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

BULLETIN 2194 August 20, 1975

TABLE OF CONTENTS

ITEM

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

BULLETIN 2194 August 20, 1975

1. APPELLATE DECISIONS - FRIENDLY TAVERN, INC. v. SOUTH AMBOY.

Friendly Tavern, Inc.)
Appellant,)
v.) On Appeal
Common Council of the City of South Amboy,) CONCLUSIONS and ORDER
Respondent.)

John M. Lucitt, Esq., Attorney for Appellant
John J. Vail, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant conducts a tavern business at 359 Bordentown Avenue, South Amboy. On August 7, 1974, it filed a place-to-place application for a transfer of its liquor license to premises adjacent thereto at 361 Bordentown Avenue, located at the southeast corner of Bordentown Avenue and Pine Avenue, South Amboy.

After a public hearing, the respondent Mayor and Council of the City of South Amboy (Council), on October 24, 1974, denied the application for the following stated reasons:

> "...no proof was submitted by applicant to substantiate the application and for the reason that it will be detrimental to the health and welfare of the residents of the neighborhood."

In its petition of appeal filed on November 22, 1974, appellant contends that the Council's action was erroneous in that (1) no evidence was presented at the public hearing contrary to appellant's application; (2) no legal reason was given for the denial of appellant's application; and (3) its action was arbitrary and unreasonable.

In its answer, the Council denies the substantive matters urged in the petition of appeal and asserts that, since no proof was presented by appellant in support of its application for transfer, it was compelled to deny the said application. The Council also asserted, in its separate defense, the following:

> "The respondent reserves the right to move, at any time either prior to or at the hearing of this matter for the entry of an order referring this matter back to the South Amboy licensing authority in order that the appellant may be compelled to present all of its proof to the licensing authority so the licensing authority may make a rational and independent judgment thereon, which it has not been able to do to date."

Thereupon, the parties to this appeal stipulated that the matter of the application for transfer shall be remanded to the Council at a regularly scheduled meeting for its reconsideration; that the proceedings be stenographically transcribed; and that the transcript of the hearing before the Council and the exhibits, augmented by oral argument, be submitted to the Division, pursuant to Rules 6 and 8 of State Regulation No. 15.

Pursuant to the said stipulation, a transcript of the hearing held by the Council on January 21, 1975 to consider the subject application for place-to-place transfer, the exhibits, a transcript of the hearing held by the Council on February 10, 1975 wherein the Council's determination was recorded and oral argument were submitted by the parties herein.

At the hearing held by the Council on January 21, 1975 to consider the subject application, Joseph E. Patasewicz, president of the corporate appellant, testified that the tavern business had been operated at its present location for the past twelve years. He desired to transfer the tavern operation to the adjacent corner plot because, at its present location (which appellant rented from the owner thereof), the quarters were too cramped to adequately serve its patrons; the heating and sanitary facilities were insufficient. The ventilation was poor and the premises presented a safety and health hazard.

Appellant owns the proposed location and it intends to expend a considerable sum of money for the completion of extensive improvements thereat. Off-street parking for nine cars would be provided at the proposed location, whereas, at its present location, there are no facilities for off-street parking.

The witness stated that there were no parking problems in the area presently. There is a traffic light in operation at the subject intersection. He also asserted that appellant never had any problem with the police department.

The witness explained that the facility is being operated as a neighborhood tavern; that he intended to maintain it as such; at least half of the patrons walk to the tavern; and that, at peak business, the patronage numbers approximately twelve or thirteen. The business is presently being conducted in a room sixteen feet by twenty feet in size, and does not permit the installation of better sanitary facilities.

John Szatkowski, testified that he patronizes the subject liquor facility occasionally; that most of the patrons reside in the neighborhood; that the proposed facility would benefit the patrons thereof; and that they have waited many years for a change.

At this point in the proceedings before the Council, members of the public, and, in particular, those who desired to articulate their objections to the proposed transfer, were invited to do so.

Frederick Resse, who resides at 407 Bordentown Avenue, South Amboy, testified that he is opposed to the proposed transfer because the move would bring the tavern closer to the residential section of Bordentown Avenue; that the move would generate increased traffic at the intersection; this would add to the noise factor and exacerbate the accident rate thereat. He testified that he never heard noise emanate from the tavern and that it has been "a very fine neighbor." He is primarily concerned with the safety factor. The witness assumed that an increase in patronage would result in an increase in accidents. He did not know whether or not any of appellant's patrons were involved in any of the accidents which occurred at the intersection.

Joseph Sniadoch, who resides on the same street, testified that he objects to the tavern being moved closer to his home because, three or four weeks prior to the hearing, two unidentified individuals engaged in a fight on his property causing damage to his hedges. He did not, with any degree of certainty, know whether or not the individuals had been patrons of the subject tavern prior to occurrence complained of. He felt that taverns belonged in the "woods", not in a residential section of a city.

Oliver Donovan, a resident of South Amboy, testified that he, too, is concerned with the parking, noise and traffic problems mentioned by his neighbors. He has patronized the tavern occasionally on weekends. He has usually walked to the tavern and believed that at least half of the patrons did likewise.

Considering the fact that the seating capacity at the proposed bar would be increased from twenty seats (the capacity at the present location) to thirty-five seats (the capacity at the proposed location) and with the addition of a parking lot at the proposed location, he felt that the transfer would have no effect upon the parking problem.

Insofar as the operation of the tavern is concerned he opined that "...it is a good neighborhood bar; it is a good meeting place basically for the neighborhood."

With respect to the noise problem, he agreed with Resse that the intersection was somewhat noisy. This was mainly due to the traffic at the intersection. The noise at the tavern was confined to the inside thereof and, when he patronized the tavern it wasn't "horrendously" loud.

Donovan was aware that there was a high accident rate at the intersection. However, no one attributed the accidents to the patronage of the tavern. Donovan saw no reason to block the transfer of the liquor license for so short a distance.

Al Johnson, who resides at 444 Bordentown Avenue, South Amboy, testified that he was in full agreement with the testimony of Donovan, the previous witness. He added that the tavern was one of the "most quiet" and "peaceful" bars in the municipality.

Betty Conlogue, who resides two doors distant from the proposed location, expressed fear that the transfer, if effected, would attract increased patronage, with attendant increase in noise. She also felt that the proposed parking entrance on Bordentown Avenue would create a traffic hazard.

Louisita Resse, whose address was not stated for the record, believed that a transfer to the corner would increase the patronage, which in turn, would increase the traffic hazards at the intersection.

Clara Whitman, who resides nearby, testified that she was present at a prior hearing when Sergeant Tedesco of the local police department and its traffic coordinator, spoke of the heavy traffic and of the traffic hazards at the subject intersection. He did not discuss what effect, if any, the tavern had upon the traffic.

From all of the testimony submitted at this hearing and from an examination of the exhibits, I find that Bordentown Avenue contains a mixture of various commercial and business enterprises and residences, the preponderance of which are residential buildings.

At the conclusion of the public hearing, the Council reserved decision to a future date.

At the meeting of the Council which consists of four Councilmen and the Mayor on February 10, 1975, a motion was made to deny the application for transfer for the reasons stated therein, as follows:

> "1. The public necessity and convenience does not require the transfer of the license to that location.
>
> 2. There is no credible proof of a deficiency in the present facilities.
>
> 3. A transfer of the license to the proposed location will affect local conveniences and interests in an adverse manner and have an adverse effect on the value of adjoining properties.
>
> 4. The transfer to the proposed location is not in the public interest.

5. The transfer to the proposed location will result in an undesirable intrusion of a business into a prime residential area which is gradually reverting to a residential status through the loss of several businesses in the area and the denial of the application of other businesses to expand therein.

6. The proposed location at the intersection of two County roads will destroy the neighborhood character of applicant's business and result in an undesirable expansion of applicant's business.

7. The intersection to which the transfer is proposed is a poor physical location for a tavern business due to the volume of traffic and the accident frequency at said intersection and the proximity of the tavern entrance to the streets.

8. There are sufficient tavern businesses within the area to serve the neighborhood.

9. The proposed location will have an adverse effect on adjoining properties and their value and on property owners and their health and welfare.

10. Moving the license to the proposed location will merely relocate the present noise, light and other incidents of the operation of a tavern further into a residential district to the detriment of persons who have not been previously affected by the operation of the licensed business.

11. The proposed move will leave a widow without income and a vacancy suited only to a tavern business, resulting in the probability of two taverns where one existed previously, since the present location will constitute a non-conforming use.

12. It is not desirable to allow the expansion of applicant's business from twenty to thirty-five stools in view of the evidence offered in the case, especially the limited parking facilities and heavy traffic at the intersection.

13. There is no evidence of applicant's inability to renovate his present facilities or buy same, or enter into a long term lease."

Two of the Councilmen voted in favor of the motion and the other two Councilmen voted against the motion. It was represented that the Mayor has no vote. The attorney for the Council correctly ruled that, inasmuch, as the vote resulted in a tie, the motion

failed passage. See Pasqua and Vecchione v. Weehawken, Bulletin 1363, Item 1; Manno v. Clifton, 14 N.J. Super. 100 (App. Div. 1951). The Council went into caucus. After the meeting was reopened, no motion was made to grant the application for transfer. This constituted an ipso facto denial of the application for transfer. Thereupon, the Council president stated that the matter would go to the ABC (Division) for its determination. It is basic that a municipality's failure to act upon an application is tantamount to a denial.

At the de novo hearing, the Council relied upon the reasons contained in the motion which is set forth above in justification of the denial of the transfer. As previously noted the vote on the motion resulted in a deadlock.

This, in my opinion, serves to dilute the weight or the value to be given to the matters therein contained. Nonetheless, I shall consider each of the reasons stated therein.

I observe that in paragraph one of the motion it is stressed that "public necessity and convenience does not require the transfer of the license to that location"; that in paragraph three it is recited that the transfer to the proposed location would "affect local conveniences and interests in an adverse manner" and paragraph four contains the language that the proposed transfer "is not in the public interest". It appears to me that the general terms therein contained are terms of general resolution and are not based upon specific facts contained in the record.

In paragraph two, it is recited that "there is no credible proof of a deficiency in the present facilities". In reviewing the uncontroverted testimony of Patasewicz, I find proof to the contrary.

Paragraphs five and nine, may be considered together. Reference is made therein to the effect that the transfer to the proposed location would result in an undesirable intrusion of a business into a prime residential area; that it would have an adverse effect upon adjoining properties and their value on property owners and their health and welfare.

If the proposed transfer were, in fact, from a different area of the municipality to the subject area, I could understand the logic of these allegations. However, the transfer is from a plot adjoining the corner to the corner plot. To the north on Bordentown Avenue there is a railroad crossing, and to the south there are located a hospital and a supermarket. In between are located various business and commercial establishments such as a gasoline station, a diner, a milk distributor, a firehouse, etc. It is my view that the transfer from one plot to the adjoining plot will have no substantial effect upon the character of the neighborhood. Furthermore, there is nothing in the record which

substantiates the assertions that the transfer would have an adverse effect on the adjoining properties and their value, and on the health and welfare of the property owners.

In paragraph six,it is alleged that the proposed transfer would destroy the neighborhood character of appellant's business and would result in an undesirable expansion of its business. It is my view that the amount of expansion is conjectural. In any event, it must be assumed that appellant is well aware of the fact that an application for the renewal of the license must be made annually. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), residents of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic Beverage Law, the licensee would subject its license to suspension or revocation. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown et al., Bulletin 1572, Item 1.

In paragraph seven, it is alleged that due to the high volume of traffic at the subject intersection and the accident frequency thereat, it would be inadvisable to transfer to the corner plot. I find that the assertion made herein of high density traffic and accident frequency is apparently contradictory to the allegations made in paragraph five that the area is prime residential in character. In any event, it has not been established that the proposed transfer, if granted, would increase the traffic congestion or the accident frequency. Furthermore, the off-street parking to be provided at the proposed location would alleviate parking problems in the area.

In paragraph eight, it is contended that there are sufficient taverns within the area to serve the neighborhood. Inasmuch as the premises, present and proposed, are located on adjoining plots, it is apparent that the transfer of the license would not result in the addition of a liquor outlet in the area.

In paragraph ten, it is alleged that the proposed transfer would relocate the present noise and other incidents connected with the operation of a tavern further into a residential district. I find the record barren of any evidence to substantiate any inference that appellant's business was carried on as a nuisance. Therefore, this contention is without merit.

In paragraph eleven, it is contended that the proposed move would leave a widow without an income and a vacancy suited only to a tavern business which may result in the establishment of two taverns side by side. An economic hardship that may be visited upon the present landlord is irrelevant to a determination of this matter upon the merits. Insofar as the possible establishment of two tavern businesses alongside each other is concerned, that is a matter for the Council to decide if and when it is confronted with that situation.

The allegations contained in paragraph twelve, to the effect that it is not desirable to allow the expansion of appellant's business from twenty to thirty-five stools in view of the evidence offered in the case, especially the limited parking facilities and heavy traffic at the intersection has, in the main, been answered hereinabove and is without merit. In particular, I have discerned nothing in the record to sustain the allegation of insufficient parking facilities.

It is my view that the allegation contained in paragraph thirteen which recites that there is no evidence of appellant's inability to renovate his present facilities or purchase same, or enter into a long term lease, irrelevant to arriving at a determination of the issues in this proceeding.

In reviewing the factual complex herein, I find that the reasons stated by the Council in the motion which resulted in a tie vote and upon which the Council relied upon in this appeal proceeding are either not substantial or unsubstantiated.

In my evaluation of the record herein, including the exhibits and the argument of counsel, I find no factual or legal foundation to support the Council's action.

For the reasons stated, I conclude that appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15. It is, therefore, recommended that the Council's action be reversed, and that the application for place-to-place transfer be granted. However, upon examining appellant's testimony, it is fair to assume that it desired to retain its characteristic as a neighborhood tavern in its proposed location. Thus, a limitation by way of special condition should be imposed to limit the occupancy of patrons permitted in the premises at any time.

It is, accordingly, recommended that an order be entered reversing the action of the Council, and directing it to grant the place-to-place transfer of appellant's license in accordance with plans to be approved by the Council or such other governmental board or authority as may be required, expressly subject, however, to the special condition that occupancy of the said premises be limited to forty (40) persons.

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

Accordingly, it is, on this 6th day of June 1975,

ORDERED that the action of the respondent Mayor and Common Council of the City of South Amboy be and the same is hereby reversed, and respondent be and is hereby directed to grant the said transfer in accordance with the application filed therefor, expressly subject to the special condition that appellant shall limit occupancy of its premises to forty (40) persons; and it is further

ORDERED that the said special condition shall be a continuing condition which respondent may reimpose upon any renewals of the said license which may be granted.

LEONARD D. RONCO
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING - NUMBERS GAME - FOOTBALL POOL - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

Willie E. Spearman
t/a Ment's Lounge
44 N. Olden Avenue
Trenton, N.J.,

Holder of Plenary Retail Consumption License C-13, issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

Irving Friedman, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to charges alleging that, on September 17 and 19, and October 2 and 3, 1974, he permitted gambling upon his licensed premises, viz., making bets in a lottery, commonly known as the "numbers game"; and, on October 3, 1974, he allowed, permitted and suffered memoranda pertaining to "football pool" in and upon his licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

In behalf of the Division, ABC agent S testified that he and ABC agent M entered the licensed premises on September 17, 1974 at 11:15 a.m. and positioned themselves at the bar. He observed a patron, later identified as Will or Willie Brown, exchange money and slips of paper with several other patrons.

Suspecting Brown to be engaged in accepting bets, agent S immediately placed a "numbers" bet with Brown for which he paid one dollar. He spoke in a normal tone of voice. At that moment, the barmaid on duty, who was later identified as Lillian Spearman, was standing behind the bar directly in front of them.

Agent S, accompanied by agent M, again visited the licensed premises on September 19, 1974, at 11:00 a.m. Mrs. Spearman was tending bar. Again he observed Brown engaging in accepting monies and slips of paper. He heard Brown announce, in a loud tone of voice, that he was rejecting one slip as it was four dollars short, and that he would return at two o'clock because "that is when the numbers would go in". He observed Brown enter the back-bar area, obtain a hand gun and place it in his pocket. The agent placed another "numbers" bet with Brown. At this time the barmaid was standing in front of them and behind the bar. He then departed the premises.

Returning with agent M on October 2, he observed Brown and a male bartender, later identified as Jessie Thompson, in the establishment. Brown sat within one stool of him and he overheard a patron ask Brown if he could place a "numbers" bet there; to which Brown replied that there would be no objection because "they know what I'm doing". At the time of this conversation, the bartender Thompson was serving that particular patron. The agent also placed a dollar bet on a number. Agent M was present and observed the transactions.

On October 3, at about 11:40 a.m., agent S returned to the premises as part of a raiding party consisting of agents M, G and D, accompanied by Detective Coy of the Trenton Police Department. Agent S entered alone and noted that Thompson was tending bar and Brown was present. Thompson and three patrons were playing pool but left the game in order to serve patrons. The licensee, Willie E. Spearman, took his place in the game at the conclusions of which, the agent observed that the winner was paid a dollar by each of the losers.

With bartender Thompson standing directly in front of him, agent S placed a "numbers" bet with Brown, using two "marked" one-dollar bills. Thompson then told Brown that he wanted to play the same numbers that were played by the agent. Brown jotted the numbers on the same slip of paper, and while Brown was giving Thompson change of a twenty dollar bill given to him by Thompson, agent S left the premises and joined his fellow agents and the detective who awaited outside.

Thereupon, all of the agents and the detective entered. Coming in through a rear door, the detective approached Brown who was then engaged in making notations on a slip. They seized the slip which contained the "numbers" bets previously placed with Brown by the agent and by Thompson. One of the "marked" bills was retrieved from Brown.

ABC agent M testified in substantial corroboration of the testimony of agent S, adding that he had observed the bartender, Thompson, place "numbers" bets with Brown following the departure of agent S.

Detective John T. Coy of the Trenton Police Department testified that, on October 3, 1974, he entered the premises by a back door, came upon Brown who was then writing slips which

he identified as "numbers" slips. He, thereupon, seized them and identified them for evidence purposes.

ABC agent D testified that he was with the raiding party, searched the premises and discovered three sheets which contained a list of football games bettors might use lying on the cash register. After having qualified as an expert on gambling, agent D identified several slips as records of "numbers" bets, and the sheets containing the list of football games as blanks available for upcoming games. The sheets also contained the name of the winner of the previous week's games and the amount won.

ABC agent G corroborated the testimony of agent D, and added that the football pool sheets were "laying right on top of the cash register". He stated that one of the two one-dollar bills previously marked for identification was recovered from Brown and the other one-dollar bill was recovered from Thompson.

Lillian Spearman, the licensee's wife, asserted that she assists as a barmaid only when a regular employee is not present. She denied the presence of any gambling activity in the licensed premises. She maintained that the juke box was playing continuously; and that, with such high volume, conversations could not be overheard.

The licensee, Willie E. Spearman, testified that, due to being engaged in other enterprises, he is out of the tavern most of the time. He entrusted the operation of the bar to his bartender, Jessie Thompson. The juke box in his premises plays constantly and plays so loud that the bartenders must ask patrons to repeat their orders for drinks three of four times.

Referring to the football pool tickets, Spearman testified that the first time he saw that paper was when one of the ABC agents seized it from the top of the cash register. He was not aware of its presence in the tavern.

Spearman explained that he has never permitted playing pool for money. At most, he has permitted playing pool for drinks.

Upon being questioned relative to whether he has seen Willie Brown in the licensed premises, Spearman replied: "Yes, he comes in all the time." He never saw Brown take money or write "numbers" for anyone in the tavern. He would not permit that type activity in his tavern.

Spearman was not in the tavern on the first three days mentioned in the charge at the times that the ABC agents were making their investigation. He was in the tavern on October 3, 1974 for some time prior to the raid. He saw

Brown in the tavern; however, he did not see anyone approach him. He did not see agent S approach Brown and hand him money.

On cross examination, Spearman conceded that the football tickets were found on top of the cash register; that they were placed there by Thompson; and that he knew that the writings found in the premises were football pool tickets.

Jessie Thompson, who is employed as a bartender by Spearman, testified that someone brought in the football pool tickets the day prior to October 3, and told him to give it to Spearman. The tickets were folded, he did not know that they were football pool tickets. He placed them on top of a cash register that was used only on weekends and when Spearman came in on the following day, he forgot to inform him about them. Spearman never saw them prior to the raid.

No one ever plays pool for money. Players sometimes play for a beer. The juke box is played practically all times. The tone is extra loud.

Willie Brown is one of the customers who patronizes the tavern steadily. He never saw anyone converse with Brown, or hand Brown money. He never saw Brown writing "numbers" in the tavern.

A "marked" bill was found in his possession because Brown gave him a bill in exchange for four quarters which he had in his pocket. He did not, on October 2 or October 3, notice three different males enter the tavern and approach Brown. He did not see agent S give Brown any money.

Relative to the date of October 3, after Thompson denied seeing anyone giving Brown any money, the questioning revealed the following:

"Q Did you see Brown write anything on a slip of paper that morning?
A No.
Q You weren't paying any attention to Brown?
A No, not that close, no."

Concerning the football pool tickets, Thompson stated that he did not know the name of the male who requested that he give the tickets (which he believed to be a message or a letter) to Spearman. The male was a patron of the tavern.

Due to the sharp conflict in the testimony, I have detailed the testimony vital to the adjudication of this matter. Preliminarily, I observe that we are dealing with a purely

disciplinary action; such action is civil in nature and not criminal. In re Schneider, 12, N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a basically factual situation, the credibility of witnesses must be weighed. Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as 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).

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

I

Numbers Game

I am imperatively persuaded that the version given by agent S relative to the numbers activity engaged in by Brown in open view upon the licensed premises on all of the dates mentioned in Charge No. 1 is factual, credible, clear and convincing. This testimony was amply buttressed by that of agent M. On the other hand, I was totally unimpressed by the testimony of the licensee and of his employees to the effect that they were unaware of Brown's activity.

A licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

Additionally, it is basic that, in disciplinary proceedings, a licensee is fully accountable for all violations committed or permitted by his agents, servants or employees. Rule 33 of State Regulation No. 20. Cf. in re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Furthermore, I find and determine that the licensee's bartender, Thompson, engaged in numbers betting activity with Brown on October 3, the day of the raid.

It is apparent that the Division has amply established a pattern of numbers betting activity engaged in by Brown on each of the four dates mentioned in this charge.

II

Football Pool

Relative to that part of Charge No. 1, which refers to the possession of football pool writings, I find and determine that this part of the charge has been established by clear and convincing evidence. In order to establish the charge, it is not essential to prove that a sale or distribution thereof occurred. It is sufficient that the proofs, established that an individual who did not have to make his identity known and who, the bartender admitted, was a patron of the licensed premises, left the tickets specifically for the licensee. Further, the licensee admitted that he knew that the writings were football pool tickets and that they were found in his premises. Thus, I find and determine that this part of the said charge has been clearly established. Re McGuire Holiday Motel, Bulletin 1884, Item 1; Town Tavern of Bd. Brook, Inc., Bulletin 1913, Item 2; Paramount Wines & Liquors v. Paterson, Bulletin 2114, Item 5.

III

Pool Game Wagering

Relative to Charge No. 2 and applying the principles governing the quantum of proof required in disciplinary proceedings, I find and determine that the testimony offered by the Division agents clearly preponderates in favor of a finding of guilt.

IV

Conclusion

A careful evaluation and consideration of the testimony adduced herein, and the legal principles applicable thereto, compel me to conclude that the Division has established the truth of both Charges herein and I so find.

Licensee has no prior adjudicated record of suspension.

Inasmuch as I find, insofar as Charge No. 1 is concerned, that commercial gambling was involved wherein an

employee of the licensee participated therein, I recommend that the license be suspended on both charges for a total of ninety 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 findings and conclusions of the Hearer and adopt his recommendations as my conclusions herein.

Accordingly, it is, on this 6th day of June 1975,

ORDERED that Plenary Retail Consumption License C-13, issued by the City Council of the City of Trenton to Willie E. Spearman, t/a Ment's Lounge, for premises 44 N. Olden Avenue, Trenton, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1975, commencing at 2:00 a.m. on Tuesday, June 17, 1975; and it is further

ORDERED that any renewal of the said license that may be granted be, and the same is hereby suspended until 2:00 a.m. on Monday, September 15, 1975.

Leonard D. Ronco
Director

3. STATE LICENSES - NEW APPLICATION FILED.

Grolsch-New Jersey, Inc.
The Sheraton Newark
901 Spring Street
Elizabeth, New Jersey
Application filed August 20, 1975
for limited wholesale license.

Leonard D. Ronco
Director