

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2418

October 29, 1981

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2418

October 29, 1981

1. APPELLATE DECISIONS - G.B.M. ASSOCIATES, INC. v. LAWRENCE TOWNSHIP.

#4188

G.B.M. Associates, Inc.,
t/a Duke's Pub,

Appellant,

v.

Township Council of the
Township of Lawrence,

Respondent.

ON APPEAL

CONCLUSIONS

AND

ORDER

Blatt, Blatt, Mairone & Biel, Esqs., by Robert V. Mairone, Esq.,
Attorneys for Appellant.
Heher & Clark, Esqs., by Harry Heher, Jr., Esq., Attorneys for
Respondent - Township of Lawrence.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from a guilty finding of two of three charges preferred against appellant - G.B.M. Associates, Inc., t/a Duke's Pub. located at Quakerbridge Mall, U.S. Highway 1, Lawrence Township, New Jersey, holder of Plenary Retail Consumption License C-6, (now 1107-33-009-001), for the licensing period 1977-78, by the Township Council of the Township of Lawrence (Council). The Council imposed a suspension of one (1) day.

The two charges at issue state that, on April 2, 1977 at approximately 2:30 a.m., the said licensee:

1. Did not have on the licensed premises or make available for inspection to an officer defined by R.S. 33:1-1(p) and Sec. 3-31 of "The Code of the Township of Lawrence, New Jersey" a list containing the names and addresses of, and required information with respect to, all persons currently employed on the licensed premises, in violation of Rule 16(c) of State Regulation No. 20, and;

2. Did interfere with an inspection or search of the licensed premises by duly authorized agents of the Township, being two police officers, by refusal to open a locked all glass door upon which said officers were knocking repeatedly and in full view of your agents, servants and employees, in violation of Sec. 3-28 of "The Code of the Township of Lawrence, New Jersey."

In its Petition of Appeal, appellant alleges that the action was:

a. Arbitrary and capricious as the testimony failed to prove guilt by a preponderance of the evidence;

b. Appellant was prejudiced by giving police and other reports to Council members prior to hearing;

c. Hearing is res judicata as it was duplicative of an earlier hearing wherein the same charges were reviewed; and

d. The penalty is excessive.

The Council denies the substantive allegations contained in the appellant's Petition of Appeal.

The parties submitted the issue based on the transcript made before the local issuing authority, the pleadings, summations and briefs.

From the various documents submitted, the following factual matrix emerges.

Lawrence Township Police Officers Jan Murray and John Simonelli were on patrol and observed approximately twenty (20) vehicles in the parking lot of the Quakerbridge Mall, proximate to the entrance to subject licensee's premises, at 2:23 a.m. on April 2, 1977. The mall had closed at 9:30 p.m. that evening (April 1).

They emerged from their vehicle and approached the glass door of the licensed premises, through which they observed perhaps twenty (20) persons about the bar. A bartender was drinking from a glass and another one was pouring fluid from a larger container into a drink glass which was served to a person later identified as Timothy Fumari, the night manager.

The officers knocked on the glass door. The occupants turned around in their direction and most of them then disappeared from view into the rear area of the premises. The door was locked and no one made an effort to admit them. After repeated knocking, a busboy came to the door and to them he did not have a key but would search for someone who did. The patrolmen called their headquarters over the walkie talkie radio, and the sergeant in charge phoned the establishment at once. The policemen heard the phone ring and saw it being answered by an employee. After a very brief conversation, the individual produced a key and admitted them at once.

In the time that elapsed between the first knocking to their ultimate admission, estimated to be between five and ten minutes, the drinks disappeared, as did many of those persons initially viewed through the glass door.

The manager identified all those in the premises as employees; however, none appeared on the E-141 Form (commonly known as the employees' list). He stated that they were having a meeting to discuss performance, etc., as is done periodically. He stated there were between sixteen (16) and seventeen (17) employees present when the police entered. He denied hearing any knocking or shouting from the front door area. He became aware of the police presence when advised by the busboy. He denied receiving a call from Police headquarters. And, lastly, he asserted that he could not even view the front door area from his position in the booth area.

George Smith, the manager, testified that the employees' list consisted of three pages at the time of the incident. Page 1 was behind the license, and pages two and three were in the office.

Smith voluntarily took the complete list to the police station a few days later after reading an account of the police investigation in the local newspaper. He admits that the list was not up to date on Saturday night into Sunday morning, and he remedied it before delivering it to Police Headquarters.

The record clearly establishes that the appellant's employees interfered with the inspection or search of its premises by hindering and resorting to delaying tactics in the admission of the police officers into the locked interior at least twenty or more minutes after the legal closing hour.

The purpose is equally clear from the record, i.e., to allow time for the removal and destruction of the damning evidence (alcoholic drinks) and to facilitate the successful departure of those persons seated about the bar. These persons were not seen again by the police after their Sergeant's phone call finally got them admitted to the premises. It is presumed that they slipped out into the parking lot through one of two doors not normally used by patrons for access and egress.

By the manager's own admission on direct testimony and appellant's attorney's comments during summation, the employees' list was not current on the evening of the occurrence. It was brought up to date by Smith several days later in order to "voluntarily" exhibit it after the fact.

The local ordinance is fashioned after State Regulation N.J.A.C. 13:2-23.13 which requires the list to be kept current at all times. The cases are numerous where licensees were found guilty for failure to exhibit the list in current form, when requested, as happened here. See I.M.O. Club 232, Inc. Bulletin 1928, Item 5.

I, thus, find that the charges were established by a preponderance of the credible evidence.

The claim of prejudice resulting from giving the members of the Council the various reports in advance of the meeting is not advanced beyond its bare assertion in the pleadings. This procedure is not, per se, objectionable. The burden is upon appellant to show how he was prejudiced.

In the instant case, the documents distributed were apparently those that would normally have been introduced during the course of the hearing as opposed to, say, newspaper accounts or anonymous letters or a defamatory nature that could be objectionable.

The claim of res judicata is without merit. The record indicates that appellant was invited to the regular meeting of the Council to discuss, without prejudice, the matters. No charges had been prepared or served, no case was presented, no witnesses sworn and heard, no findings of fact or law made, no decision reached and no resolution proposed, voted upon and passed. In short, attendance at the earlier meeting was a courtesy extended to appellant, not a formal disciplinary proceeding pursuant to N.J.S.A. 33:1-31.

Lastly, I reject the claim that a single day suspension was excessive under the circumstances. A reasonable suspension, had the matter originated at the State level, would be ten (10) days for failure to have a current employment list, and fifteen (15) days for hindering an investigation.

It is, thus, recommended that the action of the Council be affirmed, the stay of suspension vacated, the within appeal dismissed and the suspension reimposed.

CONCLUSIONS AND ORDER

No written exceptions to the Hearer's Report were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of the testimony of the hearing before the Township Council, the briefs and summation of the parties, and the Hearer's Report, I concur on the findings and recommendations of the Hearer, and adopt them as my Conclusions herein.

I must comment on the penalty imposed herein, i.e., one day suspension for the two violations. The inadequacy of such penalty is obvious, and frustrates the effectiveness of proper liquor license regulation and control. Such meaningless penalties disserve the public interest and undermine respect for the law.

However, in an appeal, it has been Division practice not to increase penalties in deference to the local issuing authority's exercise of discretion. I would recommend in the future, the imposition of more meaningful penalties where guilt of offenses has been established.

Since the issuing authority never fixed the date of service of the suspension, no stay order was issued upon the filing of the appeal. The date of suspension will be established herein.

Accordingly, it is on this 30th day of July, 1980,

ORDERED that the action of the Township Council of the Township of Lawrence be and the same is hereby affirmed and the appeal be and is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License #1107-33-009-001 issued by the Township Council of the Township of Lawrence to G.B.M. Associates, Inc., t/a Duke's Pub, for premises located at Quakerbridge Mall, U.S. Highway 1, Lawrence Township, New Jersey, be and the same is hereby suspended for one (1) day commencing 2:00 A.M. on Friday, August 8, 1980 and terminating 2:00 A.M. on Saturday, August 9, 1980.

JOSEPH H. LERNER
DIRECTOR

- 2. DISCIPLINARY PROCEEDINGS - SERVICE OF ALCOHOLIC BEVERAGES OTHER THAN ORDERED - LICENSE SUSPENDED 15 DAYS.

In the Matter of Disciplinary Proceedings against

)

X-43,576-B
S-11,863

Sam's Bar & Grill, Inc.
464 New Brunswick Avenue
Woodbridge, N.J.

)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License No. 1225-33-065-001 issued by the Township Council of the Township of Woodbridge.
-----)

ORDER

Joseph Buttafuoco, Esq., Attorney for Appellant.
Mart Vaarsi, Esq., Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

The corporate licensee pleaded "not guilty" to a Division charge alleging that, on April 24, 1978, it served and allowed, permitted and suffered the service of alcoholic beverages other than ordered, in violation of N.J.A.C. 13:2-23.19.

In support of the charges, ABC Agent S. testified that, on April 24, 1978, he entered subject licensees premises at approximately 9:20 p.m. to investigate complaints made to the Division alleging substitution of drinks.

By prearrangement with ABC Agent L., who stationed himself at the bar, Agent S. testified that he entered and proceeded to the rear dining room where he could neither see, nor be seen, from the bar area. He observed three males seated at a table, and a couple at a booth along the wall. After a brief period, Agent S. became aware that there was no waiter stationed in this room. He walked to the area near the kitchen and approached Allan Schonberger, who, with his wife are the stockholders of the licensee corporation. He placed his order for a sandwich and a Johnnie Walker Red (Scotch) and water. Shonberger nodded affirmatively. The choice of the brand was deliberate and

prearranged with ABC Agent L. It is packaged in a characteristic square-shaped bottle readily recognizable whether the label is visible or covered, unlike most other scotch whiskeys presently available in the State. The drink was served to him by Shonberger although he did not know who prepared it.

Fifteen minutes later, after consuming his drink, he approached the kitchen where he saw Shonberger and the bartender, Eugene Tarnowski. He requested a Johnnie Walker Red (Scotch) and Water, not specifically addressing either man although Tarnowski said, "O.K.", then returned to his table. Tarnowski served a drink a few minutes later. As with the first drink, he did not see it being prepared.

Later, Agent L., in the company of Woodbridge Police, appeared. The agents then identified themselves and advised Shonberger of the violation, who then stated that there must be a mistake as there was no Johnnie Walker Scotch Whiskey in stock on the premises.

Agent L. next testified in support of the charge. He corroborated the testimony of Agent S. relative to prearrangements, as well as their specific assignment to investigate complaints of substitution of brands. Agent L. was seated at the bar and saw Agent S. enter, proceed to the rear and disappear from his view.

A few minutes later he saw Agent S. again, in the hallway, near the door to the kitchen (visible to Agent L. from his seat at the bar) engaged in conversation with Shonberger, who was doing something to the ice machine. Although he could not hear the words, he saw Shonberger nod his head and walk towards Tarnowski who was in the bar area. They spoke for a few moments and Tarnowski proceeded to prepare a drink.

Agent L. presumed that this drink was intended for ABC Agent S. and, therefore, observed Tarnowski carefully. He saw him take a rounded bottle from the speed rack and pour a quantity into a glass. Although the label was obscured by Tarnowski's hand, Agent L. was able to clearly observe that the bottle's shape was not that of Johnnie Walker Red Label. Agent L. noted its position in the speed rack, when it was replaced. Tarnowski gave the drink to Shonberger who went into the back room, disappearing from Agent L.'s sight.

A little later, Agent L. again observed Agent S. in the hallway as he approached Tarnowski and Schonberger who were standing together near the kitchen entrance. After a brief discussion, Schonberger nodded and proceeded to the bar, removed a round bottle, poured a drink and replaced it in the speed rack. This time, the label was visible to Agent L. from his position of observation at the bar. It was "MacKenzie's Blended Scotch Whiskey. The drink was given to Tarnowski who proceeded to the rear dining area with it. At no time during his stay at the bar did Agent L. observe any drink being filled with Johnnie Walker Red Label for any patron of either the bar-room or rear dining room.

Soonafter, he left the premises and summoned the Woodbridge Police. Upon their arrival he re-entered. Both agents identified themselves and when they apprised Schonberger of the claimed offense, Schonberger responded as testified to earlier by Agent S.; to wit, it's a mistake as he had no Johnnie Walker Red in stock. Agent L. also corroborated Agent S.'s testimony that a search of the speed racks and back bar area failed to disclose any Johnnie Walker Red Label.

Agent L. stated that the bottle used for the first drink (where the label was hidden by the bartender's hand) was later determined upon investigation to be Canadian Mist Whiskey.

The official Wholesale Price List for the period during which this occurrence transpired indicates that Johnnie Walker Red Label costs almost twice as much as either of the two brands allegedly substituted. It is the Divison's contention that this price differential was the motivation for the substitution of brands.

Allan Schonberger testified in defense of the charges. He denies the substitution and stated that he makes more profit from a bottle of Johnnie Walker Red Label than he does from a bottle of MacKenzie's Blended Scotch Whiskey because he pours upwards of three ounces of the less expensive brands in certain mixed drinks.

Schonberger stated that the Agent (S.) requested "a drink" the first time, and the second time, when Schonberger saw Agent S. appear, asked him if he wanted a drink and Agent S. responded in the affirmative. At no time did the Agent specify any particular brand of liquor.

Schonberger denied stating to the agents that he had no Johnnie Walker Red Label in the premises. He maintains a \$15,000.00 inventory and was not out of stock of this brand. He also insisted that he keeps backup stock in visible cabinets on the wall in the bar area, not in the back bar.

He also disputes the agents' testimony as to the number of patrons that evening, maintaining that both the bar area and the rear dining room were crowded. Lastly, he stated that many of the area and County officials are regular patrons, and he does not (or could not afford to) resort to this tactic to make a profit.

The bartender, Tarnowski, although present throughout the hearing, did not testify at the hearing.

- I -

We are dealing with a purely disciplinary action which is civil, not criminal, in nature. In re Schneider, 12 N.J. Super. 449(App. Div. 1951). Thus, the proof must be supported by a preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

It is apparent that the critical issue presented for determination is factual.

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

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

I am persuaded and find that the testimony of ABC Agents S. and L. relative to the events which took place on the date charged, as hereinabove related, was credible,

factual and reasonable for an undercover investigation of a charge of this nature.

On the other hand, I find the testimony of Schonberger incredible and unworthy of belief. It is unreasonable to expect that an undercover agent, assigned to investigate an allegation of substitution, would order an alcoholic beverage without requesting a specific brand. Furthermore, the scotch whiskey selected, Johnnie Walker Red Label, is packaged in such a distinctive and readily recognizable bottle that error on the part of the agent is virtually impossible, whether the label is visible and readable or not. Schonberger's testimony that he makes more profit on a bottle of Johnnie Walker Red Label, almost twice the price of the brands that the Agent testified were used, is unworthy of belief.

My examination of the facts and the applicable law generates no doubt that the aforesaid charge has been established by a fair preponderance of the believable evidence. I, therefore, recommend that the licensee be found guilty of the said charge, and, absent prior adjudicated record, also recommend that the license be suspended for fifteen (15) days.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the licensee pursuant to N.J.A.C. 13:2-19.6.

In its Exceptions, the licensee argues that the Hearer inadequately considered the evidence presented, exhibited a bias in favor of the Division, unreasonably delayed the preparation of the Hearer's Report and improperly interjected his own erroneous presumptions in considering an issue as to profit derived from the sale of various different brands of alcoholic beverages.

Because of an acute shortage of Hearing Officers in the Division from 1978 thereafter, due to retirement, a backlog of cases developed. Vacancies were not filled in contemplation of the conversion of these duties to the Office of Administrative Law. There has been no intentional effort to delay the adjudication process herein, nor has any prejudice to the licensee been established by the delay. I reject this Exception as without merit.

The allegations of bias, interjection of personal beliefs and the contesting of the finds as to credibility by the Hearer represent arguments which are not predicated on specific incidents in the record, but upon the assumption by the licensee of same because the recommended findings were adverse to it.

The licensee was afforded a full and complete opportunity to cross-examine the Division's witnesses, and to present testimony. The testimony of the Division witnesses was direct, concise and worthy of belief. They visited the subject premises pursuant to a specific assignment, and their observations are singularly limited in scope. The licensee's witness was involved in a diverse number of activities and could not know what brand was poured by Tarnowski, its bartender.

In sum, the factual proofs substantially support a finding of guilt to the charge by a preponderance of the credible evidence. The Exceptions which allege tangential arguments cannot obscure the ultimate issue of whether said offense was established by the evidence presented. Thus, I find these Exceptions to be without substance.

Lastly, the proposed recommended penalty of fifteen (15) days suspension represents the standard Division precedent for this type of offense. I shall not disturb same.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summations of the parties, the Hearer's Report and the written Exceptions filed thereto by the licensee, I concur in the substantive finding and recommendation of the Hearer and adopt same as my conclusion herein. I shall, therefore, impose a fifteen (15) day license suspension.

Accordingly, it is on this 29th day of July, 1980,

ORDERED that Plenary Retail Consumption License #1225-33-065-001 issued by the Township Council of the Township of Woodbridge to Sam's Bar and Grill, Inc., for premises at 464 New Brunswick Avenue, Woodbridge, New Jersey, be and the same is hereby suspended for fifteen (15) days commencing 2:00 A.M. Monday, August 11, 1980 and terminating 2:00 A.M. Tuesday, August 26, 1980.

Joseph H. Lerner
Director.

3. COURT DECISIONS - SAM'S BAR & GRILL, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4641-79

IN THE MATTER OF

SAM'S BAR & GRILL, INC.

HOLDER OF PLENARY RETAIL CONSUMPTION
LICENSE NO. 1225-33-065-001 ISSUED
BY THE TOWNSHIP COUNCIL OF THE
TOWNSHIP OF WOODBRIDGE.

Argued March 31, 1981 - Decided April 8, 1981.

Before Judges Matthews and J. H. Coleman.

On appeal from the Division of Alcoholic Beverage Control.

Martin L. Sisselman argued the cause for appellant
(Joseph Buttafusco, attorney).

Christine A. Heffner, Deputy Attorney General, argued the
cause for respondents (John J. Degnan, Attorney General, attorney;
Erminie L. Conley, Assistant Attorney General of counsel and
Christine A. Heffner, Deputy Attorney General on the brief).

PER CURIAM

(Appeal from the Director's decision in Re: Sam's Bar
and Grill, Inc., Bulletin 2418, Item 2. Director affirmed.
Opinion not approved for publication by Court Committee on
Opinions).

- 4. DISCIPLINARY PROCEEDINGS - ALLOWING GAMBLING IN LICENSED PREMISES, TO WIT ACCEPTANCE OF BETS ON SPORTING EVENTS - LICENSE SUSPENDED 60 DAYS.

In the Matter of Disciplinary Proceedings against Middle Village Tavern, Inc. t/a Village Tavern 421-27 Piaget Avenue Clifton, N.J. 07011

S-11,606
X-52,062-B

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption Lic. #1602-33-093-001, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.

.....

Dominick Giordano, Esq., by Robert La Salle, Esq., Attorney for Licensee.
Mart Vaarsi, Esq., Deputy-Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded not guilty to the following charge:

On August 18, August 30, September 20, September 23, September 26, September 29, September 30, October 3, October 4, October 6, October 7, October 11, October 25 and November 15, 1977, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races and on October 7, 1977, the making and accepting of bets of football games and on aforementioned dates you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises slips, tickets, records, documents, memoranda and other writings pertaining to the aforementioned gambling activity; in violation of Rules 6 and 7 of State Regulation No. 20 (now N.J.S.A. 33:1-31).

After Alcoholic Beverage Control Agent D testified, in detail, relative to the gambling activities specified in the charge, the attorney for the corporate licensee and the attorney

for the Division entered into a statement of stipulated facts. Thus, the factual issues are undisputed.

It was stipulated and agreed that the gambling activities, as charged, did occur in and upon the licensed premises and that a bartender, Angelo De Voss, actively participated therein by the acceptance of bets from Agent D and other undercover agents. De Voss subsequently pleaded guilty to the criminal charge which emanated from such illegal activity.

Additionally, it was undisputed that De Voss conducted the aforesaid gambling activity furtively in order to conceal the proscribed activity from Connie Kazaren, the sole stockholder of the corporate licensee who worked as a waitress in the licensed premises. It was further stipulated that Kazaren had no knowledge of De Voss' illegal gambling activity in the licensed premises.

Licensee contended that its lack of actual knowledge of the criminal activity by its employee should be considered in mitigation of the penalty to be imposed, although such lack of knowledge does not exculpate the licensee from total responsibility for the employee's illegal acts.

Licensee has no prior record of suspension of license.

In order to arrive at a fair determination of the sole issue presented in accordance with the existing precedents, I note that N.J.A.C. 13:2-23.28 provides as follows:

In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee or the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings.

Vide, in Re Schneider, 12 N.J. Super. 449 (App. Div. 1951).

While there is no requirement that the proscribed activities be "open and notorious", I find that the sole corporate stockholder who was acting as the barmaid upon the licensed premises, should have known of the existence of such proscribed

4. DISCIPLINARY PROCEEDINGS - ALLOWING GAMBLING IN LICENSED PREMISES, TO WIT ACCEPTANCE OF BETS ON SPORTING EVENTS - LICENSE SUSPENDED 60 DAYS.

In the Matter of Disciplinary Proceedings against	:	
	:	S-11,606
Middle Village Tavern, Inc.	:	X-52,062-B
t/a Village Tavern	:	
421-27 Piaget Avenue	:	
Clifton, N.J. 07011	:	CONCLUSIONS
	:	AND
Holder of Plenary Retail Consumption Lic. #1602-33-093-001, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.	:	ORDER

.....

Dominick Giordano, Esq., by Robert La Salle, Esq., Attorney for Licensee.
 Mart Vaarsi, Esq., Deputy-Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleaded not guilty to the following charge:

On August 18, August 30, September 20, September 23, September 26, September 29, September 30, October 3, October 4, October 6, October 7, October 11, October 25 and November 15, 1977, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races and on October 7, 1977, the making and accepting of bets of football games and on aforementioned dates you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises slips, tickets, records, documents, memoranda and other writings pertaining to the aforementioned gambling activity; in violation of Rules 6 and 7 of State Regulation No. 20 (now N.J.S.A. 33:1-31).

After Alcoholic Beverage Control Agent D testified, in detail, relative to the gambling activities specified in the charge, the attorney for the corporate licensee and the attorney

activities. In Mazza v. Cavicchia, 28 N.J. Super 280 (App. Div. 1953), rev'd on other grounds, 15 N.J. 498, 509 (1954), the court held that the knowledge of the licensee is not necessary to sustain a conviction of the charge.

The rule in question comes clearly within the delegated authority of the Director as a reasonable regulation in the field of alcoholic beverage control. The Director has the power to make the licensee responsible for the activities upon the licensed premises. In fact, it is difficult to see how the Division could properly maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director promulgated thereunder and would make the enforcement of the Law and impossibility.

This Division has consistently held that a licensee cannot escape the consequences of the occurrence of incidents, such as hereinabove related, on the licensed premises. A licensee may not avoid his responsibility for conduct occurring on his premises by merely closing his eyes and ears. On the contrary, licensees or their agents or employees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Re Ehrlich, Bulletin 1441, Item 5; Re Club Tequila, Inc., Bulletin 1557, Item 1. Most certainly, the licensee "suffered" the aforesaid gambling activities to take place on the licensed premises. See Essex Holding Corp. v. Hock 136 N.J.L. 28 (Sup. Ct. 1947).

In applying the legal precedents to the subject case, I find that I must reject licensee's argument of mitigating circumstances.

I have hereinabove noted that licensee has no chargeable record of suspension of license. I recommend that the license be suspended for sixty (60) days.

CONCLUSIONS AND ORDER

Written exceptions to the Hearer's Report were filed by the licensee pursuant to N.J.A.C. 13:2-19.6.

In its exceptions, the Appellant does not contest the substantive finding of guilt to the charge, but submits that the lack of knowledge of the offending activities by the sole corporate stockholder should be considered in mitigation of the proposed penalty of sixty (60) days license suspension.

As noted by the Hearer, it is a well established principle that a licensee

is responsible for the misconduct of an employee committed during his employment within the licensed premises. In re Schneider, supra. The licensee is not relieved of responsibility even if the employee violates express instructions. F. & A. Distributing Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961); Olympic, Inc. v. Director, A.B.C., 49 N. J. Super. 299 (App. Div. 1958).

The principles above recited clearly demonstrate a necessary policy of vicarious responsibility which implicitly negates any mitigation predicated upon a claim of lack of actual knowledge of the violative acts. By entrusting the operations of the licensed business to another, the licensee must directly suffer the consequences of its employee's act, whether known or unknown. I find no mitigating circumstances attendant herein and reject licensee's exceptions, as lacking in merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summation and memorandum of law submitted by the licensee, the Hearer's Report and the written exceptions filed thereto by the licensee, I concur in the findings and recommendations of the Hearer, and adopt same as my conclusions herein.

I find the licensee guilty of the charges preferred, and I shall suspend its license for sixty (60) days.

Accordingly, it is on this 30th day of July, 1980

ORDERED that Plenary Retail Consumption License #1602-33-093-001, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Middle Village Tavern, Inc., t/a Village Tavern for premises 421-27 Piaget Avenue, Clifton, New Jersey, be and the same is hereby suspended for sixty (60) days commencing 3:00 A.M. Monday, August 11, 1980 and terminating 3:00 A.M. Friday, October 10, 1980.

Joseph H. Lerner
Director

5. COURT DECISIONS - MIDDLE VILLAGE TAVERN, INC. - DIRECTOR AFFIRMED.

APPELLATE DIVISION
A-4735-79

MIDDLE VILLAGE TAVERN, INC.,

Appellant,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF CLIFTON,

Respondent.

Submitted June 9, 1981 - Decided June 24, 1981.

Before Judges Matthews and Loftus.

On appeal from the Division of Alcoholic Beverage Control.

Dominick Giordano, Esq., Attorney for appellant (Robert C. La Salle, on the brief).

James A. Zazzali, Attorney General, attorney for respondent Division of Alcoholic Beverage Control (John J. Degnan, former Attorney General, and Erminie L. Conley, Assistant Attorney General, of counsel; Kenneth I. Nowak, Deputy Attorney General, on the brief).

No brief was filed on behalf of the Municipal Board of Alcoholic Beverage Control of the City of Clifton.

PER CURIAM

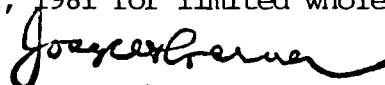
(Appeal from the Director's decision in Re: Middle Village Tavern, Inc., Bulletin 2418, Item 4. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

6. STATE LICENSES - NEW APPLICATIONS FILED.

Pastatlas Distributors, Inc., Canale Drive & Delilah Rd., Egg Harbor Twp., N.J.
Application filed October 22, 1981 for person-to-person transfer of limited wholesale license from South Jersey Distributors, Inc.

Viceroy Imports, Inc., 200 Williams Dr., Ramsey, N. J.
Application filed October 20, 1981 for plenary wholesale license.

Franciscan Vineyards, Inc., 1178 Galleron Road, Rutherford, California
Application filed October 21, 1981 for limited wholesale license.


Joseph H. Lerner
Director