Jarvis

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

BULLETIN 1967 April 21, 1971

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

BULLETIN 1967 April 21, 1971

1. COURT DECISIONS - RE CLUB "D" LANE, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1116-69

In Re: In the Matter of Disciplinary Proceedings against

CLUB "D" LANE, INC.
t/a CLUB "D" LANE
2005 East Linden Avenue

Holder of Plenary Retail Consumption License C-12, issued by the Municipal Board of Alcoholic Beverage Control at the City of Linden

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Argued October 27, 1970 - Decided January 4, 1971.

Before Judges Lewis, Matthews and Mintz.

On appeal from the Division of Alcoholic Beverage Control.

Mr. Louis M. Minotti argued the cause for appellant (Mr. Donald W. Rinaldo, attorney).

Mr. William Bayers, Deputy Attorney General, argued the cause for respondent (Mr. George F. Kugler, Jr., Attorney General of New Jersey, attorney; Mr. Stephen Skillman, Assistant Attorney General, of counsel).

The opinion of the court was delivered by

MINTZ, J.A.D.

Defendant appeals from an order of the Division of Alcoholic Beverage Control suspending defendant's plenary retail consumption license for 30 days.

The following specific charge was preferred against defendant:

> On January 14 and 15, 1969, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20.

Rule 5 of State Regulation 20 provides that:

> No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity or foul, filthy, indecent or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary

> noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance.

Concededly, on the stated dates entertainment was supplied at defendant's premises, on January 14 by two go-go dancers and on January 15 by one such dancer, wearing transparent bibs and pasties covering only the nipples on their breasts.

Defendant argues that "lewdness and immoral activity" is to be determined in accordance with the criteria set forth in N.J.S.A. 2A:115-1.1, the statute dealing with obscenity, which incorporates the First Amendment rights as defined by the United States Supreme Court. Roth v. United States, 354 U.S. 476 (1957), rehearing den. 355 U.S. 852 (1957); A Book v. Attorney General, 383 U.S. 413 (1966).

A license to sell intoxicating liquor is not a contract nor is it a property right. Rather, it is a temporary permit or privilege to pursue an occupation which is otherwise illegal. Since it is a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954).

We are not here concerned with the censorship of a book, nor with the alleged obscenity of a theatrical performance. "Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privilege may lawfully be tightly restricted to limit to the utmost the evils of the trade." McFadden's Lounge, Inc. v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61, 68 (App.Div. 1954). Lewdness or immorality for the purpose of alcoholic beverage control may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally. Davis v. New Town Tavern, 37 N.J. Super. 376, 378 (App.Div. 1955); Jeanne's Enterprises, Inc. v. State of New Jersey, etc., 93 N.J. Super. 230 (App.Div. 1966), aff'd o.b. 48 N.J. 359 (1966).

The public policy of this State strictly limiting the type of permissible entertainment in taverns was recently declared in Paterson Tavern & Grill Owners Assn. Inc., et al., v. Borough of Hawthorne, 108 N.J. Super. 433, 438 (App.Div. 1970), rev'd on other grounds, 57 N.J. 180 (1970), where the court stated:

> The ordinance seeks to ban from Hawthorne's taverns and other licensed premises the "topless" and "bottomless" entertainer or dances. The community has a right to protect itself against this kind of an immoral atmosphere which exists elsewhere in the United States. Such so-called "entertainment" is nothing more or less than an appeal to the prurient interest. It is bait to bring customers to the bar and hold them there, for the obvious purpose of increasing the sale of alcoholic beverages. It may be validly curbed, as Hawthorne provides in its ordinance.

Finally, defendant contends it received an advisory opinion from a Deputy Director of the Division to the effect that the apparel would not be violative of State law. This was denied. The Hearer for the Director in the case sub judice correctly noted that at best this argument might be urged to indicate that the

defendant's conduct was not willful and that there were mitigating circumstances to be considered. He pointedly stated that all licensees are charged with knowledge of the admonition of former Director Joseph P. Lordi expressed in an earlier proceeding against a licensee charged with employing "topless" female employees set forth in Bulletin 1778, Item 5, reprinted in Bulletin 1805, Item 1 as follows:

> In passing, however, I wish emphatically to advise all licensees, that so called "topless" female employees, whether entertainers or otherwise, and whether with pasties described by the Division agents or the larger ones described by the licensee's witnesses, will not be tolerated on licensed premises in this State.

The Director's action was a reasonable exercise of the supervisory power entrusted to him by the Legislature, and we perceive no basis to disturb his determination.

Affirmed.

2. COURT DECISIONS - RE MRS. JAY'S, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1521-69

MRS. JAY'S, INC.,
t/a MRS. JAY'S

Plaintiff-Appellant,

v.

RICHARD C. McDONOUGH, DIRECTOR,
DIVISION OF ALCOHOLIC BEVERAGE
CONTROL, DEPARTMENT OF LAW AND
PUBLIC SAFETY, STATE OF NEW JERSEY,

Defendant-Respondent.

Argued February 1, 1971. Decided March 15, 1971.

Before Judges Goldmann, Leonard and Mountain

On appeal from Division of Alcoholic Beverage Control, Department of Law and Public Safety, State of New Jersey.

Mr. Robert I. Ansell argued the cause for appellant (Messrs. Anschelewitz, Barr, Ansell and Bonello, attorneys; Mr. Ansell, on the brief).

Mr. William Bayers, Deputy Attorney General, argued the cause for respondent (Mr. George F. Kugler, Jr., Attorney General of New Jersey, attorney; Mr. Stephen Skillman, Assistant Attorney General, of counsel; Mr. Bayers, on the brief).

PER CURIAM

(Appeal from Decision in Re Mrs. Jay's, Inc., t/a Mrs. Jay's, Bulletin 1903, Item 2 and Bulletin 1925, Item 6. Director affirmed. Opinion not approved for publication by the Court Committee on Opinions).

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against	)
MRS. JAY'S, INC. t/a Mrs. Jay's 909-911-913 Ocean Avenue Asbury Park, N. J.	) SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-5, issued by the City Council of the City of Asbury Park.	)

Anschelewitz, Barr, Ansell & Bonello, Esqs., by Robert I. Ansell, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

On March 17, 1970 Conclusions and Order were entered herein suspending the license for thirty days, for permitting and suffering immoral activities on the licensed premises. Re Mrs. Jay's, Inc., Bulletin 1903, Item 2.

On March 30, 1970 the said order was amended affirming the suspension, but deferring the effective dates of said suspension to be fixed by further order.

Upon appeal from the Director's Order filed in the Superior Court, Appellate Division, a supplemental order was entered by the Director on July 7, 1970 fixing the thirty days suspension to become effective on July 22, 1970.

Thereupon the appellant filed an amended notice of appeal to include an appeal from the said order. A motion to stay the imposition of the suspension pending the appeal denied by the Appellate Division, but a stay was granted by the Supreme Court of New Jersey on August 6, 1970, pending determination by the Superior Court, Appellate Division.

The Court affirmed the Director's action on March 15, 1971. Re Mrs. Jay's, Inc., t/a Mrs. Jay's v. Richard C. McDonough, Director not officially reported, recorded in Bulletin 1967, Item 2. Thus, the suspension may now be reimposed.

Accordingly, it is, on this 19th day of March 1971,

ORDERED that the thirty days suspension heretofore imposed and stayed during the pendency of this appeal be and the same is hereby reinstated against Plenary Retail Consumption License C-5, issued by the City Council of the City of Asbury Park to Mrs. Jay's, Inc., t/a Mrs. Jay's, for premises 909-911-913 Ocean Avenue, Asbury Park, * commencing at 3:00 a.m. Monday, April 5, 1971, and terminating at 3:00 a.m. Wednesday, May 5, 1971.

RICHARD C. McDONOUGH
DIRECTOR

* Amended Order dated March 26, 1971 amends the effective dates of suspension as set forth in the above Order to dates to be fixed by further Order of the Director because of present non-operation of licensed premises.

4. APPELLATE DECISIONS - BURKS v. PASSAIC.

MELVIN BURKS & MARJORIE BURKS, t/a BURKS BUNNY CLUB, Appellants, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF PASSAIC, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Mills, Doyle & Muir, Esqs., by Charles T. Hock, Esq., Attorneys for Appellants.
August C. Michaelis, Esq., by William P. Schey, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appellant appeals from the action of the respondent (hereinafter Board) whereby it denied the application for renewal of its plenary retail consumption license for premises 324 Passaic Street, Passaic, for the 1970-71 licensing period.

Upon the filing of the appeal the Director entered an order on June 30, 1970 extending the term of the appellants' 1969-70 license until further order herein.

Appellants petition of appeal alleges that the action of respondent was "arbitrary, unreasonable and capricious".

The Board in its answer denied the substantive allegations contained in the petition of appeal and defends that it considered all the facts and circumstances pertaining to the refusal to renew the license, and it acted reasonably and in the "best interest of the public".

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, during which time the attorneys for the respective parties were afforded full opportunity to present testimony and cross-examine witnesses.

The only witness to appear on behalf of the Board was local Police Sergeant Carmen Russo, who produced the official police record. It disclosed that during the 1969-70 licensing period, the Passaic police were summoned to the licensed premises on four occasions for reasons which may be summarized as follows:

January 9, 1970 - Minors being served
April 8, 1970 - Disorderly persons
April 19, 1970 - Assault and robbery
May 3, 1970 - Disperse a large group of people

Sergeant Russo stated that he had made no personal observations as to these incidents and that, while he was aware

that the general area was a trouble spot, he had no personal knowledge as to the reputation of the licensee.

He further testified that, in his official capacity, he was charged with the responsibility of maintaining records of liquor licenses, and he was responsible for investigations relative to the transfers of liquor licenses.

On cross examination, Sergeant Russo testified that his records indicate that no charges were instituted against the licensee with reference to the incident involving a minor on January 9, 1970. The "disorderly persons" complaint on April 8, 1970 resulted from a call from an employee of the licensee relative to the removal of a disorderly person from the licensed premises. The incident of April 19, 1970, which involved a patron who was on the premises that evening, did not occur on the licensed premises, nor is there any evidence presented as to how far from the premises the incident occurred. The incident of May 3, 1970 involved the dispersal of a large group of people from in front of the licensed premises.

It was further disclosed by Sergeant Russo that no charges of any kind were ever preferred against the licensee; there were no police reports of incidents for the first half of the 1969-70 licensing period; there are five taverns in the immediate area; the area is heavily populated, and incidents as described are not unusual.

On behalf of the appellants, Melvin Burks testified that he has owned the Bunny Club for about two and one-half years, during which time no charges were preferred against the license. He very candidly testified that in addition to the four incidents disclosed by the Police reports, there was an additional occasion when he summoned the police.

He further testified that since January 1970, the police have been making regular routine visits to the licensed premises at the rate of several times per week.

Appellants argue that there is no reasonable basis for the action of the Board.

There is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). If denied on reasonable grounds such acts will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. In matters relating to the renewal of licenses the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest". Lubliner v. Paterson, 33 N.J. 428 at 446 (1960). It has been consistently held that the Director's function on appeal is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for the opinion and if so, to affirm irrespective of his personal view. Broadley v. Clinton, Bulletin 1245, Item 1. However, where the municipal action was unreasonable or improperly grounded the Director will grant such relief or take such action as is appropriate. Bayonne v. B & L Tavern, Inc., Bulletin 1509, Item 1.

On the other hand the owner of a license privilege acquires through his investment therein an interest which is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). And where it appears that the denial was arbitrary, unreasonable or illegally grounded, the act will be reversed. De La Cruz v. Passaic, Bulletin 1908, Item 2.

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal 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." Fanwood v. Rocco, 33 N.J. 404 (1960).

I have carefully analyzed the transcript of the testimony and find that the only basis for denial of renewal presented at the hearing was the record of four incidents involving the licensed premises, none of which resulted in any adjudicated record of violations against the licensee. Indeed, at least one of the four was instituted by the licensee in an effort to maintain an orderly establishment. Further, I was impressed with the forthrightness of the appellant who candidly volunteered an additional incident which was not made part of the police reports, in which he again sought the aid of the local enforcement authorities in an effort to quell a minor disturbance.

The denial of the application for renewal could not reasonably have been based on the evidence presented at this hearing. From my examination of the totality of the record, I feel that the Board's refusal to renew this license was not justified by the evidence. Bayonne v. B & L Tavern, Inc., supra.

Accordingly, it is recommended that the action of the Board be reversed, and that the Board be directed to grant the license to appellants for the 1970-71 licensing period, in accordance with the application filed therefor.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

After carefully considering 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 22nd day of February 1971,

ORDERED that the action of respondent Board of Alcoholic Beverage Control of the City of Passaic, be and the same is hereby reversed; and it is further

ORDERED that respondent Board grant appellants' application for 1970-71 renewal nunc pro tunc in accordance with the application filed therefor.

RICHARD C. McDONOUGH
DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)
RUDOLPH BROTHERS, INC. t/a "The Farm" 1240 Brace Road Cherry Hill, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-22, issued by the Township Council of the Township of Cherry Hill.	)

Piarulli & Vittori, Esqs., by Frank E. Vittori, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

> "On December 30, 1969, January 6 and 9, 1970, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races and further on said date of January 9, 1970, 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 aforesaid gambling activity; in violation of Rule 7 of State Regulation No. 20."

The Division's case was presented through the testimony of two New Jersey State Police officers, who participated in an investigation of these premises on the dates charged herein.

Detective Sergeant Frank Roller, assigned to the Crime Task Bureau of the State Police, with an impressive background of gambling investigations, particularly of horse race activities and bookmaking, first visited these premises on December 30, 1969. He entered the premises to make a telephone call and then proceeded to the main bar. These premises consist of a restaurant bar catering to luncheons, dinners and special affairs, and the barroom is separated from the dining area by a semi-partition.

When he entered the barroom he noted that there were six or eight patrons seated at the bar and:

> "I noticed an air of gambling going on in the immediate area. By that I mean there was quite a few open comments made about horse racing."

He remained at this bar from 1:30 p.m. to 4:30 p.m. during which the patrons at the bar openly discussed horse racing and football games. One patron known as Jerry called to another patron identified as John Buckalew, and said: "Give me two across the board" and he named a horse. A National Armstrong racing sheet on top of the bar was open at the racing page. He explained that

"two across the Board" means "two dollars to win, two to place and two to show on a horse race."

The bartender, later identified as Lester Austin, was standing in the immediate vicinity of this betting activity. This bet was placed with a patron, later identified as John Buckalew. Several of the patrons scanned the Armstrong racing sheet and made notations on a small white paper which they handed to Buckalew. Several of the patrons asked the bartender about football games being played on New Year's Day and one patron made notations on one of the white tablets, tore off the top page and handed it to the bartender, who placed it in his pocket.

During this visit other slips with notations were passed to Buckalew. Also, during this period, a person known as Duke handed Buckalew several bills while openly discussing with him horse race betting, football games and other sporting events. The witness estimated that at least six transactions were made with Buckalew, in the presence of Austin.

State Trooper Ronald Taylor, a member of the Organized Crime Task Force Bureau, was assigned by Sergeant Roller to continue the investigation of these premises and entered the premises on January 6, 1970 at approximately 1:00 p.m. Austin was engaged in his usual duties as a bartender; the witness seated himself near Buckalew who was then present. The general conversation during his two and a half hour stay was about "horse racing, sports, betting, losses on betting, the recent arrest of known bookmakers in the area."

Buckalew was called to the telephone and returned to the bar shortly thereafter with a white pad. A patron called for the pad; Buckalew passed the pad to him and the patron wrote some numbers on the pad and handed it to Buckalew. Buckalew tore off the top sheet of the pad, folded it and put it in his pocket. This patron stated that he has the "horse for the day".

A short while later a patron, identified as Duke, entered the bar, extracted numerous sheets of paper from his inside pocket and spread them on the bar. He took the white pad from Buckalew and proceeded to write numbers on that pad. He then gave it to Buckalew who ripped off the top sheet and placed it in his pocket.

A short while later, Austin took a newspaper which he opened to the horse pages and brought it to Freddie (the other bartender) who was stationed at the opposite end of the bar. Freddie looked at the page, wrote down a notation on the pad spread on the bar, and came back to Austin with the paper folded. Freddie handed him the paper, together with a bill of United States currency. Austin then placed that in his pocket. The witness stated that, from his experience, this transaction constituted a "horse bet".

During all of this time discussions among the patrons and the bartenders related to horse betting and other sports events and the Armstrong racing sheet was freely passed among the patrons.

On January 9, 1970, Sergeant Roller and Detective Taylor entered the subject premises at 2:00 p.m. and seated themselves at the bar. Arrangements had theretofore been made to conduct a raid at the premises, and other State Police officers together

with an agent of this Division stationed themselves at a point of surveillance immediately outside the premises. Roller and Taylor observed that Buckalew was then present and seated at the bar about three stools away from Roller, and another bartender was then on duty. Upon inquiry, he was told that Austin was out to lunch and would return shortly.

Buckalew was engaged in a conversation with a friend seated to his left. The conversation related to the placing of an "If" bet. It was explained that an "If" bet cannot be placed at the race track, but can only be placed with a bookmaker. Buckalew had the National Armstrong Daily racing sheet in front of him and wrote some numbers on a scratch pad which he then put on the bar. In fact, Buckalew wrote several horse bets on horses running at several tracks on this paper. The slips containing the bets were then handed to Austin, who had reentered the premises at about 2:05 p.m. At about 2:10 p.m. the other officers entered the premises a warrant was produced and read to the bartender by Sergeant Roller, and a search of the premises took place.

A search of Buckalew revealed a horse bet noted on a business card with the notation "7-A Hagley" (the name of a horse). Another notation, 8-M, was designated as the eighth race at Monmouth and the name "Royal Crisis" appears. That was also a "horse bet". Buckalew also had in his possession a small white paper with betting notations, and another white card with two horse bets written thereon.

A search of Austin revealed $101 in currency in his right trousers pocket and a white paper with several horse bets in his left front trousers pocket. Taylor described the slip of paper extracted from Austin's pocket as a slip containing six horse bets on various tracks. He compared the bets with the Armstrong racing sheet which was found on the person of Buckalew, and noted that those horses reflected on the slip were running on that particular day at Liberty Bell.

The first item on the slip contained an "If" bet which the witness stated could only be played with a bookmaker. The second bet was on a horse running at the Bowie, Maryland race track. Another bet reflected on the slip was placed on a horse running at the Narragansett race track, Providence, Rhode Island. This was a "reverse" bet which could not be played at a horse race track, but could only be played through a bookmaker. Another transaction involved a bet on a horse running at Tropical race track, in Florida. That, too, was an "If" bet.

Lester Austin, the bartender on the dates charged herein (and who is still employed at the subject premises), gave the following account: The patrons at this bar are sports fans who usually discuss sporting events "what horses they like, what they bet, what track they're going to, things like that". He is a player, and visits the track whenever he is off duty. When he is on duty he usually places bets with patrons who were planning to visit the track. He denied placing any bets with bookmakers or that Buckalew was engaged in bookmaking operations.

He recalled the incident on January 9, 1970 herein, where it is alleged that Buckalew entered with a slip of paper containing horse bets. He admitted that Buckalew handed him a slip of paper containing the bets which were found in his pocket, but he did not know that it contained horse bets. He was going to throw the paper out when Buckalew said "Don't throw that out. I need that." He started to hand it back to him and Buckalew said "I want you

to look at that a minute." Because he was busy he put the paper in his pocket; and "the next thing the raid took place." Finally, he asserted that he has been a bettor on horse races for the past fifteen years, but that he had never seen bookmaking activities take place at the premises.

On cross examination he admitted that several of the bets reflected on the slips were bookmaker's bets, i.e. "reverse" and "if" bets but he denied knowing much about them.

John Buckalew testified that he is the owner of a printing establishment and patronizes this facility almost daily. He stated that he makes bets through friends of his who visit the race tracks. He has personally gone to the race track only about three times in his entire life. He recalled that on January 6, 1970, a patron by the name of Duke did come over and pay him some money which was the result of Duke's "being at the track the night before and taking $2 of mine on a partnership bet, and I didn't realize it, but he had won the Exacta the night before and that was split from that." He explained that the telephone calls which he received at the premises were business calls from his customers. However, he denied that he was engaged in bookmaking activities.

On cross examination he admitted placing bets on tracks as far away as Rhode Island and Florida, but never with a bookmaker, always with a patron or a "vacationer". However, he did not know the name and address of the persons with whom he had placed bets nor did he know the last name of Duke whom he identified as "a manufacturer's representative of some kind".

William J. Rudolph, secretary of the corporate licensee and a principal stockholder thereof, testified that he was not present at the premises on December 30, 1969 and January 6, 1970, but was in the rear office of these premises on January 9, 1970, at the time the raid was conducted by the State Police officers. He had no recollection of any bookmaking activities, although he knew that there was a considerable amount of "talk" about betting on horse racing among the patrons. Further, he knew that his bartender was a horse race player and in fact, he frankly acknowledged that he bets on horses very frequently. He seldom went to the track but placed his bets with his bartenders. He also knew that Austin carried bets for other patrons.

Whitney H. Carleton, Jr., a regular patron of these premises denied knowing anything about any bookmaking activities. He did hear patrons discuss "horses, the football games and basketball".

On cross examination he admitted that he was not in the premises on December 30, 1969 or January 6, 1970. On January 9, 1970, the date of the raid, he had lunch in the dining room, but did not know what transpired at the bar.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the Division is required to establish its case by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373. In other words, the finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

From my evaluation and assessment of the testimony, I am persuaded that the version given by the Division's witnesses was credible, and accurately depicted what occurred on the dates in question. I find it particularly significant that on the visits made by the State troopers they found that the discussions and the betting on horse races were done openly and with participation of the bartenders. I disbelieve the testimony of the witnesses for the licensee, particularly that of the bartender, Austin, that bets were made through patrons who went to the tracks, since most of these bets were of the nature that could not be made at the track but only through bookmakers. It strains credulity to believe that bets made at such distant points as Tropical in Florida and in Rhode Island were made through "vacationers" who happened to patronize these premises.

Rudolph, the principal stockholder, frankly admits that he frequently placed bets with the bartender and knew that the bartender was a frequent horse race bettor. Further, he admitted that the talk about betting took place constantly in this bar. The presence of horse bets slips which were seized at the time of the raid, together with the Armstrong racing sheet, were empiric evidence of the proscribed activities as delineated in the said charge.

The licensee is, of course, responsible for the actions of its agents, servants and employees. Rule 33 of State Regulation No. 20. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951); Cf. Mazza v. Cavicchia, 28 N.J. Super. 288 aff'd 15 N.J. 498 (1954).

I, therefore, conclude that the charge herein has been established by a fair preponderance of the credible evidence. It is, accordingly, recommended that the licensee be found guilty of the said charge.

The licensee has a previous record of suspension by the local issuing authority for sale of alcoholic beverages to minors, as follows: for five days effective January 17, 1960; and for twelve days effective October 1, 1962.

The prior record of suspension for dissimilar violations occurring more than five years from the date of the said charge disregarded, it is, further, recommended that the license be suspended for sixty days. Re Flat Iron Tavern, Inc., Bulletin 1915, Item 4.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 19th day of February 1971,

ORDERED that Plenary Retail Consumption License C-22, issued by the Township Committee of the Township of Cherry Hill to Rudolph Brothers, Inc., t/a "The Farm" for premises 1240 Brace Road, Cherry Hill, be and the same is hereby suspended for sixty (60) days, commencing at 3:00 a.m. Monday, March 8, 1971, and terminating at 3:00 a.m. Friday, May 7, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE OF DRINKS FOR OFF-PREMISES CONSUMPTION - HINDERING INVESTIGATION - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against NICHOLAS CALLAHAN t/a Club Rendezvous 829 Harrison Avenue Kearny, N. J. Holder of Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Town of Kearny.	CONCLUSIONS AND ORDER

Joseph F. McCarthy, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded non vult to the first charge and not guilty to the second charge, as follows:

"1. On Sunday, September 20, 1970, you sold an alcoholic beverage not pursuant to and within the terms of your plenary retail consumption license as defined by R.S. 33:1-12(1) viz., in that you made a sale of a mixed drink of an alcoholic beverage in a cardboard container for consumption off your licensed premises, in violation of R.S. 33:1-2.

"2. On Sunday, September 20, 1970, between the hours of 4:45 P.M. and 5:05 P.M., you directly or indirectly, through a person employed on your licensed premises as a bartender, failed to facilitate, hindered, delayed and caused the hindrance and delay and attempted to hinder, delay and cause the hindrance and delay of an investigation and inspection of your licensed business and premises, and of a search thereof, then and there being conducted by Investigators of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey; in violation of Rule 35 of State Regulation No. 20."

Agent R testified that on Sunday, September 20, 1970, at 4:30 p.m., he, accompanied by Agent G, visited the licensed premises, bought an illegally sold alcoholic beverage (to the charge of which a non vult plea has been entered), left the premises and returned to inform the bartender of the violation and secure the residue of the beverage for evidence. The bartender became hostile, grabbed the person of the agent, and seized the container causing a portion of its drink to spill on his person.

In corroboration Agent G testified that the bartender ran into Agent R, grabbing the container, spilling ice and water on Agent R and on the floor. The actions of the bartender so alarmed the patrons that the police were called before order was restored. In response to the question "About how much time was the investigation delayed because of Mr. Dimichel's [the bartender] conduct", Agent G responded "Oh, about fifteen minutes."

The licensee produced testimony of the bartender and two patrons. One patron (John Tomnay) thought a holdup was in progress as he did not see the agents identify themselves to the bartender. The witness left the premises and called the police. The other patron (Frank Prusinowski) testified that he too thought the action of the agents was that of holdup men; the agents did not identify themselves. On cross examination he admitted that one of the agents had offered him a dime with which to call the police. Both patrons had been drinking for more than two hours prior to this incident.

The bartender (Anthony Dimichel) admitted that the agents had displayed their identification and, despite this, the bartender "approached him and tried to get the bottle, but I didn't push him. And then he backed up and the container spilled on him." In response to the question on cross examination "But still you said you went after them to get the bottle back", he replied "Yes. That upset me because they went in back of the bar without me being there."

By these admissions the testimony of the agents is substantially corroborated by the bartender, leaving no basic factual issue in doubt. The testimony of the patrons merely confirms the difficulties the agents experienced, confronted with an excitable bartender.

A basic principle is worthy of emphasis here. In disciplinary proceedings a licensee is fully accountable for all violations committed or permitted by his agents, servants or employees. Rule 33 of State Regulation No. 20. Cf. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

I conclude that the second charge herein has been established by a fair preponderance of the credible evidence, and recommend that the licensee be found guilty of said charge.

Licensee has a prior adjudicated record. He received a suspended penalty on a plea of guilty on December 13, 1961 by the municipal issuing authority for sales to minors, and by the Director for sixty days effective July 17, 1967, for gambling (lottery) on the licensed premises. Re Callahan, Bulletin 1751, Item 2.

It is further recommended that the license be suspended on the first charge for a period of ten days (Re Plain and Fancy Tavern, Bulletin 1934, Item 4), and on the second charge for a period of ten days (Re Sanderson, Bulletin 1885, Item 5), to which should be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Sanderson, supra), or a total of twenty-five days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 19th day of February 1971,

ORDERED that Plenary Retail Consumption License C-19, issued by the Mayor and Council of the Town of Kearny to Nicholas Callahan, t/a Club Rendezvous, for premises 829 Harrison Avenue, Kearny, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, February 22, 1971, and terminating at 2:00 a.m. Friday, March 19, 1971.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FALSE STATEMENT IN APPLICATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
JACK'S BAR, INC. 312 Cookman Avenue Asbury Park, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-23, issued by the City Council of the City of Asbury Park.	)

Licensee, by Joachim A. Mancino, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on November 20, 1970 it sold mixed drinks of alcoholic beverages to two minors, both age 18, in violation of Rule 1 of State Regulation No. 20, and (2) in application for its license for the current period it failed to disclose a prior license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective September 18, 1967 for sale of alcoholic beverages to a minor, non-disclosure of which being the subject of the second charge.

The license will be suspended on the first charge for fifteen days (Re Kelly, Bulletin 1859, Item 7), to which will be added ten days by reason of the record of the suspension for similar violation occurring within the past five years (Re Glitter Club, Inc., Bulletin 1883, Item 2), and on the third charge for ten days (Re Jule's Bar, Inc., Bulletin 1939, Item 2), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 3rd day of March 1971,

ORDERED that Plenary Retail Consumption License C-23, issued by the City Council of the City of Asbury Park to Jack's Bar, Inc., for premises 312 Cookman Avenue, Asbury Park, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Monday, March 8, 1971, and terminating at 3:00 a.m. Wednesday, April 7, 1971.

RICHARD C. McDONOUGH
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS, LOTTERY) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
EL LIDRO, INCORPORATED t/a "El Lidro Bar & Grille" 17 E. West Jersey Avenue Pleasantville, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-8, issued by the Common Council of the City of Pleasantville.	)

Feinberg & Ginsburg, Esqs., by Edward I. Feinberg, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to Charges (1) and (2) alleging that on divers dates between October 28 and November 10, 1970, it permitted the acceptance of horse race bets, and on said date of November 10, 1970 possessed tickets in two lotteries in form of "raffles" or "drawings", on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re J.K.M. Corporation, Bulletin 1844, Item 5.

Accordingly, it is, on this 10th day of March 1971,

ORDERED that Plenary Retail Consumption License C-8, issued by the Common Council of the City of Pleasantville to El Lidro, Incorporated, t/a "El Lidro Bar & Grille", for premises 17 E. West Jersey Avenue, Pleasantville, be and the same is hereby suspended for fifty-five (55) days, commencing at 1:00 a.m. Thursday, March 25, 1971, and terminating at 1:00 a.m. Wednesday, May 19, 1971.

RICHARD C. McDONOUGH
DIRECTOR