

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

January 23, 1968

BULLETIN 1774

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Hackensack) - GAMBLING (NUMBERS BETS) - PRIOR SIMILAR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 120 DAYS.
2. DISCIPLINARY PROCEEDINGS (Hoboken) - POSSESSION OF INDECENT MATTER (MOTION PICTURE FILMS) - LICENSE SUSPENDED FOR 45 DAYS.
3. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1967 TO SEPTEMBER 30, 1967 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 58 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20).
4. STATUTORY AUTOMATIC SUSPENSION (Union City) ORDER LIFTING SUSPENSION.
5. DISCIPLINARY PROCEEDINGS (Highlands) - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (West New York) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

STATE OF NEW JERSEY
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1100 Raymond Blvd. Newark, N.J. 07102

January 23, 1968

BULLETIN 1774

1. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) -
PRIOR SIMILAR RECORD OF PREDECESSOR IN INTEREST -
LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary)
Proceedings against)

GEORGE & EVELYN FORSTER &)
NATHANIEL FORSTER CORPORATION)
t/a George's Club 20)
20 Bridge Street)
Hackensack, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-2 issued by the City Council)
of the City of Hackensack.)

Gross and Gross, Esqs., by R. Michael Gross, Esq., Attorneys
for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to charges as follows:

"1. On November 1 and 5, 1966, your predecessor in interest, George Forster & Evelyn Forster, t/a George's Club 20, then the holder of a plenary retail consumption license for premises 20 Bridge Street, Hackensack, N.J., which license was transferred to you for the same premises, effective November 7, 1966, allowed, permitted and suffered gambling in and upon the licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On November 1 and 5, 1966, your predecessor in interest, George Forster & Evelyn Forster, t/a George's Club 20, then the holder of a plenary retail consumption license for premises 20 Bridge Street, Hackensack, N.J., which license was transferred to you for the same premises, effective November 7, 1966, allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon the licensed premises; in violation of Rule 6 of State Regulation No. 20.

"3. On November 10, 1966, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"4. On November 10, 1966, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

(The license having been transferred on November 7, 1966, it necessarily follows that Charges 1 and 2 (which refer to the dates of November 1 and November 5, 1966) are leveled against the predecessor licensee, a partnership, and that Charges 3 and 4 (which refer to the date of November 10, 1966) concern the present licensee corporation which succeeded the partnership in conducting the business at the licensed premises. That a transferee continues to be liable for the violations of the transferor, see Rules 1 and 2 of State Regulation No. 16.)

ABC Agents R, S and G participated in the investigation which resulted in the institution of these proceedings.

Agent R testified that, accompanied by Agents S and G and Detective Gancarz of the Bergen County Prosecutor's office, he arrived at the vicinity of the licensed premises (described as a neighborhood bar) on November 10, 1966 at approximately 12:15 p.m. He had in his possession four "marked" one dollar bills and a numbers bet slip prepared by S. Both were later received in evidence. He and S entered first and sat at the bar. Two other patrons were in the tavern at the time. George Forster, identified as one of the partners of the predecessor partnership licensee and a major stockholder and president of the successor corporate licensee, was tending bar. When Forster approached the agents at the bar, R handed him the numbers slip and said, "Here's my bets for today, George." Forster took a slip from his pocket and compared the numbers on that slip with the numbers on the slip the agent gave him. Forster pocketed the slip and placed the slip the agent gave him on the back bar. He put the four "marked" one dollar bills in a small cash register behind the bar. Forster asked R "if they [the bets] were just for today" and R responded, "Yes, they were just for today."

At the time this transaction took place, G had entered the tavern and gone into a telephone booth. Upon leaving the telephone booth, G took a position immediately to the left of R. After a few minutes, G left the premises and re-entered a couple of minutes later accompanied by Detective Gancarz, whereupon Forster said, "It's the fuzz. I got to get to the slips." Forster removed the slips from the back bar and from his pocket, placed them in his mouth and started chewing. G and Detective Gancarz identified themselves. Agents R and S departed from the premises.

Referring to the occurrence of November 1, R testified that, accompanied by S, he entered the licensed premises at approximately 11:45 a.m. Again Forster was tending bar. After S left the tavern, R asked Forster to take a numbers bet "on 363, a dollar a day for November 1st, November 2nd, November 3rd and November 4th." No writing was made of the bet. Forster repeated the dates that the number was to be played and pocketed the money. R departed at approximately 12:15 p.m.

On November 5, R entered the licensed premises with S at approximately 11:45 a.m. and asked Forster for a slip of

paper. While Forster stood directly in front of the agents, R wrote on a slip of paper a numbers bet of one dollar a day for four days on the number 363. After receiving \$4 and the slip of paper, Forster read the slip, destroyed it, and placed the money in his pocket.

The testimony elicited of ABC Agent S, who had accompanied R to the licensed premises on November 1, November 5 and November 10, corroborated R's testimony as to the transactions which had occurred during the periods of time that the two agents were together in the tavern.

On cross examination it was revealed that the two slips of paper that Forster placed in his mouth on November 10 were approximately 1½ inches wide by 2 inches long.

ABC Agent G testified that he participated in the investigation of the matter now in trial with Agents R and S and Detective Gancarz on November 10. R and S entered the tavern at approximately 12:10 p.m. and G entered shortly thereafter. George Forster was tending bar. Upon receiving a signal from S, G went outside and re-entered with Detective Gancarz. R and S departed from the premises. The four "marked" one dollar bills were found in the smaller of two cash registers. Forster stated that "he doesn't know anything about it." A thorough search failed to produce the bet slip allegedly given by R to Forster.

On cross examination, G admitted that no physical evidence of gambling was found in the licensed premises. Forster had a cigar in his mouth; he did not observe Forster chewing.

In defense of the charges, George Forster testified that he recalled seeing R and S coming into the licensed premises on November 1. On that day S conferred with a patron concerning getting some laborers to help unload a truck on the following day. Both agents ordered alcoholic beverages, "shot a couple of games of pool" and departed. He did not "take any bets, place any bets or have conversation regarding bets on that day."

On the occasion of the next visit to the licensed premises by R and S, S conversed with Forster concerning "a truckload of wigs." The agents consumed a beer each and departed. There was no conversation concerning the making or the taking of bets.

On the next visit to the tavern by R and S (which Forster stated was prior to November 10), they ordered two bottles of beer and played pool "with a couple of fellows." S approached Forster and said, "Look, I'm going to the race track tomorrow. You want to place a bet?", to which Forster replied, "No, I don't want to place any bet. I don't know nothing about no horses." Thereafter, S attempted to show Forster how to bet. Forster said, "No, don't bother." R informed Forster of a "hunch" he had on a number and urged him to play it. However, no numbers betting was engaged in on the licensed premises.

On November 10, R and S walked in at rush time. One of them put \$4 on the bar and said, "George, give us two bottles of beer and some small change. I want to make some phone calls." Forster placed two bottles of beer and \$3.20 change on the bar. S entered a telephone booth, returned to

the bar, consumed some beer and exited from the tavern. R kept calling Forster. He (R) had "a paper in his hand." Forster was busy with another customer and said, "I'll be right there." A detective rushed up to the bar and said, "Don't move your hands. You're under arrest." At that time Forster had a pipe in his mouth. He did not take the slip of paper that R had in his hand. Upon request, Forster emptied his pockets. Concluding, Forster testified that he did not take a bet from anyone that day, nor did he take any numbers or slips of paper from anyone.

On cross examination, Forster testified that on November 10 he had set up the small cash register with change shortly prior to the occurrence in question. When the ABC agent gave him the four one dollar bills and asked for change, he placed the bills in the small cash register and took the change from there because it was closer. He denied that Agent G showed him four one dollar bills and asked whether they were the dollar bills that an ABC agent had given him in order to place a bet.

In rebuttal, Agent S denied that on November 1 he requested help to unload a truck; that he visited the tavern on any date between November 5 and November 10, and that on any date he told Forster he was going to the track and would be willing to place a horse race bet for him. Finally, S denied hearing R urge Forster to play a certain number on any occasion between November 5 and November 10, or that he or R on November 10 placed \$4 on the bar and asked for two bottles of beer and change.

R corroborated the testimony given by S in rebuttal and, in addition, testified that the \$4 which he gave to Forster on November 10 was a separate transaction and was not connected with any payment made for drinks. The \$4 was placed in the small cash register and he received no change from the \$4.

Licensee's attorney argued that the Division had not sustained the burden of proving the licensee guilty by a fair preponderance of the credible evidence.

Obviously, the major point of inquiry is factual.

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

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546, (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The general rule in these cases 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.

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

It is my view that the testimony presented by ABC Agents R and S was credible, factual and truly depicted the gambling activities which they described. On the other hand, I am convinced that Forster's denial of the gambling activities in the licensed premises (as described by the Division agents) is without substance. Forster's allegation that on November 10, 1966, he made change of \$4 for payment of two bottles of beer in order to enable one of the agents to make telephone calls was purely mythical and did not destroy the agents' claim that the four "marked" one dollar bills were given to Forster in payment of numbers betting.

The fact that there was no physical evidence of gambling found in the licensed premises is immaterial and of no consequence. Cf. State v. Campisi, 49 N.J. 238 (1967), wherein the Supreme Court held that tangible record of bets made by a bookmaker is not a prerequisite to a finding of guilt.

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charges.

The predecessor licensees have a prior record of suspension of license by the municipal issuing authority (1) for twelve days effective July 13, 1953, for sale to minors; (2) for seven days effective March 19, 1957, for hindering an investigation; (3) by the Director for fifteen days effective February 24, 1959, for sale in violation of State Regulation No. 38 (Re Forster, Bulletin 1269, Item 9); and (4) by the Director for fifteen days, effective May 3, 1966, after affirmance on appeal from suspension by the municipal issuing authority for possession of numbers slips (Forster v. Hackensack, Bulletin 1678, Item 1).

It is recommended that the prior record of suspensions of license for dissimilar violations (1), (2) and (3) be disregarded because occurring more than five years ago. However, in view of the prior record of suspensions of license of the partnership licensees, George and Evelyn Forster, now stockholders and officers of the licensee corporation (Re Golden Boy's Bar, Inc., Bulletin 1668, Item 3) for similar violation within the past five years, it is recommended that the license be suspended for one hundred twenty days. Re Turso, Bulletin 1756, Item 6.

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 and the

Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 28th day of November, 1967,

ORDERED that Plenary Retail Consumption License C-2, issued by the City Council of the City of Hackensack to George & Evelyn Forster & Nathaniel Forster Corporation, t/a George's Club 20, for premises 20 Bridge Street, Hackensack, be and the same is hereby suspended for one hundred twenty (120) days, commencing* at 2 a.m. Tuesday, December 5, 1967, and terminating at 2:00 a.m. Wednesday, April 3, 1968.

JOSEPH P. LORDI
DIRECTOR

*By order dated December 4, 1967, the suspension was deferred to commence at 2:00 a.m. Thursday, January 4, 1968, and to terminate at 2:00 a.m. Friday, May 3, 1968.

2. DISCIPLINARY PROCEEDINGS - POSSESSION OF INDECENT MATTER (MOTION PICTURE FILMS) - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against

ELSIE RUBBINACCIO
338 Bloomfield St. and
155 Fourth St.
Hoboken, N. J.

)
)
) CONCLUSIONS
AND ORDER
)
)

Holder of Plenary Retail Consumption License C-142 for the year 1966-67 and C-138 for the year 1967-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

Calligy & Flynn, Esqs., by Thomas P. Calligy, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On May 4, 1967, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting pictures and representations, viz., motion picture films depicting male and female persons engaged in acts of sexual intercourse, acts of sexual perversion and other lewd and indecent sexual poses, acts and practices; in violation of Rule 17 of State Regulation No. 20."

The Division's case was predicated on the testimony of two ABC agents whose version of what took place may be stated as follows: The agents, during noon hour on May 4, 1967, while in the course of an investigation of a licensee's premises found in the lower section of a metal cabinet located at the rear of the barroom a paper bag containing three reels of motion picture film and one empty reel. Louis Rubbinaccio (hereinafter Louis), son of the licensee, was tending bar, and Paul Rubbinaccio (hereinafter Paul), husband of the licensee, was working in the kitchen. One of the films was marked "Masseur", one "Our Daughters" and the third film was unmarked.

Agent S testified that he took the bag and its contents to his car where he placed it in the trunk; that, after he arrived home, he drove the car into his garage and later that evening obtained the films from the car and, by use of a projector, viewed the three films. On the following morning (May 5, 1967) he took the bag and the films to the Division where he and Agent D viewed the respective films. I am satisfied from the agents' testimony that continuity of the whereabouts of the films from the time when they were seized until the hearing herein has been adequately proven.

At the hearing herein, the films in question were viewed by use of a projector in the presence of the attorney for the licensee, the attorney appearing for the Division, Agents B and D and myself. I shall not attempt to describe the activities of the unclad males and females shown in the respective films, as to do so would serve no useful purpose. Suffice to say that they reached the depths of degradation by their unnatural and sordid sexual exhibitions.

Licensee testified that, although she practically spends no time in the place, she nevertheless had never seen nor had knowledge of any films being used on the licensed premises. She further stated that the cabinet wherein the bag was alleged to have been found was utilized for storage of dishes.

Paul testified that he was in the licensed premises when the agents found the bag containing the films but had never seen them previous thereto nor does he own a movie projector. Moreover, Paul stated that the cabinet is located in the dining section of the barroom and is used for storage of dishes.

Louis testified that at the time in question he was on duty as bartender when the agents found the bag containing the films in the cabinet, but that he had not been aware of its being there. He further stated that, since the incident, he made inquiry of various patrons concerning the films but none was able to give him any information. Louis also said that the type of bag wherein the films were contained is not used at the licensed premises.

Anthony Calabrese (the night bartender and employee of the licensee for the past eleven months) testified that he had never seen the films and recalled that a few weeks prior to the date when the films were found he had occasion to look into the cabinet but saw only dishes therein.

There is no dispute by anyone in this matter that, although the films were found in the cabinet located on the licensed premises, the search of the premises did not uncover

a projector or screen necessary to show the films.

There has been no evidence presented that the films had ever been exhibited on the licensed premises or that these films were available for rent or sale to anyone who might desire to obtain films of this nature.

Upon the evidence produced, it is recommended that the licensee be found guilty of the charge alleged.

Licensee has a previous record of suspension of license then held for premises 802 - 14th Street, Union City, by the municipal issuing authority for ten days, effective January 5, 1959, for sale to minors.

It is further recommended that the prior record of suspension for dissimilar violation occurring more than five years ago be disregarded and that, in view of the mere possession involved without any showing or sale on the licensed premises, the license be suspended for forty-five days. Cf. Re Sal-Ruby Corporation, Bulletin 1522, Item 7; Re Whitehouse Post #284 (American Legion), Bulletin 1514, Item 1.

Conclusions and Order

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

Licensee argues that the films were seized as the result of an illegal search and seizure and must be excluded from the evidence. Her reasoning proceeds as follows: The search herein can be justified only under the authority of R.S. 33:1-35, which authorizes ABC agents to conduct warrantless searches of licensed premises. The validity of such warrantless search in a criminal proceeding was upheld in State v. Zurawski, 89 N.J. Super. 488 (App. Div. 1965), aff'd 47 N.J. 160. However, licensee asserts that Zurawski is no longer valid because of two recent United States Supreme Court decisions, namely, Camara v. Municipal Court, 18 L. Ed. 2d 930 (1967), and See v. Seattle, 18 L. Ed. 943 (1967).

My reading of these two cases satisfies me that they are not applicable to the facts herein, nor do they invalidate the holding in Zurawski. Camara involved a conviction for refusing a housing inspector permission to enter an apartment without a warrant, although authorized to do so by the city housing code. See involved a conviction for refusing a representative of a fire department permission to inspect a locked commercial warehouse without a warrant, although such inspection was authorized by a city ordinance. Neither of these cases involved liquor licensed premises and the court took pains in both cases to point out that, in certain instances, there may be administrative entry without consent and without warrant because of the nature of the business. As the court stated in See, 18 L. Ed. at 947-8:

"We do not in any way imply that business premises may not reasonably be inspected in many more situations than private homes, nor do we question such accepted regulatory techniques as licensing programs which require inspections prior to operating a business or marketing a product. Any constitutional challenge to such programs can only be resolved, as many have been in the past, on a case-by-case basis under the general Fourth Amendment standard of reasonableness."

In Zurawski, the court noted the unique position of a liquor licensee as outlined in Blanck v. Magnolia, 38 N.J. 484, 490 (1962):

"From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied."

Zurawski continues:

"In Guill v. Mayor and Council of the City of Hoboken, 21 N.J. 574 (1956), the court paraphrased, with evident approval, the holding of Justice Collins in Hoboken v. Goodman, 68 N.J.L. 217 (Sup. Ct. 1902), in these words:

"***the sale of intoxicating liquor at retail is not one of the privileges or immunities of citizenship protected by the United States Constitution or the Fourteenth amendment thereto," but is rather a business subject to prohibition or or regulation***." (p. 584).

"The field of activity is such that entry into it is not a privilege of a citizen of the state or a citizen of the United States." Crowley v. Christensen, 137 U.S. 86, 11 S.Ct. 13, 34 L.Ed. 620 (1890)."

In Mazza v. Cavicchia, 15 N.J. 498, 505, the court stated:

"...it must be remembered that a license to sell intoxicating liquor is not a contract nor is it a property right. Rather it is a temporary permit or privilege to pursue an occupation which otherwise is illegal. In re Schneider, 12 N.J. Super. 449, 456 (App. Div. 1951)... 'The sale of intoxicating liquor is in a class by itself.' Bumball v. Burnett, 115 N.J.L. 254, 255 (Sup. Ct. 1935)...

"The right to regulate the sale of intoxicating liquors, by the Legislature, or by municipal or other authority under legislative power given, is within the police power of the state, and is practically limitless." Meehan v. Board of Excise Commissioners, 73 N.J.L. 382, 386 (Sup. Ct. 1906), affirmed 75 N.J.L. 557 (E. & A. 1908)."

The court, in Zurawski, also pointed out that a search without warrant of premises licensed for the sale of intoxicating liquor has been upheld in other jurisdictions because of the special nature of the business.

Licensee, in extension of the aforesaid contentions, further argues that although she was required, in making application for her license and as an integral part thereof, to consent to such search, the consent is valid only if the underlying statute which requires it is constitutional. "Otherwise

it is clearly not a consent in the sense of a waiver of constitutional rights."

Since I am persuaded that the statute, as judicially interpreted by Zurawski, is valid, the consent is a valid consent. There is no dispute that the licensee knowingly signed this consent at the time of the making of the application. Any person has a right to voluntarily consent to a waiver of constitutional privileges. The court in Zurawski, in further considering such waiver, continues:

"In Zukowski v. State, 167 Md. 549, 175 A. 595 (Ct. App. 1934) defendant licensee sought to suppress evidence seized during such a search and which supported an indictment against him for possession of liquor upon which no tax had been paid. Denial of the motion to suppress was affirmed. The court said:

"The search***was made with his consent voluntarily and formally given, under the terms of the statute, to induce the issuance of a license to him for the sale of alcoholic beverages. The consent was none the less voluntary because of the fact that it was a prerequisite to his obtaining a license. In thus authorizing the search he debarred himself from contending that it was unlawful.' (175 A. at 597).

"In Fischer v. State, 195 Md. 477, 74 A.2d 34 (Ct. App. 1950) the seizure of evidence used to convict a tavern licensee for operating a horse race gambling establishment in the premises was validated on the same basis of express consent to search. Waiver of the right of privacy as to licensed premises was also recognized in Hines v. State, 362 S.W.2d 652 (Tex. Ct. Crim. App. 1962); Oklahoma Alcoholic Beverage Con. Bd. v. McCulley, 377 P.2d 568 (Okla. Sup. Ct. 1963) and Hurless v. Department of Liquor Control, 73 Abs. 161, 136 N.E. 2d 736 (Ohio Ct. App. 1955), appeal dismissed 164 Ohio St. 492, 132 N.E.2d 107 (Sup. Ct. 1956)."

More fundamentally dispositive of these issues is the fact that the foregoing arguments in the exceptions are raised at the wrong time, before the wrong forum. A challenge to the constitutional validity of a statute can only be adjudicated by a civil court of competent jurisdiction, since statutes are presumed to be valid on their face. Cf. Klein and Tucker v. Fairlawn and Schweder, Bulletin 1175, Item 3; Blanck v. Magnolia, 73 N.J. Super. 306. The Director is not empowered to disregard or repeal a statute. As hereinabove stated, such authority is vested in a court of plenary jurisdiction. Cf. Blanck v. Magnolia, supra; Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940).

I therefore find that these contentions are without merit and must be rejected.

It is further argued that the facts are insufficient under the Fourteenth Amendment to establish a violation of Rule 17 of State Regulation No. 20. The rationalism for this argument is that "In the instant case there is no evidence of knowledge or participation by anyone connected with the

management with these films."

The Alcoholic Beverage Law invests the Director with the right to institute disciplinary proceedings by R.S. 33:1-31, which provides:

"Any license, whether issued by the director or any other issuing authority, may be suspended or revoked by the director, or the other issuing authority may suspend or revoke any license issued by it, for any of the following causes:

...
"g. Any violation of rules and regulations."

Rule 17 of State Regulation No. 20 implements the statute and relates to such disciplinary proceedings. In its applicable part, the rule sets forth that:

"No licensee shall...have in his possession... any obscene, indecent, filthy, lewd, lascivious or disgusting recording, printing, writing, picture or other matter."

The evidence shows that these films, which are indisputably obscene and come within the proscription of this rule, were found on the licensed premises in a cabinet within the sole control of the licensee, her agents or employees. It is sterile and useless to suggest that "the films could have been placed on the premises by any patron exiting thru the rear door." I find from the record herein that the licensee, her agents or employees knew or should have known of the presence of the films on the licensed premises and was aware of the nature of such films.

There has been no affirmative showing that any patron or passerby had access to this cabinet; and it is unrealistic to believe that any patron or passerby would use the same as a hiding place for his property. The regulation makes the mere possession of indecent matter on licensed premises a violation. The Hearer's reference to the fact that no evidence was presented to show that the films had been exhibited on the licensed premises was read out of context in the licensee's exceptions. Such reference related to the Hearer's recommendation of penalty and had nothing to do with the guilt or innocence of the licensee on the charge.

There is no need under this regulation to show that the licensee either exhibited the films, made them available to patrons or displayed them in any other manner. It would be just as unreasonable to hold that the licensee would not be liable for the possession of obscene books or other material unless they were actually distributed and displayed to her patrons.

The underlying philosophy of the Alcoholic Beverage Law imposes upon the Director the stringent regulation of licensed premises. The authority of the Director to promulgate and enforce such regulation has been traditionally upheld. Franklin Stores Co. v. Burnett, 120 N.J.L. 596 (Sup. Ct. 1938); State v. Zurawski, *supra*; Meehan v. Excise Commissioners, 73 N.J.L. 382; R.S. 33:1-39.

Additionally, the responsibility of a licensee for

the possession of proscribed material on licensed premises is established, whether the same was placed therein by the said licensee or her agent, servant or employee, even without her knowledge. As the court said in Mazza v. Cavicchia, supra, the knowledge of the licensee is not necessary to sustain a conviction of the charge. See also Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Finally, the licensee advocates modification of the recommended penalty "in the interests of justice." As pointed out hereinabove, the Hearer took into consideration the fact that while there was possession, no evidence was presented that the films had been exhibited on the licensed premises or that they were available for rent or sale. He therefore recommended a lesser penalty than that imposed in the cases cited in his report. It is my view that under all the facts and circumstances, the recommended penalty is amply warranted and fully justified.

After carefully considering all of the evidence adduced in this matter, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions with supportive argument, I concur in the findings and conclusions of the Hearer, except as hereinabove stated, and adopt them as my conclusions herein.

Accordingly, it is on this 4th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-138, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Elsie Rubbinaccio for premises 338 Bloomfield Street and 155 Fourth Street, Hoboken be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. Monday, December 11, 1967, and terminating at 2:00 a.m. Thursday, January 25, 1968.

JOSEPH P. LORDI
DIRECTOR

4. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp. #313

In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Consumption License C-138) ON PETITION
 Issued by the Board of Commissioners) ORDER
 of the City of Union City to)

VINCENT BRIAMONTE & PATRICK DiCiancia)
 619 New York Avenue)
 Union City, N.J.)

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on September 13, 1967, Patrick DiCiancia, one of the licensees-petitioners, was fined \$50 in the Union City Municipal Court after plea of guilty to a charge of sale of alcoholic beverages to a minor on August 11, 1967, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that the municipal issuing authority has suspended the license for ten days effective November 13, 1967, after the licensees' plea of guilty to a charge in disciplinary proceedings alleging the same sale to the minor. It appearing that the municipal suspension has been served, I shall lift the statutory automatic suspension Re Dantschyschyn, Bulletin 1754, Item 9.

Accordingly, it is, on this 14th day of December, 1967,

ORDERED that the statutory automatic suspension of said license C-138 be and the same is hereby lifted, effective immediately.

JOSEPH P. LORDI
 DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

YOLANDA KINLAN)
t/a Wanda's Bar)
220 Bay Ave.)
Highlands, N.J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Mayor and Council of the Borough of Highlands.)

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 21, 1967 she permitted playing of a card game for money stakes on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Licensee (in her former name of Yolanda Noerenberg) has a previous record of suspension of license by the municipal issuing authority for fifteen days effective January 5, 1961, for violation of local hours ordinance.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Chaled, Inc., Bulletin 1758, Item 3.

Accordingly, it is, on this 26th day of December 1967,

ORDERED that Plenary Retail Consumption License C-8, issued by the Mayor and Council of the Borough of Highlands to Yolanda Kinlan, t/a Wanda's Bar, for premises 220 Bay Ave., Highlands, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, January 2, 1968, and terminating at 2 a.m. Friday, January 12, 1968.

JOSEPH P. LORDI
DIRECTOR

