

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

BULLETIN 2088

February 26, 1973

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FEBRUARY 26, 1973

1. APPELLATE DECISIONS - WILLNER'S LIQUORS v. NEWARK.

|                              |   |             |
|------------------------------|---|-------------|
| Willner's Liquors (a corp.), | ) |             |
| t/a Willner's Liquors,       | ) |             |
| Appellant,                   | ) | On Appeal   |
| v.                           | ) | CONCLUSIONS |
| Municipal Board of Alcoholic | ) | and         |
| Beverage Control of the City | ) | ORDER       |
| of Newark,                   | ) |             |
| Respondent.                  | ) |             |

-----  
Fox & Fox, Esqs., by Martin S. Fox, Esq., Attorneys for Appellant  
William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On June 26, 1972 respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) entered an order suspending the plenary retail distribution license issued to the appellant for premises located at 147 - 7th Avenue, Millbrook Shopping Plaza, Store No. 1, Newark, for fifteen days, commencing July 17, 1972 after finding appellant guilty of a charge alleging that on Saturday, July 17, 1971, it sold and delivered alcoholic beverages to a minor under the age of twenty-one, in violation of Rule 1 of State Regulation No. 20.

In its petition of appeal from the said determination appellant alleges that the action of the Board was erroneous and that no such sale to the said minor ever occurred. Appellant asserts that the same charge was brought against the "appellant" (sic) in the Municipal Court of the City of Newark wherein appellant was found not guilty.

The Board filed an answer admitting the jurisdictional facts and denying the substantive allegations of the petition. It also states that the grounds upon which the Board made its decision were based upon the factual testimony before the Board from which it "concluded that the penalty imposed was substantiated by the evidence."

The hearing on appeal was heard de novo and was based upon the transcript of the proceedings before the Board, supplemented by additional testimony adduced on behalf of the appellant,

pursuant to Rules 6 and 8 of State Regulation No. 15.

At the commencement of this de novo hearing the attorney for the appellant noted that, although the minor had been duly subpoenaed to appear at this hearing, he did not respond to the said subpoena and was not present at the hearing.

The transcript of the proceedings before the Board reflect the following: Newark Detective Michael Parelli testified that the minor George --- was interviewed at a local precinct on the day following his arrest with three other persons, on a charge of having "perpetrated a break and entry" in a school building. At the time of their arrest, they were under the influence of alcohol. However, at the time of the interview the minor was sober.

The minor informed him that he had purchased a six-pack of beer and a half-gallon of wine from appellant's premises, prior to his arrest and that he paid "something like \$4.00." However, the police did not find any bottles or evidence of such purchase. This officer never saw him under the influence of liquor because he was not the arresting officer.

When the matter came up for hearing in the municipal court the appellant's employee was found not guilty.

George, the minor involved herein, testified before the Board that he was nineteen years of age at the time of the alleged incident and on July 18, 1971, he purchased a six-pack of Schaefer beer and a half-gallon of Fairview wine, which was sold to him by Andrew Gablas, a clerk employed by the appellant. He lives in the neighborhood of appellant's premises and had visited the premises on prior occasions with friends of his; the purchase was made at approximately 8:00 p.m. that evening and he did not recall the exact purchase price but that it came to "about three dollars and change." After he made the purchase he left the premises and rejoined his three companions.

Andrew Gablas, Jr., testified on behalf of the appellant, both before the Board and at this de novo hearing, and gave the following account: This minor had frequently visited these premises with other boys but had never made a purchase of alcoholic beverages there. The purchases were made by his companions. He appeared to the witness to be a minor. He denied making a sale to him on the date in question and vigorously denied that the minor ever entered the premises on the date charged herein. He added that when the criminal charge against him was heard in the municipal court, the minor testified that he bought a six-pack of Schaefer beer and a half-gallon of Fairview wine. He was found not guilty of the said charge.

Frank Washington, the other clerk employed by the appellant on the date charged herein, substantially corroborated the testimony of Gablas and asserted that he would have noted the presence of this minor on that date if he had, in fact, been in the premises. He knew the minor because the minor had visited the premises in the company of his friends on prior occasions but that when he came in "...someone else always did the purchasing."

William C. Willner, the president of the corporate appellant, testified as follows: He is in charge of the financial records of the corporation. The register tapes at these premises are kept on a weekly basis. The week starts on Saturday at 2:00 p.m. and goes through the following Saturday at 2:00 p.m. The retail price for a six-pack of Schaefer beer is \$1.33; the retail price for one-half gallon of Fairview wine is \$1.39, plus 7¢ tax. In order to ring up this sale there would be four entries made, namely; \$1.33, \$1.39, 7¢ tax and then the total which would be \$2.79. From his examination of the tape for that date, which was

admitted into evidence, the tape reflects no such entries made in that sequence. The only entry of \$1.39 occurs late in the evening just before closing. Thus, he concludes that no such sales were made around 8:00 p.m. when the minor is alleged to have made the said purchase.

There was also introduced into evidence the weekly statement reflecting a recap of the figures that are entered into the cash book daily and weekly, which also does not indicate such sale.

The witness recalled that, at the hearing in the municipal court the minor definitely testified that he made a purchase of Fairview wine. Finally, he stated that the two clerks have been employed by the appellant for years and have always kept an accurate inventory and records.

I have had the opportunity to observe the testimony of the clerks who stated, with certainty that this minor never entered the premises on the date charged herein and that no such sale was made to him. Added to this is the testimony of Willner who stated that the cash register and the daily statement recapping the purchases made on the said date do reflect a contrary situation to that testified to by the minor. The tape manifests strong empiric support to bolster his testimony. I am persuaded that the testimony of appellant's witnesses was credible and forthright and had the ring of truth.

On the other hand, I have serious doubts as to the credibility of the testimony of the minor, which appears to be vague and contradictory in several respects. He at first denied knowledge of the particular brand of wine that he allegedly purchased but concluded that it was Fairview wine when confronted with the fact that he so testified in the municipal court. He also could not recall the amount paid for these purchases. Furthermore, it should be noted that none of these bottles were ever recovered by the arresting officer, so that the Board relied solely upon the uncorroborated testimony of the minor.

Moreover, no apparent attempt has been made by the Board to obtain the testimony of the minor's companions who could have been subpoenaed and who would be in a position to corroborate his testimony with respect to the alleged sale.

The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Cf. Walter v. Alt, 152 S.W. 2d 135, 141; Lysaght v. Denville, Bulletin 1490, Item 1; Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, 504-06 (1956).

Thus, we have the uncorroborated testimony of the minor which was affirmatively contradicted by appellant's witnesses. While the uncorroborated testimony of a minor is not necessarily fatal in these proceedings it must, nevertheless, be considered circumspectly together with all of the other facts and circumstances in determining the truth of the charge. An important element with respect thereto is the fact that in addition to such uncorroborated testimony, the minor's credibility must be further questioned and its probative value diminished by reason of the fact that he has failed to respond to a subpoena served upon him and did not appear at this de novo hearing.

Thus, the testimony of this minor standing alone and affirmatively contradicted by the testimony of two witnesses who were present on the date alleged, together with the empiric evidence of the tape and the recap sheets would lead me to cast more probative force to the appellant's testimonial account.

It has been held that where the evidence of several witnesses, giving positive testimony to the same facts stands in irreconcilable conflict, the question of numbers, if the witnesses are of equal credit (not present here) becomes one of the highest importance; for, as a general rule, the evidence of the greater number is more likely to be true than that of the smaller number. Kentner v. Kline, 4 Atl. 781, 41 N.J. Eq. 422; Katzenbach v. Holt, 43 N.J. Eq. 536. Professor Wigmore sums up the doctrine of preponderance of evidence pertinent herein in the following language:

"There is no measure of the weight of the evidence (unless the witnesses on the evidential facts are founded) other than the feeling of probability which it engenders." Wigmore Evid. 3rd Edition, section 2498.

I cannot say that the evidence produced by the Board is of such probative force that it has engendered that feeling of reasonable probability in these circumstances. Loew v. Union Beach, 56 N.J. Super. 93; Perlowski v. Jersey City, Bulletin 1458, Item 1.

I wish to make one final observation with respect to these proceedings. The alleged incident occurred on July 17, 1971. Not until May 31, 1972 was the appellant notified of the said charge; the proceedings before the Board on this charge were held on June 19, 1972; the order of the Board dated June 26, 1972 was first mailed to the appellant on July 6, 1972. Such delay in the proceedings appears to me to be unreasonable, may well operate to the prejudice of the licensees and constitute a denial of due process.

My examination of the entire record herein leads me to seriously doubt the testimony of the minor in view of the aforementioned facts. In disciplinary proceedings, a fair preponderance of the credible evidence, indeed, substantial evidence is necessary to support a finding of guilt. Hornauer v. Division of Alcoholic Beverage Control, supra. In fairness, any doubtful question of facts should be resolved in appellant's favor for the reason that the witnesses for the appellant appeared to be men of integrity and impressed me by their forthrightness and sincerity. To be in doubt is to be resolved. Such doubt must be resolved in appellant's favor. Re Keansburg Steamboat Company, Bulletin 1287, Item 2; Re Chizun, Bulletin 1274, Item 7; Re Heck, Bulletin 1184, Item 3; Luisi v. Orange, Bulletin 1814, Item 3; Wasserman and Goldberg v. Newark, Bulletin 1590, Item 1.

In sum, I conclude that the determination by the Board is not supported by a fair preponderance of the credible evidence on the whole of the record. It is, therefore, recommended that the action of the Board be reversed, and the charge herein be dismissed.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.



The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, and was based upon transcript of the proceedings before the Board, supplemented by additional testimony adduced by appellants pursuant to Rule 8 of State Regulation No. 15.

It would be well to set forth a chronology of what transpired, together with a brief summary of the testimony. It appears that, upon being served with a copy of the charges, the then attorney for appellants entered a plea of not guilty on their behalf. However, appellants obtained a substitution of attorney (the present one) on the day before the hearing before the Board. Inadvertently no request for an adjournment of the hearing was actually made to the Board, although such was his intention, and when the matter came on for hearing in the absence of appellants, who assumed that their attorney had obtained an adjournment, the matter was heard by the Board ex parte.

At the hearing before the Board, Alice --- gave the following account: She was twenty years of age on the dates charged herein and, in the company of two other girls whom she identified by their first names as Clara and Hattie, entered the licensed premises at about 11:30 p.m. During her stay from 11:30 p.m. on April 29, 1972, until 3 a.m. the following morning (April 30, 1972) she consumed two rum-and-cokes and two Schaeffer beers. Two of the drinks were purchased for her by "somebody" and the other two were purchased by her from a bartender whom she could not identify. She stated that she did not consume any alcoholic beverages before entering the tavern. When she ordered and paid for the drinks she was never asked her age or required to make any written representation with respect thereto.

Margaret Easton (a policewoman employed by the Paterson Police Department) testified that on April 29, 1972, she had occasion to question this minor in connection with an alleged criminal assault upon her, and the minor gave her essentially the same information. She said that she had been drinking in the tavern and, when she left the tavern, she asserted that she was drunk. The minor admitted to this witness that she had been drinking alcoholic beverages before she entered the tavern.

When the matter came on for hearing in this Division the attorney for appellants represented that he had subpoenaed the minor because he wanted an opportunity to cross-examine her but that she had not responded to the subpoena duly served upon her. Upon his request an adjournment was granted in order to afford him an opportunity to apply to the Superior Court for an order to show cause why the minor should not be held in contempt of court. Upon return of an order to show cause issued by the Superior Court judge, the minor appeared and was instructed by the judge to respond to the subpoena and to testify at the scheduled hearing in this Division, which she promised to do. In fact, the attorney for appellants appeared in Superior Court on two occasions with respect to this matter. He then arranged to have her driven to the hearing but on the morning of the hearing he was advised that this minor, who was on parole, had run away from home prior to that date and had not returned to her home or to her place of employment. Consequently, although this matter had been adjourned several times, she neither responded to the subpoena or to the order to show cause issued by the Superior Court and her testimony was unavailable.

Douglas Edwards (a co-appellant) testified as follows: He has been operating the licensed premises for the past twenty-one months with his brother M. C. Glenn (co-appellant herein) and was present on the dates set forth in the said charges. This tavern caters almost exclusively to a black patronage because it is located in a black neighborhood, and that the minor, who is a white girl, was not in the premises on the dates charged. He employs a special police officer on weekends who collects a one-dollar fee from patrons because live music and entertainment is presented there. Between the hours of 11 p.m. and 2:30 a.m. there were approximately seventy to eighty patrons, but the minor was not among them. Of the patrons only about five or six persons were white males, and there were no white females. In fact, no white women ever come into these premises unescorted by males.

M. C. Glenn, who was also present at these premises on April 29 and April 30 between the hours of 11 p.m. and 2:30 a.m., corroborated the testimony of the prior witness and emphasized that there were no white women at the bar on that occasion. He certainly would have observed the minor if in fact she were present at the said premises because she was a white female.

Eddie Mae Rawlins (a part-time waitress employed by appellants) corroborated the testimony of the prior witnesses and stated that no white women ever came into these premises.

Oscar Parker (the bartender) denied that the minor was present at the premises or was served alcoholic beverages thereat.

No supplemental or rebuttal testimony was introduced on behalf of the Board.

The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956); Willner's Liquors v. Fair Lawn, Bulletin 1868, Item 1.

The inquiry is whether there is any evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the judgment of the Board herein. The accepted standard of persuasion governing the trier of facts is that the determination is probably founded in truth. Riker v. John Hancock Mutual Life Ins. Co., 129 N.J.L. 508, at 511 (1943).

Thus the critical and decisive issue is whether the determination is founded in truth, i.e., whether or not the minor testified truthfully with respect to the alleged purchase of alcoholic beverages and with respect to her intoxicated condition upon being served therewith, as charged herein.

I have had the opportunity to observe the demeanor of appellants' witnesses as they testified before me and I am persuaded that such testimony was credible and forthright and had the ring of truth.

On the other hand, I have serious doubts as to the credibility of the minor's version of what transpired. Obviously I did not have the opportunity to observe the demeanor of the minor or to adequately assess the credibility of her testimony because she failed to respond to a subpoena and a direct order of the Superior Court and did not testify at this hearing. Her very actions in failing to honor such subpoena and the order of the Superior Court lead to the inference that her testimony was unreliable and lacking in credibility.

Significantly, it should be noted that, although she testified that she had not consumed any alcoholic beverages before entering the licensed premises, the policewoman testified that in her interview with the minor the minor admitted that she consumed alcoholic beverages before entering the tavern. The attorney for the Board acknowledged that in his opinion this minor was of sub-normal intelligence and could not deny that she is presently on parole.

Thus we have the uncorroborated testimony of the minor standing alone, which was affirmatively contradicted by the testimony of both appellants and two other witnesses. While the uncorroborated testimony of a minor does not mean, automatically, that the charges cannot be sustained, it nevertheless is an important factor which must be considered together with the other factors in this case in arriving at a determination. See Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Re Chizun, Bulletin 1274, Item 1; Re Heck, Bulletin 1184, Item 3.

Qualitatively, the evidence produced by appellants stands in a much more favorable light than that produced by the Board. Thus I cannot say that I am persuaded that the evidence produced by the Board is of such probative force that it engendered that feeling of reasonable probability and certainty in these circumstances. Loew v. Union Beach, 56 N.J. Super. 93 (1959).

In disciplinary proceedings a preponderance of the credible evidence is necessary to support and justify a finding of guilt, and doubtful questions of fact must be resolved in appellant's favor. Wasserman and Goldberg v. Newark, Bulletin 1590, Item 1; Luisi v. Orange, Bulletin 1814, Item 3.

The conclusion is inescapable that the findings of guilt by the Board on both charges are not supported by substantial credible evidence on the whole of the record. I therefore recommend that the action of the Board be reversed and the charges herein be dismissed. Lysaght v. Denville, Bulletin 1490, Item 1; Perlowski v. Jersey City, Bulletin 1458, Item 1; Collazo v. Elizabeth, Bulletin 1410, Item 1.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of the testimony and the Hearer's report, I concur in the finding and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of January 1973,

ORDERED that the action of the respondent Board of Alcoholic Beverage CONTROL for the City of Paterson be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

ROBERT E. BOWER  
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - CLAIM FOR RETURN OF SUM DEPOSITED BY UNLICENSED CLUB DEPOSITED IN LIEU OF SEIZURE REJECTED - CLAIM BY VENDING MACHINE OWNER FOR SUM DEPOSITED IN LIEU OF SEIZURE REJECTED - CLAIM BY OWNER OF CERTAIN PERSONAL PROPERTY DEPOSITED IN LIEU OF SEIZURE REJECTED - ALCOHOLIC BEVERAGES, CASH AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure on January 22, 1972 of a quantity of alcoholic beverages, fixtures, furnishings, equipment and miscellaneous personal property and \$15.65 in cash at Spanish-American Puerto Rican Social Club located at 551 Somerset Street in the Township of Franklin, County of Somerset and State of New Jersey. : Case No. 12,664 : On Hearing : CONCLUSIONS and ORDER

..... Samuel Gomez, appearing individually and for Spanish-American Puerto Rican Social Club, claimant. Joseph A. Maroon, trading as Maroon's National Vending, claimant. Harry D. Gross, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 and further pursuant to stipulation dated January 22, 1972, signed by Samuel Gomez to determine whether two refrigerators, bar, amplifier, speaker, chairs, 215 gallon adhesive, bar stools, musical instruments and bar supplies, as set forth in inventory attached hereto and marked Schedule "A" seized on January 22, 1972 at the unlicensed premises, 551 Somerset Street, Franklin Township, constitute unlawful property and should be forfeited; and further to determine whether the sum of \$400.00, deposited with the Director, pursuant to a stipulation under protest by Samuel Gomez, representing the appraised value of the items listed, exclusive of the alcoholic beverages and cash, as set forth in the aforesaid Schedule "A", which said items were returned to him, should be forfeited or returned to him; and further to determine whether the sum of \$225.00, deposited with the Director pursuant to a stipulation under protest by Joseph Maroon, trading as Maroon's National Vending, representing the appraised value of a pool table and juke box, which was returned to claimant, as set forth in the aforesaid Schedule "A" should be forfeited or returned to him.

The seizure was made by ABC agents in cooperation with the officers of the police department of Franklin Township.

At the hearing Samuel Gomez appeared on behalf of himself and Spanish-American Puerto Rican Social Club and sought return of the sum of \$400.00 deposited, representing the appraised value of articles hereinabove described as claimed.

Joseph A. Maroon, trading as Maroon's National Vending, appeared and sought return of the \$225.00 cash deposit, representing the appraised value of the articles hereinabove described as claimed.

Reports of ABC agents and the Division file were admitted into evidence with the consent of the parties present; the Division file contained the affidavit of mailing, affidavit of publication, notice of hearing, inventory and an analysis of the alcoholic content of the beverages seized. There was included a certification by the Director that no license or permit for the sale of alcoholic beverages was ever issued to Samuel Gomez, Eugene Otero, or to any other person at or for the said premises.

The reports of the ABC agents disclosed the following: Agent R gained entry into the unlicensed premises about 2:00 A.M. on January 22, 1972, approached a bar, ordered a can of beer and paid for it with "marked" money. Other agents entered, seized the beer, "marked" money and three dollars. Other alcoholic beverages were confiscated and articles of personal property located in the premises, were seized. The bartender was arrested and charged with the illegal sale of alcoholic beverages.

Joseph A. Maroon, appearing on behalf of Maroon's National Vending testified that: He had placed two pieces of equipment in the unlicensed premises three to four weeks prior to the date of seizure, after investigating the premises and Gomez and being satisfied premises were to be occupied as a social club. He visited the premises once a week and was let into the building by Mrs. Gomez. No person were ever present during the daylight hours of his visit. He never saw any alcoholic beverages or persons being served and had no knowledge of the nighttime activities in the club. He does not service his machines at night because of the danger of hold-ups or robberies.

Samuel Gomez testified for himself and for the Spanish-American Puerto Rican Social Club. He stated that he put up the cash deposit necessary to retain the personal property because he was not permitted to place such deposit for the musical instruments and the amplifiers alone. He denied knowledge of the sale of alcoholic beverages, but admitted beer is available in the premises as provided by the members. He was vague as to the method of buying and paying for the beer or other drinks, but insisted he was not present when Eugene Otero sold beer to the agent. His main interest in the club is musical as he is a singer in the band and practices there.

Eugene Otero testified that he is a member of the club and sold the beer to the agent, but he was unresponsive to questions posed concerning general sales of alcoholic beverages.

The seized alcoholic beverages are illicit because they were intended for sale without a license in violation of N.J.S.A. 33:1-1(i). Such illicit alcoholic beverages and the personal property with cash seized constitute unlawful property and are subject to forfeiture. N.J.S.A. 33:1-2, 66.

In furtherance of the claim made by vending equipment operators the Director has recently promulgated a policy imposing on such claimants the obligation of making personal, periodic and meaningful inspections and they may not rely on the presumed inspection of other persons or agencies, including those of law enforcement. See Seizure Case No. 12,252, Bulletin 1919, Item 5.

It is apparent that claimant, Maroon, had no knowledge of the dispensing of alcoholic beverages on the unlicensed premises; had conducted some investigation prior to the placement of the machines in the premises and had no opportunity to make observations as would lead the reasonably prudent to discover illicit sales. Maroon is obviously an innocent claimant.

As to claimant, Gomez, it is a strain on credibility to be asked to conclude that he was innocently unaware of the alcoholic beverage sales in the premises. He resided in the building in which the premises were located. His wife had a key and opened for the few visits of Maroon. He kept his personal property so commingled with the property of the club that it may be assumed that the club itself was his private preserve. His testimony had a hollow ring when contrasted to that of Maroon who indicated that Gomez's relationship with the club was highly personal.

Considering all of the evidence and the circumstances, it is recommended that the claim of Joseph A. Maroon, trading as Maroon's National Vending for return of \$225.00, deposited under the aforesaid stipulation be recognized and the sum of \$225.00 as deposited be returned, and that the claim of Samuel Gomez, individually and for the Spanish-American Puerto Rican Social Club be rejected, and the sum of \$400.00 as deposited and the alcoholic beverages and cash seized, be forfeited.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time provided by Rule 4 of State Regulation No. 28.

Having carefully considered the entire matter herein, including the transcript of 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 9th day of January, 1973,

DETERMINED and ORDERED that the claim of Maroon's National Vending is hereby recognized and the sum of \$225.00 deposited under protest, by Joseph Maroon, trading as Maroon's National Vending, representing the appraised value of a pool table and juke box, which was returned to claimant, be returned to him; and it is further

DETERMINED and ORDERED that the sum of \$400.00, representing the appraised value of certain personalty, listed in Schedule "A", attached hereto, deposited under protest by Samuel Gomez pursuant to the aforesaid stipulation, be and the same is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, to be disposed of in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property including the alcoholic beverages and the \$15.65 cash, as more fully set forth in Schedule "A", attached hereto, constitute unlawful property and is hereby forfeited, in accordance with the provisions of N.J.S.A. 33:1-66, and the alcoholic beverages shall be retained for the use of hospitals and State, county or municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Robert E. Bower,  
Director

SCHEDULE "A"

- 47 - containers of alcoholic beverages
- 2 - refrigerators; 1 pool table;
- 1 - juke box
- Miscellaneous personal property
- \$15.65 - cash

4. DISCIPLINARY PROCEEDINGS - SALE BY SOLICITOR TO LICENSEE ON NON-DELIVERY LIST - UNLIMITED SOLICITORS PERMIT SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against )

Angelo Quattrone )  
339 Grafton Avenue )  
Newark, N. J., )

Holder of Unlimited Solicitor's Permit No. 3798 (for 1970-71 permit period) and No. 1762 (for 1972-73 permit period), issued by the Director of the Division of Alcoholic Beverage Control. )

CONCLUSIONS  
and  
ORDER

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Beckerman, Franzblau and Cohen, Esqs., by David M. Beckerman, Esq., Attorneys for Permittee  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Permittee pleaded not guilty to the following charge:

"On divers days between December 18, 1969 and May 27, 1970, you the holder of an unlimited solicitor's permit for employment with Galsworthy, Inc., holder of a plenary wholesale license, in consort with Earl L. Bleakley employed as a warehouse manager by said Galsworthy, Inc., knowingly aided and abetted the sale and delivery of orders of alcoholic beverages by said Galsworthy, Inc. to Gerald's Tavern, Inc., then holder of a plenary retail consumption license for premises, 90 Sussex Avenue, Newark, N. J. whose name at the time of said sales and deliveries appeared on the Non-Delivery List (Rule 4(b) of State Regulation No. 39); said aiding and abetting being in violation of R.S. 33:1-52."

The Division's case was presented through the testimony of three witnesses and their version of what transpired may be briefly summarized as follows: On the dates charged herein permittee Angelo Quattrone was the holder of an unlimited solicitor's permit for employment with Galsworthy, Inc., holder of a New Jersey plenary wholesale license. Quattrone was a long-time friend of Michael J. Allora, a principal stockholder of Gerald's Tavern, Inc., t/a Slater's Gallery, 90 Sussex Avenue, Newark, holder of a plenary retail consumption license. Gerald's Tavern, Inc. was on the non-delivery list during the aforementioned period and was therefore unauthorized to purchase alcoholic beverages from wholesalers.

According to the testimony of Earl L. Bleakley, the warehouse manager of Galsworthy, Inc., Allora was taken to the warehouse by Quattrone and introduced to him as his personal friend and as a partner in a tavern owned by Anthony E. Stefanelli located at 76 Bank Street, Newark. Stefanelli is the holder of a plenary retail consumption license at this address and trades under the name of Club Delite.

Upon being introduced to Bleakley as his friend and as a partner in Stefanelli's tavern, and at his request, Allora was permitted to make purchases of alcoholic beverages from Galsworthy at that time. He made other purchases from time to time, although on subsequent occasions he was not accompanied by Quattrone. Numerous invoices were introduced into evidence reflecting the said purchases by Allora. Allora would always make the pick-ups of alcoholic beverages at the Galsworthy warehouse. It further appears that the permittee had been for a long period of time Galsworthy salesman for the Stefanelli account.

Bleakley asserted that the sales and delivery to Allora of these alcoholic beverages were based upon the representation made to him by Quattrone that Allora was in fact a partner of Stefanelli and was authorized to make such purchases on his behalf.

Richard D'Ambola, manager of the Stefanelli (Club Delite) facility, testified that on the dates charged herein Quattrone was never authorized to make any purchases on behalf of Stefanelli, and he had no knowledge of such purchases. In June 1970 he received a duplicate bill in the mail from Galsworthy which reflected a purchase of alcoholic beverages. He contacted Milton Simpson, sales manager for Galsworthy, with reference thereto and was informed that this was merely a duplicate of a bill for a purchase made by Allora. He then informed Simpson that Allora was not associated with his establishment, was not authorized to make any purchases on behalf of his tavern, and that such activity should be stopped. He noted that at no time does Stefanelli ever send anyone to Galsworthy to pick up whiskey; that in fact any purchases are sent directly from the Galsworthy warehouse to the Stefanelli tavern.

Anthony Stefanelli testified that he had never employed Mike Allora nor did he ever authorize him or anyone by the name of "Mike" to pick up any liquor for him from Galsworthy. He was shown thirteen invoices from Galsworthy addressed to his tavern and denied that any of the orders reflected therein were either ordered or received by him.

Angelo Quattrone, permittee herein, denied that he represented Michael Allora to Bleakley as a partner in Stefanelli's tavern. He gave the following account: He has been employed by Galsworthy for approximately nine years prior to the dates charged herein. Michael Allora was one of his accounts. On one occasion he met Allora at the Galsworthy warehouse and introduced him to Bleakley. "I said, 'Al, I want you to meet a friend of mine, one of my customers, Mike Allora.' That is as far as it went. I didn't go to the office. I didn't speak to Mr. Padovano or anyone." He insisted that the meeting at the warehouse with Allora was merely coincidental and that Mike informed him he was "... picking up stuff for the Club Delite."

He admitted that he knew that Allora was on the non-delivery list in March 1970, and for a long period prior thereto, but was told by Allora that he was making a pick-up and delivery for Stefanelli. He also admitted that Stefanelli had been his account and knew that Stefanelli had been trading under the name Club Delite.

He further acknowledged that he had never seen Allora at Stefanelli's and that Allora, to his knowledge, was not affiliated with Stefanelli or was authorized to receive orders on his behalf.

Michael J. Allora testified that he is the principal stockholder of Gerald's Tavern, Inc., and admitted making the aforementioned purchases from Galsworthy without the knowledge of or authorization by Stefanelli. He admitted that Quattrone introduced him to Bleakley as a friend of his and said, "Mike. Take care of him." The purchases at Galsworthy were made by this witness in cash and were always picked up at the warehouse.

The reason he made these purchases presumably on behalf of Stefanelli was that he was on the non-delivery list.

From my evaluation of the entire testimony herein, I am persuaded and find that the permittee knowingly aided and abetted the sale and delivery of alcoholic beverages by Galsworthy, Inc., to Gerald's Tavern, Inc., then the holder of a plenary retail consumption license for premises 90 Sussex Avenue, Newark, whose name at the time of the said sales and deliveries appeared on the non-delivery list.

The evidence clearly shows that Bleakley permitted the sales of alcoholic beverages to Allora upon the representation by this permittee that Allora was a friend of his; that Bleakley would be doing the permittee a favor by selling Allora the alcoholic beverages, and that the said purchases were made for and on behalf of Stefanelli. On the other hand, Bleakley's testimony was forthright and credible. I reject the permittee's explanation that the initial conversation with Bleakley was not made for the purpose of inducing him to make the sale and delivery of alcoholic beverages to Allora.

Under all of the circumstances herein, I find that the charge has been established by a fair preponderance of the credible evidence, indeed by substantial evidence, and recommend that the permittee be found guilty. The permittee has no prior adjudicated record. It is further recommended that the permit be suspended for thirty days.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the finding and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of January 1973,

ORDERED that the Unlimited Solicitor's Permit No. 1762, for the 1972-73 permit period, issued by the Director of the Division of Alcoholic Beverage Control to Angelo Quattrone of 339 Grafton Avenue, Newark, be and the same is hereby suspended for thirty (30) days, commencing 7:00 a.m. on Tuesday, January 23, 1973 and terminating 7:00 a.m. on Thursday, February 22, 1973.

Robert E. Bower  
Director

5. APPELLATE DECISIONS - HOTSY-TOTSY'S PUB, INC. v. JERSEY CITY.

|   |   |                       |
|---|---|-----------------------|
| Hotsy-Totsy's Pub, Inc.,  | ) |                       |
| Appellant,  | ) |                       |
| v.  | ) | On Appeal             |
| Municipal Board of Alcoholic Beverage Control of the City of Jersey City, | ) | CONCLUSIONS and ORDER |
| Respondent.   | ) |                       |

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Vincent L. Verdiramo, Esq., Attorney for Appellant  
 Samuel C. Scott, Esq., by Bernard Abrams, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which on June 22, 1972 suspended appellant's plenary retail consumption license for premises 1725 Kennedy Boulevard, Jersey City, for fifteen days following its determination that the licensee permitted the acceptance of bets, i.e., gambling on the licensed premises, in violation of Rule 6 of State Regulation No. 20.

Appellant in its petition of appeal contends that respondent's action was erroneous in that proofs were lacking to support the charge. The Board's answer admits the jurisdictional allegations in the petition and denies the substantive contentions. Upon filing of the appeal an order was entered by the Director staying the Board's order of suspension pending further order herein.

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

The Board introduced the testimony of Detective Gerald Flannely of the Jersey City Police Department. His was the only testimony introduced on behalf of the Board and may be capsulated as follows: On January 25, 1972, about three o'clock in the afternoon, he entered the licensed premises, walked over to a person later identified as Ernest Soriero whom he saw standing on the patrons' side of the bar. Soriero removed a slip from his jacket pocket, which slip the witness identified as a bet slip. Soriero was placed under arrest. There was no testimony whatever indicating that Soriero had any connection with appellant or was other than a patron in the premises. There was no testimony whatever indicating that Soriero took bets or had taken bets in the premises or in fact had done anything but allow himself to be searched by the detective.

Appellant introduced the testimony of Ernest Soriero who stated that he was once an employee of appellant but had not been employed there for more than a year. He was an employee of Hudson County and on occasion would visit the premises. He denied taking any bets and further denied the slip found in his pocket was a betting slip.

Alfred L. Scalia testified that he is manager of appellant's premises and does all of the hiring for it. He was adamant that Soriero was not nor had been an employee for a long period and on the date of the detective's visit Soriero was in the premises only minutes before as a patron.

Appellant had been charged with allowing, permitting and suffering gambling in and upon the licensed premises. To substantiate such charge it must be affirmatively shown that the licensee-appellant did in fact allow, permit or suffer such conduct. Rules 6 and 7 of State Regulation No. 20. It must be established that appellant or his employees knew or should have known of the alleged unlawful activity.

No substantial proof was advanced in support of the charge. Proof must be by a fair preponderance of the credible evidence, indeed by substantial evidence. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). The mere presence of Soriero with a bet slip in his pocket in and by itself cannot inculpate appellant. The absence of any proof whatever that Soriero was an employee, coupled with the further absence of proof of any knowledge by appellant or any of its employees that Soriero possessed such slip, negate the charge.

Counsel for the Board alluded to an "anonymous tip" which the detective had received indicating that Soriero was an employee of appellant and that he was participating in gambling as being the basis of a factual question from which a conclusion could be drawn that appellant permitted the proscribed activity. Such contention is obviously without merit. The Board had the burden of proving the charge made before it and from the totality of the testimony before it and at this de novo hearing it is apparent that no such proofs existed.

I find that appellant has successfully sustained the burden of showing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is therefore recommended that the action of the Board be reversed and the charge herein be dismissed.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record 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 them as my conclusions herein.

Accordingly, it is, on this 18th day of January 1973,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby reversed, and that the charge herein be and the same is hereby dismissed.



Robert E. Bower  
Director