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

BULLETIN 2203

November 3, 1975

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - JOHN J. JULIANO, INC. ET ALS. v. CAPE MAY ET ALS.

John J. Juliano, Inc., Matthew Barry, Richard J. Emerson, Cape May City Beverage Association and First National Bank of Stone Harbor,	)	
Appellants,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
City Council of the City of Cape May, Cape Beach Development Corporation and The V-King Corporation,	)	
Respondents.	)	

Hayman, Gorelick & Groon, Esqs., by John K. Groon, Esq., Attorneys for Appellants
Henry Tyler, Esq., Attorney for First National Bank of Stone Harbor, Appellant
Donald A. Gaver, Esq., Attorney for Respondent City Council of Cape May
George M. James, Esq., Attorney for Respondent Cape Beach Development Corporation
Wilinski, Suski, Kille & Scott, Esqs., by Robert Wilinski, Esq., Attorneys for Respondent V-King Corporation

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals (1) from the action of the City Council of the City of Cape May (hereinafter Council) a respondent herein, which approved a person-to-person transfer of Plenary Retail Consumption License C-21, from Cape Beach Development Corporation (hereinafter Cape Beach) to V-King Corporation (hereinafter V-King) respondents herein; and (2) from the grant of a place-to-place transfer of license from premises Wilmington and New York Avenues to 5-9 Jackson Street, Cape May City.

At the hearing de novo held in this Division, it was readily apparent that appellant's petition of appeal and the several answers thereto lacked any clear exposition of the chronological and factual background reflected in the Council's action. After lengthy argument and considerable discussion, counsel for the parties arrived upon statements summarizing their respective proffers of

proof, none of which is in substantial dispute. Appellants determined the issue to be resolved as follows:

> "Does Cape Beach Development Corporation have the right to transfer City of Cape May PRC License #21 authorized initially in 1968 to the V-King Corporation, a corporation owning a motel containing sixty-nine units notwithstanding Cape Beach Development Corporation's failure to have satisfied conditions precedent to the issuance of said license; said conditions being set forth in resolutions identified as Exhibit J-2, and given the change in the requirements of N.J.S.A. 33:1-12.20, effective January 1, 1968, increasing the number of units required for the issuance of a motel license from fifty units to one hundred units?"

Respondents viewed the central issue differently:

> "Where a hotel license was issued in December 1968 for a fifty room hotel to be constructed, and the licensee maintained continuous efforts to have the site improved, zoned, subdivided and altered, in the course of which the City of Cape May through its officials continuously promised to vacate streets, exchange property, and otherwise agreed to a more desirable physical structure, but never took the final action required, and during the period from 1968 to 1974, many thousands of dollars were spent on plans and other preparatory work by the corporate licensee principals who are motel builders and operators of vast experience, and where no actual physical construction of the fifty room hotel took place, and the City of Cape May has transferred that license to another fifty room hotel: should that transfer be set aside as improper?"

From the various resolutions adopted by the Council from 1968 to the present, entered into evidence as joint exhibits, the following factual picture emerges:

In October 1968, John J. Juliano, predecessor to John J. Juliano, Inc., one of the appellants herein, obtained a plenary retail consumption license for a motel to be constructed in Cape May. In December 1968, Poverty Beach, Inc., predecessor in interest to Cape Beach Development Corporation, also obtained a plenary retail consumption license for a motel to be constructed at another site in Cape May. Both licenses were issued but not then delivered and held by the Council until prospective construction had been completed. On January 1, 1969, the statute authorizing the issuance of liquor licenses to motels was amended, N.J.S.A. 33:1-12.20, increasing the required number of sleeping rooms from fifty to one-hundred.

In July 1972, appellant Juliano completed the construction of his motel and the license first issued to him in 1968, was delivered to him. Thereupon, presumably, the business began operation.

Meanwhile, Cape Beach renewed its license annually, conditioned upon completion of its motel. Counsel for Cape Beach recited a long list of stumbling blocks to construction which the developers faced; a proposal to transfer title to a portion of its beach front land to the municipality as suggested by the Planning Board; a requirement that another portion of municipal owned lands adjacent be acquired; variances from the Board of Adjustment; the delay caused by engineering studies relative to the widening of a street. All of these compounded the usual difficulty of acquiring proper construction financing. By the end of 1974, it became apparent that Cape Beach's difficulties were practically insurmountable.

Juliano had hardly fared better. While he completed construction of his motel and received the liquor license, by the fall of 1974 his interest in the premises was terminated by foreclosure. The Council then terminated his retail consumption license because he had no longer a situs for it.

At this point, respondent V-King entered the picture by acquiring some interest in Juliano's motel. In order to obtain a liquor license for it, an arrangement was then developed by which it purchased Cape Beach's interest in its license and then applied for a person-to-person and a place-to-place transfer of the said license from Cape Beach to it, and from Cape Beach's vacant land to the Juliano motel. It is the grant of these transfers that generated this appeal.

The attorney for the Council proffered supportive proof of its position that the grant of the transfers were considered to be in the best interests of the municipality. It believed that the motels should have restaurant and liquor facilities, and as the new location (Juliano's) would be without a license and Cape Beach unable to complete its construction and obtain delivery of its license, the transfers represented action in the public interest.

Returning to the crucial issues as outlined initially by the parties, we find that these may be condensed into one sentence: "Was there a valid license that could be transferred?"

It is undeniable that the grant of licenses to the predecessors of both Cape Beach and Juliano were valid grants predicated upon the statutory authority contained in N.J.S.A. 33:1-12.20. Despite the doubling of sleeping-room minimums on January 1, 1969, both licenses remained in force by virtue of N.J.S.A 33:1-12.20(a).

Appellants contend that as Cape Beach failed to get its motel "off the ground" by 1974, its license died, ceased to exist and thus, could not be subject to transfer.

Such contention is without merit. Certainly, the acceptance of the annual license fee and the active participation by municipal officials in the myriad steps taken to resolve the problems involved would be ample indication that, in the discretion of the Council, the license was kept in force.

Mere passage of time will not, in itself, void a license. Lethe v. North Bergen, Bulletin 1537, Item 2; Re Tarantola, Bulletin 570, Item 5. In one instance, the passage of nine years was not, given the unusual facts of that case, unreasonable for appellant to acquire a location for the license. Cooke v. Hope, Bulletin 2096, Item 4.

It is axiomatic that the general proposal advanced to Council by any well-intentioned applicant to construct a sizeable building will be subject to many other municipal and engineering constraints, including but not limited to change of building design and alterations of site. Cf. Springdale Park, Inc. v. Andover, 97 N.J. Super. 270 (App. Div. 1967).

The obtaining of adequate mortgage financing, both for construction and long-term repayment causes, in some instances, protracted delays. The Director has ruled that a five-year lapse for such causes is not an inordinate length of time. Cf. Buitenhuis v. Freehold, Bulletin 1984, Item 2.

I, thus, find that Cape Beach had a valid license in 1974, based upon the uncontroverted proffer of proof that its failure to commence construction did not result from unwillingness or lack of desire to do so or to comply with the requirements imposed upon it.

The remaining issue is whether or not the Cape Beach license could be the subject of a place-to-place transfer. Appellants contend that the license was issued with the specific condition that it applied to a:

> "plenary retail consumption license for premises located at Wilmington and New York Avenues, Cape May, New Jersey for a motel building to be constructed on these premises..."

and

> "...in accordance with the aforesaid plans and specifications, it being a condition prerequisite to the issuance of the license that the premises be completed in accordance with the said plans and specifications and that a certificate of occupancy thereof be issued...." (Resolution #224-12-68, adopted December 26, 1968.)

They reason that since there is no building at the described premises, nor any structure built in accordance with plans, etc., and no certificate of occupancy issued, the license was thus empty and could not be filled or enlarged by the subsequent place-to-place transfer.

Such contention ignores the fundamental and long established principle that the decision as to whether or not a license should be transferred to a particular location rests within the sound discretion of the municipal issuing authority. Paul v. Brass Rail Liquors, 31 N.J. Super. 210 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The sole determinant in matters of transfer is merely whether the grant or refusal to grant the transfer was the result of intentional discrimination or other arbitrary action. Blanck v. Magnolia, 38 N.J. 484 (1962); Essex County Retail Liquor Stores Ass'n v. Newark, 77 N.J. Super. 70 (App. Div. 1962).

In the absence of arbitrary, unreasonable or improper motivation, the Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority. Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

As the court emphasized in Lubliner v. Paterson, 33 N.J. 428, 446 (1960), in matters involving a transfer of liquor licenses the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest".

In short, the action of the Council in either approving or denying an application for transfer 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." Fanwood v. Rocco, 59 N.J. Super. 306, aff'd 33 N.J. 404; Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (1947).

It is well within public knowledge that the City of Cape May is a summer resort community and has been for more than a century. Large wooden hotels have, in most New Jersey summer resorts, including Cape May, been gradually replaced by modern motels. In that context, Cape May issued the subject license and a similar license to appellant's predecessor in 1968. By such issuance it was apparent that the Council considered the benefits of such motels with concomitant liquor privileses, to be in the best interests of the community.

Thus, the Council having been apprised of the improbability of Cape Beach to perfect its license and the concurrent loss of license situs by appellant, it concluded that the best interests of the public would be served by granting the transfers appealed from. In doing so, neither the number of "motel" licenses were increased nor was a new site, not previously licensed, approved. In short, the Council and the public were left in substantially the same position they were initially, with the exception that Cape Beach license replaced appellant's former license. All of the steps to accomplish this appear to have been a valid exercise of municipal power.

I, therefore, conclude that the appellants have 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, therefore, recommended that the action of the Council be

affirmed and the appeal be dismissed.

However, in accordance with stipulation entered into by counsel during the course of the hearing, it is further recommended that, in the event that exceptions are filed hereto, pursuant to Rule 14 of State Regulation No. 15, coupled with a request for an opportunity to present additional evidence in support of the proffered proofs, a supplementary hearing be scheduled solely for the purpose of permitting the introduction of such evidence.

The Hearer then filed a supplemental Hearer's report as follows:

Supplemental Hearer's Report

A hearing de novo took place in this Division on February 9, 1975, following which, a Hearer's Report was submitted pursuant to Rule 14 of State Regulation No. 15. One of the recommendations in the Hearer's Report was that, in the event that exceptions thereto were taken by any of the parties advancing a contention that they, or any of them, were not afforded an opportunity to present evidence in support of their respective contentions, that, an opportunity should be afforded the parties to present further evidence at a supplemental hearing.

Upon approval of the Director, a supplemental hearing was held in this Division, at which appellants were afforded such opportunity. However, the appellants elected to present oral argument only. No witnesses were called, nor was any evidence presented.

Appellants, having the burden of establishing that the action of respondent Council was erroneous and should be reversed, pursuant to Rule 6 of State Regulation No. 15, offered nothing further in substantiation of that burden.

In their exceptions, appellants contend that the recommended affirmance of the Council is contrary to the principles as set forth in Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). Such contention is without merit; Passarella merely confirms the power of the issuing authority to grant a license but withhold its issuance pending the fulfillment of conditions ennunciated thereon. The court added, (at p. 319) "it is apparent from this legislation that each municipal governing body has wide discretion in the issuance and transfer of liquor licenses, subject to review of the Commissioner (Director) for any abuse thereof".

The factual situation herein is admittedly a novel one. Nonetheless, my recommended finding, of the facts and the legal principles to be applied thereto, as set forth in the Hearer's Report, annexed hereto, remain unchanged following the consideration of the exceptions to that report and the answering arguments.

I, therefore, recommend that the action of the Council be affirmed and the appeal herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed on behalf of appellants. Although the validity of the said exceptions was challenged in respondents' answers to the said exceptions because they were not timely filed, as required by Rule 14 of State Regulation No. 15, I have nevertheless, decided to consider the said exceptions, and the argument in support thereof.

As the Hearer sets forth in his report, this matter was considered upon "proffers of proof" submitted by the respective parties. Except for the relevant resolutions adopted by the Council from 1968 to the present, which were admitted into evidence as joint exhibits, no evidence was presented by the respective parties.

However, a stipulation was entered into by the attorneys herein, wherein it was agreed that, in the event that Exceptions to the Hearer's report were filed, coupled with a request for an opportunity to present additional evidence in support of the proffer of proofs, a supplemental hearing would be scheduled, solely for the purpose of permitting the introduction of such evidence. The Exceptions filed by the appellants contained a request for a supplemental hearing for the purpose of presenting such evidence.

A supplemental hearing was, accordingly, scheduled; but at that hearing, not only was no evidence produced, but no one appeared at the supplemental hearing on behalf of the appellants, with the exception of the attorney for appellant First National Bank of Stone Harbor. At this hearing, only oral argument was presented.

In due course, a Supplemental Hearer's report was filed herein which recited that since no evidence was introduced at the Supplemental Hearing, or any new legal or factual issue asserted, the Hearer re-affirmed his findings and recommendations as set forth in the Hearer's report. Exceptions to the Supplemental Hearer's report were then filed on behalf of the appellants and answers to the said exceptions were filed on behalf of the respondents.

I shall now consider the arguments raised in the exceptions.

Appellants contend that the Hearer erred in finding that there was a valid license that could be transferred. They point out that the resolution granting the application for the license contained a special condition that the license should not be issued until the said premises were completed in accordance

with the said filed plans and specifications, and a certificate of occupancy thereof issued by the City Inspector. Since the special conditions were not complied with, they maintain that the license never actually came into being. Furthermore, this special condition could not be waived by the Council, and the privilege of the license could not be exercised or transferred until the premises, for which it was issued, are constructed, in accordance with the said plans.

The law is to the contrary. Once the application for the motel license was granted, it came into existence, and the licensee thereby obtained an interest therein. That interest remained in the said license even though it was not actually issued, from year to year upon renewal. Cf. Township Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). The issuing authority may, prior to the end of the term of an existing license, make the said license effective for the purpose of renewal.

N.J.S.A. 33:1-12.20A states:

> "Nothing in this act shall affect the right of the holder of any license issued or approved for issuance, contingent on completion of construction for a hotel or motel premises to use and to renew such license."

This section must be read in connection with N.J.S.A. 33:1-12.16 which states as follows:

> "Nothing in this act shall prevent the renewal of licenses existing on the effective date of this act, or the transfer of such licenses or the renewal of licenses so transferred."

Therefore, I find that the Council had the lawful authority, which it properly exercised, to renew the said license, and to authorize its transfer to other premises.

Appellants, however, cite Petrangeli v. Barrett, 33 N.J. Super. 378 (App. Div. 1954) and Passarella v. The Board of Commissioners of Atlantic City, 1 N.J. Super. 313 (App. Div. 1949), as authority for the proposition that an issuing authority cannot act in violation of the clear and unambiguous terms of a local ordinance. These cases are inapposite and inapplicable to the factual complex in the matter sub judice. Petrangeli specifically dealt with ordinances, not with a special condition imposed by a resolution of the local issuing authority. Passarella dealt with the validity of the special condition under the authority of the Alcoholic Beverage Act N.J.S.A. 33:1-12.13, 23, 26, 32, 39.

Resolutions containing special conditions may be set aside or altered where the local issuing authority finds that they are unfair and do not serve the public good. Cf. Bd. of Commissioners of Bayonne v. B. & L. Tavern, 42 N.J. 131, 134 (conditions lifted from the license because the public need was no longer served by their continued imposition). Such conditions have frequently been set aside in the exercise of the sound discretion of the local issuing authority. In Belmar v. Division of Alcoholic Beverage Control, 50 N.J. Super. 423 (App. Div. 1958), an appeal was taken from decision of the Director of the Division of Alcoholic Beverage Control striking out special conditions which had been attached to an on-premises liquor license. The Appellate Division held that, where trouble arising at a hotel bar occurred while the bar was concessioned to a third party, and, after such concession was terminated, there were no further complaints, there was no manifestly mistaken exercise of discretion in striking out conditions which had been attached to hotel on-premises liquor license which banned the public bar and exterior bar sign, and confined the service of liquor to patrons at tables in the dining rooms or restaurant.

This case was most recently cited with approval in Lyons Farms Tavern, Inc. v. Municipal Board of Alcoholic Bev. Control of the City of Newark, Sup. Ct. (Docket A-83, September Term 1973, decided July 10, 1975).

In the matter sub judice, it is quite apparent that, due to the many problems interrelated to the construction as noted in the Hearer's report, the motel could not be constructed in the foreseeable future, and the privilege of the license could not be exercised at that location. Therefore, the Council, in the exercise of its circumspect discretion, removed the special condition and authorized the transfer of the said license to the other site which was a motel containing at least fifty rooms. Such action in granting the transfer to a motel having fifty rooms was germane to the statutory scheme for the following reason: since the license was originally granted to a motel having fifty rooms, it had the benefit of the "grandfather" principle (since the present law now speaks of motels containing 100 or more rooms) and thus could validly be transferred to another hotel having fifty or more rooms without violating the legislative intent. See Springdale Park, Inc., v. Twp. Comm. of Andover, 97 N.J. Super. 270 (App. Div. 1967).

Furthermore, the action of the Council served the public interest because a license was now put into operation in another similar facility, and, in the reasonable judgment of the Council, was an act that best served the public need and convenience.

As the court pointed out in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 291 (1970), if the legislative purpose of our Alcoholic Beverage Law is to be effectuated, the Division and the courts must place much reliance on local action. And further, once the municipal authorities have acted, their exercise of discretion ought to be accepted on review, in the absence of a clear abuse or unreasonable or arbitrary exercise of their discretion (at p. 303).

I have considered the other matters raised in the Exceptions filed with respect to the Hearer's report and the Hearer's Supplemental report and find that they are lacking in merit.

Having carefully considered the entire record herein, including the transcripts of the proceedings, the exhibits, the Hearer's report and the Hearer's Supplemental report, the exceptions filed with respect thereto and the answers to the exceptions, I concur in the findings and recommendations of the Hearer and as supplemented, adopt them as my conclusions herein.

I, therefore, find that the appellants have 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.

Accordingly, it is, on this 19th day of August 1975,

ORDERED that the action of the Council be and the same is hereby affirmed, and the appeal be and the same is hereby dismissed.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - MANCHISI v. JERSEY CITY.

Louis Manchisi, An Individual)) Appellant,) v.) Municipal Board of Alcoholic Beverage Control of the City) of Jersey City,) Respondent.)	On Appeal CONCLUSIONS AND ORDER

Aurel A. Villari, Esq., Attorney for Appellant
Dennis L. McGill, Esq., by Bernard Abrams, Esq., Attorneys 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 Municipal Board of Alcoholic Beverage Control (hereafter Board) which, on April 28, 1975 suspended appellant's Plenary Retail Consumption License C-387, for premises 611 Jersey Avenue, Jersey City, for a period of thirty days, effective June 1, 1975.

The suspension resulted from a finding of guilt on charges alleging that on December 4, 1974, appellant (1) permitted gambling, i.e. possession of "numbers slips" upon the licensed premises, in violation of Rule 6 of State Regulation No. 20; (2) permitted an employee to work upon the licensed premises without a local identification card, as required by the local Ordinance (Ordinance 4, Sec. 4-23); and (3) failed to have and maintain on the licensed premises the required form upon which all employees are to be listed, in violation of Rule 16C of State Regulation No. 20.

Appellant contended that the Board grounded its finding upon insufficient evidence and that any violative act which may have taken place resulted from action by a patron in the absence of and outside the presence of the appellant. The Board denied these contentions.

Upon the filing of the said appeal, the Director, by Order dated May 30, 1975, stayed the said suspension pending the determination of the said appeal.

A de novo appeal hearing took place in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

The facts were not substantially in dispute. Detectives Edward Fitzgerald and Anthony D'Elia, Sergeants Edward Bennett and Phillip Pritzlaff, all of the Jersey City Police Department, Gambling Squad, testified that, following surveillance of appellant's premises, a raid was conducted about one o'clock in the afternoon on December 4, 1974. A male, later identified as Luis Rodriguez, was standing behind the bar; three male patrons were seated facing it. One male patron, identified only as Vega, was arrested and searched. He was found to possess a lottery slip.

A search was conducted and, upon the back bar, directly behind the place where Rodriguez was standing, was found a lottery slip. A further search above the ceiling in the men's room revealed a sheaf of lottery papers, carrying a date November 8, 1974. The copies of slip and sheafs were admitted into evidence. Rodriguez was thereupon arrested and taken, along with Vega, to Police headquarters.

Rodriguez maintained to police that he was not an employee, was merely "minding the place" for the owner and had no key to the front door. All officers admitted that they did not observe Rodriguez serve or sell alcoholic beverages.

The absence of the key to the front door required Sgt. Bennett to await the arrival of appellant's wife, to whom he relinquished custody of the premises.

Appellant Luis Manchisi testified that, on December 4, 1974 he was solely in charge of his premises, until about twenty minutes before one o'clock when he received a telephone call from one of his tenants of his property in Union City. That call concerned the suspicion of fire and prompted him to depart hastily from the premises; and, because there were six or seven patrons present, he requested a regular patron, Rodriguez, to permit the patrons to complete consumption of their drinks.

Because of the imminence of fire in his building, he gave no thought to the management of the licensed premises during his absence. He did not alert the fire department to his suspicions and, upon his return found his wife and brother-in-law in the premises. They gave him an account of the raid; nevertheless he did not contact the police department.

He specifically denied that he allowed any gambling upon his premises or that either Rodriguez or Vega made "numbers bets" within his knowledge. He explained that he obtained the

licensed premises by purchase from a prior owner on September 6, 1974; that he never looked under the ceiling in the men's room; and had no idea how the sheaf of numbers papers had gotten there. He denied that the employee register (Form E-141) was absent from the premises and contended that had he been present, such form would have been produced.

This is a disciplinary proceeding which is civil in nature, and not criminal, and requires proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

The testimony of appellant was particularly unimpressive. It is apparent that Rodriguez performed the duties as a bartender to a greater extent than was admitted, and that the illegal activities complained of were actually and patently carried on by Rodriguez. The slips presented in evidence are positive, empiric proof that bets were being taken within the licensed premises, or that such premises were used as a collection point by the bookie arrested there. The cache of betting paraphernalia discovered by the detectives behind the ceiling in the men's room and which carried a date less than a month before the raid, leads to no other conclusion.

> "The admission of betting slips, racing forms and other gambling paraphernalia found on the premises in the possession of the accused has generally been recognized by our courts as evidence from which the jury might conclude the guilt or innocence of the accused on an indictment for bookmaking." State v. Martinek, 12 N.J. Super. 320 (App. Div. 1951); Re Delbono, Bulletin 1616, Item 2.

The defense that Rodriguez was not an "employee", i.e. not regularly hired for compensation, lacks merit. From the moment that Manchisi delegated to Rodriguez the responsibility of tending the establishment "until the people drink up their drinks", Rodriguez became appellant's employee. Appellant cannot now absolve himself of his employee's conduct, nor can he avoid the requirement, imposed under the Ordinance, that no one may be employed in licensed premises without required police identification cards.

Likewise, the absence or unavailability of the "list (Form E-141) containing the names and addresses of ...all persons currently employed on the licensed premises, is kept on the licensed premises...." (Rule 16 (c) of State Regulation No. 20), at the time of entry by the raiding detectives is clearly a violation of that rule.

I find that the charges preferred by the Board have been established by a fair preponderance of the credible evidence.

The appellant's assertion that he "did not think" prior to the appointment of Rodriguez as his temporary manager, laid himself open to the difficulties that followed. His denial of knowledge concerning the hiding place of the betting paraphernalia is either a consumate lie or a display of callous indifference to the betting activity taking place within his premises. His alleged ignorance of such activity cannot be used to absolve himself of the paramount responsibility he has in the operation of his licensed premises.

It is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees and is fully responsible for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (1948).

Accordingly, I find that appellant has failed to establish that the Board's Action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Therefore, it is recommended that the action of the Board be affirmed, the appeal be dismissed, the Director's order staying the suspension imposed by the Board be vacated and the said suspension be reimposed.

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 matter herein, including the transcript of the testimony, the exhibits, and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of August, 1975

ORDERED that the action of respondent, Board of Alcoholic Beverage Control of the City of Jersey City, 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 of May 30, 1975, staying the suspension imposed by the Board pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Louis Manchisi for premises 611 Jersey Avenue, Jersey City, be and the same is hereby suspended for thirty (30) days commencing at 2:00 a.m. on Tuesday, September 9, 1975 and terminating at 2:00 a.m. on Thursday, October 9, 1975.

Leonard D. Ronco
Director