

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

BULLETIN 1963

April 5, 1971

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1. APPELLATE DECISION - ALANWOOD HOLDING CO. v. ATLANTIC CITY
ET ALS.

Alanwood Holding Company,)	
t/a DeVille Hotel,)	On-Appeal
)	
Appellant,)	
)	
v.)	CONCLUSIONS
)	and
Board of Commissioners of the)	ORDER
City of Atlantic City and)	
Helen Perry et als.,)	
)	
Respondents.)	

Roy Baylinson, Esq., Attorney for Appellant.
Murray Fredericks, Esq., by Chaim H. Sandler, Esq., Attorney
for Respondent Board of Commissioners.
Blatt, Blatt & Mairone, Esqs., by Martin L. Blatt, Esq.,
Attorneys for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the Board of Commissioners of the City of Atlantic City (Board) which adopted a resolution on July 16, 1970, as follows:

"WHEREAS, protests were filed pertaining to the existing license issued to ALANWOOD HOLDING CO. T/A DEVILLE HOTEL, for premises known as 149 SOUTH KENTUCKY AVENUE, Atlantic City, New Jersey; and

WHEREAS, as a result of said protests a hearing was held before the Board of Commissioners of the City of Atlantic City on Thursday, July 2, 1970, at which hearing the protestants appeared personally and the licensee through its attorney, Roy Baylinson, Esquire; and

WHEREAS, the Board of Commissioners heard the testimony from the objectors and argument of counsel for the licensee; and

WHEREAS, the sole protest was to a noise condition on the licensed premise occasioned by the fact that a rear entrance to the licensed premises was continually opening and closing at all hours of the night and morning, which rear entrance into Westminster Avenue allowed the people to both enter and leave the licensed premise in this small narrow avenue where the protestants live; and

WHEREAS, the licensed premise has existed for

some time without the necessity of said rear entrance; and

WHEREAS, it was the considered judgment of the Board of Commissioners, after hearing the objectors and the argument of counsel for the licensee, that public policy would be best served by blocking off the rear door so that entrance and exit could not be made to the licensed premise through this door except for emergency exit in case of fire:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Atlantic City that the license issued to ALANWOOD HOLDING CO. T/A DEVILLE HOTEL, for premises located at 149 SOUTH KENTUCKY AVENUE be on CONDITION that the REAR DOOR to the licensed premise entering into Westminster Avenue BE CLOSED at all times except for emergency exit in case of fire or other catastrophe."

Among other things, appellant in its petition of appeal urges the following:

"That the action of the City of Atlantic City taken by resolution attached hereto imposing a condition upon appellant's license, not in conjunction with its renewal or transfer, be declared invalid and reversed."

The respondent municipality in its answer asserts that its action was proper for the following reasons:

"Appellant is owner and operator of the DeVille Hotel and maintains a plenary retail consumption license on said premises, primarily for the benefit of the hotel and its patrons. The operation of the M & M Lounge in the rear of the hotel, with a separate entrance, is a separate and independent operation carried on by appellant under the license aforesaid, and creates noise and disturbance to the neighborhood and constitutes a public nuisance."

"The noise emanating from the M & M Lounge Bar and from the patrons in using the rear door as a means of ingress and egress at all hours of the night, constitutes a public nuisance, which is contrary to the statutes of the State of New Jersey, ordinances of the City of Atlantic City and the Rules and Regulations of the Alcoholic Beverage Control Commission. The order of the City Commission with respect to the rear door is designed to further public policy."

It is uncontroverted that the subject license was renewed for the license period commencing July 1, 1970 by the Board on May 23, 1970, without condition or conditions being imposed thereon. Thereafter, by resolution dated July 16, 1970, it sought to impose the special condition contained in the resolution hereinabove recited in full.

R.S. 33:1-32 provides:

"Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner [now director], may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof."
(underscoring mine)

Since the condition was imposed by the issuing authority subsequent to the issuance of the license, it is my view that its action be invalid. Although the Director has frequently affirmed the action of local issuing authorities in imposing special conditions in the issuance or the renewal of licenses (cf. Cesar v. Trenton, Bulletin 951, Item 2; Borko v. Mansfield, Bulletin 1894, Item 3), the statute does not authorize the imposition of conditions subsequent to the issuance thereof.

Although the dispositive issue has been identified and determined, I note that the Board's action in imposing the condition complained of was based on numerous complaints made by neighbors of excessive noise and other acts of nuisances allegedly committed by patrons of the licensed premises. These complaints were received by the issuing authority after it had granted the renewal of the license.

The appeal herein was vigorously contested and covered approximately three hundred fifty pages of transcript. Many neighbors testified relative to various acts of nuisances caused by rear entrance on Westminster Avenue being allowed to remain open. If the issuing authority had imposed the special condition simultaneously with the issuance of the renewed license, I may very well have recommended affirmance of its action upon appeal and after plenary hearing as had herein. However, the issuing authority is compelled to follow the clear mandate of the legislature, and may institute appropriate disciplinary proceedings, if warranted, in accordance with R.S. 33:1-31.

It is, accordingly, recommended that the action of the Board in imposing the condition as aforesaid be reversed.

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

I emphasize that R.S. 33:1-32 clearly forbids the imposition of conditions in a license subsequent to issuance thereof by local authorities. However, the Board may institute proceedings to suspend or revoke the license after issuance or renewal thereof for reasons enunciated in R.S. 33:1-31, upon compliance with the procedure set forth therein.

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

ORDERED that the action of respondent Board of Commissioners of the City of Atlantic City in imposing a special condition subsequent to its renewal of a plenary retail consumption license to appellant for the license year 1970-71 be reversed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISION- SUE & FRANK CLUB v. NEWARK.

Sue & Frank Club Inc.,)	
Appellant,)	On Appeal
v.)	
Municipal Board of Alcoholic Beverage Control of the City of Newark,)	CONCLUSIONS and ORDER
Respondent.)	

 Leon Sachs, Esq., Attorney for Appellant
 William H. Walls, Esq., by Jonathan Kohn, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On June 24, 1970 respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (Board) denied appellant's application for renewal of its plenary retail consumption license for premises 89½ - 7th Avenue, Newark.

The resolution sets forth that, in its "firm discretion" the Board "deems such renewal not to be in the interest of the public good and welfare, and more particularly, for the reasons as expressed in this Board's records at its hearing of June 24, 1970, and also the Board's acceptance of the Police recommendation", it determined to deny the said application.

In its petition of appeal appellant alleges that the action of the Board was erroneous because it was based on hearsay evidence and was "arbitrary, capricious, and an abuse of discretion."

No answer was filed by the Board as required by Rule 4 of State Regulation No. 15. Fairness to all parties requires that there should be compliance with this rule. However, this does not operate as a fatal defect in these proceedings, since the ultimate burden of establishing that the action of the Board was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15.

Upon the filing of the said appeal an order was entered by the Director extending the term of the 1969-70 license then held by the appellant pending the determination of this appeal and the entry of a further order herein.

This is an appeal de novo based upon the transcript of the proceedings before the Board, together with additional testimony presented at this hearing, pursuant to Rules 6 and 8 of State Regulation No. 15.

My examination of the transcript of the proceedings before the Board reveals the following: The Newark Police Department through its Deputy Chief Critchley submitted a report to the Board wherein it recommended disapproval of appellant's renewal application due to the fact that during 1969 "there were 16 arrests on various charges, A A & B, Possession of narcotics, creating hindering investigations, loitering, traffic warrants and so forth either at this address or in the vicinity of this location, and during 1970 there have been five arrests made at this direct location [at these premises]". The report further notes that on October 24, 1969 there was an incident which resulted in a charge of atrocious assault and battery. In 1970 there were two incidents resulting in arrest. The report concludes:

"Due to the fact that over the past year police have responded to more than 30 calls at this location and the fact that it is a known hangout for addicts and loiterers which congregate directly in front of said tavern, it is felt this tavern is detrimental to the entire community."

Captain Critchley testified that he has received many complaints from various residents about the operation of these premises and has found a lack of cooperation by the licensee. In his opinion this is a trouble spot and a public nuisance.

Reverend Vincent J. Prestera, the pastor of the parish in which these premises are located testified that he is personally familiar with these premises and knows that it attracts many "narcotic pushers". He asserted that many users of narcotics congregate in this tavern and he has received complaints from many members of his congregation that these premises are, indeed, a trouble spot. He has seen narcotic addicts not only patronizing these premises but frequently congregating on the outside of the premises. The tavern is located opposite a community center connected with the Columbus Homes Project, and it is also located near a school. Many persons fear to walk past the tavern because they are harrassed by persons loitering in front of the tavern. His testimony was substantially corroborated by Mrs. Eloise Stevenson, a social worker employed by the Newark Housing Authority, assigned to the Columbus Homes area.

Mrs. Rosalie Gray, a resident of that area, testified that she has frequented this tavern and has seen drug addicts in the bar area, using narcotics and "... they pass the stuff there inside the bar." She is the president of the Tenants Organization of the Columbus Homes and has occasion to pass these premises practically every day. She noted that these drug addicts congregate outside the premises.

Mrs. Margaret Stewart added that "there are too many teenagers out there, and the music and the noise [are heard]

throughout the night." She has frequently called the Police Department because of the conditions both in and outside the premises. Finally she felt that the premises do not create "a good atmosphere for the children in the area."

Reverend Herbert Draesel also corroborated the above testimony and asserted that this tavern "seems to be the one with the most trouble" of any of the taverns in the area.

Abdulla Suddek testified that the problem is particularly acute around the first of the month when people get their checks; "they are scared to come in the area to cash their checks because the drug addicts are there." He added that many young people hang around these premises, "You cannot walk down the sidewalk, because they stand there. You know, people are scared."

Frank C. Weston, the principal stockholder and officer of the appellant licensee, testified that this license was acquired by the appellant in April, 1969. He insisted that there were never any arrests made in these premises or any warning given to him by the Police Department. He tried to discourage narcotic addicts from patronizing his facility and refused to serve them. When narcotic users would come into the bar he insisted he only served them water.

On cross examination, he admitted that when he first started the operation of these premises narcotic users would come in frequently but that he would discourage them from patronizing this establishment. He also tried to discourage people from congregating outside the premises and put a sign on the outside of the premises stating "No Loitering - Police Department." He has frequently made complaints to the police about the loitering of people outside the premises. Finally he admitted that there were incidents as testified to by Captain Critchley involving several atrocious assault and battery charges, and that he was present during these occasions.

Suzi Weston, his wife, testified that she was never present when any of the incidents involving fights or disturbances took place, and she has not had any trouble with any of the patrons in the establishment. Finally she admitted that there are a lot of drug addicts in the general neighborhood because of the housing project located across the street which houses some of these drug addicts. However, if they came into the premises they were not served any alcoholic beverages.

From my evaluation of the entire record, it is abundantly clear that this facility is a hangout for drug addicts and other troublesome patrons. It was also made clear that the patrons of this tavern frequently congregated outside the premises and are a source of annoyance and trouble to the local residents.

The licensee is responsible for the conditions both in and outside the licensed premises which are caused by patrons thereof. Conte v. Princeton, Bulletin 139, Item 8. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1.

In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is

the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. See Nordco, Inc. v. State, 43 N.J. Sup. 277; R.S. 33:1-24, 38. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest". Lubliner v. Paterson, 33 N.J. 428, 446 (1960). A renewal license is in the same category as an original license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

The broad question posed before the Board on the subject application for renewal was whether, in the light of all the surrounding circumstances and conditions, it was good for Newark and the neighborhood involved, for this tavern to continue to exist at this particular location at all. The objective judgment of the Board was that its continuance would be inimical to the public interest and the immediate neighborhood.

The Director's function on appeal 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 view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Indeed, as the court stated in Lyons Farms Tavern, Inc. v. Newark et al., 55 N.J. 292 (1970):

"... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

See Hudson-Bergen County Retail Liquor Stores Association et al. v. Hoboken, et al., 135 N.J.L. 502, 511 (1947).

I conclude that the determination of the Board was supported by substantial evidence presented in the whole of the record, and that it exercised its discretion circumspectly and in the best interests of the community in refusing to renew appellant's license for the current licensing year.

It is, therefore, recommended that the Board's action in denying appellant's application be affirmed, and the appeal herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's Report, with supportive argument, were filed by the attorney for appellant pursuant to Rule 14 of State Regulation No. 15.

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

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the argument of counsel, the Hearer's report and the exceptions thereto,

I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 29th day of January 1971,

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

ORDERED that my order of June 25, 1970, extending the term of appellant's 1969-70 license pending the determination of the appeal, be and the same is hereby vacated, effective immediately.

RICHARD C. McDONOUGH
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Nick Talley, Inc.)
t/a Nick Talley's Bar)
12 N. Missouri Avenue)
Atlantic City, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-188, issued by the Board of Commissioners of the City of Atlantic City.)

Wilinski, Coruzzi & Suski, Esqs., by Robert Wilinski, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers days during October and November 1970 it permitted the acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Although licensee corporation has no previous record of violations, licenses held by Nicholas Talvacchia, president and holder of seventy per cent. of its stock, were suspended as follows: for premises 147 South Texas Avenue, Atlantic City, by the municipal issuing authority for ten days effective May 9, 1949 for sale to minors, and for premises 112 S. Georgia Avenue, Atlantic City, by the Director for (a) one hundred twenty days effective November 2, 1964 for permitting solicitation for prostitution (Re Talvacchia, Bulletin 1594, Item 1; Bulletin 1600, Item 1), and (b) thirty-five days effective November 28, 1968 for permitting hostess activity (Re Talvacchia, Bulletin 1833, Item 4).

The prior record of suspensions of licenses of Nicholas Talvacchia for dissimilar violations in 1949 and 1964 occurring more than five years ago disregarded, but considering

the record of suspension of license of Nicholas Talvacchia for dissimilar violation in 1968 within the past five years, the license will be suspended for sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days. Re Gajewski, Bulletin 1742, Item 4.

Accordingly, it is, on this 16th day of February 1971,

ORDERED that Plenary Retail Consumption License C-188, issued by the Board of Commissioners of the City of Atlantic City to Nick Talley, Inc., t/a Nick Talley's Bar, for premises 12 N. Missouri Avenue, Atlantic City, be and the same is hereby suspended for sixty (60) days, commencing at 7 a.m. Monday, March 1, 1971, and terminating at 7 a.m. Friday, April 30, 1971.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
New Ritz Lounge, Inc.
493 Springfield Avenue
Newark, N. J.
Holder of Plenary Retail Consumption License C-330, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
and
ORDER

A. William Sala, Jr., Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 21, 1970 it possessed alcoholic beverages in nineteen (19) bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a prior record of suspension of license by the municipal issuing authority for forty days effective July 27, 1964, for permitting gambling (numbers). This 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. Cf. Re Melchiorre, Inc., Bulletin 1478, Item 3.

Accordingly, it is, on this 16th day of February 1971,

ORDERED that Plenary Retail Consumption License C-330, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to New Ritz Lounge, Inc., for premises 493 Springfield Avenue, Newark, be and the same is hereby suspended

for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, March 2, 1971, and terminating at 2:00 a.m. Monday, April 26, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

Margaret G. Manson, Inc.)
t/a The Cobblestones)
1170 Bloomfield Avenue)
West Caldwell, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-2, issued by the Mayor and)
Council of the Borough of West)
Caldwell.)

Licensee, by Margaret G. Manson, Secretary-Treasurer, Pro se
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 22, 1970 it possessed alcoholic beverages in twelve bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days. Re Hausner, Bulletin 1779, Item 10.

Accordingly, it is, on this 16th day of February 1971,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of West Caldwell to Margaret G. Manson, Inc., t/a The Cobblestones, for premises 1170 Bloomfield Avenue, West Caldwell, be and the same is hereby suspended for thirty-five (35) days, commencing at 2 a.m. Tuesday, March 2, 1971, and terminating at 2 a.m. Tuesday, April 6, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Forest Inn, Inc. t/a Forest Inn Williamstown Road Winslow Township PO Sicklerville, N. J. Holder of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Winslow.

CONCLUSIONS and ORDER

Joseph Mennite, Esq., Attorney for Licensee Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 11, 1970 it sold a case of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of two suspensions of license by the municipal issuing authority -- one for ten days effective September 30, 1968 for sales during hours prohibited by State regulation, and the other for forty days effective September 8, 1970 for sales to minors and during hours prohibited by State regulation.

The prior record of suspension for similar violation within the past five years considered, the license will be suspended for twenty-five days (Re Casey's Inc., Bulletin 1839, Item 13), to which will be added five days by reason of the record of the suspension of license for dissimilar violation within the last five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), 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 16th day of February 1971,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Winslow to Forest Inn, Inc., t/a Forest Inn, for premises Williamstown Road, Winslow, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, March 1, 1971, and terminating at 2 a.m. Friday, March 26, 1971.

RICHARD C. McDONOUGH DIRECTOR

7. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FRONT - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)	
)	
Ev-Mar Corporation)	CONCLUSIONS
t/a Cabana Club)	and
22 Hamilton Street)	ORDER
Paterson, N. J.)	

Holder of Plenary Retail Consumption License C-190, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

 LaDuca & Ivler, Esqs., by Anthony R. LaDuca, Esq., Attorneys
 for Licensee
 Walter H. Cleaver, 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. In your application filed with the Board of Alcoholic Beverage Control for the City of Paterson on June 10, 1969, upon which you obtained your current plenary retail consumption license, in answer to Question No. 21 you listed Eugene Dorobkowski, as the holder of 100% of your corporate stock and falsely stated 'No' in answer to Question No. 22 which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact said Eugene Dorobkowski was not the real and beneficial owner of said shares of stock listed in his name in that under terms of a lease agreement executed June 10, 1969, between Torres Enterprises Corporation as 'Landlord' and you and said Eugene Dorobkowski as 'Tenants', said Torres Enterprises Corporation acquired such interest in that said Torres Enterprises Corporation became and continues to be the real and beneficial owner of all said shares of stock listed in the name of Eugene Dorobkowski; said false statements, misrepresentations and evasions and suppression of material facts being in violation of R.S. 33:1-25.
- "2. In your aforesaid application you falsely stated 'No' in answer to Question No. 29 which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for in the business to be conducted under said license?', whereas in truth and fact

Torres Enterprises Corporation had such an interest in that it was the real and beneficial owner of said license; such false statement being in violation of R.S. 33:1-25."

In support of the charges, the Division offered the testimony of two ABC agents.

Agent C testified that, accompanied by Agent S, he visited the licensed premises on October 7, 1969 and interviewed Eugene Dorobkowski, who was listed in licensee's license application as the 100% stockholder, president and treasurer of the corporation licensee. Dorobkowski revealed that he had purchased the stock of Ev-Mar Corporation in June of 1969 for the sum of one dollar. The agent was informed by Dorobkowski that he could not locate the account books of the income and disbursements, because the previous manager of the premises, who had access to the records was not in the premises at the time.

He did not keep a business checking account or an employees list. Purchases were paid for cash on delivery. The only cash records were the cash register tapes.

On November 26, 1969, Dorobkowski, accompanied by his attorney, appeared at the Division offices and revealed to Agent C that the corporate licensee had entered into an agreement dated June 10, 1969 with the landlord, Torres Enterprises Corporation, for the rental of the premises and the purchase of the stock which reads, as follows:

"The landlord agrees to lease the premises located at 22 Hamilton Street, Paterson, New Jersey, in which there is presently a bar and restaurant, to the tenant, on a month to month basis, at Three Hundred Seventy-five (\$375.00) Dollars per month, payable in weekly installments.

Either party may terminate the lease on Thirty (30) days notice to the other party by certified letter.

The landlord further agrees to take whatever steps that may be necessary to have the tenant acquire all of the issued stock in the Ev-Mar Corporation which is the present license holder of License #C-190; and the consideration for the purchase of said stock shall be One (\$1.00) Dollar, payable to the transferor.

The landlord further represents that the present tenant of the property has defaulted on a lease agreement and is thereby obligated to return all of the capital stock in his possession.

The tenant further agrees that after the issuance of his capital stock he will deposit same in escrow with the landlord as security for the faithful performance of this agreement and that he will be personally responsible to return the premises and fixtures to the landlord in the condition in which it was received, reasonable wear and tear accepted.

In the event there is a default by the tenant, the landlord shall be empowered to transfer the

capital stock held in escrow on Ten (10) days notice to the tenant and the tenant shall vacate the premises upon receipt of said notice."

On November 26, Dorobkowski also revealed that he was employed by Bell Telephone Company and also by a credit company. A Mrs. Lambert (first name unknown), who had been in the employ of the previous stockholders of the corporate licensee, managed the business conducted by the corporate licensee.

The income and disbursements sheets which he produced on November 26 were prepared by him approximately two weeks prior thereto and were dated back to the time that he first came into control of the corporate licensee. He listed the starting capital as \$1,815. He did not account for the source of the said sum of \$1,815.

Dorobkowski was aware of the fact that, in the event of a default, the stock would revert to the landlord and he would lose his original investment.

On cross examination, Agent C conceded that he did not recall asking Dorobkowski whether or not he had the right to transfer the stock of the corporate licensee or to transfer the license. He admitted that Dorobkowski informed him that the starting capital was provided by him from his own personal funds, none of which was borrowed; that he had a savings account and a checking account, and that he had been in the clothing business prior to operating the licensed premises. There were five changes in stockholders of the corporate licensee in the past two years.

Except for the fact that Agent S was not certain of the date that Dorobkowski and his attorney appeared at the Division offices with the lease agreement hereinabove set forth, it was stipulated that his testimony would be similar to the testimony offered by Agent C.

In behalf of the licensee, J. George Ivler, an attorney at law of the State of New Jersey, a law partner of the attorney for the licensee, and an officer of the corporate landlord, Torres Enterprises Corporation, testified that he drew the agreement between the landlord and the licensee, hereinabove incorporated in full. He asserted that the circumstances leading to the drawing of the agreement was as follows: The establishment had not been profitable for the past five years. Anthony Sorce who had assumed 100% ownership of the stock of the corporate licensee in the early part of 1969, voluntarily surrendered the premises and the capital stock in May, 1969 to the landlord in his (the witness') office. Thereafter, in a matter of days, Dorobkowski agreed to take all of the stock from Sorce.

The clause concerning the fixtures was included in the agreement of June 10, 1969 because the landlord owned all of the fixtures. The clause providing for the landlord to hold the stock in escrow was included because Dorobkowski was unable to provide a security deposit. However, Dorobkowski was not prevented from assigning the license, nor was he prevented from assigning the stock of the corporate licensee.

On cross examination, the witness testified that he

held the stock in escrow for a period of less than a month prior to turning it over to Dorobkowski.

Upon examination by the Hearer, Ivler asserted that the stock is no longer held in escrow by the landlord corporation. Dorobkowski had the stock at the time that he appeared in the Division offices in November, 1969, and he still has the stock. The agreement is no longer in effect. The tenancy is presently month-to-month, with the rent being paid monthly, and not weekly. The corporate licensee has full control of the stock.

Agent S recalled, testified that on November 26, 1969, he heard Dorobkowski assert that Ivler had the stock in his possession at that time.

In rebuttal, Ivler conceded that on November 26 he did admit that during the period of the investigation, he had possession of the stock for a short period of time.

Upon being questioned by the Hearer, relative to the date that the stock was issued, Ivler testified:

"The stock was issued June 10, your Honor, I didn't have the stock in my possession until the first time (agent S) and the other gentleman came for the investigation. Subsequent thereto I obtained the stock, and I don't think I had possession of it for even a month, and after the hearing in November I returned the stock to Mr. Dorobkowski."

It is apparent that the major point of inquiry is factual. In this case, as in all disciplinary proceedings, the Division has the burden of proving the truth of the charges by a preponderance of the evidence. Although the circumstances here may justifiably arouse suspicion, nonetheless, a conviction cannot be based on mere suspicion. Inasmuch as it is my view that the Division has failed to meet the burden of proving licensee's guilt by a preponderance of the credible evidence, I recommend that the licensee be found "not guilty", and that the charges be dismissed.

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

Accordingly, it is, on this 5th day of February 1971,

ORDERED that the charges herein be and the same are hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - ORDER STAYING SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

Elmora Liquors, Inc.)
t/a Old Colony Wine & Liquor Store)
611-613 Westfield Avenue)
Elizabeth, N. J.)

O R D E R

Holder of Plenary Retail Distribution)
License D-5, issued by the City)
Council of the City of Elizabeth.)

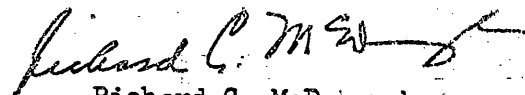
Margulies and Kochanski, Esqs., by Philip Margulies, Esq.,
Attorneys for Licensee
Francis P. Meehan, Esq., Appearing for Division

BY THE DIRECTOR:

Application has been made in the above matter for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Good cause appearing, it is, on this 22nd day of February 1971,

ORDERED that the suspension heretofore imposed upon Plenary Retail Distribution License D-5, issued by the City Council of the City of Elizabeth to Elmora Liquors, Inc., t/a Old Colony Wine & Liquor Store, for premises 611-613 Westfield Avenue, Elizabeth, for fifteen days, effective 9:00 a.m. Wednesday, February 24, 1971, be and the same is hereby stayed until entry of a further order herein.


Richard C. McDonough
Director