

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

BULLETIN 2068

October 19, 1972

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STATE OF NEW JERSEY  
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25 Commerce Dr. Cranford, N.J. 07016

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NOTE: HEREAFTER, ALL ORDERS OF THE DIRECTOR BASED ON UNCONTESTED PLEAS WILL BE BRIEFLY CAPSULATED INSTEAD OF BEING RECITED IN FULL.

1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matters of Disciplinary Proceedings  
against the following licensees:

CONCLUSIONS AND ORDER

A. Michael J. Donnelly  
972 Broadway  
Bayonne

S-9062  
Lic: C-50

Charge: Mislabeled - 3 bottles - Net suspension 15 days  
Order - July 26, 1972

B. 188 Boyd St. Inc., t/a Joe's Bar  
188 Boyd St.  
Newark

S-9150  
Lic: C-158

Charge: "Hours" Regulation. - 4th similar offense - Net suspension 48 days  
Order - July 26, 1972

C. Marye (Hart) Balandis, t/a Hart's Tavern  
500 - 502 Spring St.  
Elizabeth

S-9239  
Lic: C-172

Charge: "Hours" Regulation. - Net suspension 10 days  
Order - August 1, 1972

D. Alfred Crawford, Inc., t/a Line Cafe  
517-519 Line St.  
Camden

S-9234  
Lic: C-53

Charge: Sale to minor, age 17 - prior similar record within 5 years -  
net suspension 20 days.  
Order - August 1, 1972.

E. Antoinette Szydlowski & Irene Carick  
t/a Walter's Inn  
9020-28 Palisade Plaza  
North Bergen

S-9101  
Lic: C-31

Charge: Gambling "Irish Hospitals Sweepstakes" - net suspension  
72 days  
Order - August 1, 1972

F. Resort Land Inn, Inc., t/a Meadow View Inn S-9218  
Main St., Route 46, Independence Twp. Lic: C-1  
(Warren Co.) P.O. Great Meadows

Charge: Sale of contraceptives in vending machine - Rule 9 of  
Regulation No. 20 - Fine of \$200 in lieu of 5 day suspension  
Order - August 2, 1972

G. Aldo Tarsi, t/a Shadyside Inn S-9256  
1603 Springtown Rd. Lic: C-5  
Alpha

Charge: "Hours" ordinance regulation - prior similar offense  
within 5 years - net suspension of 32 days  
Order - August 2, 1972

H. Taft Liquors S-9200  
810 Clinton Ave. Lic: D-112  
Newark

Charge: "Hours" regulation - fine of \$1,100 in lieu of  
10 day suspension  
Order - August 2, 1972

I. James Taraski, t/a Tunnel Bar S-9224  
605 Henderson St. Lic: C-355  
Jersey City

Charge: "Hours" ordinance regulation - fine of \$1,120 in lieu  
of 25 days net suspension.  
Order - August 3, 1972

J. Arthur & Anna Glaser, t/a The Brauhaus S-9170  
961-963 Chancellor Ave. & 97 - 40th St. Lic: C-7  
Irvington

Charge: Sale to minor - age 18 - fine of \$400 in lieu of 10  
days suspension  
Order - August 4, 1972

K. Maryann Moscato, t/a Li'l Red Buggy S-9060  
737 Newark Ave. Lic: C-288  
Jersey City

Charge: Purchase from other retailers while on non-delivery list -  
Fine of \$1,350 in lieu of 15 days net suspension  
Order - August 7, 1972

L. Victor J. Sakal & Carlo Russo S-9166  
t/a Ho-Ho-Kus Pharmacy Lic: D-1  
626 North Maple Ave.  
Ho-Ho-Kus

Charge: Sale at less than filed price - prior record of similar  
violation within past 10 years - fine of \$400 in lieu of  
net suspension of 10 days  
Order - August 7, 1972.

M. Esquire Liquor Shop, Inc. S-9199  
Hillside Shopping Center Lic: D-1  
Route 130, Delran Township

Charge: Sale to minor, age 18 - fine of \$2,150 in lieu of 10  
days net suspension  
Order - August 8, 1972

- N. Willner's Industries, Inc. S-9169  
t/a Willner's Liquors Lic: D-2  
42 S. Pearl St.  
Bridgeton
- Charge: Sale to minor, age 20 - fine of \$500 in lieu of 5 days  
suspension  
Order - August 8, 1972
- O. Tabbi's Liquors, Inc. S-9103  
564-566 West Side Ave. Lic: D-111  
Jersey City
- Charge: Sale to minor, age 17 - Net suspension of 15 days  
Order - August 9, 1972
- P. Albert Orbach S-9221  
147 Broadway Lic: C-106  
Paterson
- Charge: "Hours" regulation - fine of \$600 in lieu of 15 days  
net suspension - prior similar record within 10 years  
considered  
Order - August 9, 1972
- Q. Orleans Hotel Operating Co. S-9028  
t/a Ritz Carlton Hotel Lic: C-185  
transferred to Jôlajo, Inc.  
t/a The Gay Nineties  
2727 Boardwalk  
Atlantic City
- Charge: Mislabeled, 9 bottles - fine of \$1,120 in lieu of  
28 days net suspension  
Order - August 10, 1972
- R. Joseph Alfano, t/a Circle Tavern S-9184  
292 Orange St. Lic: C-400  
Newark
- Charge: "Hours" regulation - prior similar record within 10 years  
considered - fine of \$600 in lieu of 15 days net suspension  
Order - August 9, 1972
- S. Club 339, Inc., t/a Central Bar & Grill S-9206  
339 Mulberry St. Lic: C-673  
Newark
- Charge: Front - false statements in application - failure to  
keep books (Rule 36, Regulation No. 20) - prior  
record of five suspensions - upon notice of non-renewal  
suspension of 65 days deferred until further order of the  
Director  
Order - August 10, 1972
- T. Dona Hernandez & Rolando Fernandez S-9214  
4803 Park Ave. Lic: C-67  
Union City
- Charge: Pornographic matter - net suspension of 25 days  
Order - August 10, 1972

U. LaStella Polare, Inc.  
t/a Polar Star Lounge  
150 South Essex Ave.  
Orange

S-9253  
Lic: C-53

Charge: "Hours" regulation - prior similar record within 10  
years considered - net suspension of 15 days  
Order - August 11, 1972

V. LaRocca & Russo, t/a La Rocca's  
73 Washington St.  
Paterson

S-9242  
Lic: C-203

Charge: Failure to provide copy of application and list of employees -  
prior record of dissimilar offense - fine of \$400 in lieu of  
net suspension of 10 days  
Order - August 11, 1972

W. Michael Godina  
224 Cedar St.  
Garfield

S-9231  
Lic: C-55

Charge: Sale to minor, age 17 - net suspension of 15 days  
Order - August 11, 1972

X. Elvira Cavallaro  
332 Monroe St.  
Hoboken

S-9252  
Lic: C-16

Charge: Hours' ordinance regulation -  
Service of alcoholic beverages to intoxicated person -  
prior dissimilar violation - net suspension 36 days  
Order - August 11, 1972

Y. Anthony Gianfortuno, t/a Tony's Dugout  
32 E. Browning Rd.  
Bellmawr

S-9217  
Lic: C-2

Charge: Front - false statements in application - licensee not  
bona fide resident of N.J. - license suspended for balance of  
term and until correction after 32 days from suspension date.  
Order - August 14, 1972

Z. Michael A. Carey Jr. & Sheldon Cooper,  
t/a Corner Lounge  
144 Bartholdi Ave.  
a/k/a 1648 Kennedy Blvd.  
Jersey City

S-9111  
Lic: C-487

Charge: Gambling (numbers game) - net suspension of 72 days -  
fine of \$2,500 accepted from prior owner - unusual circumstances  
Order - August 14, 1972

2. DISCIPLINARY PROCEEDINGS - FRONT - PRIOR SUBSTANTIAL RECORD - NO DEFENSE ENTERED - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

Play Pen, Inc. )  
t/a Play Pen )  
789 Palisade Avenue )  
Cliffside Park, N. J., )

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consumption License C-11 (for 1971-72 license period), issued by the Mayor and Council of the Borough of Cliffside Park. )

-----  
No Appearance on behalf of Licensee Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

A plea of not guilty was entered on behalf of the licensee herein who was charged with failure to disclose in its application for license that one John Marano was the real and beneficial owner of fifty per cent. of the shares of stock held by Rose Marie Marano, such failure to disclose constituting the evasion and suppression of a material fact, in violation of N.J.S.A. 33:1-25.

On the second adjourned date of hearing, no one appeared for the licensee. At the request of the attorney for the Division, a copy of the notice of hearing for the date March 29, 1972, was personally served on Mrs. Marano (principal stockholder of the corporate licensee). When the matter was finally set down for hearing, no one appeared on behalf of the licensee, and the hearing was conducted ex parte.

The attorney for the Division waived the preparation of a Hearer's report and agreed to submit the matter for the Director's determination pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of testimony and the exhibits, I find the licensee guilty as charged.

The licensee has a substantial prior record of dissimilar violations, the most recent of which resulted in a warning by the Director that any future substantial violations might well result in outright revocation. See Re Play Pen, Inc., Bulletin 1927, Item 5.

Considering the seriousness of the recent charges, the prior adjudicated record of violations, and the failure of the licensee to appear at the hearing, the only proper penalty is outright revocation.

I have been advised by the local issuing authority that the license herein was not renewed for the 1972-73 license period. Nevertheless, for record and disqualification purposes, I have determined to enter an order of revocation of the license.

Accordingly, it is, on this 11th day of August 1972,

ORDERED that Plenary Retail Consumption License C-11 (for the 1971-72 license period), issued by the Mayor and Council of the Borough of Cliffside Park to Play Pen, Inc., t/a Play Pen, for premises 789 Palisade Avenue, Cliffside Park, be and the same is hereby revoked nunc pro tunc, effective June 30, 1972.

Robert E. Bower  
Director

3. APPELLATE DECISIONS - HERRINGTON v. JERSEY CITY.

Howard Herrington,	)	
Appellant,	)	
v.	)	On Appeal
Municipal Board of Alcoholic Beverage Control of the City of Jersey City,	)	CONCLUSIONS and ORDER
Respondent.	)	
-----	)	

Schutzman, Glickman & Valentine, Esqs., by Peter S. Valentine, Esq.,  
Attorneys for Appellant  
Louis P. Caroselli, Esq., by Bernard Abrams, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the City of Jersey City (hereinafter Board) which by resolution adopted March 21, 1972 revoked appellant's plenary retail consumption license for premises 621 Communipaw Avenue, Jersey City, after finding licensee guilty of allowing, permitting and suffering narcotic activity to take place on the licensed premises in violation of Rule 4 of State Regulation No. 20.

Appellant contended that the action of the Board was unreasonable, without factual basis and constituted an abuse of discretion. The Board in its answer denied these contentions.

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

The Board produced the testimony of Thomas Gleason (an acting detective with the Jersey City Police Department). He stated that on February 1, 1972, he together with about twelve other officers participated in a raid on the licensed premises. His search of the premises revealed ten packets of narcotics which were found by other officers in his presence; he located a gun on a patron directly outside of the premises. He further observed another gun found in a plastic bag in the men's room, with live rounds of ammunition in it.

Dolores Dries (a policewoman of the Jersey City Police

Department, testified that she conducted body searches of thirteen female patrons. A seventeen-year-old girl had thirteen packets of heroin in her pockets. Another girl had two bags of narcotics. The majority of the other females, while not carrying narcotics on their person, had "track" marks on their arms indicating that they were narcotic users. One girl had narcotics on her person but no "track" marks, which the witness explained indicated that she was a pusher of narcotics, i.e., was a narcotics peddler.

Detective Kenneth Calabrese testified that he participated in another raid on the licensed premises on February 28, 1972, and discovered a patron placing narcotics over the door in the bathroom. When that patron was searched, six more packs were discovered secreted in her undergarments.

Walter Adams (an acting detective of the Jersey City Police Department) testified that he also participated in the raid on the licensed premises on February 1, 1972, and uncovered eight glassine bags of heroin behind the juke box on the floor.

Lawrence Puget (a member of the narcotics squad of the local Police Department) testified that he participated in the raid on the licensed premises on February 19, 1972. Upon entry he noticed a patron attempt to stuff a tinfoil packet in his glove. The packet contained heroin and the glove holding it was on the bar immediately in front of the bartender who had completed serving the patron a drink. A total of forty glassine envelopes containing narcotics was found in the glove.

Another member of the narcotics squad (Frank Rataczik) testified that he participated in the raid on the licensed premises on February 19, 1972. He corroborated the testimony of Officer Puget respecting the finding of the narcotics in the glove of the patron. He further stated that he joined another raid on the licensed premises which occurred on March 3, 1972. At that time he observed a patron dispose of what appeared to be a packet of cigarettes and, on retrieving it, found the packet contained eleven marijuana cigarettes. Another patron discarded six or eight glassine bags containing narcotics. In the rear of the premises a pouch was discovered which contained about one hundred fifty barbituate tablets.

The witness stated that the patrons who were discovered with narcotics were arrested and appropriately charged.

Appellant introduced the testimony of James Withers (a part-time bartender who was on duty on February 1, 1972 when the police conducted the raid). He displayed a sign which he stated was located behind the bar which admonished dope pushers not to frequent the establishment. He denied any knowledge that narcotic users or pushers who were present on the premises were known to him as such, adding that he could not tell who did use narcotics. He never saw narcotics in the premises.

Henry Montgomery (another bartender) testified that raids were made, people arrested by policemen known to him, but he did not know what the raids were all about.

Both witnesses for appellant admitted, however, that the police were continuously investigating narcotics violations in the said premises.

Disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960).

Counsel for appellant has urged reversal of the Board's action, basing such argument on the allegation that the mere presence of narcotics possessors on the licensed premises is not sufficient cause for the revocation of the license. Such argument has as its underlying rationale that a licensee cannot be charged with conduct over which he has no control. Rule 4 of State Regulation No. 20 provides in part that no licensee shall allow, permit or suffer "... any unlawful possession of or any unlawful activity pertaining to narcotic drugs ...."

There is no denial whatever that the investigation of the subject premises on February 1, 19 and March 3, 1972 culminated in many arrests and the confiscation of a quantity of heroin and other drugs. It is inconceivable that appellant or his bartenders were unaware that this establishment was a hotbed of narcotics activity. The sign over the bar enjoining the presence of narcotic pushers is sufficient indication of appellant's awareness of the problem. There was no testimony by the appellant whatever indicating any effort to obtain police assistance in coping with the torrent of narcotic activity in or about the said premises. Cf. Ishmal v. Div. of Alcoholic Bev. Control, 58 N.J. 347 (1971).

Even in the alleged absence of knowledge of such activity, the licensee cannot escape the consequences of the occurrence of the incidents as related herein when simple observation by appellant or the bartenders obviously would have led to discovery of the abundant traffic in and possession of narcotics by the patrons. Licensee or employees may not avoid their responsibility for the conduct on their premises by merely closing their eyes and ears. On the contrary, their eyes and ears must be used effectively to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3.

The testimony in this matter has been carefully considered and I find as a fact that appellant is guilty of the charge upon which revocation was based.

I shall now consider the matter of the penalty of revocation imposed by the Board herein. It has been generally held by this Division that a suspension or revocation imposed in disciplinary proceedings rests in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2. In reviewing the penalty herein, it is apparent that the Board was well aware of the serious, tragic and devastating effects of trafficking in narcotics and has manifested by its action that it will not tolerate such activity. Glad-Ed Tavern, Inc. v. Newark, Bulletin 2020, Item 1. This Division has repeatedly supported efforts to discourage and eradicate the existence of narcotic traffic in licensed premises. Jackson v. Newark, Bulletin 2016, Items 2 and 3; El Torero, Inc. v. Newark, Bulletin 1989, Item 1; Re Elite, Inc., Bulletin 1951, Item 1; Re Richards, Bulletin 1838, Item 1, in all of which outright revocation of the license was the commensurate penalty imposed.

I find, under the totality of the facts and circumstances herein, that the action of the Board in revoking the said license was reasonable and constituted a reasonable exercise of its discretion. Hence I conclude that appellant has failed to sustain its burden of establishing that the Board's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is accordingly recommended that an order be entered affirming the action of the Board, dismissing the appeal and vacating the order heretofore entered by the Director staying the Board's action pending determination of this appeal.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof were filed by attorney for appellant. Answering arguments to such exceptions and argument were filed by respondent.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report, the exceptions and argument to the Hearer's report, and the answers and argument addressed to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 8th day of September 1972,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City 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 order of March 24, 1972, staying respondent's order of revocation pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-162, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Howard Herrington for premises 621 Communipaw Avenue, Jersey City, be and the same is hereby revoked, effective immediately.

Robert E. Bower  
Director

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

Arthur Martin, Inc.  
100 South Street  
Jersey City, N.J.

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-490 for the 1971-72 and 1972-73 license periods) issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Malfitano, Claudat & Kealy, Esqs. by Anthony F. Malfitano, Esq., Attorneys for Licensee.  
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleads not guilty to a charge alleging that on August 13, 1971, it allowed, permitted and suffered gambling activity, in the form of "numbers game" to take place on the licensed premises, in violation of Rule 6 of State Regulation No. 20.

The Division's case was developed through the testimony of State Police Officer William J. Vanya who stated that on August 13, 1971, at about 4:00 P.M., fortified with a search warrant, he in the company of State Police Sgt. Belcolle, conducted a raid on the licensed premises of Arthur Martin, Inc., located at 100 South Street, Jersey City. Immediately upon entry and upon announcement that a raid was begun, a patron, later identified as Billy McCann, began moving from a chair near the telephone booth. McCann dropped a slip of paper and pen, which the witness retrieved. That paper contained "numbers" information. Shortly thereafter, the telephone rang, the witness answered it to learn that the caller was attempting to place a "numbers" bet. The phone rang seven or eight times thereafter and was answered by the witness, who described all but one call as a "numbers" bet placement. The callers repeatedly asked for "Billy McCann" preliminarily to placing their bets. The remaining call was from a male voice which said, "Get rid of the numbers. The State Police raided Cambridge Street"; the caller hung up. Nearing the close of the investigation, both the witness and his companion spoke to the principal of the corporate licensee, Arthur Martin, about the gambling. He replied, "I know it's going on but can't do a thing about it."

State Trooper Sgt. Henry Belcolle testified in substantial corroboration of the testimony of Trooper Vanya, save for the telephone conversations. He added that he found a coaster with numbers on it in the telephone booth during his search. Both McCann and Martin were placed under arrest and charged with book-making.

Arthur Martin, testifying on behalf of the licensee, stated that he is the owner of about 30% of the stock of the licensee corporation and was present at the time of the raid. He denied that he knew that McCann took bets, but had he known, he "would have found some way to stop it". He admitted McCann came in several times a week at "all different hours". He believed McCann

was a painter. The telephone is usually answered by a patron unless he is alone when it rings.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (1948). Proof is required by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The findings must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

It cannot be reasonably controverted that gambling activity took place within the licensed premises. The "numbers slip" dropped by McCann and identified by Trooper Belcolle, who has had thirteen years experience investigating gambling matters, confirmed this, and when connected to the seven or eight calls within the short period of the raid, all placing number bets with McCann, substantiated the charge herein.

Martin denied making the statement to the troopers to the effect that he knew gambling was taking place but couldn't do a thing about it, but that denial did not carry a ring of truth. There was little conviction in his response that, had he known gambling was taking place, he would have found some way to stop it. At least, at the time of the raid, he had not yet found any way.

Failure to prevent the prohibited activity is to "suffer" its occurrence. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (1947). The licensee cannot avoid his responsibility in preventing the illegal activity if he or his agents knew or should have known of its existence. Davis v. New Town Tavern, Inc., 37 N.J. Super. 376 (1955); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

Martin's failure to take the necessary steps to prohibit the proscribed gambling activity within the licensed premises constitutes "suffering" its occurrence. Re Finbar, A Corporation, Bulletin 1851, Item 3; cf. Jackson v. Newark, Bulletin 1600, Item 2; Benedetti v. Trenton, 35 N.J. Super. 30. (App. Div. 1955).

Under these circumstances, I conclude that the licensee's guilt of the charges has been established by a fair preponderance of the believable evidence, indeed by substantial evidence. I therefore recommend that the licensee be found guilty of the charge herein.

The licensee has no prior adjudicated record. It is, further, recommended that the license be suspended for ninety days. Re Casale, Bulletin 2045, Item 4.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 8th day of September 1972,

ORDERED that Plenary Retail Consumption License C-490, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Arthur Martin, Inc., for premises 100 South Street, Jersey City, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m. Thursday, September 21, 1972, and terminating at 2:00 a.m. Wednesday, December 20, 1972.

Robert E. Bower  
Director

5. APPELLATE DECISIONS - ONE ON TWO CORPORATION v. NEWARK.

One on Two Corporation, t/a	)	
New Era Lounge,	)	
	)	
Appellant,	)	
v.	)	On Appeal
	)	
Municipal Board of Alcoholic	)	CONCLUSIONS and ORDER
Beverage Control of the City	)	
of Newark,	)	
Respondent.	)	
-----	)	

M. Bernadine Johnson, Esq., Attorney for Appellant  
William H. Walls, Esq., by Beth M. Jaffe, 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 Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which on April 24, 1972 found appellant (holder of a plenary retail consumption license for premises 1007-1009 Broad Street, Newark) guilty of permitting a brawl or act of violence on the licensed premises, in violation of Rule 5 of State Regulation No. 20. The act complained of occurred on May 20, 1971; the resultant penalty was a suspension of twenty days effective May 8, 1972, which suspension was stayed by order of the Director pending determination of this appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 and was presented upon transcript of the hearing before the Board, supplemented by additional testimony produced on behalf of appellant pursuant to Rules 6 and 8 of State Regulation No. 15.

Appellant challenged the action of the Board as erroneous in that "the charges against the appellant were untrue." The Board denied that contention urging that the record before the Board contained ample support for its findings.

Capsulating the testimony given before the Board and this Division, it is uncontroverted that an act of violence did occur within the licensed premises on the date alleged. However, testimony offered concerning the circumstances giving rise to that act, taken as a whole, revealed two completely opposite versions of the occurrence.

Robert Godfrey and his girl friend Marilyn Avery in their testimony before the Board described themselves as patrons sitting at the bar when the bartender began calling Godfrey "names", to which Godfrey responded with similar epithets. While his back was turned away from the bartender and toward his girl friend, the bartender hit him with a bottle across the bridge of his nose causing such lacerations that hospitalization was required. The girl friend corroborated the striking.

Patrolman James Whittaker of the Newark Police testified that he responded to a call from a hotel room in the Hotel Belmont (in which building the licensed premises are situated) and there found Godfrey drenched with blood. Godfrey, after informing the officer that he was struck by the bartender, was removed by the policeman to the hospital.

The bartender Sylvester McWhite testified before the Board and at the hearing in this Division and gave this account of the incident: Godfrey had called to him demanding immediate service and, as he was then in process of pouring a drink for another patron, did not instantly respond. That delay angered Godfrey who grabbed McWhite's wrist while the bottle was still in hand, forcing the arm to swing and the bottle to strike Godfrey. A towel was procured to stem the blood on Godfrey's face and someone called the police. Godfrey and his girl friend departed. McWhite did not consider Godfrey's injuries serious, describing his condition as a "little dazed."

Two employees of appellant (the cook Willis Stringer and a waitress Carolyn Conoway) testified in substantial corroboration of the testimony of McWhite. On direct examination Conoway testified:

"Q And did you see what happened, did you see what happened when Robert went after Mr. McWhite?

"A Yes. He reached at Mr. McWhite and the way it happened, to me it was so fast it looked like an instant to me. And Mac hit him with the White Label bottle, because he had the bottle in his hand."

At the hearing before this Division Norman W. Gaskins (president of appellant corporation) testified that, prior to the incident giving rise to the charge, he had spoken to Godfrey, whom he described as a "troublemaker", who responded with a physical threat. He admonished Godfrey not to return to the establishment. He characterized Godfrey's actions as "erratic without malicious intent." He admitted that at no time prior to the incident had he told the bartender McWhite that Godfrey was not permitted in the premises. Conoway added to her original testimony that on the date of the incident, and before McWhite came on duty, Godfrey had already been engaged in an argument with the cook.

In appraising the factual issue presented in this proceeding, the credibility of witnesses must be weighed. Evidence to be believed must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

A careful evaluation of the testimony given both before the Board and at the de novo hearing in this Division leads to the inescapable conclusion that the entire testimony represented an exercise of imagination and exaggeration. Godfrey would have the Board believe that he was the victim of an unprovoked assault, and McWhite's version implied that by a peculiar juxtaposition of movement Godfrey's nose came into contact with the bottle.

The defense to the charge is entirely unconvincing in view of the admission by Gaskins that, despite the troublemaking propensities of Godfrey, being rejected as a patron, notice of that situation was never directed to the bartender McWhite. The Board apparently came to the inescapable conclusion that the act of violence provoked by Godfrey was overly reacted to by the bartender whose efforts to obtain police aid were both too little and too late. Such conclusion is manifest from the totality of the testimony.

It is a well established and fundamental principle that a licensee is responsible for the activities of his employees during their employ on the licensed premises. In re Olympic, Inc., 49 N.J. Super. 299 (App.Div. 1958); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951); Rule 33 of State Regulation No. 20. Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951).

The prior behavior of Godfrey being sufficient to have engendered the admonition by Gaskins that he would be unwelcome in the premises should have been of sufficient warrant for the issuance of warnings to the employees, all of whom were apparently familiar with the conduct of Godfrey, to be wary. As the Director articulated the central issue in Jackson v. Newark, Bulletin 1600, Item 2: "... The question involved here is whether the licensees could reasonably have taken steps to prevent the act of violence and disturbance that took place on their licensed premises, but failed to do so." The licensee, not having taken stringent efforts to preclude the possibility of an incident like the one which did take place must be held to have "allowed, permitted and suffered" the prohibited conduct. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947). Thus he cannot now contend successfully that the finding of guilt by the Board was unreasonable and erroneous.

It is accordingly recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective date of suspension which was stayed by the Director pending determination of this appeal.

#### Conclusions and Order

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

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

Accordingly, it is, on this 11th 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 my order dated May 5, 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-344, issued by the Board of Alcoholic Beverage Control of the City of Newark to One on Two Corporation, t/a New Era Lounge for premises 1007-1009 Broad Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 A.M. Thursday, September 21, 1972 and terminating at 2:00 A.M. Wednesday, October 11, 1972.

Robert E. Bower  
Director

6. DISCIPLINARY PROCEEDINGS - APPLICATION TO PAY FINE IN LIEU OF SUSPENSION IMPOSED BY MUNICIPAL ISSUING AUTHORITY GRANTED.

In the Matter of Disciplinary Proceedings against Leonard Marcus t/a Faller Bowl-O-Drome 872 River Rd. New Milford, N.J.

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-3 (for the 1971-72 and 1972-73 license periods) issued by the Mayor and Council of the Borough of New Milford.

Gross, Demetrikis & Donohue, Esqs., by Walter J. Dorgan, Esq., Attorney for Licensee Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleaded guilty before the municipal issuing authority to a charge that he sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20, whereupon his license was suspended for five days. The effective date thereof was deferred pending licensee's application to the Director to pay a fine in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$2,250.00 in lieu of suspension.

Accordingly, it is, on this 18th day of August, 1972

ORDERED that the payment of a fine of \$2,250.00 by the licensee be and is hereby accepted in lieu of the suspension of license for five days.

Robert E. Bower,  
Director

7. DISCIPLINARY PROCEEDINGS - ORDER DISMISSING CHARGE.

In the Matter of Disciplinary Proceedings against )

Raritan Liquors, Inc. )  
t/a Raritan Liquor Store )  
90 E. Somerset Street )  
Raritan (Somerset County), N.J., )

O R D E R

Holder of Plenary Retail Distribution License D-1, issued by the Mayor and Council of the Borough of Raritan. )

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Levy, Levy, Albert & Marcus, Esqs., by Leon L. Levy, Esq.,  
Attorneys for Licensee  
Edward F. Ambrose, Esq., Appearing for Division

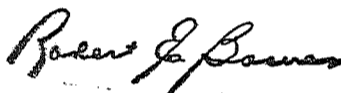
BY THE DIRECTOR:

It appears that a charge dated June 11, 1971, was brought against the licensee herein alleging that on divers days from or about January 1, 1969 to December 31, 1969, it accepted gifts, rebates, discounts, and things of value from F & A Distributing Company, in violation of Rule 11 of State Regulation No. 34.

It further appears that the employee of the afore-said wholesaler, alleged to have primarily participated in the proscribed transactions is deceased. Hence, the proofs are unavailable for the effective prosecution of this charge.

Accordingly, it is, on this 23rd day of August 1972,

ORDERED that the charge herein be and the same is hereby dismissed.



Robert E. Bower  
Director