Deputy Director Saum

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

BULLETIN 1707

December 27, 1966

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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 - NATIONAL LOAN SOCIETY v. NEWARK and HNIEDAY.

National Loan Society, et als., Appellants, v. Municipal Board of Alcoholic Beverage Control of the City of Newark, and Michael Hnieday, t/a Kings & Queens Club, Respondents.	)	On Appeal CONCLUSIONS AND ORDER

Arthur L. Abrams, Esq., Attorney for Appellants
Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney for Respondent Municipal Board
James E. Abrams, Esq., Attorney for Respondent Michael Hnieday

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Board (hereinafter Board) on March 23, 1966 whereby it granted the place-to-place transfer of the plenary retail consumption license of respondent Michael Hnieday, t/a Kings & Queens Club (hereinafter licensee) from 166 Washington Street to premises 127 Halsey Street, Newark.

Appellants' petition of appeal challenges the action of the Board because:

> "The issuance of the license was erroneous and the appellants are aggrieved thereby because the Respondent issuing authority decided that the premises were within the six hundred (600) feet as set forth in the ordinance and were consistent with the master plan for the proposed development of the area by the City."

The answers filed by the respondents deny that the action of the Board was erroneous, and the answer filed on behalf of the Board also asserts that:

> "The grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the transfer should be granted."

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

before the Board was received in evidence, and additional and supplemental testimony was presented by appellant and respondents in accordance with Rules 6 and 8 of said Regulation.

It appears from the transcript of the hearing before the Board that, prior to the said hearing, nine written objections to the transfer in question were received and at the time of the hearing four representatives from business establishments in the area voiced objections. These objections in the main were in reference to operation of a liquor establishment at the site requested as the expressed opinions of the objectors were that a place where alcoholic beverages were permitted to be sold would tend to adversely affect the other types of business in the area.

At the instant hearing the contention most emphasized was that the footage ordinance with reference to the transfers of liquor licenses was violated by approval of the transfer of the license to the proposed premises.

The pertinent portion of the ordinance applicable to the matter now under consideration is Section 3.29 of the Revised Ordinances of the City of Newark, as amended, which provides in pertinent part as follows:

> "1. (a) No plenary retail consumption license, except renewals for the same premises and transfers of license from person to person within the same premises, shall be granted or transfer made to other premises within a distance of one thousand feet from any other premises then covered by any other plenary retail consumption license or any plenary retail distribution license, provided, however, that the local license issuing authority may, in its discretion, grant a transfer of an existing license to the same licensee only, to other premises within six hundred feet of the premises from which the transfer is made, notwithstanding that the premises to which the license is so transferred is within one thousand feet of an existing plenary retail consumption license or plenary retail distribution license, provided, however, that such transfer shall be made in good faith and shall inure solely for the benefit of the same licensee.
>
> * * * * *
>
> (c) Where the one thousand foot distance is referred to in this section, the same shall be measured in the same manner as required by statute for the measuring of two hundred feet relative to schools and churches."

At the hearing held before the Board, Edwin Schumacher, a land surveyor, testified that he prepared the survey dated February 11, 1966 which accompanied the application for the transfer of the license, disclosing the distance "from the center of the entrance of the old location [166 Washington Street] to the center of the entrance to the new location [127 Halsey Street]" to be 594.6 feet.

At the hearing herein Mr. Schumacher testified that, when he made the survey aforementioned, "the building [166 Washington Street] had been torn down but the cellar stairway which was directly under that entrance was still there and the

walls of the cellar stairway and the steps were still there at that time, and I went from the center of that." Mr. Schumacher further testified that he "measured on the property line. Then I calculated that it would be two feet off" and at the respective corners (Washington Street and Raymond Boulevard, and Raymond Boulevard and Halsey Street) he measured on an arc rather than on an angle. On the proposed premises he measured to where the door would be located as represented to him by the architect.

John D. Sierco, a land surveyor, produced on behalf of appelllants, testifed that he made a survey of the distance between 166 Washington Street and 127 Halsey Street during the week ending April 6, 1966, and found the distance to be 611.29 feet. In explanation of the matter in which he calculated the distance to be 611.29 feet, he stated:

> "My measurements were taken from the center of the door of the old tavern, thence proceeding westerly three foot away from the existing building, going along Washington Street a distance of 281.45 feet, thence turning and going east along Raymond Boulevard at a distance three foot away from the buildings to a point on Halsey Street again three foot away from the existing buildings, thence I went along Halsey Street a distance of 33.50 feet to the center of the door of the proposed new tavern, thence I went from there a distance of four feet to the entrance of the new building, the reason for the four foot being that the door is recessed away from the property line by one foot, a minimum of one foot. When I made this survey, the front entrance was not in place but framing that I had seen and had since verified since this date, it is more than one foot in from the property line."

Mr. Sierco further testified that, when he made his survey, the foundation of the building at 166 Washington Street was standing and he measured from "the most southerly point of a possible door that can be put in there."

On rebuttal Mr. Sierco testified that, using the tax map figures as a guide with the exception of the measurement along Halsey Street which he (Mr. Sierco) calculated to be 29½ feet, the measurement along property lines was 588.79 feet.

Margaret Don Diego, called as a witness by appellants, testified that she had no interest in the license held by the respondent licensee.

Michael Hnieday (the licensee), also called as a witness by appellants, corroborated the fact that no one held an interest in the license, the transfer of which is now under consideration. Licensee further testified that the dimensions of the proposed premises are 15 x 76 feet.

No proof that anyone but the licensee had an interest in the license being transferred was presented by appellants herein.

I shall first consider whether the footage ordinance in question has been violated by reason of the transfer. In Aldarelli v. Asbury Park, Bulletin 186, Item 12, with reference to measurements made between taverns and churches or schools pursuant to R.S. 33:1-76, Commissioner Burnett stated as follows:

> "...the rule hereafter will be that the measurement will be made in the direction indicated by the statute in straight lines along the side of walls and street lines nearest to church (or school) and tavern thus to get the shortest distance between them. The courses will commence and terminate at the nearest point on the nearest doors of the respective premises. That is the place where the pedestrian would leave or enter, taking the shortest course, if the door were open."

It is expressly provided in the ordinance, Section 3.29, that the method of measurement to be used is to be in accordance with R.S. 33:1-76.

Thus the manner of measurement disclosed in both surveys, made by the respective land surveyors and marked as exhibits herein, and the testimony given by the surveyors indicate that such measurements were not made in accordance with the established rule in that neither measured along the sides of walls and both measured from and to the centers of the entrances rather than the nearest sides of such entrances. However, Mr. Sierco testified that the tax map measurement with reference to the property lines on Washington Street and Raymond Boulevard calculated by him, plus 29½ feet on Halsey Street, was 588.79 feet, which measurement appears to be the correct distance between the entrances to the premises in question.

The objectors' assertions, as voiced by the persons representing various business establishments, that the presence of a liquor establishment will attract unsavory persons to the area, are based merely on conjecture. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), the appellants or other objectors have nothing to fear. If, however, the licensed premises are permitted to be operated in violation of the Alcoholic Beverage Law or municipal ordinances pertaining thereto, the licensee will subject the license to suspension or revocation.

Appellants' next contention is that the licensee did not act in good faith when he made the application for the place-to-place transfer of his license. No independent or factual evidence was presented in proof thereof. Appellants relied upon, as precedent in alleging bad faith, a ruling made in the matter of Essex County Retail Liquor Stores Association v. Newark et als., 77 N.J. Super. 70 (App.Div. 1962). Briefly, a digest of that case indicates that during hearing on July 19, 1961, Smith (the holder of a plenary retail consumption license for premises 776 South Orange Avenue) applied for a place-to-place transfer of the license to 773 South Orange Avenue. The application for such transfer within six hundred feet of its then location was approved. During the said hearing the local issuing authority, on request by appellant, declined to compel the transferor "to state his present intention with respect to future operation." On August 3, 1961, an application was made by a third party for a person-to-person transfer of the license to the new premises. It developed that, during the hearing on this application for transfer, prior to the date when Smith had made application for the place-to-place transfer of the license, an agreement was negotiated by him with the third party corporation for the person-to-person transfer of the license to it. Both the place-to-place transfer and the person-to-person transfer were granted. Application to the State Director resulted in the affirmance of the action of the local issuing authority. Essex County Retail Liquor Stores Association v. Newark, Smith and Home Liquors Inc., Bulletin 1449, Item 1. The court affirmed the

respective transfer of the license under the then existing ordinance. Essex County Retail Liquor Stores Association v. Newark et als., supra. It is true that the court discussed the section of the amended ordinance which presently exists, but was not applicable to the matter then being considered by the court, it being in the nature of obiter dictum. Furthermore, it would surely have no applicability with reference to the appeal of the place-to-place transfer of the license in this case.

Appellants contend in the matter sub judice that there is now pending before the local issuing authority an application for a person-to-person transfer to a corporation, and thus the original application for the place-to-place transfer indicates bad faith. However, under the circumstances appearing herein, I am satisifed that the mere filing of the person-to-person application is not in itself sufficient to sustain the said charge. An allegation of bad faith must be supported by proper proof and not by implication in order to sustain the charge.

Moreover, the application for the person-to-person transfer of the license has not been acted upon by the local issuing authority. As long as the license remains in the name of the existing licensee, as here, there is no justification in going into the question of what may occur after the transfer thereof. Perhaps, depending upon the facts in a future case, the ordinance may be determined to be unreasonable in its implicit preclusion of later transfer of the license from person to person.

Appellants' last contention is that the licensee's business is not the type contemplated by the planning board's recommendation in 1961 for the said type of business included in the master plan of 1964. The latter designated the area for intensive commercial use and listed various businesses which might be included, among which are "restaurants." Licensee testified that he intends to provide a "businessman's lunch" to be served at the proposed premises. As to this contention, it is believed that it is no more the function of the municipal issuing authority or the Director to consider whether there is compliance or not than it is to consider the application of zoning ordinances -- cf. Lubliner v. Bd. of Alcoholic Bev. Con., Paterson et als., 59 N.J. Super. 419 (App.Div. 1960), reprinted in Bulletin 1325, Item 1; aff'd id. nom. 33 N.J. 428, reprinted in Bulletin 1365, Item 1.

I shall now consider whether the Board abused its discretion in granting to the licensee the place-to-place transfer of the license in question.

It has been well established that a local issuing authority's discretionary power is broad in determining whether or not a liquor license should be transferred. The Director's function on appeals of this nature 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. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, the following general principles were stated:

"Local officials who are thoroughly familiar with their community's characteristics and interests and

> are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications.... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480. 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the Rocco case, supra, it was stated:

> "The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511...."

No evidence has been presented herein to indicate that the Board was in any way improperly motivated or abused the discretion vested in it by granting the transfer of the license in question.

After careful examination of the entire record presented herein, I conclude that the appellants have failed to sustain the burden of proof in showing that the action of the Board was erroneous. Rule 6 of State Regulation No. 15.

For the reasons aforementioned, it is recommended that an order be entered affirming the action of the Board herein and dismissing the appeal.

Conclusions and Order

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

Although the matter has no direct or indirect bearing upon my determination of this appeal on the merits, I must comment in emendation of the portion of the Hearer's report concerning the appellants' contention that the intended business is not the type contemplated by the planning board's recommendation in 1961 or in the master plan of 1964, as to which contention the Hearer wrote: "...it is believed that it is no more the function of the municipal issuing authority or the Director to consider whether there is compliance or not than it is to consider the application of zoning ordinances"--citing Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 59 N.J.Super. 419, affirmed in 33 N.J. 428. In here-pertinent part Lubliner points out that the existence of an operative zoning ordinance does not prohibit the issuing authority's grant of transfer of license to premises located in the particular zone but that such grant would in nowise permit operation under the license in contravention of any applicable zoning provisions; and that if the licensee ever attempts to so operate, relief is

readily available (see 33 N.J., p. 435). Clearly, Lubliner does not stand for a proposition that municipal issuing authorities and the Director may not properly consider the application of zoning ordinances. The Director has no jursidction either to approve or to disapprove a zoning ordinance (Re Adams, Bulletin 70, Item 4), but an application for a limited winery license was denied on the ground that a grant thereof would have been in direct violation of the terms of the municipal zoning ordinance (Re Bardessono, Bulletin 266, Item 3); and on appeals from municipal denial of retail license applications on a ground that the grant would have been in contravention of operative zoning ordinances, the denials were affirmed (Marra v. Cedar Grove, Bulletin 302, Item 15; and Murchio v. Wayne, Bulletin 379, Item 7). Furthermore, and of course, to say that the recommendations of a planning board and a master plan do not carry legal sanctions is not to say that they may not properly be given consideration by the issuing authority confronted with an application for license or license transfer.

The exceptions to the Hearer's report contain, among other items, a paragraph reading:

> "The official records of the Newark Alcoholic Beverage Control Board show that the place-to-place transfer application here in issue was filed by the Respondent, Michael Hnieday, on February 23, 1966. On April 11, 1966 Kings & Queens Club, Inc. was incorporated in the State of New Jersey. The stockholders of Kings & Queens Club, Inc. are Michael Hnieday, Edward Teltser and Margaret Don Diego. On April 20, 1966 a person-to-person transfer application was filed to transfer the license of Michael Hnieday, trading as Kings & Queens Club, Inc. (sic) to Kings & Queens Club, Inc., which application is still pending. The Hearer erroneously refused to permit Appellants to place the application in evidence. It appears from the foregoing that at the time of the application for the place-to-place transfer the person-to-person transfer filed on April 20, 1966 may have been anticipated."

Continuing, the exceptions allege that when the place-to-place transfer application was filed by the respondent Hnieday, "he probably was committed to the person-to-person transfer since the financing for the construction of the new premises must have been arranged...It is now clear that the transfer, if permitted, will inure to the benefit of the new corporation, the majority control of which is in other persons..."

The Division's records show that on June 30, 1966, the respondent Board adopted a resolution amending the resolution of March 23, 1966 so as to make place-to-place transfer of the 1965-66 license effective as of June 30, 1966 for the sole purpose of permitting grant of Michael Hnieday's application for 1966-67 renewal, and granting such renewal application subject to a completion-of-premises special condition. The Division's records show, further, that upon due completion of the new premises, the 1966-67 license was issued to Michael Hnieday effective October 19, 1966.

The corporation's application was for person-to-person transfer of a 1965-66 license. With 1966-67 license renewal to respondent Hnieday, no current application for person-to-person transfer is before the respondent Board. It is conceivable that

no further transfer application will be filed by the corporation.

I am unable to find, from the record before me on this appeal, that the respondent Board's action was in violation of the distance-between-premises ordinance.

After carefully considering the entire record, including the transcript of the record below, the evidence, exhibits and oral argument, the written memorandum for the appellants, the Hearer's report and the exceptions thereto, I find that the appellants have failed to sustain the burden of establishing (Rule 6, State Regulation No. 15) that the action of the respondent Board was erroneous and should be reversed.

Accordingly, it is, on this 28thday of October, 1966,

ORDERED that the action of the respondent Board be and the same is hereby affirmed and that the appeal herein be and the same is here dismissed.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against	)
ROBERT W. LAVIN t/a Twin Corners Bar & Grill 157 East Westfield Avenue Roselle Park, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Roselle Park.	)

John L. McGuire, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On March 24, April 7, and May 13, 1965, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of horse race bets; in violation of Rule 7 of State Regulation No. 20."

Trooper Raymond Feldherr, who has had extensive experience in the investigation of gambling, including bookmaking and lottery activities, in his capacity as a member of the State Police force assigned to the criminal investigation section, testified that he visited the licensed premises pursuant to specific assignment. He described the premises as "a one-story greystone building, consisting of a tavern and a package liquor store connected to it."

On March 24, 1965, Feldherr entered the licensed premises at approximately 2:20 p.m. with a person known to him as "Don" and

sat at the section of the bar adjacent to the door. Four or five persons were seated at the bar. Tending bar was George Opie. Don introduced the trooper to Opie as "Ray" and said to the bartender, "He's got some horse to give you." Opie said, "Just a minute." Opie procured a piece of white paper "approximately three by five, that comes from a small pad" and a ballpoint pen. The trooper then described the transaction thusly: "I took the paper and the pen and I wrote a bet on a horse called Trojan Sword, running in the eighth race at Aqueduct, and I wrote the bet for two dollars across the board. I then returned the slip to George and I gave him six dollars. He put both in his upper shirt pocket. Then--well, that was all that took place." The witness described the transaction as a horse bet or bookmaking. Approximately five minutes later the licensee entered the tavern.

On April 7, 1965, Feldherr entered the licensed premises alone at approximately 12:45 p.m. and sat at the bar. Opie was again tending bar and served the trooper a glass of beer. In response to the question, "And when served was there any conversation between you and Mr. Opie?", Feldherr responded as follows:

> "Yes, sir, there was. When Mr. Opie brought the beer to me and placed it in front of me, I said, 'I didn't make out so good on that Trojan Sword last time, did I?'
>
> "He said, 'I don't know. I don't even pay any attention to what horses are played. I used to when I started booking years ago, but now I just look over the slips at the end of the day.'
>
> "Then I said to George, 'I got another one for you today, George,' and with that I handed him a slip which I had previously prepared, and the slip was for a bet on a horse named Just Half which was running in the seventh race at Laurel race track in Maryland, and the bet was for two dollars across the board, again two dollars to win, two dollars to place and two dollars to show, on the same horse, the total amount being six dollars.
>
> "Mr. Opie took the slip and the money and placed them both in his shirt pocket. Shortly after that I left the tavern."

On cross examination, the officer admitted that he did not find the licensee, Mr. Lavin, "mixed up in any betting propositions or running of any book or anything of that nature."

Rudolph Simonetti (a detective-sergeant in the New Jersey State Police, assigned to its criminal investigation section) testified that, accompanied by two other members of the State Police force, he entered the licensed premises on May 13, 1965 at approximately 12:45 p.m. He had on his person a search warrant issued by a judge the previous day. The bartender on duty identified himself as George Russell Opie. At approximately 1:10 p.m. a person identified as Robert William Lavin (the licensee herein) entered the tavern. The search warrant was exhibited to Opie and to Lavin.

Simonetti then detailed a telephone conversation thusly:

> "At approximately 1:35 p.m. this telephone rang, Chestnut 5-9750, and I answered the phone and I said,

'Hello,' and the caller said, 'Is George there?'

"I than said, 'Hold on,' and I paused for a few seconds. I then came back on and said, 'George.' the caller said, 'This is Nick. Is this George Opie?'

"I said, 'Yes. I have laryngitis. You got anything?'

"The caller said, 'Yes. First and second at New York, Sea Wolf and Gidyea, two dollars, DD; eighth at New York on Holiday, two dollars place; ninth at New York, Eyes Right, two, four and two.'

"I said, 'Anything else?' Caller said, 'No.'"

Simonetti described the transaction as "bookmaking, gambling, horse bets."

On cross examination Simonetti admitted that during the two-hour interval he was in the licensed premises, he found no paraphernalia or slips to indicate that betting was carried on. Additionally he admitted that Lavin was not permitted to answer the telephone when calls came in for him.

In defense of the charge the licensee, Robert W. Lavin, testified that in the nineteen years that he operated the tavern at the location in question, he never took a bet, never saw any bookmaking or betting activity in the licensed premises, never saw his bartender take a bet and, in fact, warned his bartender against taking bets. He did not recall seeing Trooper Feldherr in the tavern on March 24 or April 7, 1965. He is "in and out of the tavern quite a bit." The first indication that he had of a bookmaking charge was the day that the search warrant was exhibited to him. Nothing was found on his person or in the tavern bearing any connection with bookmaking. He was not permitted to answer any incoming telephone calls.

Mrs. Mary Isabelle Armeny testified that on the date of the raid, she tried to enter the licensed premises and found the doors locked. She made a telephone call to the tavern from across the street and asked for Mr. Lavin. The person who answered responded that Mr. Lavin was not in the premises. When Mrs. Armeny advised the person that Mr. Lavin's automobile was outside, he responded that Mr. Lavin was busy. Not being satisfied with the response, she called the tavern a second time. When requested to relate the conversation, Mrs. Armeny responded:

"I asked for Mr. Lavin again and he said, 'Mr. Lavin can't talk.' I said, 'Well, I want to speak to Mr. Lavin.' He said, 'I'll take your action.' I said, 'What are you talking about?' I said, 'I want to speak to Mr. Lavin.'"

On cross examination, Mrs. Armeny testified that she did not know the person with whom she was speaking.

Mrs. Rita Macallister testified that she and her husband operated the kitchen-dining room concession on the licensed premises and that, in the pursuit of her duties as a waitress, she mingled with the patrons and was in a position to overhear conversations. She never heard or observed anything that had any connection with bookmaking or gambling of any kind. She never received a telephone call which indicated that the person calling was attempting to place a bet.

John Macallister, husband of the previous witness, corroborated his wife's testimony as to the non-existence of gambling activity in the tavern.

George Russell Opie testified that he was employed as a bartender by the licensee and was so employed on the dates specified in the charge. He did not recall ever seeing Trooper Feldherr in the licensed premises. He denied that he was solicited to take a horse race bet on March 24 or on any other date. He denied ever taking a bet at the licensed premises. He never saw the licensee accept bets in the tavern.

In brief, the licensee's attorney forcibly argued that (1) the evidence is insufficient to sustain a finding of guilt, and (2) the evidence is insufficient to sustain a finding that licensee allowed, permitted and suffered the violations charged herein.

It is apparent that this proceeding presents a purely factual question.

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

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. 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 (1954); Gallo v. Gallo, 66 N.J.Super. 1 (App. Div. 1961).

I have had an opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

It is my view that the testimony of Trooper Feldherr, presented in a detailed and direct manner, was factual and credible and required no further probative embellishment. I am amply vonvinced that his graphic description of the horse race betting on March 24, 1965 and again on April 7, 1965, hereinabove detailed, truly depicted what occurred on those dates. It is apparent that he was not improperly motivated in testifying as he did, nor did he have any personal animus against the licensee.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must

use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1.

An additional basic principle is worthy of emphasis. In disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Knowledge on the part of the employer is not a prerequisite to a finding of guilt where the employee participates in the misdeeds. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J.Super. 449 (App.Div. 1951).

Although I agree with the argument of the attorney for the licensee that the testimony of Detective-sergeant Simonetti relative to a telephone conversation he had with a caller on May 13, 1965 is not probative of a violation on the part of the licensee as to that particular date, that conversation is corroborative of the fact that horse betting was allowed, permitted and suffered on the other dates specified in the charge. It is significant to note that the caller asked for "George" and then asked "Is this George Opie?" (the name of the licensee's bartender) prior to indulging in horse race betting over the telephone with the State Police officer. See Re Tumulty, Bulletin 1502, Item 3.

After carefully considering and evaluating all of the evidence adduced herein and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of that part of the said charge which particularly refers to the dates of March 24 and April 7, 1965, and I further recommend that there be a finding of not guilty as to that part of the charge which relates to May 13, 1965.

Licensee has a previous record of suspension of license by the municipal issuing authority (which license was in the name of John H. Enright and Robert W. Lavin, t/a Twin Corners Bar & Grill), on each occasion for sales to minors, as follows: (1) for five days effective June 13, 1954, (2) for twenty days effective November 1, 1959, (3) for five days effective January 5, 1964. It is recommended that the prior record of suspension for dissimilar violations (1) and (2) be disregarded because occurring more than five years ago.

It is further recommended that the license be suspended for sixty days (Re Mary Jane Inn, Inc., Bulletin 1693, Item 2), to which should be added five days for the record of suspension of license for dissimilar violation (3) occurring within the past five years (Re Manruff Corp., Bulletin 1691, Item 1), making a total suspension of sixty-five days.

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 26th day of October 1966,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Roselle Park to Robert W. Lavin, t/a Twin Corners Bar & Grill, for premises 157 East Westfield Avenue, Roselle Park, be and the same is hereby suspended for sixty-five (65) days, commencing at 2 a.m. Wednesday, November 2, 1966, and terminating at 2 a.m. Friday, January 6, 1967.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - PERMITTING OPEN CONTAINERS ON DISTRIBUTION LICENSED PREMISES - LICENSE SUSPENDED FOR 70 DAYS, LESS 5 FOR PLEA - DATE OF SUSPENSION NOT FIXED BECAUSE LICENSE NOT RENEWED.

In the Matter of Disciplinary Proceedings against MICHAEL SOKOL 25 Wavecrest Avenue (Winfield Park) Winfield Township PO Linden, N. J. Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Winfield.	CONCLUSIONS AND ORDER

Frank S. and Myron Weiner, Esqs., by Myron Weiner, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on April 22, 1966, he (1) permitted acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) permitted open containers of alcoholic beverages (a half pint bottle of liqueur and a pint bottle of rock 'n rye) on his plenary retail distribution licensed premises, in violation of Rule 14 of State Regulation No. 20.

Absent prior record, the license would normally be suspended on the first charge for sixty days (Re Mary Jane Inn, Inc., Bulletin 1693, Item 2) and on the second charge for ten days (Re Rotondo, Bulletin 1693, Item 11), or a total of seventy days, with remission of five days for the plea entered, leaving a net suspension of sixty-five days. However, since the licensee has permitted his 1965-66 license to expire on June 30, 1966, without renewal granted for 1966-67 or application for such renewal filed by July 30, 1966 (cf. R.S. 33:1-12.13), no effective dates for such suspension may now be fixed.

Accordingly, it is, on this 3d day of November, 1966,

ORDERED that Plenary Retail Distiribution License D-1, issued by the Township Committee of the Township of Winfield to Michael Sokol for premises 25 Wavecrest Avenue, Winfield Park, Winfield Township, be and the same is hereby suspended for sixty-five (65) days, the effective dates of such suspension to be fixed pursuant to State Regulation No. 15, Rules 1 and 2, if and when the licensee again obtains a license.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA - DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against	)	
JOHN J. FLETCHER t/a "Shangri-La" Culvermere, Route 206 Culver's Lake Frankford Township PO Branchville, N. J.	)	CONCLUSIONS AND ORDER
Holder of Seasonal Retail Consumption License CS-1, issued by the Township Committee of the Township of Frankford	)	

Licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on August 19-20, 1966, he (1) sold drinks of alcoholic beverages to nine minors, two age 18, four age 19 and three age 20, in violation of Rule 1 of State Regulation No. 20, and (2) permitted removal of several opened bottles of beer from the licensed premises during hours prohibited by Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended on the first charge for forty-five days (cf. Re Ricci and Nappa, Bulletin 1510, Item 1) and on the second charge for fifteen days (Re Rubin's Tavern, Bulletin 1692, Item 12) or a total of sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Report of recent inspection of the licensed premises discloses that the licensed business is not presently being conducted and that business is conducted only during the summer months from Memorial Day to about a week or so after Labor Day. In addition, the summer seasonal retail consumption license held by the licensee will expire by its terms on November 1, 1966.

In view of the current non-operation of the licensed business and the near expiration of the license, no effective penalty can be imposed at this time. Hence, the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the licensed business has been fully resumed on a substantial basis.

Accordingly, it is, on this 27th day of October, 1966,

ORDERED that any renewal of Seasonal Retail Consumption License CS-1, issued by the Township Committee of the Township of Frankford to John J. Fletcher, t/a Shangri-La, for premises Culvermere, Route 206 Culver's Lake, Frankford Township, be and the same is hereby suspended for fifty-five (55) days, the effective dates of such suspension to be fixed by further order as aforesaid.

JOSEPH P. LORDI
DIRECTOR

5. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #292 In the Matter of a Petition to Lift the Automatic Suspension of Plenary Retail Consumption License C-145, issued by the Board of Commissioners of the City of Passaic to JOHN MOLOZZI t/a Pip's Tavern 31-33 Bergen Street Passaic, N. J.	)	ON PETITION ORDER

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on October 3, 1966, the licensee-petitioner was fined $50 and $5 costs in the Passaic Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on October 1, 1966, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Acfal, Inc., Bulletin 1694, Item 9.

Accordingly, it is, on this 25th day of October, 1966,

ORDERED that the aforesaid automatic suspension of license C-145 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Jeanne Newman
t/a Mirror Bar
599 Orange Street
Newark, N. J.,

Holder of Plenary Retail Consumption License C-127, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS and ORDER

Licensee, Pro se
Michael J. Mehr, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on September 6, 1966 she possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for twenty days effective August 8, 1966, for sale to minors and permitting a brawl on the premises.

The prior record of suspension of license for dissimilar violation within the past five years considered, 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 Jakubczak, Bulletin 1692, Item 10.

Accordingly, it is, on this 15th day of November, 1966,

ORDERED that Plenary Retail Consumption License C-127, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jeanne Newman, t/a Mirror Bar, for premises 599 Orange Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing* at 2 a.m. Tuesday, November 22, 1966, and terminating at 2 a.m. Wednesday, December 7, 1966.

JOSEPH P. LORDI,
DIRECTOR

* By order dated November 21, 1966, the suspension was deferred to commence at 2 a.m. Tuesday, January 17, 1967 and to terminate at 2 a.m. Wednesday, February 1, 1967.

JOSEPH P. LORDI
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Kasser Distillers Products Corp., t/a Oxford Liquor Company and Kasser Liquor Company, Third & Luzerne Streets, Philadelphia, Pa. Application filed December 21, 1966 for place-to-place transfer of Additional Warehouse License AW-41 from 926 Haddonfield Rd., Cherry Hill, N.J., to Heller Rd., Interstate Industrial Park, Bellmawr, N.J., in connection with Plenary Wholesale License W-3.

Joseph P. Lordi
Director