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

BULLETIN 2011 November 18, 1971

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ITEM

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1. APPELLATE DECISIONS - BEIRA MAR BAR & GRILL, INC. v. NEWARK.

Beira Mar Bar & Grill, Inc. Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	

Carl J. Yagoda, Esq., Attorney for Appellant
William H. Walls, Esq., by Althear A. Lester, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the determination of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which found the appellant guilty of failing to have the licensed premises closed during hours set by municipal ordinance, on October 11, 1970. In consequence, the Board suspended its license for fifteen days, effective June 28, 1971.

In its petition of appeal, appellant contends that the action of the Board was erroneous in that the Board failed to establish, consistent with due process of law, that the licensee was guilty of the charges.

The Board's answer admits the jurisdictional allegations in the petition and denies the substantive contention.

Upon filing of the appeal, an Order dated June 22, 1971, was entered by the Director staying the Board's order of suspension pending further order herein.

While there was no agreement between the attorneys for the respective parties relative to the submission of the transcript of testimony taken in a proceeding before the Board, pursuant to Rule 8 of State Regulation No. 15, counsel for appellant offered a copy of such transcript for the record, in support of its factual allegations.

At the plenary hearing before this Division, counsel for the Board did not appear; beyond filing answer, nothing was done by the Board in defense of the appeal.

Testimony of John Almeida was offered on behalf of appellant. He is one of the owners of the licensed premises which is located at 18-20 Downing Street, Newark, where he

operates a restaurant, bar and catering business. He and his associate are of Portuguese ancestry and serve the Portuguese-American community of the City. He has a large van, a picture of which offered into evidence shows lettering under the name of the licensee offering "Catering-Wedding-Parties-Free Delivery". There is no reference to a bar or grill on the truck or on its business card. The premises were described as being contained on the ground floor of a large brick building and which included a large restaurant, a large kitchen and a bar. The restaurant is open for breakfast about five o'clock in the morning and continued on through luncheon and dinner. The business usually closes about midnight, the bar being only a minor part of the business.

He further testified that on Saturday, October 10, 1970, he, his associate and a number of his employees catered a wedding for a party named Russo on Walnut Street, Newark. After the wedding party, he returned bringing with him, in an accompanying car seven helpers. They brought all of the food remaining, the used pots and pans and all of the soiled dishes back to the licensed premises and began the drudgery of cleaning. It was nearly three-thirty in the morning before the last of the food was being put away and the helpers were standing at the bar awaiting a ride home, when there was a knock at the door. Upon its being opened, a police officer entered and observed the group present at the bar. The charges against the licensee followed.

As the Board was neither represented at the hearing nor offered any evidence on its behalf, a perusal of the transcript of testimony given to the Board revealed that Patrolman Arkey, on duty at 3:25 a.m. October 11, 1970, found both doors to the licensed premises locked.. He peered into the front window and saw eight people at the bar, seated or standing. He guessed that three of this number were seated. He noticed nothing in the glasses on the bar and upon his admittance and inquiry did learn that all of the people in the premises had been on a catering job, but did not know that the licensee was a caterer.

The major point of inquiry is whether in fact the appellant allowed the licensed premises to be open during the prohibited hours.

Appellant urged that the ordinance excluded closings of establishments where the principal business is other than the sale of alcoholic beverages. Since the licensed premises has as its principal business a restaurant and catering business, the closing requirements of the ordinance would not apply. Such contention is without foundation. The facts as elicited from the testimony of the licensee's principal agents, supported by photographs of the interior of the licensed premises, reveal that the bar is an integral part of the restaurant without physical separation. The licensed premises, in short, include the restaurant and kitchen as well as the bar; hence, the ordinance exclusion would not apply.

We are dealing with a purely disciplinary measure and an alleged infraction of the law. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (1948). Proof is required by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The charge must be established by affirmatively satisfactory evidence. See Silidker, Bulletin 405, Item 5.

At the hearing before the Board and on appeal to this Division, it was uncontroverted that the persons at or near the bar at the time of the officer's visit were employees. Admittedly, the presence of such a number of persons at that hour of the morning, standing or seated at the bar, would give rise to a suspicion that the closing hour requirement was being violated. Certainly the circumstances of such number of persons being present would cause suspicion, and such natural suspicion could be allayed only by full explanation. Although the officer admitted that "...they were out on a catering job elsewhere", he did not recognize that such job was part of the activities of the licensee and hence, they would be employees. A language barrier may have impeded full communication between the employees and the officer who had concluded that they were members of the public. "Closing hour" ordinances have uniformly been interpreted to mean that if there is anyone found on the premises it shall be deemed a violation of the ordinance.

> "As used in this ordinance, the closing-of-premises provisions mean that all members of the public must be excluded."

Oliver Twist Pub and Lounge v. North Bergen, Bulletin 1869, Item 3; Cf. Mama Ventura, Inc. v. Voorhees, Bulletin 1498, Item 1; Town House, Inc. v. Montclair, Bulletin 792, Item 3.

Thus a rebuttable presumption arose. Counsel for the appellant averred that on the initial hearing before the Board when the charges were preferred (transcript of which was not made available in this matter) all of the named employees were then available in the hearing chamber, but their testimony was not then desired. The actual hearing of the charges did not occur until four months had passed, during which time some of the employees returned to Portugal and the others drifted to other areas and were not then available. "The question in every case is whether a reasonable man, acting reasonably, could have reached the administrative agency decision under review, from the evidence found in the entire record, including the inferences to be drawn therefrom." Cooley's etc. Foundation v. Legalized Games of Chance Com., 78 N.J. Super. 128 (App. Div. 1963).

Appellant successfully rebutted the presumption by way of the uncontroverted evidence indicating that those persons present were not members of the public but were, in fact, employees awaiting rides to their homes. Hence, their presence within the licensed premises was not violative of the ordinance.

In view of the above finding, it is concluded that the appellant has sustained the burden of establishing that the Board acted erroneously. Rule 6 of State Regulation No. 15. Therefore, it is recommended that an order be entered reversing the action of the Board and dismissing the said charge.

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

Accordingly, it is, on this 7th day of October 1971,

ORDERED that the action of respondent be and the same is hereby reversed and that the charge herein be and the same is hereby dismissed.

Richard C. McDonough
Director

2. APPELLATE DECISIONS - SKY-LIN ASSOCIATION v. LINDEN.

Sky-Lin Associates, a New Jersey Corporation, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Linden, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Albert M. Bukosky, Esq., Attorney for Appellant
Jerome Krueger, Esq., by Richard W. Kochanski, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Municipal Board of Alcoholic Beverage Control of the City of Linden (Board) whereby it denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Den-Lou Corporation to Sky-Lin Associates (appellant) and from premises 26 West Elizabeth Avenue to 1710 West Elizabeth Avenue, Linden.

In its resolution, dated April 12, 1971, the Board set forth the following reasons for its action:

> "The transfer of a license into an area in which there are no taverns or package stores is in the same category as the issuance of an original license. No person is entitled to either as a matter of law.
>
> The general rule respecting need and necessity for a liquor outlet at a particular locality is that its' determination rests within the sound discretion of the issuing authority and where there is a conflict between private interests and the interest of the community, the latter must prevail, particularly where there is widespread local sentiment in favor of keeping this area free of taverns and package stores. This sentiment must be seriously weighed and considered.

Having thoroughly and completely weighed all of the testimony, it is the opinion of this board that there is no need or necessity for said transfer, and that it is not in the best interest of the community, therefore the request for transfer of plenary retail consumption license C-56 from Den-Lou Corporation, 26 West Elizabeth Avenue to Sky-Lin Associates, location at 1710 West Elizabeth Avenue, Linden, New Jersey is hereby denied."

Appellant alleges that the action of the Board was erroneous for reasons which may be briefly summarized as follows:

1. The Board acted arbitrarily and abused its discretion in denying the transfer.

2. The petition signed by certain objectors was improperly received and unduly influenced the Board.

3. The proposed transfer would be to a location more distant from an existing liquor licensed premises than presently.

4. The proposed location is not in contravention of zoning ordinances or any other governmental requirements.

5. Adequate parking is provided and the location would not create additional traffic hazards or neighborhood disturbances.

6. The proposed transfer is to a location in the same general area and would be in the public interest.

The Board, in its answer, denied that it abused its discretion and asserted that its action was legal.

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

Joseph F. Bukosky testified that since the year 1941 he was the owner of a plot of land situate at the northwest corner of West Elizabeth Avenue and Bradford Avenue, known as 1710 West Elizabeth Avenue, Linden, the site to which it is proposed to transfer the license. Until recent months the site had been used as a gasoline station. He entered into an agreement with the appellant to lease the property to appellant for use as a tavern. He characterized the area as mainly industrial, heavy and light. The area is zoned for industry.

Two weeks prior to the meeting of the Board he spoke with Board members Malle and Handley who had come to inspect the site. They informed him that they had anticipated a petition would be presented by neighbors opposing the transfer. However, they did not foresee any difficulty in the approval of the transfer.

One of the neighbors, a Mrs. Price, informed him that although she did sign a petition opposing the transfer, she did not mind the site being used for a tavern.

The distance between the proposed site and the present site is in excess of 5,000 feet. The nearest competitor to the proposed site, namely, Hank's Starlight Lounge is well in excess of 1,000 feet distant. The bulk of the residential area is north of Stiles Street, which is in excess of 3,000 feet distant from the proposed site.

The traffic problem is similar to any other section of the city. Appellant would have off-street parking facilities for twenty-five cars. The site is obsolete for use as a gasoline station. The witness asserted that he would suffer serious economic loss if the transfer were to be denied.

On cross examination the witness conceded that there was a residential house on Bradford Avenue, next to his former gasoline station; that there are approximately twenty-five residential houses on Bradford Avenue, there are three or four houses approximately one block distant on Price Street; a "few" on Lexington Avenue, and about three houses on West Elizabeth Avenue in the vicinity of his property.

Robert P. Bukosky, president of the corporate appellant and a son of the previous witness, testified that he is under contract to purchase the plenary retail consumption license held by Den-Lou Corporation. He intends to renovate the premises 1710 West Elizabeth Avenue, operate a bar and sell package goods over the counter. He characterized the area of the proposed premises as "...surrounded by heavy industrial, light industrial, private dwellings. The area is not as heavily residential as the major portion of the ward. The ward has not as many private dwellings there as elsewhere."

A week or two prior to the hearing on the application he conferred with Board members Handley and Malle at the proposed site in the presence of his father. He was informed that the objections to the transfer would be heard and that there wouldn't be any problem in obtaining the transfer. Although he is acquainted with the ward councilman, he did not confer with him concerning the application.

On cross examination, the witness testified that the distance along Bradford Avenue to the industrial park is approximately 950 feet, and there are approximately twenty-five or thirty dwelling houses along Bradford Avenue at that point.

Richard J. Garlipp, a member of the Board for approximately three years, testified that he and Board members Handley and Malle heard appellant's application for transfer on the night of March 23, 1971. Councilman Locascio requested that he be heard at the hearing. He had no other contact with Locascio either prior to the hearing or subsequent thereto concerning the matter of the transfer.

Prior to announcing the decision on April 3, the Board members held caucus meetings for the purpose of discussing the merits of the transfer.

At the public hearing of March 23, a minimum of five persons objected to the proposed transfer. No one spoke in favor of the transfer of the license although an opportunity was afforded therefor.

He voted to deny the application because he felt there was no need for a tavern at the proposed site; that local sentiment was opposed to the transfer; that the public interest was superior to private interests.

Frank Malle, who had been a member of the Board for the past seven or eight years and who resides in the ward wherein the proposed transfer is located, testified that he at no time conferred

with the ward representative, Councilman Locascio, with whom he is very well acquainted.

Of the five objectors who spoke at the public meeting, namely, Bradley (Brady), Norelli, Gallo, Yersewich and Ohrin, he is only acquainted with Brady. Brady called to inform him of his objection to the transfer of the license prior to the meeting of the Board.

He characterized the area as partly industrial and partly residential; that it was "60-40, with industrial greater."

Malle was opposed to the transfer because "public interest goes first." Also he was fearful that area industrial employees working various shifts would rush in and out for lunch and beverages thus creating a hazard for school children and other pedestrians.

Prior to the hearing he conferred with the president of the corporate appellant and with the owner of the land. If it were not for the objections, he would have favored the transfer. He was not pressured or influenced by his fellow Board members.

George W. Handley, a member of the Board, who resides in the ward wherein the proposed transfer is involved, testified that he is socially acquainted with Councilman Locascio and signed a petition for his nomination. He did not discuss the transfer application with Locascio while it was pending before the Board.

The general area of the proposed transfer is a complex of heavy industry, light industry and residential; the immediate neighborhood is predominantly residential.

He based his action on considerations of the welfare of the community and local sentiment. He recalled that, in addition to the five individuals named in the minutes of the hearing before the Board who voiced opposition to the transfer, one additional individual who was not named in the minutes also spoke in opposition to the transfer. He also gave some weight to the petition opposing the transfer in arriving at his decision. He gave no consideration to the opposition to the transfer voiced by two licensees in the general area.

Additionally, the witness testified that he and Councilman Locascio are members of the Republican party. The other Board members, Malle and Garlipp, are Democrats.

Chester P. Serden, a licensed real estate broker, testified that, although there are residential buildings in the area, the area is zoned for industry. Locating a tavern at the proposed site would not devaluate the surrounding properties. Less traffic would be generated by the use of the site in the operation of a tavern than by its use as a gasoline service station.

Morris Scialabba, who together with his wife are the corporate stockholders of Linden Inn Corp. which operates a tavern in the Second Ward of Linden, testified that he hand-delivered a letter expressing his objections to the secretary of the ABC Board prior to the date of the public hearing conducted by the Board. His wife signed a petition opposing the transfer. He made known his objections to the transfer to each of the Board members. He attended the public hearing; however, he did not speak. He did not communicate his objections to Councilman Locascio. He objected to the transfer because he felt that he would sustain a loss of business.

Albert Gallo, an objector, who resides on Bradford Avenue in the vicinity of the proposed site of the transfer of the tavern, testified that petitions A-8 and A-9, containing signatures of objectors should not have been separated; that the petition was prepared by a Mr. Brady; that he personally circulated the petition in the neighborhood and witnessed the signing thereof; that most of the time he was accompanied by Brady; thereafter accompanied by Brady he proceeded to Councilman Locascio's home with the petition and not finding Councilman Locascio at home the petition remained with Brady.

Thomas J. Brady, who resides in the immediate area of the site proposed for the transfer of the said license, testified that he delivered the petition above referred to to Councilman Locascio at City Hall; that, accompanied by Gallo, he obtained some of the signatures thereon; that he called Board member Malle on the telephone in order to question him concerning the proposed liquor license transfer; that he communicated his objection personally to Councilman Locascio; that the Councilman and he have opposite political affiliations and that he (Brady) spoke at the public hearing in opposition to the proposed transfer.

The sheet of paper containing signatures of objectors (A-9) was separated from the sheet containing signatures (A-8) because he wanted to obtain additional signatures of objectors. It was intended that the two sheets should be considered as one petition.

Brady opposed the transfer of the license because it would intensify the parking problems of the residents of Bradford Avenue, and the movement of automobiles accommodating the lunch-time sandwich trade would be a hazard to children walking at or near the proposed premises.

Charles J. Ohrin, who resides in the immediate neighborhood of the proposed site, testified that he spoke at the public hearing in order to protect his property. He did not communicate with Councilman Locascio or with any of the Board members relative to the proposed transfer. He signed the petition opposing the proposed transfer.

In behalf of respondent, Irene Duda, John W. Fowler and Ernest A. Jannett, all of whom reside on Bradford Avenue and were signers of the petition, testified that although they attended the public hearing on March 23, they did not speak because others had stated their position.

Joseph P. Locascio, councilman for the ward wherein the proposed license transfer is located, testified that at no time did he discuss the proposed license transfer with any member of the local alcoholic beverage control board. Petitions opposing the transfer were handed to him by Brady. In turn he handed the petitions to the City Clerk who is also the Clerk of the local ABC Board. Additionally he presented to the clerk a letter written by him expressing his opposition to the proposed transfer.

It is apparent that he dispositive issue is: Did the Board act reasonably and in the best interest of the community?

It is basic that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be

affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 566 (Sup.Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App.Div. 1960), aff'd 33 N.J. 404 (1960):

> "... No person is entitled to [the transfer of a license] as a matter of law...."

and

> "... If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial...."

In this connection it may be well to quote further from Fanwood v. Rocco, supra:

> "The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs.of City of Hoboken [135 N.J.L. 502 (E. & A. 1947)]. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent."

The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Board in either approving or denying the application for such transfer may not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra.

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

> "... Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for ..... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the recent case of Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292, 303 (1970), the court stated:

> "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the

> event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

In the Lyons Farms Tavern case, the Supreme Court re-emphasized the thesis of the Fanwood case that the Director may not disregard the municipal governing body's authority to decline to license the operation of any taverns or package stores in a business section, particularly where there is widespread local sentiment in favor of keeping the area free of taverns and package stores, albeit the sentiment may have resulted in part from moral precepts and in part from the general objections voiced in the testimony of the councilmen. In honoring the expressed sentiment, the governing body does not act at all unreasonably.

In the matter herein at least a modest number of the residents of the neighborhood to be affected articulated their objections to the grant of the transfer. Additionally, a petition containing the signatures of almost fifty persons residing in the general area objecting to the transfer was on file. Contrary to appellant's contention in its petition of appeal, I find no impropriety in and attach no taint to the filing of the said petition opposing the transfer. On the other hand, no one except the members of the immediate family connected with the corporate appellant, spoke in favor of the transfer. Thus, it is apparent and I find that the Board seriously weighed, considered and conscientiously evaluated the sentiments expressed by the residents of the neighborhood and were thereby motivated in arriving at its unanimous decision. Absent improper motivation, the action of the local issuing authority, based upon proper and bona fide use of its discretion, must be affirmed. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra.

Upon considering all the evidence herein, including the transcript of the testimony, the exhibits and the summation of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the Board and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits, the Hearer's report, and the exceptions to the Hearer's report which I find have either been answered in the said Hearer's report or are without merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 7th day of October 1971,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Linden be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

Richard C. McDonough
Director

3. DISCIPLINARY PROCEEDINGS - PURCHASE FROM WHOLESALER WHILE ON NON-DELIVERY LIST - TRANSPORTATION WITHOUT TRANSIT INSIGNIA - UNLAWFUL STORAGE - FALSE BEVERAGE TAX REPORTS - GAMBLING (LOTTERY) CHARGE DISMISSED - LICENSE SUSPENDED FOR 55 DAYS.

In the Matter of Disciplinary Proceedings against

Gerald's Tavern, Inc.
t/a Slater's Gallery
90 Sussex Avenue
Newark, N.J.,

Holder of Plenary Retail Consumption License C-783 (for 1970-71 license period) and Plenary Retail Consumption License C-129 (for 1971-72 license period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS and ORDER

Friedman & D'Alessandro, Esqs., by Amedeo C. Jacovino, Esq., Attorneys 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 divers dates between December 18, 1969 and May 27, 1970, when your name appeared on the Non-Delivery List, and without written authorization from the Director to do so, you purchased or accepted deliveries of twenty-four orders of assorted kinds and brands of alcoholic beverages from Galsworthy, Inc., 300 Frelinghuysen Avenue, Newark, N.J., holder of a plenary wholesale license; in violation of Rule 4(b) of State Regulation No. 39.

2. From on or about December 18, 1969 to on or about May 27, 1970, you stored alcoholic beverages except at your licensed premises or a public warehouse licensed under the Alcoholic Beverage Law, or at other premises pursuant to special permit first obtained from the Director of the Division of Alcoholic Beverage Control, viz., at premises known and designated as 156 Baldwin Place, Bloomfield, N.J.; in violation of Rule 25 of State Regulation No. 20.

3. You failed to file with the State of New Jersey, Department of the Treasury, Division of Taxation, Beverage Tax Bureau, requisite reports disclosing the alcoholic beverages distributed, transported, imported, purchased and sold by you during the months of December 1969, January, February, March, April and May 1970, in that you filed for those months reports which did not accurately and truthfully disclose your purchase of alcoholic beverages during those months; in violation of R.S. 54:45-1 and R.S. 54:47-3.

4. On divers dates between December 18, 1969 and May 27, 1970, you transported alcoholic beverages, viz., the alcoholic beverages referred to in Charge 1 herein on public highways in Newark, N.J. and Bloomfield, N.J. in a vehicle having no transit insignia affixed thereto or inscription printed thereon, as provided by Rule 12 of State Regulation No. 17; in violation of Rule 2 of State Regulation No. 17.

5. On August 5, 1970, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises tickets or participation rights in a lottery, commonly known as the 'numbers game'; in violation of Rule 6 of State Regulation No. 20.

On behalf of the Division agent B testified as follows: On August 5, 1970, accompanied by agents C and T, he entered the licensed premises pursuant to an assignment relating to suspected unlawful possession of alcoholic beverages, since the licensee had been placed on the Division's non-delivery list in December 1967. He indicated that the licensee remained on the non-delivery list continuously until the first date of this hearing, March 15, 1971.

A search of the premises disclosed the presence of thirty-six bottles of assorted alcoholic beverages and four cases of beer.

A further search of the premises disclosed an invoice dated May 27, 1970 issued by Galsworthy, Inc. and made out to one Anthony Stefanelli, in the amount of $305.49, representing the purchase of alcoholic beverages.

The search further disclosed the presence of a small black loose-leaf book behind the bar on a shelf which also contained sundry items, such as a valise, an umbrella, etc. The book contained a slip of paper which was identified by agent S, who qualified as an expert in "numbers" gambling matters, as a gambling slip.

There being only a non-English speaking bartender on duty the agents departed and returned the following day. They confronted Mike Allora, principal stockholder of the licensee, with respect to the items found. He denied any knowledge of the lottery slip.

On August 8 agent B continued his investigation by speaking with Earl Bleakley, warehouse manager of Galsworthy, Inc. who advised agent B that Allora had been brought to the warehouse by a salesman of Galsworthy, introduced as being a representative of a licensee, namely Stefanelli, and that he, Allora, would from time to time, pick up cash purchases for Stefanelli. He further identified the signature on the invoice made out to Stefanelli as that of Allora. A review of the Stefanelli file at Galsworthy, disclosed numerous cash deliveries to Stefanelli, signed by Allora.

At this point in the hearing, counsel for the licensee stipulated that the numerous purchases referred to and represented by copies of invoices obtained from Galsworthy were, in fact, purchases made by Allora.

Further investigation disclosed that Stefanelli had not authorized Allora to make his purchases in the manner herein described.

Examination of New Jersey Beverage Tax reports filed by the licensee disclosed that the business was inactive, and that no purchases of alcoholic beverages were made during the period from December 1969 to May 1970.

The agent thereupon questioned Allora who admitted making the cash purchases as hereinbefore described. He further admitted taking these purchases to his home in an unlicensed vehicle and that the alcoholic beverages found on the licensed premises on August 5, 1970 were "...brought ... from his home."

On cross examination agent B testified that his inspection was actually made on August 6, 1970 in the presence of Allora who cooperated with the agent. The black book in which the numbers slip was found was seized by the agents but was not available for the hearing. Allora denied ownership of the book or knowledge of its contents.

Allora advised him that he had purchased between $2,000 and $3,000 worth of alcoholic beverages shortly before being placed on the non-delivery list in December 1967, and that this was the liquor used to supply the licensed premises. Further, he stated that the invoice for this purchase was in the possession of his bookkeeper and unavailable. Agent B checked the records at Galsworthy and found no record of purchases made by Allora in December 1967.

Allora also acknowledged the cash purchases made between December 1969 and June 1970, and that he distributed these alcoholic beverages to friends. He asserted that he had no personal knowledge that any agent had visited his home to confirm the presence there of the alcoholic beverages in question.

Earl Bleakley, warehouse manager of Galsworthy, substantially repeated the version of the incidents which occurred at the Galsworthy warehouse with respect to Allora's purchases, using the name of Stefanelli. He added that he had no personal knowledge as to whether the vehicle used by Allora was or was not licensed, but stated that it is company policy to determine the existence of transportation permits.

On behalf of the licensee, Michael Allora testified that he acquired 50% of the stock in the licensee corporation in 1965 and became active in December of 1967, at which time, anticipating that the licensee would be entered on the Division's non-delivery list, he made the $2,000 to $3,000 purchase. He explained that the premises had been robbed numerous times in recent years, and, acting on advice of a local police officer he transported this supply of alcoholic beverages to his home for storage to avoid the possibility of this supply being stolen. This stock was used to replenish the supply at the tavern from time to time, as needed. The tavern was doing a gross volume of between $300 and $400 per week during the period from 1968 through June 1970.

With respect to the cash purchases made from Galsworthy from December 1969 through June 1970, he admitted these purchases and admitted that Stefanelli was unaware of the situation. He

explained that the alcoholic beverages so purchased were stored separately from the large order purchased in December 1969, and were not used to supply the licensed premises but were either given or sold, at cost, to his friends.

With respect to the allegation that he filed faulty Beverage Tax Reports for the months of December 1969 and January, February, March, April and May 1970, which reports show no purchases of alcoholic beverages, and indicate the business as "inactive", he explained that, since the cash purchases made from Galsworthy were not used as part of the stock of the licensed premises, these purchases need not have been divulged on the said reports.

Lastly, Allora denied all knowledge of the lottery slip and denied ownership of the black book referred to hereinabove.

Having thus presented a substantial quantum of the evidence, it appears that the licensee by his own admission has committed the violations alleged in Charges 1, 2, 3 and 4. The cash purchases at Galsworthy during the months of December 1969, and January through May 1970, constitute purchases made while on the non-delivery list and there has been no evidence of written authorization from the Director pursuant to Rule 4(b) of State Regulation No. 39. The storage of this alcoholic beverage and the storage of the large amount alleged to have been purchased prior to placement on the non-delivery list, at other than the licensed premises or a licensed public warehouse, and without special permit are clearly violations of Rule 25 of State Regulation No. 20. The admission of Allora that he transported these alcoholic beverages in his unlicensed vehicle constitutes an admission of violation of Rule 2 of State Regulation No. 17.

Allora seeks to justify his acts and, thus, mitigate the penalty with his explanation of the segregation of the large quantity of alcoholic beverages purchased earlier as stock for the licensed premises from those purchases made allegedly for friends. He seeks further to suggest that, at the recommendation of a police officer, he transported the alcoholic beverages home for safe-keeping. When one considers the method employed by Allora to defraud Galsworthy and, thereby, make his cash purchases, the uncorroborated testimony of Allora lacks credence and is unworthy of belief.

With respect to Charge 3, Allora's explanation is equally without merit. He testified that $2,000 to $3,000 worth of alcoholic beverages were used to stock the licensed premises from 1968 through June 1970, or a total of one hundred thirty weeks. He further testified that the business grossed between $300 to $400 per week during that period. It follows, therefore, that the $2,000 to $3,000 worth of alcoholic beverages generated some $45,000 in gross sales. I find this to be wholly implausible and am impelled to conclude that some substantial portion of the alcoholic beverages purchased for cash, by subterfuge, while on the non-delivery list, was used in furtherance of the licensed business. The answers on the reports "None" or "inactive" are clearly misleading and inaccurate, particularly as answers to Questions 1, 4, 5, 8 and 9. I therefore, find the statutory provision was violated because the required reports are inaccurate and untruthful. Weinstein v. Div. of Alc. Bev. Control, 70 N.J. Super. 164 (App. Div. 1961) at p.168.

Lastly, with respect to Charge 5, there is no dispute that one "numbers slip" was found on the licensed premises. There is,

however, a paucity of evidence attaching any knowledge of the existence of this slip to the licensee or its agent. The testimony of agent B is simply that the slip was found among sundry items of personalty. The explanation by Allora that these were items left by patrons is reasonable under the circumstances. There is a complete lack of any evidence that any gambling activity took place on the licensed premises. My consideration of the facts and circumstances relating to the said charges leads me to conclude that the Division has failed to establish by a fair preponderance of the believable evidence that the licensee "allowed, permitted and suffered" the "numbers slip" on his licensed premises. See Re Columbia Tavern, Inc., Bulletin 1750, Item 8.

I therefore recommend that the licensee be found guilty on Charges 1, 2, 3 and 4; that it be found not guilty of Charge 5; and that said Charge 5 be dismissed.

The licensee has no prior adjudicated record. It is further recommended that the license be suspended on the first charge for fifteen days, Re Harrington & Burns, Inc., Bulletin 1882, Item 5; on the second charge for twenty days, Re Newman, Bulletin 1575, Item 3; on the third charge for ten days, Re The Little Doll, Inc., Bulletin 1886, Item 6; and on the fourth charge for ten days, Re Harrington, supra., or a total of fifty-five days.

Conclusions and Order

No exceptions to the Hearer's report were filed within the time permitted by Rule 6 of State Regulation No. 16.

Having considered the entire record herein, including the transcript of the testimony and the exhibits, I concur in the recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of October 1971,

ORDERED that Plenary Retail Consumption License C-129, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Gerald's Tavern, Inc., t/a Slater's Gallery, for premises 90 Sussex Avenue, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. on Tuesday, October 19, 1971, and terminating at 2:00 a.m. Monday, December 13, 1971.

Richard C. McDonough
Director

4. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER IMPOSING SUSPENSION.

In the Matter of Disciplinary Proceedings against	)	
S. Edward Hausner t/a Skyline Lounge 789 Dowd Avenue Elizabeth, New Jersey,	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-111, issued by the City Council of the City of Elizabeth.	)	

Theodore Cohen, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On January 6, 1971 Conclusions and Order were entered herein suspending the license for fifty days effective January 21, 1971 after licensee was adjudged guilty of charges alleging that he allowed, permitted and suffered obscene printings, writings and pictures on August 27, 1969 in and upon his licensed premises, in violation of Rule 17 of State Regulation No. 20, and that he possessed prophylactics, contraceptives and contraceptive devices upon his licensed premises, in violation of Rule 9 of State Regulation No. 20. Re Hausner, Bulletin 1956, Item 1.

Prior to the effectuation of the said suspension, on appeal filed, the Appellate Division of the Superior Court, by order dated January 20, 1971, stayed the operation of the suspension until the determination of the appeal. The court affirmed the Director's action on September 27, 1971 (In re Hausner, Appellate Division 1970, not officially reported, recorded in Bulletin 2008, Item 1). The suspension may now be reimposed.

Licensee has made application to this Division for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971. However, this is not the kind of case in which I would accept such offer in compromise. The application is, therefore, denied.

Accordingly, it is, on this 7th day of October 1971,

ORDERED that Plenary Retail Consumption License C-111, issued by the City Council of the City of Elizabeth to S. Edward Hausner, t/a Skyline Lounge, for premises 789 Dowd Avenue, Elizabeth, be and the same is hereby suspended for fifty (50) days, commencing at 2 a.m. Thursday, October 14, 1971, and terminating at 2 a.m. Friday, December 3, 1971.

Richard C. McDonough
Director