Deputy Director Stockburger

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

BULLETIN 1634 SEPTEMBER 13, 1965

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - JULIE'S INN, INC. v. HOBOKEN.

2. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

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1. APPELLATE DECISIONS - JULIE'S INN, INC. v. HOBOKEN.

Julie's Inn Inc., Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Hoboken, Respondent.	On Appeal CONCLUSIONS AND ORDER

George R. Wiggs, Esq., Attorney for Appellant
E. Norman Wilson, Esq., by William Gottlieb, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The appellant, Julie's Inn Inc., the holder of Plenary Retail Consumption License C-199 for premises 208 River Street, Hoboken, was found guilty by respondent of violation of Rule 1 of State Regulation No. 20 in that it sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor on Sunday, December 6, 1964, and of violation of Rule 5 of State Regulation No. 20 in that it allowed, permitted and suffered a brawl, act of violence and disturbance in and upon its licensed premises and allowed, permitted and suffered its place of business to be conducted in such manner as to become a nuisance on Sunday, December 6, 1964, whereupon its license was revoked effective February 16, 1965.

It filed this appeal challenging said conviction, and an order was entered on February 15, 1965 staying respondent's order of revocation until further order of the Director. R.S. 33:1-31.

In its petition of appeal appellant alleged that such action was "unwarranted and unsupported by the proofs and the sanction imposed by said Board is unduly harsh and arbitrary."

In its answer respondent entered a general denial to the charges and sets forth three separate defenses which may be summarized as follows: (1) the appellant pleaded _non vult_ before the respondent (hereinafter Board) for violation of Rule 1 of State Regulation No. 38 on January 17, 1963; (2) the appellant was found guilty before the Board for violations which occurred on August 9 and August 11, 1963 of Article VIII, Section 1(c) and Article VI, Section 2 of an ordinance adopted by The Mayor and Council of the City of Hoboken, and (3) the appellant was charged

with the violation of Rule 5 of State Regulation No. 20 which occurred on June 6, 1964 "and that the respondent has been unable to locate the complaining witness."

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for both the appellant and the Board to present witnesses in their behalf and cross examine opposing witnesses.

In support of the Board's case it produced at this plenary hearing the minor (Diane ---, age 19) who testified as follows: In the company of her girl friend Mrs. Josephine Kulikowski, she entered the licensed premises between 11:30 and 12 p.m. on December 5, 1964 and seated herself at the bar. She immediately went to the ladies' room and, when she returned, she was served a bottle of beer by Anthony De Louise, the secretary-treasurer of the corporate appellant who also acted as one of the bartenders.

During the course of the evening and the early morning of December 6, she consumed about five or six bottles of beer served by De Louise, James Coleman (another bartender on duty) and Miss Nellie Allman, and at no time was inquiry ever made about her age nor was she asked to produce any proof of age or make any written representation as to her age. She had on her person, however, a birth certificate, which was admitted into evidence, which indicates that she was born in Jersey City on June 6, 1945.

During the time that she was seated at the bar it appears that three women sitting at the other end of the bar taunted her with remarks and suggested, among other things, that she was a lesbian. Shortly after that she again went to the ladies' room and, on her return, one of the women at the bar hit her "so I hit her back in self defense and then the other two had started to hit me also. So I was fighting with the three of them and then somebody had broken the fight up." She remembered that it was the bartender De Louise and another person who helped break up the fight. She returned to her seat, and the verbal exchanges apparently continued. In the meantime she had a few more beers, and these same women left their seats apparently to leave the premises and, as they were leaving, "one of them hit me. So I turned around and I swung and I hit her back, and we started a brawl again." She insists that, during the time that she was seated at the bar before the second incident, she requested De Louise to have the girls stop annoying her but he did nothing about it and in fact did not intercede at the time of the alleged second assault. After the second incident she went to the phone booth and called the police, and remained in the telephone booth until the policemen arrived, because she claimed she was in fear of further assault. When the police arrived she left the premises with them, and the three girls remained on the outside of the premises. It appears that the police spoke to them and, since neither of the participants desired to make a complaint against each other, the women were permitted to go on their way.

In the meantime, an examination of Diane's auto registration by the police officer revealed that she was in fact a minor and, in the company of the police and De Louise, she was taken to police headquarters where she made a voluntary, signed statement with respect to the above incidents.

Josephine Kulikowski corroborated the testimony of Diane with respect to the sale to and consumption of six bottles

of beer by Diane. However, she asserted, in a statement that she gave to the police after this incident, that inquiry was made of Diane's age and she produced a birth certificate. Nevertheless, no written representation was made by Diane with respect to her age.

Her version of what followed continues: The girls at the other end of the bar and Diane were "calling back and forth to each other and she got up to go to the bathroom. And when she came out I really didn't see what happened, but when I looked over they were all fighting.... Two were trying to hold her and the other was trying to hit her." After the fight was broken up Diane returned to her seat, as did the other girls, and drinking continued. While the "bickering back and forth" continued, the girls decided to leave. Then something happened "because she jumped up and started fighting again." Diane then proceeded to the phone booth and the girls left the premises. When the police arrived Diane emerged from the telephone booth and left with the police officer, and entered into a discussion with the three girls. Mrs. Kulikowski then went to another tavern and later, in the company of Edward Zielinski (one of appellant's patrons), she went to police headquarters and signed the above referred to voluntary statement with reference to the facts.

Detective Frank F. Tortorella, of the Hoboken Police Department, testified that at about 1:30 a.m. on the morning of December 6 he received a call at police headquarters and, accompanied by Lieutenant Vincent Connors, went to the appellant's premises and proceeded to the telephone booth from which Diane emerged. She complained that she had been "assaulted and afraid to leave the tavern at that time as her assailants were waiting for her outside on the street." He questioned De Louise about this complaint and De Louise stated that "there was just a misunderstanding; there was nothing to it."

He left the premises with Diane and questioned the women; "they... mentioned the fact that they had an argument and they accused one another of provoking the incident." When all parties indicated that no complaints were going to be lodged against each other, the three women were permitted to go on their way. At that time Lieutenant Connors questioned Diane and determined that she was a minor.

Tortorella then returned to the tavern and directed DeLouise to accompany them to police headquarters. At headquarters he "didn't outright deny anything. He said there was nothing to it, just a misunderstanding, and he couldn't understand why anyone notified the police."

Lieutenant Vincent Connors, of the Hoboken Police Department, testified that, when he arrived at the tavern, he questioned the three women standing in the street; they acknowledged that they were in the tavern, and stated "there was a little argument and dispute." Shortly thereafter Diane emerged with Detective Tortorella and admitted that she had been drinking beer in the tavern. His inquiry elicited the information that she had been drinking. He then questioned De Louise, who insisted that he asked her for proof of age and she produced a birth certificate which satisfied him that she was nineteen years of age. At police headquarters Diane was asked to empty her pockets, and the birth certificate reflecting her true age was the only one that she had in her possession.

James Coleman (a bartender employed on that evening), Edward Zielinski and Joseph Sullivan (patrons at the bar) were produced on behalf of the appellant and gave substantially an identical version of what had transpired. Coleman insisted that Diane was asked to sign a piece of paper, after which he was directed by De Louise to serve the beer to her. This was corroborated by the other two witnesses. They further asserted that they did not see any brawl or any incidents occur in the licensed premises during Diane's stay. All three insisted that there was no fight on the premises, nor did they see anyone strike Diane. Sullivan acknowledged that he had consumed about fifteen bottles of beer during his stay on the licensed premises. Both Sullivan and Zielinski admitted that they were socially friendly with De Louise, had attended parties with him, and Sullivan adamantly denied that Diane ever entered the telephone booth.

Anthony De Louise gave the following account: He is a stockholder and secretary-treasurer of the corporate appellant and worked as a bartender on the date in question. When Diane entered the tavern he requested that she show him proof of age because he has a policy of asking any new customer for her age if they appear to be younger than twenty-seven years of age. It was his opinion that Diane, whom he estimates weighs about 205 pounds, appeared to be about thirty-two or thirty-three years of age. She thereupon produced a birth certificate which satisfied him that she was twenty-four years old; nevertheless he made her sign her name and age on a blank piece of paper which he threw on the back bar.

He vigorously denied that there was any incident at all that occurred on the licensed premises during Diane's stay; that in fact Diane and Josephine left the premises together. He also denied that any assault took place, or that he came from behind the bar to break up any fracas. Detective Tortorella came into the premises as one of his usual visits. When he left the premises Lieutenant Connors called him out and then first informed him that Diane was a minor. He accompanied Lieutenant Connors to police headquarters and informed him that Diane had "signed a paper for me." He did not make any request at that time, or at any time, to return to the premises to retrieve the alleged "slip of paper" and, when he returned the following day, the paper was missing. He presumed that the cleaning woman must have thrown the paper away on the following morning. However, she was not produced as a witness.

On cross examination he again insisted that Diane appeared to be somewhere between thirty and thirty-three years of age and that, although he had no doubt about his estimate, nevertheless insisted that she made a written representation. He added that Diane had never gone to the telephone booth; that Tortorella had come in on a routine check-up because these premises were under constant surveillance, and that there were no women on the outside of the premises when he emerged therefrom.

In rebuttal, both Diane and Mrs. Kulikowski asserted that Sullivan was definitely not in the premises at all on the date as alleged. Lieutenant Connors, called in rebuttal, denied that De Louise ever informed him when he was on his way to police headquarters that Diane had made any written representation with respect to her age. The only conversation he could recall was with respect to a birth certificate. He added that, had De Louise requested permission to go back to retrieve any such

evidence, "I would gladly let him go back, sir."

In evaluating the testimony on both charges and its legal impact, the following principles of law should be restated: We are dealing here with purely disciplinary measures and their alleged infractions. Such measures are civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The credibility of witnesses must be evaluated and the trier of facts must act accordingly. 34 C.J.S. at p. 321. As Prof. Wigmore pointed out:

> "There is no measure of the weight of evidence (unless the witnesses on the evidential facts are counted) other than the feeling of probability which it engenders." Wigmore Evidence 3d Ed., sec. 2948.

Further, it should be pointed out that the ultimate test must be one of reasonableness on the part of the respondent. In other words, could the Board, as reasonable men, acting reasonably, have come to its determination based upon the credible evidence presented. Cf. Hudson Bergen Liquor Dealers Ass'n. v. Hoboken, 135 N.J.L. 502. The Director's function on an appeal of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton & Klingler, Bulletin 1245, Item 1; Tash v. Princeton, Bulletin 1585, Item 3. In other words, the Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board.

As to the first charge: The appellant was convicted of the following:

> "Sale, service and delivery and allowing, permitting and suffering the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years and allowing, permitting and suffering the consumption of alcoholic beverages by such person in and upon the licensed premises on Sunday, December 6, 1964 from about 12:30 A.M. to 1:30 A.M.; in violation of Rule 1 of State Regulation No. 20.

> "Rule 1 of State Regulation No. 20. No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverages, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of any alcohoholic beverages by any such person in or upon the licensed premises."

I have had the opportunity to closely observe the demeanor of the witnesses as they testified, and was able to understand more meaningfully the tone and feel of the charge as reflected by the testimony. I would be less than frank if I did not state, with emphasis, that the testimony of DeLouise and the witnesses for the appellant were unconvincing and untruthful. De Louise insists that he made the minor sign a blank piece of paper with her name and age, presumably as her written representation in accordance with the requirements of Rule 1 of State Regulation No. 20.

This he did despite the fact that it was his impression that the minor appeared to be a person of the age of thirty or thirty-three years. Such action does violence to any sense of reality and ordinary human conduct, and does not engender a feeling of probability under the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546. This is particularly so since the mincr denied having made such representation; nor is there any such testimony on the part of Mrs. Kulikowski that there was such written representation made.

Lieutenant Connors also denied being told of such writing by De Louise at any time. It would seem logical that, if this important prerequisite were indeed complied with, De Louise would have immediately requested permission to return to the premises in order to retrieve the said writing at the time of his confrontation. This he did not do. The paper was mysteriously missing on the following day, and there has been no affirmative showing by anyone that such paper was actually in existence. De Louise states that possibly the cleaning woman on the following day must have discarded the paper, but she was not produced as a witness to support such alleged action.

The testimony of the other witnesses is equally impersuasive. Their testimony seems to me to be rehearsed as to the alleged signing incident. They state that they saw a blank paper presented by De Louise to the minor, but they did not hear the conversation that ensued, nor did they know what, if anything, was written thereon.

I am also persuaded from the testimony that Sullivan was not even in the tavern at the time he swears he saw this procedure take place. On the other hand, the testimony of Diane stands in a better posture. Her story appears to be straightforward, forthright and convincing. She denies that she was ever asked about her age or was required to make any written representation by De Louise or the other bartenders, and that she was served and did consume about six bottles of beer. This is corroborated by Mrs. Kulikowski who, however, told the police officers that she was required to produce a birth certificate. There is no evidence of any certificate, other than the one introduced in evidence, which reflects the true age of Diane.

Accordingly, I find from the credible evidence that there was a sale, service and delivery of alcoholic beverages, directly or indirectly, to this minor on December 6, 1964, and that the appellant did allow, permit and suffer the consumption of such alcoholic beverages by the minor, in violation of Rule 1 of State Regulation No. 20.

As to Charge 2: This charge sets forth the following:

> "Allowing, permitting and suffering a brawl, act of violence and distrubance in and upon the licensed premises; and allowing, permitting or suffering the licensed place of business to be conducted in such manner as to become a nuisance on Sunday, December 6, 1964 from about 12:30 A.M. to 1:30 A.M.; in violation of Rule 5 of State Regulation No. 20."

Here too I am persuaded that the testimony of De Louise and the other witnesses for the appellant was totally unbelievable. De Louise denies that there was any disturbance in the premises on the date in question or that he witnessed any brawl

or breach of the peace therein. Similarly the testimony of the minor stands in a much more convincing posture and is supported by the testimony of Mrs. Kulikowski and Detective Tortorella.

It will be recalled that, even before the first incident, there was considerable name-calling and angry words between the minor and the other three women at the bar. Surely De Louise and the other bartenders must have heard these exchanges and could have anticipated that this might result in more aggresive action. They could have taken some preventive action at that point. Since they claim they heard nothing and saw nothing, they obviously did nothing. Diane testified that, when she was first assaulted by these three women, De Louise came from behind the bar and, with the assistance of another person, helped to break up the fight. She then returned to the bar and apparently nothing was said or done to prevent any further disorder. Obviously neither she nor the other women were admonished or cautioned. The quarrel apparently continued and culminated in the second attack upon this minor.

De Louise denied that Diane ever went to the telephone booth or called the police, and describes Detective Tortorella's visit as merely a routine check on his premises. This, of course, was denied by Tortorella, and the validity of Diane's testimony was re-enforced by the testimony of Tortorella that he saw Diane in the telephone booth when, in response to her telephone call, he went to these licensed premises.

Mrs. Kulikowski testified in corroboration of Diane's version of what transpired, although her statement to the police was that Diane and the other women "got involved in an argument." I am persuaded that Mrs. Kulikowski understated the full force of the events because it is evident that she is a good friend of Zielinski who in turn is a close personal friend of De Louise. It seemed clear to me that she was not as forthright as she might have been because she wanted to do as little harm as possible to the appellant in these proceedings.

The crucial issue, therefore, is whether or not there was a brawl and disturbance. A brawl is "a clamorous or tumultuous quarrel in a public place, to the distrubance of the public peace" (Black's Law Dictionary, 11 C.J.S. 767); "a noisy quarrel; loud angry contention; wrangle, tumult" (Webster's New International Dictionary). Brawling is "the use of loud and violent language and opprobrious epithets" (Com. v. Foley, 99 Mass. 497, 499). (Here it will be recalled the minor was allegedly the target of villification, and she engaged in the exchange of angry contention.) A disturbance is "an interruption of a state of peace and quiet ... public commotion; synonyms: brawl, turmoil, uproar, hubbub ..." (Webster's New International Dictionary); "acts or conduct inciting to violence or tendering to provoke or excite others to break the peace" (11 C.J.S. 817).

Physical violence is not a necessary ingredient of a brawl or distrubance. (See Woodland Rod & Gun Club v. Belleville, Bulletin 569, Item 3.) It may, however, as in this case, reasonably be expected to result therefrom, since words borrow one another and oft beget blows. The evidence in this case clearly indicates that a disturbance or brawl, accompanied by blows, occurred on the licensed premises.

Obviously, since the appellant asserts that there was no brawl or disturbance, it reasons that it did not "allow, permit or suffer" such disturbance or brawl. I find, on the contrary, that, since there was a brawl or disturbance on the licensed

premises, it, through its agents and employees, was duty-bound to prevent such disturbance. Licensees are held strictly responsible for keeping the peace in their taverns at all times. Kluge v. Orange, Bulletin 256, Item 3.

In Connor v. Fogg, 75 N.J.L. 245 (Sup.Ct. 1907), the court, in considering the terms "allowed", "permitted" or "suffered", stated:

> "To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W. Rep. 4), but the term 'permit' has been often used synonymously with 'suffer,' so that it may be said that one who suffers the doing of a thing which he might have prevented permits it. 22 Am. & Eng. Encycl. L. (2d ed.) 699, and cases there cited."

It should also be noted that, although De Louise and his witnesses deny that there was any disturbance or brawl on the premises, this is further contradicted by the testimony of the police officer who stated that De Louise admitted that there had been a "misunderstanding", which appears to be the under-statement of the day.

In his memorandum submitted in summation, counsel for the appellant reasons as follows: Of course, he denies that there was a brawl on the premises, but for the purpose of argument or conveying a thought advocates that, if the version as given by Diane can be accepted as true (that De Louise broke up the first assault immediately after its occurrence), it follows that "the proprietor acting impartially and in full discharge of his duty and in accordance with the law", citing Engle v. Belleville, Bulletin 694, Item 5. In that case the Director said:

> "The guilty finding on the brawl charge must be reversed. The record fails to demonstrate any responsibility for the fracas by the licensee. Although a fight did occur on the licensed premises shortly after midnight on the morning of October 20, 1945, there is nothing in the testimony to show that the licensee had any reason to anticipate the trouble which occurred on the occasion in question. According to the testimony given by one of the respondent's witnesses 'this all happened in a second' and the participants were immediately quieted by the licensee and several of the patrons ...."

In answer to this argument, in view of the position of the appellant that no brawl occurred, it cannot now, even for the sake of argument, take an inconsistent position that, if indeed such disturbance occurred, it acted diligently and in full discharge of its responsibility with respect thereto.

Also, the facts in the instant case differ substantially from Engel in that there were two separate incidents occurring in the premises which were separated and permeated by "bickering" and name-calling. Certainly the licensee, if the version given by the Board's witnesses is to be believed (as I do believe them), could have taken affirmative measures to prevent these incidents.

Counsel further states that the only one whom claimed such an assault was Diane; "the policemen, they did not witness it; Josephine Kulikowski, though she was present, did not witness it ...." This, of course, is at variance with the testimony. It will be recalled that Mrs. Kulikowski testified that there was

"calling back and forth to each other" before Diane went to the bathroom and "when she come out I really didn't see what happened, but when I looked over they were all fighting." This fight was broken up by De Louise. She then went on to narrate the incident after Diane returned to her seat. She testified that, when these girls started to leave the room, she noted that Diane jumped and turned around "and next thing I know they were fighting again."

Detective Tortorella testified, as stated hereinabove, that when he entered the premises he went to the telephone booth where Diane was seated, and she informed him that she had been assaulted. This is an empirical contradiction of De Louise's testimony.

Therefore, the only version that I can consider on behalf of the appellant is that testified to by the appellant's witnesses, namely, that no brawl, disturbance or breach of the peace had occurred. I disbelieve that account. Since I am also satisfied that such brawls did occur on these premises, it is obvious that licensees may not avoid their responsibility for conduct occurring on their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3. I find that De Louise actually did see the first fight that took place, and did indeed permit and suffer such disturbances and brawls to take place on these licensed premises. Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Under the circumstances, and pursuant to a careful examination of the evidence appearing herein, I conclude that the Board has established the truth of these charges by a fair preponderance of the believable evidence. I therefore recommend that the Board's action in finding appellant guilty of both charges should be affirmed.

As to penalty: A liquor license is a mere privilege, Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). And, as Judge Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J.Super 43,52 (App.Div. 1953), said:

> "The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

In the exercise of that power the Legislature invested the issuing authority (the Board) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations including violation of the law or of State or local regulation. R.S. 33:1-31.

The penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion, in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive. Portion v. Roselle, Bulletin 974, Item 3; Benedetti v. Trenton, Bulletin 1040, Item 1, aff'd 35 N.J.Super. 30.

Penalties may vary in different municipalities and according to the circumstances surrounding the offenses. Pawelek v. Sayreville, Bulletin 456, Item 10. The fact that a penalty is severe does not, of itself, justify reduction on appeal. Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1.

Acting Police Chief Edward Kerins, of the Hoboken Police Department, testified and produced into evidence a summary of the police reports reflecting complaints, violations and prior convictions in the operation of said licensed premises or the appellant, its officers or agents, from the period May 31, 1962 up to and including December 6, 1964. This summary sets forth the following:

"1. May 31, 1962 Fight in tavern resulting in arrest of Anna Pacewicz and Catherine O'Hara.

2. June 10, 1962 Complaint from people in the neighborhood as to drinking and loud noise in the rear yard of tavern. Owner warned by Tavern Squad.

3. Sept. 1, 1962 Fight in tavern. No complaint, no arrest. Donald Smith and James McManus, both having police records were involved. Smith was pushed and fell to the floor striking his head.

4. Dec. 5, 1962 Anthony De Louise arrested and charged with Atrocious Assault and Battery. Held for action of Grand Jury on Jan. 8, 1963. No final disposition.

5. Feb. 5, 1963 Tavern Squad received instructions from Captain Sheehy that Magistrate Miller requested investigation of this tavern on receiving complaints that the tavern was open after hours, patrons drank in the rear yard and narcotics being used in the home of one of the owners located at 216 River Street, Hoboken, New Jersey. In court Patricia Van Marter was charged with being a Disorderly Person on 2-2-63 and was committed for 30 days.

6. Feb. 11, 1963 Elia Echols of 917 Clinton Street assaulted in the tavern. No complaint.

7. May 20, 1963 Again Magistrate Miller stated complaints had been received as to conditions in the tavern.

8. July 6, 1963 Noise complaints concerning rear of tavern.

9. July 18, 1963 Received copy of letter of reprimand issued by A.B.C. Board in Newark to this tavern concerning obscene language and conduct in premises.

10. Aug. 6, 1963 Complaint of disturbance in tavern. Found broken glass on floor but no complaint.

11. Aug. 9, 1963 William Meyer assaulted in tavern and Barbara Phillips charged with Disorderly Person.

12.	Aug. 9, 1963	Complaint of woman being assaulted in tavern proved unfounded.
13.	Aug. 10, 1963	Had meeting in Detective Bureau concerning complaints about this tavern.
14.	Aug. 14, 1963	Received complaint concerning activities at home of Anthony De Louise located at 216 River Street, Hoboken, New Jersey, as to his bringing girls from his tavern to his home.
15.	Aug. 16, 1963	Tavern Squad recommended license for The Inn not be renewed due to the many complaints received and the arrests of three unattached females either in the tavern or the immediate vicinity. (See subject sheet submitted by Lt. Sweeten on Friday, August 16th, 1963).
16.	Sept. 14, 1963	Eighteen year old female on premises drinking soda.
17.	Sept. 17, 1963	Joseph P. Cermak of 24 St. Paul's Ave., Jersey City, N. J., assaulted outside tavern by owner Anthony De Louise.
18.	Oct. 18, 1963	A report was received that narcotics could be found in cellar of tavern. Search of premises was made with negative results.
19.	Jan. 2, 1964	Premises closed for 30 days as a result of violations.
20.	June 6, 1964	Thomas Farrell of 8 Jones Street, Jersey City, N. J., assaulted by owner Anthony De Louise. No complaint."

In addition to the above, the records reflect the following:

(1) On December 5, 1962 De Louise was charged in the Hoboken municipal court with atrocious assault and battery, committed in the licensed premises, upon a complaint by one Robert Koval. This matter is presently pending before the Hudson County Grand Jury;

(2) Appellant pleaded <u>non vult</u> on April 24, 1963 for violation of Rule 1 of State Regulation No. 38, and received a net suspension of five days;

(3) On December 23, 1963, upon its plea of guilty to a violation of the City ordinance, the Board imposed a penalty of thirty-five days, less five days for a plea of guilty, making a net suspension of thirty days;

(4) On July 24, 1964 appellant was charged before the Board with violation of Rule 5 of State Regulation No. 20 in that De Louise engaged in a brawl with one Thomas J. Farrell. However, at that date set for the hearing, Farrell was unavailable and the matter is still pending;

(5) It should be further noted that on July 17, 1963 the appellant received a warning letter from this Division with respect to the operation of the said premises;

(6) On June 10, 1964, Hoboken Chief of Police opposed the renewal of appellant's license by letter which stated in part as follows:

> "A history of recurrent violations of the Alcoholic Beverage Control regulations resulting in disciplinary action and additional complaints on which occasions sufficient evidence could not be adduced to support prosecution prompts me to recommend that an application for renewal of a Plenary Retail Consumption License by Julie's Inn, Incorporated (Anthony De Louise and Nellie Allman, Officers), for the premises at 208 River Street, City, be denied. See report attached."

It should be recorded that, although this license was in fact renewed, counsel for the Board, in his memorandum in summation, informs me that De Louise was present at the hearing and received a stern warning from the Board with respect to the futute operation of these premises. He assured the Board at that time that appellant would no longer be a "trouble spot" or that the Police Department would ever receive any complaints in the future operation of the premises.

In view of the past record of the appellant and the serious charges on which it had been presently adjudged guilty, appellant cannot, as a matter of substantial justice, seriously claim that it has been prejudiced in the circumstances presented. See Nordco, Inc. v. State, 43 N.J. Super. 277. It is quite apparent to me that the Board considered that these licensed premises were a trouble spot, and the continuation of its operation would be inimical to the public interest.

In the light of the broad discretion vested in a local issuing authority (Biscamp v. Township Council of Tp. of Teaneck, 5 N.J. Super. 172, 175 (App.Div. 1949), I conclude that the Board acted circumspectly and its actions were not the result of intentional discrimination or other arbitrary action. Cf. County of Camden et al. v. Pennsauken, 15 N.J. 456, 471 (1954).

In conclusion, under all of the circumstances herein, I find that the determination of the respondent in finding the appellant guilty on both charges and ordering the revocation of its license was supported by a preponderance of the credible evidence, indeed by substantial evidence. I therefore find that the appellant has failed to sustain the burden of establishing that the Board's action was erroneous and should be reversed.

I recommend that an order be entered affirming the Board's action, finding the appellant guilty of both charges, and reimposing the order of revocation.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument thereon were filed with me by the appellant, and written answering argument thereto was filed with me by the respondent.

Appellant argues (1) that the Hearer's findings were not supported by the competent and credible evidence, and (2) that he "erred in permitting evidence of matters which were collateral to the charges set forth in the complaint."

In his approach to the Hearer's report the Hearer divided his report into two parts: The first part was a consideration and evaluation of the testimony with respect to the specific charges against the appellant, and (2) he evaluated and discussed the penalty of revocation after concluding, on the basis of the credible evidence presented, that there was substantial evidence to support the judgment of the respondent and that the appellant did not sustain its burden of establishing that the Board's action was erroneous (Rule 6 of State Regulation No. 15).

My examination of the transcript herein leads me to associate myself with the findings and conclusions of the Hearer and adopt them as my conclusions herein. The Hearer has had the opportunity to observe the demeanor and evaluate the credibility of the witnesses as they appeared at this appeal de novo.

It seems clear to me that the evidence is overwhelming in support of the guilt of the appellant on these charges. In the absence of a conspiracy with the police officials, which of course was not suggested herein, the testimony of both Diane and Mrs. Kulikowski, with the supportive testimony of Lieutenant Connors and Detective Tortorella, is much more persuasive, believable and consistent with human experience. I am inclined to believe, on the other hand, that De Louise's testimony was clearly unworthy of belief. In addition to this, the testimony of his three supporting witnesses had such uncommon similarity as to appear to have been rehearsed. Further, there is justification for the Hearer's conclusions based upon the testimony offered that Sullivan was not even in the tavern on the alleged date.

I therefore adopt the findings and conclusions of the Hearer with respect to the guilt of the appellant on these two charges.

With respect to the penalty imposed by the respondent, the appellant's attorney argues that the admission into evidence of the records of the Police Department, containing a series of complaints received by the said Department against these licensed premises and the appellant, deprived the appellant of due process. He reasons that he was not afforded the opportunity to examine the substance of each of these complaints and was denied "the right of confrontation and cross examination of one's accuser." I cannot agree with this contention.

After a finding of guilt, respondent had the mandate to determine whether the appellant's license should be suspended or revoked. In proper consideration of the penalty to be imposed, the record of its past activities must be considered in its totality. A similar situation was presented in Nordco, Inc. v. State, 43 N.J. Super. 277 (App.Div. 1957), which involved an appeal from a denial of a license renewal. In that matter the court took into consideration a series of complaints received by the Police Department and determined that the appellant's licensed premises were a trouble spot. Similarly, in this case the respondent considered the various complaints made in reaching its decision that the best interests of the community warranted the immediate revocation of the appellant's license. These complaints had nothing to do with the specific determination as to the guilt or innocence on the charges immediately before it, but were introduced solely for the purpose of its determination as to penalty. The appellant was afforded ample opportunity to cross examine the Chief of Police with respect to the police record.

In Oak Inn, Inc. v. State etc. (App. Div. 1963), not officially reported, reprinted in Bulletin 1523, Item 2, which was an appeal from a denial of an application to renew appellant's plenary retail consumption license, the admission of the police blotter listing police calls was objected to on the ground of "hearsay." Rejecting this contention, the Court stated:

> "... It was proper for [the Elizabeth Board], and also the Director, to take into account not only the licensee's conduct but also conditions not attributable to its conduct which rendered the continuance of the tavern in a particular location inimical to the public interest. Nordco, Inc. v. State, supra, at p. 282. Where, as here, there was testimony in the appellant's direct case referable to the notations in the police blotter, it was not improper for the Director to consider such notations so long as his ultimate determination rested upon legally admissible evidence. Mazza v. Cavicchia, 15 N.J. 498, 509 (1954) ...."

This principal is equally applicable to revocation proceedings as in license renewals.

Moreover, even disregarding the various complaints and entries as testified to by Police Chief Kearins, the prior adjudicated record of alcoholic beverage convictions would have been sufficient to justify a revocation. In Benedetti v. Bd. of Com'rs of Trenton, 35 N.J. Super. 30, 35, it has been held that the Director, or local issuing authority, has the statutory authority to suspend or revoke licenses for a first offense (R.S. 33:1-31) "and his action in this regard works no deprivation of any inherent right to engage in the occupation thus curtailed." Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 381, citing Crowley v. Christensen, 137 U.S. 86 (1890); Meehan v. Board of Excise Commissioners, 73 N.J.L. 382.

In the instant case the appellant was penalized on two separate occasions within the past two years of alcoholic beverage violations. As the Hearer pointed out, the penalty to be imposed in disciplinary proceedings instituted by a local issuing authority rests within its sound discretion in the first instance, and the power of the Director to reduce it on appeal should be exercised only where such penalty is manifestly unreasonable and clearly excessive. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598, 600 (App.Div. 1955); Stueber v. Washington, Bulletin 1107, Item 2; Skripko v. Raritan Township, Bulletin 1081, Item 1. There is no allegation in the petition of appeal that the members of the respondent issuing authority were improperly motivated nor was there evidence presented to indicate such impropriety.

One further observation: The respondent undoubtedly took into consideration the prior recommendation of the Police Department that the licensed premises not be renewed because they considered such renewal to be against the public interest. Notwithstanding that, the license for the year 1964-65 was renewed but was accompanied by a stern warning by the respondent that any further violation would invoke severe action. The appellant was thus noticed that any further transgression would undoubtedly result in revocation. It seems clear that, by these offenses of which it was convicted, it exhibited an utter disregard for the controls exercised over vendees of alcoholic beverages and properly brought into question the fitness of the appellant to continue its

licensed operation. A license to sell intoxicating liquor is not a contract nor is it a property right. It is a temporary permit or privilege. Mazza v. Cavicchia, 15 N.J. 498, at p. 505.

In this connection the attorney for respondent points out in his answer to the exceptions that, during the pendency of this appeal, the appellant was charged that on June 7, 1965, it did allow and permit a brawl, act of violence, on its licensed premises, in violation of Rule 5 of State Regulation No. 20, and that De Louise (the principal stockholder of the corporate appellant) was charged with atrocious assault and battery as a result thereof.

In a letter dated July 15, 1965, addressed to the Director, counsel requests permission to add a "supplement" to his exceptions heretofore filed. Although the time for such filing has long since expired, I will consider the said exception.

Counsel states that he is now informed by the appellant that it has "procured a willing and able buyer of the licensed premises." He requests that consideration be given thereto, with the understanding that the appellant will "not conduct business at the aforesaid place in the future."

Such request must be denied in view of my findings hereinabove. A similar request was made in Nordco, Inc. v. State, supra, where a request to transfer its license was made by appellant. Said the court, at p. 289:

> "... it is to be observed that in view of the Division's determination that the tavern constituted a 'trouble spot,' it could hardly be claimed that there was any abuse in discretion in not affording Nordco an opportunity to transfer the license to a certain vendee under contract with Nordco, who wanted to continue the business at the same location."

This reasoning applies with equal vigor in revocation proceedings.

In the totality of the circumstances herein, I cannot find that respondent's action was unreasonable or arbitrary. Hence I shall enter an order as recommended in the Hearer's report.

Accordingly, it is, on this 21st day of July 1965,

ORDERED that the action of the respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Maesm, Inc.,
t/a Maesm Tavern
258 Johnston Avenue
Jersey City, N. J.,

Holder of Plenary Retail Consumption License C-431, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS AND ORDER

Licensee, by Eva Petrick, Secretary, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on Sunday, June 20, 1965, it sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

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 Ja-Da, Inc., Bulletin 1614, Item 9.

Accordingly, it is, on this 19th day of July 1965,

ORDERED that Plenary Retail Consumption License C-431, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Maesm, Inc., t/a Maesm Tavern, for premises 258 Johnston Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, July 26, 1965, and terminating at 2 a.m. Thursday, August 5, 1965.

Joseph P. Lordi
Director

New Jersey State Library