Gossweiler

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

BULLETIN 1802 August 7, 1968

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ITEM

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

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1. APPELLATE DECISIONS - TORRES v. UNION CITY.

ANGELINA TORRES, Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE CITY OF UNION CITY, Respondent.	)	

Sidney Lasser, Esq., Attorney for Appellant
Edward J. Lynch, Esq., 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 the respondent Board of Commissioners of the City of Union City (hereinafter Board) whereby it suspended the appellant's plenary retail consumption license for premises 1000 Central Avenue, Union City, for ninety days effective December 2, 1967, after finding the appellant guilty in disciplinary proceedings of charges as set forth in its adoptive resolution. The text of the resolution and order follows:

"WHEREAS, charges have been heretofore duly served upon the above named licensee charging that: On January 14, 1967 you did permit disorderly persons to be on the premises as a result of which a fight and affray took place in violation of Sections 15 and 16 of an Ordinance adopted February 6, 1936, as follows:

Section 15: No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pickpockets, swindlers, confidence men, prostitutes, disorderly persons, or other persons of ill-repute, nor permit any females to attend or assemble in said licensed premises and solicit or entice customers to purchase drinks or make assignations for improper purposes.

Section 16: No licensee shall allow, permit or suffer in or upon the licensed premises any disturbance, brawl or unnecessary noise, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance.

Second Count: On January 15, 1967 you did permit disorderly persons to be on the premises as a result of which a fight took place in violation of Section 16 hereinabove set forth.

Third Count: On March 4, 1967 you permitted disorderly persons to be on the premises as a result of which a

fight and affray took place in violation of an ordinance hereinabove set forth.

On August 3, 1967 you did permit disorderly persons to be on the premises as a result of which a fight and affray took place in violation of an ordinance hereinabove set forth.

On September 15, 1967 you did permit disorderly persons to be on the premises as a result of which a fight and affray took place in violation of an ordinance hereinabove set forth.

On September 30, 1967 you permitted disorderly persons to be on the premises as a result of which a brawl, fight and affray with dangerous weapons took place, that is the use of ice picks, knives and other weapons in violation of Sections 15 and 16 of an Ordinance adopted February 6, 1936, as hereinabove set forth.

WHEREAS, the Board of Commissioners has heard the evidence and argument of counsel and find the licensee, Angelina Torres, guilty of charges as set forth in the Complaint.

IT IS THEREFORE, on this 28th day of November, 1967, on motion duly made and recorded, RESOLVED AND ORDERED, that Plenary Retail Consumption License No. C-174, heretofore issued by the Board of Commissioners of the City of Union City, in the County of Hudson, New Jersey, to Angelina Torres for premises at 1000 Central Avenue, Union City, New Jersey, be suspended for a period of ninety (90) days, being found guilty on the charges contained in Complaint; said suspension to commence on December 2nd, 1967 at 3 A.M. and to end on March 2, 1968, at 3 A.M.

DATED: November 28th, 1967"

Upon the filing of this appeal an order was entered by the Director on December 26, 1967, staying respondent's order of suspension until entry of a further order herein.

Appellant in her petition of appeal alleges that the action of the Board was erroneous for reasons which may be briefly summarized as follows:

(a) The decision of the Board was contrary to the weight of the evidence;

(b) The facts upon which the charges were based "do not constitute a violation of respondent's ordinance as alleged;"

(c) "Prejudicial and objectionable evidence" was received at the hearing before the Board;

(d) Penalty imposed was "too severe, excessive, prohibitive, arbitrary, discriminatory, contrary to and not commensurate with the violations charged against the appellant and her previous innocent and unblemished record as a licensee."

The answer of the Board admits the jurisdictional facts and denies the substantive allegations of the petition. It sets forth further that its decision was based upon "clear and concise" evidence. It further contends that the appellant, "who does not speak or understand the English language, offered no defense."

With respect to the penalty imposed, the Board alleges that "during a period of less than twelve months, the Union City Police Department was dispatched to the licensed premises due to fights, noise, melees and stabbings on a number of occasions."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

I

Before considering the critical issues involved in the appeal herein, it might be well to comment upon the proceedings before the Board. After the Board had introduced testimony by police officers and other witnesses in support of the charges contained in the notice of charges served upon the appellant, the appellant was then produced as a witness in her own behalf. It appears from the record herein that she does not understand the English language, and an interpreter was necessary. Because of the representation by her counsel that she had an interpreter available, the interpreter who served on behalf of the Board left the meeting. The appellant was then asked whether a fight took place at the premises on either January 14 or January 15, 1967. She replied that she knew of no such incidents. Her interpreter refused to be sworn, and the attorney for the appellant thereupon withdrew the appellant as a witness. No other witnesses were called to testify on behalf of the appellant.

It seems clear that, under these circumstances, it is difficult to assess the specific responsibility for the failure of the appellant to adequately present her defense before the Board. Nevertheless, a full opportunity has been given to both the appellant and the Board at this plenary de novo hearing to present all testimony relating to the said charges so that neither side is prejudiced. This cures any infirmity allegedly arising by reason as aforesaid or, as further asserted, by reason of any "prejudicial or objectionable" evidence received at the hearing below. Cino v. Driscoll, 130 N.J.L. 535 (Sup.Ct. 1943); cf. Neiden Bar and Grill, Inc. v. Newark, 40 N.J. Super. 24 29 (App. Div. 1956).

II

We come now to the consideration and evaluation of the testimony relating to the specific charges upon which the Board grounded its determination as aforesaid.

Gerald Cerulli (a local police officer) testified that on September 30, 1967, pursuant to a specific assignment, he went to the premises and observed several men "fighting on the floor, wrestling." Upon entering the tavern he disengaged the combatants and noted that one of the patrons was slashed in and bleeding from the neck. It appeared that none of the patrons seemed to speak or understand English and, while these men were lined against the wall, another fight occurred. Four other police officers appeared and order was soon restored.

Carlos Vega (a patron), a victim of the assault, was then taken to the North Hudson Hospital for treatment of a severe laceration on his neck which required twelve sutures. The officer further observed that, when he arrived at the tavern, tables were overturned, glasses and bottles were strewn over the floor. There was a broken cue stick on the floor, and the whole place was in shambles. The officers placed seven of the patrons under arrest. A search of the premises disclosed a pocket knife and two socket wrenches. Another victim of this fracas, Jose Rivera, who suffered a punctured wound of the left chest, was also sent to the hospital and treated.

On cross examination the officer explained that he did not question the appellant because she could not speak English. He identified Vega as the one who resumed the battling after he was lined up against the wall. The witness added that, from his observation, it appears that the windows were broken from the inside and that the glass was shattered and strewn partly on the outside of the premises.

Jose Rivera testified (he does not understand English and an interpreter was used to elicit his testimony) to the following effect: At 2:30 a.m. on September 30, 1967, he entered the premises and ordered a beer. While consuming this beer, several persons entered the tavern and started to fight, whereupon he decided to leave the tavern. As he tried to leave, he was stabbed in his chest, whereupon he retreated into the appellant's apartment which adjoined the licensed premises.

When the police arrived the appellant escorted him into the street and the police then took him to the hospital for treatment. On his way out he observed that the tavern was a shambles; that all the windows were broken, and that there was much glass strewn throughout. He insisted that he was stabbed by patrons who had started fighting on the outside and continued the battle inside the premises. However, he could not explain why he was stabbed as he proceeded to leave the premises. All he knows is that one of the patrons lunged at him with an ice pick and stabbed him in the left chest. He identified the person who stabbed him as Rinaldo Rodriguez, whom he had seen at this tavern on prior occasions but had never had occasion to have any conversation or dealings with him. On cross examination he admitted that he was in fact charged with atrocious assault and battery on Vega resulting from cutting Vega in the neck with a knife. He could not explain why this charge was made against him since he was, in fact, an innocent bystander. However, he denied that he actually cut Vega with a linoleum knife. Finally he acknowledged that his testimony at the hearing with respect to the original version of the fight differed from that given in the municipal court; that this was the first time that he testified that the fight actually started on the outside of the premises.

Daniel Lawlor (a local police officer) testified with respect to the incident which allegedly occurred on March 4, 1967. He stated that he responded to a call to the premises on complaint that there was a fight. When he arrived he observed a large group of men on the street in front of the premises who were loud and boisterous, "and they were shouting back and forth at one another." Since all the conversation was in Spanish, he did not understand the cause of the commotion. He dispersed the crowd, but did not question the appellant at that time. In describing the condition of the persons on the outside of the premises, he noted that they were agitated, "were shouting back and forth to one another", and

their clothing was "disarranged." One person was being assisted into an automobile and he appeared to have been "engaged in fisticuffs."

This witness also responded to a call to these premises on August 3, 1967. Then, too, he noted that there were large groups immediately outside of the premises, as well as on the opposite side of the street, who were engaged in violent shouting. The husband of appellant was standing in the doorway of the premises shaking his fist and shouting. Another man, across the street, was being restrained by his companion and he had a slight cut on the side of his face. After about ten minutes, the crowd was finally dispersed. Questioned about the incident by this witness as to what had occurred, Torres merely responded "nothing" and refused to say anything further. No arrests were made.

Lawlor also noted that he had responded to calls at these premises on three or four prior occasions because of noise complaints, and he warned the appellant's husband, who appeared to be in charge of the premises, that he would have to discontinue the disturbing noises.

Lieutenant Roderic McKenzie gave testimony with respect to his visit to these premises on September 30. When he arrived he saw two radio cars at the scene and a large crowd had gathered at the premises. He ordered one of the injured patrons to be taken to the North Hudson Hospital and, while this person was escorted to the police car, he also observed another injured patron leaving the premises with a wound on his left chest. He identified this person as Jose Rivera. Upon his arrival in the premises he noticed that every window was broken and there was a cue ball which was found in the street lying under the front window of this tavern. Upon entering the premises he noted that it was a complete shambles on the inside and, at his direction, a tarpaulin was placed over the windows. His observation of the patrons was that they were "drinking very heavily" and "my impression was that they were heavily intoxicated." On cross examination he stated that he observed Rivera and noted that he had been drinking heavily and his shirt was torn.

Frank Hanna (City Clerk) testified that he took the minutes of the proceedings before the Board and offered into evidence a true copy of the ordinance upon which the charges were based, as well as copies of the charges and the resolution. He also recalled that the appellant had difficulty in understanding questions put to her by her attorney, whereupon her attorney "rested his case."

Joseph Preciose (a local police officer) visited the premises in response to a police call on January 14, 1967, and found several persons arguing in a loud manner in front of the said premises. Because of a language barrier, he could not determine the reason for the argument but finally quieted them down and dispersed them.

Officer Kurt Fink testified that he was directed to proceed to these premises because of a disturbance. Upon entering the premises with his partner, he observed a group of about twenty-five patrons in the premises. He questioned Torres who denied that there was any disturbance. He noted that, while the patrons had been drinking, "I wouldn't say [they were] heavily intoxicated." This witness also described his visit to these premises pursuant to an assignment on September 15, 1967. When he and his partner

approached the tavern, two men and a woman outside of the taver were engaged in scuffling and fighting. Upon questioning them, one of them admitted that the three of them had been inside the tavern drinking and got into an argument over a woman. He observed that these persons had "quite a bit of drink in them." In fact, the man had a strong smell of alcohol on his breath; his eyes were glassy and bloodshot. It was his impression that these persons were under the influence of liquor, but he did not place them under arrest because he explained that his common procedure is not to arrest persons "unless they are helplessly drunk or causing a disturbance."

Felix Torres (husband of the appellant herein) gave the following account: With respect to the incident of September 30, 1967, he was present in the tavern at about 2:30 a.m. At that time he tried to close the door of the tavern in order to proceed with cleaning up when Manuel Fuentes ran past the door and into the tavern. He was closely followed by Carlos Vega. Fuentes ran into the back door and Rivera tried to go under the bar. Vega then went into the bathroom and Manuel tried to break down the bathroom door. The next thing he noticed was that Vega was bleeding, and he then called the police. While the fighting was proceeding on the inside, the police arrived and another group of persons from the outside then came into the tavern and joined the fight. He stated that his wife was behind the bar during this battle and was in fact the only one tending bar on that occasion. He denied that she ever went into the rear apartment, but in fact remained at the bar until the police arrived. The windows were broken with car wrenches which were thrown by a person on the outside. He was the one who phoned the police, but did not identify himself during that call; he merely told the police that there was a disturbance at Lynn's Bar.

With respect to the August 3 incident, his recollection was that there was a group on the outside quarreling but he denied standing in the doorway, shouting or shaking his fists at the group. On cross examination he was asked why he did not testify with respect to these incidents before the Board. He explained that nobody asked him to testify. Finally he added that, on the morning of September 30, he did not actually see anyone slashed or stabbed. The first thing he knew that anyone was injured was when he visited the victims at the hospital. He also admitted that both Carlos Vega and Jose Rivera were under the influence of liquor on this occasion.

Angelina Torres (the appellant herein), testifying with the aid of an interpreter, categorically denied the charges with respect to each and every date alleged in the complaint. Concerning the incident of September 30 she gave the following version: She was tending bar on that date and, at about 2:10 a.m., Jose Rivera and Manuel Fuentes entered the premises. After a short period of time Rivera and Fuentes engaged in a conversation and then left the premises followed by several of the other patrons. Within a short time thereafter Fuentes came running back into the tavern, followed by Vega and three other patrons. Fuentes was bleeding and ran into the bathroom. Vega, who had a car wrench in his hand, started banging on the door. She thereupon told her husband to call the police, who responded within a few minutes. She then went into her apartment where Rivera had gone, but she denied that she put him to bed or ministered to his wounds. Rather, she requested that he leave the apartment, which he did. She admitted that there was a considerable amount of damage to the premises and that the windows were broken from objects thrown from the outside of the premises. However, she

did not observe any fighting and, in fact, the patrons appeared to be "friendly and mixing." She further stated that she did not see any weapons or ice picks or pocket knives. With respect to the prior dates, she denied that she ever saw any of the police officers enter her tavern in response to any complaints of alleged disturbances or brawls. On cross examination she insisted that there was no fighting at all inside the tavern on September 30, but that any fighting that did occur took place on the outside of the premises. She explained that she did not see anyone go into her apartment, because she was very busy working; nor did she observe how any of the windows were broken because this occurred from the outside of the premises. She insisted also that none of the persons was intoxicated, all the patrons were quiet and "everybody was drinking and talking."

These charges were predicated upon Sections 15 and 16 of an ordinance adopted February 6, 1936. Counsel's contention that the charges based upon the ordinance are invalid is clearly frivolous and must be rejected.

In order to meet the burden required under Rule 6 of State Regulation No. 15, appellants must show manifest error and that indeed the action of the Board was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502. We are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252. These cases require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956). A licensee is responsible for conditions both in and outside her licensed premises which are created or caused by the patrons thereof. Kaplan et al. v. Englewood, Bulletin 1745, Item 1; cf. Garcia v. Fair Haven, Bulletin 1149, Item 1; Essex Holding Co. v. Hock, 135 N.J.L. 28.

With respect to brawls or misconduct on the licensed premises, it has been held that, while it is true that a licensee cannot be responsible for a sudden flare-up on the premises, where she could not have reasonably been aware of its imminence, she does become responsible where she should reasonably have become alerted to the imminence of trouble or a disturbance. Suppa v. Harrison, Bulletin 1783, Item 2.

Finally, with respect to the testimony, the general applicable principle is to the effect that no testimony need be believed but, rather, the Hearer must always credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (3rd ed. 1940); Greenleaf Evidence, sec. 201. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super. 1; Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

My evaluation and examination of the testimony lead me to make the following findings of fact:

1. As to the incident occurring on September 30, 1967 (which epitomizes the inculpatory conduct of the licensee, and decisively influenced the Board in proceeding against her), the proof is substantial that the appellant permitted disorderly

persons to be on the premises, as a result of which a brawl, fight and affray with dangerous weapons took place, in violation of Sections 15 and 16 of the aforementioned ordinance. In reaching the conclusion with respect to this charge, as indeed on the other charges, I am convinced that there were serious factual conflicts in the testimony of the witnesses. Some of this was undoubtedly due to the difficulty in communication since a number of the witnesses could neither speak nor understand English.

I have the abiding conviction that some of the witnesses, and particularly the appellant, played fast and loose with the truth. Her repeated denial that she was aware of any of the incidents on the prior occasions does violence to common experience when confronted with the believable and credible testimony of the police officers and the police reports.

With respect to this date, the appellant would have us believe that all of the damage to the premises was sustained from the outside of the premises and that there was in truth no fighting inside the premises. This is contrary to the testimony of her own witnesses, including that of her husband, and is patently false.

2. I find as a fact that the disturbance on September 30 was not as a result of a sudden flare-up but came over a substantial period of time. There is clear testimony emanating not only from the witnesses for the Board but even from Torres himself that many of the patrons were under the influence of liquor. The Police Lieutenant testified that he observed many of the patrons and concluded that they were intoxicated.

Licensees have a strong stake in proper law enforcement and must assume a leading position in cooperating with law enforcement agencies. Jackson v. Newark, Bulletin 1600, Item 2. I am persuaded that the appellant herein did not act in accordance with her obligations and responsibility as a licensee. This conclusion is based upon the fact that on this occasion, as well as on the prior occasions, she permitted excessive drinking on the premises; this was the pattern in the operation of this tavern; and it was undoubtedly a primary cause for the disturbances that took place at these premises on the dates charged. Where a licensee does not control the premises and the patrons thereof, and permits heavy drinking and intoxication, she must be held accountable for the logical consequences of such activities. I thus conclude that the evidence preponderates in support of guilt of this charge.

3. With respect to the other dates as set forth in the resolution and order, I am left with the overall impression, from the preponderance of the credible evidence in the record, that the disturbances which occurred outside of the appellant's premises on those dates, and which necessitated police action, were caused, as stated above, in large measure by the conduct of the appellant in permitting these persons to drink heavily. Their intoxication precipitated the incidents alleged herein. Thus, for example, Officer Fink testified that several patrons who were fighting on the outside of these premises were clearly under the influence of liquor and had "imbibed heavily", that the eyes of these persons were "glassy and bloodshot." It is also significant that Lieutenant McKenzie testified that on September 30, 1967, he observed that the patrons had been drinking very heavily, and his impression was that they were "heavily intoxicated." I therefore conclude that the Board has sustained the burden of establishing the charges as set forth herein by a fair preponderance of the believable evidence, and indeed by the substantial evidence. Greenberg v. Middlesex,

Bulletin 1079, Item 5; Whitley v. Kenilworth, Bulletin 1376, Item 5.

III

Appellant finally advocates that the penalty was harsh and discriminatory under the circumstances of the case and should be modified. A liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585 (1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). In the exercise of that power, the Legislature invested the issuing authority (Board) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violation of the law or of State or local regulations. R.S. 33:1-31. It has generally been held by this Division that a suspension imposed in a disciplinary proceeding rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Buckley v. Wallington, Bulletin 1772, Item 1; cf. Delroz, Inc. v. West Orange, --- N.J. Super. --- (1968), reprinted in Bulletin 1786, Item 1. As the court said in Delroz:

> "... the Director ... need not make a fresh determination wholly uninfluenced by the action of the municipal authorities. The penalty is a matter within the Director's discretion, Mitchell v. Cavicchia, 29 N.J. Super. 11, 15 (App.Div. 1953), and in discretionary matters the Director may defer to the determination of the municipality 'so long as its exercise of judgment and discretion was reasonable.'" Fanwood v. Rocco, 33 N.J. 404 (1960) and 59 N.J. Super. 306, 317 (App.Div. 1960).

In considering the ninety-day suspension imposed by the Board, I am mindful of the report of the Police Department which shows that the police were summoned for fights and disturbances both in and outside of the premises on fourteen separate occasions from December 21, 1966 until September 30, 1967. Five of these complaints related to fights inside or in front of the tavern; the last one (on September 30) resulted in stabbing of two of the patrons and the arrest of six patrons. Seven of these police calls were made in response to noise complaints.

I am aware of the fact that the police did not make any arrests on most of the occasions hereinabove noted. The fact that the authorities were, in my opinion, indulgent and restrained with the appellant should not in anywise be misconstrued as an exculpation of her conduct of these premises which resulted in these complaints.

The Board, further, had before it two petitions signed by neighbors who requested the assistance of the police in alleviating the constant harassment and unrest to which these neighbors were subjected due to the "intolerable and frightening acts which are taking place at the Lynn Tavern located at 1000 Central Avenue in Union City, New Jersey (i.e., constant brawls, a stabbing, abusingly foul language, loitering etc.)." These neighbors complained that they feared for their children and for the well-being of the neighborhood.

I conclude that the activities at these premises which resulted in the order of suspension, as aforesaid, do not warrant any lesser penalty than that imposed; that, in any event, the penalty was not so severe as to form a basis for modification

on this appeal. Cf. Benedetti v. Trenton, 35 N.J. Super. 30; Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra; cf. In re 17 Club, Inc., 26 N.J. Super. 43; R.S. 33:1-31.

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

Conclusions and Order

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

Having carefully considered the record herein, including the transcript of testimony, the exhibits and the Hearer's report, I adopt the conclusions and recommendations of the Hearer as my conclusions herein.

Accordingly, it is, on this 14th day of May, 1968,

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-174, issued by the Board of Commissioners of the City of Union City to Angelina Torres for premises 1000 Central Avenue, Union City, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1968, commencing at 3:00 a.m. Tuesday, May 21, 1968; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Monday, August 19, 1968.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - LEKAS & PAROBY v. NEWARK.

JAMES LEKAS & STEPHEN PAROBY, t/a CENTRAL AVENUE TAVERN, Appellants, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent	)	ON APPEAL CONCLUSIONS AND ORDER

Carl J. Yagoda, Esq., Attorney for Appellants.
Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants appeal from the action of respondent whereby

by unanimous vote of its members it denied the application of appellants for renewal of their plenary retail consumption license for the 1967-68 licensing year for premises 86-88 Central Avenue, Newark.

The respondent based its action on the following reasons:

"Whereas, on the return date of said Order did hear oral argument by the attorney for the licensee and did hear testimony relative to the licensee's past conduct, prior suspensions and present conduct; and

"Whereas, after having duly considered said oral argument and testimony relative to licensee's past conduct, which resulted in a charge of sale to persons actually or apparently intoxicated and a sale after hours of an alcoholic beverage in its original container, for which the license was suspended commencing on June 5, 1967 and continuing up and until August 8th, 1967, and also a charge involving sale to persons actually or apparently intoxicated and permitted indecent language to be used on the premises, and although same occurred in the year 1965, license was suspended for forty days commencing on January 19, 1966, and having taken into consideration that license had not been approved by the Police Department of the City of Newark. and the area in which it is located and the public interest at large, the Board in its proper discretion;"

"Resolved and Ordered that application for renewal of Plenary Retail Consumption License C-602, be denied."

Appellants allege in their petition of appeal that the denial of the renewal of their license was erroneous in that the action of respondent was capricious, arbitrary, without cause and an abuse of its discretion.

Respondent in its answer denies the aforesaid allegations contained in appellants' petition of appeal.

At the time of filing of this appeal an order dated July 19, 1967 was entered by the Director extending the term of the license then held by appellants pending determination of the appeal and entry of a further order herein.

This appeal is in the nature of a hearing de novo pursuant to Rule 6 of State Regulation No. 15. The transcripts of the proceedings before the respondent were marked in evidence and testimony was given by appellant James Lekas and Police Captain Edward V. Weber, pursuant to Rules 6 and 8 of said regulation. It appears from the record herein that their license had been suspended on two occasions by the Director of the Division of Alcoholic Beverage Control. The first occasion was for a period of forty days effective January 19, 1966, as a result of appellants' plea of non vult to charges that (1) on December 3, 1965 they sold a pint bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38, (2) sold drinks of alcoholic beverages to intoxicated persons, in violation of Rule 1 of State Regulation No. 20, and (3) permitted foul language by patrons on the licensed premises, in violation of Rule 5 of State Regulation No. 20. The second occasion appellants' license was suspended for sixty-five days effective June 5, 1967, resulting from a plea of non vult to charges all ging that appellants

(1) sold a drink of wine to an intoxicated patron, in violation of Rule 1 of State Regulation No. 20, and (2) sold a pint bottle of whiskey for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38. See Re Lekas and Paroby, Bulletins 1659, Item 12 and 1742, Item 3, respectively.

It appears from Captain Weber's testimony before the respondent, and also from that given by him herein, that his recommendation to deny renewal of appellants' license was predicated on the fact that the license was under suspension at the time and would continue to be suspended until August 8, 1967. Captain Weber said that, so far as the police were concerned, the place presented no problem.

At the hearing herein appellant Lekas testified that the appellants have held a license for a period of five years, and the violations aforementioned were the only ones committed during that period of time. An examination of the files with reference to the violations for which the appellants' license had been suspended discloses that on each occasion one or the other licensee was on duty in the licensed premises and had actually been involved in the violations in question.

The issue to be resolved in the instant case is whether the evidence presented justifies the action of the respondent in refusing to renew appellants' license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. It must be kept in mind that, in all cases which involve discretionary matters such as the appellants' renewal of a liquor license, the burden of proof falls upon the appellants to show manifest error or an abuse of discretion by the issuing authority. As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

> "The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

See Freddie's Blue Room, Inc. v. Elizabeth, Bulletin 1422, Item 1.

It has been stated in Abad v. Newark, Bulletin 619, Item 8, by former Commissioner Driscoll that:

> "The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the 'de novo' character of the appeal, the Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record 'from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced.' Cf. Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106. Under the Rules Governing Appeals, the burden of proving reversible error rests with the appellant."

In consideration of the public interest with reference to a renewal of a liquor license, I am aware that a licensee is entitled to fair play. Therefore, failure to renewa license should not result from arbitrary action on the part of the licensing authority. However, when licensed premises are operated in violation of the law, and especially where it is shown that the respective licensees each participated in the violations, this in itself is sufficient proof that such persons are unworthy to hold a liquor license.

There has been no evidence presented to indicate that there was any improper motivation on the part of the members of respondent, and there appears to be substantial evidence to support their determination. 279 Club, Inc. v. Newark, Bulletin 1405, Item 2; Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its determination and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4.

Appellants contend that the violations in question were not of a serious enough character to warrant the denial of renewal of their license. However, despite the reasons given by Captain Weber for his recommendation, the said previous record of appellants was considered by respondent to justify refusal to renew appellants' license.

I have carefully examined all the grounds of appeal set forth in appellants' petition of appeal and conclude that they lack sufficient merit.

After careful consideration of the evidence presented, I am satisfied that respondent exercised its discretion properly, reasonably and in the best interests of the community in refusing to renew appellants' license for the current licensing year. I am further satisfied that appellants have failed to sustain the burden of proof as required by Rule 6 of State Regulation No. 15. Thus it is recommended that respondent's action in denying appellants' application for renewal be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

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

I have examined the exceptions and conclude that they lack merit.

After carefully considering the entire record herein, including the transcripts, the exceptions and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of May, 1968,

ORDERED that the action of respondent Board in denying appellants' application for renewal of their license for the 1967-68 licensing year be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the order entered on July 19, 1967 extending the term of appellants' license pending determination of the appeal herein, be and the same is hereby vacated.

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PETER J. FERRARI and SHIRLEY FERRARI
t/a Fox Hole Tavern
218 River Street
Hoboken, N. J.

Holders of Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

CONCLUSIONS AND ORDER

Licensees, by Peter J. Ferrari, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on March 15, 1968 they possessed alcoholic beverages in six bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the municipal issuing authority for ten days effective May 16, 1954, for sale during prohibited hours, and by the Director for twenty days effective June 26, 1963, for permitting acceptance of numbers bets and possession of a punchboard and sweepstakes tickets. Re Ferrari, Bulletin 1522, Item 8.

The prior record of suspension of license for dissimilar violation in 1954 occurring more than five years ago disregarded, but the record of suspension for dissimilar violation in 1963 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 Jackson, Bulletin 1751, Item 3.

Accordingly, it is, on this 20th day of May 1968,

ORDERED that Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Peter J. Ferrari and Shirley Ferrari, t/a Fox Hole Tavern, for premises 218 River Street, Hoboken, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, May 27, 1968, and terminating at 2 a.m. Friday, June 21, 1968.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary Proceedings against MARIE LOTITO t/a Bridge Inn 45 Bridge Street Paterson, N. J. Holder of Plenary Retail Consumption License C-21, issued by the Board of Alcoholic Beverage Control for the City of Paterson	CONCLUSIONS AND ORDER

Donald A. Rosenfelt, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 17, 1968, she sold a pint bottle of gin for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ten days effective April 17, 1967 and again for fifteen days effective October 19, 1967, both for sale to minors, and for twenty days effective May 14, 1968 (currently effective and terminating June 3, 1968) for permitting a card game for money stakes on the licensed premises. Re Lotito, Bulletin 1732, Item 9; Bulletin 1767, Item 9; Bulletin 1797, Item 5.

The license will be suspended for fifteen days (Re Kicey, Bulletin 1787, Item 4), to which will be added fifteen days by reason of the record of three suspensions of license for dissimilar violations within the past five years (Re Sandford, Bulletin 1788, Item 4), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 22d day of May, 1968,

ORDERED that Plenary Retail Consumption License C-21, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Marie Lotito, t/a Bridge Inn, for premises 45 Bridge Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. Monday, June 3, 1968, and terminating at 3:00 a.m. Friday, June 28, 1968.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO AND PURCHASE FROM ANOTHER RETAILER - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Aldot, Inc. 1004 Washington Street Hoboken, N. J. Holder of Plenary Retail Distribution License D-3, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken	CONCLUSIONS AND ORDER

Alexander A. Abramson, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers dates between January 7 and September 5, 1967, it sold to and purchased from another retail licensee various quantities of alcoholic beverages, in violation of Rule 15 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 Crowley, Bulletin 1791, Item 10.

Accordingly, it is, on this 27th day of May 1968,

ORDERED that Plenary Retail Distribution License D-3, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Aldot, Inc., for premises 1004 Washington Street, Hoboken, be and the same is hereby suspended for fifteen (15) days, commencing at 9 a.m. Monday, June 3, 1968, and terminating at 9 a.m. Tuesday, June 18, 1968.

Joseph M. Keegan
Director