

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

February 5, 1968

BULLETIN 1777

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE OF NARCOTICS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - LICENSE REVOKED.
2. APPELLATE DECISIONS - LYONS FARMS TAVERN, INC. v. NEWARK.
3. DISCIPLINARY PROCEEDINGS (South Hackensack) - GAMBLING (NUMBERS BETS) - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 85 DAYS.
4. DISCIPLINARY PROCEEDINGS (Long Branch) - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Phillipsburg) - ORDER REIMPOSING SUSPENSION STAYED DURING PENDENCY OF APPEAL.
6. DISCIPLINARY PROCEEDINGS (Montville) -ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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

February 5, 1968

BULLETIN 1777

1. DISCIPLINARY PROCEEDINGS - SALE OF NARCOTICS - SALE  
IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR  
SIMILAR RECORD - LICENSE REVOKED.

In the Matter of Disciplinary )  
Proceedings against )

Smithpaul Corporation )  
273 Grand Street )  
Jersey City, N. J. )

Holder of Plenary Retail Consumption )  
License C-117 issued by the Municipal )  
Board of Alcoholic Beverage Control )  
of the City of Jersey City )

CONCLUSIONS  
AND ORDER

-----  
Louis E. Saunders, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic  
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on divers dates between December 20 and 31, 1966, its principal stockholder offered to sell and sold narcotic drugs (marihuana) to patrons on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) on December 17 and 23, 1966, it sold on each occasion a four-fifth quart of Scotch whisky for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for one hundred thirty-seven days effective February 14, 1967, for possession of numbers slips, possession and sale of marihuana and sale of alcoholic beverages to a minor.

In view of the serious social consequences resulting from the commercialized traffic in narcotics, the nature of the first charge considered, as well as the prior record of suspension for similar violation, the only proper penalty is outright revocation of the license. Re Gnewcenski, Bulletin 1722, Item 1.

Accordingly, it is, on this 18th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-117, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Smithpaul Corporation for premises 273 Grand Street, Jersey City, be and the same is hereby revoked, effective immediately.

JOSEPH P. LORDI  
DIRECTOR

2. APPELLATE DECISIONS - LYONS FARMS TAVERN, INC. v. NEWARK.

Lyons Farms Tavern, Inc., )  
 Appellant, )  
 v. )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City )  
 of Newark, )  
 Respondent. )

ON APPEAL

CONCLUSIONS  
AND ORDER

-----  
 Rocco F. Senna, Esq., Attorney for Appellant  
 Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney  
 for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the denial by respondent of appellant's application for a place-to-place transfer of appellant's plenary retail consumption license so as to include a thirty-foot addition to be constructed and attached to the rear of appellant's present licensed premises now known as 368 Clinton Place, Newark.

Appellant alleges in its petition of appeal that the action of respondent in denying appellant's application was arbitrary, capricious, an abuse of discretion and improperly motivated.

Respondent's answer denies the aforesaid allegations contained in the petition of appeal and contends that the denial was "based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the application for a transfer be denied."

The reasons given by respondent for its action, as announced by its secretary, were: "after considering and evaluating all the evidence produced by all parties, and in consideration of the general welfare of the neighborhood and in the exercise of their sound judgment and discretion, denied the application unanimously by a 3 to 0 vote."

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings before respondent was marked in evidence, and further testimony was presented by appellant in accordance with Rules 6 and 8 of said regulation.

The transcript of the proceedings held before respondent discloses that a number of witnesses announced that they spoke in behalf of civic associations organized for the welfare of the community and who had filed written objections to the transfer in question. The objections voiced by these witnesses were substantially similar and to the effect that the proposed arrangement was undesirable and would not only enlarge the premises and invite new patrons, but also would create a separate package store in addition to the tavern as it exists at present;

that appellant has erected a very large sign on the property which, as one witness asserted, "the applicant put a huge garish sign on the property, about two and half feet high, creating a honky-tonky area."

Leo J. Zucker, an attorney appearing on behalf of Newark Beth Israel Hospital located on Lyons Avenue, testified that, speaking for the hospital, he concurred in the objections advanced by the objectors and was apprehensive that the expansion of the licensed premises would not "inure to the benefit of the community." However, Mr. Zucker said that he was never in appellant's tavern and to his knowledge there had never been any specific objections to the manner in which the place had been operated but, nevertheless, "we feel there may be side effects from such an operation." Mr. Zucker also stated that in his opinion the appearance of the "gaudy signs" is hardly conducive to the area's character.

Petitions containing names of objectors to the transfer were filed, some of which were by persons living in the area.

Two witnesses testified in favor of the transfer to include the proposed addition. The said witnesses said that they had patronized appellant's premises and that the patrons whom they had observed were respectable people and that the place was operated in an orderly manner.

Alex Neu, secretary and treasurer of appellant, testified that, in accordance with plans submitted with the application, the proposed addition will extend the length of the building on Lyons Avenue thirty feet; that more space is necessary to properly serve the increase in patrons; that the present bar will be prolonged so as to "run almost the full length of the entire new premises;" that there are parking facilities to accommodate twenty-five to thirty cars; that there are at present several signs, one which reads "Lyons Farms Tavern", another "Parking in rear", another which reads "We sell liquor to take out" and one which says "Bar"; that he had no knowledge of neighborhood antagonism because of the erection of the large sign which, he agreed, was larger than other signs in the neighborhood. However, because of objection to this sign, he will have it removed.

Alex Neu further testified that the licensed premises has no juke box, cigarette machine, shuffle alleys or pool table, and it will continue to operate without any of these accessories. Moreover, there are other mercantile businesses located on the north side of Lyons Avenue between appellant's licensed premises and Irving Avenue where the hospital property begins. It was conceded by the attorney for the respondent that the appellant's premises are located in an area zoned for business.

Louis Neu, registered agent for appellant corporation, testified that, although at this time he does not participate in the operation of the licensed premises, he has been in the tavern business since 1934. Louis Neu further stated that there were never any complaints concerning the method of operation of the tavern, nor for improper parking in the vicinity thereof.

Since one of the objections questioned the legality of the proposed interior arrangements, it might be advisable to comment briefly concerning same. R.S. 33:1-12.23 defines a "public barroom" as follows:

"...such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or

other open receptacle for consumption on the licensed premises...."

In Coral Lounge and Cocktail Bar, Inc. v. Hock, 5 N.J. Super. 163, Judge Colie stated "...it seems clear to us that a barroom means that portion included within the four walls of the room in which the bar is located." Judge Schettino said in Passaic County Retail Liquor Dealers' Association v. Board of Alcoholic Beverage Control for the City of Paterson, et als., 37 N.J. Super. 187, "True, each application must be considered in the light of the plans and other specific facts presented."

An examination of the floor plan of the interior of the premises submitted herein indicates appellant's compliance with the requirement of the statute (R.S. 33:1-12.23) that the sale or display of alcoholic beverages in original containers for off-premises consumption will be exclusively in the public barroom. The public barroom will be completely unobstructed by any objects or partitions.

The plan of the interior of the premises, as submitted, shows the entire licensed premises to be one large room with a bar, and shelving which is to contain various package goods. Other than the length of the bar, no question had been raised as to the bona fide nature of the bar itself.

I have carefully considered the floor plans of the interior of appellant's licensed premises, and am satisfied that it will constitute a "public barroom" within the meaning of the statute in question. See Totowa v. Chicken Barn, Inc., 41 N.J. Super. 459 (App. Div. 1956), sustaining Division's reversal of a municipal denial of an application to enlarge a barroom to provide greater area for the sale and display for sale of package goods. Consequently I find that the objections herein with reference to the barroom were improperly grounded and therefore erroneous. See South Jersey Retail Liquor Dealers Assn. v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940).

One of the principal objections made was that the enlargement of the licensed premises would tend to attract a greater volume of business to appellant's establishment. In Bivona v. Hock, 5 N.J. Super. 118, reprinted in Bulletin 860, Item 1, the court stated, with reference to the place-to-place transfer of a plenary retail consumption license to larger premises located across the street from its then location, that an objection that the new premises would be more attractive for business could not be accepted as a reason for denying a transfer of the license in the immediate area where it formerly existed.

There is no testimony that the said transfer would aggravate the number of licenses in the area as it is only intended to construct a building to extend the size of the premises which are already licensed. There are many rulings by the Division, and the courts on appeal, wherein the transfer of liquor licenses to a larger premises or to a premises in the immediate area have been consistently upheld. See Smith et als. v. Newark and Black, Bulletin 1481, Item 2; Union County Retail Liquor Stores Association v. Elizabeth and Miller and Cooperstein, Bulletin 886, Item 2; also Bivona v. Hock, supra; Piccirillo v. Lyndhurst, Bulletin 1578, Item 2, affirmed sub. nom Moderelli and Lyndhurst v. Piccirillo, App Div. 1966, not officially reported, recorded in Bulletin 1662, Item 1; Bomwell v. Newark, Bulletin 1639, Item 1, affirmed App. Div.

1966, not officially reported, recorded in Bulletin 1667, Item 1; L. Kubisky Inc. v. Paterson, Bulletin 1662, Item 2.

The testimony presented in this case by those in opposition to the transfer is merely conjecture on the part of said objectors, that, if the extension to the building was permitted, the premises will be improperly operated. However, over the years that the appellant has been operating at the present location he has never been charged with any violation at any time whatsoever.

Under the facts and circumstances appearing herein, it is my opinion that respondent's denial of appellant's application for the place-to-place transfer in question was unreasonable, arbitrary and an abuse of discretion. I therefore recommend that its action 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, including the transcripts, the exhibits and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 18th day of December, 1967,

ORDERED that the action of the respondent be and the same is hereby reversed; and it is further

ORDERED that the respondent transfer appellant's license to include as part of its licensed premises the addition thereto when completed in accordance with the plans submitted with appellant's application.

JOSEPH P. LORDI  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 85 DAYS.

In the Matter of Disciplinary Proceedings against )

Patty's Umbrella Lounge, Inc. )  
410 U.S. Highway 46 )  
South Hackensack )  
PO Hackensack, N. J. )

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of South Hackensack. )  
----- )

CONCLUSIONS  
AND ORDER

John J. Cariddi, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On January 7 and 11, 1967, 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 both of said dates, and the making and accepting of bets on horse races on said date of January 11, 1967; in violation of Rule 7 of State Regulation No. 20.

"2. On January 7 and 11, 1967, 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.

"3. On January 11, 1967, while Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises; you, through officers, directors, stockholders and agents, servants and employees of your corporation and other persons in your behalf, failed to facilitate and hindered and delayed and caused the hinderance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35."

The Division offered the testimony of four ABC agents in substantiation of the charges.

Agent C (who possessed ample experience in gambling investigations, including horse racing and numbers betting) testified that, pursuant to specific assignment to investigate an allegation of gambling, he visited the licensed premises on January 7, 1967, accompanied by Agent D. Both agents entered the licensed premises (described as containing "a large bar to the left side as you come in, and there's an adjoining dining room section to the right side; numerous tables and chairs. Kitchen to the far rear of that side"), and positioned themselves at the center of the bar. One of the patrons was a male known as "Bob." Bob had been seen tending bar on an occasion previous to January 7, 1967. Tending bar was a male identified as John Cerbo. A half-hour later, upon being relieved by a Joseph Alessandro, Cerbo positioned himself on the patron's side of the bar. A male known as Pasquale Vasterino (a fifty percent stockholder and the president of the licensee corporation) was observed to enter the licensed premises.

After hearing Bob (who was seated to the right of the agent) inform an unidentified male patron that he had played a number that day, the agent asked Bob what number he played. Bob responded that he played No. 714. The agent called John Cerbo who was walking past at that time. Cerbo stopped. The agent then testified as follows:

"I told John Cerbo as long as Bob was playing that number 714 'It sounds pretty good. I would like the same number for \$2 straight and a quarter combination.'"

The total bet amounted to \$3.50. C handed Cerbo a five-dollar bill and fifty cents change. Cerbo repeated the bet, took a sheet of paper out of his pocket, and noted the bet thereon and said, "That's three-fifty, right?" Cerbo handed C \$2 change. C described the transaction as a numbers bet. The agents departed from the premises at approximately 1:30 p. m.

Referring to the date of January 11, 1967, ABC agents C, D, G, Co and two detectives connected with the Bergen County Prosecutor's Office participated in the investigation of the gambling charges. C had in his possession a marked \$5 bill and four \$1 bills and a horse bet slip, and D had in his possession two \$1 bills and a numbers bet slip.

C and D entered the licenses premises at approximately 12:30 p. m. and placed themselves "to the center of the bar". At that time there were approximately eight or ten patrons in the premises. Seated to the right and next to each other, approximately ten to fifteen feet away and in that order, were Cerbo, Vasterino and Alessandro. After going into the kitchen to prepare sandwiches for the agents, Vasterino returned to his position at the bar between Cerbo and Alessandro. C left his position at the bar and placed himself between Vasterino and Cerbo. The testimony proceeded as follows:

"Q Did you ask him Cerbo anything?

A I asked him if he had a scratch sheet today. He says he didn't have any. 'Do you want to play them or what?' I said, 'Well, I wanted to look at the odds. But if you haven't got a sheet, then I'll just put them in as they are.' I gave him the horse slip and \$9, five and four ones, and he placed in his left pants pocket.

Q Now, what money did you give him?

A Marked money. This money was prerecorded before we entered the premises."

At the time of this occurrence Alessandro was seated to Vasterino's right and Cerbo was positioned to Vasterino's left. C moved away from his position between Cerbo and Vasterino and D replaced C in a position between Cerbo and Vasterino. When queried as to whether or not he heard or observed any transaction among them C replied:

"Yes. He asked Mr. Cerbo if he can play -- 'Is it all right to play these numbers for today?' Cerbo replied 'Yes.' He then gave him the slip. At this time Agent D had taken out his number slip, consisting of three number bets totaling \$2, presented it to Mr. Cerbo, who accepted the bets and placed the slip and the money in his left pants pocket."

Vasterino was seated next to Cerbo at the time of this transaction. Alessandro was in the same place, to the right of Vasterino. C and D resumed their original positions at the bar upon the completion of the transactions.

At approximately 1 p. m., and after D made a telephone call, Agents G and Co, accompanied by the two detectives, entered the licensed premises. C and D "then went to the corner of the bar where Mr. Cerbo and Mr. Vasterino were seated. We showed our credentials." They were then joined by G and Co who "also identified themselves; also, Bergen County Detectives did likewise." After identifying themselves, Cerbo was requested to accompany the agents to the "far dining room section." Vasterino was with the group leaving the bar. Enroute to the dining room section, Cerbo was observed taking two slips ("maybe notebook-size paper; three-by-four dimension") exactly the same size as the slips that had been photostated and admitted into evidence as

Exhibit D-4, from his pocket, stuff them in his mouth and chewing them. The ABC agents tried to prevent Cerbo from consuming the slips of paper. Vasterino shouted to patrons at the bar, "Hey, they're jumping John. They're on top of John." Five or six males joined the agents, "there was quite a bit of yelling and hollering and screaming as to what we were doing, and there was pushing and shoving and whatnot." At this point the testimony revealed the following:

"Q When these people came up, you said at that particular point you and the other agents were trying to get the slips out of Cerbo's mouth?

A Yes, sir.

Q Now, when these people came, what were your actions? What did you concentrate on?

A Well, this threw our concentration off Mr. Cerbo and he was able to consume the slips.

Q Did he consume them?

A Yes, sir.

Q While he was consuming them what were you and the other agents doing?

A We were pushing off all these males that interfered with the investigation."

C told Vasterino (who was in the group) "You better stop these guys from entering the investigation or you're going to be charged."

The melee "continued for a few more minutes" until Vasterino called out "to cut it out" and, "after a few seconds or so, they all returned to the bar and a few of them departed the premises." Upon request, Cerbo opened his mouth. He had nothing in his mouth. Pursuant to the request of the detectives, Cerbo emptied his pockets and the \$11 marked money was found therein.

Despite an intense and extensively detailed cross-examination, the agent's testimony remained substantially unchanged.

Referring to the date of January 7, 1967, the agent admitted that he could not state that Vasterino was within hearing distance of any conversation that he (the agent) may have had with any other person. The agent did not see Bob or the other gentleman actually place a bet with Cerbo. He did not ask Bob with whom he had placed the bet.

Referring to the date of January 11, 1967, he did not obtain the names of the patrons who participated in the altercation, nor were any arrests made.

Agent D, who also had acquired ample experience in gambling investigations, including horse and numbers betting, testified that he accompanied C in the investigation of the licensed premises on January 7, 1967. He corroborated C's testimony as to C betting the sum of \$3.50 on the number 714 with John Cerbo.

Referring to the date of January 11, 1967, D corroborated C's testimony concerning the preparations of the \$11 in marked money and the horse bet and numbers bet slips. D had in his possession the numbers bet slip and two \$1 bills in marked money at the time the agents

entered the licensed premises. C had in his possession \$9 in marked money and the horse bet slip. Upon entering the barroom they placed themselves at "approximately the center of the bar." Alessandro, Vasterino and Cerbo were grouped together at the far end of the bar, approximately ten or twelve feet distant. C left his position at the bar and gave Cerbo what appeared to him "to be a slip and money." D proceeded to where C was standing, and the questioning then revealed the following:

"Q Tell us what you did.

A I asked Cerbo if he--well, I had said that I have three numbers for today. I says, 'Can you take them?' He said, 'Sure. Give them to me.'

Q Go ahead. Tell us what happened.

A Then I gave him the slip and he looked at it and he says, 'Okay.' He says, 'That's two dollars.' I gave him the two dollars and with that I returned back to the position at the bar."

The slip referred to by the agent had been received in evidence as Exhibit D-4. At the time of this alleged transaction, Cerbo, Vasterino, Alessandro and C were grouped at the bar.

ABC Agents Co, G and the two detectives entered the licensed premises at 1 p. m. in response to a telephone call made by D. Thereupon the agents identified themselves to Cerbo, Vasterino and Alessandro who were still grouped at the bar. At the agents' request Cerbo proceeded into the restaurant area (a distance of fifteen or twenty feet) for questioning. Vasterino joined the group. In the restaurant area Cerbo put paper in his mouth and "began chewing it as fast as he could and we tried to restrain him from doing so." At this point the questioning proceeded as follows:

"Q Instead of saying restrain, tell us what you did.

A We held his hands or I held his hands, along with the other agents, to try to stop the attempt of him putting it in his mouth.

Q Continue.

A Well, at this point here it became a little shuffle and everyone was holding one another. I was holding John Cerbo to stop him from chewing, as other agents did, and Mr. Vasterino stated out or yelled out to the bar to come and help John, and other patrons at the bar then entered this section of the restaurant and then it became a lot of shoving and pushing and grappling.

Q Were you able to retrieve the material that Cerbo had put in his mouth?

A No, sir.

Q Why not?

A It just couldn't be found.

Q Well, was there anything that prevented you from obtaining it?

A That he ate it.

Q What was that?

A I believe that he ate it.

Q Did you or any of the other agents say anything to Mr. Vasterino about his calling those people or about the scuffling?

A Well, to stop it.

Q Who said anything to him?

A I believe it was Agent C.

Q What did he say?

A That he was going to charge him with hindering if he didn't stop the interfering by the patrons."

On cross-examination the witness admitted that Vasterino had gone into the kitchen and restaurant area at the time that the alleged gambling with Cerbo took place in the barroom on January 7, 1967.

Referring to the occurrences of January 11, 1967, D admitted that he did not hear what C said to Cerbo although he saw paper and money being passed. Concerning the numbers betting activity engaged in by D with Cerbo (who was seated next to Vasterino at that time), D testified as follows:

"Q But he Vasterino didn't know what you were doing there or what you said; is that right?

A I believe he heard what I said.

Q Well, you don't know that, do you?

A No, sir."

On redirect examination D testified that Vasterino was not personally involved in the scuffle and that he (Vasterino) "was in the restaurant section during this scuffle and when I saw him he was on the fringe of the grappling and scuffling."

Agent G participated in the investigation of the licensed premises on January 11, 1967. Together with ABC Agent Co and two detectives of the prosecutor's office, he entered the licensed premises on that day at approximately 1 p.m. He observed C and D seated "about the center of the bar" and Cerbo, Vasterino and Alessandro seated at the far end of the bar. After the agents identified themselves, the group, including Cerbo and Vasterino, walked to the rear room. The testimony proceeded as follows:

"Q Tell us what happened.

A I put my finger in his Cerbo's mouth and he bit my finger. And at this time Mr. Pasquale Vasterino, who was just by the partition there near the phone booth, he called out to some fellows at the bar, 'Let's help John. Let's give him a hand.' Something to that effect. At this time approximately five males came to the back room. There was some shoving and pushing, kicking.

Q What did these five men do?

A They tried to harm us. Well, pull us off of John Cerbo and there was a lot of commotion and the reason for this was because of Mr. Pasquale Vasterino calling these males into the back room.

Q What, if anything, did you see Mr. Vasterino do during the time these five men were doing what you said they were doing?

A I believe he stood right where he was more or less directing these males to our position.

Q Did you or any of the other agents say anything to him about this?

A Yes. After it was all over we stated that it was his fault because it wouldn't have happened if he hadn't called these males in and tried to help Mr. Cerbo.

Q Did he make any answer to your accusation?

A No, he didn't say anything."

On cross-examination the agent testified that no bet slips were found in the licensed premises. The marked money was found in Cerbo's possession.

The testimony of Agent Co, who accompanied G and the two detectives to the licensed premises on January 11, 1967, was basically corroborative of G's testimony. As a result of Vasterino's call to "help John", "numerous males came in and tried to push us and grab us." When asked, "Did you see him Vasterino do anything to stop anything that was going on?", the agent responded, "Well, C instructed him several times to tell the people to get back and leave us alone, but in the beginning he made no effort to do it." He could not say that Vasterino was engaged in the pushing activities.

On cross-examination Co admitted that he didn't know whether or not Agents C and D identified themselves to Vasterino when they first approached Cerbo.

In defense of the charges Pasquale Vasterino testified that on January 7 and 11, 1967, Joseph Alessandro, John Cerbo and he were employed by the licensee corporation. At lunch hour, commencing shortly after 10:30 a. m., the patronage for eating and drinking is very heavy. He and Cerbo were employed at the licensed premises on January 7, 1967; however, he did not recall seeing either C or D on that date.

Referring to the date of January 11, 1967, after preparing sandwiches for two males, he sat at the bar near Cerbo for a short time in order to ask him for a key. After returning to the kitchen he heard "noise and scuffling." Continuing, he testified that "I seen a bunch of fellows walk in and Johnny Cerbo in the corner." He saw G striking Cerbo. Prior to this time, none of the ABC agents identified themselves. After the scuffle was over, Vasterino proceeded to the bar and said "Everybody out" because one of the agents said, "We are ABC men" and want everyone out. He did not call for help for Cerbo, he saw "too many men;" he "didn't know what it was all about." He had no knowledge of Cerbo accepting bets, nor did he see C or D place bets with Cerbo.

Joseph J. Alessandro testified that he was employed as a bartender and manager by the licensee corporation on the dates mentioned in the charges. On January 7, 1967, from approximately 11 a. m. (when he relieved Vasterino from his duties as bartender) Vasterino was not at the bar at all except to deliver sandwiches to patrons at the bar occasionally. On that day, from noontime on, the bar was almost full. Cerbo's duties are in the kitchen. On "rare occasions" Cerbo relieves him for a brief period. He did not recall seeing C and D in the licensed premises on January 7, 1967. He did not see C and D place bets with Cerbo on that date.

Referring to January 11, 1967, Alessandro testified that some time after 11:30 a. m. he recalled serving C and D sandwiches. Later he joined Cerbo and another male who were seated at the far corner of the bar. C and D were seated closer to the front of the bar, approximately twenty-five feet distant. Vasterino was in the kitchen, he did not see Vasterino seated at the bar. Concerning the actions of the ABC agents he testified, "Well, when I turned around--I don't know just which one of the two agents went up to John. I turned around right away and they went to John. When I turned around I saw him show him his credentials and they said, 'We want to see you in the back. ABC men.' That's all I heard." The group (G/excepted) went to the small dining room in the rear. Alessandro and G remained in the barroom so that G could conduct a search. While he was at the bar he heard a commotion in the rear small dining room area. Pursuant to the request of one of the agents, he ordered the patrons to leave the barroom. The witness concluded his testimony as follows:

"Q Did you hear Pat Vasterino say anything?

A I didn't hear him holler or nothing. No, I didn't hear him say anything.

Q Did you hear anyone say anything to Pat?

A No. Only after awhile. They all told us to get the rest of the customers out of the place and I locked the door.

Q Did you hear Pat say anything to the customers after he found out they were investigators?

A Yes. He told them to get out, not to cause any-- not to cause anything, you know, to hurt the place."

On cross-examination the witness reiterated that on January 11, 1967 he did not see C or D leave their position at the bar to speak with Cerbo. After ABC Agents G and Co entered the licensed premises with two detectives, he observed the agents identifying themselves to Cerbo. After the agents and Cerbo proceeded to the rear, "one or two" of the patrons followed into the rear. He heard no one call out to help Cerbo.

During the course of the hearing the attorney for the licensee moved to dismiss those parts of the Charge 1 and Charge 2 which referred to the date of January 7, 1967, and further moved to dismiss Charge 3. I reserved decision thereon and recommend that both motions be denied.

In adjudicating this matter I observe primarily 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 preponder-

ance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

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

The general rule in these cases is that the findings 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.

In view of the fact that the primary issue presented for determination is factual, I closely observed the demeanor of the witnesses as they testified and made a careful analysis and evaluation of their testimony.

Referring to the date of January 7, 1967, ABC Agents C and D depicted clearly the numbers betting engaged in by C with Cerbo (admittedly an employee of the licensee corporation) on the number 714. To rebut this testimony Vasterino (a major stockholder and president of the licensee corporation) and Alessandro (an employee of the licensee corporation) testified that they did not recall seeing the ABC agents in the premises on that day. Their testimony does not overcome the clear-cut testimony presented in behalf of the Division.

C and D presented in detail the horse and numbers betting which they engaged in with Cerbo while Cerbo was seated at the bar with Vasterino and Alessandro on January 11, 1967. Their testimony was amply supported by the finding of the marked money in Cerbo's possession and required no further probative embellishment.

Whether or not Vasterino was seated with Cerbo at the time of these occurrences, or if seated next to Cerbo he did not overhear and had no knowledge of the occurrences, is immaterial and of no consequence for the reason that, in disciplinary proceedings, it is a basic principle that a licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Knowledge on the part of the employer is not a prerequisite to finding of guilt where an employee participates in the misdeeds. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N. J. Super. 449 (App. Div. 1951).

Referring to Charge 3, I am persuaded that the agents made their identities known prior to proceeding to the rear small dining room. Vasterino's calling to the patrons to assist John Cerbo which resulted in melee, hindered and delayed the investigation.

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charges.

The licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended on C Charges 1 and 2 for sixty days (Re Galamb, Bulletin 1755, Item 3) and on Charge 3 for twenty-five days (cf. Re Long, Bulletin 1665, Item 2), making a total suspension of eighty-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 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, on this 28th day of December 1967,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of South Hackensack to Patty's Umbrella Lounge, Inc., for premises 410 U.S. Highway 46, South Hackensack, be and the same is hereby suspended for eighty-five (85) days, commencing at 2:00 a. m. Thursday, January 4, 1968, and terminating at 2:00 a. m. Friday, March 29, 1968.

JOSEPH P. LORDI  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) -  
LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
Samuel P. & Anthony M. Tomaino  
t/a Running Brook Inn  
Cor. Myrtle Avenue & N. Linden Ave.  
Long Branch, N. J.

CONCLUSIONS  
AND ORDER

-----  
Holders of Plenary Retail Consumption License C-54 issued by the City Council of the City of Long Branch  
-----

Charles Frankel, Esq., Attorney for Licensees  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on divers dates during June, July, August and September 1966 they permitted acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, 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 Murphy, Bulletin 1758, Item 2.

Accordingly, it is, on this 26th day of December 1967,

ORDERED that Plenary Retail Consumption License C-54, issued by the City Council of the City of Long Branch to Samuel P. & Anthony M. Tomaino, t/a Running Brook Inn, for premises Cor. Myrtle Avenue & N. Linden Ave., Long Branch, be and the same is hereby suspended for fifty-five (55) days, commencing at 2 a.m. Tuesday, January 2, 1968, and terminating at 2 a.m. Monday, February 26, 1968.

JOSEPH P. LORDI  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING PENDENCY OF APPEAL.

In the Matter of Disciplinary Proceedings against )

Alfred & Dorothy Kurland )  
t/a Al's Liquor Store )  
31-35 South Main Street )  
Phillipsburg, N. J. )

SUPPLEMENTAL ORDER

Holders of Plenary Retail Distribution License D-1018 issued by the Director of the Division of Alcoholic Beverage Control )

----- )

Schapira, Steiner & Walder, Esqs., by Justin P. Walder, Esq., Attorneys for Licensees  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On October 9, 1967, I entered Conclusions and Order herein suspending the license for twenty-five days for sale to a minor. Re Kurland, Bulletin 1766, Item 4.

Prior to the effectuation of the order of suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On December 15, 1967, licensees' attorney advised that the appeal was being withdrawn and imposition of the penalty was requested. The suspension may now be reimposed.

Accordingly, it is, on this 22d day of December, 1967,

ORDERED that Plenary Retail Distribution License D-1018, issued by the Director of the Division of Alcoholic Beverage Control to Alfred and Dorothy Kurland, t/a Al's Liquor Store, for premises 31-35 South Main Street, Phillipsburg, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a. m. Monday, January 1, 1968, and terminating at 9:00 a. m. Friday, January 26, 1968.

JOSEPH P. LORDI  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA

In the Matter of Disciplinary Proceedings against Montville Realty Co. t/a Lake Valhalla Club Vista Road, Lake Valhalla Montville, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 issued by the Township Committee of the Township of Montville

McCarter & English, Esqs., by Arthur L. Nims, III, Esq., Attorneys for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 6, 1967, it possessed alcoholic beverages in two 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 fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Deal Golf and Country Club, Bulletin 1767, Item 11.

Accordingly, it is, on this 29th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Montville to Montville Realty Co., t/a Lake Valhalla Club, for premises on Vista Road, Lake Valhalla, Montville, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a. m. Monday, January 8, 1968, and terminating at 2:00 a. m. Thursday, January 18, 1968.

Handwritten signature of Joseph P. Lordi, Director.