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

BULLETIN 2152 July 10, 1974

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ITEM

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

BULLETIN 2152 July 10, 1974

1. COURT DECISIONS - BELL BEEF CO., INC. v. MATAWAN.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-229-73

BELL BEEF CO., INC.,
t/a FOODTOWN OF MATAWAN,

Appellant,

v.

BOROUGH COUNCIL OF THE BOROUGH
OF MATAWAN,

Respondent.

Submitted May 28, 1974 - Decided June 5, 1974.

Before Judges Collester, Lynch and Michels.

On appeal from Order of the Director of the Division of Alcoholic Beverage Control.

Messrs. DeMaio & Yacker, attorneys for appellant (Mr. Vincent C. DeMaio on the brief).

Messrs. Pillsbury, Barnacle, Russell & Carton, attorneys for respondent (Mr. William E. Russell of counsel; Mr. Robert E. McLeod on the brief).

Mr. William F. Hyland, Attorney General of New Jersey, attorney for Division of Alcoholic Beverage Control (Mr. George F. Kugler, Jr., Former attorney General of New Jersey; Mr. David S. Piltzer of counsel).

PER CURIAM

(Appeal from the Director's decision in Re Bell Beef Co., Inc. v. Matawan, Bulletin 2119, Item 2. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

2. NOTICE TO ALL RETAIL LICENSEES - AMOUNT OF SALES TAX TO BE ADDED TO LABEL PRICE AFFIXED TO MERCHANDISE - ALLIED REQUIREMENTS.

TO ALL RETAIL LICENSEES:

Prior to July 1, 1972, the State sales tax applied to the retail sale of alcoholic beverages. However, Ch. 27 of the Laws of 1972 which became effective July 1, 1972, changed the point of impact of the sales tax on alcoholic beverage sales so that the tax applied instead to the sale of all alcoholic beverages (except draught beer sold by the barrel) at the wholesale level, i.e., at the point of sale to a retail licensee. At the same time, Ch. 27 provided that the sales tax on such wholesale sales would be applied not to the wholesale sales price of the alcoholic beverages, but to the minimum consumer resale price filed with the Division of Alcoholic Beverage Control pursuant to Division Regulation No. 30.

Thus, the retail licensee presently pays the sales tax when he makes his wholesale purchase and he resells the product for a price which includes such sales tax. The Division's Minimum Consumer Resale Price List published by the Division of Alcoholic Beverage Control contains the filed minimum consumer resale price and the sales tax applicable thereto, and the Division's Regulation No. 30. prohibits the retail licensee from selling below the total of the two. In this connection, soon after Ch. 27 became effective, former Attorney General George F. Kugler, Jr. ruled that retailers had the choice of (1) using a shelf price which is only the said filed price, and then adding the sales tax at the point of sale, or (2) using a shelf price which includes both the filed price and the sales tax.

However, on January 13, 1974, Ch. 308 of the Laws of 1973 became effective. It provides:

> "It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign either affixed to the merchandise or located at the point where the merchandise is offered for sale." (Emphasis added).

Attorney General William F. Hyland has now ruled that Ch. 308 of the Laws of 1973 applies to the retail sale of alcoholic beverages and that the "total selling price" of alcoholic beverages sold at retail includes the sales tax portion thereof and must be "plainly marked" in the manner described by the aforementioned statute.

Accordingly, based upon the ruling of the Attorney General, you are advised that the retail licensees may no longer use a "shelf" price of any container of alcoholic beverages and add the sales tax thereof at the point of sale. The price which is affixed to the container on the shelf where the container is offered for sale must include not only the filed price, but the sales tax as well. The use of any price so affixed which is less than the total of the filed price and the sales tax will be deemed to be in violation of Regulation No. 30. The same principle applies to the advertising of prices of alcoholic beverages in any periodical, publication, circular, handbill or direct mailing piece.

This ruling would normally become effective immediately. However, in view of the large number of price changes which are due to take effect upon the publication of the Division's July 1, 1974 Minimum Consumer Resale Price List, I have determined that the ruling shall take effect July 1, 1974 in order that some retail licensees may not be required to change a large number of posted prices twice within a period of less than two weeks.

JOSEPH H. LERNER
ACTING DIRECTOR

Dated: June 24, 1974

3. MODIFICATION OF EFFECTIVE DATE ON NOTICE RE SHELF PRICES OF ALCOHOLIC BEVERAGES.

Re: Posting of Shelf Prices of Alcoholic Beverages

On June 24, 1974, I issued a directive to all retail licensees wherein I stated that based upon a ruling of the Attorney General, and his interpretation of the effect of Chapter 308 of the Laws of 1973 "...you are advised that retail licensees may no longer use a 'shelf' price of any container of alcoholic beverages and add the sales tax thereof at the point of sale. The price which is affixed to the container on the shelf where the container is offered for sale must include not only the filed price, but the sales tax as well. The use of any price so affixed which is less than the total of the filed price and the sales tax will be deemed to be in violation of Regulation No. 30. The same principle applies to the advertising of prices of alcoholic beverages in any periodical, publication, circular, handbill or direct mailing piece."

Although this ruling would normally become effective immediately, I determined that it should take effect on July 1, 1974 in view of the large number of price changes which are due to take effect upon the publication of the Division's July 1, 1974 Minimum Consumer Resale Price List, and in order that some retail licensees may not be required to change a large number of posted prices twice within a period of less than two weeks.

I have now been advised that Governor Byrne has requested that Attorney General Hyland personally further review the legal opinion in question, upon which my directive was based. Under the circumstances, all retail licensees are hereby advised that no action will be taken by this Division to implement this opinion until further notice.

Accordingly, retail licensees are not required to comply with my June 24, 1974 directive until further notice.

JOSEPH H. LERNER
ACTING DIRECTOR

Dated: June 26, 1974

4. GENERAL INFORMATION RESPECTING CONVICTED OFFENDERS - PETITIONS TO REMOVE DISQUALIFICATION - REHABILITATION EMPLOYMENT PERMITS - LIMITED EMPLOYMENT PERMITS.

CONVICTED OFFENDERS UNDER THE ALCOHOLIC BEVERAGE LAW

The Alcoholic Beverage Law (N.J.S.A. 33:1-25) prohibits the issuance of a license to any person convicted of a crime involving moral turpitude, or to any partnership in which any partner has been so convicted, or, with certain exceptions, to any corporation in which any owner, directly or indirectly, of more than 10% of its shares of stock or any officer or director has been so convicted. Persons thus criminally disqualified may not be employed by or connected in a business capacity, with any licensee. (N.J.S.A. 33:1-26; State Regulation No. 13, Rule 1).

Petition to Remove Disqualification

Pursuant to N.J.S.A. 33:1-31.2, any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of conviction, apply to the Director of the Division of Alcoholic Beverage Control for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under the Alcoholic Beverage Law.

The petitioner must affirmatively show that:

(1) at least five years have lapsed from the date of conviction;

(2) the applicant has conducted himself or herself in a law abiding manner during that period; and

(3) his or her association with the alcoholic beverage industry will not be contrary to the public interest.

The entry of an order removing the applicant's disqualification lies within the discretion of the Director of this Division.

Rehabilitation Employment Permit

Pursuant to ABC Rules and Regulations, State Regulation No. 13, as amended February 15, 1974:

Any person convicted, as a first offender, of a crime involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a Rehabilitation Employment Permit. Whenever any such application is made, and it appears to the satisfaction of the Director that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the Director may, in his discretion, issue such employment permit.

The Rehabilitation Employment Permit shall be issued for the calendar year beginning January 1st and renewable annually for the term of disqualification, as set forth in N.J.S.A. 33:1-31.2. The fee shall be ten ($10) dollars per annum, payable on the date of application. Rehabilitation Employment Permits shall consist of the following types:

(1) Unlimited Employment Permit

This permit shall allow the holder thereof to be employed, by any class license, without restriction as to type of employment. Such permits may not be issued to persons who have been convicted of crimes which, in the opinion of the Director, present a special risk to the alcoholic beverage industry.

(2) Limited Employment Permit

This permit shall allow the holder thereof to be employed, by any class license, in any non-managerial capacity, except that the holder may not sell, serve or deliver any alcoholic beverages.

No licensee shall allow, permit or suffer the holder of a Limited Rehabilitation Employment Permit, to act in a managerial capacity with respect to the licensed business, or to sell, serve or deliver any alcoholic beverage, nor shall any holder of a Limited Rehabilitation Employment Permit engage in any such activity.

Any employment permit may be cancelled or suspended or revoked by the Director for cause, including among others any of the following causes:

(a) Violation by the holder thereof of any provision of the Alcoholic Beverage Law or any regulation adopted thereunder;

(b) For any fraud, misrepresentation, false statement, misleading statement, evasion or suppression of a material fact in the application for said permit;

(c) Upon presentation of proof that the holder thereof has a prohibited interest in any license issued by the Director or any other issuing authority;

(d) If the Director concludes that the holder thereof is disqualified from being employed by a licensee for any reason other than the disqualification referred to in the employment permit;

(e) Any other act or happening, occurring after the time of making an application for an employment permit which if it had occurred before said time would have prevented issuance of the permit.

(f) With respect to a Rehabilitation Employment Permit, conviction of any crime or disorderly persons offense.

On making application for a Rehabilitation Employment Permit, in addition to the above enumerated requirements, the applicant must submit:

(1) a letter of recommendation from his Parole or Probation Officer;

(2) a letter of recommendation from his prospective employer or a prominent citizen;

(3) passport size (2" x 2") photograph.

Petitions to remove disqualification and rehabilitation employment permit applications must be filed in duplicate. It is necessary for a petitioner or applicant to appear at the Division of Alcoholic Beverage Control to be fingerprinted. Petition and application forms are available at the Division of Alcoholic Beverage Control, 25 Commerce Drive, Cranford, New Jersey.

Any questions concerning convicted offenders may be addressed to Donald M. Newmark, Esquire, Legal Assistant of this Division at (201) 272-8511.

Joseph H. Lerner
Acting Director

Dated: June 1974

5. APPELLATE DECISIONS - ANWAR CORP. v. ELIZABETH.

Anwar Corp., t/a The Seminole, Appellant, v. City Council of the City of Elizabeth, Respondent.	On Appeal CONCLUSIONS and ORDER

Stern & Weiss, Esqs., by Harvey L. Weiss, Esq., Attorneys for Appellant
Frank P. Trocino, Esq., by Daniel J. O'Hara, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent City Council of the City of Elizabeth (Council) which denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail consumption license, from Rich-Hugh, Inc., to appellant, and from premises 134 Fifth Street to 606 Livingston Street, Elizabeth.

Appellant alleges that the action of the Council was erroneous for reasons which may be summarized as follows: (1) it did not afford appellant a proper hearing; (2) the proposed transfer was not violative of the local distance requirements; (3) appellant was fully qualified to hold a license; and (4) the Council's action was unreasonable and arbitrary.

The Council, in its answer, denied the substantive matters contained in the petition of appeal.

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

I

Procedural irregularities or infirmities which may have occurred at the time of the hearing before the Council, if any, are cured at this appeal de novo because the appellant has now been given full opportunity to offer testimony in support of its petition. Re Cino v. Driscoll, 130 N.J.L. 535; cited in Nordco, Inc. v. State, 43 N.J. Super. 237, 287 (App. Div. 1957); Rokay Wines and Liquor v. Passaic, Bulletin 1198, Item 1; Sidoroff et al. v. Jersey City et al., Bulletin 1310, Item 1.

I, therefore, conclude that appellant's contention with respect thereto has no merit.

II

The facts upon which an adjudication of this matter may be based are not in substantial dispute, and are manifested in the stipulations entered into at the hearing and in the memoranda submitted by both parties.

It was agreed that neither the corporate appellant nor its sole stockholder was disqualified from holding a liquor license; nor was it disputed that the appellant had no interest whatsoever in the liquor establishment operated by the corporate transferor or in the corporation which had held a liquor license at the proposed transfer site. Additionally, it was stipulated that the proposed transfer would not be violative of the local distance ordinance.

III

It appears from the reading of the answer filed herein and the argument of counsel that the critical issue is the validity of Council's contention that the proposed situs of the transfer, that is, 606 Livingston Street, was rendered ineligible to become the subject of any license for a period of two years due to the fact that the Council had, on July 1, 1971, denied the renewal of the license to the then-occupant, Mello-D-Club, Inc., Pending a series of appeals the effective date of the denial of renewal was stayed to May 16, 1973, at which time the action of the Council was affirmed by the Supreme Court. The Council contended that it was bound by N.J.S.A. 33:1-31 not to approve a liquor license at the proposed situs for a period of two years from the effective date of the denial of renewal of the license.

The relevant part of N.J.S.A. 33:1-31 reads, as follows:

> "Any revocation may, in the discretion of the director or other issuing authority as the case may be, render the licensed premises ineligible to become the subject of any further license, of any kind or class under his chapter, during a period of 2 years from the effective date of the revocation." (Emphasis supplied.)

The Council argues that the denial of a renewal is tantamount to a revocation.

A "renewal" has been construed to mean a replacement of the old by something new. 76 C.J.S. Renewal; Zimmerman v. Savoy Hotel Corporation, 199 Va. 73, 97 S.E. 2d 727.

A "revocation" or to "revoke" has been defined as an act of cancellation; an act of recall; to call back; to take back, 72 C.J.S. Revocation; Revoke.

It is apparent that an act of revocation and a denial of a renewal are not synonymous. Moreover, even in revocation proceedings, the declaration of ineligibility must be affirmatively set forth.

Inasmuch as the Legislature's sanction is limited to revocation proceedings, and is silent as to invoking similar sanctions against licenses not renewed, I perceive that the Council's argument is without merit; and I so find.

Additionally, I observe that although the Council may reasonably honor local sentiment against the grant of a new license or the transfer of an existing license, Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970) the record was completely devoid of any expression of public sentiment directed against the proposed place-to-place transfer. Therefore, I must infer that the Council relied solely upon its construction of the above quoted statute.

IV

Subsequent to the hearing held herein, the Council requested a supplemental hearing. This request was based upon the allegation that, at the time its license was renewed for the 1973-74 licensing year, the transferor-licensee had no right to occupy the premises from which the license was sought to be transferred, and that, therefore, the license of the transferor-licensee, Rich-Hugh, Inc., was subject to revocation.

The opposing factual contentions were presented through affidavits submitted by the parties hereto.

An affidavit executed by a co-owner of 134 Fifth Street submitted by the Council contained an assertion that no one was operating a tavern business at the store at 134 Fifth Street, since April 1973 when he had acquired title to the said premises although the store did contain a bar, stools, sinks, a refrigerator and an ice maker.

Contact was made with a lawyer representing Rich-Hugh, Inc. who informed the co-owner of the building that a contract was in the making for a transfer of the license and that the arrearages in rent for the months of May and June, 1973, would be paid at the time of the closing. In July, 1973, upon ascertaining from Rich-Hugh, Inc.'s attorney that the transaction might not be consummated, the co-owner rented the premises to a social club. Thereafter, it was discovered that Federal liens were filed against the equipment.

Council argued (1) that, if it had known of the non-user of the license by Rich-Hugh, Inc. it would not have renewed its license for the 1973-74 licensing period; and (2) that because Rich-Hugh, Inc. had, in its application falsely answered "No" to question No. 31 therein which reads as follows:

> "Does any individual, partnership, corporation, or association hold any chattel mortgage or conditional bill of sale or other security interest on any furniture, fixtures, goods, or equipment used or to be used in connection with the conduct of the business to be operated under the license herein applied for?",

it, thereby, subjected its license to revocation because of the existence of the Federal liens.

In the affidavit submitted by the principal stockholder of Rich-Hugh, Inc., an assertion was made that, in the latter part of June, 1973, another co-owner of the building located at 134 Fifth Street, agreed that the landlords would accept the sum of $200. per month as rent for the store premises for the months of June and July, 1973 from the proceeds of the contemplated sale. This was confirmed by the affidavit submitted by the attorney for Rich-Hugh, Inc.

Mere non-user will not of itself void a license. See Re Tarantola, Bulletin 570, Item 5. Non-use for a period of nine years was not, in one instance, too long a period of non-use to require non-renewal of license. Cf. Cooke v. Hope, Bulletin 2096, Item 4. In Lethe v. North Bergen, Bulletin 1537, Item 2, this Division reversed a municipality's refusal to renew a license after a period of non-use for three years.

I find that question No. 31 was not falsely answered. That question refers specifically to any type security interest

upon any chattel used in the operation of a liquor business which was created by bilateral agreement between the licensee and a creditor or creditors. A Federal tax lien does not come within the purview of that question. It is a lien upon all assets of a licensee, and is created by operation of law, as distinguished from the lien contemplated in question No. 31 which is consensually created.

V

In reviewing the record, including the testimony, the exhibits, the stipulations and argument of counsel, I find no factual or legal basis to justify the Council's action.

Although the attention given to this case by the Council is to be commended, I find, upon the record presented, that its action in refusing to grant a transfer of the license was unreasonable.

For the reasons above stated, I conclude that the appellant has sustained the burden imposed upon it under Rule 6 if State Regulation No. 15. It is, therefore, recommended that the Council's action be reversed, and that it be ordered to grant the transfer in accordance with the application filed therefor.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed by the respondent pursuant to the provisions of Rule 6 of State Regulation No. 14. I have carefully analyzed and considered said exceptions and find that they have either been answered and resolved in the Hearer's report, or are lacking in merit.

Thus, having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of May 1974,

ORDERED that the action of the respondent City Council of the City of Elizabeth be and the same is hereby reversed; and it is further

ORDERED that the respondent be and is hereby directed to grant the person-to-person and place-to-place transfer of a plenary retail consumption license from Rich-Hugh, Inc., to the appellant, and from premises 134 Fifth Street to 606 Livingston Street, Elizabeth, for the current licensing period, in accordance with the application filed therefor.

JOSEPH H. LERNER
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) ON LICENSED PREMISES - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 95 DAYS.

In the Matter of Disciplinary Proceedings against Anthony Lacalandra t/a Monopoli Bar 611 Jersey Avenue Jersey City, N.J., Holder of Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS and ORDER

John W. Yengo, Esq., Attorney for Licensee
Carl W. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on December 11, 14 and 18, 1973, he permitted gambling, i.e., the taking of "numbers" bets upon the licensed premises, in violation of Rule 6 of State Regulation No. 20.

In support of the charge, the Division offered the testimony of ABC Agents I, B, C and detectives of the Jersey City Police Department.

ABC Agent I testified that on December 11, 1973 about 11:15 a.m. he, in the company of ABC Agent B, visited the licensed premises where the licensee, Anthony Lacalandra, was engaged in serving four males and a female patron. Among those patrons was a male, later identified as Louis Rodriguez hereinafter referred to as "Lou" who, they observed, took money and wrote slips in connection with what the witness believed were "numbers" bets.

On December 14, 1973 about 11:30 a.m. Agent I returned to the licensed premises in the company of Agent B. Again he found the licensee on duty and the patron known as Lou in attendance. Lou's apparent wife, later identified as Grace Mills, was also seated at the bar.

Agent I placed a bet on #302 with Lou in the presence of the licensee, who was also present when Lou accepted a bet, spoken in Spanish, by another patron. Agent B then made a bet

with Lou, and thereafter, in the direct presence of the licensee made another bet on #888 for which he paid one dollar. Concurrently with the making of that bet, Lou suggested that the bet be placed with his wife sitting at the bar near the licensee, as that number was a favorite of hers. Nonetheless he took the bet.

On December 18, Agent I returned to the premises with Agent B, prior to entering the tavern, arrangements for a raid had been made with members of the Gambling Squad of the Jersey City Police Department. Agent B made a bet with Lou on #888 and explained this to the licensee, whose only response was to grunt. Agent I also made two bets with Lou and, as he did so, Agent B remarked to the licensee "He feels lucky, eh?" to which the licensee nodded and smiled. These bets were made with "marked" money, a list of which had been previously prepared.

On entry of the members of the Jersey City Police detectives, Lou was on the telephone. On the approach of the detectives, Lou dropped a sheet which was retrieved by the detectives. That sheet contained numbers including the numbers previously bet by the agents. Lou was placed under arrest and the "marked" money retrieved.

Agent I explained that on his initial visit on December 11th, the licensee departed the premises, and requested before leaving, that Lou take charge. Lou then did assume the bartender's position, and while serving patrons took a "numbers" bet and put the slip and money in his inner shirt pocket.

The agent admitted that he never had a conversation with the licensee respecting "numbers" bets, but indicated that the licensee was fully aware of the betting done with Lou.

ABC Agent B testified in substantial corroboration of the testimony of Agent I. He added that all of the bets placed by him and his fellow agent were by prearrangement, so that the said bets were accomplished only in the direct presence of the licensee. He affirmed his observation of a bet accepted by Lou when the licensee had turned the management of the establishment over to him on December 11th. All telephone calls were answered only by Lou, on the aforesaid dates.

Detective Sergeant Edward Bennett and Detective Clara Ziglear, both of the Jersey City Police Department testified concerning the raid on the licensed premises conducted December 18, 1973. They added that both Lou and his female companion, Grace Mills were arrested for possession of lottery slips to which they pleaded guilty.

ABC Agent C testified that he had been part of the raiding party; that the "numbers" paper found alongside Lou had contained the three numbers that had been bet by Agents I and B. He admitted that no gambling slips had been found in the licensee's

possession nor had a criminal charge been lodged against the licensee.

The licensee testified that he was present when the agents were in the premises but he observed no betting and had no knowledge that Lou was taking any bets. He prohibits gambling and recalled one instance when gambling figures were written on a newspaper which resulted in his admonition that such gambling would not be countenanced in the licensed premises.

He recalled turning over the management of the premises to Lou on an occasion when he had to visit his physician at a New York hospital. He denied that only Lou had answered the phone and said that he frequently did; but, in any event, any customer standing close to the phone could answer it.

A patron of the licensed premises, Joseph Plotnikawicz, testified that he visits the premises daily and was present at the time of the raid. He denied that, in the many years of daily visitation, he had seen any gambling activity.

In adjudicating matters of this kind, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal, 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). In appraising the factual picture presented and having had the opportunity to observe the demeanor of the witnesses, as they testified, their credibility has been assessed. Testimony to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

The basic issue involved here is not that gambling did or did not take place, since the overwhelming evidence establishes that fact, but rather that, if gambling did take place, the licensee knew or should have known that it did, in order to establish the present charge.

There is such abundance of testimony by the agents of repeated acts of gambling that it is inconceivable that such could have occurred without the knowledge and consent of the licensee. While no direct conversation existed between the licensee and the agents relative to the placement of bets, the conversations between the bookmaker and the agents was purposely arranged so that the licensee could not consciously be unaware of it. The repeated telephone calls, answered only by the bookmaker, and the several slips made and passed in full view of the licensee evidence the over-riding presence of gambling activity.

The argument advanced by the licensee is contrary to human experience. Lou, the bookmaker, has been previously admonished, the licensee claimed, for writing some numbers on a newspaper while at the bar. Thereafter, and following the conversation

between him and the agents and the exchange of money in full view of the licensee, the management of the premises was blithely turned over to him by the licensee.

I find that the charges have been proven by a preponderance of the evidence, in fact, by substantial evidence, and I recommend that the licensee be found guilty of the charge.

The licensee has a record of suspension of license for fifteen days, effective December 21, 1970, in consequence of an "hours" violation. Re La Calandra, Bulletin 1951, Item 8.

It is recommended, further, that the license be suspended for ninety days on the charge herein, to which should be added five days by reason of the dissimilar violation occurring within the past five years, making a total suspension of ninety-five days. Re Arnone, Bulletin 1971, 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 as my conclusions herein.

Accordingly, it is, on this 24th day of May 1974

ORDERED that Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anthony Lacalandra, t/a Monopoli Bar, for premises 611 Jersey Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1974, commencing at 2:00 a.m., Monday, June 3, 1974; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. on Friday, September 6, 1974.

Joseph H. Lerner
Acting Director

7. STATE LICENSES - NEW APPLICATION FILED.

Crown Ltd.
620 Newton Avenue
Camden, New Jersey
Application filed July 8, 1974 for place-to-place transfer of Plenary Wholesale License W-18 from 2121 Clement Avenue, Pennsauken, New Jersey.

Joseph H. Lerner
Acting Director