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

BULLETIN 2144 May 1, 1974

TABLE OF CONTENTS

ITEM

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

BULLETIN 2144 May 1, 1974

1. APPELLATE DECISIONS - BALZER'S DELICATESSEN, INC. v. TEANECK - SUPPLEMENTAL ORDER.

Balzer's Delicatessen Inc., t/a Heritage Liquors,	)	
Appellant,	)	On Appeal
v.	)	SUPPLEMENTAL ORDER
Township Council of the Township of Teaneck,	)	
Respondent.	)	

Samuel J. Davidson, Esq., Attorney for Appellant
Jacob Schneider, Esq., by Stephen J. Draisin, Esq., Attorney for Respondent

BY THE DIRECTOR:

On June 5, 1973, Conclusions and Order were entered herein affirming the action of the respondent, dismissing the appeal and reimposing a suspension of nine days theretofore ordered, based upon a finding of guilty of a charge alleging that on January 3, 1973 appellant sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20. Re Balzer's Tavern Inc. v. Teaneck, Bulletin 2110, Item 1.

Prior to the effectuation of the said suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the said suspension until the outcome of the appeal.

On February 19, 1974 the Appellate Division of the Superior Court entered an order affirming my action. Re Balzer's Delicatessen, Inc., t/a Heritage Liquors v. Teaneck et al., (App. Div. 1972), Docket A-2972-72, not officially reported, recorded in Bulletin 2139, Item 1 . The suspension may now be reimposed.

Accordingly, it is, on this 22nd day of February 1974,

ORDERED that Plenary Retail Distribution License D-5, issued by the Township Council of the Township of Teaneck to Balzer's Delicatessen Inc., t/a Heritage Liquors for premises 1356 Teaneck Road, Teaneck, be and the same is hereby suspended for nine (9) days, commencing 2:00 a.m. on Monday, March 11, 1974 and terminating 2:00 a.m. on Wednesday, March 20, 1974.

ROBERT E. BOWER
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ORDER - NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against

Admiral Bar & Liquor Store, Inc.
t/a Admiral Bar & Liquor Store
2250 Admiral Wilson Boulevard
Camden, N.J.,

Holder of Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

ORDER

Licensee, Pro se

BY THE DIRECTOR:

Licensee pleaded not guilty to the following charge:

"On December 19, 1972, you allowed, permitted and suffered a male employed at your licensed premises to deliver or transport alcoholic beverages in a vehicle without the driver of the vehicle having in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, route card or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container, and quantity of each item of the alcoholic beverages being delivered or transported; in violation of Rule 4 of State Regulation No. 17."

It appears that prior to the institution of this proceeding, I had approved a compromise whereby a fine shall be paid by the licensee as a penalty in this matter, in lieu of the preferment of charges. In view of the said compromise previously arrived at, I shall enter an order nolle prossing the said charge.

Accordingly, it is, on this 22nd day of February 1974,

ORDERED that the charge herein be and the same is hereby nolle prossed.

Robert E. Bower
Director

3. APPELLATE DECISIONS - RIVERSIDE CORP. v. ELIZABETH.

Riverside Corp. t/a New Madison Bar, Appellant,	)	
v.	)	On Appeal
City Council of the City of Elizabeth, Respondent.	)	CONCLUSIONS and ORDER

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Appellant
Frank P. Trocino, Esq., by Daniel J. O'Hara, 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 City Council of the City of Elizabeth (hereinafter Council) which, on October 29, 1973 suspended appellant's plenary retail consumption license for premises 321 Madison Avenue, Elizabeth, for twenty days, effective November 12, 1973, upon a finding of guilty to charges alleging (1) that on March 3, 1973 it permitted a brawl on the licensed premises, in violation of Rule 5 of State Regulation No. 20 and (2) that at the same time and date, it hindered and delayed an investigation being then conducted on the licensed premises, in violation of Rule 35 of State Regulation No. 20.

Upon filing of this appeal, an order was entered by the Director on November 7, 1973 staying the Council's action pending the determination of this appeal.

In its petition of appeal, appellant alleges that the action of the Council was erroneous in that it was contrary to the weight of the evidence and resulted from mistake, passion and prejudice. In its answer, the Council defended that its determination was based upon evidence before it, and was in the best interests of the community.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to present evidence and cross-examine witnesses. A transcript of testimony taken at the hearing before the Council was admitted into evidence pursuant to Rule 8 of State Regulation No. 15.

Testimony was elicited both at the hearing before the Council and the hearing held in this Division of three police officers of the Elizabeth Police Department. Police Officer Richard J. Pelesko stated that he and his partner entered appellant's premises in response to a radio call indicating a female had been therein stabbed and furnishing a description of the assailant. While apprehending a male who apparently fit the description, an inquiry was made of a bartender whose response to such inquiry, he described as 'negative'.

Detectives Robert D. Mello and Wade H. Hazel testified that they investigated the stabbing incident which apparently resulted from a conversation which took place in the ladies room by two females. When one of them returned to the bar she was accosted by the brother of the other female. The brother, being incensed about something related to his sister, stabbed the female. Apparently the stabbing was not sufficiently grievous to prevent the female from departing the premises and driving her own car to the hospital.

Detective Wade H. Hazel testified that he interviewed the victim of the stabbing thereafter and learned that the victim had been stabbed by the brother of a woman with whom she had had an altercation in the ladies room. The stabbing had been sudden and completely unexpected, following which the assailant left the premises.

Detective Robert D. Mello began his investigation of the incident by summoning Morris Thornton, manager of appellant's premises, to his office on April 9, 1973. He indicated that while Thornton attended voluntarily on that day, he arrived without bringing with him his two bartenders or having accurate identification of either. Although the incident occurred on March 3, 1973 he had not received sufficient data from Thornton which would enable him to summon the bartenders into his office for interviews. He asserted that it was the responsibility of Thornton to produce them and that such failure, coupled with the negative responses which the bartenders had given to the police on the initial visit, was a sufficient basis for the hindering charge.

Testifying on behalf of the appellant, Morris Thornton stated at the hearing before the Council, that he had been in the cellar when the female was stabbed and arrived at the

barroom floor level in time to see her holding her side, leaving the premises and getting into her car. He asked his bartenders, Cliff and Skip (later identified as Clifford Keaton and Ronnie Smith) what had occurred, and all they could tell him was that a female had been stabbed and the assailant ran out of the premises.

He instructed Ronnie Smith to call the police and Ronnie went to the telephone. The police arrived minutes later and proceeded to the rear where they immediately made an arrest. He denied either of the police made specific inquiries of the incident but admitted he might have responded that he didn't know who did the stabbing.

Thornton then asserted that, a few days following the incident, he was invited to visit police headquarters to talk with Detective Mello. He did so and admitted that he did not have the specific names and addresses of his bartenders when he arrived there; he did not know that such information would then be required. Subsequently, he gave the detective the exact name and address of one of the bartenders, Cliff, but never learned the full address of the other. Some time after the incident, he discharged both bartenders.

The crucial issues in this appeal are entirely factual. Was a brawl or act of violence permitted to occur on the licensed premises and did the licensee, through its agents or employees, hinder or delay an investigation thereof. I find that the answers to both questions are negative.

There was no testimony presented either before the Council or at the de novo hearing held in this Division which established that the appellant by its agents or employees permitted a brawl or act of violence to take place. The version of the incident as recited by the detective leads to the inevitable conclusion that a patron went to the ladies room and, upon returning to her place at the bar, was suddenly stabbed by the brother of another female with whom she had had a discussion in the ladies room. There was no testimony whatever indicating that anything took place that could or should have been noticed by the bartenders and which would have led them, as reasonably prudent persons, to anticipate a possible act of violence. The licensee is not responsible for an unforeseen and sudden 'flare-up'.

The test in this and similar matters involving a brawl or act of violence is:

> "...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."

Jackson v. Newark, Bulletin 1600, Item 2; Cf. Re Hillcrest, Inc., Bulletin 2089, Item 4.

Applying the above test to the evidence presented at this de novo hearing, I find that the conduct alleged does not come within the prohibited activity. The testimony of the witnesses for the Council does not establish such conduct which would justify the determination of the Council. Euell v. Jersey City, Bulletin 2093, Item 2.

The second charge, relating to the hindering of the police investigation similarly lacks sufficient proof or substantiation. The police officers who initially responded made only a cursory inquiry while then in the process of arresing a suspected culprit. They departed the premises immediately and did not return to pursue the inquiry.

The detectives who testified in behalf of the Council offered little substantiation to the charge. Only one detective was concerned with the hindering charge predicated on the ground that appellant's manager failed to bring the bartenders with him to police headquarters.

Apparently no police officer visited the premises following the stabbing to confront the bartenders and manager with demand for an account of the occurrence. Nor was there a specific hearing scheduled for the police with notice to the (licensee) appellant to produce all of the then-employees. In any event, there was no evidence that appellant or it's agents actually "hindered" an investigation.

The appellant is under a duty to do everything in its power to facilitate the lawful and authorized investigation of a criminal act occurring within its premises, and may not, in any way hinder or delay that investigation. Vogellus v. Division of Alcoholic Beverage Control (App. Div. 1963-not officially reported) Bulletin 1537, Item 1; Cf. N.J.S.A. 33:1-35.

There was no evidence offered in support of the contention that appellant's agents did not do what was mandated that they do. Before lack of cooperation can be affirmed, it must be reasonably shown that cooperation was demanded. No proof to that end was supplied.

It is my view that appellant has succeeded in sustaining the burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

I therefore conclude that the action of the Council should be reversed and I so recommend.

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 conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of March 1974,

ORDERED that the action of respondent in finding appellant guilty of the charges preferred herein be and the same is hereby reversed, and the charges be and the same are hereby dismissed.

Joseph H. Lerner
Acting Director

4. APPELLATE DECISIONS - ROFF v. BOGOTA.

Ralston E. & Helen Roff, t/a R. E.'s Plum, Appellants,	)	
v.	)	On Appeal
Borough Council of the Borough of Bogota, Respondent.	)	CONCLUSIONS and ORDER

Michael Gross, Esq., Attorney for Appellants
Robert A. Baron, 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 respondent Borough Council of the Borough of Bogota (hereinafter Council) which on December 6, 1973 suspended appellants' plenary retail consumption license for premises 20 East Fort Lee Road, Bogota, for fourteen days following a finding that appellants permitted excessive noise, indecent language, brawls and disturbances, in violation of Rule 5 of State Regulation No. 20.

Appellants' petition of appeal alleged that such finding was erroneous in that no factual legal basis existed for such determination. The Council answered by letter alleging that the charges were fully substantiated by testimony at a hearing held before it. Additionally a transcript of the testimony taken at such hearing was offered into evidence pursuant to Rule 8 of State Regulation No. 15.

The suspension ordered by the Council was stayed by order of the Director on December 11, 1973, pending determination of this appeal. The de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. As above noted, the transcript of the proceedings before the Council was offered by it in lieu of other evidence.

The finding appealed from as hereinabove set forth contains mere generalizations of violative acts; the specific charges, not referred to in the resolution of the Council, were set forth in a notice to appellants, a copy of which was

furnished to this Division. The charges as specified contained two counts: The first refers to a sale to a minor and counsel for Council indicated that this charge was withdrawn at the outset of the hearing before it; the remaining charge alleges violations of Rule 5 of State Regulation No. 20 on March 18, 1973, April 4, 1973, May 28, 1973, June 2, June 3, June 21, June 30, September 12 and October 21, 1973. The last incident involved a "fight at the premises."

The Council offered copies of police files relating to the incidents charged in support of its findings. Additionally the transcript of the proceedings before the Council revealed that two police officers and nine residents recounted difficulties in the form of excessive noise, caterwauling, urination, fisticuffs that occurred at appellants' premises.

Neither before the Council nor at this Division did appellants offer proofs in contravention of the evidence assembled against them. The testimony of appellant Ralston E. Roff, both before the Council and at this Division, related to his efforts to correct the sorry conditions described in the charges. The Council noted the cooperation of appellants in attempting to remedy the situation and the Mayor registered the attitude of the Council in levying a minimal penalty because of it.

The primary responsibility of enforcement of the laws pertaining to retail licenses rests upon the municipality. Benedetti v. Trenton, 35 N.J. Super. 30 (App.Div. 1955); Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960); Broadley v. Clinton & Klingler, Bulletin 1245, Item 1. The suspension imposed in a local disciplinary proceeding rests in the first instance with the sound discretion of the local issuing authority. Sventy & Wilson, Inc. v. Point Pleasant Beach, Bulletin 1930, Item 1. The power of the Director to reduce suspension on appeal is confined to cases where the suspension is manifestly unreasonable. Lou's Liquors v. Plainfield, Bulletin 1692, Item 1.

While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

In order for appellants to prevail in the instant

matter it must appear that the evidence did not preponderate in support of the determination of the Council. Feldman v. Irvington, Bulletin 1969, Item 2.

Tested against the foregoing principles, it is clear from the testimony of the police officers and that of appellants that the charge, were it confined to the alleged brawl, would not be recommended for affirmance. Within the context of the said regulation a brawl is a clamorous or tumultuous quarrel in a public place to the disturbance of the public peace. Such situation must be due to the participation or indulgence of the licensee. Here the father and older brother of a minor, who had been in attendance in appellants' premises, returned to take vengence upon a bartender who had ejected the minor. Appellants immediately summoned police aid and attempted to quell the disturbance by removing the malcontents as speedily as possible. In such climate the appellants can hardly be said to have encouraged or permitted a brawl to occur.

The remaining incidents included in the charges clearly took place without serious contravention by appellants. Hence the decision of the Council represented a reasonable exercise of discretion and, as such, must remain undisturbed on review by the Director. Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292 (1970).

The remaining issue is the extent of the penalty imposed -- was the suspension of fourteen days reasonable upon the further consideration that the charge involving a brawl was not proven.

As Judge Jayne stated in In re 17 Club, Inc., 26 N.J. Super. 43 (App.Div. 1953):

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

Perhaps more importantly that the mere determination of the reasonableness of the instant suspension is an underlying view that appellants in permitting a long series of exterior noise and offensive conduct by their departing patrons has subjected the license to a potential review by the Council of its continued operation. The privilege of selling alcoholic beverage at retail, which is granted to the few and denied to the many, must be exercised in the public interest. Paul v. Gloucester County, 50 N.J.L. 585 (1888).

In a matter involving an appeal from a guilty finding

on the same rule and regulation (Rule 5 of State Regulation No. 20), the Director made the following determination:

> "The Board found as a fact that the charges were established; from the seriatim of events from which an inescapable conclusion is reached that the premises were a continuous nuisance, I find that the Board could have come to no other conclusion. Its determination, from which the penalty ensued, allowed the imposition of a suspension for sixty days. Such penalty, under Division precedent, is not excessive." Cf. Torres v. Union City, Bulletin 1802, Item 1. Nehoc Tavern, Inc. v. Paterson, Bulletin 2115, Item 1.

While the magnitude of the incidents in the within matter is not comparable in severity to those described in Nehoc, supra, they are more than sufficient to cause suspension for fourteen days.

A corollary to the fundamental that a liquor license is a privilege (cf. Mazza v. Cavicchia, 15 N.J. 498 (App.Div. 1954)) results in a parallel rule that the abuse of such privilege will result in loss of license. Hence the penalty imposed by the Board equates with an admonition that appellants must eliminate the cause of the difficulties or face eventual denial of renewal of their license privilege. From testimony offered on behalf of appellants it is apparent that the corrective measures already introduced were in recognition of the peril to the license.

It is therefore concluded that appellants have failed to meet the burden of establishing that the Council erred in its determination. Rule 6 of State Regulation No. 15. Accordingly I recommend that the action of the Council be affirmed, the appeal be dismissed, the Director's order staying suspension be vacated, and that an order be entered reimposing the suspension.

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 transcript of testimony, exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Appellants have requested that a fine be imposed in lieu of the suspension recommended herein pursuant to Chapter

9 of the Laws of 1971. I have determined to deny the said application because, under present Division policy, the payment of fines in compromise in lieu of suspensions is impermissible for this type of violation.

Accordingly, it is, on this 19th day of March 1974,

ORDERED that the action of the municipal issuing authority 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 December 11, 1973, staying the imposition of penalty imposed by said municipal issuing authority pending determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Bogota to Ralston E. & Helen Roff, t/a R. E.'s Plum, for premises 20 East Fort Lee Road, Bogota, be and the same is hereby suspended for fourteen (14) days commencing at 2 a.m. Monday, April 1, 1974, and terminating at 2 a.m. Monday, April 15, 1974.

Joseph H. Lerner,
Acting Director.

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against)

Allamuchy Liquors, Inc. t/a Allamuchy Liquors Main Road Allamuchy, N.J.,) SUPPLEMENTAL ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Allamuchy.)

- -

Malcolm H. Greenberg, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

On February 13, 1974, a Supplemental Order was entered in this proceeding suspending the plenary retail distribution license of Allamuchy Liquors, Inc., for the balance of its current term, effective 2:00 a.m. Tuesday, February 26, 1974, with leave to the licensee, or any bona fide transferee, to apply to the Division by verified petition for the lifting of the suspension whenever the unlawful situation, as detailed in the Conclusions and Order entered herein on April 6, 1973, as affirmed on appeal by the Superior Court, Appellate Division by opinion of December 26, 1973, has been corrected, but in no event sooner than thirty days from the commencement of such suspension.

The licensee has filed with the Division a verified petition requesting that the aforesaid suspension be lifted. Additionally, a hearing has been held before me on such petition. The evidence before me shows that on April 19, 1973, Lewis Lo Presti, the husband of the president and only stockholder of the licensee, Juanita Lo Presti, conveyed to his wife without consideration his interest in the real estate at which the licensed premises are located and that on January 30, 1974, Mrs. Lo Presti paid to her husband $1,000.00 in payment to him of moneys he paid to the licensee's predecessor-licensee at the time the agreement for the purchase of the licensed business was executed in 1969. Evidence was also adduced that Mrs. Lo Presti has been active in the operation of the licensed business since April 6, 1973. However, both Mr. and Mrs. Lo Presti have testified that there has been no change in the proprietary interests of either the shares of stock of the corporate licensee or of the licensed business from the date the corporation acquired the licensed business in 1969; that Mrs. Lo Presti continues to hold all of the licensee's shares of stock; that Mr. Lo Presti continues to be employed as a salesman

for a wholesale licensee; and that there has been no change in the interests of Mr. and Mrs. Lo Presti with respect to the licensed business since April 6, 1973. Both Lo Prestis testified that notwithstanding the determination by this Division that Mr. Lo Presti has held an undisclosed prohibited interest in the licensed business, in that same was acquired in 1969 as a joint venture by him and his wife, they both disagree with such determination and therefore have taken no steps to sever his connection with the licensed business, other than the aforesaid real estate conveyance and $1,000.00 repayment. In short, the Lo Prestis contend that since Mr. Lo Presti never had any interest in the licensed business, there is no need for him to divest himself of any interest in such business.

After carefully considering the entire record before me, I find that there has been no correction of the unlawful situation in question. Lewis Lo Presti continues to hold an undisclosed interest in the retail licensed business of Allamuchy Liquors, Inc., at the same time that he, as a wholesale salesman, is prohibited from holding any interest, disclosed or undisclosed, in any retail licensed business. The licensee herein is attempting to collaterally attack this Division's prior determination that such undisclosed interest did exist, in fact. This it may not do.

In the original decision of this case, reference was made to the fact that the real estate in question was purchased by the Lo Prestis jointly, at the same time that the licensed business was purchased. But this circumstance was only one of many from which the inference was drawn that the entire acquisition, including the licensed business, was a joint venture by the Lo Prestis. Thus, the subsequent conveyance of Lewis Lo Presti's interest in the real estate, after the Division's determination on April 6, 1973, does not in itself change the joint ownership of the licensed business. The character of the 1969 acquisition of the licensed business became fixed at such time. It is not possible to relate back, retroactively, subsequent events to change the nature of the original acquisition interests. Lewis Lo Presti must be deemed to have then acquired a joint interest in the licensed business and the unlawful situation must be deemed to continue to exist unless and until it has been established that he has divested himself of such interest. So too with respect to the repayment of the $1,000.00 advancement. The original advancement of Lewis Lo Presti was merely another circumstance from which the determination of undisclosed interest was made. Its repayment earlier this year does not change the interests of the Lo Prestis in the licensed business.

I find that Lewis Lo Presti has not as yet divested himself of his joint proprietary interest in the licensed business. The licensee concedes this to be a fact, but for the impermissible reason that the licensee contends he never had such an interest, and therefore, it argues, there is nothing for him to divest.

As heretofore stated, I cannot accept this position. To do so would mean that all of the proceedings herein were for naught; that such proceedings decided nothing.

Under the circumstances, I will deny the petition.

Accordingly, it is, on this 27th day of March 1974,

ORDERED that the petition to lift the license suspension herein be and the same is hereby denied.

Joseph H. Lerner
Acting Director