

Ambrose
~~Deputy~~ 29

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

BULLETIN 1842

March 21, 1969

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - SHARP'S LODGE INC. v. LAKEWOOD.
2. DISCIPLINARY PROCEEDINGS (Newark) - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Gloucester City) - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Atlantic City) - GAMBLING (WAGERING) - SALE TO INTOXICATED PERSON - SALE TO A MINOR - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Fort Lee) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1842

March 21, 1969

1. APPELLATE DECISIONS - SHARP'S LODGE INC. v. LAKEWOOD.

Sharp's Lodge Inc., t/a)
Sharp's Lodge Inc.,)
Appellant,) On Appeal
v.)
Township Committee of the) CONCLUSIONS
Township of Lakewood,) and
Respondent.) ORDER

Alvin H. Gelb, Esq., Attorney for Appellant
James P. Jeck, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals as from denial by respondent Township Committee of the Township of Lakewood (hereinafter Committee) which failed to act on its application for renewal of its plenary retail consumption license for the license year 1968-69, for hotel premises located at 706 Madison Avenue, Lakewood.

At its special meeting held on Thursday, June 20, 1968, the Committee, after a hearing held on objection, reserved decision on the said application. No further action was taken thereon.

In view of the fact that the Council has failed or refused to act upon the application, such failure or refusal is tantamount to denial of the application. Bradford v. Paulsboro, Bulletin 419, Item 11; Higgins v. Elizabeth, Bulletin 1081, Item 5; Clemencich v. Manalapan, Bulletin 1465, Item 1.

This is an appeal de novo with full opportunity to the parties to present evidence and cross-examine witnesses. Thus it can be determined whether under all of the evidence presented at this plenary hearing the license should be renewed. See Lethe, Inc. v. North Bergen, Bulletin 1537, Item 2; Ritter v. North Bergen, Bulletin 546, Item 2.

In its petition of appeal the appellant alleges that it was informally advised that the failure or refusal to either grant or deny said application was based upon the Committee's information that "there were certain violations of the building code or other codes in the Township." Appellant asserts that it has complied with all requirements of the building code and that, therefore, the action of the Committee was erroneous.

The answer of the Committee, as amended, admits the jurisdictional allegations of the petition of appeal and sets forth the following defenses: (1) that at the time of the application the appellant had operated a hotel of less than fifty sleeping rooms, (2) that the Committee has withheld approval pending an investigation to determine whether or not the appellant is the

real party in interest due to the "nature and method of operation of the licensed premises indicating the possibility that person or persons other than the corporation stockholders shown on the license application may be the beneficial owner or have a real interest in said licensed premises or in the operation thereof ...", (3) that the premises have been operated in such manner as to constitute the operation of a disorderly house in that the appellant permits the premises to be frequented by criminals, prostitutes, gamblers or other persons having records as criminals or disorderly persons, (4) that persons engaged as employees have criminal records and have not obtained a waiver from this Division, (5) that appellant has permitted persons, firms or corporations to pay bills for supplies or work done on the premises although such persons were not listed as having an interest in the said licensed premises, and (6) that appellant has a written or oral contract to sell the licensed premises to persons or corporations other than the appellant; that such prospective purchaser has a monetary interest in the licensed premises, having advanced sums for improvements, labor or materials or supplies, and such persons have been supplying labor or performing managerial services without the said interest of the prospective purchaser having been disclosed in the license application.

By order dated July 8, 1968, the term of the license was extended pending the determination of this matter and until further order of the Director.

Abraham Sharp (president and principal stockholder of appellant corporation) gave the following account: After attending a meeting on the said application for renewal of this license, he was informed informally by one of the councilmen that the application was not renewed because of noise and an improper door exit.

Appellant has operated under this license at these premises for many years until May 8, 1968 when it entered into a contract for the sale of this property and the stock of the corporation to Angelo J. Bertolotti for the sum of \$50,000. Bertolotti deposited \$5,000 in the corporate account and thereafter proceeded to undertake reconstruction of the building, including a new bar-room. He had no idea how much money was actually spent for these improvements nor did he have any records to show how much money was spent. Bertolotti undertook the management of the hotel and the operation. This witness could not specifically identify the employees engaged at this facility after May 8, 1968.

As to Bertolotti, Sharp did not know what his regular business or occupation was. However, he admitted that Bertolotti paid for all of the construction work, paid the salaries of the employees including the orchestra. Pressed to explain what happened to the \$5,000 deposit, he stated that this \$5,000 was to be deposited with his attorney Mr. Alvin Gelb until closing title. (Gelb represented appellant at the hearing herein.) The contract further provided that at the time of the closing there was to be paid Bertolotti the sum of \$10,000 and a mortgage in the sum of \$35,000 was to secure the entire purchase. Asked to identify a Miss Eileen Hup, whose checks were deposited in the appellant's account, he stated that she was merely a clerical person employed by Bertolotti but knew nothing more about her. He explained further that the checks were merely exchanges for checks issued by the appellant for expenses of construction and the purchase of materials and supplies.

The witness further explained that Bertolotti apparently could not meet the terms of the contract; that in the early part of September 1968 Bertolotti assigned his contract to Herbert Gross who was to purchase the property and the stock of the corporation on the same basis and on the same terms, that is, he was to take an assignment of the contract from Bertolotti. It was pointed out, and the witness agreed, that nowhere in the contract was there any provision that Gross would assign back the shares of the corporation in the event of a default. Gross was not to put in any cash but was to receive the benefit of the \$5,000 originally paid by Bertolotti, and would also be the beneficiary of all the monies expended by Bertolotti for the improvements to the property.

Sharp asserted that the \$5,000 deposit placed by Bertolotti and held in trust by his attorney Mr. Gelb was returned to the appellant's account with the authorization of Bertolotti and was eventually paid out for improvements.

He was then questioned about a Mr. Valvano and stated that, while he knew this individual, he had no information about his background or employment record. Finally, he added that, when this property was eventually sold to Gross on September 4, 1968, both he and his wife, who were the officers and directors of the corporate appellant, resigned those offices. At the time of the final transfer to Gross there was no inventory of any of the stock of alcoholic beverages nor any consideration in the agreement for transfer of the corporate stock or the inventory.

Herbert Gross, testifying in behalf of the appellant, stated that he is now the owner of the building by deed executed by Abraham Sharp and his wife (who owned it in their individual names), and also the assignment and amendment of a contract from Bertolotti to him dated July 29, 1968. He gave the following version of the transaction: Bertolotti entered into the agreement to purchase this hotel and the stock of the corporation in April 1968 and paid a deposit of \$5,000 on account of the purchase price of \$50,000. During the next few months Bertolotti made improvements at a cost of "conservatively" \$25,000. Then, as this witness explains it, "I think he got into deep water financially. He couldn't meet his obligations. He was being harrassed. He was in some other kind of trouble at the time and I had become friendly with him over a period of, May, June, July and August, four months, of constant attendance there, and I got the benefit." He explained that the repairs had not been fully completed but that in his opinion he got a bargain because the property was then worth "approximately \$75,000." Gross explained that he was quite familiar with this property because he had visited the property daily for some months prior to the conveyance to him, and was familiar with its operation over a long period of time. The price included the building but apparently the stock of the corporation was thrown in. He then admitted that he paid no consideration for the transfer of the stock of the corporate appellant or the alcoholic stock in trade, although he assumed that the corporate stock was part of the consideration for the entire transaction. He was then asked the following:

"Q In accordance with the option provided in the contract of sale. The sellers who are transferring their stock at no consideration make no representations as to any liabilities as to said corporation, and if there are any liabilities the same shall be assumed by the buyer herein. Is that correct?

A If that's what it says there, that's correct.

Q And do I understand you paid no consideration

for the transfer of the alcoholic beverage license and the stock in trade of alcoholic beverages owned by Sharp's Lodge, Inc., as is set forth in this agreement or, rather, this closing statement?

A That is right."

The witness also did not know exactly what the liabilities or obligations of the corporation were at the time of the said transfer and assignment, although it was under the impression that it was "several thousands dollars." However, he could not produce any records which would reflect the exact amount of the obligations nor did he produce any of the cancelled checks, although he was subpoenaed to produce these records. He was then questioned about his employees and could not seem to remember any of their names except for one employee by the name of Fred Apollo who was employed as a bartender.

Finally the witness was asked to explain why he executed two notes -- one in the sum of \$35,000 and the other in the sum of \$11,000 -- whereas the original agreement provided for one note which secured a mortgage in the sum of \$46,000. The \$11,000, the witness explained, was a note payable weekly in order to give the Sharps "the original ten thousand that they were supposed to have on closing a lot quicker than they would have the mortgage money of thirty-five thousand."

Harold Lipsky testified that he entered an objection before the Committee to the renewal of this license and based his objection upon the fact that the outside door leading from the street to the bar was constantly open and persons were moving in and out of the bar. He noted significantly that, since the Spring of 1968, there was "quite a deal of activity going in and out of the bar to late hours of the night." It was a complete change in the activity that I had noticed over the period of years. A lot of cars parked all around; young people coming in and out of the hotel, which I had never seen before. It was strictly a Jewish hotel catering to a Jewish crowd of elderly people. Never much activity any other way. I noticed a large amount of non-Jewish people which I didn't notice before, big Cadillacs"

ABC Agent H, on behalf of the Committee, testified that pursuant to a specific assignment he conducted an investigation to determine whether or not a "front" situation existed at these licensed premises. The investigation commenced on July 12, 1968, at which time he interviewed Sharp and Bertolotti. Bertolotti at that time identified himself as the manager. Proceeding with his examination he asked to see check books and some of the cancelled checks. Several cancelled checks were available; others were not. Bertolotti took charge and answered the questions, particularly those relating to the personnel. Bertolotti informed this witness that he had agreed to pay Mr. Sharp by a contract entered into with him on May 8, 1968, the sum of \$50,000. He paid \$5,000 in cash. The sum of \$10,000 is to be paid at the time of closing, and the balance was to be secured by a note and mortgage in the sum of \$35,000. Bertolotti refused to reveal wherein he had obtained the \$5,000 except to mention that some friends of his had given it to him.

A further check of those cancelled checks which were produced reflected a check for \$1,485, made payable to Sharp's Lodge by Eileen Joan Hup, which contained a "bounced slip from the bank." Bertolotti admitted that this woman had advanced money to him from time to time and that in fact she had given him cash to cover this "bounced" check. Other checks indicated that pay-

ment was made to an entertainment group at the hotel and there were also two checks made to Nicholas Valvano. Bertolotti explained that Valvano was "sort of a boss of the contractors" and "sort of managed" the operation of the remodeling of the barroom for Bertolotti. Bertolotti also at that time denied that he had any criminal record and described himself as a freelance used-car salesman.

Later that day this witness visited the home of Eileen Hup and questioned her about the check in the sum of \$1,485 and any other checks which she might have given to Bertolotti. She informed him that she would help out occasionally at the hotel; that she knew Bertolotti, but that she knew nothing about these checks. She did not even know the name of the bank upon which these checks had been drawn. Her explanation: She just signed the entire check book in blank for her husband whom she identified as Gary Hup. However, she did not know where he lived, or about his employment. Further, she did not receive any of the statements of this account from the bank.

The witness then continued his investigation by a visit to the office of the attorney Alvin Gelb. Mr. Gelb was questioned about the form that Bertolotti had given his \$5,000 deposit. Gelb explained that a majority of the \$5,000 was in the form of three checks - - one of Bertolotti's, another one in the sum of \$1,600 and the other \$1,100. Some of these checks were given by Mrs. Hup and another by Connie Dello Russo who was allegedly the phone girl at the hotel. It seems that Eileen Hup had written \$2,500 worth of checks which apparently "bounced". A number of these checks were made payable to the various contractors and suppliers of materials, bar supplies and foodstuffs. Interestingly enough, one supplier (the Shore Restaurant Equipment Supply Company) billed the items purchased to "Sharp's Lodge" and next to Sharp's Lodge on the line that said "Sold to" is "Eileen Joan Hup" written in parentheses. This appeared on several of the bills, and this witness noted that several of the suppliers told him that they were under the impression that Mrs. Hup was a part-owner of Sharp's Lodge.

His examination of fourteen other checks indicated that they were either paid to hotel employees by Bertolotti or to material men who reconstructed Sharp's Lodge.

Thereafter the witness contacted the bank and ascertained that in fact the bank had sent the bank statement and the cancelled checks to Mrs. Hup at her present address, so that the information that she gave the investigator, i.e., that her husband had received the checks at another address, was untrue. The agent then interviewed Mrs. Hup's landlord and showed him a photograph of Nicholas Valvano, who was theretofore described by Bertolotti as the "boss" of the contractors in charge of remodeling the hotel. The landlord immediately recognized this man as being Nick Hup, the alleged husband of Mrs. Hup. The photograph displayed, which was a police photograph, was in fact Nicholas Valvano, whose police record showed that he was convicted of crime, having been sentenced to five years on May 8, 1956 to the New Jersey State Prison in Bordentown on a charge of breaking and entering.

Agent H then returned to the premises, in the company of ABC Agent B, on July 24, 1968 and observed that Valvano was behind the room-service desk in the lobby of the hotel. There were four persons at the desk at the time, including Bertolotti. Bertolotti directed the agents to a rear room where they were immediately joined by Valvano, who was visibly angry and accused

the agents of harassing Mrs. Hup. When the agents asked Valvano what his name was, he became obdurate and refused to give it to them. During the course of the conversation he told the agents that he would appreciate if they would stop interviewing local businessmen with respect to the activities of this hotel. At this point he made a conciliatory offer to arrange to give these agents and their wives a week's vacation in Atlantic City. The agents unhesitatingly declined.

Sharp then joined in the conversation, and arrangements were made to meet at Gelb's office on the following day to discuss the books of account. At that meeting Sharp informed the agents that he now had a new accountant; that his former accountant (Mr. Simcsuk) was now doing the books for Bertolotti. Sharp was questioned about his check book and the bills which reflected a large number of checks written to Valvano and other persons whom he described as contractors, and he was asked why these checks were drawn on the hotel account since Sharp claimed that he had nothing to do with the reconstruction and modernization. His explanation: These were merely exchanges that Bertolotti "has to make good on." Sharp took the position that he did not know any of the persons engaged in the remodeling of the hotel, and was asked specifically about Valvano. He stated that "He's a visitor. I don't know his name. They're friends with them, meaning Bertolotti. I don't know who they are." However, he denies that Valvano was one of the contractors. He also insisted that Eileen Hup was merely a friend of Bertolotti; that he did not know where Bertolotti had gotten the money to pay for the remodeling.

The witness then continued his investigation by checking with the local Police Department. He ascertained that one of the persons he saw at Sharp's Lodge was named Alex Schwed, who has a criminal record. He also saw a man named Jimmy Fife (also known as "Jimmy the Brush") who had a criminal record. As testified before, he also verified that Valvano had a criminal record.

ABC Agent B. corroborated the testimony of Agent H with respect to a personal visit made to the licensed premises in the company of Agent H, and related his further investigation as follows: On October 9 he visited the hotel and noted that there were approximately six or eight persons seated in the lobby. One was identified as James Fife and another as Valvano. He identified himself and asked to see Gross because he wanted to examine certain documents. At that time Valvano seemed to be very upset and said to the agent, "Bobby Kennedy got shot; Jackie Kennedy got shot. They were all for nothing, and sixty thousand dollars is something to get shot for." Valvano was disturbed because this agent had interviewed Mrs. Hup (heretofore identified as his wife) during this investigation, and he conceived that she was being "annoyed."

Robert L. Wooley (a local police detective) also participated in this investigation. He testified that he was assigned to spot-check these premises "for any criminals or any people that were known to us to be criminals." In the course of his assignment, on June 8, 1968, accompanied by Sergeant Justus, he went to the premises for the purpose of serving a warrant on a person who he thought would be there. At that time he observed that James Fife, Valvano, Alex Schwed and Martin De Luca were there. On his return to the premises on June 17, James Fife (also known as "Jimmy the Brush") and Valvano were present. Valvano questioned him on the purpose of his visit. He stated that he had a warrant for Bertolotti. Valvano told him that Bertolotti was not there and

he did not know where he was, but that he would give him the message.

Returning to the premises on August 16, 1968, accompanied by Sergeant Justus, he spoke to Valvano who was behind the room-service counter. Gross joined the conversation briefly and departed. He once more returned to the property on October 11 and again saw Valvano and Fife. Valvano told him that he intended to renovate the dining-room and indicated that he was going to "spend in the area of ten thousand dollars to renovate it." The witness further testified that he examined the file with respect to the criminal records of Fife, Valvano and Schwed and ascertained the following: Fife was convicted of bookmaking on March 1, 1957 and was sentenced on April 12, 1957 to two to three years in New Jersey State Prison.

Sergeant Ross Justus testified that he visited these premises on a number of occasions during 1968 pursuant to an assignment to investigate the said premises. His first visit was made on May 25, 1968, when he observed that the premises were being remodeled. Bertolotti approached him, told him that he was the new owner, and they were then joined by Valvano. Valvano stated that he was investing \$80,000 in remodeling these premises.

Returning to the premises on June 8, 1968, accompanied by Officer Wooley, he again engaged in a conversation with Valvano and informed him that he had a warrant for the arrest of Bertolotti. He returned to these premises on June 17, 1968, with the same warrant and was informed that Bertolotti was in Atlantic City. The following day he was notified that Bertolotti had been apprehended by police in Atlantic City.

The witness visited these premises a total of eight times and on six of these occasions he saw Fife, Valvano, Schwed, De Luca and Gleeson. On his visit in July 1968 he spoke to Gross, who inquired why the police were checking the place. He explained to Gross: "Well, the element that you have in here, you would draw the police's attention. Everybody in the lobby has a criminal record and that's why we are interested." Gross assured him at that time he would try to clean up the place.

Stephen Belitrand, chief of detectives of Lakewood, produced records with respect to the criminal convictions of several of the aforementioned individuals. He testified that Schwed had been convicted of larceny in 1954, and on October 27, 1964 was convicted of breaking, entering and larceny. Fife was convicted of bookmaking in 1957 and, as mentioned hereinabove, was sentenced to two to three years in New Jersey State Prison. Valvano was convicted on June 8, 1953 of assault and battery, and in 1955 was sentenced to Bordentown Reformatory on his conviction of breaking, entering and larceny. Martin De Luca was convicted of bookmaking in 1957 and in 1966, and on the latter conviction was sentenced to six months in the county jail and fined \$100.

Reginald Renery (a public accountant) testified that he was the accountant for the Sharps and Sharp's Lodge until April 1968 when Bertolotti took over the ownership and management. At that time Bertolotti retained Theodore Simcsuk as his accountant to make an analysis of the financial situation. This witness explained that, after that time and between the period of April 21, 1968 through June 30, 1968, the whole method of bookkeeping was changed because Sharp was no longer in charge of the operation of the hotel. He noted, particularly, that on June 24, 1968 there was a deposit on the Sharp Lodge account to "Alvin Gelb, \$5,000." He explained that Sharp had informed him that certain payments had been made on behalf of Bertolotti, that he had not received

repayment and this was a matter of concern to him. Bertolotti promised to repay Sharp the sums that had been spent from that account. Finally, after Bertolotti took over the business, he had his own operation and Simcsuk was brought in as an accountant. Sharp told him that Bertolotti was taking over the business, was going to manage it, and eventually would buy it. Thus, when certain construction and operational supplies were delivered to Sharp's Lodge, Sharp would pay for them from the appellant's account and would be reimbursed by Bertolotti. This included liquor bills as well as bills for supplies and materials.

Theodore Simcsuk (a public accountant) testified that he was employed by Bertolotti in April 1968 and undertook to prepare accounting records for Bertolotti. Bertolotti supplied him with information on receipts and disbursements; he prepared the journal entries from the said information. These books were not the regular books of account of Sharp's Lodge, and in fact this witness stated that he had never seen Sharp's Lodge books. In fact he stated that, when he was first retained, he was told that the Sharps had no longer any interest in the business; that he prepared these books of account from figures supplied directly by Bertolotti.

Lloyd G. Carr (a member of the Committee) testified that the reason he did not vote to renew the license was "because of rumors I had heard and in conference with the other committeemen, we had all heard rumors and gotten telephone calls about this and we figured we would hold it up until we got an investigation started." He felt that the license should not be renewed because of aroused public opinion, and he decided not to vote for approval of the application until the investigations were completed.

I have set forth a detailed summary of the testimony in order to establish a proper perspective from the totality of the evidence. It is clear that both sides have had a full opportunity to present testimony and have been accorded due process in these proceedings. The central issue herein is whether the evidence presented at this plenary hearing justifies the Committee's refusal to renew the appellant's license. Cf. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. Before considering the facts and the conclusions of law to be drawn therefrom, it would be well to set forth the applicable principles involved in the consideration of the renewal of liquor licenses. The influential determinant on this application for renewal of license is whether it is in the public interest that this establishment be licensed in the future. Tumulty v. Dunellen et al., Bulletin 1487, Item 4; aff'd (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1. The burden of proof involving discretionary matters, wherein renewal of licenses is sought, falls upon the appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84. As the court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

"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. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585;

Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed 75 Id. 557. 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. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28."

And the court added this significant and pertinent imperative:

"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."

Further, the worthiness of a person applying for a license or for renewal of a license is a matter which resides within the sound discretion of the issuing authority. Frey v. Hoboken, Bulletin 1768, Item 1. It is proper for a local issuing authority in passing upon applications for renewal of liquor licenses to take into account not only conduct of licensees but also conditions, not attributable to its conduct, which render a continuance of a tavern in particular location against public interest. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

I have carefully examined and evaluated the testimony and exhibits presented in evidence herein. I have also observed the demeanor of the witnesses as they testified before me. Testimony, 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; Gallo v. Gallo, 66 N.J. Super. 1.

Findings of fact and conclusions of law:

1. I find that from approximately April 21, 1968 until June 30, 1968, and continuing thereafter, Abraham Sharp and his wife, who are listed as the principal officers and stockholders of the appellant, surrendered the control and management and operation of the said license and the licensed premises to Bertolotti and Valvano.

2. While it is not entirely clear whether Valvano was in fact the true owner of the business, a proper inference might be drawn from both the statements made by him to Division agents and other police officers, as set forth hereinabove, that he was in fact the owner of the premises and used Bertolotti as a "front." The very nature and characteristic of a "front" is concealment and subterfuge. Very rarely is such proof buttressed with confessions and/or affirmative admissions. Thus the testimonial presentation must be largely circumstantial and documentary. See Re Village Tap Room, Inc., Bulletin 1551, Item 1.

3. Whether or not Bertolotti was operating as a "front" for Valvano, it is clear that he was in apparent control as manager of these premises until he disappeared from the scene. He hired his own accountant, set up his own books of account and records, represented himself on many occasions as being the person in charge

of the premises, and undertook the reconstruction of the premises, including the barroom. In this connection, and as part of the subterfuge, the evidence shows that numerous check exchanges were made with the appellant's account, and that Bertolotti obligated himself to the extent of many thousands of dollars for such reconstruction.

4. The evidence further shows that monies were loaned to Bertolotti for the reconstruction by Miss Hup who, the testimony reveals, is the wife of Valvano. It is fair to deduce that this money was in fact Valvano's money and played the part in the entire picture after April 18, 1968.

5. The testimony shows that Valvano asserted that he had invested a sum approximating \$80,000, either in sums advanced or to be advanced. He also represented himself to be the owner of the licensed premises. His implied threat on the life of one of the ABC agents strongly supports the inference that he was apprehensive that his property interest was being jeopardized. Such threats made by one associated with appellant must not be ignored or lightly considered in the ultimate determination of this matter.

6. Regardless of whether Bertolotti or Valvano was in full control, it is clear that either one or both of them had an interest and is the real and beneficial owner of the license. Thus it is clear that the licensee aided and abetted Bertolotti and/or Valvano to exercise the rights and privileges of this plenary retail consumption license without notifying the Committee and without setting forth their interest therein in the license application by notice as required by our regulation. Thus the licensee was in clear violation of R.S. 33:1-52 and R.S. 33:1-26.

7. It is equally clear that Bertolotti, after assuming control of the licensed premises, advanced sums of money for improvements and supplies, engaged contractors, hired employees, and in all other ways assumed the full operation of these licensed premises. This was done without lawful compliance with the rules and regulations of this Division.

8. I find that all of the parties in the transactions were represented by Alvin Gelb. Thus it must be assumed that there was a full and fair disclosure of all the facts as existing among the parties.

9. I further find that, according to the record herein, Bertolotti was having some difficulty with the police authorities and it was considered politic for him to leave the scene. Valvano nevertheless remained and continued to direct and operate the activities at this facility. His presence at these premises was noted as late as October 1968.

10. A transfer of the property and assignment of the stock of the corporate appellant was made to Gross. Gross entered into an agreement for the purchase of the property but admitted that the stock of the appellant was assigned to him without any monetary consideration. He did not invest any money and was then placed, in so far as his documents are concerned, in the place and stead of Bertolotti. I do not believe, nor is there anything in the testimony to indicate, the contrary - - that Bertolotti defaulted in his contract. It is preposterous to accept the thesis that Bertolotti, having invested \$5,000 as a cash deposit and approximately \$30,000 in improvements to the property and the

the licensed premises, would assign his entire interest without consideration to Gross. It is more logical to believe that both Bertolotti and Valvano still maintained the real and beneficial interest in this property, even though the nominal ownership of the corporate appellant is in Gross. The evidence further discloses that some of the discussions were held with Valvano in the presence of Gross, although Gross stoutly denies that he ever heard such discussions. It is remarkable, however, that Valvano was not produced by the appellant to contradict any of the testimony with respect to his affiliation with this license.

11. I find that the licensee permitted the operation and management of its licensed premises after April 18, 1968, to be conducted by Bertolotti, Valvano and others - - persons with criminal records, whose disqualifications from being engaged in the alcoholic beverage industry were not removed by order of this Division.

12. I further find that the licensee, after April 18, 1968, has permitted and suffered the congregation of persons with criminal records, more particularly Valvano, Bertolotti, Schwed and Fife, among others, and has failed and refused to take any action to eliminate this condition. I am further satisfied that, during the period after April 18, 1968 until June 30, 1968 and thereafter, the licensee permitted Bertolotti and those for whom he was acting to retain the profits and income of these licensed premises, and falsely stated otherwise in the license application, in violation of R.S. 33:1-25.

It should be noted at this point that the testimony relating to the period after June 30, 1968 was received in evidence to support the allegation of a common scheme in action on the part of the appellant. The attorney for the appellant argues that, in order to properly refuse to grant appellant's application for renewal, it must present and prove charges as delineated hereinabove. Of course, this is not so. As the court expressed it in Tumulty v. Dunellen et al., supra (reprinted in Bulletin 1519, Item 1):

"The problem before the Director 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."
See Downie v. Somerdale, supra.

In the area of licensing, the determinative consideration is the public interest in the creation or continuance of the licensed operation. Blanck v. Magnolia, 38 N.J. 484. In thus implementing the salutary objectives of statutory liquor control, the responsibility of a local authority is "high", its discretion "wide" and its guide "the public interest". Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960).

My assessment and evaluation of the totality of the evidence presented herein, the exhibits and the summation of counsel lead me to the irresistible conclusion that the renewal of this license would be inimical to the public interest; that, conversely, the interests of the community would best be served

by refusing to renew the appellant's license for the current licensing year.

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

Conclusions and Order

Exceptions to the Hearer's report, with supportive argument, were filed by appellant's attorney and answering argument to the said exceptions was filed by the attorney for respondent pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the transcript of the proceedings, the exhibits, the Hearer's report, the exceptions thereto and the answer to the exceptions. I find the exceptions without merit, and concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 23rd day of January 1969,

ORDERED that the action of the respondent Township Committee of the Township of Lakewood, which, in effect, denied appellant's application for renewal of its plenary retail consumption license for the license year 1968-69, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on July 8, 1968, extending the term of appellant's license pending determination of this appeal, be and the same is hereby vacated, effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ARTHUR & JUNE SAUNDERS t/a Artie's Place 512 So. 19th Street Newark, New Jersey

CONCLUSIONS and ORDER

Holder of Plenary Retail consumption License C-63 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

Licenses, by Arthur Saunders, Pro se Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licenseses plead non vult to charges (1) and (2) alleging that on November 27 and 29 and December 3 and 12, 1968, they permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licenseses have a previous record of suspension of license by the Director for five days effective January 14, 1962, for possession of alcoholic beverages not truly labeled. Re Saunders, Bulletin 1495, Item 2.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Campo Associates, Bulletin 1831, Item 4.

Accordingly, it is, on this 21st day of January, 1969,

ORDERED that Plenary Retail Consumption License C-63, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Arthur and June Saunders, t/a Artie's Place, for premises 512 So. 19th Street, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, January 28, 1969, and terminating at 2:00 a.m. Monday, March 24, 1969.

JOSEPH M. KEEGAN DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DOLAN CLUBS, INC.)
t/a Reading Tavern)
#50 Crescent Blvd. (Route 130))
Gloucester City, New Jersey)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-11 issued by the Mayor and Common Council of the City of Gloucester City)

-----)

Licensee, by Edward J. Dolan, President, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 28, 1968, it sold three six-packs of bottles of beer and a pint of whiskey to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Ehrlich, Bulletin 1827, Item 5.

Accordingly, it is, on this 21st day of January, 1969,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Common Council of the City of Gloucester City to Dolan Clubs, Inc., t/a Reading Tavern, for premises #50 Crescent Boulevard (Route 130), Gloucester City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, January 28, 1969, and terminating at 2:00 Friday, February 7, 1969.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - SALE TO INTOXICATED PERSON - SALE TO A MINOR - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MICHAEL F. BARRETT
t/a Duquesne Grille
22-26 S. Tennessee Avenue
Atlantic City, New Jersey

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the City of Atlantic City

Licensee, Pro se
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on January 10, 1969 he (1) permitted gambling (pool games for money stakes) on the licensed premises, in violation of Rule 7 of State Regulation No. 20, (2) sold a drink of beer to an intoxicated patron, in violation of Rule 1 of State Regulation No. 20, and (3) sold a drink of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Samuel Berelman, Inc., Bulletin 1826, Item 3), on the second charge for twenty days (Re Downsea Beach Hotel, Inc., Bulletin 1831, Item 8), and on the third charge for ten days (Re Holly Distributors, Inc., Bulletin 1720, Item 7), or a total of forty-five days, with remission of five days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 13th day of February 1969,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the City of Atlantic City to Michael F. Barrett, t/a Duquesne Grille, for premises 22-26 S. Tennessee Avenue, Atlantic City, be and the same is hereby suspended for forty (40) days, commencing at 7 a.m. Thursday, February 20, 1969, and terminating at 7 a.m. Tuesday, April 1, 1969.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
YELLOW FRONT SALOON, INC.)	CONCLUSIONS
126 Main Street)	and
Fort Lee, New Jersey)	ORDER
)	
Holder of Plenary Retail Consumption License C-31 issued by the Borough Council of the Borough of Fort Lee)	
-----))	
Licensee, by John W. Deegan, President, Pro se)	
Walter H. Cleaver, Esq., Appearing for)	Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 30, 1968, it possessed alcoholic beverages in eight bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective January 22, 1967, for sale to minors.

The license will be suspended for thirty days (Re Basralian, Bulletin 1798, Item 5), to which will be added five days by reason of the record of suspension of license for dissimilar violation within five years (Re Hi-De-Ho Corp., Bulletin 1832, Item 7), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 17th day of February, 1969,

ORDERED that Plenary Retail Consumption License C-31, issued by the Borough Council of the Borough of Fort Lee to Yellow Front Saloon, Inc. for premises 126 Main Street, Fort Lee, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Wednesday, February 19, 1969, and terminating at 3:00 a.m. Friday, March 21, 1969.


 Joseph M. Keegan
 Director