

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

BULLETIN 2179

April 3, 1975

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Elmwood Park) - LEWDNESS - LICENSE SUSPENDED FOR 30 DAYS.  
  
APPELLATE DECISIONS - ARTEND v. ELMWOOD PARK.
2. APPELLATE DECISIONS - HAR SIM BAR, INC. v. NEWARK.
3. APPELLATE DECISIONS - HAR SIM BAR, INC. v. NEWARK - AMENDED ORDER.
4. APPELLATE DECISIONS - HELEN'S HIDEAWAY, INC. v. HAWTHORNE - AMENDED ORDER.
- ✓ 5. DISCIPLINARY PROCEEDINGS (Newark) - FRONT - FALSE STATEMENT IN APPLICATION - FAILURE TO KEEP BOOKS - NO RESPONSE TO CHARGES - EX-PARTE HEARING - LICENSE SUSPENDED FOR BALANCE OF TERM OR NOT LESS THAN 70 DAYS.
6. DISQUALIFICATION PROCEEDINGS - CONVICTION FOR POSSESSION OF LOTTERY SLIPS IN 1973 - PRIOR CONVICTION 1972 - APPLICATION FOR REMOVAL OF DISQUALIFICATION DENIED.

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

BULLETIN 2179

April 3, 1975

1. DISCIPLINARY PROCEEDINGS - LEWDNESS - LICENSE SUSPENDED FOR 30 DAYS.

APPELLATE DECISIONS - ARTEND v. ELMWOOD PARK.

In the Matter of Disciplinary )  
Proceedings against ) S-10,100  
 ) X-51,028-A  
 Artend, Inc., )  
 t/a The Zodiac )  
 9 Broadway )  
 Elmwood Park, N.J., )  
 Holder of Plenary Retail Consumption )  
 License C-5, issued by the Mayor and )  
 Council of the Borough of Elmwood )  
 Park. )  
 - - - - - ) On Appeal  
 #3870- ) CONCLUSIONS  
 ) and  
 Artend, Inc., ) ORDER  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Mayor and Council of the Borough )  
 of Elmwood Park, )  
 )  
 Respondent. )  
 - - - - - )  
 Constantine S. Loukedis, Esq. Attorney for Licensee - Appellant  
 Ferrara, Glock & Spector, Esqs., by Stephen R. Spector, Esqs.,  
 Attorneys for Respondent Borough of Elmwood Park  
 David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is a report of a combined hearing involving appellant, Artend, Inc., relative to a charge alleging that on June 12, 1974, it allowed and permitted, upon its licensed premises, lewdness, immoral activity and foul, filthy, indecent and obscene conduct, in violation of Rule 5 of State Regulation No. 20, to which it entered a plea of not guilty.

Concurrent with the investigation leading to the preferment of the above charge, the respondent Mayor and Council of the Borough of Elmwood Park (hereinafter Borough), having been alerted to such investigation and the consequent disciplinary proceedings, adopted the following resolution:

"BE IT RESOLVED, by the Mayor and Council of the Borough of Elmwood Park, that the renewal of Plenary Retail Consumption License #C-5, Artend, Inc., t/a 'The Zodiac', 9 Broadway, be renewed without a renewal date, until such time as investigation presently pending before the Division of Alcoholic Beverage Control are disposed of.

BE IT FURTHER RESOLVED, that this license be inoperative after midnight June 30, 1974."

Thereafter, at a special meeting of the Mayor and Council a further resolution was adopted on June 27, 1974:

"BE IT RESOLVED, by the Mayor and Council of the Borough of Elmwood Park, that the renewal of Plenary Retail Consumption License #C-5, application of Artend, Inc., t/a 'The Zodiac', 9 Broadway, Elmwood Park, BE DENIED.

BE IT FURTHER RESOLVED, that this resolution supercedes previous Resolution #R-127-74 of June 20, 1974."

On June 28, 1974 appellant, Artend, Inc., filed a petition of appeal with this Division, wherein it alleged, as its sole reason for the appeal, the denial of renewal of its license by the Borough. In its answer, the Borough responded that the reason for its denial of renewal was that the conduct of patrons of appellant's premises was grossly scandalous, immoral and obscene, and tended to debauch the morals of citizens of that municipality.

A hearing with respect to the charge in the disciplinary action took place in this Division, pursuant to Rule 6 of State Regulation No. 16; and concurrently, the appeal de novo was heard pursuant to Rule 6 of State Regulation No. 15, with full opportunity provided the parties to introduce evidence and to cross-examine witnesses.

ABC Agent C testified that on June 12, 1974, at about 8:45 p.m., accompanied by ABC Agent DeF he visited appellant's licensed premises. He remained therein until 11:20 p.m., during which time he observed the patronage increase from ten or fifteen to over a hundred. He saw females sitting on the laps of other females who kissed each other repeatedly and who fondled each other's bodies.

While this was in progress, he observed men kissing each other and fondling each other in their erogenous areas. While some of the men were dancing with each other, they continued kissing each other on the mouths and fondling each other. Two of the females leaned against a wall in close embrace and moved their bodies in

simulated sexual intercourse.

The attention of these things were called to the bartender, later identified as Mason Love. The witness asked Love: "Are there any straight people in this bar", to which Love replied, 'There are no straight people in here. Everybody is having a good time.'

After contacting and receiving support from the local police, the agents identified themselves to both John Dunphy, one of the principal officers of the corporate licensee, and the bartender and informed them of the alleged violations. Dunphy's response was that the man who was responsible for order in the establishment was not on duty that night. Love admitted that he had seen males kissing each other.

Detective Robert J. Kassai of the Elmwood Park Police Department, testified that he arrived at appellant's premises at the request of the ABC agents. He observed ten or fifteen couples of men dancing together, as well as girl patrons who were kissing and fondling each other. He stated that he had been in the premises on three prior occasions and had then witnessed similar activity. He believed that his oral report given to his superior had been the basis of the request for assistance made to this Division.

Mayor Richard A. Mola testified that he and members of the Council had received numerous complaints from nearby residents that they witnessed homosexual activity taking place on the exterior of the premises. They were also subjected to hearing foul language; noted streets littered and patrons urinating upon and destroying private property. He had received a petition signed by many residents in the area urging immediate correction of the alleged abuses. He described the contiguous residential area to being about one hundred feet away from the subject premises. Additionally, he and his colleagues on the Council had been alerted to the then pending investigation of the appellant's premises.

Borough Clerk Delores Camlet testified that about June 13, 1974, at an executive meeting of the Council, she was advised that the borough officials were inclined not to renew the license in question, and she was instructed to seek the advice of this Division. Thereafter the resolution of June 20, 1974, renewing appellant's license without date was adopted, followed by the resolution denying renewal, on June 27, 1974.

She identified copies of her letters to appellant, dated June 25 and 28, 1974, respectively, notifying it of the Borough's actions on both occasions. She admitted that appellant was first notified that its license was renewed subject to the pending investigation, and then, that its application for renewal was denied. There was no evidence offered indicating that appellant had been afforded an opportunity to be heard, at or prior to the special meeting of the Borough, when the application for renewal was considered and, thereupon, denied.

ABC agent DeF substantially corroborated the testimony of agent C.

Testifying on behalf of appellant, John T. Dunphy stated that he is one of the principal stockholders of appellant corporation and is its secretary-treasurer. He also acts in the capacity of manager and, as such, was on duty on June 12, 1974. Appellant had opened for business under appellant's ownership only a month before.

Although he had not seen the activity of any patrons as described by the agents of this Division, he had seen momentary similar conduct on prior occasions and acted to have the patrons behave. He admitted seeing men dancing with each other, but had not observed bodily contact between them. He denied being present within the licensed premises in one spot long enough to make a concerted observation and described his activity as moving from the cellar to the bar to the front door in continuous circle, so that he was unable to make constant observations of the behavior of patrons.

Bartender Mason Love testified that he had responded to the agent's question 'are these all gay people in here?' with a response 'No, straight and gay. Have a good time.' When the agents called his attention to what was described in their testimony, he had paused to make observations, and saw nothing out of order. He summarized the instructions previously given him by the manager to "break up anything out of the ordinary, including kissing and such other activities." He was told to look out for such activities; but on June 12, he insists that he saw no such activities. However, he admitted seeing females kissing each other on previous occasions and "broke it up".

A part-time employee who lives in the building housing the licensed premises and is a friend of the manager, testified that she often visits the premises, as a patron, and has never seen anything similar to the conduct described by the agents.

It is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees and is fully responsible for their activities during their employ on 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); F & A Distrib. Co. v. Division of Alcoholic Beverage Control, 36 N.J. 34 (1961).

Concerning the occurrences which allegedly transpired on June 12, 1974, I observe 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, therefore require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

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 common experience and observations of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). 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.

Based upon the foregoing principles, I find that the believable evidence preponderates in favor of the Division. I find the testimony of the witnesses offered by appellant to be incredible and unbelievable. Their denial that they saw activities as described by the agents, is unconvincing when considered in light of the admitted presence of homosexuals and the alleged admonition of the bartender to "break-up" unseemingly activity. The testimony of the agents, on the other hand, was forthright and credible.

On the basis of the overwhelming testimony presented by the Division, I recommend that the licensee be found guilty of the charge preferred against it. It is therefore recommended that the license herein be suspended for thirty days on the charge herein preferred against it.

## II

Addressing the more troublesome problem relating to the denial of renewal of appellant's license, a different set of principles becomes involved. It has long been established that the Director may not substitute his own determination of a controversy previously adjudicated by the local issuing authority unless such finding by it was manifestly unreasonable, capricious or arbitrary. Fanwood v. Rocco, 33 N.J. 404, 414 (1960).

From the evidence presented, it appeared that appellant acquired the premises and its accompanying license on April 6, 1974 and, commenced operation on April 12, 1974. Within a two-month period, the premises were operated in such an improper manner as to result in the denial of license renewal. Concurrent with the said denial of license renewal, the seller of the premises to appellant learned of the prospective termination of the license privilege and, under the terms of its contract of sale, immediately brought an action in the Superior Court seeking the right to recapture the said premises. Following the date of the hearing in this Division, such action for recovery of possession was successful. However effective the steps to secure the premises by the seller-mortgagee have been, the subject license remains unaffected.

It would be inequitable that the seller of appellant's premises who had enjoyed an unblemished record of operation of premises until the conveyance to the appellant two months before the renewal date of the license, should lose its equity and interest in the license, particularly in light of the restoration to it of the premises by the order of the Superior Court.

In short, the Director, exercising his discretionary power, may afford an opportunity to the respondent Council to renew the license nunc pro tunc and concurrently, adopt an appropriate resolution granting a person-to-person transfer of the subject license from appellant to the seller-mortgagee. The action of the Council would be based, of course, upon its exercise of sound discretion both with respect to the proposed renewal and person-to-person transfer.

Accordingly, it is recommended that the matter with respect to renewal of appellant's license be remanded to the Council for its reconsideration of the application for renewal and person-to-person transfer in the light of the present facts and circumstances set forth hereinabove, and with the public interest as its guide post.

#### Conclusions and Order

No exceptions to the Hearer's Report with respect to the disciplinary action were filed pursuant to Rule 6 of State Regulation No. 16, and no exceptions to the Hearer's Report with respect to the matter on appeal pursuant to Rule 14 of State Regulation No. 15.

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

Since the licensed business is presently inoperative, the effective dates of the said suspension will be set by further order when the said licensed premises resumes operation on a substantial full-time basis.

Accordingly, it is, on this 23rd day of January 1975,

ORDERED that Plenary Retail Consumption License C-5 (for the 1973-74 licensing period) issued by the Mayor and Council of the Borough of Elmwood Park to Artend, Inc., t/a The Zodiac for premises 9 Broadway, Elmwood Park be and the same is hereby suspended for thirty (30) days, the effective dates of which shall be set by the entry of a further order herein when the licensed premises resumes operation on an substantial full-time basis; and it is further

ORDERED that the action of the respondent Mayor and Council of the Borough of Elmwood Park (in Case No. 3,870 Artend, Inc. v. Mayor and Council of the Borough of Elmwood Park) be and the same is hereby reversed; and it is further

ORDERED that the Board reconsider, and, in the exercise of its discretion, grant appellant's application for renewal of its plenary retail consumption license for the 1974-75 licensing period, nunc pro tunc, concurrently with its consideration of and action with respect to the presently pending application for a person-to-person transfer of the said license to a bona fide transferee.

Leonard D. Ronco  
Director

2. APPELLATE DECISIONS - HAR SIM BAR, INC. v. NEWARK.

Har Sim Bar, Inc., t/a Har Sim Bar,	:	
	:	
Appellant,	:	On Appeal
v.	:	CONCLUSIONS
	:	and
Municipal Board of Alcoholic Beverage Control of the City of Newark,	:	ORDER
	:	
Respondent.	:	
. . . . .		
Schutzman, Glickman & Valentine, Esqs., by Robert P. Glickman, Esq., Attorneys for Appellant	:	
Milton A. Buck, Esq., by Andrew A. McDonald, 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 (hereinafter Board) which, on June 28, 1974, found appellant guilty on two charges, alleging that, on November 21, 1973 it: (1) allowed gambling, viz., "numbers bets" upon the licensed premises, in violation of Rule 7 of State Regulation No. 20; and (2) permitted and suffered tickets on "numbers game" and permitted them to be sold or offered for sale upon the licensed premises, in violation of Rule 6 of State Regulation No. 20. In consequence of such guilty finding the appellant's Plenary Retail Consumption

License C-46, for premises 277 Broad Street, Newark, was suspended for ninety days, effective July 15, 1974. The said suspension was stayed by the Director, by Order dated July 17, 1974, pending the determination of this appeal.

The petition of appeal contends that the determination by the Board was against the weight of the evidence, and the imposition of a suspension of appellant's license was unreasonable. The Board denied these contentions, and maintained that its findings were based upon sufficient evidence. It also denied that the penalty imposed was unreasonable.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and examine witnesses. Additionally, the transcript of the proceedings held by the Board was admitted into evidence, pursuant to Rule 8 of State Regulation No. 15 and, by stipulation, the parties agreed to rely solely upon the testimony and argument adduced before the Board.

A review of such transcript reveals that the principal witness on behalf of the Board was Detective Thomas Waters of the Newark Police Department. He testified that on November 21, 1973, he participated with other police officers in a search of appellant's licensed premises. As a result of a thorough search therein, he discovered a lottery slip of a "numbers game" under the cash drawer of the cash register located behind the bar. This was the only evidence seized as well as the only evidence of gambling activity in the premises.

ABC agent B testified that he was present with the raiding party and observed Detective Waters remove the subject slip from under the cash drawer. The slip was characterized as a "numbers slip" by the detective but the agent did not examine it. The remainder of the search made of the premises failed to reveal anything else of a gambling nature.

Testifying on behalf of appellant, Harvey L. Smith stated that one Nathaniel Battle, the bartender present at the time of the police search, was known to him only as Howard Lennen. He questioned him following the raid and Lennen denied any knowledge of the numbers slip, or how it came to be at the place where it was discovered. Smith was not present during the raid, and knew nothing of the purported gambling activity which gave rise to the raid.

There was no testimony offered in contravention of the discovery of the lottery slip. Nor was there any other testimony respecting other gambling activity. There was no testimony to establish a sale or offer of sale of "numbers slips" or of any other gambling activity.

Absent any proof whatsoever, that appellant "allowed, permitted and suffered gambling in the licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'", it is readily apparent that appellant has met the burden of establishing that the action of the municipal issuing authority was unreasonable, as required by Rule 6 of State Regulation No. 15. It is, therefore, recommended that the Board be reversed respecting this specific charge.

The presence and discovery of a "numbers slip" upon the licensed premises remains uncontroverted. I, therefore, find that the first charge (1) has been established by a fair preponderance of the credible evidence.

The Board's resolution finding appellant guilty of both charges with the concomitant imposition of a single penalty on both charges requires the recommendation that the penalty imposed, i.e., ninety days, be modified.

Following present Division precedent respecting the imposition of penalties on both charges as contained herein, the penalty imposed by the Board, i.e., ninety days, would have undoubtedly been affirmed had both charges been proven. However, upon proofs supplied in connection with the second charge alone, it is recommended that the penalty imposed be modified from ninety days to forty-five days. Cf. G.J.R. Spirits, Inc., Bulletin Item (December 27, 1974).

It is, therefore, recommended that the action of the Board be reversed in respect to the first charge herein and affirmed as to the second charge. It is, further, recommended that the suspension imposed on the said license be modified from ninety days to forty-five days in consequence of the violation of Rule 6 of State Regulation No. 20, as set forth in the second charge.

#### 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 testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of February 1975,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark in finding the appellant guilty of the first charge preferred against it, be and the same is hereby reversed; and it is further

ORDERED that the action of the said respondent in finding appellant guilty on the second charge herein be and the same is hereby affirmed; and it is further

ORDERED that the suspension imposed by said respondent be and the same is hereby modified, i.e., reduced from ninety days to forty-five days; and it is further

ORDERED that my order dated July 17, 1974 staying the respondent's order of suspension pending the determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-46, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Har Sim Bar, Inc., t/a Har Sim Bar, for premises 277 Broad Street, Newark, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. on Friday, February 21, 1975 and terminating at 2:00 a.m. on Monday, April 7, 1975.

Leonard D. Ronco  
Director

3. APPELLATE DECISIONS - HAR SIM BAR, INC. v. NEWARK - AMENDED ORDER.

Har Sim Bar, Inc., t/a Har	:	
Sim Bar,	:	
	:	On Appeal
Appellant,	:	
	:	AMENDED ORDER
v.	:	
	:	
Municipal Board of Alcoholic	:	
Beverage Control of the City	:	
of Newark,	:	
	:	
Respondent.	:	

.....

Schutzman, Glickman & Valentine, Esqs., by Robert P. Glickman, Esq.,  
Attorneys for Appellant  
Milton A. Buck, Esq., by Andrew A. McDonald, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

On February 10, 1975 Conclusions and Order were entered affirming, in part, the action of the Respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark, and imposing a suspension of license for 45 days commencing on Friday, February 21, 1975. Re Har Sim Bar, Inc. v. Newark, Bulletin 2179, Item 2.

The licensee, through its president, Harvey Smith, has submitted an affidavit in support of its request for a reasonable deferment of the commencement of the said suspension, because the licensee has just resumed operation of its licensed business, and an immediate suspension at this time would result in a "substantial" financial loss.

Good cause appearing, I shall grant a deferment of three weeks from the commencement date as set forth in the said Conclusions and Order.

Accordingly, it is on this 20th day of February, 1975

ORDERED that my Conclusions and Order dated February 10, 1975 be and the same is hereby amended, as follows:

ORDERED that Plenary Retail Consumption License C-46, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Har Sim Bar, Inc., t/a Har Sim Bar, for premises 277 Broad Street, Newark, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. on Friday, March 14, 1975 and terminating at 2:00 a.m. on Monday, April 28, 1975.

Leonard D. Ronco,  
Director

4. APPELLATE DECISIONS - HELEN'S HIDEAWAY, INC. v. HAWTHORNE - AMENDED ORDER.

Helen's Hideaway, Inc.,	)	
Appellant,	)	On Appeal
v.	)	AMENDED ORDER
Board of Commissioners of the	)	
Borough of Hawthorne,	)	
Respondent.	)	

-----  
Iannaccone, Rapkin, Chessin & Carrion, Esqs.,  
by Neil Chessin, Esq., Attorneys for Appellant  
Evans, Hand, Allabough & Amoresano, Esqs.,  
by Douglas C. Borchard, Jr., Esq.,  
Attorneys for Respondent

BY THE DIRECTOR:

On January 10, 1975, Conclusions and Order were entered herein reimposing the suspension of the said license for twenty-five days, commencing on Thursday, January 23, 1975, upon affirmance of the action of the respondent Board, wherein the appellant was found guilty of a charge alleging that, on June 19, 1973 it sold and allowed the consumption of an alcoholic beverage to a minor.

The appellant then made application for the payment of a fine in compromise in lieu of the suspension of license. On January 17, 1975, I entered an order staying the effective dates of the suspension pending my consideration of the said application. I have now been advised, by letter dated February 4, 1975, that the respondent has expressed objection to the approval of the said application.

Furthermore, the attorney for the appellant, by letter dated February 3, 1975, has advised that the appellant desires to withdraw its said application. I shall, therefore, reimpose the aforementioned suspension. The request by the appellant to commence the suspension retroactive to January 23, 1975 is unwarranted, and is, therefore, denied.

Accordingly, it is, on this 7th day of February 1975,

ORDERED that my order dated January 17, 1975 staying the effective dates of the suspension heretofore reimposed by my order dated January 10, 1975, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the Borough of Hawthorne

to Helen's Hideaway, Inc., t/a Helen's Hideaway, for premises 36 Pasadena Place, Hawthorne, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. on Thursday, February 13, 1975 and terminating at 3:00 a.m. on Monday, March 10, 1975.

LEONARD D. RONCO  
DIRECTOR

- 5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN APPLICATION - FAILURE TO KEEP BOOKS - NO RESPONSE TO CHARGES - EX-PARTE HEARING - LICENSE SUSPENDED FOR BALANCE OF TERM OR NOT LESS THAN 70 DAYS.

In the Matter of Disciplinary Proceedings against  
Willenz Bar, Inc.  
55 Lentz Avenue  
Newark, N.J.,  
Holder of Plenary Retail Consumption License C-379, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS  
and  
ORDER

-----  
No Appearance on Behalf of Licensee  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee was duly notified by this Division of charges preferred against it alleging that: (1) in its short-form application of May 22, 1973, it failed to disclose that Thomas and/or David Walker were the real or beneficial holders of the corporate stock of the licensee corporation; (2) in said application it failed to reveal that Thomas and/or David Walker had an indirect interest in the licensed business; (3) in said application Thomas and/or David Walker derived the income and profits from said licensed business; charges (1), (2) and (3) were violative of N.J.S.A. 33:1-25; and, that on May 7, 1973 it aided David Walker in exercising the privileges of the license, in violation of N.J.S.A 33:1-52. It was also charged that, from April 25, 1972 to October 10, 1974, it failed to keep proper books of account of the licensed business, in violation of Rule 36 of State Regulation No. 20.

Upon its failure to enter a plea to the said charges, a plea of not guilty was entered by the Division and the matter was listed for hearing. At the said hearing, of which the licensee was noticed by certified mail and telegrams, no one appeared for the licensee or on its behalf. Consequently, the hearing proceeded ex parte.

The Division file, containing reports of intensive investigation relative to the conduct of the licensee's business was accepted into evidence. These reports disclosed that the principal shareholder of the licensee corporation, Carolyn Walker, was, in fact, a disinterested party to the licensee's business which was conducted by and for the benefit of Thomas Walker and/or David Walker, neither of whose names appeared on the short-form application for license filed by the licensee.

Additionally, the investigation revealed that the corporate entity was used as a "front" to screen the active business interest of David Walker in the licensed business; and, further, that there were no proper books of account kept that would indicate receipts and expenditures of the business or of its fiscal affairs.

The licensee has a prior record of suspension of license for twenty days, by the local issuing authority, in consequence of an "hours" violation, effective July 8, 1974.

The evidence offered in the matter herein heavily preponderates in support of the charges, and I find the licensee guilty of all charges herein. The license will be suspended for forty days on charges one through four, and for twenty-five days on the fifth charge, to which will be added an additional five days by reason of the dissimilar offense occurring within the past five years, making a total suspension of license for seventy days.

However, since to date, the unlawful situation has not been corrected, the license will be suspended for the balance of its term, with leave granted to the licensee or any bona fide transferee of the license to apply to the Director, by verified petition, for the lifting of the said suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted, in any event, sooner than seventy days from the commencement of the suspension herein.

Accordingly, it is, on this 27th day of January 1975,

ORDERED that Plenary Retail Consumption License C-379, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Willenz Bar, Inc., for premises 55 Lentz Avenue, Newark, be and is hereby suspended for the balance of its term, viz., June 30, 1975, commencing 2:00 a.m. on Thursday, February 6, 1975, with leave granted to the licensee, or any bona fide transferee of the license, to apply to the Director, by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but, in no event, sooner than seventy (70) days from the date of the commencement of the suspension herein.

LEONARD D. RONCO  
DIRECTOR

6. DISQUALIFICATION PROCEEDINGS - CONVICTION FOR POSSESSION OF LOTTERY SLIPS IN 1973 - PRIOR CONVICTION 1972 - APPLICATION FOR REMOVAL OF DISQUALIFICATION DENIED.

In the Matter of an Application ) CONCLUSIONS  
for Rehabilitation Employment ) and  
Permit. ) ORDER  
-----

Miller, Hochman, Meyerson & Miller, Esqs., by Ira Cohen, appearing for Applicant.  
Walter H. Cleaver, Esq., Appearing for Division.

Applicant applied for a hearing in order to ascertain the reasons for the Director's denial of issuance to him of a Rehabilitation Employment Permit and to be apprised of the evidence relied upon by the Director in arriving at his decision.

Applicant testified that in 1973, he was convicted in Hudson County Court of possession of lottery slips, and sentenced to one year in the Hudson County Penitentiary. He was released after serving four months and six days. He was also fined \$1,000.00 and given two years probation. He claimed that he made an error in his application by reporting his crime as bookmaking.

He also testified that he had been previously convicted in 1972 in Hudson County Court of possession of lottery slips and sentenced to one year in the Hudson County Penitentiary and was released after four months. He was also fined \$1,000.00 and given two years probation.

Applicant's criminal record disclosed the two crimes which applicant had reported in his application and said crimes both involve the element of moral turpitude (Re Elig. 727, Bulletin 1563, Item 6).

Applicant's counsel expressed his opinion on the inequities of using the date of conviction as opposed to the date of arrest in computing the time a person must conduct himself in a law-abiding manner for five years before becoming eligible to have his disqualification removed. Although counsel's argument may have some merit, the fact remains that N.J.S.A. 33:1-31.2 clearly refers only to the date of conviction. Said statute also gives the Director discretionary power in these matters and in the exercise of this power, it has become Division policy to extend the date of conviction to the date of release if incarceration was imposed.

Rule 4 of State Regulation No. 13 provides as follows:

"Any person convicted, as a first offender, of a crime involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a Rehabilitation Employment Permit. Whenever any such application is made, and it appears to the satisfaction of the Director that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the Director may, in his discretion issue such employment permit."

In view of applicant's 1972 and 1973 convictions, it is apparent that he does not qualify under the provisions above cited Rule and Regulation to hold a Rehabilitation Employment permit and my denial of said permit is herewith affirmed.

*Leonard D. Ronco*  
Leonard D. Ronco,  
Director

Dated: February 21, 1975