

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

BULLETIN 1922

August 5, 1970

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 1922

August 5, 1970

1. APPELLATE DECISIONS - D'AMBOLA v. NORTH CALDWELL.

FIGORE D'AMBOLA, t/a RO-DEE'S,)
Appellant,) ON APPEAL
v.) CONCLUSIONS
Mayor and Council of the) AND ORDER
Borough of North Caldwell,)
Respondent.)

Marinello, Henkel, Soriano & Klein, Esqs., by Joseph Klein, Esq.,
Attorneys for Appellant
John J. McDonough, Esq., Attorney for Respondent Borough
Samuel A. Wiener, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On June 24, 1969 respondent (hereinafter Council) in effect denied appellant's application for renewal of his plenary retail consumption license for the license year 1969-70, for premises 707 Main Street, North Caldwell.

The reason for the Council's action, as reflected in the minutes of the special meeting of June 24, 1969, was that this licensee, together with another tavern ("The Library") located next door to it at 711 Main Street, "created a nuisance in the area" and thus should not be renewed. An appeal filed by the R. B. & W. Corp., t/a The Library, was heard in this Division and will be considered in a separate Hearer's report.

In his petition of appeal appellant alleges that the action of the Board was erroneous for the following reasons:

1. No formal charges were ever filed against the appellant;
2. Certain affidavits filed with the Council in opposition to the renewal of this license were not served on the appellant and he had no knowledge of their contents;
3. No hearing was held to determine the validity of the allegations contained in the affidavits;
4. No reasons were given for the said denial.

In its answer Council admits the jurisdictional allegations of the petition and denies its substantive allegations. It asserts that it acted after numerous property owners of this municipality and of the adjacent Township of Little Falls objected because the appellant was operating his tavern as a nuisance. As a result of the complaints the Council requested that the objectors file affidavits setting forth specific charges and delineating the conditions complained of. The Council also received reports that many complaints had been received by the Little Falls Police Department, as well as the local Police Department, all of which required "constant police attendance at all hours of the evening." After considering all of the circumstances, the Council concluded that the license should not be renewed because it was not in the public interest. It further answers that the appellant attended the meeting of the Council and was fully aware of the facts and circumstances relating to the Council's action.

Upon the filing of this appeal, the Director entered an order on July 2, 1969, extending the term of the 1968-69 license then held by appellant pending the determination of this appeal and the entry of a further order herein.

This is an appeal de novo, with full opportunity afforded counsel to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15.

I

Before considering the testimony and the record, it may be well to resolve several jurisdictional matters raised in the petition of appeal. Appellant first alleges that no formal charges were ever filed against him prior to the action denying his application for renewal. It is my view that the more satisfactory procedure for the local issuing authority to follow would be to initiate disciplinary proceedings wherever required, upon specific complaints, and to base its refusal to renew the license upon an adjudicated record. However, it is understandable that local issuing authorities at times withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the complained of conditions in the operation of the licensed business. This would appear to be the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, some licensees do not take the hint and consider that the failure of the issuing authority to take specific action as license for continued profligacy. As the court stated in Downie v. Somerdale, 44 N.J. Super. 84, 87:

"... Mr. Downie's contention seems to be that the borough council should have furnished him with some statement of its reasons to which he might take exception before the council came to its decision. But the law does not impose on the council an obligation of this sort. Mr. Downie perhaps thinks that on a hearing before the borough he was entitled to sit back and wait for it to put in its case. On the contrary, upon such a hearing the burden of proof falls on the applicant for the renewal of the license. Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App. Div. 1957)."

In any event, the Council set forth the reasons upon which it based its determination to deny renewal herein.

II

Appellant also argues that no hearing was held to determine the validity of the allegations contained in the affidavits. However, the record discloses that he was represented by counsel at the meeting and was afforded an opportunity to support his application for renewal of said license. In any event, at this plenary de novo hearing on appeal the appellant was afforded the opportunity not only to examine the affidavits but to cross-examine the witnesses who had submitted those affidavits to the Council and who were present at this appeal hearing. This cures any infirmity allegedly arising by reason of denial of a fair and impartial hearing before the Council. Cino v. Driscoll, 130 N.J.L. 535; cited with approval in Nordco, Inc. v. State, supra.

III

The crucial issue on this appeal is whether the record herein substantially supported and justified the action of the Council in refusing to renew appellant's license.

In analyzing the testimony, it would be helpful to state the applicable legal principles pertinent hereto. The burden of proof in all these cases which involve discretionary matters where renewal of license is sought falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, supra; Nordco, Inc. v. State, supra. 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 a 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."

The record discloses that a part of the tavern premises is also located in the Township of Little Falls and its front entrance on Main Street faces Little Falls Township located on

the opposite side of Main Street. It is also located next door, (separated by an alleyway) to another tavern (R. B. & W. Corp., t/a The Library) which application for renewal of license for the current licensing period was denied the same time by the Council and for the same stated reasons.

At this plenary de novo hearing the Council introduced a resolution of the Township Committee of the Township of Little Falls, endorsing the action taken by the Council. The resolution sets forth the following:

"RESOLUTION

"WHEREAS, the Borough of North Caldwell, as the local issuing authority, has denied the applications of liquor license renewals of Ro-Dee's, 707 Main Street, North Caldwell, New Jersey and J and R Bar, a/k/a The Library, located at 711 Main Street, North Caldwell, New Jersey, which businesses are located just across the county line from the Township of Little Falls; and

"WHEREAS, the Township Committee of the Township of Little Falls has considered requests of residents from both the Borough of North Caldwell and the Township of Little Falls to endorse the action of the governing body of North Caldwell with respect to the aforesaid applications; and

"WHEREAS, the Township Committee of the Township of Little Falls has reviewed the matters and has found that the operation of both applicants at the aforesaid locations is inimical to the best interests of Little Falls and is deleterious to the health, safety and welfare of its citizens; now, therefore, be it

"RESOLVED by the Township Committee of the Township of Little Falls that it hereby endorses the action taken by the Borough of North Caldwell with respect to such applications; and, be it further

"RESOLVED that a true copy of this Resolution be forwarded to the Clerk of the Borough of North Caldwell."

Fiore D'Ambola (the appellant) testified that he has been operating as a licensee trading as Ro-Dee's at these premises for the past five and one-half years, and that no complaints were lodged against him with the Council during that time. He states that eighty-five to ninety per cent of his patrons are middle-aged, and that his patrons are generally orderly. During the past two years the police have had occasion to respond to calls at his tavern because of disturbances, but he insists that many of them were calls which he personally made to the Police Department. On cross examination he acknowledged that he had attended a meeting requested by the Mayor, the clerk of the Council and the Administrator in June 1968, wherein he was informed that numerous complaints had been received about the disorderly operation of his tavern. He also admitted that on February 23, 1969 police were summoned to his tavern upon complaint that there was a disturbance. After the patron was removed, D'Ambola got into a violent argument with the police and used abusive language. As a result, he was arrested; but the complaint was later dismissed. It was

developed that in addition to the ten or twelve times which he recalled where the local Police Department responded, the Little Falls Police Department also responded on numerous occasions to complaints of disturbances at the premises. Finally, he acknowledged that there were considerable problems involved because of inadequate parking facilities.

James Howland, a former Police Chief of this municipality, stated that when he patronized the tavern he found it orderly. On cross examination he admitted that during his tenure as Police Chief he received numerous complaints from residents, some of whom did not identify themselves. The complaints related to loud noises late at night, and also about the allegedly illegal parking on Hillside Avenue. The licensed premises are surrounded by one-family houses in a residential neighborhood. The witness asserted that since he retired from the Police Department, he was no longer interested in the activities of the tavern because he "completely divorced the whole thing out of my mind. I was no longer interested in it." He was shown a list of complaints as reflected on the police blotter, that were entered during 1967; however, he insisted that he did not recall them since he has been off the police force for over two years. He was then asked whether in his opinion the tavern was well-run and he responded, "Oh, he had problems; parking, problems with the juke box, and that was all." Finally the witness admitted that, although he has no specific recollection of the complaints listed on the complaint blotter, the record indicates that he actually left the Police Department on April 1, 1968. It was pointed out to him that on June 16, 1967 a local police officer apprehended a twenty-year-old youth coming out of appellant's tavern with a package of beer. The witness explained that he did not make a charge against this tavern because the police officer was not sure whether the youth had emerged from this tavern or from the next door tavern (The Library).

Several patrons of this tavern testified that during their visits to the tavern they found the premises operated in an orderly manner. However, they do not recall being present in the premises at any of the specific occasions when the alleged incidents occurred as reflected in the police reports; particularly, they were not present in the late hours of the night on week-ends.

Charles Rollwagen (the Borough Administrator, Treasurer and Tax Collector) recounted his conversations with residents of the area who complained about the operation of this tavern. He testified that at the Council meeting on June 10, numerous objectors appeared to oppose renewal of the said license, and were requested to submit affidavits with respect to their specific complaints. They were advised that a special meeting would be held on June 24, 1969 to consider the affidavits and other evidence with respect to this application. He stated that these complaints related to the "noise in the area, the activities of some of the patrons in the tavern as to their conduct [on Main Street and Hillside Avenue, adjoining the tavern]." Some of these objectors live in the adjacent Township of Little Falls. He also verified the fact with respect to former Chief Howland, that the official minutes of March 26, 1968 showed that Howland retired on April 1, 1968 and was on terminal leave until October 1, 1968. On cross examination he acknowledged that many of the

complaints involved both this tavern and the "Library" next door.

The witness finally explained that, although this tavern is located in a business zone, it is surrounded by residences. Although the tavern is located on Main Street in North Caldwell, the opposite side of Main Street is actually located in Little Falls, and in fact part of the licensed premises is in Little Falls.

Clifton Speller (the present Police Chief) stated that he has received complaints about "noise, litter, profanity, illegal parking, and in general disorderly conduct on the part of the patrons." He produced a record of 1967, 1968 and 1969 which shows that there were fourteen complaints where this tavern was named specifically, and the police responded to disturbances both within the tavern or immediately outside the premises.

Without listing all of the complaints, the following are some of the more significant ones: On February 23, 1969 police responded to a complaint about disorderly patrons and this patron was removed. D'Ambola and the police officer had an altercation on the sidewalk, as a result of which D'Ambola was arrested and a complaint was made against D'Ambola charging him with disorderly conduct and using profane language. The complaint was later dismissed. Referring back to the records for 1967, a patron was arrested for being drunk and disorderly on March 2, 1967. On June 16, 1967 the record shows that a twenty-year-old youth was apprehended with beer in his car after being observed emerging from appellant's tavern with a package. The youth was charged, but no charges were lodged against the tavern. On March 10, 1968 the Little Falls police responded to a call that there was a fight at this tavern. The fight was over on arrival and the combatants did not wish to sign complaints. On June 28, 1968 a report was received that an adult patron had delivered beer to teenagers in a car on Hillside Avenue. A patrol car was sent, but the car was gone on arrival.

The Police Chief stated that during the past few years residents visited him to complain specifically about immoral conduct of bar patrons in and about the subject premises, "noise, litter, profanity, illegal parking in the general area of one square block and, allegedly, that the bar patrons of the Main Street taverns were responsible for these various things that were going on." As a result of these complaints it was necessary to have a much greater police surveillance because "90 percent of the total disturbances and calls and total calls coming from neighbors, residents about noise, illegal parking were coming from this area of the town." Finally, he stated that, in addition to the fourteen specific complaints listed on the blotter, there were various other complaints made by telephone which were not listed because they were general in nature. He added that "I have not, up to this point, felt that I was going to hold the owner of the bar liable for what his patrons do out in the street."

Police Officer Edward Gorman described in detail the incident of February 23, 1969 involving an altercation with D'Ambola, as a result of which it was necessary for his fellow police officer to place Mr. D'Ambola under arrest. This was verified by Allen J. Hughes, the arresting officer.

Numerous witnesses appeared to voice the objections which were set forth in the affidavits submitted to the Council at the June 24 meeting. These affidavits, which were admitted into evidence by stipulation of counsel, and the direct testimony of the witnesses, specified instances of loud noises, illegal parking, disturbances and disorderly conduct. The witnesses pointed out incidents of drunks emerging from appellant's tavern, patrons urinating on the sidewalk in front of the premises, loud and boisterous shouting, and generally, such conditions which created "an atmosphere which make it impossible to enjoy our homes and daily lives." The affidavit of Lionel Coombs contained four typewritten pages specifying incidents occurring both inside and outside the premises during the year 1968, and continuing until June 14, 1969. These witnesses were fully cross-examined by counsel for the appellant on the contents of the affidavits.

I have had the opportunity to observe the demeanor of the witnesses as they testified at this hearing, and am persuaded that the accounts given by the Council's witnesses were more forthright and credible. They testified with sincerity and conviction and with a sense of public responsibility. Although the thrust of their testimony clearly indicated that the total nuisance situation was created by both the appellant and the adjoining tavern, it is equally clear that these witnesses, who reflected the views of numerous other resident objectors present at this de novo hearing pinpointed numerous specific instances involving the appellant.

These conditions, as heretofore mentioned, not only created a general nuisance situation but, according to the testimony of Helene F. Powell, seriously affected her health. The attorney for appellant in his memorandum submitted in summation argues that, of all the residents in the area, only six filed affidavits with the Council and only five of these were admitted into evidence. He reasons that, if the situation "was as intolerable as is purported by the Affidavits, there would be more complainants." The fact is that other witnesses did appear at the hearing, although they did not testify since their testimony would have been merely cumulative. Further, I find that the witnesses who did testify made sufficiently serious allegations reflective of an intolerable situation within and immediately outside these premises.

Appellant also maintains that in a number of the instances wherein the police were summoned to these premises the calls were made by the appellant himself. This argument loses sight of the fact that the complained of activities at this tavern imposed a tremendous burden of constant policing not only upon the Police Department of this municipality but on the police authorities of the contiguous municipalities of Fairfield and Little Falls as well. See Nordco, Inc. v. State, supra.

From my evaluation of the entire record, it is abundantly clear that both the appellant and the neighboring tavern contributed to the troublesome conditions that existed in this area. However, appellant was no less responsible for the conditions which existed, and I am persuaded that the Council properly determined this tavern was operated as a trouble-spot, which was detrimental and inimical to the best interests of the community.

Appellant, contrary to the view of Police Chief Speller, is responsible for conditions both within and outside of his premises. As early as in Conte v. Princeton, Bulletin 139, Item 8, this Division has held that a licensee is responsible for conditions both in and outside the licensed premises which are caused by patrons thereof. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1. In accord, see Lyons Farms Tavern, Inc. v. Newark et al., 55 N.J. 292 (1970), reprinted in Bulletin 1905, Item 1.

In its consideration of this matter the Council was guided by the applicable principle enunciated in Tumulty v. Dunellen and Davis (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1, as follows:

"... The problem before the [Council] was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed...."

In the area 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. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest". Lublinter v. Paterson, 33 N.J. 428, 446 (1960). A renewal license is in the same category as an original license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

Thus in this matter, entirely apart from the consideration as to appellant's culpability for the deleterious conditions which surrounded this establishment, the broad question posed before the Council on the subject application for renewal, was whether, in the light of all the surrounding circumstances and conditions, it was good for North Caldwell and the neighborhood involved, for this tavern to continue to exist at this particular location at all. The objective judgment of the Council was that its continuance would not serve the public interest and the immediate neighborhood.

There is no persuasive evidence to indicate any improper motivation on the part of the Council in its action, and there appears to be substantial evidence to support its determination herein. 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 opinion and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Indeed, as the court stated in Lyons Farms Tavern, Inc. v. Newark et al., supra:

"... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

See Hudson-Bergen County Retail Liquor Stores Association et al. v. Hoboken, et al., 135 N.J.L. 502, 511 (1947).

I conclude that the determination of the Council was supported by substantial evidence presented in the whole of the record, and that it exercised its discretion circum-spectly and in the best interests of the community in refusing to renew appellant's license for the current licensing year.

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

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written memoranda in summation of the attorneys for the respective parties, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of June 1970,

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

ORDERED that the order dated July 2, 1969 extending the term of appellant's 1968-69 license pending the determination of this appeal be and the same is hereby vacated, effective immediately.

RICHARD C. McDONOUGH
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

JAMES SHERIDAN)
53 St. Pauls Avenue)
Jersey City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)

Waters and McPherson, Esqs., by David A. Waters, Esq.,
Attorneys for Licensee
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:

- "1. On April 17, 25, May 1, 19, June 10, 13 and 20, 1969, you engaged in and allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', and on said date of June 20, 1969, you also possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda and other writings pertaining to the aforementioned 'numbers' gambling activity and to other gambling activity, viz., bets on baseball games and horse races; all in violation of Rule 7 of State Regulation No. 20.
- "2. On April 17, 25, May 1, 19, June 10, 13 and 20, 1969, you engaged in and allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises, and on said date of June 20, 1969, you also possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The attorney for the licensee made a motion to have these proceedings postponed until a criminal indictment arising from the incident had been tried and finally resolved. It is recommended that this motion be denied for the reason that these proceedings are civil in nature, instituted against the license, as distinguished from the criminal indictment against the individual.

Detective Sergeant John J. Maziekien testified on behalf of the Division that he is employed by the New Jersey State Police, assigned to the criminal investigation section. It was stipulated that he is an expert in the investigations of gambling and gambling activity. Pursuant to a special assignment to investigate alleged gambling at the licensed premises, Maziekien entered the licensed premises in the company of two other State Police officers, on Friday, June 20, 1969, at 1:40 p.m. Fortified with a search warrant, he identified himself to the bartender, Joseph F. Gallagher, and thereupon conducted a search of Gallagher and the premises. He found on Gallagher's person three white slips bearing names and number notations which he characterized as representing bets in a lottery and on horse races.

Gallagher stated that the notations were his bets and that he made them as an accommodation for his customers. A further search of his person revealed a total of \$41.07 in cash and a white slip of paper bearing six numbers bets. The witness also found a slip of paper bearing numbers bets in Gallagher's wallet. A search of the safe behind the bar revealed a packet of money with two numbered slips which Maziekien identified as being bets on a baseball game.

Cross-examined with respect to the cash found on Gallagher's person, the witness explained that, in his experience, the cash does not necessarily reflect the total amount of bets made because bettors are often extended credit by the bookmaker on bets.

Robert J. Gaugler, a New Jersey State Police detective assigned to the West Trenton headquarters, testified that he has been a member of the undercover unit engaged in gambling investigations for the past two and one-half years and has participated in hundreds of gambling investigations. He is fully familiar with bookmaking operations and recordation of bets. He visited these premises on April 17, April 25, May 1, May 19, June 10, June 13 and June 20, 1969.

On April 17, he entered the premises at approximately 12:50 p.m. At approximately 1:51 p.m. the licensee entered the premises and assumed his duties as a bartender. Shortly thereafter, he observed a white male patron hand a slip of paper to Sheridan, saying, "Hey, Jim! I got a hot one." Sheridan walked over to him and said, "What do you want today?" The patron replied that he wanted to play 711 for 50 cents. Sheridan wrote on a slip of white paper the number 711 with the notation 50 cents to the right of the number. The witness observed several other numbers written on the said paper. He recognized the transaction as a numbers bet. He also observed that another male requested Sheridan to place a bet on number 467 for a dollar, handing him one dollar. Sheridan wrote the number 467 on the piece of paper. Gaugler then placed a bet on number 247 for one dollar and the notation was made by Sheridan on a slip of paper. Gaugler left the tavern at 2:05 p.m.

On April 25, 1969 reentering the tavern at 1:45 p.m., he seated himself at the bar and noted that Gallagher was then tending bar. He sought to place a bet with Gallagher, and Gallagher asked him, "Do you play with Jim [Sheridan]?" The witness assured him that he did play with Sheridan and Gallagher accepted a bet on number 247 for one dollar straight. Gallagher wrote the number on a slip of paper, accepting the dollar bill.

Shortly thereafter the trooper left the premises.

On May 1, 1969, when he next visited these premises, the licensee was tending bar. Shortly after Gaugler entered, the licensee answered the telephone and the trooper saw him write numbers on a slip of paper. At about 3:20 p.m. he handed Sheridan a dollar bill and told him that he wanted "to play 247 for \$1 straight." Sheridan took a piece of white paper from his shirt pocket, put it on the bar in front of the witness and made a notation of that bet. At approximately 3:32 p.m., the telephone rang again and Sheridan picked up the extension phone behind the bar. He took a piece of white paper and made notations of numbers bets received from the caller. The trooper heard him say into the telephone, "All for a dollar straight; right?" He mentioned certain numbers which the witness saw him write on the paper.

Returning to the premises on May 19, 1969 at approximately 1:15 p.m., he met Gallagher at the entrance and placed a bet on number 247 for \$1, which Gallagher took and put in his pocket. After placing this bet, he entered the tavern where he remained for a short time.

On June 10, 1969 at 1:40 p.m. he visited the subject premises at which time the licensee was tending bar. At 1:45 p.m. he placed a bet with the licensee on "247 for \$1 straight." Sheridan took the money and put it in his pants pocket, and made a notation of the said bet.

On June 13, 1969 he again placed a one-dollar bet with Sheridan on number 124. Sheridan accepted the money, made the notation on a piece of white paper and placed the money in his pants pocket. On this occasion, the witness noted that another patron also placed a bet with Sheridan on the same number, handing him a one-dollar bill for that bet.

His next visit was made on June 20, 1969. Although he knew that Sergeant Maziendien had a warrant in his possession, Maziendien did not accompany Gaugler on this visit. Fortified with "marked" money, he placed a bet for \$1 on number 247 with Gallagher; Gallagher made a notation of the bet and accepted the "marked" one-dollar bill. The witness left the tavern at 12:58 p.m.; at 1:40 p.m. Sergeant Maziendien entered the tavern and executed the warrant. He added that he did not personally participate in the raid of the premises with Maziendien.

The defense rested without calling any witnesses.

We are dealing here with a disciplinary measure and its alleged infraction. Such measures are civil in nature and not criminal. Thus the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956).

I have analyzed the testimony herein and have observed the demeanor of the Division's witnesses as they testified. I am persuaded that the version given by them is credible and forthright and accurately established the charges alleged.

I conclude that these charges have been proved by a

preponderance of the evidence, indeed, by substantial evidence. It is, therefore, recommended that the licensee be found guilty of the said charges.

Licensee has no prior adjudicated record. It is further recommended that the license be suspended for sixty days. Re Troiano, Bulletin 1890, Item 3.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 9th day of June 1970,

ORDERED that Plenary Retail Consumption License C-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to James Sheridan, for premises 53 St. Pauls Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1970, commencing at 2 a.m. Monday, June 22, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Friday, August 21, 1970.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LAELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

RARITAN MOTEL CORP.)
t/a Holiday Inn of Hazlet)
2870 State Hwy. #35)
Hazlet, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-16, issued by the Township)
Committee of the Township of Hazlet,)
and transferred during the pendency)
of these proceedings to)

Jersey Shore Motor Lodge, Inc.,)
t/a Holiday Inn of Hazlet,)

for the same premises.)
-----)

Scott, Fox & Walsh, Esqs., by Frank V. Walsh, Jr., Esq.,)
Attorneys for Licensee)
Walter H. Cleaver, Esq., Appearing for Division)

BY THE DIRECTOR:

Licensee Raritan Motel Corp. pleads non vult to
charge alleging that on October 21, 1969 it possessed alcoholic
beverages in eight bottles bearing labels which did not truly
describe their contents, in violation of Rule 27 of State
Regulation No. 20.

Absent prior record, the license will be suspended
for thirty days, with remission of five days for the plea en-
tered, leaving a net suspension of twenty-five days. Re Harlem
Cafe, Inc., Bulletin 1787, Item 9.

Accordingly, it is, on this 10th day of June 1970,

ORDERED that Plenary Retail Consumption License C-16,
issued by the Township Committee of the Township of Hazlet to
Raritan Motel Corp., t/a Holiday Inn of Hazlet, for premises
2870 State Hwy. #35, Hazlet, and transferred during the pendency
of these proceedings to Jersey Shore Motor Lodge, Inc., t/a
Holiday Inn of Hazlet, for the same premises, be and the same
is hereby suspended for the balance of its term, viz., until
midnight June 30, 1970,*commencing at 2 a.m. Thursday, June 25,
1970; and it is further

ORDERED that any renewal license that may be granted
shall be and the same is hereby suspended until 2 a.m. Monday,
July 20, 1970.

RICHARD C. McDONOUGH-
DIRECTOR

*Amended Order dated June 25, 1970 deferred dates of suspension
of license for 25 days commencing 2:00 a.m. Thursday, July 30,
1970 and terminating at 2:00 a.m. Monday, August 24, 1970.

4. DISCIPLINARY PROCEEDINGS - SERVICE OF ALCOHOLIC BEVERAGES
OTHER THAN ORDERED - LICENSE SUSPENDED FOR 15 DAYS, LESS
5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

CILCO ENTERPRISES (A CORP.))
t/a Gaslight)
789 Jersey Avenue)
New Brunswick)
PO Box 5, North Brunswick, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-78, issued by the Board of
Commissioners of the City of New
Brunswick.)

Licensee, by Seymour Yasbin, President, Pro se
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that
on April 17, 1970 it served to a patron an alcoholic beverage
drink other than ordered, in violation of Rule 23 of State
Regulation No. 20.

Absent prior record, the license will be suspended
for fifteen days, with remission of five days for the plea
entered, leaving a net suspension of ten days. Re Delabu, Inc.,
Bulletin 1846, Item 5.

Accordingly, it is, on this 11th day of June 1970,

ORDERED that Plenary Retail Consumption License
C-78, issued by the Board of Commissioners of the City of
New Brunswick to Cilco Enterprises (A Corp.), t/a Gaslight,
for premises 789 Jersey Avenue, New Brunswick, be and the
same is hereby suspended for the balance of its term, viz.,
until midnight June 30, 1970, commencing at 2 a.m. Monday,
June 29, 1970; and it is further

ORDERED that any renewal license that may be granted
shall be and the same is hereby suspended until 2 a.m. Thurs-
day, July 9, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MARGARET CELENTANO AND JOSEPH CELENTANO t/a Marge's Tavern 94 Spruce Street Paterson, N.J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-174, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Carmine T. Vigorito, Esq., Attorney for licensees. Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that, on March 12, 1970, they possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Charcoal Hearth, Inc., Bulletin 1908, Item 9.

Accordingly, it is, on this 10th day of June 1970,

ORDERED that Plenary Retail Consumption License C-174, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Margaret Celentano and Joseph Celentano, t/a Marge's Tavern, for premises 94 Spruce Street, Paterson, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, June 22, 1970, and terminating at 3:00 a.m. Saturday, June 27, 1970.

RICHARD C. McDONOUGH DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Fine Wines Unlimited Rooms 724 & 725, 50 Park Place Newark, New Jersey Application filed July 29, 1970 for wine wholesale license.

Richard C. McDonough (handwritten signature)

Richard C. McDonough Director