

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

BULLETIN 2030

February 25, 1972

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1. APPELLATE DECISIONS - ELMORA LIQUORS, INC. v. SUMMIT.

Elmora Liquors, Inc., t/a)	
The Wine Shop,)	
Appellant,)	On Appeal
v.)	CONCLUSIONS
Common Council of the City of)	and
Summit,)	ORDER
Respondent.)	

Kein, Pollatschek & Iacopino, Esqs., by Julius R. Pollatschek, Esq.,
Attorneys for Appellant
Russell T. Kerby, Jr., Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, the holder of a plenary retail distribution license for premises 355 Springfield Avenue, Summit, was found guilty in disciplinary proceedings by the respondent (hereinafter Council) of three charges alleging sales to minors and allowing, permitting and suffering the sales of such alcoholic beverages to the said minors on May 23, June 19 and June 25, 1971, in and upon its licensed premises in violation of Rule 1 of State Regulation No. 20; whereupon the license was suspended for four months, effective September 20, 1971.

An order was entered by the Director on September 16, 1971 staying the Council's order of suspension pending the determination of this appeal.

In its petition of appeal appellant alleged that the Council's action was erroneous, because:

- (a) it was based on insufficient proof;
- (b) the charges were the result of entrapment;
- (c) the sales were made after the appellant fully complied with R.S. 33:1-77; and
- (d) The penalty imposed was excessive.

In its answer, Council defends that the testimony produced at the hearing "justified a finding of guilty on all charges

and the penalty imposed, especially since no defense was interposed on behalf of appellant." It further defends that appellant did not comply with the requirements of R.S. 33:1-77.

This matter was presented for determination upon the transcript of the proceedings held before the Council pursuant to Rule 8 of State Regulation No. 15, supplemented by additional testimony presented on behalf of the parties hereto at this de novo hearing.

The testimony as reflected in the transcript of the proceedings before the Council shows the following: Douglas --, a twenty year old minor visited the premises on May 28, 1971 and purchased a bottle of wine. He produced, upon request, a spurious draft card which belonged to his brother, and which indicated that the possessor was over twenty-one years of age. No written representation was requested by the appellant's employee nor did he sign any written representation at the time of the said purchase respecting his age. Upon leaving the premises, he was intercepted by local Police Officer Stephen Christy who stated that he observed the minor leaving the premises, who upon being questioned readily admitted that he was a minor.

Frederick --, a nineteen year old minor at the time of the alleged purchase, entered the premises on June 19, 1971, and purchased a six-pack of "Budweiser" beer. This was sold to him by Sanford Marcus, an officer of the corporate appellant. He was not asked for any identification nor was he requested to make any written representation at the time of the said purchase or at any other time respecting his age. When he left the premises through the rear door, he was stopped by Officer Christy, who testified that this individual appeared to him to be a minor. After this witness admitted that he had purchased the beer and wine at the premises, he was placed under arrest.

Robert --, a nineteen year old minor testified that he entered the subject premises on June 25, 1971, ordered and was served two six-packs of "Michelob" beer and a bottle of wine. He was served by Sanford Marcus. He produced for identification a spurious Selective Service System registration certificate, or draft card, but was not requested nor did he make any written representation respecting his age at the time of the said purchase or at any other time.

Upon emerging from the premises and entering his motor vehicle, he was intercepted by Police Officer Yannotta, who testified that he requested identification because he suspected that this individual was a minor. The minor produced the draft card, and upon admitting to the officer that he was under twenty-one years of age, he was arrested.

All three minors were subsequently arraigned in the Municipal Court and each pleaded guilty to a charge of the unlawful purchase by a minor of alcoholic beverages. The alcoholic beverages seized by these officers were admitted into evidence.

No defense was offered on behalf of the appellant to these charges at the hearing before the Council. The attorney for the appellant urged in summation at that hearing, that, since these minors had represented themselves to be of statutory maturity, the sales were made upon reliance thereof "and that that reliance was in fact a reasonable one."

At the appeal hearing, nevertheless, Sanford Marcus, a principal stockholder and manager of the licensed premises admitted that the sales to the said minors were made on the dates alleged, but asserted that all of the sales were made after written representations were obtained at the time of the said sales from each of the minors. However, he was unable to produce those written documents at this hearing on appeal. He explained that he first attempted to locate them on the evening prior to the de novo hearing, and that they were apparently lost or thrown out. He could not explain why he did not make a search for these slips prior to the date of the hearing before the Division and why he did not produce them, if indeed, he had such slips at the hearing before the Council.

When asked why he made no effort to produce them at that time he stated, "Well, I will tell you quite frankly we didn't think about it. We should have." He added that he did not testify before the local Council because he was advised by his attorney not to take the stand or introduce any testimony in defense.

Martin Marcus, the president of the corporate appellant and its principal stockholder, testified that he had instructed his employees not to make any sales to persons who "looks like a minor". On cross examination he admitted that the appellant's license was suspended for twenty days, less five days for a non vult plea, effective March 16, 1971, for a sale to a minor.

Douglas --, was produced on rebuttal and reaffirmed that he did not sign any written representation as to his age nor was he requested to do so. Similarly, testimony to that effect was made by Frederick, with respect to his purchase of alcoholic beverages at the said premises.

I have had the opportunity to observe the demeanor of the witnesses as they testified before me and to evaluate the testimony as reflected in the record. I am persuaded from my analysis of the totality of the evidence produced that no written representations were made by the minors at the time of the purchases of alcoholic beverages, as required by R.S. 33:1-77, nor were the same requested of the said minors. I believe the testimony of the minors which appeared to me to be credible and forthright.

It is inconceivable to me that if such representation had been made, the appellant would not have produced them at the time of the hearing before the Council. If, indeed, such statements were executed, it is logical to assume that efforts would have been made by the appellant to search for those statements prior to the night before the hearing on appeal.

It is also clear that Sanford Marcus, the manager of these premises, did not fully understand his obligation under R.S. 33:1-77, which requires that in order to establish a complete defense, that it must be established that the minor made a false representation in writing and that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was of age. Melstan Corporation v. Randolph, Bulletin 1496, Item 1; Sportsman 300 v. Board of Commissioners of Nutley, 42 N.J. Super. 488 (App. Div. 1956). Such representation in writing does not embrace such writings as a draft card. See Special Note to Rule 1 of State Regulation No. 20 (p. 86 of the Rules and Regulations); Re Wedemeyer, Bulletin 1050, Item 8, cited with approval in Sportsman 300 v. Nutley, supra.

I, therefore, reject the testimony of Sanford Marcus as wholly incredible and unbelievable. The burden of establishing that the Council acted erroneously and in an abuse of its discretion rests with the appellant. (Rule 6 of State Regulation No. 15) The Director should not reverse unless he finds as a fact that it is manifestly unreasonable, or that there was an unwarranted finding of fact or mistake of law. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956).

I find that the appellant has failed to meet the exculpatory requirements of the statute as aforementioned by adequately supporting evidence. Thus, it has failed to sustain the burden of establishing that the Council's action was erroneous and against the weight of the evidence. Sussman v. Paterson, Bulletin 1817, Item 1:

Appellant finally argues that the penalty was excessive. The authority of the Director to reduce or modify a penalty imposed by the Council will be sparingly exercised and then only with the greatest caution. Pete Jacobs, Inc. v. Winslow, Bulletin 1568, Item 1; Buckley v. Wallington, Bulletin 1772, Item 1; Edelson v. Paterson, Bulletin 1988, Item 3. Of course it is unfortunate that the appellant was victimized by the wilful misrepresentation of the minors. It is quite apparent, nevertheless, that the appellant has not taken the precautions enjoined by the statute. As the court, in Sportsman 300 stated, referring to Wedemeyer, supra:

"Experience in cases similar to this indicates that for some reason licensees or their agents are reluctant to 'embarrass' a minor by requiring him to reduce to writing his name, age and address. If licensees are willing to use their own methods of determining the age of a minor, rather than follow the statute, they do so at their peril and must accept the consequences of their own neglect."

The penalty to be imposed in disciplinary proceedings by a local issuing authority rests within its sound discretion in the first instance. Penalties may vary in different municipalities, and according to the circumstances surrounding the offenses. Ross v. Hoboken, Bulletin 1478, Item 1. The fact that a penalty may be severe does not, of itself, justify reduction on appeal. Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1; De Luccia v. Paterson, Bulletin 1781, Item 1.

In the matter sub judice it is my impression that the Council took into consideration the prior suspension on a similar charge occurring shortly before these violations occurred, and it considered the fact that these three violations constituted a pattern of conduct which it sought to discourage. The Director of this Division has had occasion within the past month to deplore the fact that there has been a marked increase in the sale and service of alcoholic beverages to minors and has determined this type of action an "affront to law and order." See New Jersey Beverage Retailers Weekly, December 13, 1971 issue. Licensees must be held strictly accountable for violations of the statutes and the rules with respect to sales to minors. The prevention and sale of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, supra; In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Mazza v. Cavicchia, 15 N.J. 498, 505 (1954).

I cannot say, under all of the circumstances, that the penalty imposed herein was so severe as to form a basis for reversal or even modification on appeal. The plea for mitigation should be made, if at all, to the Council, which may grant relief in the event that the members thereof determine that such action is advisable. Russo v. Lincoln Park, Bulletin 1177, Item 7.

I have considered the other matters raised in the petition of appeal and find that they lack substance.

It is, therefore, recommended that an order be entered affirming the Council's action, dismissing the appeal and fixing the effective dates for the suspension imposed by the Council and stayed by the Director until the entry of a further order herein.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report, the exceptions thereto and the answer to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of January 1972,

ORDERED that the action of the respondent Common Council of the City of Summit 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, dated September 16, 1971, staying the Council's order of suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License D-8, issued by the Common Council of the City of Summit to Elmora Liquors, Inc., t/a The Wine Shop, for premises 355 Springfield Avenue, Summit, be and the same is hereby suspended for four (4) months, commencing 8:00 a.m. on Monday, February 14, 1972, and terminating midnight on Tuesday, June 13, 1972.

Richard C. McDonough
Director

2. DISCIPLINARY PROCEEDINGS - GAMBLING (FOOTBALL POOL BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 95 DAYS, LESS 19 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 Mary Zebrowski)
 363 Kennedy Boulevard) CONCLUSIONS
 Bayonne, N. J.,) and
) ORDER
 Holder of Plenary Retail Consumption License C-154, issued by the Municipal Council of the City of Bayonne.)
 -----)
 Licensee, Pro se.
 Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 23, 26 and 28, 1971, she permitted gambling, including the acceptance of football pool bets, and possessed tickets in such football pools, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a prior record of suspensions of license for (1) ten days, effective April 14, 1958 by the local issuing authority for "hours" violation; (2) for five days, effective June 29, 1969 by the local issuing authority for "hours" violation; and (3) for ten days by the Director, effective August 12, 1963, for possessing liquor not truly labeled. Re Zebrowski, Bulletin 1527, Item 7.

The prior suspensions occurring in 1958 and 1963 for dissimilar violations being more than five years ago disregarded for penalty purposes, the license will be suspended for ninety days, (Re Arnone, Bulletin 1971, Item 3) to which will be added five days by reason of the suspension for dissimilar violation occurring within the past five years, making a total of ninety-five days, with remission of nineteen days for the plea entered, leaving a net suspension of seventy-six days. Re Joseph Poniatowski Beneficial Association, Inc., Bulletin 1995, Item 3.

Accordingly, it is, on this 26th day of January 1972,

ORDERED that Plenary Retail Consumption License C-154, issued by the Municipal Council of the City of Bayonne to Mary Zebrowski for premises 363 Kennedy Boulevard, Bayonne, be and the same is hereby suspended for seventy-six (76) days, commencing 2:00 a.m. on Thursday, February 10, 1972 and terminating 2:00 a.m. on Wednesday, April 26, 1972.

Richard C. McDonough
Director

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE AND NUMBERS BETS) - LICENSE SUSPENDED FOR 90 DAYS, LESS 18 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Mc Der Brien Corporation)
t/a Crestwood Lounge)
900-904 Jackson Avenue)
Elizabeth, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-17, issued by the City Council of the City of Elizabeth.)

Carpenter, Bennett & Morrissey, Esqs., by Francis X. O'Brien, Esq.,
Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 11, 21 and October 1, 1971, it permitted gambling, i.e., the making and accepting of horse race and numbers bets, in and upon the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record the license will be suspended for ninety days with remission of eighteen days for the plea entered, leaving a net suspension of seventy-two days. Re Bridgeboro Inn, Inc., Bulletin 2024, Item 3.

Accordingly, it is, on this 26th day of January 1972,

ORDERED that Plenary Retail Consumption License C-17, issued by the City Council of the City of Elizabeth, to Mc Der Brien Corporation, t/a Crestwood Lounge for premises 900-904 Jackson Avenue, Elizabeth, be and the same is hereby suspended for seventy-two (72) days, commencing 2:00 a.m. on Monday, February 14, 1972, and terminating 2:00 a.m. on Wednesday, April 26, 1972.

Richard C. McDonough
Director

4. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) -
LICENSE SUSPENDED FOR 90 DAYS, LESS 18 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

P & G Bar & Grill, Inc.)
t/a Pete's Bar & Grill)
39 South Street)
Manville, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-1 issued by the Mayor and Council of the Borough of Manville.)
-----)

Norris, McLaughlin & Trucker, Esqs., by Richard A. Norris, Esq.,
Attorneys for Licensee.
Percy A. Jarvis, Jr., appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 7, 1971 it permitted gambling, viz.: 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 ninety days (Re Arnone, Bulletin 1971, Item 3) with remission of eighteen days for the plea entered leaving a net suspension of seventy-two days. Re Bridgeboro Inn, Inc., Bulletin 2024, Item 3.

Accordingly, it is, on this 26th day of January, 1972,

ORDERED, that Plenary Retail Consumption License C-1 issued by the Mayor and Council of the Borough of Manville to P & G Bar & Grill, Inc., t/a Pete's Bar & Grill for premises 39 South Street, Manville, N.J. be and the same is hereby suspended for seventy-two (72) days commencing 2:00 a.m. on Thursday, February 10, 1972 and terminating 2:00 a.m. on Saturday, April 22, 1972.

Richard C. McDonough
Director

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO CORRECT AFTER 35 DAYS, LESS 7 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Lotus Landing, Inc.)
t/a Lotus Landing)
West Shore Drive.)
Stillwater Township RD 2)
Box 54, Newton, N.J.)

CONCLUSIONS
and
ORDER

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

-----)
Ogden and Sutphen, Esqs., by William R. Sutphen, III., Esq., Attorneys for licensee.
Dennis M. Brew, appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges as follows:

- "1. In your short form application dated May 30, 1971 and filed on June 9, 1971 with the Township Committee of the Township of Stillwater upon which you obtained your current plenary retail consumption license C-1, in answer to Question No. 8, you, after listing Donald M. Haug, Elizabeth J. Haug, Edwin Bugle, Jr. and Norma Bugle as the holders of 40%, 10%, 40% and 10% respectively, of your issued and outstanding stock, failed to disclose in answer to Question No. 10 therein a change in facts in your last prior long form application, viz., to show a change of answer from 'No' to 'Yes' to Question No. 22 in said long form application 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?_____'. If answer is 'Yes' state details_____.' to show and disclose that Anthony Lentini and Joan Lentini had such an interest in that they were the real and beneficial owners of all the shares of stock listed in the names of Donald M. Haug, Elizabeth J. Haug, Edwin Bugle, Jr. and Norma Bugle, such evasion and suppression of a material fact being in violation of R. S. 33:1-25.
- "2. In your aforesaid short form application for license, you failed to state in answer to Question No. 10 therein a change in facts in your last prior long form application, viz., a change from 'No' to 'Yes' to Question No. 29 which asks: 'Has any individual, partnership, corporation or or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?_____'. If so, state names, addresses and interest of such individuals, partnerships, corporations or associations_____.' and to show and disclose that the aforementioned Anthony and Joan Lentini had such an interest in that they, indirectly, through the said Donald M. Haug, Elizabeth J. Haug, Edwin Bugle, Jr. and Norma Bugle had such an interest, as hereinbefore set forth in the license applied for and in the business to be conducted under said license; such evasion and suppression of a material fact being in violation of R. S. 33:1-25.

- "3. In your aforesaid short form application for license, you failed to state in answer to Question No. 10 therein a change in facts in your last prior long form application, viz., a change of answer from 'No' to 'Yes' to Question No. 30 in said long form application which asks: 'Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for? _____. If so, give complete details _____.' and to show and disclose you had agreed to permit the aforementioned Anthony Lentini and Joan Lentini to retain the profits and income derived from your licensed business, such evasion and suppression of a material fact being in violation of R. S. 33:1-25.
- "4. From on or about January 1, 1970 to date you knowingly aided and abetted said Anthony Lentini and Joan Lentini to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R. S. 33:1-52."

Counsel for licensee has indicated that the unlawful situation described in the charges herein is being corrected by virtue of an impending sale of the licensed premises with anticipated application for transfer of license to another. Upon approval of such transfer by the municipal issuing authority the unlawful situation will then have been corrected.

Absent prior record, the license would normally be suspended for thirty-five days with remission of seven days for the plea entered leaving a net suspension of twenty-eight days. Re Ciccone, Bulletin 2021, Item 4.

However, as the unlawful situation has not to date been corrected, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than twenty-eight days from the commencement of the suspension herein.

Accordingly, it is on this 24th day of January, 1972,

ORDERED, that Plenary Retail Consumption License C-1 issued by the Township Committee of the Township of Stillwater to Lotus Landing, Inc., t/a Lotus Landing for premises West Shore Drive, Stillwater Township, ED 2, Box 54, Newton, New Jersey be and the same is hereby suspended for the balance of its term, until 12:00 P.M. on Friday, June 30, 1972 effective 4:00 A.M. on Monday, February 7, 1972 with leave to licensee or any bona fide transferee of the license to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event sooner than twenty-eight days from the commencement of the suspension herein.

Richard C. McDonough,
Director

6. DISCIPLINARY PROCEEDINGS - BRAWL - SALE DURING PROHIBITED HOURS - HOURS CHARGE DISMISSED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against
 Happy's Bootleggers Inn
 t/a Happy's Inn
 South Jersey Avenue between 12th & 13th Avenues
 Weymouth Township, N. J.,
 Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Weymouth.

CONCLUSIONS and ORDER

 Wallace R. Foster, Esq., Attorney 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. On Thursday, June 10, 1971, you allowed, permitted and suffered a brawl, act of violence and disturbance in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20.
- 2. On Thursday, June 10, 1971, between the hours of 5:00 and 6:00 A.M., you failed to have your entire licensed premises closed for business; in violation of Section 1 of an Ordinance adopted by the Township Committee of the Township of Weymouth on June 4, 1947, as amended June 3, 1959."

In behalf of the Division, Frederick Lee testified that he patronized the licensed premises, a tavern, on numerous occasions prior to June 10, 1971. On that date Lee entered the barroom at 4:10 a.m. Several patrons were in the barroom at that time. William Werner, an officer of the corporate licensee and its principal stockholder, was present in the barroom. Roy Orange was tending bar.

Two patrons ordered a bottled beer for Lee. Werner was playing pool near the end of the bar. At approximately 4:45 a.m. Werner went behind the bar and Orange asked Lee if he wanted another beer, and stated that it was the last call. Lee requested a bottle of beer. At approximately that time, Werner came from behind the bar and called out "I'm going to throw all yous SB's out of here." Werner then proceeded down the bar and struck David Bowser, a patron, and knocked him off the stool. Thereafter he grabbed another patron, Firman Lawless and said:

"I'm going to start with you first, you son of a bitch, and throw yous all out of here."

He then told Lee to get out before he threw him out. Lee refused and said he had more beer in front of him. While Werner and Lawless were arguing, Lee attempted to get off the stool in order to get out of the way. Werner struck Lee a backhand blow. In anger, Lee shoved Werner from the bar. Lee fell to the floor and Werner and Lee started rolling on the floor. Upon getting up Lee saw that Werner held a gun and yelled out that Werner held a gun. Orange shouted, "Don't worry, boys. There's blanks in it."

Continuing, Lee testified that he pursued Werner to the corner of the bar. Werner turned and pointed the gun at him. Lee struck Werner's hand. Werner fired three times, one of the bullets striking Lee in the leg. Lee then described what followed:

"So I chased him on back of the bar and I finally got the gun -- I don't know -- somebody -- I grabbed his arm and the gun fell over his shoulder on the floor, so I was going to kick it down the cellar 'cause the cellar door was open, so while I was trying to kick the gun down the cellar, he got a telephone cord around my neck and tried to choke me to death, so he was choking me and all the guys in there grabbed me and tried to drag me outside, so when -- when I got to the door I was so mad I broke away from them, I went back and I attacked Mr. Werner and I was beating him in the face when they pulled me off the second time."

Lee then testified that the fracas was of approximately ten minutes duration. An ambulance arrived at approximately 5:30 a.m. and Lee was taken to a hospital for treatment.

On cross examination, the witness testified that Werner was dressed in shirt and trousers; he did not see the revolver until Werner got up from the floor; and he was pursuing Werner who was retreating behind the bar at the time he was shot.

Vernon B. Shockley testified that he patronizes the licensed premises occasionally and that he entered the tavern on June 10th between 2:00 and 2:30 a.m. Lee came in later. He observed both Orange and Werner tending bar.

Shockley asserted that at approximately 5:00 a.m. a fight ensued because Werner said that he was going to throw everyone out. He started first with Firman and then Lee. He heard but didn't actually see three gunshots fired. He saw a bullet hole in Lee's leg. The altercation continued for a period not in excess of ten minutes.

In response to the Hearer's question concerning what precipitated the alleged fight, Shockley responded:

"Well, I would say this: It was a very bad approach to the men, the people who were there, by saying, 'I'm going to throw you out of the bar,' where I think a simple, 'Fellows, I've got to close. It's time to go home,' would have done as well."

New Jersey State Troopers George F. Taylor and Steven A. Brook testified that, pursuant to a telephone call received on June 10th at approximately 6:00 a.m., they arrived at the licensed premises at approximately 6:25 a.m. Upon confrontation, Werner admitted firing the shots. They observed broken glasses strewn on the floor in front of the bar, broken bottles strewn on the floor behind the bar, and three or four bar stools lying on the floor.

In defense of the charges, William Werner testified that he entered the licensed premises on June 10th at 2:00 a.m. He sets his clock seven minutes fast in the tavern in order to facilitate the closing thereof. At approximately 4:40 or 4:43 a.m. he requested the bartender, Roy Orange, to announce "last call" because he did not want anyone in the premises after 5:00 a.m. He finished a game of pool at approximately 4:50 a.m., turned off the interior lights, checked the kitchen, made other preparations to close and sat down to wait for the patrons to leave.

When the clock read 5:00 a.m. (the actual time seven minutes earlier) he requested the patrons to leave. After waiting several minutes and no one appeared to be leaving, he again requested the patrons to leave. Again no one moved. He then went up and down the bar requesting all patrons to leave. He looked at the clock again at "...27 minutes of 6" while conversing with Vernon Shockley. Continuing, Werner testified:

"So when I was talking to Vernon, the next thing I knew, I was on the floor. Somebody hit me. And when I straightened myself out I look up. There's Freddy Lee. And I feel grit in my mouth where my teeth chipped."

Upon arising he requested the bartender to call the police. He then proceeded to the rear of the premises, took a pistol out of a desk drawer and at approximately 5:35 a.m. by his clock, returned to the barroom with the pistol in his hand and stood between the refrigerator and the rear wall. Lee lunged towards him. After testifying that Lee was held back, Werner then testified:

"Actually, who they were, I don't know. But if nobody was holding him back, he would have been over top of the bar. So he went back onto the floor and when he got on the floor he walked right around where I go and stepped over my cellar hole and this is when I shot at him. I shot at the floor."

Upon being questioned concerning his purpose in firing the pistol, Werner testified:

"To scare them. To get them out. The people won't leave. 'Let's go.'"

Everybody's hanging. Everybody's -- I figured they'd leave."

After firing the pistol he threw it on the bar, and he and Lee engaged in physical combat.

On cross examination, the witness asserted that until 5:27 a.m. (referring to the time on the tavern clock) when the commotion commenced he had repeatedly requested the patrons to leave.

Roy Orange, who was tending bar at the date and time charged herein, testified that, in accordance with Werner's request and pursuant to usual custom, he announced "last call" shortly prior to 4:45 a.m. Thereafter he served no additional alcoholic beverages. Werner commenced extinguishing lights and said to everyone in general, "Hurry up" and "Let's drink up and let's get out of here." No one attempted to leave and at approximately 5:00 a.m. Werner said, "Let's go. We got to get out of

here." Werner exclaimed to a patron, Firman Lawless, "You don't even have a drink" and "Why don't you leave." Lawless commenced arguing. Lee (who was seated at the bar) then physically assaulted Werner, and Werner and Lee engaged in a wrestling and punching bout. He heard three shots fired. He did not see the gun. The fight ended when Werner subdued Lee.

It was stipulated that the Township closing hours ordinance provides that the entire licensed premises are to be closed between the hours of 5:00 a.m. and 6:00 a.m.

I find that the major point of inquiry involved in the disposition of both charges is factual.

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

As to Charge No. 1, the evidence is clear and convincing that Werner engaged in a brawl and act of violence which may very well have resulted in a fatality. Assuming that the patrons did not heed his call to leave the premises prior to the closing hour, it is apparent that Werner over-reacted in his follow-up attempt at clearing the barroom of the patrons.

Concerning Charge No. 2, it is uncontroverted that the licensed premises were open for some period of time after 5:00 a.m. in contravention of the local ordinance.

It is a fundamental principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

I conclude that the Division has established the truth of both charges by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty of said charges.

Licensee has no prior adjudicated record.

Deeming the use of a lethal weapon aggravated circumstances, it is, therefore, recommended that the license be suspended on the first charge for fifteen days (Re Fessler, Bulletin 1201, Item 4), and on the second charge for fifteen days (Re Collbern, Inc., Bulletin 1735, Item 4), making a total suspension of thirty days.

Conclusions and Order

Written exceptions to the Hearer's report and supportive argument thereto were filed by the licensee pursuant to Rule 6 of State Regulation No. 16.

Upon careful consideration of the entire record herein, I find that the matters contained in the exceptions pertaining to Charge No. 1, have been considered in detail by the Hearer in his report or are without merit. Thus, I adopt his recommendation pertaining thereto

However, after considering all of the facts relative to Charge No. 2, I am persuaded that reasonable efforts were made by the licensee to comply with the subject ordinance. Under the circumstances, I find that this charge has not been established by a fair preponderance of the credible evidence. Therefore I shall reject the Hearer's recommendation pertaining thereto and shall dismiss this charge.

Accordingly, it is, on this 31st day of January 1972,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Weymouth to Happy's Bootleggers Inn (A Corp.), t/a Happy's Inn for premises South Jersey Avenue between 12th & 13th Avenues, Weymouth Township, be and the same is hereby suspended for fifteen (15) days, commencing 5:00 a.m. on Monday, February 14, 1972, and terminating 5:00 a.m. on Tuesday, February 29, 1972.

Richard C. McDonough
Director

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)	
Lakeview Bergen Corp.)	CONCLUSIONS
t/a The Frigate)	and
207-209 Bergen Turnpike)	ORDER
Little Ferry, N.J.)	

Holder of Plenary Retail Consumption License C-10 issued by the Mayor and Council of the Borough of Little Ferry.)

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 20, 1971, it sold alcoholic beverages to three minors, ages 19, 20 and 20 in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Gallia, Bulletin 1811, Item 8. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$600.00 in lieu of suspension.

Accordingly, it is, on this 27th day of January 1972,

ORDERED that the payment of a \$600.00 fine by the licensee is hereby accepted in lieu of a suspension of license for fifteen days.

Richard C. McDonough
Director

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Bilrose, Inc.)
t/a Danny's Golden Dragon)
1015-1025 Kingsley Street)
Asbury Park, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-9, issued by the City Council of the City of Asbury Park.)

Licensee, Pro se
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 28, 1971, it sold alcoholic beverages to two minors, ages 17 and 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re White Arrow Tavern Corp., Bulletin 1924, Item 4.

Accordingly, it is, on this 31st day of January 1972,

ORDERED that Plenary Retail Consumption License C-9, issued by the City Council of the City of Asbury Park to Bilrose, Inc., t/a Danny's Golden Dragon, for premises 1015-1025 Kingsley Street, Asbury Park, be and the same is hereby suspended for fifteen (15) days, commencing 3:00 a.m. on Monday, February 14, 1972, and terminating 3:00 a.m. on Tuesday, February 29, 1972.

Richard C. McDonough
Director

9. STATE LICENSES - NEW APPLICATIONS FILED.

Bass Charrington Vintners (USA) Ltd.
655 Madison Ave., New York, N. Y.
Application filed February 18, 1972 for wine wholesale license.

Harrison Beverage Co., 850 W. Delilah Rd., Egg Harbor Twp., N. J.
Application filed February 23, 1972 for place-to-place transfer of State Beverage Distributor's License SBD-67 from S. E. Cor. Delaware & Mediterranean Aves., Atlantic City, N. J.

Robert E. Bower
Robert E. Bower
Director