

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

August 20, 1963

BULLETIN 1524

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1. APPELLATE DECISIONS - WEST END CLUB OF NEWARK, N. J. INC.
v. NEWARK.

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| Cases Nos. 1 & 2 |) | |
| WEST END CLUB OF NEWARK, N.J. INC., |) | |
| Appellant, |) | |
| v. |) | ON APPEAL |
| |) | CONCLUSIONS |
| |) | AND ORDER |
| MUNICIPAL BOARD OF ALCOHOLIC |) | |
| BEVERAGE CONTROL OF THE CITY OF |) | |
| NEWARK, |) | |
| Respondent. |) | |

Stanley Blasi, Esq., Attorney for Appellant.
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"These appeals involve the same issues and may be decided together.

"In Case No. 1 appellant appeals from the respondent's action in refusing to endorse its license and complete the transfer already approved by the respondent, thus in effect denying a place-to-place transfer of appellant's club license from premises 361 - 14th Avenue to 679 South Orange Avenue, Newark.

"In Case No. 2 appellant appeals from the respondent's action whereby it revoked appellant's club license issued for the 1962-63 licensing year after finding it guilty of the charges as set forth in the notice of appeal.

"An application to the Director of this Division to stay the effect of respondent's order of revocation and denial pending determination of this appeal was denied by order dated April 24, 1963.

"In its petition of appeal in Case No. 1 the appellant sets forth that it is the holder of a club license for premises at 361 - 14th Avenue, Newark; that on or about January 5, 1963, it applied for a transfer of its license to premises at 679 South Orange Avenue, Newark. This matter was set down for a hearing before the respondent on February 6, 1963, at which time the hearing was adjourned to February 13. It was thereafter adjourned several additional times for the reason that one James Del Grosso was murdered in the early morning of January 31, 1963, on the premises to which the appellant requested permission to transfer. Those premises were then licensed to the Essex County Hunting & Fishing club.

"On February 27, 1963, the respondent approved the

transfer 'with the distinct knowledge that when and if anything detrimental to either license is shown in the reports submitted to this authority (respondent), that proper and necessary steps will be taken which may result in the suspension of either or both licenses.'

"Although the license certificate was delivered by appellant for endorsement of the transfer by respondent, it was never actually endorsed or returned to the appellant.

"On March 12, 1963, the appellant was served with charges which formed its basis for Case No. 2. These charges relate to alleged violations which occurred on January 31, 1963. The charges were introduced with the following statement:

'application to transfer to 679 So. Orange Avenue stayed, pending the endorsement of the license certificate by the local issuing authority. Transfer was approved and adopted on February 27, 1963.'

"The petition alleges that the action of the respondent was unlawful and an unreasonable exercise of its discretionary powers for the following reasons:

1. Respondent had already approved the transfer.
2. Such endorsement of the license was not legally required to effect such transfer.
3. Respondent was legally impotent to alter its decision on an approval once such decision has been rendered.
4. Such change of respondent's act can be made only by the Director of this Division upon appeal.
5. The action of respondent in refusing to endorse the license and effect the transfer was the result of passion and prejudice and of hysterical reaction to events not remotely connected or related to the subject matter involved herein.'

"The appellant therefore prays that the respondent be directed to endorse and deliver to appellant said license and grant approval of such transfer.

"The respondent admits the factual allegations as set forth in the said petition but denies that its actions were unlawful or arbitrary and states that its decisions were based upon the testimony before it and that the denial of the transfer was supported by the facts adduced at the hearing.

"In its petition in Case No. 2 the appellant sets forth that on March 12, 1963, it was served with charges by the respondent as follows:

- '1. In that you did on January 31, 1963, exercise the right and privilege of your license

other than at your own licensed location, to wit:
679 So. Orange Avenue; in violation of
R.S. 33:1-26.

'2. In that you failed to notify the issuing authority (Board of Alcoholic Beverage Control of the City of Newark, New Jersey) of any and all material changes which would reflect on your present application on file with the said issuing authority, with reference to the surrendering and closing of your licensed premises at 361 - 14th Avenue; in violation of R.S. 33:1-34....'

"Following the hearing on these charges the respondent found appellant guilty on April 10, 1963, and ordered the revocation of its license effective forthwith. Appellant states that the action of the respondent was erroneous for the following reasons:

1. The verdict was contrary to the clear weight of the evidence.

2. It was unlawful and unreasonable.

3. It was the result of 'passion, prejudice, and hysteria produced by newspaper accounts, statements of Enforcement Officers both Municipal and County, a complete disregard for justice and an unwillingness to weigh merit against expediency.'

4. The testimony of respondent's witnesses was a complete refutation of the charges.

"Respondent in its answer denies the essential allegations hereinabove set forth and asserts that its decision was based upon the factual testimony before it upon which it concluded in its sound discretion that revocation was warranted.

"Attorneys for both parties agreed to submit both appeals upon the transcripts taken before respondent. This procedure is authorized by Rule 8 of State Regulation No. 15.

"A brief history of the evidence which forms the background for these actions, together with a chronology of such events, is reflective of the following: The appellant is a social club with a membership of approximately 175 members, and has been in operation for many years in the City of Newark. During the past year it has had some difficulty in finding suitable quarters and rented temporary quarters at various addresses within the City. Its last address from which it operated under its present club liquor license was 361 - 14th Avenue, Newark.

"According to the transcript, during the month of January 1963 its treasurer, one Michael Cereste, initiated negotiations with officers of the Essex County Hunting & Fishing club seeking to effect a transfer of the appellant's operations to a building then rented and operated by the said Essex County Hunting and Fishing club.

"The Essex County Hunting and Fishing club was then operating under a club license at 679 South Orange Avenue in

premises which consisted of a one-story building with four rooms with two entrances. The first floor contained a bar. One of the three additional rooms was a kitchen which permitted them to serve food as well as drinks.

"The negotiations resulted in the filing of an application by the appellant with the respondent in January 1963 for a place-to-place transfer of its license from its present location to the premises then in control and operation of the Essex County Hunting and Fishing club. The hearing before respondent on this application was set for February 6, 1963.

"During the month of January there were further informal discussions between the representatives of the Essex County Hunting and Fishing club and the appellant with respect to the 'take-over' date.

"According to the testimony of Anthony Accardi (manager of the Essex County Hunting and Fishing club), the rent for these premises for the months of January and February was paid by that club. Accardi also stated that he, on behalf of the club, paid for all the liquor purchased during the month; the last bill was paid on February 27 or February 28, 1963.

"The transcript further reflects the desire of the appellant to move from its present location on 14th Avenue because it wanted to avoid paying rent at those premises for the month of February.

"Patsy Minichello (president of the appellant club for the past fifteen years, and a member since 1930) testified that James Del Grosso, a member of his club, undertook to make some arrangements with Accardi for the 'take-over.' It was agreed that the 'take-over' would commence upon the approval of the applicant's application by the respondent. In the meantime the appellant continued to operate during the month of January at its premises on 14th Avenue.

"Dominick Del Grosso served for a long period of time as the treasurer of the appellant and paid all the bills. However, he was succeeded in December 1962 or January 1963 by Michael Cereste as treasurer, and Cereste took the responsibility for paying such bills.

"There was considerable concern on the part of the officers of the appellant with respect to the storage of furniture at the end of January. It was finally arranged with Accardi that James Del Grosso would be permitted to move some of the books and financial records of the appellant to this building at the end of January.

"Nicholas Cuccozo (a member of the appellant club) testified that James Del Grosso, the custodian of the appellant club, requested that he move the furniture and records from the appellant's premises on 14th Avenue on or before February 1; otherwise the appellant would be liable for another month's rent at those premises. Accordingly, with the approval of Accardi, Cuccozo moved some books and records of appellant to the premises at 679 So. Orange Avenue during the last week in January, and on February 1 he moved appellant's furniture to the garage of a private residence in East Orange. He further states that

thereafter some of the furniture was moved to the South Orange Avenue premises during the month of February and, in fact, some of appellant's furniture is still in the garage in East Orange. He firmly asserted that at no time did he ever deliver any liquor from the 14th Avenue address to South Orange Avenue.

"Carmine Battaglia (the landlord of the South Orange Avenue premises) corroborated the fact that the rent for the months of January and February was received by him for these premises from Accardi, the manager of and on behalf of the Essex County Hunting and Fishing club, and that the rent for March was paid by Michael Cereste on behalf of the appellant.

"Accardi testified that he extended a privilege to James Del Grosso to look around and acquaint himself with the facilities of the bar and the premises. He firmly insisted that Del Grosso was merely learning the layout of the place and did not act in the capacity of a manager or custodian. In fact, around January 27 or 28 Accardi gave him a key but insisted that Del Grosso did not have the right to enter the club or collect any receipts. Furthermore, Accardi stated that he was the sole person who collected receipts.

"Accardi further stated that, until the transfer was actually completed, no member of the appellant club was authorized to enter the premises without permission. The privilege given to certain members of the appellant to come into the place and 'acclimatize themselves' which was given one week prior to January 31, 1963, did not carry with it the right to drink on the premises.

"Accardi vigorously rejected the suggestion that Del Grosso was permitted to open the club after hours or to serve alcoholic beverages to anybody at that time.

"Nevertheless, on January 31, 1963, Del Grosso was in the premises after 2 a.m. and was engaged in the kitchen either drinking or cooking or both. Several members of the appellant club, including Votto and Culmone, were in the club on that morning.

"James Del Grosso was brutally murdered as a result of stab wounds some time between 3:00 and 7:00 a.m. of that day. Newark Detective William J. Leonardis, testifying on behalf of the respondent, stated that his investigation disclosed that Del Grosso was murdered on the premises, and the bloodstains on the floor and wall of the rear room, together with broken bottles, manifested that a brawl had taken place. His investigation further revealed that one Michael Pisauero and Miss Patricia Fiore had been on the premises at about that time. It should be mentioned in passing that Pisauero and Miss Fiore refused to testify in these proceedings on the ground that such testimony might tend to incriminate them.

"Mr. Blasi, attorney for the appellant, stated that before February 6 he personally informed Robert Brown, the secretary of the respondent, of appellant's intentions to move into the premises on South Orange Avenue and, therefore, he advocates that he has come within the purview of the statute which requires that notice must be given of any material change

in fact in the license application within ten days after its occurrence.

"He further asserts that thereafter he appeared before the respondent on February 6, the scheduled hearing date, prepared to make a full presentation; that the hearing was postponed by respondent in order to enable the municipality and county authorities to make a complete investigation of the murder committed on the subject premises.

"There was also introduced into evidence, through the testimony of witnesses, bills of the Public Service Electric and Gas Co. and the New Jersey Bell Telephone Company establishing the fact that transfers of those services were made on behalf of the appellant after January 31, the date alleged in the charges; that during the month of January the electric bills and telephone bills were in the name of and paid by the Essex County Hunting and Fishing club.

"After three adjournments the respondent finally considered the application for a transfer of appellant's license from 361 - 14th Avenue to 679 South Orange Avenue, Newark, and approved the transfer 'with the distinct knowledge that when and if anything detrimental to either license is shown in the reports submitted to this authority, that proper and necessary steps will be taken which may result in the suspension of either or both licenses.' This license was delivered to the secretary of the respondent for endorsement but was never actually endorsed or returned to the appellant. Thereafter, on March 12, 1963, appellant was served with the charges which are made the basis of the appeal in Case No. 2.

"After considering and analyzing the testimony of the transcripts and the exhibits herein, I make the following findings of fact as they refer to the specific charges in both Cases Nos. 1 and 2:

"1. That the evidence contained in the transcripts preponderantly shows that negotiations were undertaken by the appellant and the Essex County Hunting and Fishing club for the 'take-over' of those premises by the appellant upon the approval of an application for transfer with the respondent;

"2. That the appellant did, during the month of January, file such application with the respondent and a hearing thereon was set for February 6. This application contained the correct information as required therein;

"3. That the control of these premises was in the Essex County Hunting and Fishing club, and Accardi exercised such full control and operation. During the month of January, and more specifically on January 31, 1963, the rent and gas and electric bills were paid by the Essex County Hunting and Fishing club during the month of January, as well as the liquor bills;

"4. Accardi gave to James Del Grosso and certain other members of the appellant club permission to enter the premises while he was there, but did not give them the full rights and privileges of their own membership, nor did he ever relinquish control thereof;

"5. On January 29 Accardi gave Del Grosso a key to the premises in order that he could bring in some books and

records of the appellant club during the day because Accardi was not there during the morning. His explanation was that 'I figured if it's in the morning he might as well have a key and I had to give it to him because in five days they were going to take the place over;'

"6. By so doing, Accardi made Del Grosso his invitee, and the Essex County Hunting and Fishing club bore the responsibility for the violations committed on January 31 which resulted in disciplinary proceedings against the said Essex County Hunting and Fishing club;

"7. The furniture of the appellant was not moved to the premises on the date alleged in the charges, and I am satisfied that the appellant did not exercise on January 31, 1963, the rights and privileges of its license at 679 South Orange Avenue, in violation of R.S. 33:1-26.

"In this connection it should be noted that the respondent admits that part of the allegations in paragraph 4 of the petition of appeal in Case No. 1, wherein it is stated that said premises (679 South Orange Avenue) 'were then in control of another Club operating under another license.'

"'Control' is defined as 'directing or restraining domination ... Syn. - Regulation, direction, management.' Webster's New International Dictionary, Second Edition, Unabridged.

"Since the Essex County Hunting and Fishing club was in control of these premises and exercised its privileges under its own license, it cannot be logically argued that the appellant was also operating on those premises under its own license. In any event, that has been specifically refuted, and there is no affirmative evidence on the part of any witnesses to establish that fact;

"8. I also find that the respondent was notified within the statutory period that the appellant intended to surrender possession of and close its licensed premises at 361 - 14th Avenue and, therefore, was not in violation of R.S. 33:1-34.

"The fact of the matter is that the respondent did approve the transfer of the license of the appellant on February 27. The only thing that remained to be done in order to validly complete this transfer was the making of the enforcement by the secretary of respondent.

"Thus, respondent became subject to the established rule that, when an issuing authority reaches a final determination on an application for a license or transfer thereof, it then has no jurisdiction to reconsider its action at a subsequent meeting. Cf. Essex County Retail Liquor Stores Association v. Newark et al., Bulletin 1457, Item 3; Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City et al., Bulletin 80, Item 11.

"It must be understood that these hearings took place in the aftermath of a tragic incident in the form of a senseless murder at the subject premises. The respondent in the actions thereafter entered charges not only against the appellant but against the Essex County Hunting and Fishing club, as a result of which it revoked the license of that said club. The Essex County Hunting and Fishing club appealed that decision to this Division. On that appeal I have recommended a reversal of three of the six charges against the said

Essex County Hunting and Fishing club, with the resultant modification of penalty from revocation to suspension of that license for a period of forty days.

"I am persuaded that the situation has been ambiently approached and the respondent reached an effortless conclusion both with respect to the charges which it instituted against the appellant and its decision to reverse its earlier approval of a transfer of appellant's club license.

"Again, it is my conclusion that, within the totality of circumstances surrounding the tragic incident of January 31 and the local and county investigations which followed, the respondent had a mistaken sense of unfinished business when it voted to revoke the appellant's license and to reverse its earlier decision with respect to the application for transfer.

"The Director's function on appeals 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 views. Cf. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Neiden Bar and Grill, Inc. et al. v. Newark et als., 40 N.J. Super. 24.

"However, where it appears that such discretion has been abused or exercised in an arbitrary manner or is based upon reasons which are illusory or arbitrary or where a transfer of a license has been refused to a properly qualified person without any reason which is valid and sufficient in law, such action will require reversal. Cf. Maliken v. Neptune City, Bulletin 915, Item 2.

"The comparative degree of proof by which a case must be established is the same in an administrative proceeding as in a judicial proceeding, i.e., by a preponderance of the evidence. 42 Am. Jur., Public Administrative Law, sec. 132 p. 467, and cases cited therein. The charges must be established by affirmatively satisfactory evidence. A guilty finding may not be based upon mere suspicion, no matter how reasonably inferable such suspicions may be. Re Doyle, Bulletin 469, Item 2.

"I cannot say that the evidence produced by respondent in Case No. 2 is of such probative force that it has engendered that feeling of reasonable probability in these circumstances. Loew v. Borough of Union Beach, 56 N.J. Super. 93. Cf. Davidson v. Fornicola, 38 N.J. Super. 365, 371 (1955).

"Finally, it should be observed that, where the administrative tribunal function partakes of the judicial, its exercise is styled quasi-judicial by its exercise of judicial power, nevertheless conditioned upon the observance of the traditional safeguards against arbitrary action - what Chief Justice Hughes of the United States Supreme Court has termed the rudimentary safeguards of fair play. Cf. Morgan v. United States, 298 U.S. 468, 80 L. ed. 1288.

"I do not believe that the respondent has produced proof in this appeal by the preponderance or greater weight of the evidence. Thus its verdict of guilty and its action in

refusing to effect the license transfer are not supported by a fair preponderance of the credible evidence.

"In view of all the circumstances in this case, I therefore recommend the following:

Case No. 1 - that the action of the respondent in effect denying the transfer after its grant be reversed and that respondent be ordered and directed to endorse the transfer upon the license certificate.

Case No. 2 - that an order be entered reversing action of the respondent."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. General exceptions, filed out of time, were nevertheless considered.

After carefully considering the transcript, including the oral arguments of counsel contained therein, and the exhibits, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 26th day of June 1963,

ORDERED in Case No. 1 that the respondent be and it is hereby directed to endorse the transfer upon the license certificate and forthwith effect a transfer of said license as hereinabove indicated; and it is further

ORDERED in Case No. 2 that the action of the respondent in finding the appellant guilty of charges as set forth therein and revoking the license be and the same is hereby reversed.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. APPELLATE DECISIONS - ESSEX COUNTY HUNTING & FISHING ASS'N. v. NEWARK.

ESSEX COUNTY HUNTING & FISHING ASS'N.,)

Appellant,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK.)

Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

Salvatore A. Simeone, Esq., Attorney for Appellant.
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney
for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby it revoked appellant's license on April 10, 1963, effective forthwith, after the appellant was adjudged guilty of the following charges:

'1. They did on January 31, 1963, allow, permit and suffer an act of violence in and upon their licensed premises, and allowed, permitted and suffered their licensed premises to be conducted in such manner as to become a nuisance; in violation of Rule 5 of State Regulation No. 20.

'2. They did on January 31, 1963, allow, permit and suffer their licensed premises to be open after the legal hour for sale of alcoholic beverages; in violation of Section 3.1(a) of the Revised Ordinances of the City of Newark.

'3. They did on January 31, 1963, allow a person or persons of ill repute to frequent their licensed premises; in violation of Rule 4 of State Regulation No. 20.

'4. They did on January 31, 1963, allow, permit and suffer the sale of alcoholic beverages to persons other than bonafide members of their Club; in violation of Rule 8 of State Regulation No. 7.

'5. They did on January 31, 1963, knowingly allow, aid and abet the West End Club of Newark, N. J., Inc. to exercise the rights and privileges of their license other than at their licensed premises; contrary to R.S. 33:1-26, and in violation of R.S. 33:1-52.

'6. They did fail to notify the issuing authority (Board of Alcoholic Beverage Control of the City of Newark, New Jersey) of any and all material changes which would reflect on their present application on file with the said issuing authority, with reference to their change in officers; in violation of R.S. 33:1-34.'

"The licensed premises for which the appellant is the holder of a club license is located at 679 South Orange Avenue, Newark. Upon the filing of the appeal, an application was made for an order to stay respondent's order of revocation, which said application was denied by the Acting Director.

"Appellant, in its petition of appeal, states that on March 12, 1963, it was served with the foregoing charges and an additional charge which, in effect, stated that on January 31, 1963, the appellant allowed and suffered the sale of alcoholic beverages 'to persons actually or apparently intoxicated.' The petition further sets forth that the matter was tried before the respondent on March 27, 1963 and April 1, 1963. On April 10, 1963, the appellant was found guilty on all charges except with respect to the service to 'persons apparently intoxicated', which said charge was dismissed. The respondent thereupon revoked the subject license, effective forthwith.

"Appellant alleges, substantially, that the respondent's action was erroneous for the following reasons:

- "A. That it was contrary to the clear weight of the evidence.
- "B. That it was unlawful and unreasonable.
- "C. That it was the result of passion, prejudice, and hysteria produced by newspaper accounts, and prejudicial statements of enforcement officers in the city and county.

"The appellant therefore requested that the action of the respondent Board be set aside and reversed.

"The respondent in its answer, denies the essential allegations hereinabove set forth and asserts that the decision was based upon the factual testimony before it upon which it, in its sound discretion, concluded that the penalty imposed was warranted.

"Attorneys for both parties agreed to submit this appeal upon the transcript taken in the disciplinary proceedings before respondent. This procedure is authorized by Rule 8 of State Regulation No. 15.

"A brief history of the events which served as a genesis for the charges brought against appellant might help in setting this matter in proper focus.

"The appellant, a social club, having approximately 125 to 150 members, had been occupying subject premises for about eight or nine months. The premises consist of a one-story building of four rooms, with two entrances, the front room containing a bar and some lounging chairs; a rear room has table and chairs; to the left of the rear room is another small room and behind the bar is located a kitchen.

"On January 31, 1963, between the hours of 3:30 and 7:00 a.m. one James Del Grosso was murdered and his body was discovered by police at about 12:00 noon on that date. The police investigation revealed that Del Grosso was killed on the premises.

"As a result of further police investigation, Victor Pisauro and Patricia Ann Fiore were apprehended, and thereafter indicted by the Essex County Grand Jury on a charge of murder. During the course of the investigation, considerable publicity was given to the incident and the members of the respondent Board were summoned to testify before the Grand Jury. Whether their subsequent action was affected by this singular circumstance will be considered in the light of the testimony as hereinafter set forth and analyzed.

"The transcript of the proceedings is reflective of the following facts: The appellant appeared to be unable to meet its ordinary expenses of operation of subject premises and undertook negotiations with the West End Club, a social club of good reputation and long standing in the community, to take over the said premises. These negotiations started informally during the latter part of December 1962 and in January of 1963.

"Some time during the middle of January 1963 when some informal understanding was reached, an application was filed by the West End Club with the respondent for a place-to-place transfer of its club license from its premises on 14th Avenue in Newark to the subject premises.

"The rent for the premises in the sum of \$200 per month was paid in January and February by the appellant, the understanding being that the West End Club would not pay the \$200 monthly rental charge until its license was formally transferred to the said premises. The West End Club did pay the \$200 monthly rent for the month of March, 1963.

"During these negotiations, it was agreed that James Del Grosso, the deceased, who was a member and custodian of the West End Club, would be permitted to assist in the kitchen and the bar at such times as he chose until the license was actually transferred in order to permit him to become familiar with the mechanics of its operational facilities.

"Anthony Accardi, the manager and custodian of the appellant, gave him a duplicate key so that he would have free ingress to the premises. The key was given for an additional reason that it was suggested that Del Grosso move some of the records of the West End Club even prior to the actual transfer of license. The transcript does not indicate whether these records were, in fact, transferred to these premises. The transcript does show, however, that the West End Club rented the premises and was not anxious to pay rent for the month of February. An arrangement was made whereby the West End Club would be permitted to store its furniture and other physical belongings in the basement of a private residence in East Orange, and would thereafter move the said furniture and fixtures to the new premises upon formal transfer of the said license.

"The evidence seems to indicate, further, that on the morning of January 31st Del Grosso was in the kitchen of the subject premises serving drinks and socializing with friends or acquaintances; the only persons positively identified as having been present at the time of the murder were Pisauro and Miss Fiore, both of whom had been drinking. These two persons were subpoenaed as witnesses by the respondent at the hearing below but refused to testify on the ground that their testimony might tend to incriminate them.

"Casper Culmone, testifying on behalf of the respondent,

stated that he visited the subject premises on January 30th at about 12:00 p.m. and remained there until 1:30 a.m. on January 31st. He then returned at 3:00 a.m. on the same morning and had a drink with Del Grosso but doesn't remember whether he paid for the same. At that time a Frank Votto was identified as being engaged in drinking.

"Culmone insisted that he was just a member of the West End Club but is not familiar with any of its operations. He also stated that a Johnny Curcio, who was associated with the appellant, was serving drinks from the bar on this morning. The witness further stated that he had been drinking during the entire prior afternoon and evening and had about nine brandies and about ten cans of beer during that period. He denied that he was drunk but stated that he was 'feeling good'.

"On cross examination he admitted that the reason he went to the premises on this particular occasion was that he owed Del Grosso a gambling debt in the sum of \$1,000., which he paid him.

"Frank Votto testified that he arrived at the premises on January 31st at 2:30 a.m., and his understanding was that these were the premises of the appellant. He was aware of the fact that 'it was in the process of being taken over by the West End Club'. When he arrived at the premises he was admitted by Del Grosso and engaged in a conversation with him. Del Grosso served him some coffee with brandy in it, and he remained there for about a half hour. In his conversation with Del Grosso, he was informed that the West End Club had to vacate its premises by the end of the month and he gave permission to have the furniture of the West End Club stored in the cellar of the Midway Tavern, Newark, where he was employed as a bartender.

"On cross examination he denied that he had ever seen or had known Pisauro or Fiore prior to the incident on January 31st and until they were apprehended by the Newark Police.

"Philip J. Sito, the former president of the appellant club, testified that he had resigned as president but failed to notify the respondent of the fact of the termination of his official capacity.

"Joseph Petillo testified that he became president of the appellant on January 1st. He was not sure whether the respondent was notified except that he signed one 'corporation paper'. He denied any knowledge of how Del Grosso obtained a key to the premises. In fact, he denied even knowing Del Grosso or knowing anything about the operations of the club.

"He insisted that the club had never had a meeting since he was named president and further asserted that the entire control and management of the appellant was undertaken by Anthony Accardi. A meeting of the appellant's membership was slated for February but after the incident hereinabove referred to, that February meeting was indefinitely postponed.

"Carmine Battaglia, the owner of the subject premises, testifying on behalf of the respondent, confirmed the fact that the appellant had paid rents for the months of January and February and that, in fact, Accardi was the one who paid the rent to him. He also admitted seeing Curcio, bartender of the appellant,

working in that capacity during the month of January.

"On cross examination he corroborated the prior testimony that the appellant had complained that the rent was too high and that they had difficulty in meeting the same. He had also been informed of the negotiations for transfer of the West End Club license to the said premises. There was a question as to who would pay the February rent, and it was finally paid by Accardi. He also stated that discussions with respect to the take-over continued through the latter part of January but nothing was done until February.

"William J. Leonardis, testifying on behalf of the respondent, stated that he is a Newark police detective, and that he made an investigation of the premises shortly after the January 31st incident. His investigation disclosed that the murder was committed as stated hereinabove and was the result of a brawl. He also identified police records reflecting convictions of crime of Pisauro and Fiore.

"Robert Brown, the secretary of the respondent, testified that the records of the respondent show that the appellant in its application for license for the 1962-63 term listed Philip Sito as president, Dan DeCarlo as vice-president, Addison Fritz as secretary and Joseph Boccia as treasurer; and that at no time did the respondent receive any notice of change of status of the appellant. He further testified that on February 19, 1963, the license of the appellant was surrendered to the Board. (That surrender of license does not bar or abate disciplinary proceedings, see Rule 1 of State Regulation No. 15.)

"Casper Culmone was recalled by respondent and questioned in depth about his knowledge of what occurred during the early morning of January 31st. He stated that when he first visited the premises on that morning Johnny Curcio, who was the bartender for the appellant, served him and the other five persons drinks and acted as a bartender. He insisted that Del Grosso was seated on the customer's side of the bar and was drinking 'as a customer'. He then repeated the testimony with respect to the fact that he visited the place later that morning to return a gambling debt of \$1,000. which he owed to Del Grosso. He also reiterated that Del Grosso was merely 'learning the layout of the place' and was not acting in the capacity of a manager or custodian. There was no question in his mind that at that time the premises were in the control and operation of the appellant and the signs on the outside of the premises affirmed that fact.

"Anthony Accardi, called by respondent, testified that he had been a member of the appellant club for eight or nine months and was the manager of these premises. He undertook the negotiations with Michael Cereste, the treasurer of the West End Club, with respect to the proposed take-over by the West End Club of these premises.

"He insisted that Del Grosso visited these premises solely for the purpose of learning the operations. He gave him a key, but insisted that Del Grosso did not have the right to enter the club without permission, or to collect any receipts. In fact, this witness stated that he was the sole person who collected receipts and Del Grosso never gave him any monies. He also denied that Del Grosso ever acted as a bartender or

served any alcoholic beverages in his presence. He further insisted that no one from the West End Club was authorized to serve or even to be served any alcoholic beverages on these premises.

"The permission to certain members of the West End Club to come into the place and 'acclimatize themselves' was given one week prior to January 31, 1963. They were permitted to come in and sit around, 'they weren't allowed to drink.' He vigorously rejected the suggestion that Del Grosso was permitted to open the club after hours or to serve alcoholic beverages to anybody at that time.

"However, he admitted that Del Grosso was given permission to move certain club records to these premises and insisted that that was the only reason that he was given the key to the premises. 'The place is closed in the morning. It's usually closed in the morning. So, I took it for granted he is going to move the stuff from their old place up to the new place. I figured if it's in the morning he might as well have a key and I had to give it to him because in five days they were going to take the place over.'

"This witness also testified that he, on behalf of the appellant, paid for all the liquor purchased for the premises during the month of February. The last bill was paid on February 27th or 28th.

"After considering and analyzing the testimony in the transcript and the exhibits herein, I make the following findings of fact as they refer to specific charges (not in the order set forth in the petition of appeal): James Del Grosso, the deceased, was upon the premises originally both in his individual capacity and as a representative of the West End Club. Such representation was never officially granted to him. However, when the appellant's agent, Anthony Accardi, gave him a key to the premises, Del Grosso became the invitee of the appellant. Such action also carried with it the responsibilities and obligations which such invitee would have by reason of the privilege of entering the said premises at his will. Implicit in the possession of a key was a certain freedom of action which Del Grosso exercised.

"Therefore, when Del Grosso entered or remained in the premises after the legal hour for sale of alcoholic beverages, as set forth in Charge No. 2 hereinabove, he acted as the invitee of the appellant. Guastamachio v. Brennan, 128 Conn. 356, 23 A. 2d 140.

"This principle must be very literally and emphatically applied in the conduct of the liquor business because our courts have consistently held that 'the liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner.' Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). 'The sale of intoxicating liquor has from the earliest history of our state been dealt with by legislation in an exceptional way. In its legal significance it is sui generis. 'It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied.'" Hudson Bergen & Co., Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

"The testimony of the appellant's officers indicates a very disjointed and loose operation of these premises. Nobody

seemed to know who was in charge; receipts were not accounted for and even Accardi, the manager, didn't know exactly who was the bartender or the cook or performed any duties at any specific time. Nevertheless, the appellant, regardless of its knowledge, is chargeable with prohibited acts on the premises and is responsible for the acts of its agents and invitees. Rule 33 of State Regulation No. 20; Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup. Ct. 1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Greenbrier v. Hock, 14 N.J. Super 39 (App. Div. 1951).

"I therefore recommend that the action of respondent in finding appellant guilty of Charge No. 2 be affirmed.

"I also find as a fact that the appellant did allow, permit and suffer the sale of alcoholic beverages to persons other than bona fide members of their club in violation of Rule 8 of State Regulation No. 7, as set forth in Charge No. 4.

"Casper Gulmone testified that on January 31st he drank a considerable amount of intoxicating beverages after 3:00 a.m. There is also evidence, implicit in the testimony of the other witnesses, that persons who were not members of the appellant club consumed alcoholic beverages. 'Sale' is defined in R.S. 33:1-1(w) as 'Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, ...and the gratuitous delivery or gift of any alcoholic beverage by any licensee.' I therefore recommend that the conviction on Charge No. 4 be affirmed.

"With respect to the sixth charge, which sets forth that the appellant failed to notify the issuing authority (respondent) of material changes in its application on file with the said issuing authority with reference to change in officers, such failure was admitted by several witnesses including the past president and the present president.

"I am persuaded from the testimony herein that the appellant was guilty of violation of R.S. 33:1-34, and recommend that the conviction on Charge No. 6 be affirmed.

"Charge No. 3 alleges that the appellant on January 31, 1963 allowed a person or persons of ill repute to frequent its licensed premises, in violation of Rule 4 of State Regulation No. 20. This apparently refers to the alleged presence of Pisauro and Miss Fiore. To substantiate this charge, the respondent produced police records of the City of Newark which, indeed, reflected convictions of both of these people of crimes involving moral turpitude.

"However, there is not a scintilla of evidence in the transcript before me to show that these two persons 'frequented' the licensed premises or, in fact, ever appeared upon the said licensed premises. It is well established that the mere production of a police record of disclosing certain charges and dispositions is not sufficient to establish the facts contained therein. Even if a document may qualify as a public record, it does not ipso facto (except where specifically made admissible by statute) become an exception to the hearsay rule as it is only a substitute for the appearance of the public officer who made the record. Olender v. United States, 210 F. 2d 795, 42 A.L.R. 2d 736 (1954).

"Prior convictions of crime must be proved by the best evidence; and the mere assertion by a police officer that the

persons referred to herein have been convicted of crime is not proof that they are persons of ill repute. Sylvestri v. North Bergen, Bulletin 1513, Item 1.

"Absent proof of the alleged presence of these persons on the premises, and upon the failure of the respondent to produce competent evidence relating to their reputation, it is recommended that the conviction of the appellant on Charge No. 3 be reversed.

"The appellant was further convicted on the first charge, which states that on January 31st it allowed, permitted and suffered an act of violence upon its licensed premises and allowed, permitted and suffered its licensed premises to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulation No. 20. This theme is pressed by respondent with no competent proof to sustain it. While we have held that the appellant must bear the responsibility for the acts of Del Grosso, and must be chargeable for his acts, it would certainly be contrary to every instinct of fair play to charge that its invitee permitted an act of violence when he, himself, was the victim and suffered death at the hands of the perpetrators of the violence. The evidence supports the opinion of the police officer that Del Grosso suffered a brutal death by stabbing.

"In these circumstances, it cannot be said that either the appellant or its invitee 'permitted', 'allowed' or 'suffered' an act of violence, as contemplated by Rule 5 of State Regulation No. 20. I therefore recommend that the conviction of appellant on Charge No. 1 be reversed.

"Charge No. 5 states that on January 31, 1963, appellant knowingly allowed, aided and abetted the West End Club of Newark to exercise the rights and privileges of the latter's license at other than its own licensed premises. I think the evidence is quite clear that while certain members of the West End Club were permitted entry into the appellant's premises for the purpose of observing the operations and technicalities, it was not convincingly proved that the West End Club exercised the rights and privileges of its license at appellant's premises.

"It is true that Del Grosso was permitted to bring with him certain records of the West End Club prior to February 27th, when its application for transfer was granted by the respondent. However, the evidence is also clear that the furniture of the West End Club was removed from its premises and stored in East Orange, and that, in fact, part of the furniture was first delivered to the subject premises in the month of February. There is no dispute of the testimony of a representative of the Public Service Electric and Gas Company that the West End Club had been supplied by that company with electric and gas service at 361 - 14th Avenue, Newark, from July 27, 1961 to February 16, 1963. There was also introduced telephone bills reflecting the same situation. Thus, the respondent has not established, by clear and convincing proof, that the appellant knowingly aided and abetted the West End Club to exercise the rights and privileges of its license at other than its licensed premises; and I recommend that the conviction on Charge No. 5 be reversed.

"For the foregoing reasons, it is recommended that an order be entered affirming respondent's action in finding appellant guilty as to Charges 2, 4 and 6, and reversing respondent's action with respect to Charges 1, 3 and 5.

"The measure or extent of penalty to be imposed in disciplinary proceedings rests within the sound discretion of the issuing authority and will not be disturbed on appeal unless the evidence clearly shows an abuse of discretion. Re Club Fremont, Inc., Bulletin 1420, Item 2; Dzieman v. Paterson, Bulletin 233, Item 10.

"In view of the fact that there has been a recommendation of reversal on three most serious of the six charges, the penalty of revocation as imposed by the respondent would be manifestly unreasonable and unduly excessive. The Director, in these circumstances, has circumspectly modified such penalty. Cf. Rigoletti v. Wayne, Bulletin 1430, Item 2; Kovacs v. South River, Bulletin 1008, Item 2.

"In view of the circumstances in this case, including the absence of a prior record, I, therefore, recommend that the penalty of revocation be modified, and that an order be entered imposing a suspension of appellant's license on Charge No. 2 for fifteen days (Re Lauterio, Bulletin 1475, Item 8), on Charge No. 4 for fifteen days (Re Pride of Camden Lodge of Elks #82, Bulletin 1506, Item 4) and on Charge No. 6 for ten days (Re Kolbek, Bulletin 1472, Item 3), making a total of forty days."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. General exceptions, filed out of time, were nevertheless considered.

After carefully considering the transcript, including the oral arguments of counsel contained therein, and the exhibits, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 26th day of June 1963,

ORDERED that the action of the respondent in finding the appellant guilty of Charges 1, 3 and 5 and revoking the license of appellant be reversed; and it is further

ORDERED that the action of respondent in finding the appellant guilty of Charges 2, 4 and 6 be affirmed and that Club License CB-53, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Essex County Hunting & Fishing Ass'n., for premises at 679 South Orange Avenue, Newark, be and the same is hereby suspended for forty days. In view of the surrender of the license by the appellant to the respondent on February 19, 1963, no effective dates of suspension will be fixed.


Emerson A. Tschupp,
Acting Director.