MR. ZEMEL

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

BULLETIN 1608

March 25, 1965

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - HIGHTSTOWN v. HEDY'S BAR AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

2. PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION - ISSUANCE OF MONEY ORDERS ON LICENSED PREMISE NOT DEEMED SUCH PRACTICE - BULLETIN ITEMS SUPERSEDED.

3. APPELLATE DECISIONS - SCHWEBEL v. JERSEY CITY.

4. APPELLATE DECISIONS - JACKSON v. NEWARK.

5. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

6. DISCIPLINARY PROCEEDINGS (Cliffside Park) - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1608 March 25, 1965

1. COURT DECISIONS - HIGHTSTOWN v. HEDY'S BAR AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-843-63

COMMON COUNCIL OF THE BOROUGH OF HIGHTSTOWN,

Appellant,

vs.

HEDY'S BAR (a corporation), t/a HEDY'S BAR, and the STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

Respondents.

Argued February 15, 1965 -- Decided February 18, 1965.

Before Judges Goldmann, Sullivan and Labrecque.

Mr. Timothy J. Kelty argued the cause for appellant (Messrs. Turp, Coates & Essl, attorneys).

Mr. Thomas C. Jamieson, Jr. argued the cause for respondent Hedy's Bar (Messrs. Jamieson, Walsh & McCardell, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General, attorney).

PER CURIAM

The Common Council of the Borough of Hightstown appeals from a decision of the Director of the Division of Alcoholic Beverage Control, Department of Law and Public Safety, who, after a full hearing, reversed its denial of the application of Hedy's Bar for a place-to-place transfer of its license, and directed that body to grant the requested transfer. (Hedy's Bar v. Hightstown, Bulletin 1561, Item 2.) We affirm.

The standards of review controlling the Director and the court on appeal are set out in Borough of Fanwood v. Rocco, 33 N.J. 404 (1960), affirming 59 N.J.Super. 306 (App. Div. 1960). The court there pointed out that under New Jersey's system of liquor control the municipality has the original power to pass on an application for an alcoholic beverage license or the

transfer thereof. However, its action is subject to appeal to the Director of the Alcoholic Beverage Control Division. On such appeal the Director conducts a de novo hearing and makes the necessary factual and legal determinations on the record before him.

> "* * * Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable. * * * However, where the municipal action was unreasonable * * * or improperly grounded * * * the Director will grant such relief or take such action as is appropriate. * * * On judicial review, the court will generally accept the Director's factual findings * * * and not interfere with his action so long as it is not unreasonable or illegally grounded. * * * (Citations omitted; at pages 414-415)

The Director cited Fanwood in his conclusions and, with its principles as a guide, addressed himself to the question of whether the Hightstown governing body had abused discretion in denying the transfer for any of its 13 stated reasons. To that end, he reviewed in detail the undisputed facts and the testimony, and made factual findings with respect to each reason advanced by the common council. He found them not supported by the record, or clearly shown to be untrue, or an obvious mistake in or misstatement of the law.

"The question in every case is whether a reasonable man, acting reasonably, could have reached the administrative agency decision under review, from the evidence found in the entire record, including the inferences to be drawn therefrom." Cooley's, etc., Foundation for Children, Inc. v. Legalized Games, etc., Comm'n, 78 N.J.Super. 128, 140 (App. Div. 1963), certification denied 40 N.J. 212 (1963). In light of our own review of the entire record, we find that the Director's action was reasonable and legally grounded. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); Fanwood v. Rocco, above.

Above and beyond the analysis and reasoning of the Director which led him to reverse the municipality's denial of a place-to-place transfer, we find compelling positive reasons to support his conclusion that the transfer should have been granted. This is not a case where the licensee voluntarily seeks to move to a more advantageous business location. The fact is that Hedy's Bar was forced to relocate by a public agency, the Hightstown Housing Authority, which took possession of the premises on August 1, 1963, when the tavern was obliged to cease operations. The owners had invested their entire assets, $35,000, in the business, and if they are unable to move, their investment is lost. They made an exhaustive investigation in an effort to find a site which would comply with the rigid distance regulations of the borough. They finally located one in an industrial zone of the borough, sufficiently distant from residences, churches, schools and other licensed premises to meet the local requirements. The new site is at the very edge of the municipality, better situated, from the public interest point of view, then the former location, which adjoined a residential area and was on a pedestrial thoroughfare. The proposed location is the only site in the entire borough to which the license can be transferred and still be in compliance with the applicable license ordinance. Finally, it is not disputed that the owners of Hedy's Bar were issued a valid building permit for a structure at the new

site. This building, of modern brick and glass design, represents a construction cost of $30,000, exclusive of land value. The area is currently zoned for industry, but commercial uses were allowed at the time the building permit was issued and when the Hightstown governing body held its first hearing.

It was the Director's considered opinion that the transfer was denied in order to reduce the number of licenses in the community, and he so found. That conclusion was justified not only by the inference which could reasonably be drawn from the testimony, but from the testimony actually given.

In Township Committee of Lakewood Township v. Brandt, 38 N.J.Super. 462 (App. Div. 1955), the court, in dealing with a similar situation, said:

> "* * * An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." (at page 466)

In Fanwood v. Bocco, above, this court, in commenting upon the application of the Lakewood case to the factual situation there under review, interpreted the quoted text to mean that "there are equities in favor of a holder of a license, which an applicant for a new license cannot claim which should be considered together with all the other factors in the case." 59 N.J.Super., at page 322. The undisputed facts, testimony and law referred to by the Director aside, it is quite evident that the borough council did not concern itself with the equities of the present case.

The decision of the Director is accordingly affirmed.

2. PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION - ISSUANCE OF MONEY ORDERS ON LICENSED PREMISE NOT DEEMED SUCH PRACTICE - BULLETIN ITEMS SUPERSEDED.

March 9, 1965

Leonard Brass, Esq.
Executive Secretary and Counsel
Essex County Retail Liquor Stores Association
Newark, New Jersey

This acknowledges your letter of December 28th requesting my review and abrogation of previous Divisional rulings prohibiting the operation of a money order service upon licensed premises.

The delay in my response has been occasioned by the necessity of thorough study of the matter, particularly in view of the opinion voiced by my predecessor in office that the issuance of money orders upon licensed premises constitutes a practice designed to increase unduly the consumption of alcoholic beverages. For his views in this regard, see the enclosed copies of Bulletin 1223, Item 11, and Bulletin 1241, Item 8, dated respectively March 28, 1958 and August 26, 1958. Divisional rulings are not to be lightly disturbed since the trade has a right to rely on precedent in order to achieve uniformity and continuity in the observance of the regulations. But this does not mean that there should be blind observance to precedent for the sake of precedent only. To the contrary, there must be constant awareness of changes wrought by the passage of time in the social, economic and business patterns affecting the public convenience and the interests of the industry.

In evaluating the instant problem, I may say, from my personal observation, that the large growth of "money order exchanges" in all types of mercantile establishments is directly attributable to a public demand for the convenience afforded by such outlets. It appears to me to be a realistic approach to afford the same convenience to the public in retail liquor establishments as is afforded in other establishments. I do not agree with any premise that a present relaxation to allow money order service would result in wide-spread attempts by licensed retailers to "tie in" liquor purchases with the issuance of money orders, a practice which, if engaged in, would result in violation of Rule 20 of State Regulation No. 20 and would subject an offender to suspension or revocation of his license. I have faith in the public intelligence in thwarting, and reporting to me with proper indignation, attempts, if any should be made, by retailers to make the rendition of the money order service contingent upon the purchase of alcoholic beverages.

Accordingly, it is my judgment that the issuance of money orders upon licensed premises would not, in itself, constitute a practice which would increase unduly the consumption of alcoholic beverages, and is not in violation of the Alcoholic Beverage Law or any existing regulation of this Division. The hereinabove cited bulletins, to the contrary, are hereby abrogated.

As indicated, removal of the money order restriction is predicated upon my belief that no undue problems of liquor control will arise. If future experience should not so indicate, I shall promptly and effectively take regulatory action to remedy the situation. Licensees would be well advised, therefore, to be most scrupulous in their preservation of this privilege.

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - SCHWEBEL v. JERSEY CITY.

WALTER SCHWEBEL, Appellant,	)	
v.	)	
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF JERSEY CITY,	)	ON APPEAL CONCLUSIONS AND ORDER
Respondent.	)	

Irving Reiken, Esq., Attorney for Appellant.
Meyer Pesin, Esq., by Joseph S. E. Verga, 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 respondent whereby it suspended appellant's license for twenty days effective November 30, 1964, after finding appellant guilty in disciplinary proceedings of a charge alleging that on November 4, 1964 he sold alcoholic beverages to a minor in violation of R.S. 33:1-77 and Section #11 of Ordinance No. K-1299 adopted June 20, 1950. Appellant's premises are located at 555 Ocean Avenue, Jersey City.

Upon the filing of the appeal an order dated November 25, 1964, was entered by the Director staying the effect of respondent's order of suspension pending the determination of the appeal. R.S. 33:1-31.

Appellant, in his petition of appeal as subsequently amended and allowed nunc pro tunc, alleges that the action of the respondent was erroneous in that (a) "it was against the weight of the evidence produced and contrary to the testimony adduced at the hearing before the Local Board" and (b) that the appellant "was not represented by counsel and that the witnesses and he had no opportunity to examine the complainant as the complainant did not appear."

Respondent filed an answer admitting the jurisdictional facts and denying the substantive allegations of the petition. It further states that, based on the testimony of a police officer in whose presence the minor "had identified one of the employees of the appellant as having sold the wine to her" and based on the fact that sales were made to women at the door of the establishment, they unanimously determined that the appellant was guilty of the said charge.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross examine witnesses.

The following picture was reflected by the testimony adduced at this plenary hearing: Kathleen --- (a 17-year-old minor) testified that, in the company of her boy friend, she went to the licensed premises to purchase a bottle of wine.

Her friend remained on the outside, and she entered the premises. She spoke to the bartender (whom she later identifed as Ralph Johnson) who informed her that the cost of the wine would be $1. Since she had only ninety cents on her, she went outside, borrowed the additional ten cents from her friend, returned to the tavern and paid the price for the wine. She then went to a nearby park where she consumed the beverage, and was apprehended by police officers. On cross examination she stated that she entered the licensed premises at somewhere between 7 and 7:30 p.m.; and during the transaction was never questioned as to her age or required to make any further identification. She could not recall the brand of wine purchased.

Clara Ziglear (a local policewoman) testified that on November 10, 1964 the bartender Ralph Johnson was identified by this minor at police headquarters by personal confrontation between them, and a statement was taken from the minor. The witness admitted that this was the second statement taken, an earlier statement having been executed on November 6, several days after the alleged incident.

Officer Thomas Bradshaw (of the local Police Department) similarly testified that, in the presence of Ralph Johnson, the minor identified him as the person who sold the wine to her.

The boy who allegedly accompanied the minor to the premises on the date alleged herein was not produced, although I am advised by counsel for the respondent that he was available.

Walter Schwebel (the appellant), testifying in his own behalf, categorically denied that any such sales were made in his premises. He explained that Ralph Johnson was employed by him as a part-time bartender and works "weekends, Saturdays and Sundays." He was not employed on the Wednesday night November 4, on which this alleged sale took place; nor in fact was he employed during that entire day. He further explained that he was on duty on that night and never saw this minor at any time prior to the time that he saw her at police headquarters.

This witness admitted under cross examination that he was given adequate opportunity to be represented by counsel; was advised that the hearing would be adjourned if he desired to have his counsel appear, and admitted that there is no foundation for such allegation in his petition of appeal.

Ralph Johnson testified that he is regularly employed at the Park Corrugated Container Corporation in Paterson and is so engaged every weekday from 8:30 a.m. to 5 p.m. He is employed part time, on weekends, at the licensed premises but was definitely not so employed on the Wednesday evening of the date and time alleged. He too emphatically denied that he had ever seen this minor before the personal confrontation on November 10, nor had he ever sold any alcoholic beverages to her at any time.

He explained that, when he was first confronted with this minor, he was brought into the room where she was seated at the special services bureau and was asked whether he was the one who sold her the wine. "She pointed at me and said, 'Yes.'" This was repeated a second time when he was again brought back into the room. He was then asked whether he said

anything, and he answered "I didn't say anything. They wouldn't let me say anything. I tried to but I was told I would get my chance to speak later." The witness further asserted that these premises do not have for sale any wine for $1; that pint wine sells for fifty cents, and that in fact they do not sell quart bottles of wine.

Walter Schwebel was recalled, and similarly stated that he does not carry any quart bottles of wine for resale and uses fifths solely for dispensing drinks at the bar.

Otto Lewis testified that he was at these premises from 6:45 p.m. until 11:50 p.m. on November 4, and did not see the minor come into the tavern at any time during that evening.

Willie Olds (called as a witness on behalf of the appellant) testified that he arrived at this tavern at 6:45 p.m. on November 4 and remained there until 11 p.m., after which he left for his regular place of employment at a county hospital. During his stay at the premises he did not see the minor come in or make any purchases.

Thus we have the uncorroborated testimony of Kathleen, the minor, as to her alleged purchase of the wine as opposed to the testimony of the licensee, corroborated by two witnesses, together with a denial of the bartender who allegedly made the sale.

I have had an opportunity to observe the demeanor of the minor on the stand, and am frankly unimpressed with her testimony. I am also at a loss to understand why her boy friend, who allegedly accompanied her to the premises and was available to respondent, was not subpoenaed and produced as a witness to corroborate her testimony.

Contrasted with the minor's testimony is that of the licensee who states that he was present and on duty at the date and time alleged herein and did not see this minor at the premises nor were any sales made to her. We have in addition the testimony of two witnesses whose testimony appeared to me to be forthright, who also testified that they were in the tavern during the entire evening on the date alleged and did not see the minor or observe any such transaction although they were in a position to make such observation. In addition we have the testimony of the bartender who vigorously denied that he was employed on the night in question or that he sold any wine to this minor.

The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042. 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. Cf. Walter v. Alt, 152 S.W. 2d 135,141.

The inquiry is whether there is any evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the judgment of the respondent herein. The accepted standard of persuasion governing the trier of facts is that the determination is probably founded in truth. Riker v. John Hancock Mutual Life Insurance Co., 129 N.J.L. 508, 511.

While the issue in these cases is not determined merely by the number of witnesses testifying in support of or in contradiction of the licensee, but by the greater weight and sufficiency of the evidence, it is equally established that many witnesses who are equally intelligent and have equal opportunity for knowledge of the facts for which they testify are less likely to be mistaken than the few. Kestner v. Kline, 4 Atl. 781, 41 N.J. Eq. 422; Katzenbach v. Holt, 43 N.J. Eq. 536, 12 Atl. 383.

I wish to make the further observation that the witnesses appearing for the appellant appear to be men of integrity and impressed me by their forthrightness and sincerity. This was equally true of the licensee who has conducted his business in a law-abiding manner for a number of years. My consideration of all the testimony in this case convinces me that the testimony of the appellant's witnesses stands in a more convincing posture. Re Chizun, Bulletin 1274, Item 7.

Weighing the uncorroborated testimony of the minor against the testimony given on behalf of the appellant, I am not persuaded that the respondent could reasonably have reached a finding of guilt against the appellant. In other words, I reach the inescapable conclusion that, on the facts presented, a finding of guilt by the respondent was not supported by a fair preponderance of the believable evidence.

I therefore recommend that an order be entered reversing the action of respondent. Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1; Chase v. Washington Township, Bulletin 1272, Item 4; Collazo v. Elizabeth, Bulletin 1410, Item 1.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the oral argument of counsel in summation and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 19th day of February, 1965,

ORDERED that the action of the respondent be and the same is hereby reversed.

JOSEPH P. LORDI
DIRECTOR

4. APPELLATE DECISIONS - JACKSON v. NEWARK.

LONZIE B. & RUBY P. JACKSON, t/a JACKSON'S LOUNGE, Appellants,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	)	

Robert W. Wolfe, Esq., Attorney for Appellants.
Norman N. Schiff, Esq., by Paul E. Parker, 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 respondent whereby it suspended appellants' license for fifteen days effective November 16, 1964, after finding appellants guilty in disciplinary proceedings of a charge alleging that they allowed, permitted and suffered a brawl, act of violence, disturbance and unnecessary noises on their licensed premises and conducted their place of business as a nuisance, in violation of Rule 5 of State Regulation No. 20. Appellants' premises are located at 150-152 Springfield Avenue, Newark.

Upon the filing of the appeal, an order dated November 9, 1964, was entered by the Director staying the effect of respondent's order of suspension pending the determination of the appeal. R.S. 33:1-31.

Appellants, in their petition of appeal, allege that the action of respondent was "erroneous, unreasonable, and contrary to the weight of the evidence, and without legal basis."

Respondent filed an answer admitting the jurisdictional facts and denying the substantive allegations of the petition. It further stated that the decision was based upon the factual testimony from which it, "in its sound discretion, concluded that the penalty imposed substantiated such action."

The hearing on appeal was based upon the transcript taken in proceedings before respondent, as authorized by Rule 8 of State Regulation No. 15. In addition, counsel were permitted to present oral summation in lieu of written memoranda.

At the hearing before respondent, Mrs. Ruby Sheen testified that on February 8, 1964, at about 10:00 p.m., she entered the licensed premises accompanied by her sister. She had had several glasses of beer before entering this tavern, where she purchased and consumed another beer. There were at least one hundred twenty-five patrons on the premises. She remained in the premises for approximately thirty minutes.

Some time after she consumed the beer, she went to the rear of the premises where she started to dance with a boy named Joe. An acquaintance of hers by the name of Jimmie Boyd came up to her while she was dancing and she began to "tease" him. "I always tease him." She grabbed him and he said "Turn me loose." She then scratched him, whereupon he either hit or slapped her on the mouth with his hand.

Apparently, there was some laceration of her lower lip which caused bleeding, and she went to the front of the premises and complained to the licensee, Lonzie Jackson, that Boyd had slapped her. The licensee asked whether she wanted him to call a doctor but she declined. She did not at any time receive medical attention from a doctor or at a hospital for this injury. Jackson asked whether he should call the police and she said that it was unnecessary, that she was going to the police station personally to make a complaint.

On cross examination, the witness admitted that no member of the management was near her at the time of this incident, nor did they know of the incident before she reported it to Jackson. She also stated that there was no loud language, nor any cursing, nor did anyone other than those mentioned participate in this incident. She also assured respondent that the owner had been cooperative and did all he could after she reported the incident to him.

Mary Johnson, Mrs. Sheen's sister, testified that she had left the premises before the altercation took place and therefore could not testify with respect to the said incident.

Detective Samuel Damiano and Officer Andrew Lavan of the Newark Police Department both testified as to their subsequent investigation. They stated that Jackson was cooperative, gave them a written statement, and their investigation (which included interrogation of Mrs. Sheen) indicated that the facts as testified to by Mrs. Sheen were substantially correct.

Lonzie B. Jackson, one of the appellants herein, testified that he was tending bar on the evening of February 8; that the first he knew about the incident was when Mrs. Sheen came to him and told him she had been struck by Jimmie Boyd. He did not hear any argument or noise or altercation. When Mrs. Sheen reported that she had been struck by Boyd, he immediately went to the rear of the premises and asked Boyd why he had struck Mrs. Sheen. Boyd answered that "she was pulling on me and scratched my face. I said, 'Don't you know you have no right to hit anybody in this establishment.' And he said, 'Yes, I know that.' I said then 'You have to leave.' And he said, 'O.K., I will go.'" When Jackson asked Mrs. Sheen whether she required any medical assistance, she informed him that she did not but that she intended to go to police headquarters and make a complaint against Boyd.

My examination and evaluation of the testimony in this case convinces me that it is insufficient to support a finding of guilt herein. Respondent seeks to support the charge that there was a brawl or disturbance in the premises, and that appellants "permitted" and "suffered" such brawl to take place, upon the testimony of Mrs. Sheen.

A fair appraisal of the facts requires giving consideration to the definition of brawl or disturbance, as contemplated by our rules and regulations. A "brawl" is a clamorous

or tumultuous quarrel in a public place to the disturbance of the public peace. Black's Law Dictionary, 11 C.J.S. 767; Com. v. Foley, 99 Mass. 497. Webster's New International Dictionary defines a disturbance as "an interruption of a state of peace and quiet...a public commotion; synonym, brawl." Within the four corners of this definition, I am not persuaded that a disturbance or brawl actually occurred.

What happened here was simply an assault upon a patron by another patron who clearly was acting in self-defense. The whole incident appeared to take only a few seconds and did not appear to disturb any of the other patrons in the vicinity. In the broader sense, of course, any assault is a disturbance. The question is whether it is the kind of disturbance contemplated by the regulations, which was permitted and suffered by appellants.

The liability of licensees for disturbances which occur on licensed premises presents grave problems. Manifestly, it would be unfair to hold a licensee liable where a disturbance occurs without warning and a licensee and his agents do everything that a reasonable man may be expected to do under the circumstances promptly to terminate the dispute. Zicherman v. Newark, Bulletin 613, Item 5. In Conner v. Fogg, 75 N.J.L. 245, 247 (Sup. Ct. 1907), the court said:

> "To permit is defined as meaning to authorize or to give leave (McHenry v. Winston, 49 S.W.Rep. 4), but the term 'permit' has been often used synonymously with 'suffer', so that it may be said that one who suffers the doing of a thing which he might have prevented permits it." (Emphasis ours)

The evidence here is that Mrs. Sheen provoked this defensive assault upon her and informed appellant Jackson of the assault after it had occurred. No one in the management, in so far as the evidence shows, had any knowledge of the altercation, until it was reported. There is nothing to indicate that appellants or their agents had any warning of the incident or that it was anything other than a sudden flare-up. Cf. Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3; Re Burd, Bulletin 412, Item 7. It might be pointed out that even in cases where a lethal weapon is used (cf. Re Burd, supra), licensees have been found blameless. In the instant matter, Mrs. Sheen received a slap on her lip. Therefore, it could not reasonably be said that appellants "allowed, permitted or suffered" such assault. Re Gerrity, Bulletin 412, Item 6.

After appellant Jackson was advised of this incident, he offered medical assistance and offered to call the police. Mrs. Sheen refused such offers, saying that she needed no medical attention and intended to make a complaint personally at police headquarters. Jackson, after ascertaining what had happened, forthwith evicted the offender.

Respondent sharply questioned appellant Jackson with respect to his failure to call the police department after he had been apprized of the incident. He stated that since Mrs. Sheen intended to go to police headquarters, he felt it was senseless to call the police at that time. On this point, in argument before me, counsel for respondent was most forthright in the following colloquy:

"THE HEARER: ...Here the altercation was admittedly completed. The woman came to the licensee and said, 'I have been hit.' Suppose the licensee had then called the police, he not being a witness to this altercation, and the police arrive fifteen minutes or a half-hour later. What could they have done that this woman did not do by going directly to police headquarters and making a complaint?

"MR. PARKER: Very frankly, they would have done the same thing. They would have asked certain questions which would have been answered during the course of the investigation, the police would have taken a report, and from my knowledge of the situation they would have said, 'All right, young lady, if you want to make a complaint appear at the police precinct the next morning.'"

Finally, I am satisfied that this was a sudden flare-up which could neither be prophesied nor anticipated by appellants and which took place without their knowledge. Cf. Snug Tavern, Inc. v. Orange, Bulletin 1425, Item 1; Engel v. Belleville, Bulletin 694, Item 5. Since the actions complained of were not brought to the attention of appellants or their agents, nor were there such facts in this case as would imply knowledge, I must come to the inescapable conclusion that appellants did not allow, permit or suffer such brawl or disturbance to occur on their premises.

The evidence further indicates that respondent could not, upon the facts, as reflected in the transcript, reasonably have made a finding of guilt by a preponderance of the credible evidence; that, indeed, such finding was clearly against the logic and effect of the presented facts. Cf. Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

I therefore recommend that an order be entered reversing the action of respondent. Snug Tavern, Inc. v. Orange, supra; Iannello & Cassetta v. Hackensack, Bulletin 1008, Item 1.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony and the oral argument of counsel for the respective parties, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 19th day of February, 1965,

ORDERED that the action of the respondent be and the same is hereby reversed.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against	)	
CHESTER KUSHPA AND DOROTHY KUSHPA t/a CHET'S TAVERN 407 Hoboken Avenue Jersey City, N. J.	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-257, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)	

James M. Kenihan, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensees pleaded not guilty to the following charges:

"1. On September 29 and October 2, 1964, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races and in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On September 29 and October 2, 1964, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The Division offered the testimony of Agents S and O in substantiation of the charges.

Agent S's testimony may be summarized as follows: On September 29, 1964, at about 11:10 a.m., he entered the licensed premises, sat at the bar closest to the storage area. Thereafter, "Tommy" (identified as Thomas P. Crawford) entered the premises, sat two stools away, pulled out a pad of papers about 3" x 5", laid it on the bar. Chester Kushpa (the co-licensee) stated to Tommy, "Tommy, there's two slips in my coat hanging on the wall area." Tommy went to the coat, took slips from the pocket, returned to the bar, opened up the slips, proceeded to write figures from these slips onto the pad of paper which he placed on the bar. Kushpa handed some money to Tommy. Kushpa then said to Crawford, "I'll take the usual," at which time Crawford wrote two more figures on the pad and then accepted one dollar from Kushpa. Kushpa said, "75 and 25, the usual." Crawford wrote the figures on the pad. Agent S asked Kushpa (also referred to as Chet), "'Is Tommy the number man?' And Chet replied, 'Yes,' and I asked, 'Is he safe?' and Chet said, 'I hit for 600 and he came right in with the money.' I asked Chet, 'Do you okay him?' He said, 'I play with him. Is

that enough?'" The agent then described the playing of two numbers with Tommy (which he testified was gambling activity) and the placing of a horse race bet, all in the presence of the licensee.

Agent S next testified that he visited the licensed premises on October 2, 1964, with Agent O; that Agent O entered the premises at 12:15 p.m.; that he entered therein a minute or two later and seated himself at the bar two stools away from Agent O. When Kushpa came in to relieve the bartender behind the bar, he exclaimed to the agent, "I see you have got some come-back money on your horse race bet...with Tommy." The agent then stated to Kushpa that he had some numbers for Tommy and Kushpa responded that Tommy would be in shortly.

He next testified that two males said they had to get back to work and gave numbers slips and money to Kushpa; Kushpa placed them in his shirt pocket; that Crawford came in about 12:35; he went to where Crawford was seated at the bar; that he placed a horse race bet and bets on three numbers with Crawford in the presence of Kushpa who was facing them from behind the bar at that point; Kushpa then placed two numbers bets with Crawford.

Agent S's testimony did not vary on cross examination.

Agent O testified that on October 2, 1964, he entered the licensed premises shortly before Agent S; that he sat about ten feet away from Agent S; he did not see and hear all of the activity related by Agent S concerning the events of that day; however, he did hear Kushpa place two numbers bets with Crawford; that Crawford wrote on a pad and took two dollars from Kushpa; that shortly before the police arrived, Kushpa verbally admitted to him that he actually placed two numbers bets with Crawford.

The co-licensee Chester Kushpa denied that he or anyone else on his licensed premises took any bets or wagers relating to horses or numbers, or that he played any numbers. He claimed that Crawford was taking up a collection for a deceased iceman who delivered ice to the premises and for a deceased patron.

Although testifying in the licensees' behalf, Thomas P. Crawford admitted that on September 29, 1964, he took a number from Agent S when Kushpa was at the other end of the bar; that on October 2, 1964, he took two or three numbers from Agent S when Kushpa was at the far end of the bar. He denied that Kushpa placed numbers bets with him. On cross examination he did admit that, for a short period of time prior to September 29, 1964, he wrote numbers bets in the tavern when Kushpa might have been on duty, "at the bar sometimes. Maybe in the bathroom."

Thus a purely factual question is presented.

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32 C.J.S. Evidence, sec. 1042. By a preponderance of the evidence is meant evidence which is of greater weight or more convincing than that which is offered in opposition. 32 C.J.S. Evidence, sec. 1021 at p. 1051, and cases therein cited. Disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only.

Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J.Super. 501 (1956).

I had ample opportunity to judge the credibility of the witnesses and I am compelled to conclude that the agents' version of the material facts with reference to the occurrences at the licensees' place of business was credible and convincing.

After carefully reviewing the evidence, I have no hesitancy in concluding that the Division has established the truth of the charges herein by a fair preponderance of the evidence. I recommend that the licensees be found guilty of said charges.

The licensees have no prior adjudicated record of suspension of license. I recommend that the license be suspended for sixty days. Re Harris, O'Nion and Mack, Bulletin 1596, Item 6.

Conclusions and Order

No exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 15th day of February, 1965,

ORDERED that Plenary Retail Consumption License C-257, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Chester Kushpa and Dorothy Kushpa, t/a Chet's Tavern, for premises 407 Hoboken Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, February 22, 1965, and terminating at 2:00 a.m. Friday, April 23, 1965.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
ELVEE CORPORATION t/a ANCHOR INN 76 Palisade Avenue Cliffside Park, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Cliffside Park.	)	

Licensee, by Frank Liggio, Secretary-Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on January 28 and 30, 1965, it permitted a female (barmaid) employed on the licensed premises to accept drinks at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Henn, Bulletin 1569, Item 4.

Accordingly, it is, on this 23d day of February, 1965,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Cliffside Park to Elvee Corporation, t/a Anchor Inn, for premises 76 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Tuesday, March 2, 1965, and terminating at 3:00 a.m. Wednesday, March 17, 1965.

Joseph P. Lordi
Director