore, he asked the agents to leave and called the police when they refused.

He added that the agents' badges were gray or blue in color which looked like a police badge and appeared to be made out of metal; the tavern clock is ten minutes fast; he refused to give agent D a cap for the beer bottle until the police arrived; he told agent D not to go behind the bar but never physically restrained him; and he advised Palicz not to answer questions until the police arrived.

Frank Kovics testified that he entered the premises with Kardos at 1:52 a.m. as reflected on the clock on the Magyar Savings Bank. He heard Kardos announce closing time; he saw agents P and D on the premises but saw no drinks served.

On cross examination he stated that he was not present when the police arrived.

Eva Palicz testified that on the night in question she was on duty alone. She served agent D three or four drinks during his stay. Kardos entered seven or eight minutes before 2:00 a.m. and agent D received his last service shortly before Kardos arrived.

Louis Farkas testified he was in the premises for two hours on the evening in question; he saw Kardos enter shortly before 2:00 a.m. and saw no one served thereafter.

Stephen Rubi testified he saw Kardos enter at 1:53 a.m. and order the bar closed; that no drinks were served thereafter.

Frank Pelle testified that he attempted to enter the bar at 1:52 a.m. but was denied entrance by Kardos.

Agent D, on rebuttal, testified that he showed no badge to Kardos and that Kardos did not hand him the telephone but rather he made the call himself. Agent P testified that he showed no badge but rather, he displayed his credentials, which are

embodied in a billfold with his photograph on one side and the large red letters "A.B.C." on the other.

Mr. Kardos then testified that the billfold was in fact what he had seen but it was shown so quickly that he thought it was a badge.

Considering the evidence adduced herein, having had an opportunity to judge the credibility of the witnesses and recognizing the sharp dispute of facts, I am satisfied that the issue of time is the dispositive issue with reference to Charges 1, 2 and 3, of the complaint. I find that the version presented by the agents, buttressed by their methods of checking time with the radio remained substantially unshaken under vigorous cross examination.

I find that, although there are some discrepancies in the agents' testimony, the dispositive issue of time and their testimony with reference thereto, remains undiminished and is credible and convincing. On the other hand, I cannot under the circumstances herein, give credence to the testimony of the licensee's witnesses, with respect to Charges 1, 2 and 3.

With reference to Charge 4, I find that the agents did properly identify themselves to Kardos and that he denied agent P entrance; refused agent D's request for a bottle cap, and attempted to remove agent D from behind the bar.

Having found that the agents properly identified themselves to Kardos, I therefore conclude that he was aware or should have been aware that agents D and P were agents of the ABC and therefore was totally unjustified in refusing to cooperate with them. Thus I conclude that he hindered, delayed and failed to facilitate the investigation of the licensed premises.

Under the circumstances I conclude that the Division has sustained the burden of establishing the licensee's guilt by a fair preponderance of the believable evidence, and recommend that the licensee be found guilty as charged.

Licensee has no prior adjudicated record. I, therefore, recommend that the license be suspended on Charges 1, 2 and 3 for fifteen days. Re Brighton Memorial VFW Post #2134, Bulletin 1933, Item 3, and on Charge 4 for ten days. Re Delabu, Inc., Bulletin 1846, Item 5, or a total of twenty-five days.

Conclusions and Order

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

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

Accordingly, it is, on this 28th day of April 1971,

ORDERED that Plenary Retail Consumption License C-52, issued by the Board of Commissioners of the City of New Brunswick to Bela Eszlari, t/a Central Cafe, for premises 122 French Street, New Brunswick, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, May 17, 1971, and terminating at 2:00 a.m. Friday, June 11, 1971.

RICHARD C. McDONOUGH
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

Angel Luis Rivera, Inc.
t/a Angel Luis Rivera, Inc.
352 Montgomery Street
Jersey City, N.J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-467, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensee, by Angel Luis Rivera, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, November 1, 1970, it sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Although licensee corporation has no previous record of suspensions, a license held for the same premises by Angel Luis Rivera, ninety-nine per cent stockholder in licensee corporation, was suspended by the Director for ten days, effective October 18, 1966, for a similar violation. Re Rivera, Bulletin 1703, Item 5.

The prior record of suspension 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 Culver & Culver, Bulletin 1874, Item 4. However, the licensee has made application for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$1,000 in lieu of the suspension.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the payment of a \$1,000 fine by the licensee is hereby accepted in lieu of a suspension of license of twenty-five days.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Nick J. Boscarell)
t/a Mercer Airport Cabin)
Bear Tavern Road)
Ewing Township)
PO Box 85, Trenton, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Township Committee of Ewing Township.)
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Sidney P. Skokos, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 12-13, 1971, he sold drinks of beer to two minors, both age 19, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of three suspensions of license, (1) by the municipal issuing authority for thirty days, effective April 17, 1943, for sale of alcoholic beverages to a minor, (2) by the Director for twenty days, effective October 23, 1956, for sales of alcoholic beverages to minors (Re Boscarell, Bulletin 1141, Item 11), and (3) by the municipal issuing authority by Resolution and Order adopted April 18, 1962 for five days (the entire five days remitted for entry of a confessional plea prior to the hearing) for sale of alcoholic beverages for off-premises consumption during hours prohibited by State regulation.

The suspensions for similar violations in 1943 and 1956 occurring more than ten years ago and for dissimilar violation in 1962 occurring more than five years ago disregarded in measuring the penalty, the license will be suspended for the violation herein for fifteen days (Re Lomor, Inc., Bulletin 1786, Item 8), to which will be added fifteen days since this is the licensee's fourth violation (Re Lou's Tavern, Inc., Bulletin 1926, Item 2; cf. Re Eighth Ward Progressive Republican Club, Bulletin 1948, Item 6), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. However, the licensee has made application for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$1000 in lieu of the suspension.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the payment of a \$1000 fine by the licensee is hereby accepted in lieu of a suspension of license of twenty-five days.

RICHARD C. McDONOUGH
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

Warren J. Holst t/a Pinehurst Supper Club West Side of Bridgeton-Fairton County Road Fairfield Township PO RD 4, Bridgeton, N. J.,

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of Fairfield Township.

Samuel Adler, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge that on Friday, January 15, 1971, he sold a pint bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Stanczyk, Bulletin 1939, Item 8. However, the licensee has made application for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$1180 in lieu of the suspension.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the payment of a \$1180 fine by the licensee is hereby accepted in lieu of a suspension of license of ten days.

RICHARD C. McDONOUGH DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

H. George Buckwald and Leon Buckwald t/a Buckwald's Restaurant 319-323 Main Street Lakewood, N. J.,

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-1024, issued by the Director of the Division of Alcoholic Beverage Control.

Novins, Novins, Farley & Levin, Esqs., by Robert J. Novins, Esq., Edward F. Ambrose, Esq., Appearing for Division Attorneys for Licensees

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that, on Friday, October 23, 1970, they sold mixed drinks of alcoholic beverages to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Belco Liquor Store (A Corporation), Bulletin 1897, Item 4. However, the licensee has made application for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$340 in lieu of the suspension.

Accordingly, it is, on this 28th day of April 1971,

ORDERED that the payment of a \$340 fine by the licensee is hereby accepted in lieu of a suspension of license of five days.

RICHARD C. McDONOUGH DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Abate Importing Co. 28 N. Kentucky Avenue Atlantic City, New Jersey

Application filed June 28, 1971 for limited wholesale license.

Richard C. McDonough Director