

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

BULLETIN 1966

April 16, 1971

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1. APPELLATE DECISIONS - R.O.P.E. INC. v. FORT LEE

R.O.P.E. Inc., )  
Appellant, ) On Appeal  
v. )  
Mayor and Borough Council ) CONCLUSIONS  
of the Borough of Fort Lee, ) and  
Respondent. ) ORDER

-----  
Goodman & Breslin, Esqs., by Lawrence G. Goodman, Esq.,  
Attorneys for Appellant  
Breslin and Monaghan, Esqs., by John A. Schepisi, Esq.,  
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of respondent Mayor and Borough Council of the Borough of Fort Lee (hereinafter Council) which, by unanimous action of the five councilmen who voted, one having abstained, adopted a resolution on September 3, 1969 denying the application of appellant (hereinafter The Vat) for renewal of its plenary retail consumption license for the 1969-70 licensing period for premises 209 Cumbermede Road, Fort Lee. The resolution reads, as follows:

"WHEREAS, written objections have been filed with the Borough Clerk protesting the granting of a renewal of plenary retail consumption liquor license No. C-20 issued by the Borough of Fort Lee to R.O.P.E., Inc., a New Jersey corporation trading as 'The Vat' for premises known and designated as 209 Cumbermede Road, Fort Lee; and

WHEREAS, due notice was given to the holder of said plenary retail consumption license and publication made as required by law; and

WHEREAS, a public hearing was duly conducted on August 6, 1969 at which time all parties in interest were heard and the applicant was granted the right to cross examine any and all objectors present at said hearing; and

WHEREAS, eleven (11) objectors testified to various objections to the renewal of the liquor license heretofore referred to, all as more specifically set forth in the record of said proceedings as taken by a certified shorthand reporter; and

WHEREAS, seven (7) members of the Police Department of the Borough of Fort Lee testified to the numerous disturbances and complaints emanating from the operation of the premises in question and the numerous occasions upon which police officers were caused to be sent to said premises in response to complaints, all as more particularly set forth in the aforesaid transcript of the proceedings; and

WHEREAS, it was testified to by a Sergeant of the Police Department of the Borough of Fort Lee and various officers that in their opinion, as members of the Fort Lee Police Department, the numerous occasions police officers were dispatched to the above mentioned premises amounted to a drain upon the orderly operation and function of the Police Department of the Borough of Fort Lee to the detriment of all citizens of the Borough of Fort Lee.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fort Lee as follows:

That renewal of plenary retail consumption liquor license No. C-20 issued to R.O.P.E., Inc., a New Jersey corporation trading as 'The Vat' for premises known and designated as 209 Cumbermede Road, Fort Lee, New Jersey be and hereby is denied for the following reasons:

The evidence adduced before the Mayor and Council, all as more specifically set forth in the transcript of the proceedings hereof, clearly established that the licensee has for a period of more than one year, in particular for the period during which this licensee has held said license as disclosed by the testimony, allowed, permitted and suffered in and upon the licensed premises and the grounds surrounding same, the use of filthy language, obscene language and conduct, brawls, unnecessary congregation, disturbances, unnecessary noise, permitted the patrons of said establishment to act in a manner detrimental to all persons in the vicinity of the licensed premises, permitted the patrons of said premises to act in an unruly manner, all causing numerous complaints to be made to the Police Department of the Borough of Fort Lee resulting in dispatchment of men and equipment to the licensed premises on numerous occasions thus causing a detriment to the safe and proper operation of said Police Department, all to the detriment of the citizens of the Borough of Fort Lee and, in addition thereto, the testimony discloses that the licensee has allowed, permitted and suffered the licensed premises and all the property surrounding said premises used as part of the operation of the premises in question, to be conducted and operated in such a manner as to become a nuisance."

In its petition of appeal, appellant alleges that the action of the Council was erroneous in that it was "arbitrary, capricious, discriminatory, contrary to the weight of the evidence and based upon irrelevant considerations."

The Council, in its answer, defends that "the action taken by the Mayor and Council of the Borough of Fort Lee was not arbitrary, capricious, discriminatory, contrary to the weight of the evidence and based upon irrelevant considerations, and that in fact, the premises in question were not operated in an orderly fashion, thus causing said premises to become a nuisance and a detriment to the safe and proper operation of the Police Department of the Borough of Fort Lee, or as more particularly set forth in the aforesaid resolution."

The appeal was heard de novo with full opportunity for counsel to present testimony and cross-examine witnesses. Additionally, the transcript of testimony of the proceedings held before the Council was received in evidence. Rules 6 and 8 of State Regulation No. 15.

Mayor Joseph P. Licata testified that he expressed his concern to the Council relative to the conduct of The Vat based on the evidence presented to the Council at the hearing below. He was partially influenced by the number of telephone calls alleged to have been made to the Police Department complaining of the operation of the licensed premises.

Finally, the Mayor testified that he has no personal knowledge of any formal complaints of violations of the noise control ordinance having been lodged against the licensee. However, he was aware of many calls having been made complaining of excessive noise, some of which he investigated personally.

Councilman Paul Van Eyk, III, testified that he was not exclusively influenced by the number of telephone calls made to the Police Department complaining of The Vat.

No representative of the Police Department complained to him that the operation of The Vat was a burden upon it. He has no knowledge of disciplinary proceedings having been instituted against the present ownership of The Vat. He would not have voted differently if the licensed premises were located in another area.

Councilman Anthony Buda testified that he was not certain as to how he would have voted if he had known that a substantial percentage of the telephone calls to the Police Department had been false.

It was stipulated that the testimony of the other Councilmen on the governing body, Harvey Salb, Myril Neiman and Haig Simsarian would be similar to the testimony elicited from the Councilmen who testified herein.

Elizabeth Gratas who resides in the "third house from the corner" where The Vat is located and who had testified below, testified at this de novo hearing that on one occasion two youths parked a car half on the street and half on the sidewalk in front of her property, and upon remonstrating with them they cursed her and went into The Vat. On "Thursdays, Fridays, and Saturdays, the whole street is mobbed with cars, and there are signs, 'No Parking'."

On those days, she also heard noises and screaming at two or three o'clock in the morning which, in her opinion, could only emanate from The Vat since there are no other commercial enterprises nearby.

Theodore E. Grieco, the Fort Lee Chief of Police, testified that there were no formal charges made against anyone for being disorderly, noisy or for brawling at The Vat, since February 1967. Of the twenty-three telephone calls made to the Police Department subsequent to August 6, 1969 (the date of hearing below) until March 4, 1970, it appeared that twenty-one of these calls appeared to be unfounded. A number of the calls were made by one person. He did not know the identity of any of the callers. He did not request the Mayor and Council to take disciplinary action against The Vat.

On cross examination, the Chief conceded that a police car might arrive at The Vat within two, three or five minutes after a complaint was received. He further asserted that:

"If a person was living in the area and the doors were open, they might hear something, but upon closing of the door, there would be no noise."

Clark Prather, president of the corporate appellant who has been in active management of the business since he acquired it in February 1967, testified that the licensee has not had any disciplinary proceedings filed against it, nor has any patron or employee been charged with disorderly behavior of any kind in or about the licensed premises. He was aware of complaints having been made by neighbors concerning the operation of The Vat. Mr. DeLeonard (who resides adjacent to The Vat) is the only neighbor who complained to him directly. He reimbursed DeLeonard for repairs made to his fence upon his complaint that his fence had been damaged. He hires a uniformed guard to patrol the parking lot in order to prevent people from congregating there and to discourage disturbances. He never saw brawls occur in the said premises.

On cross examination, Prather testified that he is in The Vat most of the evenings. He admitted that on November 28, 1968 a bouncer grabbed a patron by the shoulder; however, he denied that the person suffered any fractures as a result thereof. He denied that a fight occurred in the parking lot on February 4, 1968. He stated that, on that date, the police were called because a patron refused to leave the parking lot. Upon arrival of the police, the patron departed without further incident. He denied that the patrolman was assaulted.

He recalled that soon after he commenced operating the business he was informed by the Mayor and Council during a caucus meeting of complaints having been made concerning the operation of the establishment.

In behalf of respondent, Sergeant Daniel H. McGuire, of the local police force, produced a synopsis of twenty-three calls or complaints made to the Police Department and entered in the police log book from the time that Prather assumed control of the licensed premises, to June 9, 1969, and a log of approximately one hundred fifty telephone calls made to the Police Department covering approximately the same period of time.

The Council presented no other testimony at this hearing and relied upon the transcript of the hearing below which was admitted in evidence, in accordance with the provisions of Rule 8 of State Regulation No. 15, over appellant's objection.

At the hearing below, a substantial number of persons objected to the renewal of the license. The appellant was represented by counsel and it was afforded an opportunity to cross examine the witnesses. Their testimony may be summarized as follows:

Frederick Gansley, whose grounds and home adjoin The Vat, complained of the noise from patrons racing the motors of their cars and blowing horns upon leaving The Vat in the early morning hours, yelling, screaming, cursing; and patrons damaging his hedges with their cars and overflowing garbage cans, causing the street to become littered with glass. Additionally, he heard screams for help. The noise is usually heard from Thursdays to Sundays, from midnight to two or three in the morning, and emanates from patrons of The Vat.

Mrs. Elizabeth Gansley, wife of the previous witness, stated that her complaints were the same as her husband's. She asserted that she has seen rats in the garbage cans, glasses and beer cans on her grounds, and men using the grounds as a bathroom. She had complained to the Police Department, the Mayor and to Prather of the conditions. The noise of the music through the amplifiers is heard every Friday, Saturday and Sunday night.

Mrs. Elizabeth Gratas, who had also been called to the witness stand by the attorney for the appellant at the hearing before the Division, objected to the noise when patrons left The Vat and went to their cars, this including the language, screaming and motor-racing in the early morning hours. She called the Police Department many times. Her driveway has been blocked by parked cars.

Two or three weeks prior to this hearing, two young men parked their car in front of her house, half on the sidewalk. Upon requesting them to move the car, they told her to go to hell and entered The Vat. The noise had become worse in the past two years. These problems persist continually.

Mrs. Jean Kaszka, whose home is behind The Vat, likewise complained of the noise past midnight, people swearing coming out of The Vat, blocked driveways and garbage problems. The guard in the parking lot did nothing to stop the noise.

Frederick Sitkens, who resides approximately seventy-five feet distant from The Vat complained that The Vat garbage is placed outside twenty-four hours and sometimes forty-eight hours prior to collection. The area outside The Vat is used by males as a urinal quite frequently. Additionally, he complained of the noise of the music and the noise of the people congregating in the parking lot.

Luciano Dossena objected to the noise. From his porch he has observed patrons engaging in drinking in the parking lot at 3:00 a.m. and that there are a "lot of parties in that parking lot" at closing time. Beer cans, glasses and trash are always found on his lawn. Conditions caused by The Vat and its patrons have been worsening during the last two years.

Harry DeLeonard, a neighbor, complained of the constant noise every night The Vat is open. The noise is caused by the cars of its patrons, and by people talking, screaming,

laughing, shouting and carrying on in the parking lot and street in front of the premises. Cars have damaged his fence. On several occasions, Prather reimbursed him for damages caused to his property. Glasses and beer cans have been tossed over the fence onto his property. He occasionally heard girls screaming for help. The music is very loud and disturbs his sleep.

Russell Maggio, a local police officer, testified that, during the past year, he was dispatched to The Vat more frequently than to other establishments. He responded to a call on February 9, 1968 at approximately 12:34 a.m. when he and two other policemen quelled a brawl in the parking lot. He recalled that, on other occasions, he was summoned because of noise complaints and that he cautioned The Vat employees to eliminate the noise.

Police Officer Frank Battipaglia also asserted that he was dispatched to The Vat more frequently than to other establishments. During the past year he was sent there, at night, ten or twelve times. On December 8, 1968 he was called to The Vat parking lot because a female patron was using loud vulgar language, and she became abusive to the officer. Although she was brought to police headquarters, no charges were preferred. During the past three months, he was sent to The Vat on four occasions. Neighbors had complained of loud noises in the parking area between midnight and 3:00 a.m. On one occasion The Vat was closed, but on the other occasions The Vat was still open. Each time he quieted the group involved. The management has been cooperative.

Police Officer Gerard Huber testified that during the past two years, he was dispatched to The Vat because of complaints of noise inside The Vat, in the parking lot, or because of parking.

Police Officer Alfred Beyer testified to the same effect as the previous witness. He found the management cooperative.

Police Officer Lino Boccher testified that he was summoned to The Vat more frequently than to any other tavern within the municipality. This was corroborated by Police Officer Gerrard Kiely.

Sergeant Joseph Zevits, a seventeen year veteran of the local police force, testified that over a period of twenty-five months prior to July 1, 1969 (during which time the present ownership was in control) the Police Department received approximately one hundred-fifty calls requiring the dispatch of police cars to the premises. It was stipulated by the attorneys that this was confirmed by entries in the police log book. It was his opinion that the amount of calls to The Vat by the police on that shift was a drain upon the Police Department and its orderly operation.

A neighbor, Emil Bellerano, testified that during the past year, he frequently observed persons coming out of The Vat under the influence of liquor.

At the hearing below, appellant offered no rebuttal testimony except for the assertion that it sold bottled beer only, and no canned beer, and stated that it planned to

follow certain procedures in order to eliminate some of the conditions complained of.

Appellant argued mainly that: (1) the resolution of the Council is not supported by the evidence; (2) since there is no history of disciplinary proceedings or any other charge of misconduct having been made against the appellant, the refusal to renew the license should be reversed in common fairness, and (3) the testimony by the several Councilmen that if they had known that twenty-one of the twenty-three calls made to the police after August 6, 1969 (the date of the hearing below) and the date he testified (March 30, 1970) were unfounded may have led them to vote differently and should lead to a reversal of the Council's action.

Preliminarily, I observe that in considering the reasonableness of Council's action it should be noted that a liquor license is a temporary permit or privilege to conduct a business otherwise illegal. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954). The matter of renewal rests in the sound discretion of the local issuing authority and, upon review, its determination should not be disturbed unless the evidence indicates an abuse of that discretion. 279 Club v. Mun. Bd. of Alcoh. Bev. Cont. of Newark et al., 73 N.J. Super. 15, 21 (App. Div. 1962); Nordco Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Prior infractions of the law may be taken into consideration. Cf. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956).

As more fully stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (Sup. Ct. 1946):

"The primary question presented is the right of a holder of a plenary retail consumption license to a renewal of that license for a subsequent term.

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license.... No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities.... The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

Upon considering the totality of the entire record, it is abundantly clear that numerous acts of nuisances were allowed, permitted and suffered by licensee in and about its licensed premises; for example, loud noises of music, voices, motors racing, horn-blowing, screaming and vulgar language. Additionally, an adjoining neighbor's grounds were damaged on several occasions. The rats and the garbage piled on the

grounds of The Vat were not the figment of witnesses' imagination. Cars blocking neighbors' driveways and males urinating openly would justifiably lead the neighbors to complain against the operation of the license. It is apparent from the record that the neighbors justifiably complained to the police and the Mayor on countless occasions.

In summation, I find that the witnesses made sufficiently serious and unchallenged allegations reflective of an intolerable situation immediately outside the licensed premises which imposed a tremendous burden of constant policing on the local Police Department. I am persuaded that the Council properly determined this tavern was operated as a nuisance and, contrary to the view of Police Chief Grieco, was a drain upon the Police Department.

Appellant's argument that the license should be renewed because no disciplinary proceedings were ever instituted against it is likewise without substance. As was aptly stated in R.B. & W. Corporation v. Caldwell, Bulletin 1921, Item 1:

"... it would have been a more satisfactory procedure for the Council to initiate such proceedings, upon specific charges, and to base its refusal to renew on an adjudicated record. However it is understandable that local issuing authorities, at times, withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the licensed business. This would appear to be the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, some licensees do not take the hint and consider that the failure of the issuing authority to take specific action as license for continued profligacy. As the court stated in Downie v. Somerdale, 44 N.J. Super. 84, 87:

'... Mr. Downie's contention seems to be that the borough council should have furnished him with some statement of its reasons to which he might take exception before the council came to its decision. But the law does not impose on the council an obligation of this sort. Mr. Downie perhaps thinks that on a hearing before the borough he was entitled to sit back and wait for it to put in its case. On the contrary, upon such a hearing the burden of proof falls on the applicant for the renewal of the license. Nordco, supra."

In any event, Prather admitted that soon after he assumed control of the business he was made aware by the Council that complaints were made to it concerning the improper operations of the business. Further, he conceded that he was aware of complaints having been made by neighbors. Additionally, DeLeonard's testimony at the hearing below that Prather had on several occasions reimbursed him for damage done to his property was uncontradicted.

Appellant is responsible for conditions both within and outside of his premises. As early as in Conte v. Princeton,

Bulletin 139, Item 8, this Division has held that a licensee is responsible for conditions both in and outside the licensed premises which are caused by patrons thereof. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1. In accord, see Lyons Farms Tavern, Inc. v. Newark et al., 55 N.J. 292 (1970), reprinted in Bulletin 1905, Item 1.

In its consideration of this matter the Council was guided by the applicable principle enunciated in Tumulty v. Dunellen and Davis (App. Div. 1963); not officially reported, reprinted in Bulletin 1519, Item 1, as follows:

"... The problem before the [Council] was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed...."

In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest". Lublimer v. Paterson, 33 N.J. 428, 446 (1960). A renewal license is in the same category as an original license. Zicherman v. Driscoll, *supra*. Thus, entirely apart from the consideration as to appellant's culpability for the deleterious conditions which surrounded this establishment, the broad question posed before the Council on appellant's application for renewal was whether, in the light of all the surrounding circumstances and conditions, it was in the public interest of the municipality for this tavern to continue to exist. The objective judgment of the Council was that its continuance would be inimical to the public interest.

There is no persuasive evidence to indicate any improper motivation on the part of the Council in its action, and there appears to be substantial evidence to support its determination herein. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Indeed, as the court stated in Lyons Farms Tavern, Inc. v. Newark, et al., *supra*:

"... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision

of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

See Hudson-Bergen County Retail Liquor Stores Association et al v. Hoboken, et al., 135 N.J.L. 502, 511 (1947).

I find that it exercised its discretion circumspectly and in the best interests of the community in refusing to renew appellant's license for the current licensing year.

It is, therefore, recommended that the Council's action in denying appellant's application be affirmed, and the appeal herein be dismissed.

#### Conclusions and Order

Exceptions to the Hearer's report and argument in support thereof have been filed by the appellant pursuant to Rule 14 of State Regulation No. 15.

No answer to the exceptions and argument was filed by respondent.

I have noted the comments in the said exceptions and find that the matters contained in the exceptions have either been considered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summation of counsel for the respective parties, the Hearer's report and the exceptions thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 17th day of February 1971,

ORDERED that the action of the respondent Council be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the Order dated September 8, 1969, extending the term of appellant's 1968-1969 license pending determination of the appeal herein be and the same is hereby vacated, effective immediately.

RICHARD C. McDONOUGH  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

279 Orange Street, Inc. t/a Hooker's Elbow Room 279 Orange Street Newark, N. J.,

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-627, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Martin Gelber, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On December 30, 1969 and January 2, 1970, 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.

"2. On December 30, 1969 and January 2, 1970, 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 Division's case was presented through the testimony of four ABC agents, who pursued a specific assignment to investigate alleged gambling activities at the licensed premises.

The testimony of Agent G, which was corroborated by Agents R and Ga, presents the following picture: In the company of R and Ga, Agent G visited the licensed premises on December 30, 1969 and January 2, 1970, the dates alleged in the said charge. The three agents had considerable experience in the investigation of gambling activities with particular emphasis on numbers betting. Agent G testified that he has been so employed for the past twelve years, and has taken part in some one thousand gambling investigations, ninety percent of which involved numbers betting. Agents Ga and R were also directly involved in many similar investigations during the period of their employment with this Division.

The three agents entered the licensed premises on December 30, 1969 at approximately 11:30 a.m. and seated themselves at the bar. There were four other patrons present and it was noted that the clientele was, apart from the agents, almost exclusively negro.

A negro barmaid, later identified as Beatrice Morgan (hereinafter referred to as Bea) was in attendance.

After engaging Bea in general conversation the agents directed the conversation toward the subject of numbers betting. The following testimony was elicited from Agent G, on direct examination:

"We asked Beatrice if she played numbers, and she said yes, she did. She said she played 318 combination. She was asked if she could get our numbers bets in. She said she could. At that time Agent R- said, 'Give me 363 for \$1.' Agent G- said, 'Give me 318 for \$1.' I said, 'Give me 168 for \$1.'

"Q What transpired, if anything, after that?

A She took a piece of paper--

Q Where was the piece of paper?

A Off the back bar. She wrote these bets on this paper and folded the paper up and put it inside her dress, her bra. Then she took a dollar from each of us from our money on the bar."

These transactions were characterized by the agents as numbers bets and took place in front of the agents at the bar. Further, all three agents were able to hear the conversation clearly and distinctly. The agents departed the premises at 12:30 p.m.

The agents returned on January 2, 1970 at approximately 11:00 a.m. Again there were four patrons present and Bea was tending bar. In reference to this visit Agent G testified that the three were again served by Bea who upon being questioned again indicated that their bets could be accepted. She was apprised by the agents that "we each want 703 for half and half" whereupon Bea removed a piece of paper from her bra and wrote "703, \$3, half and half" on the slip of paper and in the presence of the agents. She then took the agents' money from the bar and placed the slip in a small plastic receptacle on the bar. Agent G characterized these as three numbers bets.

It developed that Bea was not an officer of the corporate licensee nor were any of the officers of said corporate licensee present on either of the dates charged in the complaint.

On cross examination, Agent G testified that six visits were made to the licensed premises, the first being the visit of December 30, 1969 and the last on February 13, 1970; and that on the visit of December 30, 1969, one of the four patrons present was white and the others were negro.

On cross examination Agent Ga conceded that on the visit of January 2, 1970, none of the agents retained any physical evidence of alleged numbers bets.

Agent S of the ABC testified that on February 13, 1970, in the presence of Agent G, Bea admitted having accepted the bets from Agents G, Ga and R on December 30, 1969 and January 2, 1970.

In defense of the charges, Leniel Hooker testified

that he is president of the corporate licensee, and he was not present on any of the dates alleged in the complaint. He, therefore, had no personal knowledge of the alleged incidents.

He further testified that he has been engaged in the retail liquor business for fifteen years without any violation of any kind against his license. He stated that Beatrice Morgan had been employed by him for approximately one year prior to this hearing and that his investigation into her background, through her friends and former employer, satisfied him that she was honest.

On cross examination he added that Bea was employed on the licensed premises on December 30, 1969 and January 2, 1970 and continues to be employed thereon.

Beatrice Morgan testified that she recalls visits on December 30, 1969 and January 2, 1970 by the agents although she was not aware of their employment at that time. She emphatically denied accepting any numbers bets from the agents "because I don't play the numbers."

She asserted that it is her habit to record the price of drinks for the individual members of a group to avoid confusion. Furthermore, the prices of the drinks consumed by the agents were fifty cents each and hence she recorded 50-50-50. She continued that she would destroy these slips when the group departed. She reiterated that she did not accept or record any bets but recorded only the above described prices.

William Crawford testified for the licensee that he is employed by the Penn-Central Railroad; he has known Leniel Hooker since 1954; he has known Beatrice Morgan since 1959, through the church which they both attend and from her former employment at a restaurant which he frequented. He recommended her to Hooker for employment and he characterized her as a nice girl.

On cross examination, he stated that his association with her was limited to frequent visits to the restaurant where she generally served him and meetings with her at church once or twice a month.

The attorney for the licensee argued that (1) no physical evidence was admitted to support the charges; (2) that the Division has failed to sustain the burden of proof and (3) charge number 2 should be dismissed since there is no evidence at all as to the participation rights in a lottery.

He, therefore, sought a dismissal of the charges on grounds (1) and (2) or, in the alternative, a dismissal of charge (2) on grounds designated (3).

It is immaterial that no physical evidence of gambling was found in the licensed premises. Re Schultz Realty Co., Bulletin 1780, Item 2. The motion to dismiss on ground number (1) is untenable in light of the above stated principle.

Ground number (3) is equally untenable. Charge number (2) clearly states in its pertinent part that the licensee:

"... 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; ...."

Thus participation rights in a lottery commonly known as the "numbers game" may be clearly established absent any ticket, receipt or other indicia. The alleged gambling activity, furthermore, may also be chargeable under Rule 6 of State Regulation No. 20. (Charge (1) in the instant complaint), and as the attorney for the Division pointed out, it is the usual practice to bring the charges under both rules although the Division in practice, considers both charges as one violation, for penalty purposes. Re The Blue Door, Bulletin 1954, Item 2.

Ground number (2) is, on its face, untenable and I therefore, recommend, that the motion to dismissed be denied.

It is readily apparent that the major point of inquiry presented for determination is factual.

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 not criminal, 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).

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.

I am persuaded that the testimony of Agents G, R and Ga was credible and truly depicted the gambling activity described. The denial by Bea of the alleged gambling activity is in the face of the testimony of the Division agents wholly untenable. The testimony of Crawford as to the character of Bea, while no doubt sincere, is unpersuasive in defense of the charges. Hooker was not present and had, therefore, no personal knowledge of the incidents. Whether or not he was aware of the activity, is immaterial since by his own admission, Bea was in his employment on December 30, 1969 and January 2, 1970. In disciplinary proceedings a licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Knowledge on the part of the employer is not a prerequisite to a finding of guilt where an employee participates in the misdeeds. Re Schultz, supra. Rule 33 of State Regulation No. 20.

I find that under the facts and circumstances herein, the licensee, through its employee, allowed, permitted and suffered gambling in and upon the licensed premises. I conclude that the Division has established the truth of the charges by a fair preponderance of the believable evidence.

Accordingly, it is recommended that an order be entered finding the licensee guilty of the said charges.

Licensee has no prior adjudicated record. It is further recommended that an order be entered suspending the license for sixty days. Re Renee's Bar & Liquor Store, Inc., Bulletin 1929, Item 2.

Conclusions and Order

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

I find that the matters contained in the exceptions have either been fully considered by the Hearer in his report or are without merit. I further find the licensee's request for oral argument to be unwarranted, and is, accordingly, denied.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report and the exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of February 1971,

ORDERED that Plenary Retail Consumption License C-627, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 279 Orange Street, Inc., t/a Hooker's Elbow Room, for premises 279 Orange Street, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, March 8, 1971, and terminating at 2:00 a.m. Friday, May 7, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against	)	
	)	
The Stonehouse, Inc.	)	
t/a The Stonehouse	)	Supplemental
Route 206, Byram Township	)	
PO R.D. 2, Stanhope, N.J.	)	Order
Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Byram.	)	
-----	)	
Donald J. Concilio, Esq., by Charles E. Carlson, Jr., Esq., Attorney for Licensee	)	
Edward F. Ambrose, Esq., Appearing for Division.	)	

BY THE DIRECTOR:

On January 4, 1971, Conclusions and Order were entered herein suspending the license for fifteen days for exhibiting indecent photoview pictures on licensed premises. Re Stonehouse, Inc., Bulletin 1956, Item 2.

Prior to the effectuation of the order of suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

By stipulation filed with the Appellate Division of

the Superior Court on February 18, 1971, the parties to this appeal agreed that the said appeal be dismissed. Thus the suspension may now be reimposed.

Accordingly, it is, on this 25th day of February 1971,

ORDERED that the fifteen (15) days suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Byram to The Stonehouse, Inc., t/a The Stonehouse, for premises Route 206, Byram Township, commencing at 3:00 a.m. Thursday, March 11, 1971, and terminating at 3:00 a.m. Friday, March 26, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ORDER LIFTING SUSPENSION.

In the Matter of Disciplinary Proceedings against  
T.L.M. & Associates, Inc.  
594-598 South Orange Avenue  
Newark, N. J. ) ) ) ORDER

Holder of Plenary Retail Consumption License C-786, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. ) )

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Licensee, by Rose Conyers, President, Pro se.  
Francis P. Meehan, Jr., Esq., Appearing for Division.

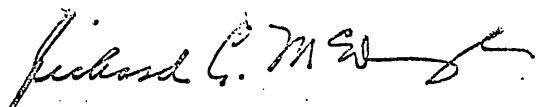
BY THE DIRECTOR:

On November 10, 1970, Conclusions and Order were entered herein suspending the license for the balance of its term, effective November 30, 1970, with leave granted to the licensee or any bona fide transferee of the license to apply for the lifting of the suspension whenever the unlawful situation has been corrected (undisclosed interest of a police officer in the license), such lifting of the suspension to be granted on or after forty (40) days from the commencement of the suspension therein. Re T.L.M. & Associates, Inc., Bulletin 1948, Item 3.

It appearing from the verified petition submitted by the transferee that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension, effective immediately.

Accordingly, it is, on this 22nd day of February 1971,

ORDERED that the same is hereby terminated, effective 2:00 a.m. Tuesday, February 23, 1971.



Richard C. McDonough  
Director