

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

BULLETIN 1705

December 20, 1966

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1. COURT DECISIONS - ENGLEWOOD v. LACQUA AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-460-65

COMMON COUNCIL OF THE CITY OF
ENGLEWOOD,

Appellant,

v.

JOSEPH LACQUA, t/a Englewood
Country Club and DIVISION OF
ALCOHOLIC BEVERAGE CONTROL,

Respondents.

Argued October 31, 1966 - Decided November 10, 1966

Before Judges Conford, Foley and Leonard

On appeal from decision of the Division
of Alcoholic Beverage Control.

Mr. William V. Breslin argued the cause for
appellant.

Mr. Daniel Amster argued the cause for
respondent Joseph Lacqua.

Mr. Max Spinrad, Deputy Attorney General,
argued the cause for respondent Division of
Alcoholic Beverage Control (Mr. Arthur J.
Sills, Attorney General, attorney).

PER CURIAM

The municipality appeals from an order of the Director of the Division of Alcoholic Beverage Control disapproving special conditions imposed in a plenary retail consumption license which the municipality issued to respondent. (Lacqua v. Englewood, Bulletin 1657, Item 1).

The Director's order was based upon his adoption of the findings of the hearing officer of the Division following the hearing of respondent's appeal from the imposition of the conditions in question.

Two questions were considered on that appeal: (1) did the municipality exceed its authority in imposing special conditions which in effect converted a "C" license, N.J.S.A. 33:1-12(1) into a club license, N.J.S.A. 33:1-12(5); (2) did the fact that the "C" license, commercial in nature, permitted a business operation in a residential zone, contrary to the provisions of the municipal zoning ordinance, render it invalid?

The hearing officer held that the special conditions imposed effected a curtailment of the statutory privileges of the holder of a "C" license, and thus were nugatory. He held also that the fact that the premises involved were not subject to commercial use in a residential zone did not preclude the issuance of the license, citing Lubliner v. Bd. of Alcoholic Beverage Control, Paterson, 59 N.J. Super. 419 (App.Div. 1960), modified and affirmed 33 N.J. 428 (1960).

We agree with both legal conclusions and find substantial evidence in the record to support them.

On the oral argument of this appeal the municipality also contends that in granting the "C" license it was lulled into the belief that the licensee would accept the special conditions imposed, and granted the license on that basis. Consequently, the municipality maintains that the case should be remanded to it for consideration of the application in light of the Division's determination. This point was not raised below and we therefore decline to pass upon its merits. See Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959).

Affirmed.

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 120 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Alice P. Russo t/a Star Lite Bar 48 N. Main St., Paterson, N. J., Holder of Plenary Retail Consumption License C-52, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS and ORDER

Louis R. Cerefice, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 1, 1966 she sold a half-pint bottle of liqueur for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspensions of license by the Director, all for similar violation, for 15 days effective June 14, 1965, 45 days effective August 16, 1965 and 40 days effective September 14, 1966. Re Russo, Bulletin 1697, Item 4.

It is to be noted that the violation occurred on the same day that the licensee's plea of non vult was received in the most recent proceeding.

Considering the record of three suspensions of license for similar violation within the past five years (actually within the past fifteen months), as well as the aggravating circumstance of the occurrence of the instant violation while the previous proceeding was pending, the license will be suspended for one hundred twenty days, with remission of five days for the plea entered, leaving a net suspension of one hundred fifteen days. Cf. Re Coleman, Bulletin 1696, Item 1; Re Celtic Bar, Incorporated, Bulletin 1704, Item 1.

Accordingly, it is, on this 17th day of October 1966,

ORDERED that Plenary Retail Consumption License C-52, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Alice P. Russo, t/a Star Lite Bar, for premises 48 N. Main St., Paterson, be and the same is hereby suspended for one hundred fifteen (115) days, commencing at 3 a.m. Monday, October 24, 1966, and terminating at 3 a.m. Thursday, February 16, 1967.

JOSEPH P. LORDI
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - SALE TO MINORS - EMPLOYEE WORKING WHILE INTOXICATED - EMPLOYING MINOR WITHOUT PERMIT - EMPLOYING MINOR BARTENDER - LICENSE SUSPENDED FOR 110 DAYS, LESS 5 FOR PLEA, DEFERRED EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

Mary Morrin and Thomas Morrin)
t/a Eddie's Shamrock Cafe)
221-229 S. Kentucky Avenue)
Atlantic City, N. J.)

CONCLUSIONS
AND ORDER

-----)
Holders of Plenary Retail Consumption License C-151, issued by the Board of Commissioners of the City of Atlantic City)
-----)

Licensees, by Mary Morrin, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on September 4, 1966, they (1) permitted congregation of apparent homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20, (2) sold drinks of alcoholic beverages to two minors, age 18 and 19, in violation of Rule 1 of State Regulation No. 20, (3) permitted a bartender to work while intoxicated, in violation of Rule 24 of State Regulation No. 20, (4) employed a minor without employment permit, in violation of Rule 3 of State Regulation No. 13, and (5) employed a minor as a bartender, in violation of Rule 2 of State Regulation No. 13.

Reports of investigation disclose that as to the first charge, of a total patronage of ninety, approximately 75% were males and females who appeared to be homosexuals.

Licensee Mary Morrin has a previous record of suspension of license by the municipal issuing authority for one day effective September 25, 1945, for permitting mislabeled beer taps on the licensed premises.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended on the first charge for sixty days (Re Manruff Corp., Bulletin 1691, Item 1), on the second charge for fifteen days (Re New Peppermint Lounge, Inc., Bulletin 1679, Item 3), on the third charge for twenty days (Re Marge's Cafe, Inc., Bulletin 1691, Item 2), on the fourth charge for five days and on the fifth charge for ten days (Re Koslo, Bulletin 1682, Item 4), or a total of one hundred ten days, with remission of five days for the plea entered, leaving a net suspension of one hundred five days.

Report of investigation discloses that the licensed business is customarily discontinued at the end of the year and resumed in the spring of the next year. Thus, to impose the penalty at this time would render nugatory the latter portion thereof which would be in effect at the time when the licensed business is not normally being conducted. Hence, the suspension will be held in abeyance and will be imposed after the licensed business has been resumed in the spring of 1967.

Accordingly, it is, on this 17th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-151, issued by the Board of Commissioners of the City of Atlantic City to Mary Morrin and Thomas Morrin, t/a Eddie's Shamrock Cafe, for premises 221-229 S. Kentucky Avenue, Atlantic City, be and the same is hereby suspended for one hundred five (105) days, the effective dates thereof to be fixed by further order.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)
)
The New 72 Club, Inc.,)
6 Bridge Street)
Hackensack, New Jersey,)
)
Holder of Plenary Retail Consumption License C-32, issued by the City Council of the City of Hackensack.)
-----)

CONCLUSIONS
and
ORDER

Edwin C. Eastwood, Jr., Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On Saturday, October 23, 1965 at about 11:00 P.M. you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., four 12 ounce cans of Schaefer beer at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.
- "2. On Saturday, October 23, 1965, between 11:05 P.M. and 11:40 P.M., while an Inspector and Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you, through agents, servants, employees and other persons in your behalf, failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.

"3. In your application filed with the City Council of the City of Hackensack and upon which you obtained your current plenary retail consumption license you falsely stated 'No' in answer to Question No. 41 which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled? --- If so, state details with respect to each surrender, suspension, revocation or cancellation', whereas in truth and fact plenary retail consumption licenses held by you for these same premises had been suspended by the City Council of the City of Hackensack on three separate occasions as follows: for alcoholic beverage activity during prohibited hours contrary to Rule 1 of State Regulation No. 38, for one (1) day, effective June 15, 1959, and again for five (5) days effective September 25, 1960, and for sale of alcoholic beverages to a minor contrary to Rule 1 of State Regulation No. 20 for five (5) days, effective February 22, 1960; said false answer, statement, evasion and suppression being in violation of R.S. 33:1-25."

In connection with charges (1) and (2), the Division's case was developed through the testimony of three ABC agents.

Agent M testified that pursuant to a specific assignment to investigate an allegation that alcoholic beverages were being sold for off-premises consumption after the legal hours, accompanied by ABC Agents S, H and B he arrived in the vicinity of the licensed premises which he described as a neighborhood tavern on Saturday, October 23, 1965 at 10:15 p.m. He entered the tavern with Agent B while the other two agents remained at a nearby post of observation. Two bartenders, identified as Roy Gilmore and Latham Ladell, were serving the patronage of about sixty which crowded the barroom.

At about 11 p.m. the agent noted a person (who was identified as James Battle) enter the tavern, proceed to the bar, converse with a patron and then converse with the bartender Gilmore. Although the agent was six feet distant from Battle, it was impossible to overhear the conversation due to the noise. He observed Gilmore pass a brown paper bag across the bar to Battle. Battle took the bag and walked out through the front door. He had been at the bar no more than five minutes. Battle turned to his right as he left the tavern followed by Agents M and B. After proceeding about twenty feet, the agents approached Battle. Agent M identified himself and, upon request, Battle handed him the bag. Agent M noted that the bag contained a six-pack of Schaefer beer with four cans inside. The cans and the carton felt cold and damp. Upon questioning, Battle stated that he obtained the six-pack "from inside." At this point the two agents were joined by Agents S and H and subsequently by Patrolman Steede of the Hackensack Police Department. The four agents, Battle and Steede entered the licensed premises with Agent M carrying the six-pack.

Upon questioning, Gilmore denied selling the beer to Battle. The agents proceeded toward the rear of the tavern to question Battle, whereupon Battle stated that he "had bought the beer earlier, and that he had just come back to get it."

Although the agent repeatedly asked both bartenders for their names and to examine the license application, the bartenders

refused to identify themselves or exhibit the license application to the agents. The agents remained in the premises from 11:05 p.m. to 11:40 p.m. At about 11:15 p.m. Gilmore said, "I just called the boss and he said, 'Don't tell nobody nothing until I get there.'"

Although Agent M was subjected to an intensely probing cross examination, his testimony concerning the matters relevant to the charges remained uncontradicted.

In addition, he testified that Agent H summoned the Hackensack police at the time that Battle was being interrogated outside of the tavern. He did not see money passed at the time that the six-pack was handed to Battle. At no time did he identify himself as the owner of the bar or hear Agent S identify himself as the owner of the bar. He admitted that Battle claimed that the actual purchase of the beer was made before 10 p.m.

Agent B testified that he entered the licensed premises on October 23, 1965 with Agent M and participated in the investigation of the matter now on trial. His testimony corroborated the salient features of the testimony given by Agent M as to the matters relevant to the first charge. He observed Gilmore reach down beneath the bar and pick up a brown bag and hand it to Battle. It was ascertained that the bag contained a six-pack carton with four cans of beer. The cans were very cold. He was too far removed from the group, therefore he did not hear any of the other agents ask the bartenders for their identities.

Agent S testified that he and Agent H stationed themselves at a place of observation on the corner facing the licensed premises while Agents M and B entered the tavern at about 10:15 p.m. on the night in question. At approximately 11 p.m. he observed Agents M and B emerge from the tavern following a male who was identified as James Battle. Battle had emerged from the tavern carrying a brown paper bag. He saw Agent M accost Battle and Battle hand over the bag to M. Agent S then joined the group and discovered for himself that the bag contained a six-pack container of beer with four cans of Schaefer beer in it. The cans felt ice cold and wet. Agent S inquired of Battle, "Did you get this beer in the tavern?" Battle responded, "Yes, I did." Battle then added that he had purchased the beer earlier that evening to be picked up later. The four ABC agents, Patrolman Steede (who arrived at the scene) and Battle entered the tavern. Agent S identified himself to both bartenders. Upon inquiry Gilmore denied that he sold the beer to Battle. Noting the crowd gathering behind him, Agent S requested Gilmore to go to the rear with him in order to confer with the bartenders singly. The bartenders responded, "We're not going anywhere. We're staying right here." Both bartenders refused to respond to Agent H's inquiry as to their identification. In response to Agent S's inquiry concerning the license application, Gilmore responded, "I'm not giving you anything." Latham then stated that he had just talked to the boss and that the boss said "not to say anything until he gets here."

A person (who was identified in the hearing room as Ernest Murphy) stated that he was the manager. Murphy, who refused to identify himself by name, exclaimed "Talk to me like a man and not boys. Who are you pushing around?" When asked how long he was working in the tavern he responded "none of my business." Both partners

refused to go to the rear for questioning. During the forty minutes that the agents were in the tavern the bartenders failed to furnish the agents with their names or to exhibit the license application to them. A period of approximately half-an-hour elapsed from the time that one of the bartenders said he had called the boss to the time that the agents departed from the premises.

The agents' testimony on cross examination was mainly corroborative of the testimony given on direct examination. In addition, he denied telling anyone that he owned the premises.

Agent H testified that he accompanied the other ABC agents who preceded him on the witness stand in the instant proceedings. He and Agent S took positions outside of the licensed premises. Agents M and B entered the licensed premises at approximately 10:15 p.m. He observed Agents M and B emerge from the tavern at about 11 p.m. and interview a male (later identified as James Battle) who was carrying a brown paper bag. Noting the possibility of a violation he proceeded to a luncheonette on the corner and called the local police. Immediately thereafter he joined the other agents and Battle. He ascertained that the brown paper bag contained a cardboard container which contained four cans of Schaefer beer. He testified, "The cans were ice cold and somewhat wet as was the carton itself. The brown paper bag was relatively dry." He did not converse personally with Battle. However, he did hear Battle say to Agent S that "he purchased it earlier in the day and had just picked it up at this time from the bartender." About a moment later Patrolman Steede joined the group and the entire group then entered the licensed premises. He proceeded directly to the bar and identified himself to Latham. When he asked Latham for his name, Latham replied "Wait a minute, I don't know, I don't know, wait a minute, I want to see the other man." Both bartenders returned to the position where Agents H, S and M were standing near the end of the bar. At that time Agents S and M identified themselves to the bartenders. Agent S asked both bartenders for their names, apprised both of the apparent violation and asked to see the license application. They responded, "I don't know, what is this all about, wait a second." Latham said, "I have to make a call" and left without waiting to be excused. A moment later he returned and said, "I just called the boss ... he said not to give you anything or tell you anything until he shows up." The agent placed the time of this occurrence as "11:10 or 11:15." At this point Agent S said that he expected cooperation and, if it were not forthcoming, a hindrance charge would be recommended. The bartender replied, "I don't know nothing." The witness then testified as follows:

"Well, I saw Inspector S-- talk to the bartender and the bartender when I apprised him of the violation he replied that Battle -- he didn't refer to Battle by name but he replied that he had purchased the package earlier and he was holding it for him."

The agents departed from the premises at approximately 11:30 p.m. Up to that time none of the officers of the licensee corporation had arrived at the premises. Neither of the bartenders identified himself or made available the license application. He personally asked twice. He heard Agent S ask at least twice. When the agents were getting ready to leave, he heard Agent S say to the bartenders, "You were given an opportunity and a hindrance charge will be placed against the premises."

Despite a prolonged and detailed cross examination, the

witness' story was unchanged as to the matters pertinent to the charges.

On re-direct examination the agent testified that he did not make an inspection behind the bar because he feared a serious disturbance might have resulted due to the general attitude of and behavior of the patrons and the lack of cooperation on the part of the bartenders.

In behalf of the licensee, James Battle testified that he entered the licensed premises on October 23, 1965 at "about nine o'clock, nine, nine-fifteen." The barroom was "very crowded." After a few minutes he purchased and received a six-pack of beer from Latham and walked outside with the beer. He met a friend. He and his friend sat in a car and each drank a can of beer. His friend left and he re-entered the tavern, sat down and "laid my packet up on the bar." Roy Gilmore took the bag and placed it under the bar. The witness told Gilmore "I'll pick it up later when I ready to go." Battle then went across the street, stayed there a while and returned to the licensed premises "about eleven o'clock." He exclaimed, "I better go home." With that, Gilmore gave him the package and he departed from the tavern. Outside he was accosted by Agent M. He then testified as follows:

"So Mr. M --- [referring to Agent M] asked me, said, 'Give me your pocket knife.' So I didn't know who it was. Then he said -- I run my hand in the pocket. I gave him the pocket knife. He said, 'Give me the bag.' Then ran up three or four more guys. So I didn't know what was going on.

"He said, 'Didn't you buy this beer in the bar?'

"I said, 'No. I bought this beer early this afternoon.'

"So stood there. Kept trying to get me to say I bought it over the bar. I didn't buy it over the bar late. I bought that beer early."

Eventually he, the agents and Patrolman Steede entered the licensed premises and, after Agent S obtained his name and address, he was told he could leave. He knew Mr. Murphy but did not see him all the time. He saw no one threaten any of the agents. Gilmore did not know what was in the package. At no time did he observe the agents show their identification to either of the bartenders and he did not observe any of the agents talk to either of the bartenders. The agents were in the tavern about thirty-five minutes and he was there the entire time. He did not hear Murphy say he was the manager. Finally, in response to the question "Do you know whether or not Roy Gilmore knew what was in the package", the witness responded "Not that I know of, because I didn't buy it from him."

On cross examination Battle testified that he did not know the name of the friend with whom he drank the can of beer in the car. His friend asked him for a drink of beer. After he and his friend consumed a can of beer each, he re-entered the licensed premises, called Roy Gilmore, said to Roy "Will you take this [the bag containing the four cans of beer] and put it down there till I get ready to go?" Gilmore took the bag and put it under the bar. He departed from the tavern and returned at about 11 p.m. and asked Gilmore for the package. Gilmore reached down and gave the package to Battle. The bag was cool when he gave it to Gilmore for safe-keeping, and it was still cool when it was returned to the witness.

Additionally, Battle testified that he knew nothing "about

what the agents did or what the bartenders did with respect to them." The bag still had the contour of a six-pack when he took the bag out the last time. He did not inform Gilmore of the contents of the package.

Roy Gilmore testified that he had been employed as a bartender by the licensee on the night in question and the bar was crowded. He served the patronage on one end of the bar and Latham served the patronage on the other end of the bar. The cash register is in the center. When asked to explain his contact with Battle that evening he replied:

"Well, he come in. He come in, laid his package on the bar and told me to put it under the bar for him. I was busy. I ain't paying -- I grabbed it and throwed it up under the bar."

He stated there was no refrigerator under the bar, the six-packs are kept in the "icebox" about sixty feet away. His next contact with Battle was when Battle asked for the package, he gave it to him. About twenty minutes later he received information that Battle was accosted by an ABC agent concerning the beer.

Although he noted the presence of ABC agents, none of them identified himself to him. Agent M asked him for the license. Agent S did not speak with him at all. He informed Agent M as to his name and address. He did not note Agent B's presence in the tavern. Agents S and M were in the tavern about thirty minutes. He did not know the contents of the package given to him by Battle.

Ernest James Murphy testified that he had never been an employee or manager of the licensed premises. He was a patron at the licensed premises on the night of October 23, 1965. He did not observe Agent S speak with Gilmore at any time. He did not observe Agents B or M speak with either Gilmore or Latham.

Ladell Latham testified that on the night of October 23, 1965 he was employed as a bartender at the licensed premises together with Gilmore. He was serving the patronage "near the rear." His explanation of his contact with James Battle was that he sold him a six-pack of beer at about a quarter-after-nine. He procured the beer from a walk-in freezer in another room, put it in a bag and received payment from Battle. Six-packs are not kept behind the bar. Battle was with the ABC officers when he next saw him. Agent S walked in first, walked up to the witness and asked him for his name. Latham refused because Agent S failed to give his name to Latham or identify himself. Agent S was "walking around and around in the floor" and he had no other conversation with him. As to Agent M, he testified that M identified himself as an ABC man and asked to see the license because of a six-pack of beer that was sold. When he saw Battle in the tavern, he advised Agent M that Battle purchased the beer at "9:00 o'clock, quarter after." Upon being asked for his name and the license, he replied that Roy Gilmore was in charge. Latham then testified as follows:

- "A And at that time he talked to Roy. And Roy -- up hanging above the cash register they have the license and the application. He goes to take it down and get on the phone to call the owner. And at that time Mr. S-- says, 'Let's get the hell out of here.' I heard him say this. And Roy turned --
- Q To whom was that addressed, if you know?
- A He didn't address it to anybody directly. He said, 'Let's get the hell out of here.' I presume he's talking to his friends or co-workers, whoever they are.
- Q Then what occurred?
- A They left."

Business continued during the time that the agents were in the premises. He was not instructed to stop selling. He heard Agent M ask Gilmore for his name and address and heard Gilmore give his name and address.

Walter Martin Mills testified that he entered the licensed premises as a patron on October 23, 1965 at approximately 10:30 p.m. and stayed an hour or an hour and fifteen minutes. Agent S was at the door (which was open) arguing with someone, the other agents were "further down by the middle of the bar" and Officer Steede arrived about ten minutes later. He did not observe any of the agents conversing with the bartenders. He observed the bartender working the front end, make a telephone call, and observed no hostility or threats. He departed from the premises while the agents were still there.

Jack Nochimson testified that he, his mother Bella Nochimson, and his wife Jacqueline Nochimson are the sole stockholders of the licensee corporation. There are no names on the license application filed for the year 1965-66 other than those aforementioned. None of the persons mentioned in the license application, including the witness, was ever convicted of a violation of the Alcoholic Beverage Law. The witness had no interest in the license at any time that a violation occurred.

The witness then stated that he received a telephone call from Roy Gilmore and, in answer to the question "What was said", he replied:

"Well, he said there are some guys in here that say they are A.B.C. agents. So I asked him if they showed him any proof and he said no. So I said, 'Well, if they show you proof give them the application and whatever they want and whatever they want and let me speak to the man who is in charge.' So at that time he called someone. They were on their way out. He called someone to tell them I wanted to speak to them and the reply that he got was -- they used a dirty word."

He was in bed when he received the telephone call and, when asked as to what he did after the call, he responded "I did nothing. I called back and I asked if they had returned and the bartender told me no."

He stated that he served Patrolman Steede with a subpoena to attend the hearing. The officer did not appear at the hearing.

Describing the tavern he stated that the cash register was at the center of the bar, the license application was kept above the cash register, and the telephone was six feet from the cash register and toward the front. The packaged beer was kept in a box in a rear room. None is kept behind the bar.

Murphy was never in his employ nor did he ever have authority to speak for the management.

On cross examination the witness testified that he first became a stockholder of the licensee corporation in September 1960. The other members of his family became stockholders about "a year or a year and a half later." He had no knowledge of suspensions of

licenses against the corporate licensee. The questioning then revealed the following:

- "Q Who prepared the application, and when I say that, who filled in the answers?
 A I did.
 Q Did you read the question particularly No. 41, 'Have you or has any person mentioned in this application ever had any interest directly or indirectly in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, rejected or cancelled?'
 And your answer that appears is 'No.' You understood that question, did you not?
 A Yes.
 Q Do you know what it means?
 A Yes."

He further admitted that he had no intention of going to the tavern as a result of Gilmore's telephone call, nor did he ask the bartender how long the agents were in the tavern.

On re-cross examination the testimony of Nochimson revealed the following:

- "Q You understand that when you read that question that that question says, 'Have you or has any person --' and I take it that you know that when they say, 'you,' it refers to the corporation.
 A I imagine so."

In rebuttal Agent S denied that at any time during the investigation he declared that "I own this joint" or "I am the new owner of this joint." At no time did Gilmore furnish either the witness or Agent H with his name and address. He did not hear the bartender call him back as he was leaving the tavern saying that Mr. Nochimson wanted to speak with him on the telephone.

The attorney for the licensee argued that there was insufficient evidence to support a finding of guilt as to charges (1) and (2). As to charge (3), he argued that question No. 41 in the license application applied to persons only and not to corporations and, inasmuch as the instant licensee is a corporation, Question No. 41 was answered truthfully.

In disposing of Charge (3), first, suffice to say the terms "you" and "persons" have been uniformly held by the Division to apply to natural persons and to corporate licensees alike. See R.S. 33:1-1(r.) defining "person." Nonetheless it may be pertinent to point out that, when Nochimson was asked the question "You understand that when you read that question that that question says, 'Have you or has any person --' and I take it that you know that when they say, 'you,' it refers to the corporation", he answered "I imagine so." Licensee's argument is merely play on words and not a valid defense to the charge. I recommend that the licensee be found guilty of charge (3).

As to charges (1) and (2), the major inquiry presented is factual.

It is a firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak

Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). This principle was re-echoed in the case of Howard Tavern, Inc. v. Division of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, § 1042.

I have carefully weighed, evaluated and considered all of the material testimony presented in this proceeding. Additionally I have carefully observed the demeanor of all of the witnesses who testified in this proceeding.

I am persuaded that the testimony of the agents presented a true account of the occurrences in question.

As to charge (1), unquestionably there was a delivery and a removal of the alcoholic beverage in its original container after legal hours. I am of the opinion that the delivery and removal were in contravention of Rule 1 of State Regulation No. 38. See Re Marinaccio, Bulletin 1688, Item 6, closely similar on the facts here involved.

As to charge (2), the proof is clear and convincing that the licensee, through its employees, failed to facilitate and hindered and delayed the investigation, inspection and examination as charged.

Agent M testified that repeated efforts to obtain the names of both bartenders and to examine the license application were fruitless. Agent S made similar efforts to obtain the names of the bartenders and to examine the license application with similar results despite the fact that he threatened to bring hindrance charges. This testimony was buttressed by the testimony of Agent H whose testimony I consider additionally truly portrayed the non-cooperative attitude of the bartenders.

It is a fundamental principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup.Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Rule 33 of State Regulation No. 20.

I conclude and I find that the Division has established the truth of charges (1) and (2) by a fair preponderance of the credible evidence, and I recommend that the licensee be found guilty of said charges in addition to charge (3) as above indicated.

Although the licensee has a previous record of suspensions of license as above indicated, it is further recommended that the prior record of suspensions of license be disregarded for penalty purposes by reason of intervening change of stockholders (Re Duffy's Tavern, Inc., Bulletin 1679, Item 4) and that the license be suspended on the first charge for fifteen days (Re Marinaccio, supra), on the second charge for ten days (Re Triple Lake Ranch, Inc., Bulletin 1676, Item 3) and on the third charge for ten days (Re Duffy's Tavern, Inc., supra), making a total suspension of thirty-five days.

Conclusions and Order

Exceptions to the Hearer's report and argument with reference thereto were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I find that the exceptions have been either covered by the Hearer in his report or are without merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the summation by the attorney for the licensee, the Hearer's report and the exceptions and arguments filed with reference thereto, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 18th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-32, issued by the City Council of the City of Hackensack to The New 72 Club, Inc. for premises 6 Bridge Street, Hackensack, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Tuesday, October 25, 1966, and terminating at 2:00 a.m. Tuesday, November 29, 1966.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - NUISANCE (SOLICITATION FOR DRINKS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
Lafayette Bar, Inc.,
137 and rear 139-141 Mulberry St.,
Newark, N. J.,
Holder of Plenary Retail Consumption License C-744, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
and
ORDER

Harry Castelbaum, Esq., by Emanuel N. Silberner, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge as follows:

"On Friday night, April 29, 1966, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered persons employed on your licensed premises as bartenders and in other capacities to make overtures to and solicitation of a male customer or patron to purchase numerous drinks of alcoholic beverages for consumption by them and others, to overcharge for drinks served and to charge for drinks not served; allowed, permitted and suffered an unescorted female customer or patron on your licensed premises to make overtures to and solicitation of a male customer or

patron to purchase numerous drinks of alcoholic beverages for consumption by her and others; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Licensee has a previous record of suspension of license by the Director (1) for twenty-five days effective June 1, 1959 for sale to intoxicated persons and foul language, (2) for twenty days effective June 28, 1960 for possession of alcoholic beverages not truly labeled, and (3) for thirty-five days effective January 25, 1965 for sale to intoxicated persons and foul language. Re Lafayette Bar, Inc., Bulletin 1282, Item 6; Bulletin 1349, Item 3; Bulletin 1603, Item 7.

The prior record of suspensions of license in 1959 and 1960 for dissimilar violations disregarded because occurring more than five years ago, the license will be suspended for thirty days (cf. Re Frankie's Nomad Club, Inc., Bulletin 1481, Item 4), to which will be added five days by reason of the record of suspension in 1965 for dissimilar violation occurring within the past five years (Re Manruff Corp., Bulletin 1691, Item 1), 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 10th day of October 1966,

ORDERED that Plenary Retail Consumption License C-744, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Lafayette Bar, Inc., for premises 137 and rear 139-141 Mulberry Street, Newark, be and the same is hereby suspended for thirty (30) days, commencing at 2 a.m. Monday, October 17, 1966, and terminating at 2 a.m. Wednesday, November 16, 1966.

JOSEPH P. LORDI
DIRECTOR

6. DISQUALIFICATION REMOVAL PROCEEDINGS - CONSPIRACY TO EXTORT MONEY - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R.S. 33:1-31.2.)

CONCLUSIONS
AND
ORDER

Case No. 2058
-----)

Winne & Banta, Esqs., by Joseph A. Rizzi, Esq.,
Attorneys for Petitioner.

BY THE DIRECTOR:

Petitioner's criminal record discloses that on August 10, 1961 he was convicted in the Bergen County Court for conspiracy to extort money and, as a result thereof, was sentenced to serve from one to two years in New Jersey State Prison (suspended), fined \$1000.00 and placed on probation for three years.

Since the crime of which petitioner was convicted involves the element of moral turpitude (Re Perlmutter, Bulletin 966, Item 5), he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein petitioner (61 years old) testified that he is married and living with his wife; that for the past thirty-six years he has lived in two neighboring municipalities; that since June, 1966 he has been unemployed; that between July, 1961 and June, 1966 he had been employed by a licensee as a buyer of foodstuffs for its restaurant, and that until recently, when advised by his attorney in the course of a conference relative to purchasing an interest in a licensed business and other legal matters, he had no knowledge that he was ineligible to be associated with the alcoholic beverage industry in this State.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State, and that ever since his conviction in 1961 he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a superintendent of schools, a banker and a police lieutenant) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

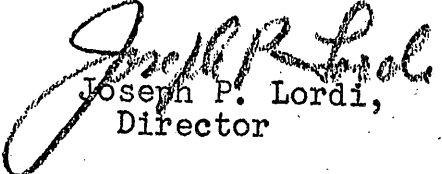
The only hesitation I have to grant the relief sought herein is based on the fact that petitioner, although disqualified, worked for a licensee in this State. I am, however, favorably influenced by three factors: (a) the testimony of his character witnesses, (b) the fact that his criminal record shows only one conviction which took place over five years ago and (c) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee in this State. Knowledge of the law, moreover, is not a prerequisite

to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all of the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 20th day of October, 1966,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.


Joseph P. Lordi,
Director