STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1573 August 3, 1964

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1. APPELLATE DECISIONS - GUICE v. PATERSON and ELBAR, INC.

Mariah Guice, et als., Appellants,	)	
v.	)	On Appeal
Board of Alcoholic Beverage Control for the City of Paterson and Elbar, Inc., t/a Bobaloo Cafe, Respondents.	)	CONCLUSIONS AND ORDER

Frankel & Frankel, Esqs., by Esther Strum Frankel, Esq., Attorneys for Appellants.
Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq., Attorney for Respondent Board.
George S. Grabow, Esq., Attorney for Respondent Elbar, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The appellants challenge by this appeal the action of the respondent Paterson Board of Alcoholic Beverage Control (hereinafter Board) in granting the application for renewal of Plenary Retail Consumption License C-165 to the respondent Elbar, Inc., t/a Bobaloo Cafe (hereinafter Elbar) for premises located at 178- 12th Avenue, Paterson.

The implementing resolution notes that Elbar was under suspension by this Division and that such suspension would be effective through July 19, 1963. Thus, in its operative part it recites the following:

> "WHEREAS, application has been made to this Board for the renewal of Plenary Retail Consumption License C-165, heretofore issued to Elbar, Inc., t/a Bobaloo Cafe, for premises situated at 178 - 12th Avenue, Paterson, New Jersey; and,
>
> "WHEREAS, the Director of the Division of Alcoholic Beverage Control of the State of New Jersey, on May 13, 1963, suspended the said license for the balance of its term, effective 3:00 A.M., May 20, 1963, and a further suspension of the renewed license was imposed until 3:00 A.M., July 19, 1963; and,
>
> "WHEREAS, complaints entered by residents in the immediate area of the licensed premises indicate that the licensee does not exercise proper control of his patrons; NOW, THEREFORE,
>
> "BE IT RESOLVED, that the renewal of Plenary Retail Consumption License C-165 is hereby granted,

subject to the termination of the aforesaid suspension imposed by the Director of the Division of Alcoholic Beverage Control of the State of New Jersey; and,

"BE IT FURTHER RESOLVED, that the granting of such renewed license is further subject to the following special conditions:

1. The licensee must employ the services of a constable every Thursday, Friday and Saturday, from 7:00 P.M. to closing.

2. The licensee must erect a cyclone fence to the height of 8 feet at the rear property line of its premises.

3. The rear door of the licensed premises is to be used only as an emergency exit.

4. The licensee must prohibit the congregation of patrons on the street in front of the licensed premises and in the alleyway in the rear of said premises."

The appellant Mariah Guice and the other appellants whose names are affixed on Schedule A allege that the action of respondent Board was erroneous for the following reasons:

(1) A large part of the community is "outraged by the flagrant disregard (by Elbar) of any semblance of morals or decency; by the filth, the noise, the curses, the obscenities, the destruction to property, and the depravity generated by the operation" of its premises, in violation of Rule 5 of State Regulation No. 20; and it has a "defiling and demoralizing influence" victimizing negroes and depraving young people;

(2) Elbar is within 200 feet of the Church of God, from which it never obtained a waiver, in violation of N.J.S.A. 33:1-76.

(3) The use of the name "Bobaloo Club" violates Rule 1 of State Regulation No. 7 as amended, and Rule 2 of State Regulation No. 26;

(4) Elbar violates Rule 1 of State Regulation No. 20 by serving liquor to minors; and

(5) The action of renewal violates the limitations imposed by N.J.S.A. 33:1-12.14, a heavy concentration of taverns or liquor stores in the immediate vicinity of Elbar.

The appellants therefore seek to have the action of renewal reversed and Elbar's license "revoked". It should be noted at this point that the sought-after action of reversal would have the effect of nullifying such action, and any action herein which seeks revocation could not be entertained in these proceedings.

Respondent Board in its answer admits the jurisdictional allegations of the appeal and denies the substance of the allegations. In its separate defense it states (1) that the Board based its decision upon testimony adduced at two consecutive meetings on the application for renewal, and such decision was "fair, equitable and just and based on the testimony before it and should not be disturbed."

Separate answer was filed on behalf of Elbar, substantially to the same effect as the answer filed by the Board herein.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15. Hearings were held at this Division on September 27, 1963, December 11, 1963, and January 22, 1964, after which written summations were submitted by counsel for all parties herein. Thus a full opportunity was afforded counsel to present testimony under oath and cross examine witnesses. Sidoroff et als. v. Jersey City and Niebanck, Bulletin 1310, Item 1.

In this matter, as in similar matters, the persuasive and guiding principle enunciated in Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946) and Bivona v. Hock, 5 N.J. Super. 118 (App. Div. 1949) should be set forth as influential in establishing the legal perspective. In these cases it was held that the burden of proof in all matters involving discretion rests upon the appellants and they must show manifest error or that the local issuing authority clearly abused its discretion. The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1, citing Weiss v. Newark, Bulletin 1079, Item 7. See also Rule 6 of State Regulation No. 15. Cf. Biscamp and Hess v. Township Council of Teaneck et al., 5 N.J. Super. 172; Brandon et als. v. Town of Montclair, et als., 124 N.J.L. 135, 145.

It is well established that there is no inherent right to the renewal of a liquor license. Zicherman v. Driscoll, supra. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. However, the manner and extent of such exercise rests in the discretion of the governing authority and, in the absence of a clear showing of its abuse of such authority, its action will be sustained.

The testimony herein was quite voluminous and no purpose would be served in setting forth the specifics thereof in extensive detail. The matters raised in the petition of appeal will be considered seriatim and references from the testimony will be made as specifically applicable thereto.

It should be preliminarily noted that Elbar has operated a tavern in this location for the past seventeen years and, at the time of its application for renewal, was under suspension by this Division for the sale of alcoholic beverages in violation of Rule 1 of State Regulation No. 38 which prohibits sale after legally designated hours. At the time of the hearings before the Board, full opportunity was granted to objectors who based their complaint substantially upon the reasons urged in the petition of appeal. The Board, after

deliberate consideration of these objections, granted the renewal of the license but imposed the conditions as set forth in the resolution recited hereinabove. Subsequent to the hearing, application was made for a change in the first condition to the effect that Elbar must employ the services of a constable every Friday, Saturday and Sunday from 7 p.m. to closing, instead of on Thursday, Friday and Saturday as originally imposed therein. This change was made at the instance of Elbar which represented that the Sunday business was much heavier than on Thursday and would serve the better interests of the community. The appellants, however, are dissatisfied with these conditions and assert that, notwithstanding such limitations, the action of the Board was improper and "erroneous."

I

Appellants asserted that Elbar has "outraged" the "whole Negro community and a good part of the white community" because of its conduct and operation of these premises. In support of this it produced Mrs. Guice (a next door neighbor of the licensed premises) whose testimony may be briefly summarized as follows: She lives almost in the rear of the premises and is disturbed by the noise and the obscene language emanating from the premises; patrons use her driveway; they urinate on her property; they have broken shingles of her home; have engaged in immoral activities on her doorsteps; they park cars in front of her home; the premises are a hangout for "winos" who break bottles and act in an intoxicated condition at all hours of the night. Numerous "crap games" take place in the rear of the premises without interference by Elbar. She has complained to the police on many occasions but "they would tell me there wasn't anything they could do." During the period of suspension by this Division the noise abated in large measure, but some noise still continued. She also has seen minors (age 12 to 18 years) going into the tavern screaming, cursing and acting generally "like wild people." After the renewal of the license a cyclone fence was built pursuant to the directive of the renewal grant, and much of the complained of conditions appeared to have been improved. However, she complains that there is still considerable noise during the late hours of the night. She also insists that some of the patrons have even climbed this fence on numerous occasions. When she complained to Mr. Schwartz (president of Elbar), things would quiet down for a while but the noise would be resumed in a few hours thereafter. She also noted that lately the constables employed by Elbar have not been as effective in curbing the conditions on the outside of the premises. On cross examination she admitted that there were two other taverns and three package stores in the immediate vicinity of Elbar, and that some of the persons against whom she complained may have been customers of the other facilities. She is opposed to the operation of these licensed premises even if there is no noise.

Lilton T. Walker (a former part-time employee porter until October or November 1962) testified as to alleged Sunday sales of package goods. However, on cross examination he admitted that he did not inform the Police Department or the detectives assigned to investigate these premises that

such liquor was being sold. In fact, he denied telling anyone during his entire period of employment of such sales. He denied that he was discharged because he was alleged to have stolen whiskey, and stated that the reason he quit was because of other differences with his employer primarily concerning the fact that his hours of employment were changed.

Nathaniel Morris (who had been employed by Elbar as a part-time bartender for a number of years until July 1962, which is prior to the last licensing period) testified that he observed some of the conduct as described by Mrs. Guice, particularly with respect to the broken bottles on the sidewalk and the vile language used on the premises. He stated that he left the employment because of a rash on his hand, and was not discharged. On cross examination it was developed that he had a grievance against Elbar because his house was condemned by the City of Paterson. He is convinced that the condemnation proceedings were instigated by Schwartz (the president of Elbar). It became apparent, in further questioning, however, that this house had no running water or toilets and, after he was given a certain length of time to make the repairs and they were not made, the house was thereupon condemned.

Richard Adams (a member of a congregation known as the Church of God, located diagonally across the licensed premises) testified as to certain threats made to him by Schwartz. It was also developed that he was not actually a member of the church. Finally he admitted that he never reported the alleged threat to any police officer or local authority. On cross examination this witness admitted that he had been convicted of carrying a concealed weapon.

William W. Harris (the secretary of the Board), called on behalf of the appellants, testified that he brought to the attention of the Board the letters of the objectors and also brought to its attention the reports by the Police, Fire and Health Departments. He stated that the Police Department was requested to make periodic investigations of the premises to determine whether or not the conditions attached to the renewal resolution were being complied with and, so far as he knows, Elbar had fully complied with the special conditions. On cross examination this witness stated that the usual procedure was followed by the Board in its consideration of this renewal application as was followed in every other similar case, namely, that reports are received from the Police, Fire and Health Departments. He was then asked the following question:

"Q Was there anything in those reports that were filed by those departments which precluded a license being renewed to the (Elbar) Cafe?

A Yes, there was nothing contained in the--in any of the reports received with respect to the (Elbar) premises which would preclude the granting of the renewal.

By the Hearer:

Q Let's go further than that: Was there any recommendation on the part of these departments?

A No, there was no recommendation made, except that each department reported to me that inspections or investigations had been made, and the findings were favorable."

He also testified that there was nothing in the subsequent reports to indicate that there was any violation of any of the conditions. Indeed, he learned that a fence was built as enjoined by the Board. He also learned through discussions with Chief Ryness of the Paterson Fire Department that Elbar was complying with conditions with respect to the rear door of these premises as an emergency fire exit, and of adequate identification on said door. There was also admitted into evidence reports of the Police Department investigation during the past licensing year which show that the police had been summoned on a number of occasions to the licensed premises both as a result of calls made to the Department by employees of Elbar as well as by neighbors and others. I have examined these reports and do not find any specific violation of the Alcoholic Beverage Law or the Rules and Regulations of this Division by the agents, servants or employees of Elbar.

Anthony Pasquariello (chairman of the Board) delineated the procedure used by the Board in its consideration of all applications, including the subject application for renewal. He stated that the Board usually acts upon the recommendation of its secretary who is designated to receive the reports of the various departments as mentioned hereinabove. If these reports are favorable, or in any event do not reflect any objections, the Board usually votes for such renewal as it did in this case. He stated that, with respect to the subject application, the Board did not conduct its own investigation because it relies therefor upon the Police, Fire and Health Departments. However, it (the Board) did instruct the Police Department to make a continuing investigation of these premises to see that the conditions imposed in the renewal license were being observed.

The witness also explained why the condition with respect to the use of constables was amended. He stated that the president of Elbar appeared before the Board and advised them that Thursday evenings "wasn't so very busy and Sunday was very busy. And he wanted to give that adequate protection to the neighborhood. So we thought it was a fair request, and we voted favorably to that request. Since we put that in, we have had no objections from anyone." On cross examination the witness then elaborated upon the hearings held before the Board on this application for renewal. He stated that, after listening to testimony of the witnesses for the applicant and the objectors, the members of the Board considered in caucus and made a final determination upon all the testimony. He insists that, in his opinion, the resolution of renewal was fair, reasonable and just. He also stated that, since this license was renewed, the Board has received only one report with respect to these premises. This related to the congregation of undesirables in front of the premises. According to the police report, they were dispersed without incident.

Louis McDowell, testifying in behalf of the appellants, stated that he conducts prayer meetings at the Church of God located diagonally opposite these premises, and he objects to the renewal because (a) patrons of Elbar park in the church's driveway; (b) there is broken glass frequently littering the

sidewalk and streets in the vicinity of the church and the premises; (c) there is vile language and conduct in the presence of children; (d) there is loud noise emanating from the premises. He explained that, after the renewal of this license, conditions bettered for a period of time but they have deteriorated recently. He has never complained to the Board although he has contacted police authorities, and insists that he never got any real satisfaction from them. On cross examination he stated that he is generally opposed to all taverns. He admitted that the fence has helped to improve conditions for Mrs. Guice but not for his church. He also admitted that he has never discussed with Mr. Schwartz or any agents of Elbar about the complained of conditions.

Another neighbor (Ella S. Beal) corroborated some of the testimony of Mrs. Guice with respect to the loud noises and the congregation of Elbar's patrons in front of her house.

On behalf of respondent Board, Sergeant Peter Le Conte, of the Paterson Police Department, testified that, as a member of the special unit assigned to check all taverns in the section of the community in which Elbar was located, he made regular checks and in his opinion Elbar was "one of the best run taverns in the City of Paterson, considering its clientele" but, he explained, this was a public tavern and the incidence of unlawful activity is "the lowest" at the Elbar "compared to the other taverns." He maintained that police authorities had received a number of reports of assaults and so forth, but the investigations disclosed that many of these reports were untrue. He particularly noted that during the period of Elbar's suspension he observed that there were broken bottles strewn in the street and his conclusion was that they resulted from the activity of patrons of nearby taverns. He also noted that, since the conditions were imposed by the Board, they were complied with fully by Elbar. On cross examination he further explained that, because many of the calls relating to Elbar had been proved to be untrue and were apparently "crank" calls, the police authorities now insisted that persons reporting same should give their name and address. Even after this was done, many of them proved to be false.

Alphonse Cennamano (a member of the special unit under the supervision of Sergeant Le Conte, assigned to check taverns) stated that in his opinion this Elbar was a "normally run tavern". He stated that in his regular nightly tours of inspection he usually passes these licensed premises a few times each night. During the period of its suspension he noted that there were broken glass and bottles in the immediate vicinity. He also responded to some trouble calls but they turned out to be "crank calls". On cross examination this witness admitted that the juke box in these premises was "blaring" but that conditions in the tavern appeared to be under control. With respect to the broken glass and bottles, he reiterated that he saw these items throughout the entire area; that it was not limited to the area immediately in front of these premises.

Sergeant Peter Ventimiglia (of the Paterson Police Department) was assigned by the Police and Fire Commissioners to make an investigation of Elbar in June 1963, in the course of which he took numerous photographs of the outside of the premises. These pictures were taken during Elbar's suspension

when the premises were closed. They reveal a considerable amount of broken glass, bottles and other items in the immediate vicinity. There were also empty beer cans and whiskey bottles in the alleyway and in front of these premises. The purpose of this testimony was to demonstrate that the condition complained of with respect to the broken glass and bottles was caused not by patrons of Elbar, but by patrons of other nearby taverns and liquor facilities.

Louis J. Schwartz (president and principal stockholder of Elbar) specifically denied the allegations made by the witnesses for appellants with respect to noise and threats. He stated that Mrs. Guice first complained to him about the broken bottles, profanity and loitering in the yard several weeks before the date of the subject application for renewal. He stated further the following: that, after she complained about these things, he tried to correct these conditions and, in fact, Mrs. Guice told him that, when he was on the premises, everything "was all right". In order to correct these conditions he directed one of the bartenders to go into the yard frequently, and demand that loiterers leave the area upon threat of calling the police. He had the yard cleaned every single day by a porter to whom he specifically assigned that task, but he observed that many of the broken bottles contained labels of brands which were not sold by Elbar. He further maintains that he has complied with the conditions imposed by the Board, and that he has erected a fence in the rear of the yard to separate his yard from that of Mrs. Guice to prevent egress. He also has employed a constable on Friday, Saturday and Sunday nights.

He insists that he had not heard of these complaints prior to the week preceding this renewal application, and it was at his instance, as a measure of his sincerity and cooperation, that the Board directed the change of employment of the constables from Thursday to Sunday because Sunday was a busier night. He also stated that the eight-foot fence is specially constructed with barbed wire on the top so that it is almost impossible for anyone to negotiate it. As a result of this fence being erected, conditions have "improved at least 90 per cent." While he has received no complaints from those persons who had formerly complained to him, he has, however, received "threatening 'phone calls, crank calls, and calls with profanity over them. I never knew who they were." With respect to the witness Walker, he insists that he discharged him because he found him drinking whiskey from a bottle that he had taken from his stock, as a result of which an argument ensued. He also insists that the constables are specifically directed to disperse all persons loitering in front of the premises. On cross examination the witness asserted that he had never received any complaints prior to the ones referred to in this case during the seventeen years of operation of Elbar. However, he does remember that there were two complaints made to him personally during his operation of these premises.

I have carefully analyzed and considered testimony with reference to the objection now being considered with respect to the conduct and operation of these premises. Firstly, I want to observe that there is no affirmative

testimony to support the appellants' argument that the "whole Negro community and a good part of the white community is outraged by the flagrant disregard (by Elbar) of any semblance of morals or decency." The persons who have testified in this case and who are primarily concerned with the conduct and behavior of Elbar appear to be several neighbors whose premises are contiguous to the licensed premises and by members of the Church of God located diagonally across the street from the premises. While the amended notice of appeal contains a total of seventy-seven names as appellants, including prominent church organizations, these persons did not appear in court prepared to offer testimony. It would have been significant if representatives of other churches and community organizations had appeared in court as representative of the other parts of the community and of organizations in the community. The mere inclusion of the names of these individuals on a schedule annexed to a petition of appeal does not establish this as a class action, nor can the witnesses for the appellants who have testified herein be considered as representative of the individuals or groups whose names are set forth on said annexed Schedule A.

This, however, does not minimize the seriousness of the charges made by the appellants herein. The appellants are neighbors of Elbar and are entitled to reasonable peace and quiet. They should not be subjected to the loud noises and blaring of the juke box during the late hours of the night; to the congregating of "winos" and other undesirables in the back yard and alleyway adjacent to these premises; to the broken bottles and glass strewn in the alley and to the other conditions which they charge have occurred over a period of time during the last licensing period and which have caused them mental anguish and annoyance.

While these charges have been substantially denied by Schwartz, the president of Elbar, I am satisfied that at least some of them have existed for too long a time. However, the Board heard this testimony before at its hearing and was influenced by the reports of the Police, Fire and Health Departments with respect to the conditions. They must also have been influenced, as I am, by the testimony of officials of the Police Department who state that this is a normally run tavern and, considering its clientele, is one of the better run taverns in the community. I am satisfied from the evidence that the Board gave proper consideration to the objections raised and to the advisability of granting this renewal. That the Board considered seriously the objections raised by those present at the hearings before it is best manifested by its issuance of a conditional renewal license, imposing strict limitations upon the further operation of Elbar. Implicit in these conditions and its text is the admonition that the Board would not be satisfied with partial compliance, but would insist upon the elimination of the nuisances charged. The Board has thus acted resolutely, decisively and meaningfully. There is nothing in the record to indicate that the members of the Board were prejudiced or improperly motivated. Falduto v. Parsippany-Troy Hills, Bulletin 1318, Item 1.

These complaints can be resolved in the future by disciplinary action by the Board. As was pointed out hereinabove, the Director is concerned solely with the question of

whether the grant of the license was the result of unreasonable and arbitrary action on its part. Whether a license should be renewed rests in the sound discretion of the issuing authority. The action of the local Board may not be reversed by the Director unless he finds the action of the Board was so clearly against the logic and effect of the presented facts as to amount to an abuse of its discretion. Hudson Bergen County Retail Liquor Stores Association v. Hoboken et al., 135 N.J.L. 502, at p. 511. Hawkes v. Rockaway and Slovak Sokol Camp, Inc., Bulletin 1535, Item 2; Allen v. City of Paterson et al., 98 N.J.L. 661; Fornarotto et al. v. Board of Public Utility Commissioners etc., 105 N.J.L. 28.

The common interest of the general public should be the guidepost in the issuing and the renewing of licenses. However, the Director's function on appeals is not to substitute his personal opinion for that of the issuing authority but merely to determine if reasonable cause exists for that opinion and, if so, to affirm irrespective of his views. Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1; Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1.

I am particularly impressed with the testimony adduced herein that, as a result of the conditions imposed in the renewal license, the general conduct of the business has considerably improved. This is acknowledged as well by witnesses for the appellants. Respondent Elbar should be reminded that, if these conditions are not corrected, it may be subject to disciplinary proceedings not only by the Board but by the Director as well. Its conduct may be taken into consideration at the time for renewal for the next licensing year. It should also be pointed out that a liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right of the appellant to sell intoxicating liquor at retail. Bumball v. Burnett etc., 115 N.J.L. 254; Paul v. Gloucester etc., 50 N.J.L. 585. Whether a license should be renewed rests in the sound discretion of the issuing authority. Under the statutory duty imposed upon it, an issuing authority is required to consider an applicant's past record as a licensee which will include the determination of whether the licensed business has been conducted in a reputable manner. Cf. Zicherman v. Driscoll, supra. It is to be hoped that this very appeal will serve to prompt the respondent Elbar to make an even more determined effort to improve conditions at the tavern in order to ensure the peace and comfort of its neighbors.

After reviewing the facts and argument of counsel, I conclude that the appellants have failed to sustain the burden of proof in showing that the action of the Board was erroneous, improper or constituted an abuse of its discretionary powers with respect to the allegations hereinabove considered. Rule 6 of State Regulation No. 15.

II

Appellants advocate that Elbar is within two hundred feet of the Church of God from which it never obtained a waiver, in consequence of which the license was issued in violation of R. S. 33:1-76.

Before discussing this contention it might be well to dispose of another issue first raised during the hearing (but not in the pleadings) which has tangential relevance hereto, namely, that the congregation of the Church of God existed prior to the establishment of Elbar. If that were the fact, it might have been necessary for Elbar to have obtained a waiver during the past seventeen years of its existence in order for it to have operated legally, in view of its geographic proximity.

The evidence adduced herein shows that Elbar has been in existence for seventeen years at this location and that prior thereto these premises were occupied for a number of years by a prior liquor licensee. The testimony further shows, according to the testimony of its deacon McDowell, that the property wherein this congregation is located was first transferred to the trustees thereof in 1952, at least five or six years after Elbar commenced its operation. McDowell also stated that the building in which the Church of God conducted its services was a regular residential building with a store front, and the services were held in the store. In fact, the sign with the legend "Church of God" was first placed on the outside of the building about three years ago. Except for the sign, there is nothing to indicate that this was a church property.

The question was therefore raised by respondent Elbar as to whether the Church of God, operating in the manner testified to, was in fact a church within the definition used in the Alcoholic Beverage Law -- in other words, whether the premises constituted a church edifice. In Mellas v. West Orange et al., Bulletin 1047, Item 2, involving a community house used in part for school purposes and in part for other purposes, including living quarters, it was cited with approval the following language from Manning v. Trenton, Bulletin 247, Item 1:

> "In the instant case, no one would recognize this ordinary dwelling house as being a church. The most anyone could say is that it is used to some extent like a church. It is not used exclusively for the worship of God. It was not built with that in mind. The second floor of this dwelling house is nothing but a flat to be rented out to tenants. The Church Trustee (who testified on behalf of all the Trustees) himself talks of the 'church downstairs'. A house divided against itself into a place of worship and an ordinary flat is not, within the contemplation of the statute, a church edifice."

Cf. Parisi v. Jersey City and Macchi, Bulletin 1201, Item 1.

In any event, without deciding this collateral issue, it is clear that Elbar was established and commenced its operations prior to the establishment at the present location of the premises of the Church of God. Thus the waiver was not required herein.

In support of their contention that the Church of God is within two hundred feet of the licensed premises, the appellants called Councilman Pasquariello (the chairman of the local issuing authority) who stated that, according to the

engineer's report submitted to him, he determined that the distance between the church and the tavern was over two hundred feet. It was on that report that the Board relied. The only other witness produced by the appellants testified that the Church of God was diagonally across the street from Elbar, and that the street was thirty feet in width.

Rozard Polizzotti (traffic supervisor of the City of Paterson) testified that there was a stop sign at the intersection of 12th Avenue and Graham Avenue but there are no traffic lights on that corner, and that there are no crosswalks in that particular area.

Appellants advert to the statute, R.S. 33:1-76, which provides:

> "... no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church or public schoolhouse or private schoolhouse not conducted for pecuniary profit .... Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed."

I am satisfied from the evidence presented that the Church of God is more than two hundred feet from Elbar as measured in the normal way that a pedestrian would "properly" walk from the nearest entrance of the church to the nearest entrance of Elbar. In order to get to the church it would be necessary to walk to the corner and cross the street. This would be the only proper and lawful manner in which to reach the other side.

From the testimony of all the witnesses it is indisputable that the distance to the lawful crosswalk (the absence of a marked crosswalk is of no consequence; the stop sign at the corner is reflective of the municipal design that the intersection be used for pedestrian crossing) from that point to the church would be without the two hundred feet limit. Presbyterian Church etc. v. Division of Alcoholic Beverage Control et al., 53 N.J. Super. 271; Hopkins v. Municipal Board of Alcoholic Beverage Control of the City of Newark et als., 4 N.J. Super. 484.

Finally it should be mentioned that no witnesses have been produced by the appellants who have actually measured the distance so that there is no affirmative proof with respect to those actual measurements. The burden of establishing this contention by the production of adequate proofs rests upon appellants. In the absence of such proofs, the argument must fail.

III

I have examined the other points raised by the appellants in their petition of appeal and find them without substantial merit.

After reviewing all of the evidence and exhibits

herein, including the written summations of counsel, I conclude that the appellants have failed to sustain the burden of proof in showing that the action of the respondent Board was erroneous, improper or constituted an abuse of its discretionary powers. Rule 6 of State Regulation No. 15. Hawkes v. Rockaway and Slovak Sokol Camp, Inc., supra.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of respondent Board and dismissing the appeal.

Conclusions and Order

Exceptions to the Hearer's Report and arguments thereto were filed with me by the attorneys for appellants within the time limited by Rule 14 of State Regulation No. 15.

I have carefully considered all the facts and circumstances herein, including the entire record and exhibits introduced into evidence at the hearing of this appeal, as well as each of the exceptions and supporting arguments taken to the said Hearer's Report. The various exceptions are either not well taken or are without substantial merit, in consequence of which no change in the result is indicated. Accordingly, I concur in the Hearer's general findings and conclusions and adopt his recommendations.

However, I have taken particular note of the observations by the Hearer that, although the general conduct of the business has considerably improved, there is still further room for improvement; that respondent Elbar should be reminded that further violations may subject it to disciplinary proceedings not only by the Board but by this Division as well, and that "It is to be hoped that this very appeal will serve to prompt the respondent Elbar to make an even more determined effort to improve conditions at the tavern in order to ensure the peace and comfort of its neighbors." I want to emphasize that any further violations uncovered by this Division will be dealt with most severely.

Accordingly, it is, on this 24th day of June, 1964,

ORDERED that the action of respondent Board be and the same is hereby affirmed and that the appeal be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (ACCEPTANCE OF NUMBERS AND HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - INCREASED PENALTY IN UNAGGRAVATED CASE - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Mellolark, Inc. 3809 Park Avenue Union City, N. J., Holder of Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the City of Union City.	CONCLUSIONS and ORDER

Robert Greenberg, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that it permitted the acceptance on its licensed premises of numbers bets on April 15, 29 and May 2, 1964, and horse race bets on April 29 and May 2, 1964, in violation of Rules 6 and 7 of State Regulation No. 20.

It is to be noted that the prohibited activity occurred, in part, on April 29 and May 2, 1964, after the release of my notice to all retail licensees dated April 27, 1964 (Bulletin 1560, Item 6), wherein I stated that:

> "I am firmly convinced that commercialized bookmaking and numbers gambling, by its very nature, requires that kind of organization which breeds corruption and affects the moral fibre of the community. The prime evil is not so much the gambling in and of itself, but rather the syndicated structure which has for its underlying purpose the violation of our laws against bookmaking and lotteries.
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> * * * * * *
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> "All licensees are warned that from now on the penalty to be imposed in gambling cases involving bookmaking or numbers activity will be greater (irrespective of the plea entered) than the penalty which would have been imposed heretofore in the same situation."

The minimum penalty heretofore imposed for similar unaggravated first-offense cases, wherein the licensee had no previous record of adjudicated violation, has been suspension of license for twenty-five days, with remission of five days for confessive plea. See, for example, Re Hagen, Bulletin 1562, Item 9. Henceforth, and commencing with this case, the minimum will be sixty days, with customary remission of five days for confessive plea entered prior to hearing.

Licensee herein has a previous record of

suspension of license for ten days effective May 4, 1964, for employing a female without requisite identification card in violation of local ordinance.

In view of the foregoing, the license will be suspended for sixty days, to which will be added five days by reason of the prior record of suspension of license for dissimilar violation occurring within the past five years (Re Vamos, Bulletin 1541, Item 5), or a total of sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 22nd day of June 1964,

ORDERED that Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the City of Union City to Mellolark, Inc., for premises 3809 Park Avenue, Union City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1964, commencing at 3 a.m. Monday, June 29, 1964; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Friday, August 28, 1964.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary Proceedings against Edward Przybylowski 4901 Broadway Union City, N. J. Holder of Plenary Retail Consumption License C-163, issued by the Board of Commissioners of the City of Union City.	CONCLUSIONS and ORDER

Licensee, Pro se
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 4, 1964, he 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.

Licensee has a previous record of suspension of license by the municipal issuing authority (1) for five days effective July 27, 1952, and again (2) for fifteen days effective March 6, 1955, for "hours" violation, and (3) for fifteen days effective March 20, 1955, for permitting brawl and employing person without identification card, in violation of local ordinance. In addition, the license then held by Edward Przybylowski and Alfred Johnson for the same premises

was suspended by the Director for forty days effective July 10, 1958, for permitting indecent language and conduct, sale to intoxicated persons and conducting business as a nuisance. Re Przybylowski & Johnson, Bulletin 1238, Item 4.

The prior record of suspension of license for dissimilar violations occurring more than five years ago disregarded, 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 Cliffside Inn, Inc., Bulletin 1542, Item 3.

Accordingly, it is, on this 22nd day of June 1964,

ORDERED that Plenary Retail Consumption License C-163, issued by the Board of Commissioners of the City of Union City to Edward Przybylowski, for premises 4901 Broadway, Union City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1964, commencing at 3 a.m. Monday, June 29, 1964; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3 a.m. Thursday, July 9, 1964.

JOSEPH P. LORDI
DIRECTOR

4. STATE LICENSE - NEW APPLICATION FILED.

Kerns Distillers Products Corporation
North Alley rear of 302-04-06-08 North
Broad Street and 302 North Broad Street
Trenton, New Jersey
Application filed July 31, 1964 for
Rectifier and Blender License.

Joseph P. Lordi
Director

New Jersey State Library