

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

BULLETIN 1735

JUNE 13, 1967

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1. APPELLATE DECISIONS - MONMOUTH COUNTY PACKAGE STORES ASSOCIATION AND WEST END GROCERY, INC. v. ATLANTIC HIGHLANDS AND 89 CLINTON, INC.

MONMOUTH COUNTY PACKAGE STORES)
ASSOCIATION and WEST END GROCERY,)
INC., t/a "Plaza Liquors",)
Appellants,) ON APPEAL
CONCLUSIONS
AND ORDER
v.)
MAYOR AND BOROUGH COUNCIL OF)
THE BOROUGH OF ATLANTIC HIGHLANDS,)
and 89 CLINTON, INC., t/a The)
Copper Basket,)
Respondents.

Howard A. Roberts, Esq., Attorney for Appellants.
Henry J. Saling, Esq., Attorney for Respondent Mayor and
Borough Council.
Klatsky & Himelman, Esqs., by William Himelman, Esq., and Arthur
P. Siegfried, Esq., Attorneys for Respondent
89 Clinton, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Borough Council (hereinafter Council) which, by vote of four to one of the Council (one member being absent from the meeting), approved an application for a place-to-place transfer of respondent licensee's plenary retail distribution license from premises 110-112 First Avenue to premises to be constructed in accordance with plans and specifications at 183 First Avenue, Atlantic Highlands.

The resolution of the Council, adopted July 26, 1966, after a hearing on said application, concluded as follows:

"1. The proposed transfer is in the public interest presents a more justifiable distribution of liquor licenses in the permissive zone and lends itself to a general improvement of the commercial area of the Borough of Atlantic Highlands.

"2. Located as proposed, the exercise of license no. D-2 would not present undue competition to existing licenses and, in fact, would more equitably balance whatever competition might exist."

Appellants' petition of appeal alleges that the action of the Council was erroneous and should be reversed for the following reasons:

"(a) In fact, the transfer of the license in question will present undue competition as it will provide three (3) liquor licenses, all with the ability and custom of dealing in 'package' goods within a one block area, a situation which does not exist now, and if allowed to exist in the future will prove financially detrimental to all parties involved.

"(b) The proposed location is at the intersection of the recently widened State Highway No. 36 (from two (2) to four (4) lanes) and First Avenue, with a newly placed 'jughandle' diagonal to the proposed location, and there is resulting actual and anticipated increase in traffic flow. The placing of an additional liquor outlet, naturally involving both cars and persons on foot, would create a vehicular as well as pedestrian traffic hazard, effecting the safety and well-being of the community as a whole.

"(c) In view of the fact that the Borough of Atlantic Highlands placed great emphasis on certain petitions presented by 89 Clinton, Inc., allegedly supporting the proposed transfer, therefore when numerous signatures appearing on those petitions were of individuals living in areas not the least bit proximate to the district that is serviced by the new, or for that matter the old location, of the Copper Basket, they should be disregarded in their entirety. This removes the main basis for the approval of the transfer from place to place of the Retail Plenary Distribution License in question."

The respective answers of the respondent Council and licensee deny the aforesaid allegations contained in appellants' petition of appeal, and in defense of the Council's action contend that:

"The action of the Borough of Atlantic Highlands was not arbitrary, capricious or unreasonable, and the resolution granting the transfer was in accordance with standards established by the Statutes of the State of New Jersey and applicable decisions by the Director of the Division of Alcoholic Beverage Control, recognizing the needs and development of the Borough of Atlantic Highlands, the issuing authority."

Rose F. Caplan, called as a witness by appellants, testified that she is president of respondent corporate licensee which has operated a liquor business at its location 110-112 First Avenue for approximately five years. Although there are places for parking next to the licensee's present establishment, one using the facilities is limited to "five minutes parking" because the parking area is primarily used by police cars, thus making it necessary for customers to park on the street. Mrs. Caplan further stated that she and her husband purchased the land at 183 First Avenue where a two-story building is being constructed containing four stores on the first floor, one of which is to be occupied as the licensed premises; that there will be parking space for four or five cars in front of the building as it is set back thirty feet from the west curb of First Avenue. She further testified that there is a strip of land twenty feet in width at the rear of the proposed building for use of trucks when unloading merchandise but may also be used for temporary parking. Also there is to be a driveway eighteen feet in width north of the

proposed premises, which driveway leads from First Avenue and, in addition, the licensee has provided parking facilities on a vacant lot fronting on Garfield Avenue, part of which is contiguous to a rear portion of licensee's proposed site with ample space between the two sections for cars to enter and leave. Moreover, she said that the parking facilities will have black top surfaces.

Mrs. Caplan further testified that immediately to the south of the proposed premises there is a service station on the corner of Highway 36 and First Avenue, and immediately north of the proposed premises is a vacant lot, and then a plenary retail consumption license, whereas across Highway 36 there is a plenary retail distribution license in a shopping center.

Donald J. Caruso, a stockholder of appellant West End Grocery, Inc., t/a "Plaza Liquors", testified that he objects to the transfer of the license in question "for a number of reasons; one of which there is no public need or necessity; two, it creates a traffic problem; three, as being resident of the town, it establishes no new stores but takes and empties stores." In support of his contention that no need or necessity exists for the transfer of the license, Mr. Caruso listed the location of liquor outlets as follows:

"Starting from our location, which is a highway location, then we go across the highway on First Avenue would be the new location of the Copper Basket; next, right immediately next door is Johnny Roma's; in the same block facing on Highway 36 is Jack's Inn; further down, four blocks away, is the old location of the Copper Basket; directly across from that is Hoptay's Tavern; down further in the next block is Lemberg's Reliable Liquors; several stores down is a combination broad D which is Andy's Tavern; in the next following block is Paul's Tavern and Restaurant; and in that same block on the far corner is Joey Miles' tavern and package; directly across is the Pier Hotel, which also has a license."

Mr. Caruso stated that in his opinion the area for which the transfer of the license is sought has adequate facilities provided by the West End Grocery, Inc., Johnny Roma's and Jack's Inn, the latter license being located around the corner on the north side of Highway 36. Furthermore, Mr. Caruso stated that he opposes the transfer of the license to the proposed area because it would be "damaging to my livelihood." Mr. Caruso said, concerning a traffic problem, that from his experience and observation traffic on First Avenue is "backed up" when waiting for the light to change at Highway 36 "beyond Johnny Roma's Tavern" and, as a result thereof, would be in front of the proposed licensed premises.

John Roma (holder of a tavern license on First and Garfield Avenues, the premises for which are closest in distance to the proposed licensed premises) testified that he objects to the transfer because of the impact on his business and if "they move next door, I be out of business." He also stated that there will be a parking and traffic problem created but that his main objection was mostly "economic."

Viola Lynch testified that she is the owner of the premises now occupied by the respondent licensee, and opposes the transfer of the license in question because she had spent a large sum of money in renovating the premises prior to the licensee's occupancy thereof.

Frank Vanore (borough administrator) testified that the distance between the existing licensed premises and the proposed premises is "about a thousand feet."

Petitions obtained by the respondent licensee containing 322 signatures indicated that the signers thereof are in favor of the transfer of the license to the proposed premises. Another petition submitted by appellants had signatures of parties interested in ten licensed premises located on First Avenue and nearby locations in the Borough expressing objections to the transfer in question.

It has long been held that the question of whether a license should be permitted at a particular location is within the sound discretion of the local issuing authority and that it is not the function of the Director on appeal to substitute his opinion for that of the issuing authority but, rather, to determine whether there is reasonable cause for its opinion and, if so, to affirm. Redfield v. Long Branch and Corte, Bulletin 1027, Item 1.

In Ward v. Scott, 16 N.J. 16 (1954), the Supreme Court of New Jersey, on an appeal from a zoning ordinance, cited in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, the following general principles:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U. S. 474, 480. 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the Rocco case, supra, it was stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511"

In addition to the testimony of the owner of the building where the license now exists, the only testimony in opposition to the transfer of the license was given by witnesses having an interest in liquor licenses. Their principal objections were that the transfer to the proposed site would adversely affect their respective businesses. With reference thereto it was stated by former Commissioner Driscoll in Kelley v. Manalapan and Forman, Bulletin 531, Item 3:

"An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing licensee will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual."

See also Knast et al. v. Camden et al., Bulletin 810, Item 2.

It is apparent by the determination of the Council that the members were not impressed with reference to the creation of a traffic problem if the transfer of the license were granted.

I am satisfied from the record herein that the matter of transfer was fully considered by the Council before action was taken on the licensee's application. Furthermore, no evidence was presented which in any manner indicates that the Council was in any way improperly motivated in its action.

After careful review of all the evidence adduced herein and the memoranda submitted by the attorneys for the respective parties, I conclude that nothing has been presented by the appellants to indicate that the Council had abused its discretion in approving the place-to-place transfer in question.

It is therefore recommended that an order be entered affirming the action of the respondent Council and dismissing the 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 the transcript of the record below, the exhibits and 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 14th day of April, 1967,

ORDERED that the action of the Mayor and Borough Council of the Borough of Atlantic Highlands be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - STEVE'S BAR, INCORPORATED v. HIGHTSTOWN.

| | | |
|----------------------------|---|-------------|
| STEVE'S BAR, INCORPORATED, |) | |
| Appellant, |) | ON APPEAL |
| v. |) | CONCLUSIONS |
| |) | AND ORDER |
| COMMON COUNCIL OF THE |) | |
| BOROUGH OF HIGHTSTOWN, |) | |
| Respondent. |) | |

Malsbury & Selecky, Esqs., by John A. Selecky, Esq., Attorneys
for Appellant.
Hervey S. Moore, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from the action of respondent in suspending its license for fifteen days effective April 10, 1967, for sale of package goods for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Upon the filing of the appeal an order was entered on April 7, 1967, staying the suspension until further order herein.

Appellant's sole ground of appeal is that the penalty was "too severe" for a first offense of this kind.

The appeal was submitted, pursuant to Rule 8 of State Regulation No. 15, upon an agreed statement of facts, as follows:

"Appellant's bartender sold a pint of Seagram's 7 Crown Whiskey for off premises consumption on October 13, 1966, prior to opening hours as alleged in Complaint contrary to and in violation of Rule 1 of State Regulation No. 38.

"No similar violations to the one that is the subject matter of this appeal have occurred on the licensed premises.

"The prior violations are: Lottery on premises, suspension 20 days, effective April 3, 1956; and permitting a brawl on premises and gambling on premises, suspension 5 days, effective June 24, 1964.

"Appellant pled guilty to charge from which appeal is being taken on April 5, 1967. Issuing Authority suspended license for 15 days effective April 10, 1967."

In view of the licensee's record of suspension of license for dissimilar violation in 1964, occurring within the past five years, the penalty imposed exactly coincides with the minimum customarily imposed by the Director in similar cases. See, for example, the most recent similar case in Re Molozzi, Bulletin 1721, Item 3.

On the general question of reasonableness of penalties imposed and municipal discretion with respect thereto, see Lou's Liquors v. Plainfield, Bulletin 1692, Item 1, aff'd Lou's Liquors v. Plainfield and Div. of Alcoholic Beverage Control

(App.Div. 1967), not officially reported, recorded in Bulletin 1719, Item 1.

The penalty thus conforming to the Director's penalty practice, it cannot be deemed by me to be too severe, as alleged. The action of respondent will therefore be affirmed.

Accordingly, it is, on this 25th day of April 1967,

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 respondent's order of suspension, stayed during the pendency of this appeal, is hereby reinstated and that Plenary Retail Consumption License C-3, issued by the Common Council of the Borough of Hightstown to Steve's bar, Incorporated, for premises 136 Mercer Street, Hightstown, be and the same is hereby suspended for fifteen (15) days, commencing at 12:01 a.m. Tuesday, May 2, 1967, and terminating at 12:01 a.m. Wednesday, May 17, 1967.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - UNLAWFUL TRANSPORTATION - HINDERING INVESTIGATION - SOLICITOR'S PERMIT SUSPENDED FOR 60 DAYS - HEREIN WARNING OF INCREASED PENALTIES IN FUTURE CASES OF HINDERING INVESTIGATION BY SOLICITORS.

In the Matter of Disciplinary Proceedings against

PAUL HARNICK
23 Sanhican Drive
Trenton, N. J.

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit No. 3812,
issued by the Director of the Division
of Alcoholic Beverage Control.

Permittee, Pro se.

David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Permittee pleads non vult to charges alleging that on January 10, 1967, he (1) transported alcoholic beverages without requisite delivery slip or invoice contrary to Rule 4 of State Regulation No. 17, in violation of Rule 12 of State Regulation No. 14, and (2) hindered investigation then being conducted by Division agents by refusing to furnish requested information, in violation of R.S. 33:1-35.

Reports of investigation disclose that on the date alleged, the permittee was apprehended transporting two cases of whiskey and sixteen bottles of assorted whiskies, wines and liqueurs without accompanying delivery slip or invoice and that, when questioned by the investigating agents, he refused to disclose the source or destination of the alcoholic beverages.

Absent prior record and considering the confessional plea entered, the permit will be suspended for sixty days.

"2. On Sunday, January 8, 1967, between 4:15 a.m. and 5:00 a.m., while an Inspector and an Investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises you, through officers, directors, shareholders and agents, servants and employees of your corporation and other persons in your behalf failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35.

"3. In your application filed with the Board of Commissioners of the City of Union City, and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question No. 41, which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled? ...If so, state details with respect to each surrender, suspension, revocation or cancellation.', whereas in truth and fact plenary retail consumption license held by you for these same premises had been suspended by the Director of the Division of Alcoholic Beverage Control for a period of fifteen (15) days, effective June 2, 1964, for sale of alcoholic beverages to minors; such false answer, statement, evasion and suppression being in violation of R.S. 33:1-25."

ABC Agents V and Z participated in the investigation of the charges that are the subject matter of the instant trial.

Agent V testified that after entering and leaving the licensed premises (which he described as a neighborhood tavern) on early Sunday morning, January 8, 1967, he and Agent Z returned to the area of the tavern at 2:30 a.m., at which time Agent Z entered the tavern. Agent V entered the tavern at 3:00 a.m. and seated himself two stools away from Z. The wall clock in the tavern was fifteen minutes fast, it indicated the time as 3:15. Prior to entering the tavern, the agents checked their wrist watches for accuracy with the time tone on the car radio. Nelson Cotto and Alvin Grant (shareholders and officers of the licensee corporation) were tending bar. Upon entry, Agent V ordered and received an alcoholic beverage from Cotto, which he consumed prior to leaving at 3:20 a.m. Upon inquiry, Cotto stated that the clock in the tavern was fifteen minutes fast. Prior to leaving the tavern, the agent noted that eleven patrons and Agent Z were consuming drinks.

Agent V was joined by Z in taking up a post of observation diagonally across the street from the tavern about a "half-block" away. At about 3:30 a.m. he observed a couple and four males emerge from the tavern. At approximately 3:55 he witnessed three couples approach the tavern and enter. Both agents approached the tavern and peered through the front window where the drape was open approximately seven inches from the wall. Although the interior lighting was dim, he had a view of the entire barroom except for the sitting area in the rear. He observed Grant and Cotto behind the bar and patrons drinking from glasses on the bar. Agent Z knocked on the front door at 4:05 a.m. The agents did not gain admittance. After a lapse of five minutes, the agents approached the door again and knocked. After a "minute or two"

Grant came to the door and pushed aside a drape covering a small clear glass window in the door. V asked for a drink. Grant said, "No." The agent then took out his credentials, held them up to the window by Grant's face and in a loud voice said, "State ABC. Let me in." The drape covering the window fell back. The agent rushed to the window and saw patrons at the bar. Additionally, he saw Grant usher the patrons to the rear of the premises and Nelson Cotto remove drinks from the bar and "dump them in the sink." Grant was pointing toward the rear and patrons hurried in that direction. V again knocked on the door and, when Grant returned to the door, said, "State ABC. Let us in" and again held up his credentials at the glass. Grant lit a match to read the credentials and said, "I don't know ABC." After reading the agent's credentials, he glanced toward the rear of the tavern and opened the door.

The agents entered the premises at approximately 4:15 a.m. after a lapse of approximately five minutes from the time their credentials were first exhibited. The agent saw Grant and Cotto in the barroom. He saw four glasses on the bar containing ice cubes. Several beer bottles were still cold. He immediately went to the rear through an archway. In the rear room he noted a pathway leading to a rear door. The door had a hasp over it with a drill bit in it. Grant stated that he was the owner and had been cleaning up since three o'clock and since that time there were no patrons in the tavern. Grant was requested to produce the license application and work permits. Instead, Grant went to the telephone booth and, upon emerging therefrom, stated that he was going to wait for the police captain to come down prior to saying anything. Captain Mescall and Patrolman Harry Calandrillo of the Union City police force entered the licensed premises after a lapse of ten minutes. Not until then did Grant exhibit the license application and work permits to the agents.

Despite a lengthy and searching cross examination, Agent V's testimony did not vary from his testimony on direct examination as to the matters relevant and material to the charges. The witness reiterated that the captain and patrolman did not enter the licensed premises until approximately 4:25 a.m. He denied that Grant told him he didn't know who he was and wanted to call the police for protection.

Additionally, the witness testified that the investigation was made pursuant to a specific complaint of a closing hour violation and other charges. After the patrons proceeded towards the rear and left the premises, he did not see any of them outside. From where he was standing on the exterior, he could not see any rear doors. After the police captain advised Grant that V and Z were ABC officers and had a right to investigate the premises, Grant cooperated fully with the agents.

The testimony of Agent Z (who participated with V in the investigation of the instant matter) corroborated V's testimony as to the salient features relative to the charges. He observed five males and three couples consuming beverages between the hours of 3:00 a.m. and 3:20 a.m. when he emerged from the premises on the date in question. He, too, consumed an alcoholic beverage after 3:00 a.m. and observed Agent V consuming an alcoholic beverage. At 3:55 a.m. he saw three couples enter the tavern. Thereafter, he peered in the front window and saw patrons at the bar and Grant and Cotto behind the bar. Grant failed to show the agents the license application or the work permits (although requested to do so by the agents) until he was advised to do so by the captain of the local police force.

The agent's testimony on cross examination was not inconsistent with his testimony on direct. Additionally, the witness testified that the first time he examined the rear door, there were no obstructions in front of it and after the police officers came in and he examined the rear door the second time, he noted that the door was obstructed by a waxing machine and boxes. The agents did not open the door to see where it led, nor did the agents go to the front door to see where the patrons had gone. When the agents were admitted to the premises after exhibiting their credentials at the door, Grant said, "I'm not answering any questions. I'm calling the captain."

Harry Calandrillo, a patrolman connected with the Union City Police Department, called to the witness stand in behalf of the licensee, testified that on the day in question he was assigned to a radio car and received a call to pick up Captain Mescall of the Union City Police Department at 4:00 a.m. The captain was in the car when a call was received to "bring the captain up to the El Rancho to meet two ABC men." They arrived at the tavern about five to seven minutes later and saw the two ABC agents who had testified herein. Upon request, the agents produced proof of their identity to the captain. After the captain conversed with Grant, the investigation proceeded without hindrance or delay. After the investigation terminated, the agents went to the captain's office at police headquarters, three-quarters of a block away. The officer fixed the time that the agents completed their mission at police headquarters as "a minute or 2 before 4:35."

Frederick Vogel testified that he was a police officer of the Town of Secaucus and had been patronizing the licensed premises for approximately a year prior to January 8, 1967. He entered the licensed premises on January 8 at 12:30 a.m. and joined three other patrons at a table in the back room. He declared that the tavern business was conducted in an orderly manner and closed on time. On January 8, 1967, at 2:55 a.m. he heard Mr. Grant say, "O.K., that is it," referring to the last call for beverages. He observed patrons at the bar finish their drinks and leave. When he and his group left the premises at approximately 3:15 a.m., they passed through the bar area and exited from the front door. There were no other patrons in the tavern at the time he departed.

On cross examination, the witness admitted that he did not know whether or not other patrons entered the tavern after 3:15 a.m. Other patrons in the back room left the tavern five or ten minutes prior to the time he left. When asked, "It was after three o'clock they left?", the witness responded, "Definitely, yes." Additionally, the witness stated that he and the group he was with were consuming alcoholic beverages between 3:00 and 3:15 a.m. The last time he observed patrons consuming beverages at the bar was five or ten minutes after 3:00 a.m.

Alvin Grant testified that he was one of the principal officers and stockholders of the licensee corporation. At the time he purchased the corporate stock in October 1965, he was not aware of a record of suspension against the license for sale of alcoholic beverages to minors in June 1964. When he answered "No" to Question No. 41 in the license application for the year 1966-67, he was of the impression that the question referred to him and his fellow officers and stockholders and not to anyone in prior interest.

Grant denied that there was ever a drape or curtain covering the window set in the exterior door. There are curtains

on the windows in the door inside the vestibule at the front entrance. On January 8, 1967, he recalled seeing the previous witness, Frederick Vogel, sitting in the back room with three other patrons prior to 3:00 a.m. There were approximately twelve or fourteen patrons at the bar, including a person he later ascertained to be Agent V. At 2:55 a.m. while there were ten or twelve patrons at the bar and some patrons in the rear sitting room, he announced closing time and requested the patrons to "drink up." The patrons consumed their drinks and left the tavern within a period of ten minutes thereafter, except for four patrons in the rear who departed from the tavern by 3:10 a.m. Later he testified that Mr. Vogel and his group left at 3:15 a.m. Thereafter, he and Nelson Cotto, his bartender, started cleaning up the tavern.

At approximately 3:55 a.m., while he was in the rear sitting room, he heard "banging on the door." He ignored the sound; he would not permit anyone to enter at that hour. Three or four minutes later, he heard more banging and a call to "open up." Upon going to the door he saw Agent V (whom he recognized as a patron in the tavern earlier that morning) peering through the window. V was accompanied by another male. Both were dressed in dark clothes.

Further questioning of the witness elicited the following response:

"When they said, 'ABC' I said, 'I don't know if you are ABC' because they showed me cards with red stenciled letters 'ABC.' I said, 'I don't know if you are the ABC.'"

The witness stated that he had never seen the credentials of ABC agents and he assumed that they carried badges. After looking around for Cotto, he allowed the two men in. There were two beer bottles and one glass on the bar, the contents of which had been consumed by Grant and Cotto. He did not see the agents touch the bottles or the glass. The rear exit doorway in the kitchen was blocked by various items. When the agents asked for the "license and papers," he told them he was going to call the local police. He stated that from the time Officer Vogel and his companions left the tavern at 3:15 a.m. until the time the agents came in at 3:55 a.m., he and Cotto were alone in the tavern. No one entered the tavern thereafter. After the police officers entered the tavern at approximately 4:05 a.m., in response to his telephone call, the agents verified their identities to Captain Mescall. After Captain Mescall advised Grant to cooperate, Grant told the agents, "Go ahead, do anything you want in here." The investigation was completed at approximately 4:25 a.m.

Grant stated that his reason for not permitting the agents to proceed with their investigation until the local police entered the tavern was because he was unsure of their identities. He denied that he led patrons out by a rear exit. In response to the question "Was the only time you remained open after three the period that you allowed for people to finish and consume their drinks?", Grant answered "Yes."

Additionally, he testified that at 3:00 a.m. there were approximately twelve patrons at the bar and six in the rear room, that after 3:00 a.m. he made no more sales, and between 3:00 a.m. and 3:15 a.m. the patrons were "finishing their drinks and leaving."

As to the contested charges (1) and (2), the major inquiry presented is factual. I observe primarily that in evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the 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).

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

I have had an opportunity to observe the demeanor of the witnesses as they testified and have made a careful analysis and evaluation of their testimony.

As to Charge (1), I have considered Vogel's testimony that he and his companions did not leave the licensed premises until 3:15 a.m. Additionally, Grant (the president and main stockholder of the licensee corporation) conceded that patrons were finishing their drinks after 3:00 a.m. and that the last patrons did not leave the licensed premises until 3:15 a.m.

My recommendation that the licensee be found guilty of charge (1) need not be predicated upon a finding that patrons did, in fact, enter the tavern at approximately 4:00 a.m., as testified to by the agents, when they attempted to gain admittance therein and, upon being refused entry, peered through the window and saw a number of patrons at the bar. See Re Pecoraro and Marchitto, Bulletin 1690, Item 3; Town House, Inc. v. Montclair, Bulletin 792, Item 3, and cases cited therein. However, I am persuaded that the testimony of the agents presented in a direct and detailed manner was not a fabrication but was factual and credible and that there actually were patrons in the tavern at 4:00 a.m. Too, it must be borne in mind that the investigation was made pursuant to a specific complaint of a closing hour violation.

Concerning charge (2), the proof is clear and convincing that the licensee, through its principal stockholder and office holder (Grant) failed to facilitate and hindered and delayed the investigation and inspection as charged.

I am persuaded that Grant's testimony that he was unsure of the identities of the ABC agents and their credentials was sham and was a frivolous attempt at wrapping himself in a cloak of innocence.

It is a fundamental principle that a licensee is responsible for the misconduct of his employees and is fully

accountable for their activities on the licensed premises. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20.

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

Although the licensee has a previous record of suspension of license (which forms the basis of charge (3)), it is further recommended that the prior record of suspension of license be disregarded for penalty purposes by reason of the intervening change of stockholders (Re The New 72 Club, Inc., Bulletin 1705, Item 4) and that the license be suspended on the first charge for fifteen days (Re Pecoraro and Marchitto, Bulletin 1657, Item 7), on the second charge for ten days (Re Corinthian Square Club, Bulletin 1681, Item 3), and on the third charge for ten days (Re The New 72 Club, Inc., *supra*), making a total suspension of thirty-five days, without remission for the confessional plea to the third charge in view of the contest to the other charges. Re Corvino, Bulletin 1706, Item 1.

Conclusions and Order

Exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16. Thereafter, licensee's attorney advised that the exceptions were withdrawn and requested immediate imposition of the penalty. No reason appearing to the contrary, I shall adopt the recommendations of the Hearer and grant the request.

Accordingly, it is, on this 17th day of April, 1967,

ORDERED that Plenary Retail Consumption License C-98, issued by the Board of Commissioners of the City of Union City to Collbern, Inc. for premises 322 - 38th Street, Union City, be and the same is hereby suspended for thirty-five (35) days, commencing 3:00 a.m. Wednesday, April 19, 1967, and terminating at 3:00 a.m. Wednesday, May 24, 1967.

JOSEPH P. LORDI
DIRECTOR

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

In the Matter of Disciplinary)
Proceedings against)
MORRISTOWN BARLANE CORP.)
50 Dumont Place)
Morristown, N. J.)
Holder of Plenary Retail Consumption)
License C-7, issued by the Mayor and)
Board of Aldermen of the Town of)
Morristown.)

CONCLUSIONS
AND ORDER

Basile & Delchop, Esqs., by Anthony Delchop, Esq., Attorneys
for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on
November 30, 1966 it possessed alcoholic beverages in two bottles
bearing labels which did not truly describe their contents, in
violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license
by the municipal issuing authority for ten days effective
January 2, 1962, and again for sixty days effective November 7,
1965, both for sale to minors.

The prior record of two suspensions of license for
dissimilar violation within the past five years preceding the
date of the instant violation considered, the license will be
suspended for twenty-five days, with remission of five days for
the plea entered, leaving a net suspension of twenty days.
Re Basralian, Bulletin 1712, Item 6.

Accordingly, it is, on this 25th day of April 1967,

ORDERED that Plenary Retail Consumption License C-7,
issued by the Mayor and Board of Aldermen of the Town of
Morristown to Morristown Barlane Corp., for premises 50 Dumont
Place, Morristown, be and the same is hereby suspended for twenty
(20) days, commencing at 2 a.m. Tuesday, May 2, 1967, and
terminating at 2 a.m. Monday, May 22, 1967.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GEORGE HRABOWECKY and OLGA HRABOWECKY)
269 Avenue C)
Bayonne, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-66, issued by the Municipal Council of the City of Bayonne.)

Licensees, Pro se.
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

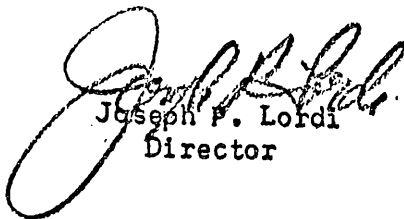
BY THE DIRECTOR:

Licensees plead guilty to a charge alleging that on February 25, 1967 they possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days (Re Dorf, Bulletin 1727, Item 7), with remission of five days for the plea entered, leaving a net suspension of ten days.

Accordingly, it is, on this 9th day of May 1967,

ORDERED that Plenary Retail Consumption License C-66, issued by the Municipal Council of the City of Bayonne to George Hraboweky and Olga Hraboweky, for premises 269 Avenue C, Bayonne, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, May 16, 1967, and terminating at 2 a.m. Friday, May 26, 1967.


Joseph P. Lordi
Director