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

BULLETIN 1973 May 18, 1971

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1. NEW LEGISLATION - R.S. 33:1-77 AMENDED TO DOWNGRADE PENALTY FOR SELLING TO A MINOR.

On March 19, 1971 the Governor signed into Law Assembly Bill No. 960 which thereupon became Chapter 54 of the Laws of 1971, effective immediately. The new Law amends R.S. 33:1-77 of the Alcoholic Beverage Law (deleted matter in brackets, new matter undersoored) as follows:

> Anyone who sells any alcoholic beverage to a minor [shall be guilty of a misdemeanor] is a disorderly person; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was 21 years of age or over, (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be 21 years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually 21 years of age or over.
>
> This act shall take effect immediately.

RICHARD C. McDONOUGH
DIRECTOR

Dated: April 13, 1971

2. APPELLATE DECISIONS - C & S TAVERN, INC. v. NEWARK.

C & S TAVERN, INC., t/a JACK'S STAR BAR, Appellant, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Louis R. Cerefice, Esq., Attorney for Appellant.
William H. Walls, Esq., Corporation Counsel, by Jonathan Kohn, Esq., Assistant Corporation Counsel, Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent (hereinafter Board) which on September 9, 1970 by unanimous vote, denied appellant's application for renewal of its plenary retail consumption license for the 1970-71 licensing period for premises 24 Tichenor Street, Newark.

The resolution adopted by the Board gave as the reason for its action that it deemed "such renewal not to be in the interest of the public good and welfare for reasons expressed in the Board's record of hearing on September 9, 1970 and the Board's acceptance of the Police recommendations."

Appellant's petition of appeal alleges that the action of the Board was erroneous in that (a) the appellant was not granted a proper hearing, (b) appellant was never notified of any charges against the license with respect to renewal, (c) it was arbitrary, harsh, unreasonable and capricious, (d) the licensee was denied due process, and (e) the reasons given for failure to renew were specious.

The Board's answer filed herein avers that "the grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board."

Upon the filing of this appeal, the Director entered an order extending the term of Jack's 1970-71 license pending the determination of this appeal.

The matter herein was heard de novo pursuant to Rule 6 of State Regulation No. 15 with full opportunity given both parties to present testimony, and to cross examine witnesses. In lieu thereof respondent offered the transcript of testimony at the hearing before the respondent Board, pursuant to Rule 8 of State Regulation No. 15.

The transcript of the hearing below, admitted in evidence indicates in its pertinent part that on June 18, 1970 the Board first considered the application for renewal of the license herein.

The Board secretary advised the Board that the license was then under suspension and that a further suspension of sixty-five days was to be imposed upon completion of the current term of suspension.

It was further noted that Bernard Rauch, president of the Corporate licensee, was not present at the said hearing. Newark Police Captain Edward V. Weber, testified that an additional complaint dated May 3, 1970 had been forwarded to the Board. He further testified that a series of incidents, eleven in number had required police assistance at the licensed premises during the period from July, 1969 through May, 1970. Captain Weber stated that "in view of the serious nature and frequency of calls for police assistance it is obvious that the management cannot or will not, control his patrons." He then characterized the premises as a "trouble spot" and noted his opposition to the renewal of the license.

On June 25, 1970 the Board reconvened, one of three members absent. Mr. Bernard Rauch appeared for appellant and explained that because the licensed premises had been closed, he had not received notice of the hearing of June 18, 1970.

He was reminded by the Board that there was presently a matter described by a Board member as an "aggravated assault and battery" on May 23, 1970 the same matter referred to by Captain Weber as May 3, 1970. The Board then adjourned the hearing on the application until July 15, 1970 so that the Board could study the pending and undetermined situation.

At the meeting of July 15, 1970 the record indicates that at the request of an attorney for the appellant the matter was carried until August 12, 1970.

On August 12, 1970 Louis R. Cerefice, Esq. appeared on behalf of the appellant and advised the Board that negotiations were under way for the sale of the licensed premises. The Board then reserved decision on the application for renewal until September 9, 1970.

On September 9, 1970 the Board reconvened with one of three members absent. Rauch appeared without counsel. George J. Menza, chairman of the Board reviewed the earlier testimony of Captain Weber. He stated that "a further perusal of our records indicate that this license is presently under suspension until September 13, 1970 for a second Sunday sale in the 1969-70 licensing term, and further your record indicates that on June 5, 1970 there was a suspension of thirty-five days, on July 10, 1970 a suspension of sixty-five days plus a suspension of eighty days in the 1966-70 (sic) term, and a further suspension for a period of fifteen days in the 1963-64 term, plus an additional suspension of ten days in the 1957-58 term, and while this is over a ten year period it is however a suspension record."

"It also appears from the police report that the management has not attempted to control the proper conduct of the licensed premises and we feel that with these records along with the police recommendations, that this license has been proven to be a public nuisance and should be denied." He concluded, "Now, the Board has gone over quite a few of these records, and you will notice there are some suspensions here. This Board has carefully gone into the background surrounding this licensed operation for the past several years. We have considered carefully the police recommendations in this situation and feel that for general welfare of the community, as well as the total overall City's interest and the neighborhood, that this license should not be renewed."

Rauch, informed the Board regarding the contemplated sale that "It is just a matter of getting the place open so that the purchaser could make a final arrangement to buy it. The purchaser is not able to make a final arrangement to buy the place if the place is not in business. We have done extensive cleaning up and alterations in the place. We have been closed. Amd we are ready to convey the ownership to the new owner."

The Board nonetheless denied renewal by a vote of two to nothing.

At this de novo appeal hearing Rauch testified that he is president of the Corporate appellant and has operated at the present location since March, 1961. He characterized the area as a "ghetto" area and that the public phone in his premises was the only phone for the eight apartments and four businesses in the building. He asserted that during the period of suspension beginning in early June 1970, he had made repairs and renovations to the premises costing $4,600.

George J. Menza testified that he is chairman of the Board and has been a member for five or six years.

He further confirmed the sixty-five days suspension referred to supra and a thirty-five day suspension which immediately preceded it. Further that on July 28, 1970 the Board recommended the appearance of Rauch relative to an alleged infraction which he described as "a police referral, A and B, 5-23-70, and it was brought to our attention 6-23-70, and according to this record it is an order of the commissioners 7-28-70, an appea appearance." He further indicated that no formal charges resulted.

He affirmed that the decision not to renew the license was based on the recommendation of Captain Weber. He indicated additional reason for denial of the renewal as being "the history of this tavern...."

He concluded that "We thought this was one of the trouble spots that we should get rid of in the city of Newark."

From my evaluation of the transcript of the hearing below and the testimony adduced on appeal, it is abundantly clear that the Board could reasonably have concluded from the testimony of Captain Weber and from the review of the history of appellant's operation that this was in fact a "trouble spot" and that the renewal of this license would not be in the best interest of the public good and welfare. In theaarea of licensing as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. Nordco Inc. v. State, 43 N.J. Super 277, (App.Div. 1951) Sue and Frank Club, Inc. v. Newark, Bulletin 1963, Item 2.

Appellant argues that he was not granted a proper hearing. Rule 8 of State Regulation No. 2, in its pertinent part provides that "no hearing need be held... if the issuing authority on its own motion after the requisite statutory investigation, shall have determined not to issue a license to such applicant." It is clear however, from the record that appellant had ample opportunity to be heard at the hearing below.

Since the appellant was not entitled to a hearing below and since the record indicates Rauch's presence on several occasions

the additional argument by appellant as to want of notice of any charges against the license with respect to renewal or non-renewal must similarly fail.

At the de novo hearing, reference is made to the fact that the alleged infraction of May 3, 1970 did not result in any charges against the licensee. It seems to us entirely proper for both the local and the State agencies when passing on such applications to take into account not only the conduct of the licensee but also conditions not attributable to its conduct, which render a continuance of a tavern in a particular location against the public interest. Nordco Inc., supra at p. 282.

The transcript taken below and the testimony adduced at the hearing indicate that the appellant seeks as an alternative, a reversal of the Board's action and to order renewal of the license so that an application for transfer to another party may be considered. This matter was of course brought to the attention of the Board at the hearing below. After the appeal was filed respondent might have indicated its consent to a reversal for such limited purpose. Instead the Board chose to stand upon its decision below based on the report of the police precinct and the record of the licensee. Under the circumstances I find nothing unreasonable in respondents action. Downie v. Somerdale, Bulletin 1135, Item 1.

In addition, it is to be observed that in view of the determination by the Board that the tavern constitutes a "trouble spot" it could hardly be claimed that there was any abuse of discretion if not affording the appellant an opportunity to transfer the license to a vendee who wanted to continue the business at the same location Nordco, Inc., supra at p. 281.

The Board fully examined the facts and circumstances involved in this application which reflected the fact that there were five serious charges during the past ten years and that the licensee was at the time of the denial of renewal under suspension for the second serious violation within the licensing period 1969-1970. In addition the Newark Police Department recommended disapproval of the applicant. It is clearly evidenct that the Board felt that the public interest required such action. Silver Dollar Cafe v. Newark, Bulletin 1623, Item 2.

I conclude that the determination of the Board was supported by substantial evidence, and that the Board acted reasonably and in the best interests of the community in refusing to renew appellant's license.

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

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of testimony, the Hearer's report and the exceptions filed with respect thereto, which I find have either been answered in the Hearer's report, or are lacking in merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of March 1971,

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

ORDERED that the Order dated September 10, 1970, extending the term of appellant's 1969-70 license pending the determination of this appeal be and the same is hereby vacated, effective immediately.

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - NEW ALLWOOD REST v. CLIFTON.

NEW ALLWOOD REST, INC., t/a NEW ALLWOOD REST, INC., Appellant,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CLIFTON, Respondent.	)	

Joseph M. Keegan, Esq., Attorney for Appellant
Arthur J. Sullivan, Jr., Esq., by G. Dolph Corradino, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent (Board) whereby it suspended appellant's plenary retail consumption license for premises 777 Bloomfield Avenue, Clifton, for twenty days effective September 28, 1970, after finding appellant guilty of the following charge:

> "On June 25, 1970, you allowed, permitted or suffered gambling, viz., the possession of lottery slip, in and upon the licensed premises in violation of Rule 7 of State Regulation No. 20."

Upon the filing of the appeal an order was entered by the Director on September 25, 1970, staying the Board's action until the entry of a further order herein.

Appellant alleges in its petition of appeal that the action of the Board was erroneous for the following reasons:

(a) There was insufficient evidence presented;

(b) Evidence presented did not justify determination that licensee allowed, permitted or suffered gambling upon licensed premises;

(c) Board allowed into evidence extraneous matters not related to the charge herein;

(d) Suspension period was unreasonable and excessive.

The Board in its answer denies the aforesaid allegations and contends that the charge preferred had been sufficiently proven to warrant a finding of guilt thereon and that the penalty was not unreasonable.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

Detective Philip Calderaro of the anti-gambling squad of the Clifton Police Department testified on behalf of the Board that he has been engaged in the investigation of gambling matters for twelve years. His qualifications as an expert on gambling were stipulated. On June 25, 1970 he entered appellant's licensed premises about 1 p.m. alone and went to the bar, where he ordered a beer and hot dog. The place was full and most of the bar stools were occupied. He sat in the center of the bar and was served by a Mrs. Finkle, the owner (presumably the principal owner of the corporate stock of the licensee). Mrs. Finkle had a conversation with a patron about a numbers bet. She indicated that she did not understand such a bet and a discussion ensued culminating in the writing of a numbers slip by Mrs. Finkle. She placed it on the bar together with $1.50 in front of the patron. At this point the witness effected an arrest, took the bet slip and the money, both of which were marked into evidence.

On cross examination the witness admitted Mrs. Finkle was busy. He had not come to the place on an investigation; was there only to have lunch. He admitted the slip varied from the usual slip in that it had no indication of the amount of the bet written upon it. He concurred that Mrs. Finkle seemed to be joking when she presented the slip to the patron.

Appellant offered testimony of Mrs. Finkle and of a patron who was identified by the detective as receiving the slip and money. Edna Finkle (the corporate officer) claimed she was not usually tending bar but was there in place of her son-in-law. She alleged she knew the detective by sight. She was very busy that luncheon period, and was being teased about her ignorance of the numbers game and to end the teasing put a slip with numbers on it on the bar along with $1.50. She insisted that she did not make a bet, does not know the mechanics of numbers betting and did not make a numbers selection while at the register.

The patron (Oliver V. Stivalla) denied making a bet with or for Mrs. Finkle and that the money given to him was to buy beer. He admitted Mrs. Finkle did make out a bet slip and place $1.50 on the bar but that he had picked up neither. He claimed he would not know where to place a bet, and does not bet.

In rebuttal, the detective (Calderaro) repeated that the prior witness was picking up the money when the arrest was made and that the money was taken from him.

The factual differences between the testimony presented by the appellant and the Board are very slight. Mrs. Finkle admitted making out the numbers slip and laying money on the bar. Her story that doing so as part of an education program to learn

the mechanics of numbers betting, with the patrons as a faculty, and putting down $1.50 to "shut them up", places a strain on her credibility.

The evidence presented was certainly sufficient upon which a finding could be predicated. The testimony of the detective, as a gambling expert, was clear and precise. The numbers on the slip and their combinations gave three chances to the bettor to win, and the amount posted was easily divisible for an even bet.

We are dealing with purely disciplinary measures and their alleged infractions. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (1948). Thus the Division is required to establish its case only by a preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). In other words, the finding must be based on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Appellant's witness admitted that she made out a numbers slip and placed money on the bar; this corroborates the testimony of the detective. In a similar matter it was noted that "It makes no difference whether the bets are committed to paper or to memory, and hence it is not necessary to prove a tangible record was made." State v. DeStasio, 49 N.J. 247, at p. 253 (1967); Re Venezia's Tavern, Inc., Bulletin 1946, Item 2. The argument that the betting slip did not contain a reference to the amount bet can thus be laid to rest.

The attempt of appellant to have one believe that the making of the numbers slip was by way of experimentation would falter if viewed against the long-standing policy, instructions and decisions that licensees shall zealously guard against permitting gaming on the licensed premises. As long ago as 1938 the first Commissioner (now Director) of the Division said:

> "As a practical matter, licensees take long chances when they permit either cards or dice upon licensed premises." Re Pease, Bulletin 226, Item 5.

Playing the numbers could be added to cards or dice in the above quote. Were her conduct restricted to the making of the slip alone, there might well have been a finding of guilt as she, being the licensee, had the paramount duty of obedience to the regulation, i.e., "No licensee shall engage in --- any unlawful game or gambling ... nor shall any licensee possess ... any slip ... pertaining in any way to ... gambling of any kind ...." Rule 7 of State Regulation No. 20. Compounded, however, by the placing of the bet money on the bar, the conclusion of guilt is inescapable.

The appellant's contention that extraneous and irrelevant matter, not related to the charge herein, was allowed into evidence below is not applicable here, this being a hearing de novo under Rule 6 of State Regulation No. 15. Parenthetically, it might be added that counsel for appellant did not press this objection.

A weighing of testimony and the evidence presented in this matter leaves satisfaction with the finding by the Board that appellant is guilty of the charge herein and that the appellant has failed to sustain the burden that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15. Cf. Collins v. Clifton, Bulletin 1750, Item 1.

It should be added here that the penalty imposed by the Board, i.e., fifteen days plus five days for a dissimilar offense, was far from excessive, as those imposed by the Division for like offenses exceeded sixty days (Re Tonks, Bulletin 1935, Item 3; Re Maesm, Inc., Bulletin 1931, Item 3; Re Renee's Bar & Liquor Store, Inc., Bulletin 1929, Item 2; Re Bond, Bulletin 1925, Item 4).

It is therefore recommended that an order be entered affirming the action of respondent, dismissing the appeal and fixing the effective dates for suspension imposed by respondent and stayed pending the entry of the order herein.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

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

ORDERED that Plenary Retail Consumption License C-122, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to New Allwood Rest, Inc., t/a New Allwood Rest, Inc., for premises 777 Bloomfield Avenue, Clifton, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Tuesday, April 13, 1971, and terminating at 3 a.m. Monday, May 3, 1971.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 120 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
SALVATORE IANDOLI t/a Hazel Nut Bar 554 Valley Road West Orange, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange.	)	

Licensee, Pro se
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers dates between December 8, 1970 and January 15, 1971, he permitted acceptance of horse race bets, and on January 15, 1971 possessed horse race bet slips and also slips in a lottery, commonly known as the "numbers game", on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for fifteen days, effective January 2, 1946, for a local "hours" violation and by the Director for sixty days, effective April 29, 1968, for permitting gambling (acceptance of "numbers" bets) on the licensed premises. Re Iandoli, Bulletin 1795, Item 1.

The prior record of suspension of license for dissimilar violation in 1946 occurring more than five years ago disregarded, but the record of suspension of license for similar violation in 1968 within the past five years considered, the license will be suspended for one hundred twenty days, with remission of five days for the plea entered, leaving a net suspension of one hundred fifteen days. Re Turso and Turso, Bulletin 1756, Item 6.

Accordingly, it is, on this 23rd day of March 1971,

ORDERED that Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to Salvatore Iandoli, t/a Hazel Nut Bar, for premises 554 Valley Road, West Orange, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1971, commencing at 2:00 a.m. Monday, April 12, 1971; and it is further

ORDERED that any renewal license that may be granted be and the same is hereby suspended until 2:00 a.m. Thursday, August 5, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - FAILURE TO DISCLOSE PRIOR RECORD OF SUSPENSION IN CURRENT LICENSE APPLICATION - PRIOR SIMILAR AND DISSIMILAR VIOLATIONS - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 80 DAYS - NO REMISSION FOR PLEA ENTERED AFTER PARTIAL HEARING.

In the Matter of Disciplinary Proceedings against)
)
PINEWALD VILLA CORPORATION)
t/a Club Plaza) CONCLUSIONS
Atlantic City Blvd.) AND ORDER
Beachwood Plaza Shopping Center)
Berkeley Township
PO Bayville, N. J.)

Holder of Plenary Retail Consumption)
License C-12, issued by the Township
Committee of Berkeley Township.)

Reduced to Today 4/19/71

Haines, Schuman & Butz, Esqs., by Harold A. Schuman, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

After partial hearing, licensee pleaded non vult to charges alleging that (1) on August 8, 1970, it sold drinks of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20, and (2) in application for its current license it failed to disclose record of prior license suspensions of Eisenhower's Musical Bar, Inc., Laurel and Union Streets, Lakehurst, New Jersey, in

which it was then linked by a common officer, director and stockholder, in violation of R.S. 33:1-25.

Although licensee corporation has no record of any previous suspensions, licenses held by Eisenhower's Musical Bar, Inc., as aforementioned, were suspended by the Director for (1) ten days, effective September 1, 1960, for sales to minors; (2) thirty days, effective May 29, 1962, for sales to minors and false statement in the license application; (3) ten days, effective November 1, 1966, for permitting mislabeled beer taps on the licensed premises; and (4) thirty-five days, effective February 21, 1968, for sales to minors. Re Eisenhower's Musical Bar, Inc., Bulletins 1357, Item 8; 1458, Item 4; 1706, Item 7 and 1785, Item 4.

The license will be suspended on the first charge for fifteen days (Re H.W.J. Corporation, Bulletin 1939, Item 10) and on the second charge for ten days (Re Paul's Shore Liquors, Inc., Bulletin 1899, Item 13); and considering the prior record of Eisenhower's Musical Bar, Inc. (Re Spring Bar & Grill, Inc., Bulletin 1447, Item 9) there will be added ten days by reason of the two suspensions for similar violations, effective September 6, 1960 and May 29, 1962, as occurring more than five but less than ten years ago (Re Carabelli, Bulletin 1428, Item 7), five days by reason of the suspension for dissimilar violation effective November 1, 1966 as occurring within the past five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), and for ten days by reason of the suspension effective February 21, 1968 for similar violation occurring within the past five years (Re Glitter Club, Inc., Bulletin 1883, Item 2), to which will be added thirty days by reason of the aggravated circumstance of four prior license suspensions (Re Jeanne's Enterprises, Inc., Bulletin 1766, Item 9), or a total of eightydays, without any remission for the confessive plea entered after partial hearing (Re Callahan, Bulletin 1751, Item 2).

Accordingly, it is, on this 24th day of March 1971,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of Berkeley Township to Pinewald Villa Corporation, t/a Club Plaza, for premises Atlantic City Blvd., Beachwood Plaza Shopping Center, Berkeley Township, be and the same is hereby suspended for eighty (80) days, commencing at 2:00 a.m. Friday, April 9, 1971, and terminating at 2:00 a.m. Monday, June 28, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
JOHN MROZOWICZ) CONCLUSIONS AND ORDER
300 Lanza Avenue)
Garfield, N. J.)
)
Holder of Plenary Retail Consumption License C-13, issued by the Mayor and Council of the City of Garfield.)

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 4, 1970 he sold mixed whiskey drinks to three minors, two age 16 and one age 18, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for fifteen days effective October 10, 1955 for similar violation. Re Mrozowicz, Bulletin 1085, Item 4.

The prior record of suspension of license for similar violation occurring more than ten years ago disregarded, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Cf. Re Glitter Club, Inc., Bulletin 1883, Item 2.

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

ORDERED that Plenary Retail Consumption License C-13, issued by the Mayor and Council of the City of Garfield to John Mrozowicz, for premises 300 Lanza Avenue, Garfield, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Tuesday, April 13, 1971, and terminating at 3 a.m. Saturday, May 8, 1971.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
CLUB 31, INC. 28 Brunswick Street Jersey City, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)

George R. Wiggs, Esq., Attorney for the Licensee.
Walter H. Cleaver, Esq., Appearing for the Division.

BY THE DIRECTOR:

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

Licensee has a previous record of suspension of license by the Director for ten days, effective August 24, 1970, for similar violation. Re Club 31, Inc., Bulletin 1934, Item 13.

The prior record of suspension for similar violation occurring within the past five years considered, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Culver & Culver, Bulletin 1874, Item 4.

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

ORDERED that Plenary Retail Consumption License C-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Club 31, Inc., for premises 28 Brunswick Street, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, April 12, 1971 and terminating at 2:00 a.m. Friday, May 7, 1971.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against	)	
ROYAL CLUB OF BEVERLY 121 Broad Street Beverly, N. J. 08010	)	CONCLUSIONS AND ORDER
Holder of Club License CB-2 issued by the Common Council of the City of Beverly.	)	

Licensee, by Leroy McGee, Financial Secretary.
Edward F. Ambrose, 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:

"On July 28, 1970, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises a ticket or participation right in a lottery, commonly known as the 'numbers game'; in violation of Rule 6 of State Regulation No. 20."

The Division's case was presented through the testimony of Detective Sergeant James Dowd of the New Jersey State Police who for the past five years has been in charge of criminal investigations at the Fort Dix Station, Wrightstown, New Jersey. Detective Dowd indicated he has been personally engaged in 40-50 gambling investigations during the said period of five years including numbers betting activities.

He testified that, accompanied by three other State Troopers, armed with a proper search warrant, he searched the licensed premises on July 28, 1970. Upon entering the premises they confronted one Harold Foreman, the bartender, and noted that there were no patrons on the premises at the time. Foreman was advised of his constitutional rights, shown the search warrant and voiced no objections to the search.

A search of the person of Foreman and the "entire contents of the bar" produced one small slip of white paper with a series of three digit numbers thereon.

The contents of this slip is herewith reproduced.

130	149	
124	169	
129	170	
130	172	
135	179	S.W.

He testified that this slip was found next to the cash register and that in his opinion this slip was a numbers bet slip "indicating ten individual three digit numbers."

Foreman, upon being asked for an explanation replied that he had no knowledge of it and suggested that it might be a part of the cash register tape. A comparison clearly showed that this was

not the case. He further testified that while the slip did not specify any money amounts, this is not unusual in the recordation of bets. He concluded that the paper indicated ten numbers bets in like amount placed by "SW."

In defense of the charge Leroy McGee, testified that he is financial secretary of the licensee and is its bar chairman. The club is a private club which has been in existence at the same location since 1955 and he has been a member since that time.

He explained the alleged numbers slip as follows: The records on the club juke box are selected by depressing a three digit number corresponding to the particular record. The records are changed or replaced every two weeks and the serviceman leaves a list of the records which have been changed or replaced designating them by numbers rather than by title. The initials "SW" represented a popular recording artist named Stevie Wonder. The records are changed every two weeks, popular records remain and unpopular records are replaced; the juke box holds approximately two-hundred records and each of the three digit numbers appearing in the alleged numbers slip is also present on the juke box.

On cross examination he candidly admitted that he has received many more similar slips some of which he could produce if necessary since he receives one every two weeks from the serviceman. Furthermore, Foreman was merely a temporary bartender helping out during a period of his unemployment and he may have had knowledge of the existence and purpose of the slip at that time. He concluded that while a representative of the service company appeared at the municipal court hearing no one was present for these proceedings.

Harold Foreman testified that he is a member of the licensee and he volunteered his services as bartender during a period of his unemployment which began sometime in the middle of May 1970, and continued up to and including the date of the incident herein. His hours were from 10:00 a.m. to 6:00 p.m. on Monday, Tuesday and Wednesday and slightly longer on Thursday and Friday. With reference to the incident on July 28, 1970 trooper Dowd and two other troopers entered the premises, locked the door, read the warrant and proceeded to search the premises. He maintained that he had no knowledge of the list of numbers and so informed the officers; the record by Stevie Wonder is the most popular record and he had never seen numbers activity take place on the licensed premises.

On cross examination he denied knowledge of the existence of or purpose of the slip. When the officers confronted him with the slip, he stated that the handwriting on the slip was not his and he knew nothing about it. He added that the record by Stevie Wonder was titled <u>Signed, Sealed and Delivered</u> and repeated that it was the club's most popular record. Further, with reference to the juke box "you have to hit three digits to get your number." He concluded that a search of his person by officer Dowd showed he had $1.65 in his pockets at the time; his sister-in-law had opened the premises for him on the morning of July 28, 1970 and it was she who was seen leaving the premises when the State police arrived.

Fred Palombi testified on behalf of the licensee that he is chief of police of Beverly, and has been on the force for twenty-six years. He testified that he was not on the premises at the time of the search; he knows most of the members of the

club and is familiar with how it conducts its operation. In his opinion "the club itself does have a high reputation. We do have a high calibre of membership there, and they do run it very, very smooth."

On cross examination he testified that there have never been any complaints regarding the licensee made to the police department.

In disciplinary matters the Division is required to establish its case by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control 20 N.J. 373. The finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence Sec. 1042.

The paucity of evidence presented by the Division leads to the conclusion that it has failed to establish its case by a fair preponderance of the credible evidence. The alleged numbers slip which has been set forth in its entirety, raises only a suspicion that it was in fact a numbers slip.

The perfectly plausible explanation given by the licensee, the credibility and candor of both McGee and Foreman and the excellent reputation of the licensee as presented by the local Police Chief overwhelmingly serve to refute any suspicion as to the nature of the alleged numbers slip. This Division has dismissed for lack of evidence a number of gambling complaints wherein considerably more evidence was presented. Cf. Re Columbia Tavern, Inc., Bulletin 1750, Item 8; Re Benjamin Ridolfi, Bulletin 1396, Item 6; Re Alps, Inc., Bulletin 578, Item 1; Re Albert Edward Langford, Bulletin 569, Item 2; Re Polish American Citizens Club, Inc., Bulletin 472, Item 9.

Since there appears to be a lack of the necessary preponderance of the evidence herein, I recommend that the licensee be found not guilty and that the charge be dismissed. Re Columbia Tavern, Inc., supra.

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

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

ORDERED that the charge herein be and the same is hereby dismissed.

Richard C. McDonough
Director