STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2131 February 6, 1974

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STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - STARSHOCK, INC. v. PENNSAUKEN.

Starshock, Inc., t/a Lido,)
Appellant,)
v.)
Township Committee of the Township of Pennsauken,)
Respondent.)

On Appeal
CONCLUSIONS and ORDER

Martin Margolit, Esq., Attorney for Appellant
Higgins, Trimble & Master, Esqs., by Thomas S. Higgins, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appellant, Starshock, Inc., t/a Lido, filed an application with the respondent Township Committee of the Township of Pennsauken, the municipal issuing authority (hereinafter Committee) for renewal of its plenary retail consumption license for the current licensing period. By resolution dated July 23, 1973, the Committee denied said application for reasons set forth in the said resolution as follows:

"WHEREAS, no one appeared on behalf of the applicant at the hearing on July 9, 1973; and

WHEREAS, the Township Committee has determined that the issuance of said renewal is not in the best interest of the community; and

WHEREAS, the said license for the Club Lido has been suspended by the Alcoholic Beverage Commission of the State of New Jersey for conducting lewd dances; and

WHEREAS, the Township Committee has been made aware of affidavits filed with the United States District Court stating that the licensed premises had been conducted in the prior year with female performers who wore no clothing, commonly called 'topless' and 'bottomless' dancing; and

WHEREAS, there are presently criminal charges pending against the owner of the license for violating the laws of the State of New Jersey; and

WHEREAS, there is a complaint pending in the Municipal Court of the Township of Pennsauken for violation of the Township Ordinance; and

WHEREAS, the peace and quiet of the community has been disturbed by the prior actions of the applicant in conducting its business at the Club Lido on U.S. 130 in Pennsauken Township;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Pennsauken, County of Camden and State of New Jersey, that the application for a renewal of liquor license C-6, Starshock, Inc., trading as 'Lido', is hereby denied."

In its petition of appeal appellant alleges that the action of the Committee was erroneous, for reasons which may be briefly summarized as follows:

(1) That the appellant had not been given prior notice of the action of the Committee;

(2) A clerk had at first refused to accept the application and although the clerk's action was overruled by the Township Clerk, it indicated that the Committee "had to reject appellant's application";

(3) That no one appeared at the meeting at the time the application was considered to object to the said renewal;

(4) The Committee failed to take into consideration the fact that the appellant had already incurred two lengthy suspensions of license and that the denial would additionally penalize the appellant; and

(5) That the issue of the Constitutionality of the Division regulations and the local obscenity ordinance "remains unresolved in the Federal Court suit in which appellant and respondent are parties". "

The Committee, in its answer, denied the substantive allegations of the petition and set forth that its reasons for denial are fully embodied in the resolution hereinabove set forth.

Upon the filing of the appeal, the Director entered an order on August 3, 1973 extending the term of the 1972-73 license then held by the appellant expressly subject to the suspension then in effect, 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 in this matter, it is well to set forth the applicable legal principles pertaining hereto. The crucial issue in this appeal is whether the record as a whole substantially supported and justified the action of the Committee in denying the appellant's application for renewal. The burden of proof in all of these cases which involve discretionary matters where the applicant seeks a renewal of the license, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Nordco Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); 279 Club v. Mun. Bd. of Alcoh. Bev. Cont. of Newark et al., 73 N.J. Super. 15, 21 (App. Div. 1962); Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957); Blanck v. Magnolia, 38 N.J. 484 (1962).

A liquor license is a temporary permit or privilege to conduct a business otherwise illegal. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). 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; Fornarotta 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."

II

John H. Schoch, the president and sole stockholder of the corporate appellant, testified that he did not attend the Committee meeting when the appellant's application was being considered "...because nothing would be resolved in a township shouting match with the form of government there, and I thought I could handle it through the court. I was not interested in getting involved in something like that."

He asserted that he got the impression through some newspaper article that there was shouting and arguing at a prior Committee meeting. He also alleged that at the Committee meeting when appellant's application was considered, no one appeared to object to the renewal thereof.

However, Manrico R. D'Anastasio, Mayor of the Township of Pennsauken, who is a member of the Committee testified that he had received numerous telephone calls and personal complaints by residents of this municipality with reference to the operation of appellant's business. He stated that the other members of the Committee informed him that they had similarly been contacted by telephone. These complaints were voiced by local clergymen, residents, and representatives of church, political and civic organizations who complained about the "topless" performers and that this facility disturbed the peace and quiet of the community. They urged a denial of renewal. In fact, at a regular meeting of the Committee, three women voiced their objections to the continuance of the appellant's operation, and demanded to know what the Committee was going to do about it. As a result of these complaints he personally visited the licensed premises in the company of the chief of police and Captain Collar and observed the performances.

This witness further explained that, in fact, numerous residents indicated that if no action were taken against these premises to stop the performances as described in the resolution that they "were personally going to demonstrate in front of the place, they didn't want it, felt it was bad for the community, they were going to physically picket the place." He advised them that that was not the proper way to handle the situation. "It is a legal type of problem, and I will not permit any violation of any kind in Pennsauken Township." He added that his community was known to many people as "church oriented" and a "conservative-minded community for many, many years and still is, and the complexion and make-up of the citizenry there just does not want to be exposed to this type of thing."

He noted that at the meeting when the question of renewal was discussed he did not take the initiative but felt

that the committeemen should act on their own in the caucus. The committeemen noted many instances of complaints about the activity at these licensed premises and after a full discussion of the matter, the politically non-partisan Committee unanimously voted to deny the application.

It is quite apparent that the appellant had adequate notice of the hearing and had full opportunity to assert its position and argument in support of its application. I find that the reason for its failure to be represented at the hearing to be unconvincing and not supported by the evidence. Appellant would have been given a full opportunity to state its case but voluntarily refrained from doing so. Thus, it can not validly contend that it was denied a full and fair hearing.

There has been no evidence introduced to establish or even suggest any improper motivation on the part of the Committee in reaching its determination.

One of the factors apparently considered was the objections of residents in the municipality. Fanwood v. Rocco, 33 N.J. 404, 412 (1960) which supports the principle that local officials may be influenced by local sentiment in the administration of alcoholic beverage control.

As the court stated in Lyons Farms Tavern v. Newark, 55 N.J. at p.306 (1970):

> "Service of the public interest in licensing, in transferring of licenses and in controlling this exceptional business requires an attentive and sympathetic attitude towards the sentiments of substantial numbers of persons in the locality, whether they be residents, commercial operators, or representatives of a nearby church, school or hospital."

And the local issuing authority does not act arbitrarily in honoring these views. Added the court:

> "In fact, in our view, the local board would be remiss in its duty if it failed to give such views serious consideration."

III

Appellant further contends in its petition of appeal that it has already incurred two lengthy suspensions of license by action of this Division and that by the denial of its renewal application the Committee seeks "additionally to penalize appellant for infractions for which it has been and continues to be penalized." However, it has been well established that in the consideration of an application for renewal, prior infractions of the law may be taken into consideration. Cf. Butler Oak

Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956).

Appellant's license was suspended by this Division for fifty days, commencing April 12, 1973 by order dated April 11, 1973, after it was found guilty of three charges alleging that it allowed, permitted and suffered its licensed place of business to be conducted in such manner as to become a nuisance, i.e., that it permitted and suffered females to perform on its licensed premises in a lewd and indecent manner, viz., "topless", in violation of Rule 5 of State Regulation No. 20. Re Starshock, Inc., Bulletin 2101, Item 2. Concurrent thereto, the appellant's officers and employees were arrested and charged with the violation of the obscenity ordinance in the Pennsauken Municipal Court, which matter is presently pending. Appellant was also indicted by the county grand jury on obscenity charges.

Before the effectuation of the suspension appellant instituted an action in the United States District Court and obtained a temporary injunction staying the said suspension. However, thereafter appellant continued the same type of activity and introduced in addition "bottomless" dancing so that the performers danced entirely nude. When these facts were revealed to the Court, the injunction was promptly vacated. The Division then brought additional proceedings against the appellant on two similar charges and upon a finding of guilt the Director, by order dated June 12, 1973, suspended the subject license for one-hundred-twenty days. Re Starshock, Inc., Bulletin 2111, Item 1. It based this suspension upon the fact that it considered that in view of the prior adjudicated record for similar offenses that this constituted an aggravated situation.

In its consideration of this matter the Committee 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 sine 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 ...."

As noted above, the liquor business is one that should be conducted by reputable people in a reputable manner. Zicherman v. Driscoll, supra. By the Committee's action, it expressed its conviction that these premises were not so conducted.

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". Lubliner v. Paterson, 33 N.J. 428, 446 (1960). A renewal license is in the same category as an original license. Zicherman v. Driscoll, supra.

Thus, the broad question posed before the Committee on appellant's application for renewal was whether, in the light of all the surrounding circumstances and conditions, it was in the public interest of the municipality for these premises to continue to exist. The objective judgment of the Committee was that its continuance would be inimical to the public interest. Blanck v. Magnolia, supra; R.O.P.E., Inc. v. Fort Lee, Bulletin 1966, Item 1.

IV

In its petition of appeal and in the testimony of Schoch it is contended that the appellant did not comply with the applicable regulation of this Division (Rule 5 of State Regulation No. 20) because Schoch, its president, felt that the issue of constitutionality of the said regulation and the local obscenity ordinance were unresolved in the Federal court suit in which the appellant and the respondent was parties.

Schoch was then asked why, after the first charges were preferred against the appellant, it did not desist from engaging in such alleged proscribed activity until the matter was ultimately resolved rather than continuing to permit such performances. He admitted that he was aware of the applicable Division rule (Rule 5 of State Regulation No. 20), and the Appellate Division decision in Re Club "D" Lane, Inc., 112 N.J. Super. 578 (App. Div. 1970), which involved a similar charge under the said rule that the licensee permitted the type of performances denounced by the said charge. In that case the court held that "topless" performances were proscribed. The Director's order also noted that the decision in Paterson Tavern & Grill Owners Ass'n Inc. v. Hawthorne, 108 N.J. Super. 433, 438 (App. Div. 1970), rev'd on other grounds, 57 N.J. 180 (1970) where the court stated, in discussing an ordinance similar to that of Pennsauken's obscenity ordinance:

> "The ordinance seeks to ban from Hawthorne's taverns and other licensed premises the 'topless' and 'bottomless' entertainer or dances. The community has a right to protect

itself against this kind of an immoral atmosphere which exists elsewhere in the United States. Such so-called 'entertainment' is nothing more or less than an appeal to the prurient interest. It is bait to bring customers to the bar and hold them there, for the obvious purpose of increasing the sale of alcoholic beverages. It may be validly curbed, as Hawthorne provides in its ordinance."

In both Conclusions and Orders in the disciplinary proceedings against the appellant, the Director pointedly noted the earlier admonition set forth in Play Pen Incorporation, Bulletin 1778, Item 5, as follows:

> "In passing, however, I wish emphatically to advise all licensees that so-called 'topless' female employees, whether entertainers or otherwise, and whether with pasties described by Division agents or the larger ones described by the licensee's witnesses, will not be tolerated on licensed premises in this State."

This admonition was noted in Club "D" Lane (112 Super. at p. 580, 581) where the court affirmed that all licensees are charged with notice thereof.

The Director's order further points out that, historically, nudity has not been countenanced in liquor licensed premises by this Division or by the courts. While the standards of dress at other than licensed premises have changed in recent years, there has been no lowering in the standard apparel as it relates to female entertainers on licensed premises. In a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the various statutes and the rules and regulations pertaining thereto. A public convenience should not be allowed to degenerate into a social evil.

> "The conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location 'may lawfully be tightly restricted to limit to the utmost the evils of the trade."

See Jeanne's Enterprises, Inc. v. Div. of Alcoholic Bev. Control, 93 N.J. Super. 230 (App. Div. 1966), aff'd o.b. 48 N.J. 359 (1966).

Significantly, the appellant's president Schoch, was obviously aware prior to the hearings against appellant in the disciplinary proceedings through consultations with his attorney, that Division and Appellate Court decisions interpreting the

subject regulation were constitutionally sustained by the United States Supreme Court, in California et al. v. Robert LaRue et al., 93 S. Ct. 390 (decided December 5, 1972).

Appellant, through Schoch, nevertheless maintains that it was persuaded, upon consultation with counsel, that the three-Judge Federal Court would reverse its earlier ruling in view of several decisions to the contrary in other states. However, no specific decisions were cited.

Schoch explained that a motion for a re-hearing was pending at the time of this hearing before the Federal court and he was certain that the court would enter an order for reconsideration of its prior ruling. (Subsequent to the de novo hearing herein and before this Hearer's report was prepared, the Three-Judge Court Order denying its motion for reconsideration was entered on September 19, 1973.

In that order the court stated:

> "It appearing that plaintiffs, on July 12, 1973, filed a notice of appeal with the Supreme Court of the United States seeking review of this Court's Order of Abstention; and
>
> The Court having considered the briefs of counsel accompanying the moving papers and having adjudged that, in light of the pending appeal, it lacks jurisdiction to reconsider its Order of Abstention;
>
> It is, accordingly, on this 19th day of September, 1973 ORDERED that the plaintiffs' motion for Reconsideration be and the same is hereby denied."

Re Starshock, et al., v. Robert E. Bower, et al., United States District Court for the District of New Jersey (Civil Action No. 51-73).

I find that the appellant was adequately advised and notified of the rulings of this Division and of the Appellate Division of the Superior Court with respect to the nature of the performances which it allowed and permitted on its licensed premises. The fact is that until these rulings were reversed they constituted the determinative and binding determinants of the legality and validity of the Division regulations and the local obscenity ordinance.

I further find as did the Director in Re Starshock, Inc., supra, (Bulletin 2111, Item 1) that the appellant deliberately pursued a course of wanton disregard and in violation of the regulation and stat ute. Thus, it is clear that the appellant had guilty

knowledge and was fully aware of what was taking place. In view of the evidence reflected in the Director's conclusions in the disciplinary proceedings, the conclusion is inescapable that the appellant deliberately embarked upon this activity because it was a "gimmick" to attract people to the licensed premises and increase the business of the appellant; that it's business was substantially increased is undenied and that its method was clearly to stimulate greater sales of alcoholic beverages for more money and not to express any ideas or expressions to the public. I, therefore, find these contentions by the appellant to be totally lacking in merit.

V

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; Central Jersey PSA et als. v. Pohatcong and Falk's etc., Bulletin 1768, Item 2. Indeed, as the court stated in Lyons Farms Tavern, Inc. v. Newark et al., 55 N.J. 292 (1970) reprinted in Bulletin 1905, Item 1:

> "The conclusions is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, it exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

Lyons Farms then added this guiding principle (55 N.J. at p.307):

> "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).

From my evaluation and assessment of the total record herein, I find that the Committee's determination was supported by substantial evidence, Hornauer v. Div. of Alcoholic Bev. Control, 40 N.J. Super. 501 (1956), and that it exercised its discretion circumspectly and in the public interest in refusing to renew appellant's license for the current licensing period.

I thus conclude that the appellant has failed to establish that the action of the Committee was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is, therefore, recommended that the Committee's action be affirmed and the appeal herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the attorney for and on behalf of the appellant pursuant to Rule 14 of State Regulation No. 15. Written answers to the said exceptions with supportive argument were filed by the attorney for and on behalf of the Township Committee.

I find that the points raised and the matters contained in the exceptions have either been fully considered and resolved by the Hearer in his report or are lacking in merit.

I have carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the exceptions filed with reference thereto, and the answer to the said exceptions, and find that the action of the Committee in denying renewal of appellant's license was reasonable and justified under the circumstances. Consequently, 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 November 1973,

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

ORDERED that my order dated August 3, 1973 extending the term of appellant's 1972-73 plenary retail consumption license expressly subject to the suspension then in effect, pending the determination of the appeal herein, be and the same is hereby vacated, effective immediately.

Robert E. Bower
Director

2. APPELLATE DECISIONS - ANFER, INC. v. HARRISON.

Anfer, Inc., t/a Night & Day Lounge,)
Appellant,)
v.)
Town Council of the Town of Harrison,)
Respondent.)

On Appeal

CONCLUSIONS and ORDER

Robert J. Jerome, Esq., Attorney for Appellant
Walter Michaelson, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Mayor and Council of the Town of Harrison (hereinafter Council) which on July 17, 1973 revoked appellant's plenary retail consumption license after finding appellant guilty of charges alleging that (1) on January 7, 1973 it permitted a person of ill repute and with a criminal record on the licensed premises in violation of Rule 4 of State Regulation No. 20, and permitted the unauthorized possession of firearms and unlawful firing in violation of N.J.S.A. 2A:151-41, the Town Ordinance and Rule 5 of State Regulation No. 20, and (2) on March 22, 1973 it permitted a brawl on the premises in violation of Rule 5 of State Regulation No. 20 and permitted an unauthorized person to be employed thereon without a permit and with a criminal record, in violation of both the local ordinance and Rule 1 of State Regulation No. 13.

The revocation was stayed by order of the Director dated July 25, 1973, pending determination of this appeal.

Appellant's petition of appeal alleges that the action of the Council was arbitrary, capricious and against the weight of the evidence, which revealed insufficient factual and legal grounds to support its findings. The Council denied these contentions and alleged that the evidence was sufficient to warrant its determination and the penalty imposed.

This appeal was based solely on the transcript of the testimony taken before the Council by stipulation of the parties hereto, pursuant to Rules 6 and 8 of State Regulation No. 15.

I

A synopsis of the testimony pertinent to the incident

alleged to have occurred on January 7, 1973 reveals that a tenant who resides above the licensed premises entered the tavern to complain about a lack of heat. A bartender, whose first name was Santos (later identified as Santos Rodriguez), and a patron whose first name was Orlando (later identified as Orlando Ferrales) were present.

After the tenant departed from the tavern and was en route upstairs, shots were fired in the hallway and into his apartment, one bullet striking a television set.

Several police officers who responded to the call of the tenant's daughter testified that they observed bullet holes in the wall and ceiling. Their search of the licensed premises revealed two guns. The bartender present admitted having done the firing, but that admission was colored by the inescapable response to that admission by the bartender's indication that "he was taking the blame for Ferrales" presumably because Ferrales was then wanted by the police.

Jose Luis Rivera, one of the two corporate owners, arrived on the premises at the police call. He admitted that Ferrales would write the checks for the business but that he performed that service only because of Rivera's poor handwriting. Neither the bartender (who is the brother-in-law of Rivera)nor the "patron" Ferrales appeared on behalf of appellant at the hearing before the Council. The criminal record of both Rodriguez and Ferrales was made part of the record.

II

Police Lieutenant Olson testified that he received a complaint from a woman who alleged that on March 22, 1973 she was assaulted in appellant's premises by Ferrales, with whom she had been previously living. This witness visited the tavern to serve a warrant on Ferrales and there found a barmaid (later identified as Lillian Rodriguez Garcia) on duty. The criminal record of Lillian Garcia was also made part of the record. The police officer further described his observations of Lillian Garcia and recounted that she was behind the bar washing glasses. The statement previously given to the police by the victim of the assault began with the statement that she, the victim, had ordered and received a drink from Lillian Garcia, the barmaid. The victim had further related to the lieutenant that Ferrales had repeatedly stated that he was owner of appellant's premises.

Jose Luis Rivera testified that he purchased the premises with five thousand dollars borrowed from a vending company. He apparently had also borrowed money from Ferrales but declared that that loan has been paid. He has a partner who comes to the licensed premises "once in a while. Not too much." He denied that Lillian Rodriguez ever was behind the bar. Neither the barmaid nor the victim testified before the Council.

It was undenied that the victim was struck by a glass thrown at her by Lillian Garcia but no assault charge was proven with respect thereto. Lillian Garcia was additionally charged with working in licensed premises without a required local permit.

III

That both incidents took place as described in the charges was never seriously controverted. No defense to either was interposed and, save for vigorous cross-examination by appellant's counsel, appellant failed to offer testimony by anyone who might shed light on the incidents described. The Council had no other course but to find appellant guilty and to assess the penalty.

The only significant challenge to the Council's action is directed to appellant's contention that the penalty imposed, i.e., outright revocation, is far too severe and does not bear a reasonable relationship to the charges themselves.

In any evaluation of a penalty imposed by an issuing authority, the cardinal principle enunciated by Judge Jayne in In re 17 Club, Inc., 26 N.J. Super. 43 (App.Div. 1953) becomes the springboard:

> "Governmental power extensively to supervise conduct of liquor business and to confine conduct of such business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad judicial support."

The good character of those who are engaged in the liquor industry must be a hallmark of the liquor business, as was pointed out in Zicherman v. Driscoll, 133 N.J.L. 586, 588 (1946):

> "... The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner...."

A liquor license is a privilege. Mazza v. Cavicchia, 15 N.J. 498 (1954). The privilege of selling alcoholic beverages at retail, which is granted to the few and denied to the many, must be exercised in the public interest. Paul v. Gloucester County, 50 N.J.L. 585.

The control of that privilege is vested in the issuing authority. "In the exercise of that power, the Legislature invested the local issuing authority (Council) 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." Maczka v. Elizabeth, Bulletin 1746, Item 1. "The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound

discretion, in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive." Benedetti v. Trenton, Bulletin 1040, Item 1, aff'd 35 N.J. Super. 30 (1955); Harrison Wine and Liquor Company, Inc. v. Harrison, Bulletin 1296, Item 2.

The three principal characters in the dramas which unfolded in the licensed premises -- the bartender, the barmaid and the money-lender to the owner -- each have serious criminal records. The bartender who "took the blame" for Ferrales has a criminal record involving a charge of assault as well as a narcotic drug charge now pending. Similarly, narcotic drug charges were leveled against the barmaid Lillian Garcia. Ferrales too has a sorry record. In 1967 he was charged with intent to kill; in 1968 with robbery (which charge was later dismissed); in 1971 he was charged with possession of narcotic drugs and sentenced to two years; the following year he was charged with possession of a stolen auto (which charge was downgraded to the unlawful taking of an auto) and in 1973 he was charged with conspiracy to sell cocaine (which charge is presently pending).

Rivera (the part-owner) admitted an informal business connection with Ferrales, explaining that Ferrales writes his checks because of a handwriting disadvantage. He asserted that he was unable to locate either Ferrales or his bartender Rodriguez to testify on behalf of the licensee.

Referring to the principles above stated, the matter of penalty rests in the first instance with the issuing authority. The Council in this matter determined, upon a finding of guilt on the charges, that the subject license was not being administered in a reputable manner and promptly revoked. Thereafter, as stated, the Director stayed the revocation pending this appeal.

Report has been received by this Division that, subsequent to the finding in the matter and while the licensed premises were open on the stay, an act of violence took place within the licensed premises resulting in a person's death. While this later occurrence had no bearing on the action of the Council appealed from or the rights of the parties thereupon set, it is merely supportive of the declaration that a licensed premises is not run in a reputable manner. It is clear that the Council felt on the evidence presented that appellant should not be permitted to operate in the alcoholic beverage industry.

I therefore conclude that appellant has failed to establish that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is accordingly recommended that the action of the Council be affirmed, the order of the Director staying the

Council's action pending determination of this appeal be vacated, and the appeal 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, including transcript of the testimony, exhibits 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 16th day of November 1973,

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

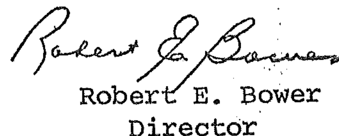
ORDERED that the order dated July 25, 1973, staying revocation of appellant's license pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that plenary retail consumption license No. C-12, issued by respondent Town Council of the Town of Harrison to Anfer, Inc., t/a Night & Day Lounge, for premises 338 Sussex Street, Harrison, be and the same is hereby revoked, effective immediately.

Robert E. Bower,
Director.

3. STATE LICENSES - NEW APPLICATION FILED.

Trip Distributors, Inc.
9-29 Getty Avenue
Paterson, New Jersey
Application filed January 28, 1974
for plenary wholesale license.



Robert E. Bower
Director