

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2072

December 6, 1972

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

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1. COURT DECISIONS - MELLO-D-CLUB, INC. v. ELIZABETH - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-204-71

MELLO-D-CLUB, INC., t/a JOE
OLIVERI'S NITECLUB,

Appellant,

v.

CITY COUNCIL OF THE CITY OF
ELIZABETH,

Respondent

Submitted September 20, 1972 - Decided September 29, 1972.

Before Judges Labrecque, Kolovsky and Matthews.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Louis M. Minotti, attorney for appellant.

Mr. Frank P. Trocino, City Attorney, attorney for respondent
(Mr. John R. Weigel, Special Counsel, of counsel and on the
brief).

Mr. David S. Piltzer, Deputy Attorney General, filed Statement
in Lieu of Brief for Division of Alcoholic Beverage Control
(Mr. George F. Kugler, Jr., Attorney General of New Jersey,
attorney).

PER CURIAM

(Appeal from the Director's decision in Re Mello-D-Club, Inc.,
Bulletin 2008, Item 3. Director affirmed. Opinion not
approved for publication by Court Committee on Opinions).

2. COURT DECISIONS - OBAY, INCORPORATED v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

OBAY, INCORPORATED
t/a OYSTER BAY,

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-370-71

v. Appellant,

STATE OF NEW JERSEY, DIVISION
OF ALCOHOLIC BEVERAGE CONTROL,

Respondent.

Submitted September 11, 1972 - Decided October 2, 1972.

Before Judges Gaulkin, Lora, and Allcorn.

On appeal from New Jersey Division of Alcoholic Beverage Control.

Messrs. LaFianza, Cavanaugh & Aurigemma, attorneys for appellant (Mr. John J. LaFianza, Jr., of counsel and on the brief).

Mr. George F. Kugler, Jr., Attorney General, attorney for the respondent (Mr. David S. Piltzer, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Obay, Incorporated Bulletin 2014, Item 5. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

3. COURT DECISIONS - EDELSON v. PATERSON - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2504-70

REUBEN A. EDELSON
t/a SOUTHSIDE BAR & BILLIARDS
and RUBY'S GAY 90's,

Appellant,

v.

STATE DIVISION OF ALCOHOLIC
BEVERAGE CONTROL and DIVISION OF
ALCOHOLIC BEVERAGE CONTROL OF THE
CITY OF PATERSON,

Respondent

Submitted September 19, 1972 - Decided October 11, 1972

Before Judges Lewis, Carton and Mintz.

On appeal from Division of Alcoholic Beverage Control.

Mr. Joseph M. Keegan, attorney for appellant.

Mr. George F. Kugler, Jr., Attorney General of New Jersey,
attorney for respondent Division of Alcoholic Beverage Control
(Mr. David S. Piltzer, Deputy Attorney General, of counsel
and on Statement in Lieu of Brief).

Mr. Joseph A. LaCava, attorney for respondent Board of
Alcoholic Beverage Control for the City of Paterson (Mr.
Samuel K. Yucht, Legal Assistant, on Statement in Lieu of Brief).

PER CURIAM

(Appeal from the Director's decision in Re Reuben A. Edelson
Bulletin 1988, Item 3. Director affirmed. Opinion not
approved for publication by Court Committee on Opinions).

4. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1972 THROUGH SEPTEMBER 30, 1972

	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>TOTAL</u>
ARRESTS:				
Total number of persons arrested	8	15	8	31
Licenses and employees	1	5	3	9
Bootleggers	6	5	2	13
Minors	1	5	3	9
SEIZURES:				
Alcohol - gallons	0	.125	0	.125
Distilled alcoholic beverages - gallons	.65	5.70	0	6.35
Wines - gallons	0	1.73	0	1.73
Brewed malt alcoholic beverages	9.56	36.07	0	45.63
COMPLAINTS AND INVESTIGATIONS:				
Inspections & visits made on assigned investigations	3,065*	1,489	1,436	5,990
Complaints assigned for investigation	243	342	332	917
Investigations completed	246	340	319	905
Investigations pending	369	337	372	1,078
Premises where alcoholic beverages were gauged	364	543	493	1,400
Bottles gauged	5,879	9,624	8,945	24,448
Premises where violations were found	529*	201	194	924
Number of violations found	622*	316	271	1,209
License applications investigated	17	11	7	35
Contacts with other law enforcement agencies	437	454	404	1,295
LABORATORY:				
Analyses made	108	114	153	375
Refills from licensed premises - bottles	72	95	141	308
Bottles from unlicensed premises	8	10	0	18
IDENTIFICATION:				
Criminal fingerprint identifications made	5	14	1	20
Persons fingerprinted for non-criminal purposes	497	466	389	1,352
Identification contacts made with other law enforcement agcy	420	342	330	1,092
DISCIPLINARY PROCEEDINGS:				
Cases instituted at Division	40	33	41	114
Violations involved	55	35	48	138
Sale during prohibited hours	11	6	5	22
Sale to minors	11	11	18	40
Sale below filed price	-	-	2	2
Possession liquor not truly labeled	4	6	3	13
Hostess activity	-	-	1	1
Fraud & Front	6	2	1	9
Aiding & A betting	4	1	1	6
No true books of account	3	-	-	3
Assault & battery	-	-	1	1
Permitting immoral activity	1	-	3	4
Sales to non-member - club	2	2	4	8
Permit Gambling (numbers)	3	2	1	6
Sale to intoxicated person	1	-	-	1
Lewdness	-	-	3	3
Possession indecent matter	1	-	-	1
Obscene language and conduct	1	-	-	1
No license application	2	-	-	2
False answers on license application	-	-	-1	1
No Form E-141-A	3	-	1	4
Obstruct view	1	-	-	1
Nuisance	1	1	-	2
Hindering	-	2	1	3
Narcotics	-	1	-	1
Employ person convicted of crime	-	-	1	1
License improvidently issued	-	1	-	1
Unauthorized sale to licensee on default	-	-	1	1
Cases brought by municipalities on own initiative and reported to the Division	25	12	12	49
Violations involved	33	15	13	59
Sale to minors	13	9	10	32
Permit person to work without requisite permit	1	-	-	1
Conduct business as nuisance	2	-	-	2
Sale during prohibited hours	1	2	2	5
Permit brawl on licensed premises	3	-	-	3
Act of violence	3	1	-	4
Disturbance	2	-	-	2
Employ person convicted of crime	1	-	-	1
Gambling	4	-	-	4
No Form E-141-A	1	-	-	1
Unqualified employee	1	-	-	1
Alteration without approval	1	-	-	1
Employing intoxicated person	-	1	-	1
Sale to non-members	-	-	1	1
HEARINGS HELD AT DIVISION				
Total number of hearings held	47	52	35	134
Appeals	5	10	8	23
Disciplinary proceedings	32	41	11	84
Eligibility	10	1	16	27

*1972 Sales Tax Survey figures included

	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>TOTAL</u>
STATE LICENSES AND PERMITS				
Total numbered issued	2,280	1,696	1,517	5,493
Licenses	548	10	9	567
Solicitor/s permits	24	50	89	173
Employment permits	556	424	354	1,314
Disposal permits	48	84	87	219
Social affair permits	340	459	499	1,298
Wine permits	20	14	31	65
Miscellaneous	540	238	263	1,041
Transit insignia	170	241	171	582
Transit certificates	24	176	34	234
 OFFICE OF A MUSEMENT GAMES CONTROL				
Licenses issued	8	3	-	11
Premises inspected	450	295	36	781
Premises where violations found	14	9	1	24
Number violations found	16	9	3	28
State Fair Licenses issued	40	120	12	172
Enforcement files established	37	9	12	58

Dated: October 13, 1972

ROBERT E. BOWER
 Director of Alcoholic Beverage Control
 Commissioner of A musement Games Control

5. APPELLATE DECISIONS - GUECHE, INC. v. UNION CITY.

Gueche, Inc.,)	
Appellant,)	On Appeal
v.)	
Board of Commissioners of the)	CONCLUSIONS
City of Union City,)	and
Respondent.)	ORDER
-----)		
Joseph M. Keegan, Esq., Attorney for Appellant		
Edward J. Lynch, Esq., Attorney for Respondent		

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Board of Commissioners of the City of Union City (hereinafter Board) which by resolution dated November 4, 1971, revoked appellant's plenary retail consumption license for premises 140-48th Street, Union City, "effective immediately", after finding it guilty in disciplinary proceedings of four of the five charges preferred against the appellant.

The said four charges upon which guilt was determined, as set forth in the resolution and order, are as follows:

"1. That on July 3, 1971, you allowed, permitted or suffered in or upon the licensed premises, a brawl to occur, in violation of the provisions contained in a City Ordinance adopted on February 6, 1936 and as amended and supplemented, which reads as follows: Section 16: 'No licensee shall allow, permit or suffer in or upon the licensed premises any disturbance, brawl, or unnecessary noise, nor allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance.'

2. That on August 30, 1971, you allowed, permitted or suffered in or upon the licensed premises, the possession of one automatic pistol containing six (6) live rounds of ammunition in violation of N.J.S. 2A:151-32, All of the above constitute disorderly conduct in violation of the provisions contained in a City Ordinance adopted on February 6, 1936 and as amended and supplemented which reads as follows: Section 15: 'No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, disorderly persons, or other persons of ill-repute, nor permit any female or females to attend or assemble in said licensed premises and solicit or entice customers to purchase drinks, or make assignations for improper purposes.

3. Allowing and permitting on August 30, 1971 upon the licensed premises 26.520 grams of Cocaine and 0.49 grams of marihuana in violation of State Regulation No. 20, Rule 4.

4. Allowing and permitting, on August 30, 1971 upon the licensed premises, Andre Gueche, bartender, 2212 Bergenline Avenue, Union City, N.J. to possess one cigarette containing 0.23 grams marihuana, in violation of State Regulation No. 20, Rule 4."

Upon the filing of the appeal, a hearing was held on an order to show cause why the Board's order should not be stayed by the Director until the determination of the said appeal. At the conclusion of the said hearing, the Director determined that no stay should be granted, and the matter proceeded to final hearing.

Appellant alleges that the action of the Board was erroneous for the following reasons:

(1) "that a revolver, white powder and a cigarette were found on the licensed premises, but (they were, in fact, not known to be in existence by the (appellant))"; and

(2) that with respect to the charge relating to the brawl "a brawl did occur, but said brawl occurred outside of the licensed premises over which the licensee had no control."

In its answer the Board denied the substantive allegations of the petition and set forth the following separate defenses:

(1) That the appellant was guilty of the said charges:

(2) That the police removed from the premises narcotics the total value of which exceeded \$30,000 (this alleged value was modified during the hearing herein);

(3) That the principal officer, Saria Restrepo, testified at the hearing before the Board that she "did not know how the revolver came on the premises and that the white powder taken by the police was probably left there by the prior owner"; and

(4) That on the day of the hearing Saria Restrepo "failed to appear for the scheduled disciplinary hearing, having been arrested on that morning as material witness to a brawl which took place on the licensed premises and which resulted in the death of a patron."

The appeal was heard de novo, and by stipulation of counsel was based upon the transcript of the proceedings taken at the hearing on the order to show cause, supplemented by additional testimony adduced at this de novo hearing, pursuant to Rules 6 and 8 of State Regulation No. 15.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion is upon the appellant. Rule 6 of State Regulation No. 15. The appellant must show manifest error, or that the action of the Board was clearly against the logic and effect of the presented facts. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); Cf. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken et al., 135 N.J.L. 252 (1947); Cf. Lyons Farms Tavern v. Newark, 55 N.J. 292 (1970). In other words, it must be established that the relevant evidence herein does not adequately support the conclusion reached by the Board. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956).

Guided by the aforementioned legal principles, I shall now consider the specific charges upon which the determination of guilt was made by the Board.

I

In support of its first charge, namely, that on July 3, 1971 the appellant "allowed, permitted or suffered" in or upon the licensed premises a brawl to occur, in violation of the relevant local ordinance, the proofs established the following: Local police officers responded to a call that there was a fight taking place in the licensed premises. Detectives Dressler and Crismale of the Union City Police Department entered the tavern and spoke to a patron, Miguel Oviedo, who informed them that while he was watching "Go-Go" girls dancing, a fight started in the rear of the bar. Someone threw a bottle, it shattered, and he was struck on the back of the head with a piece of flying glass.

They then spoke to Sarai Restrepo, the principal officer and manager of the licensed premises, and to the two bartenders, Elba Coria and Andres Gueche, all of whom denied that there had been a fight or disturbance in the tavern. Oviedo was thereupon taken to the North Hudson Hospital and treated for a scalp wound.

At the de novo hearing however, Mrs. Restrepo admitted that this incident did indeed occur inside the premises. She was asked the following:

- "Q There was broken glass inside the premises. Right?
- A Yes.
- Q Was it a broken beer bottle or broken glass, or what was it?
- A Oh boy, it was either one of them two, but I don't recall.
- Q There is no question that this broken glass was inside the licensed premises?
- A Yes, it was.
- Q That Miguel Oviedo, did you see him there in your premises that night?
- A You know, I don't remember that person.
- Q You didn't see any laceration?
- A What is that?
- Q Cuts on his face?
- A No. From the glass, no. Because there wasn't any thrown glass. It was just broken right there.
- Q But you did testify at the last time that there was an argument in the premises?
- A There was an argument but we took the people out of the place.

Q Well, you said there was an argument.

A Well, they were arguing."

She continued that an argument had started and that it had quieted but "after a little while they started to argue again. So, I told the bartender to tell them to leave and I told the barmaid not to sell them any more drinks. And then a little while after, I heard all the commotion and the police car coming, and I looked through the window and I saw that there was a whole big crowd in there. So, I locked the door."

Thus the critical issue with respect to this charge is: Was there a brawl on the date alleged herein, and (2) did the appellant permit, allow and suffer the same. A brawl is defined as "a loud, angry, and disorderly quarrel; a rough noisy and often prolonged hand to hand fight," (Webster's Third New International Dictionary); a "clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace" (Black's Law Dictionary, 11 C.J.S. 767).

I find from the record herein that a brawl did, in fact, occur on the date alleged herein. Although the appellant, while admitting that there was a brawl, contends that it occurred outside the premises, I find from the testimony of the witnesses, and by the admission of Mrs. Restrepo that the brawl occurred inside the premises and that one of the patrons was injured.

Mrs. Restrepo further admitted that an argument preceded the actual brawl and she quieted the patrons. However, she took no further steps to see that the incipient disturbance did not reoccur by taking the necessary steps to insure the same. When the first quarrel started the employees of the corporate appellant should have taken immediate steps to prevent any further disturbance and should have required its patrons involved to leave. This was not done. Cf. Jackson v. Newark, Bulletin 1600, Item 2.

Mrs. Restrepo's credibility is in serious question because of her testimonial contradictions. According to the police reports, she categorically denied that any disturbance took place inside the premises. And this was the tenor of her testimony at the hearing on the Order to Show Cause in this Division. This was contrary to her testimony at the final hearing.

Nevertheless, it has been well established that the responsibility lies in licensees for conditions and incidents that exist in or occur both inside and outside the licensed premises which are caused by its patrons. Cf. Conte v. Princeton, Bulletin 139, Item 8; Kaplan and Buzak v. Englewood, Bulletin 1745, Item 1, aff'd id nom (App. Div. 1968), not officially reported, recorded in Bulletin 1790, Item 1, certif. den. 51 N.J. 464.

The law is well-settled that the word "permit" is synonymous with "suffer" so that it may be said that one who suffers the doing of a thing, which he might have prevented, permits it. Connor v. Fogg, 75 N.J.L. 245 (S. Ct. 1907); Essex Holding Corp. v. Hock, 136 N.J.L. 28 (S. Ct. 1947); cf. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (1951).

I thus find that the relevant evidence adequately supports the conclusion reached by the Board that the appellant was guilty of this charge.

II

This charge (2) alleges primarily that on August 30, 1971 it "allowed, permitted and suffered" on its licensed premises the possession of one automatic pistol, containing six live rounds of ammunition, in violation of N.J.S. 2A:151-32; that the above constitutes disorderly conduct in violation of the City ordinance, as set forth hereinabove.

The record discloses that during their visit to the licensed premises, local police officers made a search of the premises and found the automatic revolver on a top rack in the rear room. Andres Gueche admitted that it was his revolver and that he bought it for protection "from one of his patrons."

Mrs. Restrepo testified that Gueche was her boy friend; that she believes the gun belonged to him because he informed the police that it was his revolver. However, she denies any prior knowledge of its presence on the premises, or that she had ever seen it before. She also stated that "I didn't see when he bought the pistol."

The uncontradicted testimony clearly established that this gun was owned by an employee of the appellant and was on the licensed premises in violation of the subject ordinance. Therefore, the Board properly concluded that the appellant was guilty of this charge.

III

The appellant was charged (3) with "allowing and permitting" on August 30, 1971 upon the licensed premises 26.520 grams of cocaine and 0.49 grams of marihuana, in violation of Rule 4 of State Regulation No. 20.

The testimony supporting this charge may be briefly summarized as follows: These premises had been under surveillance for a period of time prior to August 30, 1971 because of suspected large scale narcotic activity therein. On the said date, at about 6:30 p.m., Sergeant Francis Mona, Detective Sergeant Mark Fusco and Detectives Francis Corcoran and Biasco entered the licensed premises and found Mrs. Restrepo behind the bar.

They informed her that they intended to make a search of the premises and in her company, and with her consent, entered the rear room which was part of the licensed premises. On the table in that room they found "a white powder in an open piece of tinfoil". They also found a strainer, knife and fork with traces of white powder on them; a small tinfoil pack of green vegetation, and other pieces of tinfoil. The detectives determined from the examination that the contents of the table consisted of a controlled dangerous substance, as defined by statute.

Mrs. Restrepo and Gueche were arrested and charged with the possession of a controlled dangerous substance.

Detective Corcoran testified that from his long experience and special training in the State Police Narcotics School and other training schools he knew that the utensils found on the

table were used for cutting narcotics. A further search of the rear room, disclosed in one of the drawers of the table a quantity of white powder, along with what appeared to be traces of green vegetation.

A preliminary field test was made which indicated that the specimens were positive for cocaine and marihuana. The specimens were sent to the State Police Laboratory and the report of the said laboratory which was admitted into evidence confirmed that the specimens seized by the police officers contained 26.520 grams of cocaine and 0.49 grams of marihuana.

Mrs. Restrepo testifying on behalf of the appellant denied any knowledge of the presence of narcotics or of any narcotic activity in these premises, and gave the following account: She is the principal officer of the corporate appellant and assumed management of these premises in July, 1971. She spent sixteen to eighteen hours a day at these premises, usually between ten o'clock in the morning until the 3:00 a.m. closing time. She never saw any of the aforementioned white powder or narcotics, and explained that the reason that the strainer and fork and knife were present was that she does her cooking in the rear room.

She also stated that the room is used by entertainers in this establishment "To get dressed and to eat, you know, whatever, like that." She was so busy taking care of the bar, hiring girls and conducting the management of the business that she really didn't know what was going on in the rear room.

Finally, she denied ever selling narcotics or any knowledge of narcotic activity in the premises.

It is irrefutable that narcotics were found on the premises. It seems inconceivable that Mrs. Restrepo, who is in active management of these premises and is physically present there during most of the day and night did not know of the presence of the narcotics. I find her explanation incredible and further find that the Board, as reasonable men acting reasonably, properly concluded that this charge has been established by clear and convincing evidence.

IV

The final charge (4) alleges that on August 30, 1971, Andres Gueche, the bartender, possessed a cigarette containing 0.23 grams of marihuana in violation of Rule 4 of State Regulation No. 20. The testimony of the police officers hereinbefore named was to the effect that during their questioning of Gueche, during which he took out his wallet, a home-made cigarette was seen. Gueche admitted that he smokes marihuana, and a field test indicated that the seized cigarette in his possession contained marihuana. The cigarette was sent to the State Police Laboratory, and its report, which was admitted into evidence, confirmed the fact that the cigarette was positive for marihuana of 0.23 grams.

From all of the evidence herein adduced and having carefully considered the entire record I find that the credible evidence adequately supports the conclusions reached by the Board. Hornauer v. Div. of Alcoholic Beverage Control, supra.

V

The attorney for the appellant finally argues that, in the event the determination of the Board is affirmed with respect to the charges herein, the penalty should be one of suspension rather than revocation. However, the penalty imposed in a local disciplinary proceeding rests in the first place in the sound discretion of the municipal issuing authority. The authority of the Director to reduce the said penalty on appeal is confined to cases where the suspension is manifestly unreasonable. Sventy & Wilson v. Point Pleasant Beach, Bulletin 1930, Item 1; Schwartz v. Paterson, Bulletin 1577, Item 2.

Frank Clark, a member of the Board, testified that the evidence was carefully weighed by all of the members of the Board and they were convinced that the charges were fully established. The Board further found that revocation was warranted on the basis of the entire record.

I find that the Board has fully understood its responsibilities in imposing the extreme penalty based upon its determination of guilt of these charges. The Board took a dim view of narcotics activity. It apparently felt that, together with the other charges of which it found appellant guilty, that the appellant was not a suitable licensee to continue operation of this facility and the public impact of appellant's profligacy fully warranted outright revocation. The penalty of revocation is consistent with the established penalty for narcotic activity imposed by this Division. See Re Elite, Inc., Bulletin 1951, Item 1. I therefore conclude that appellant has failed to sustain its burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

The Division records show that the license was not renewed for the current licensing period. However, for record and disqualification purposes, it is, accordingly, recommended that an order be entered affirming the action of the Board, dismissing the appeal and fixing the effective date of the revocation imposed by the Board nunc pro tunc as of June 30, 1972.

Conclusions and Order

No exceptions to the Hearer's report were filed by the appellant herein pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of testimony, exhibits and the Hearer's report, I concur in the findings and the conclusions of the Hearer and adopt them as my conclusions herein.

As noted in the Hearer's report, the Division record shows that the license was not renewed for the current licensing period. However, for record and disqualification purposes, an Order of revocation will be entered nunc pro tunc, as of June 30, 1972.

Accordingly, it is, on this 21st day of September, 1972 .

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

ORDERED that Plenary Retail Consumption License C-178 (for the 1971-72 license period) issued by the Board of Commissioners of the City of Union City to Gueche, Inc., for premises 140-48th Street, Union City, be and the same is hereby revoked nunc pro tunc, as of June 30, 1972.

Robert E. Bower,
Director

6. APPELLATE DECISIONS - CHEZ LYNNE v. CLIFTON.

Chez Lynne (Corp.),)	
Appellant,)	On Appeal
v.)	
Municipal Board of Alcoholic Beverage Control of the City of Clifton,)	CONCLUSIONS and ORDER
Respondent.)	

Joseph M. Keegan, Esq., Attorney for Appellant
Arthur J. Sullivan, Jr., Esq., by Leon Klein, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Clifton (hereinafter Board) whereby it suspended a plenary retail consumption license issued to appellant for premises 250 Ackerman Avenue, Clifton, for a period of fifteen days effective April 1, 1972, following the licensee's plea of guilty to (1) a charge of having failed to notify, in writing, the local issuing authority of a change in stockholders, in violation of Rule 11 of State Regulation No. 2; and further after finding the licensee guilty of (2) employing a person convicted of a crime involving moral turpitude.

The suspension was stayed by order of the Director dated April 7, 1972, pending determination of the appeal herein. It should be noted that the suspension herein became effective at 3 a.m. on Saturday, April 1, 1972. I am advised by the municipal issuing authority that the premises herein remained closed from April 1, 1972 through April 7, 1972, and resumed operation pursuant to the Director's order staying suspension on April 8, 1972.

Appellant alleges that the action of the Board was erroneous in that, at the time the action of respondent was taken, the question of whether the employee, whose alleged disqualification while employed at these premises was convicted of a crime involving moral turpitude, had not been resolved.

Appellant further alleges that the license was suspended by respondent for ten days on charge No. 2 and for five days on charge No. 1. Appellant therefore prays the ten-day

suspension imposed as to charge No. 2 be reversed.

In its answer the Board denies that there were separate periods of suspension charged for each offense. Further, the Board avers that it had satisfactory proof that Frank Forte, in the employ of the licensee, had been convicted of the crimes of breaking and entering with intent to steal, possession of stolen property and knowingly possessing goods and chattels which had been stolen from interstate shipment, which crimes involve the element of moral turpitude.

The matter was presented for determination upon the transcript of the proceedings held before the Board, pursuant to Rules 6 and 8 of State Regulation No. 15. There were further presented certified copies of judgments of convictions confirming the convictions set forth in the Board's answer, supra.

The transcript reveals that Patrolman Klemmer of the Clifton Police Department was detailed to the licensed premises herein at 4:27 a.m. on the morning of January 3, 1972 to investigate an alleged violation. During the course of the investigation it was determined that one Frank Forte was employed at the licensed premises, and it was further established that Forte had been convicted of a crime. Forte informed the officer that he had been "... cleared by the ABC Board."

It should be noted that the certified copies of the judgments of convictions are as follows:

- (1) United States District Court, District of New Jersey, August 27, 1971, Frank Forte, adjudged guilty of knowingly possessing goods and chattels which had been stolen from interstate shipment.
- (2) Passaic County Court, New Jersey. September 17, 1969 Frank Forte et als, adjudged guilty of conspiracy to break and enter with intent to steal. Three (3) years probation.
- (3) Passaic County Court, New Jersey. September 17, 1969 Frank Forte et als. adjudged guilty of receiving stolen property. Three (3) years probation.

Frank Forte testified that on January 3 and 4, 1972, he was employed as bartender on the licensed premises herein and has been employed at the premises since July 1971.

Forte testified that he informed the State Division of Alcoholic Beverage Control with respect to the 1971 Federal Court conviction, supra, and further that at that time he was awaiting sentencing. He further stated that he was informed by a member of the State Division that he could remain so employed until the date of his sentencing. He had advised his employer of this conviction and it had been properly noted on the employment sheet which is retained on the premises.

John McManus (sole owner of the stock of the corporate licensee) herein testified that he was aware that Forte had been convicted of a crime but "... didn't realize it was really a violation until the Board -- the field inspector came in from Newark." He testified further that the field inspector "... took a statement from me, the reason I had Frank working for me and then he took a statement from Frank and then he fingerprinted him and I also asked him could he still work in the place or must he leave and he said he couldn't work until I heard from Newark so I kept him on the books and I have heard nothing from Newark at all."

He continued that, upon receiving notice of the violation herein, he contacted the Newark office of the State Division of Alcoholic Beverage Control and was advised that the matter was still open. No decision had been rendered and the Division could not authorize or approve Forte's employment. He hired Forte in August or September 1971 and was aware at that time that Forte had a criminal record. He added that the "field representative" of the State Division of Alcoholic Beverage Control advised him that Forte could continue employment on the premises until further notice.

The above recited testimony was taken at a hearing before the Board on February 9, 1972. At the conclusion of that hearing the Board reserved decision.

A subsequent hearing was held on March 17, 1972, and all interested parties were notified. On March 17, 1972 the Board resumed hearing on the matter and rendered a judgment in accordance with the resolution as hereinabove set forth.

It must be accepted as uncontroverted, indeed it is confirmed at least in part by appellant, that the employee had a record of conviction of three crimes at the time of his employment. Further, the certified copies of the judgments of convictions, introduced into evidence, clearly established this fact.

The question therefore becomes simply whether the conviction disqualified Mr. Forte from employment. N.J.S.A. 33:1-31.2 provides in pertinent part that:

"Any person convicted of a crime involving moral turpitude, may after the lapse of five years from the date of conviction, apply to the commissioner [now Director] for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under this chapter"

The crimes of breaking and entering, receiving stolen goods and possession of goods stolen from interstate shipment are all crimes which have been determined by this Division to involve the element of moral turpitude. See Bulletin 1848, Item 1.

Whether the licensee was misled by statement of agents of the Division is questionable at best. In any event, the licensee has knowingly employed a person who is disqualified from employment on licensed premises, pursuant to Rule 1 of State Regulation No. 13. Furthermore, no authorization was received by licensee from this Division permitting the subject employee to work at these premises.

Accordingly, it is recommended that the action of the Board be affirmed, that the appeal herein be dismissed, and that the order of the Director staying the suspension imposed by the Board be vacated.

Appellant has already served seven days of the fifteen-days suspension imposed herein. Accordingly, it is further recommended that an order be entered reimposing the said fifteen-days suspension with credit given for the period of seven days suspension already served, or a total of eight days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including transcript of testimony, the exhibits and the recommendations in the Hearer's report. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of September 1972,

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

ORDERED that the Director's order dated April 7, 1972, staying respondent's order of suspension pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-45 (for 1972-73 license period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Chez Lynne, Inc., t/a Chez Lynne, for premises 250 Ackerman Avenue, Clifton, be and the same is hereby suspended for fifteen (15) days, with credit for a period of seven days suspension already served, or a total net suspension of eight (8) days, commencing at 3 a.m. Wednesday, October 11, 1972, and terminating at 3 a.m. Thursday, October 19, 1972.

Robert E. Bower,
Director.

7. STATE LICENSES - NEW APPLICATIONS FILED.

William C. Smith
t/a Beverage Center
546 Midland Avenue
Saddle Brook, New Jersey
Application filed December 1, 1972 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-101 from Farenbach Enterprises, Inc., t/a Most Brands Beverages and Beer, 25 Rucereto Avenue, Dumont, New Jersey.

Clinton Russell Chalkley
t/a Chalkley's Soda & Beverage Distributors
2105 New Brunswick Avenue
South Plainfield, New Jersey
Application filed December 1, 1972 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-214 from John Novak Jr., t/a Novak's Beverages Distributing Co., Rear 54 Ray Street, New Brunswick, New Jersey.


Robert E. Bower
Director