

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

BULLETIN 2325

July 31, 1979

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1. APPELLATE DECISIONS - 461 BROADWAY, INC. v. PATERSON.

461 Broadway, Inc.	:	
t/a El Colonial,	:	
Appellant,	:	ON APPEAL
v.	:	
	:	CONCLUSIONS
Municipal Board of Alcoholic	:	AND
Beverage Control of the City	:	ORDER
of Paterson,	:	
Respondent.	:	
	:	
.	:	

Goodman & Rothenberg, by Sylvan Rothenberg, Esq., Attorney for Appellant.
 Harry Ramer, Esq., Corporation Counsel by Ralph L. DeLuccia, Jr., Esq., Assistant Corporation Counsel for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Paterson (hereafter Board) which, on July 12, 1978, denied appellant's application for renewal of its Plenary Retail Consumption Lic. No. 1608-33-116-001, for premises at 461 Broadway, Paterson.

The Petition of Appeal filed by Appellant contends that the action of the Board was arbitrary and capricious and that there was insufficient factual and legal basis for its action. The Board denies these contentions in its Answer and avers that the denial was based upon a preponderance of credible evidence substantiating their action.

Upon filing on the appeal, the Director, by Order to Show Cause dated August 10, 1978, extended the subject license pending return date of the Order and determination of the appeal.

An appeal de novo was heard in this Division pursuant to N.J.A.C. 13:2-17.6, with full opportunity given the parties to introduce evidence and to cross-examine witnesses. However,

in lieu thereof, counsel relied upon a transcript of the testimony taken before the Board and introduced into evidence pursuant to N.J.A.C. 13:2-17.8, supplemented by oral argument of counsel.

Appearing before the Board at its hearing on appellant's application to renew its license, Detective Sergeant Anthony DeFranco testified that he is a liason officer between the police department and the Board. In that capacity he has obtained the police reports relating to appellant's premises, which consisted of seventeen separate reports during the prior licensing year. The subject premises have occasioned substantial police activity as compared to other taverns in the city in consequence of complaints concerning "narcotics and gangs that congregate in that area of the tavern".

Sgt. DeFranco admitted that after disciplinary proceedings were instituted against the appellant, a request had been made by appellant's owner for a conference with the police. However, he added that the attitude of the appellant was that the charges had been brought as a result of police harassment, rather than any effort to ameliorate the conditions.

Detective Frank Petrelli testified that he is assigned to the narcotic's division of the Police Department and in that connection he has conducted investigations of appellant's premises commencing in 1975. He had made more than fifty arrests either within the premises or in the immediate area thereof. He described one of his visits to the premises as follows:

(at) the time we went to the tavern we made arrests and confiscated any type of contraband we found. We had spoken to the owner or the manager at that time. We had shown him what we had confiscated and who we had arrested for durg activity. At that time we pointed out to the manager, or the owner, persons who were in his establishment who were convicted narcotics violators. We have asked for his cooperation. It was supposed to be forthcoming but nothing ever materialized.

Detective Petrelli was asked further:

Q. In your estimation the activity that you testified about, that is the narcotic activity of buying and the selling and the distribution of narcotics that occurred at the El Colonial, does that emanate from the El Colonial or from the neighborhood around there?

to which he replied:

A. That emanates from the El Colonial.

The manager of appellant's premises, Carmen Burrell testified that the location of the premises are adjacent to other commercial establishments including a fast food eatery around which there are a number of narcotic users. Those who are known narcotic users or pushers are kept out of the premises.

A security guard had been employed for a short time, but the extent of his business has been so diminished that there was no longer a need for such guard.

On Oral argument, appellant urged reversal of the Board's decision based primarily upon the premise that, as the area is infested with narcotic users, its license should not be in jeopardy because of this ongoing social evil. Appellant assured the Director that should the license be continued, a new purchaser of it has been secured and an application for person-to-person transfer would result. Further, as the appellant had attempted to obtain police assistance to eliminate the social problems in its place, the doctrine as stated in Ishmal v. Div. of Alcoholic Beverage Control, 58 N.J. 347 (1971) should be applied here.

Counsel for the Board contends that the record of the appellant's establishment alone justified the action of the Board. A review of that record revealed several charges relating to the permitting of narcotic drugs on the licensed premises, another of possession of lottery slips and another relating to sale to a minor. The Board minimized the appellant's attempt to seek police aid, recounting that a conference with the police was requested only after disciplinary proceedings were instituted and only concerned of appellant's claim that it had been harassed by the police surveillance.

The record of most recent incidents and charges relating to appellant's premises reveals that on March 8, 1978, appellant was subject to a license suspension for 43 days in consequence of a finding that it sold alcoholic beverages to a minor, failed to have employees properly identified and allowed unlawful possession of narcotic drugs within the licensed premises. While an appeal to the Director of this Division (appeal being addressed to the length of suspension only) was pending, appellant was further charged with another offense relating to the presence of narcotic drugs on the licensed premises. An additional suspension of thirty days was the subject of an appeal to the Director of this Division, again based only upon the contention that the length of the suspension was excessive.

It is firmly established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Board in the first instance, and, in order to prevail on appeal, the appellant must show unreasonable action on the part of the Board constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

The burden of proof in all these cases, which involve discretionary action, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 33 N.J. Super. 84 (App. Div. 1957).

From the entire record herein, together with an examination of the records of the matters cited above, it is apparent that there was a total lack of control or lack of interest by the appellant in keeping the subject premises free of drug traffic. I find that the Board's action was proper, within its discretionary power and not manifestly erroneous or unreasonable. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Thus, absent such clear abuse or unreasonable or arbitrary exercise of discretion, the judgment of the Board should not be reversed. Lyons Farms Tavern Inc. v. Mun. Board of Alcoholic Beverage Control, Newark, 55 N.J. 292 (1970).

Appellant has misplaced its reliance on Ishmal v. Div. of Alcoholic Beverage Control, supra, in which the court found that the narcotic drug traffic within the licensed premises and in the area was so prevalent that the licensee could not cope with it despite her constant and repeated personal efforts and pleas for assistance to the police. In the present matter, the similarity with Ishmal ends with the finding that the subject premises is the seat of narcotic drug activity. The solitary incident in which a police conference was requested arose following a disciplinary proceeding and in consequence of a belief by appellant that it was the focus of police harassment.

The said record of appellant's management of a licensed premises bears upon the Boards' determination not to renew the license. The Board has determined this as being in the best interest of the public. There is ample precedent for such principle. Tyrone's Haven, Inc. v. South River, Bulletin 2214, Item 1; Gauntt v. Paulsboro Bulletin 2187, Item 2; Alice G. Townsend, Inc. v. Orange, Bulletin 2186, Item 3; One Ninety Four Bar, Inc. v. Passaic, Bulletin 2142, Item 1; Ocean Club Corp. v. Jersey City, Bulletin 2122, Item 2; Greenstein v. Elizabeth, Bulletin 2135, Item 4.

It is, therefore, recommended that the action of the Board in denying renewal of appellant's Plenary Retail Consumption License for premises 461 Broadway, Paterson, be affirmed, the Order extending license be vacated and the appeal herein be dismissed.

CONCLUSIONS AND ORDER

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

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.

Accordingly, it is, on this 1st day of March, 1979,

ORDERED that the action of the Municipal Board of Alcoholic Beverage Control of the City of Paterson be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed; and it is further

ORDERED that my Order of August 10, 1978, extending the subject license pending determination of the appeal, be and the same is hereby vacated.

JOSEPH H. LERNER
DIRECTOR

I

The burden of establishing that the action of the Council is erroneous and should be reversed, rests entirely with appellant. N.J.A.C. 13:2-17.6.

The Director should not reverse unless he finds that there was a clear abuse of discretion, or unwarranted findings of fact, or mistake of law by the Council. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

It is abundantly clear from the pleadings, that the appellant has established that the Council's action was erroneous and unreasonable. There is a total absence of competent support for the denial of renewal sub judice.

It is, thus, recommended that the action of the Council be reversed and an order be entered directing that the license be renewed for the 1978-79 licensing period in accordance with the application filed therefor.

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 pleadings filed by the parties and letter memorandum of appellant, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2nd day of March, 1979,

ORDERED that the action of the City Council of the City of Asbury Park be and the same is hereby reversed, and the Council be and is hereby directed to renew the subject license for the 1978-79 license term in accordance with the application filed therefor, upon compliance by appellant with statutory requirements.

JOSEPH H. LERNER
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - FRONT - UNDISCLOSED INTEREST - LICENSEE NOT GUILTY - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against :

Milfax Corporation :
t/a Depot Lounge :
Berlin & Milford Road :
Berlin Township, N.J. 08009 :

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption Lic. 0406-33-005-001, issued by the Township Committee of Berlin Township. :

.....

Weinberg & Weiner, Esqs., by Joseph M. Weinberg, Esq., Attorneys 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:

In a Notice of Change in corporate structure, dated July 5, 1977, submitted in connection with your short-form application filed with the Township Committee of Berlin upon which you obtained a plenary retail consumption license, after indicating that Mary Ann D'Angeli had become the sole stockholder and the holder of 100% of your issued and outstanding stock, you failed to disclose in connection with Question No. 13 of the said short-form application a change in facts in your last prior long-form application, viz., to show a change of answer from "No" to "Yes" to Question No. 27 in said long-form application which asks: "Has any individual, partnership, corporation or association other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license? If so, state names, addresses and interest of such individual, partnership, corporations or associations-----," to show and disclose that one Paul D'Angeli had such an interest in said license and/or business:

such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.

In support of the charge, the Division placed in evidence, with consent of counsel for the licensee, various exhibits. Comment as to their content is as follows:

(a) License applications of licensee, Milfax Corporation, (Milfax) for a period of several years. These included the 1977-78 licensing period, which indicated that the ownership of the stock was then in the Canal family.

(b) A notice to the local issuing authority dated July 5, 1977 and a copy of a legal advertisement disclosing that Mary Ann D'Angeli had acquired one hundred per-cent (100%) of the stock of the corporate licensee.

(c) Purchase agreement dated March 15, 1977 executed by the Canal family as the stockholders of Milfax, as Sellers, Mary Ann D'Angeli as the Buyer and Milfax referred to as the Corporation, wherein the Sellers conveyed the entire outstanding capital stock of Milfax to D'Angeli. The agreement provided that the total sales price was \$220,000.00. It further set forth the amount of cash to be paid to the seller; the amounts due on certain liens, payment of which were assumed by the Buyer; and the amount of a purchase money mortgage to be executed by the Buyer to the Seller.

(d) A copy of a first mortgage in the amount of \$66,000.00 executed by Mary Ann D'Angeli, as president of Milfax, to Burlington County Trust Company and a copy of a mortgage in the amount of \$104,000.00 executed by Milfax to John T. Canal and Estelle M. Canal, his wife. Attached to this second mortgage was a guarantee of payment thereof signed by Mary Ann D'Angeli and her husband, Paul D'Angeli, who stated that they were the sole stockholders of Milfax.

(e) A mortgage dated September 16, 1971, in the face amount of \$73,500.00 executed by Mary Ann Fannucci and Frank Fannucci to Paul D'Angeli and Mary Ann D'Angeli. Attached thereto under date of July 1, 1977, was an assignment of the balance of the proceeds of said mortgage from Paul D'Angeli and Mary Ann D'Angeli to the sellers.

(f) Two checks drawn on Lincoln Bank from funds in the husband and wife joint bank account therein, both signed by Mary Ann D'Angeli, one payable to Dom A. Toletta, Realtor and the other to Chicago Title Insurance Company. Both related to the Purchase of Milfax.

(g) A check in the sum of \$1,000.00 drawn to the order of John T. Canal by Dominick A. Tolotta and a note drawn by Mary Ann D'Angeli in the sum of \$1,000.00 payable one year after date. The only relevance of these instruments is that they complete the purchase price of the premises.

(h) An installment loan application of Lincoln Bank in the amount of \$23,000.00. The name of Paul D'Angeli appears on the application form and attached thereto is a personal financial statement of Paul D'Angeli. The loan was secured by property owned jointly by Paul and Mary Ann D'Angeli. The proceeds of the loan were deposited in the aforementioned joint account.

(i) Document showing opening of joint account.

(j) Five checks, two of which are drawn on a joint checking account of Paul and Mary Ann D'Angeli in Heritage Bank and three of which are drawn on a joint checking account of the same parties in Lincoln Bank. The five checks were installment payments on account of the loan obtained from Lincoln Bank.

(k) A series of documents containing what is colloquially known as a "rap sheet" and a certified copy of a criminal conviction of Paul D'Angeli for bookmaking and conspiracy. It indicates that D'Angeli pleaded "guilty" thereto on February 7, 1977, and that on May 6, 1977, he was sentenced to a prison term of not less than one year nor more than two years.

(l) A series of documents prepared in conjunction with a mortgage loan in the sum of \$66,000.00 from the Burlington Trust Company. Contained therein are the following: a financial statement of Paul D'Angeli; a letter from Burlington Trust Company addressed to Milfax, attention of Paul D'Angeli, making reference to the loan; an acceptance of the aforesaid loan and a "Guaranty of Payment" thereof, both of which were signed by Paul and Mary Ann D'Angeli.

(m) A stock certificate for 2,500 shares of stock issued to Mary Ann D'Angeli by Milfax, which represents the entire stock issued by Milfax. The stock was used as collateral for the aforementioned \$66,000.00 mortgage loan (Exhibit L).

(n) Seven checks drawn on a joint check account of Paul and Mary Ann D'Angeli bearing dates from November 23, 1976, to June 30, 1977, in payment of various obligations incurred in conjunction with a liquor establishment.

(o) Transcription of tape recorded statement given by Mary Ann D'Angeli in the presence of her attorney, Joseph Weinberg, on August 16, 1977.

The Division rested its case upon the presentation of the foregoing exhibits.

In defense of the charge, Mary Ann D'Angeli testified that she married Paul D'Angeli on April 17, 1964. They have two children, Geraldann and Paul, who were 13 and 15 years of age respectively as of the date of the hearing. At the time of the marriage she was employed as a primary grade school teacher and her husband was a part owner and bartender at Paul's North End Bar in Pemberton. Paul's North End Bar was formerly owned by Paul D'Angeli's parents. Upon their deaths, ownership devolved in Paul D'Angeli and his sister, Marianne Fanucci. During the period of time that Mary Ann and Paul D'Angeli resided over the tavern, Mary Ann D'Angeli helped out during the busy hours, such as, lunch time and at night and particularly when the Fannuccis' were going out for the evening.

The witness further explained that she acquired additional experience in the alcoholic beverage business because on "weekends, holidays, during the week if someone didn't show", she either worked behind the bar, on tables or in the kitchen at the Colonial Room, which was owned by her girlfriend and her husband.

Continuing, Mary Ann D'Angeli explained that eventually Marianne Fanucci purchased Paul D'Angeli's interest in the tavern business and she executed a mortgage to Paul and Mary Ann D'Angeli in the sum of approximately \$80,000.00 payable at the rate of \$816.02 monthly.

Mary Ann D'Angeli recounted her husband's gambling proclivities which not only led to a deterioration of their marital life, that eventuated in her filing for divorce, but the conviction and jailing of her husband resulting from two indictments alleging gambling on sporting events. She explained that her husband became involved in gambling activity in 1972 by betting daily on sporting events. Two years later he commenced selling pool tickets and became more active in telephoning bets. A year later he became a "bookie". Due to his gambling activity, he became heavily indebted to an individual who contacted her concerning his indebtedness.

The witness explained that from the time that her husband was arrested on the gambling charge in 1975 to the time he commenced serving his prison sentence in May, 1977, they lived under the same roof but did not cohabit. They did not live in the same room.

After her husband was arrested, Mary Ann D'Angeli and her husband discussed the likelihood of he having to serve time in jail. His attorney informed him that the nature of the charge was such that prison confinement was mandatory and provision should be made for the support of his family.

Prior to this time, due to her husband's gambling debts, Mary Ann D'Angeli's parents gave financial assistance to her and to her children.

With the prospect of incarceration facing her husband, Mary Ann D'Angeli realized that she must engage in an occupation which would provide financial means to support herself and her children. She enjoyed being engaged in the tavern business. She consulted Dom Talotta, a Real Estate Broker, and informed him that she was interested in the Depot (the subject licensed premises). Talotta advised that, if she was seriously interested in the Depot, she would need a \$12,000.00 deposit. Her husband offered to execute all papers that may be required of him.

Mary D'Angeli's father, through the cooperation of a financial advisor, contacted Lincoln Bank. Lincoln Bank provided a 5 year installment loan of \$23,000.00 payable monthly. The loan papers were co-signed by D'Angeli as husband and wife on August 22, 1976, (Exhibit H). The house which was owned by the D'Angelis as tenants, by the entirety, was pledged as collateral.

In order to provide Mary Ann D'Angeli with additional funds to consummate the purchase of the subject licensed premises, her husband agreed to assign to her his half interest in the \$73,500.00 mortgage (Exhibit E), executed to them by the Fannuccis'. Paul D'Angeli also agreed to transfer all interest he had in their home to his wife.

Mary Ann D'Angeli explained that the purchase of the liquor establishment was finalized on July 1, 1977. In April, 1977, Paul came into the premises on several occasions while she was in there learning the operation of the business, in order to give her the benefit of his expertise in the liquor business. The several checks which were signed by Paul, drawn on the personal joint account (Exhibit N), were signed by him long prior to the settlement date of July 1, 1977. That joint account was set up long before the purchase of the liquor establishment and was mainly used for payment of personal expenses. The final check drawn on that account, dated June 30, 1977, was signed by her, in payment of her attorney's legal fees for representation in connection with the settlement.

The witness further explained that Paul's signature appeared on the bank loan applications some months prior to July 1, 1977, because banks generally look to the male as the head of the household. On June 3, 1977, the date that Burlington County Trust Company addressed a letter to Milfax, attention of Paul D'Angeli, at the home address (Exhibit L), Paul was incarcerated on account of the gambling conviction. He was not released from jail until November, 1977.

Mary Ann D'Angeli further explained that prior to her husband's incarceration, they discussed their respective futures. This resulted in Paul agreeing to assist her in setting up the subject liquor establishment so that she may become financially independent and fully support herself and her children. In return, she would seek no support of any kind of him for herself or her children. Her parents have assisted her in the payment of many of her personal expenses, including payment of mortgage loan installments, since her husband's incarceration.

Her husband has never worked in the barroom and has never exercised control over any of the employees. Since his release from prison in November, 1977, Paul has never been in the licensed premises, nor is he welcome back. He has seen his children only once or twice since his release from prison.

In November, 1977, Mary Ann D'Angeli instituted suit for divorce against her husband based upon his alleged acts of extreme cruelty. The complaint detailed his involvement in gambling activities from the year 1972, which overpowered his existence to the extent that he became heavily indebted and estranged from his wife and family (Exhibit L-1). Pursuant to agreement, she is not seeking support monies for herself or for her children.

On cross-examination, Mary Ann D'Angeli conceded that some of the money used in consummation of the purchase of the licensed premises came from Paul. However, he is not making any installment payments on account of the balance due. After she knew that Paul was to be incarcerated, she wanted to have a business in order to support herself. She reiterated that Paul would relinquish all claims to monies that he advanced on account of the purchase price in lieu of payment of support monies for herself or for her children.

Mary Ann D'Angeli explained that she signed the agreement for the purchase of the premises on March 15, 1977, and although she didn't take title to the premises until July 1, 1977, she went into the establishment during the first week

of April in order to learn the operation. She retained the services of the three bartenders who were therein employed and who guided her relative to its operation. Prior to his incarceration in early May, 1977, Paul spent very "little time" in the tavern. After his release he never came into the tavern. Paul is not entitled to any of the profits of the business, nor did he make any demand for any of the profits.

While still incarcerated, Paul executed a deed to their jointly owned home. Thereafter, Mary Ann D'Angeli purchased a new home with her husband releasing any interest he may have therein.

Mary Ann D'Angeli reiterated that she did not ask Paul for any advice in connection with the operation of the business since his release from incarceration, nor did she intend to pay him any profits realized from the business.

Peter Edward Warner testified in behalf of the licensee. He had been employed as a bartender in the licensed establishment when he first met Mary Ann D'Angeli in the early part of the year 1977. She entered the tavern accompanied by Talotta, the realtor, and was introduced to him as the prospective purchaser of the establishment. He showed her the building.

He next met Mary Ann D'Angeli during the first week of April, 1977, when she informed him that she had purchased the establishment and that she desired that he continue in her employment as a bartender on three nights a week. He resides over the bar premises and spends between thirty (30) and forty (40) hours a week at the premises.

Warren saw Paul D'Angeli in the establishment in early April, 1977, on approximately three occasions, for a short period of time only. At no time did he observe Paul D'Angeli give orders to any of the employees, serve drinks or order anything. He never saw Paul D'Angeli in the licensed premises thereafter, including the period after he was released from imprisonment. To the best of his knowledge the owner of the establishment is Mary Ann D'Angeli. She does the managing, the ordering and signs the checks.

Geraldann D'Angeli, daughter of Mary Ann and Paul D'Angeli, testified that just before her father was arrested, he and her mother were engaged in "a lot of fighting and arguing most of the time". He mainly watched televised sporting events and talked on the telephone. From approximately the time that her father was arrested to the time that he was imprisoned, he and her mother did not sleep in the same room.

The factual matrix contained in the above recital is not in dispute. A review thereof leads me to the conclusion that the critical issue presented for determination is whether the evidence adduced is sufficient to support the charge that Paul D'Angeli had an interest in the license either directly or indirectly, which the licensee failed to disclose, in violation of N.J.S.A. 33:1-25.

It is undisputed that assets jointly owned by the husband and wife, such as the house and the Fannucci mortgage, were used to consummate the purchase of the subject licensed premises. It is also undisputed that, in order to facilitate the purchase, the husband co-signed certain loan documents. Further, the husband signed several checks in April, 1977, and prior thereto, used in connection with the liquor establishment. Additionally, it is apparent that the husband at inception of the intent to acquire a liquor license, had greater knowledge of the tavern business than the wife.

However, it is also undisputed that there is a complete lack of evidence indicating that Paul D'Angeli is entitled to, or received, any share of the profits of the business or return of the capital investment. As a matter of fact, the evidence points to the contrary. It is undisputed that an unfortunate rupture of the marital status of the parties resulted from the husband's extreme penchant for gambling. This resulted in his arrest, conviction and incarceration, as well as his wife's suit for divorce. It is also undisputed that the D'Angelis' agreed that Paul would forego any claim that he may have in monies paid to consummate the purchase of the subject establishment and to any of the profits therein, in return for which Mary Ann waived all claims for alimony or support for herself or for her children, including their education.

Furthermore, there is no proof that Paul D'Angeli set foot in the licensed premises subsequent to April, 1977, which is some two months prior to the settlement date of July 1, 1977, or that he exercised any control in the operation of the business or was employed therein in any capacity. The situation herein is entirely different from the classic tableau of a dutiful wife, who with no experience in the liquor business whatsoever, and, who hardly, if at all, participates in the management thereof, fronts for her husband who is statutorily disqualified from having an interest in a liquor license.

In this case, as in all disciplinary proceedings, the Division has the burden of proving the truth of the charges by a preponderance of the credible evidence. Although the

circumstances here may justifiably arouse suspicion, nonetheless, a conviction may not be based upon mere suspicion. Inasmuch as it is my view that the Division has failed to meet the burden of proving licensee's guilt by a preponderance of the credible evidence, I recommend that the licensee be found "not guilty" and that the charge be dismissed.

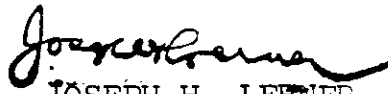
CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed by the parties pursuant to N.J.A.C. 13:2-19.6.

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 1st day of March, 1979,

ORDERED that the licensee be and the same is hereby found "not guilty" of the charge, and the said charge be and is hereby dismissed.


JOSEPH H. LEFNER
DIRECTOR