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 2332 NOVEMBER 13, 1979

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ITEM

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1. APPELLATE DECISIONS - PARRILLO'S, INC. v. BELLEVILLE.

PARRILLO'S, INC., APPELLANT, V. BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE, RESPONDENT.	:	ON APPEAL CONCLUSIONS AND ORDER

Allen C. Marra, Esq., Attorney for Appellant.
John R. Scott, Esq., Attorney for Respondent.

Initial Determination Below
Edward D. Beslow, Administrative Law Judge, c/b - April 2, 1979

BY THE DIRECTOR:

Written Exceptions to the Report of the Administrative Law Judge of the Office of Administrative Law were filed by the appellant, pursuant to N.J.A.C. 13:2-17.14.

In its Exceptions, appellant argues that, as to specific incidents of assault, there was "no finding whether the appellant could or should have prevented the fights". Testimony of both lay witnesses and municipal police officers was introduced concerning incidents of violence on October 27, 1978, November 5, 1978, November 18, 1978, November 22, December 30, 1978, January 5, 1979 and January 7, 1979.

Conflicting testimony was apparent in only two cases, the December 30, 1978 incidents concerning the alleged assaults by appellant's employees on James De Angelia and Vincent Rispoli. The appellant's employee, Thomas Cramer, gave a contemporaneous statement to Officer William Escott, in which he admitted striking Vincent Rispoli with his night stick. Although he denied the same at subsequent disciplinary hearings, but acknowledged that his recollection was vaque after being allegedly kicked in the groin by Rispoli.

Giving Cramer's testimony the most favorable inferences, it is apparent that his use of force to eject a patron exceeded reasonable or necessary levels. The fracturing of

Rispoli's nose and other injuries, requiring five days hospitalization, which occurred some distance after forceable removal from the licensed premises, could reasonably have been found by the Board to partake of retaliation, rather than appropriate control of a disruptive patron.

Similarly, the incident in appellant's parking lot with James De Angelia could have reasonably been found to constitute an unwarranted touching and confrontation, precipitated or enhanced by appellant's employee, Cramer.

I am satisfied that the Board could have reasonably reached its determination that appellant allowed, permitted, or suffered the December 30, 1978 acts of violence by a fair preponderance of the credible evidence predicated upon the record before it.

Those incidents relayed by municipal police officers as to altercations or divers specified dates constituted direct observation by them in the course of their employment. They need not be corroborated by lay witnesses as to their effect on the Community, as alleged by appellant in another aspect of its Exceptions. A substantial number of such incidents of violence about the licensed premises, caused by patrons or persons permitted to remain on the licensed premises' parking lot constitutes a nuisance or predicate for disciplinary penalty within the intendment of N.J.A.C. 13:2-23.6. Dome Lounge Corp. v. Piscataway, Bulletin 2252, Item 1; Feldman v. Irvington, Bulletin 2143, Item 2, aff'd by App. Div. (Docket No. A-1814-73), recorded in Bulletin 2168, Item 1.

As the Supreme Court articulated, in Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947) within the meaning of the Alcoholic Beverage Law and its Regulations, the word "suffer" imposes responsibility on a licensee, regardless of knowledge, where there is a "failure to prevent the prohibited conduct by those occupying the premises with his authority." This obligation extends to patron activity outside the licensed premises as well. Garcia v. Fair Haven, Bulletin 1149, Item 1; Conte v. Princeton, Bulletin 139, Item 8. An affirmative obligation is imposed on a licensee which cannot be avoided by closing its eyes and ears. Brahm's Tavern, Inc. v. Irvington, Bulletin 2288, Item 3.

I find that the aforesaid incidents of violence, in conjunction with the additional proofs of loud noises, foul and abusive language, horn blowing, parking violations and obstructions are findings supported by the record as a whole. Thus, the finding of guilt by the Board was not manifestly

erroneous, unreasonable or predicated upon improper conclusions of fact or mistake of law. David-Carlene Corp. v. West New York, Bulletin 2294, Item 1. Therefore, I find these Exceptions of appellant to be without merit.

Appellant further argues, in its Exceptions, that the definition attributed by the Administrative Law Judge to "nuisance" is out of context to the facts sub judice, insofar as the proofs lacked support from persons other than municipal police officer. I reject this Exception as without foundation in law. Whatever language may be chosen to define a "nuisance", I find that the quantity and quality of incidents, which, independently, constitute specific regulatory violations, in combination with occurrences attributable to the operation of appellant's licensed business necessitating police intervention, warrant the conclusion that the appellant's premises are a "trouble spot". Nordco, Inc. v. State, 43 N.J. Super. 277, 282 (App. Div. 1957); A.H.S., Inc. v. Wall Township, Bulletin 2308, Item 1, aff'd App. Div. (Docket No. A-496-78 - decided March 1, 1979). Such finding is synonymous with "nuisance".

I note for the record that the testimony submitted on behalf of the appellant consisted mainly of general statements of policy and operational experiences as to crowd control and absence of problems. Such statements and denials are insufficient to rebut proofs as to specific incidents.

Finally, appellant contends that the penalty imposed of one hundred and eighty (180) days suspension of license is excessive. The matter of imposition of penalty is vested, in the initial instance, with the local issuing authority. The penalty is severe enough to require appellant to eliminate the nuisance situation, yet not as severe as outright revocation of license which, in the Division precedents, could have been properly imposed. Dome Lounge Corp. v. Piscataway, supra; Moon Star, Inc. v. Jersey City, Bulletin 2200, Item 1. Thus, I find this Exception to be without merit.

I, therefore, find that the appellant has not met its burden of establishing that the action of the Board was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6. I shall affirm the action of the Board, dismiss the appeal and reimpose the one hundred and eighty (180) days suspension of license, less credit for seven (7) days already served. Inasmuch as a license suspension of 105 days previously imposed by me has been stayed by the Superior Court - Appellate Division pending their determination, I can commence this suspension at the present time.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Administrative Law Judge's Report and the written Exceptions filed thereto by the appellant, I concur in the findings and recommendations of the Administrative Law Judge, as supplemented herein, and adopt them as my conclusions herein.

In view of the fact that appellant was closed for a period of seven (7) days, as a result of this penalty, the suspension period herein will be for the remaining life of One Hundred-Seventy-Three (173) days.

Accordingly, it is, on this 26th day of April, 1979,

ORDERED that the action of the Board of Commissioners of the Town of Belleville be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License No. 0701-33-032-001, issued by the Board of Commissioners of the Town of Belleville to Parrillo's, Inc., t/a Parrillo's, for premises 104 Harrison Street, Belleville be and the same is hereby suspended for the balance of its term, to wit, midnight, June 30, 1979, commencing 2:00 A.M. Wednesday, May 9, 1979 and it is further

ORDERED that upon any renewal of the said license which may be granted for the 1979-80 license term, be and the same is hereby suspended until 2:00 A.M. Monday, October 29, 1979.

JOSEPH H. LERNER
DIRECTOR

APPENDIX

Initial decision of Administrative Law Judge Beslow

PARRILLO'S INC., APPELLANT	)	
	)	
V.	)	INITIAL DECISION
	)	
	)	DOCKET NO. 4318
BOARD OF COMMISSIONERS OF THE	)	MUN. REV. NO. 7220
TOWN OF BELLEVILLE, RESPONDENT	)	OAL. # ABC 96-79

APPEARANCES:

Allen C. Marra, Esq., Millburn, New Jersey,
for appellant.

John R. Scott, Esq., Belleville, New Jersey,
for respondent.

BEFORE EDWARD D. BESLOW, ADMINISTRATIVE LAW JUDGE, c/b:

Parrillo's Inc., (appellant) appeals to the Department of Law and Public Safety, Division of Alcoholic Beverage Control, pursuant to N.J.A.C. 13:2-17 et seq., from an action of the Board of Commissioners of the Town of Belleville (Board).

On January 30, 1979, after a public hearing, the Board found appellant guilty of the following charges:

1. Permitting fights and brawls in or about the licensed premises without proper supervision or safeguards for the safety of patrons;

2. Continually permitting patrons to loiter in and about the public sidewalk and parking lot areas immediately adjacent to the premises especially during early morning hours;

3. Failure to maintain adequate crowd control with respect to patrons entering and leaving the establishment, many of whom create disturbances on the premises, in the parking lot area and in the surrounding neighborhood, most of which occurred during the early morning hours;

4. Maintaining a public nuisance in that patrons of the establishment continually and regularly disturb the peace and quiet and dignity of the neighborhood by blowing horns, yelling obscenities, fighting, shoving, brawling and generally creating a disturbance, most of which occurred during the early morning hours.

As a result of these findings, appellant's Plenary Retail Consumption License No. 0701-33-032-001, for premises located at 104 Harrison Street, Belleville, New Jersey was suspended for a period of one hundred and eighty (180) days commencing on February 2, 1979 at 2:00 a.m.. The Board's decision was formalized in its Resolution No. M-31 dated January 30, 1979.

In its Petition of Appeal, appellant contends that it was deprived of a fair and proper hearing; that the Board's decision was arbitrary, tainted, politically motivated, contrary to the facts presented at the public hearing, unjust and excessively harsh and contrary to the reasons set forth in N.J.S.A. 33:1-31(a) through (j); and that the four charges levied against appellant duplicated false charges filed against it in November, 1978.[1] Appellant further contends that no evidence was presented, other than by police, showing that it violated the peace and quiet of, or acted as a public nuisance to, any person in the neighborhood as alleged in charges #2, #3, and #4 previously set forth.

Appellant also sought a stay of the suspension of its license pursuant to N.J.S.A. 33:1-31. On February 2, 1979, Director Joseph H. Lerner signed an order denying the stay on the grounds that the charges are similar to previous charges in a pending matter on appeal to the Division of Alcoholic Beverage Control in which a stay had been granted.

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1. On November 9, 1978, the Board found appellant guilty, after hearing, on six charges similar in nature to the charges in the present matter and suspended appellant's plenary license for a period of one hundred and twenty (120) days. In an order dated March 14, 1979 (Mun. Rev. #7220), the Director of the Division of Alcoholic Beverage Control reversed the Board as to its finding that the appellant had obstructed a police investigation pertaining to a knifing incident on the licensed premises and affirmed the Board's actions as to the remaining five charges. As a result of reversing the previously mentioned obstruction charge, the Director modified the imposed penalty to a suspension of one hundred and five (105) days to commence on March 26, 1979 at 2:00 a.m. for the balance of the term of the license, or until midnight of June 30, 1979. It was further ordered that any renewal of the license which may be granted would be suspended until July 9, 1979

He further cited to the fact that the Hearing Examiner in that matter had recommended an affirmance of the suspension order of the Board and that the alleged violations in the second suspension (the now pending matter) occurred subsequent to the alleged violations considered in the earlier appeal.

On February 9, 1979, the Appellate Division granted leave to appeal the Director's February 2, 1979 order and also granted a stay of that order. On February 21, 1979, the court, in a per curiam decision (A 1893-78), reversed the Director's order of February 2, 1979 and remanded the matter to the Division of Alcoholic Beverage Control. Jurisdiction was not retained by the court.

Pursuant to the provisions of N.J.S.A. 52:14F-1 et seq., this matter was forwarded by the Division of Alcoholic Beverage Control to the Office of Administrative Law to be set for hearing. After proper notice, a hearing de novo was held in this matter on February 16, 1979 pursuant to N.J.A.C. 13:2-17.6. Appearances are noted above. The Board offered no witnesses at this hearing but, in accordance with N.J.A.C. 13:2-17.8, introduced into evidence the transcript of the hearing held before the Board on January 30, 1979. Appellant introduced six witnesses who were made available to the Board for cross-examination. At the January 30, 1979 hearing before the Board, the Town of Belleville called twenty witnesses while the appellant called four witnesses. Of the Town's witnesses, six were private citizens who testified as to altercations which allegedly occurred on or about the licensed premises while the remainder were members of the local police department.

Delores Baulo testified that on January 7, 1979 she was struck in the face with a stick during an argument on the licensed premises stemming from a spilled drink. It is apparent from her testimony that some time elapsed between the start of the argument and the moment that she was struck. She further stated that she was placed on a chair in the immediate area of the incident and waited five minutes before being escorted to the kitchen, during which time the fight continued. She was later taken off the premises by her brother and driven to the hospital by the police where she was treated for a concussion and a broken nose.

Testimony was taken involving two separate incidents that evidently occurred within ten to twenty minutes of each other on or about the licensed premises on December 30, 1978.

James DeAngelis lives in a four family residence adjacent to the parking area of the appellant. He testified that on the night in question, he entered the parking lot to park in a space that was being secured by his mother. He observed what he interpreted to be an argument between his mother, Florence DeAngelis, and Thomas Cramer, a private security guard employed at the licensed premises. After observing Mr. Cramer touching his mother, Mr. DeAngelis stated that he left his car and told Cramer to leave Mrs. DeAngelis alone. Mr. Cramer was quoted as allegedly stating "You punk, shut up." Words were exchanged and Mrs. DeAngelis stepped in between Cramer and her seventeen year old son. Mr. DeAngelis further stated that Cramer then pulled out his night stick, and with his free hand, reached across his mother's shoulder and struck him in the face, splitting his lip. The testimony of Mr. DeAngelis was supported by that of his mother, Florence DeAngelis, and a family friend, Gloria Williamson, who had summoned the police. The testimony of these witnesses indicates that they left the immediate scene of the incident for ten to twenty minutes while awaiting the arrival of the police. Upon their return to the parking area, they became aware that during their absence, a second incident had occurred involving Vincent Rispoli, a patron, Mr. Cramer and several other persons, allegedly employees of the appellant.

Mr. Rispoli testified before the Board that he had attempted to leave the building to get a breath of fresh air. He was denied exit, probably because of appellant's policy of not allowing re-entry without payment of an additional cover charge. As he walked back inside, unaware of any reason why he was not permitted to exit, he directed obscene remarks towards the guards. At that point, Mr. Rispoli alleged that Mr. Cramer instructed Mr. Muccio and Mr. Miller, employees of the licensed premises, to throw him out. He stated that the two grabbed him, dragged him out of the building and said, "Get the club; get the club." Mr. Cramer was slightly behind them. Mr. Rispoli stated that as he struggled to break free, he saw Cramer attempting to hit him with a night stick. Then, as the two men pinned him against a car parked in the parking lot, Mr. Rispoli testified, that Cramer struck him several times with the night stick after which he was able to break loose, bleeding from the head.

Peter Salgado, a friend of Mr. Rispoli, testified that he witnessed the incident from the time of the exchange of words between Rispoli and the appellant's employees inside the building, and his account corroborates that of Mr. Rispoli. Mrs. DeAngelis and Gloria Williamson had also testified that when they returned to the parking lot, they saw Rispoli bleeding from the head.

Officer William Escott, of the Belleville Police, testified that when he arrived on the scene he found Mr. Rispoli standing in the parking area, bleeding heavily from the left side

of his forehead. Officer Escott further stated that Mr. Cramer told him that Mr. Rispoli had caused a disturbance inside the building, was asked to leave and, once outside, started to push and shove. Cramer indicated to Officer Escott that he came to the aid of the appellant's employees whereupon Rispoli kicked him in the groin. At that point, Cramer struck him several times with his night stick. Officer Escott testified that these remarks were made to him by Cramer within a half hour after his arrival on the scene at approximately 12:45 A.M.

Detective Michael Patrillo testified that he arrived on the scene with the other officers at approximately 12:45 A.M. There were between 100 - 125 people in the parking lot and several skirmishes had started and were still going on when he took Mr. Rispoli to the hospital for treatment of a large cut over his left eyebrow. Detective Patrillo was not able to get statements from Mr. Cramer and Mr. Rispoli until January 2, 1979. He read from Cramer's statement:

> "Did you tell the police officers that you struck a man with a night stick?"
> Ans - "To be honest with you, I don't recall saying that."
> "Did you strike anyone with your night stick?"
> Ans - "Not that I can remember."

Detective Patrillo further testified that Rispoli denied striking anyone during the incident. The statement of Steven Hill, a friend of Mr. Rispoli, taken on the night of the incident. supports the testimony of Rispoli. The statement of Terrence Miller, an employee of appellant, indicates that Mr. Rispoli had been loud and obscene, and had to be escorted out.

Appellant produced John Papera, a frequent patron, and Sam Dogan, a private security guard on duty at the licensed premises, to testify as to this incident. Mr. Papera stated that he opened the door of the building to ascertain the weather when he saw Mr. Miller attempting to hold Rispoli back. Cramer was standing behind Miller. Papera then testified that he saw Rispoli kick Cramer, causing him to fall to the ground. The witness then went to the aid of Cramer and assisted him into the building. Mr. Dogan testified that he had earlier escorted an intoxicated friend of Rispoli out of the building. He stated that when Rispoli attempted to go out and check on the situation and was told he would have to pay an additional cover charge to re-enter, Rispoli stated that he did not care and left the building. When Dogan walked out the door some time later, he found Cramer on the ground. He further testified that Cramer had told him that he had lost his night stick during the incident. Neither witness testified that they saw Rispoli being struck and both, as opposed to all other witnesses, stated that they saw no blood on Rispoli's person.

Mr. Cramer testified at the hearing on February 16, 1979. He stated that Rispoli had become abusive after his friend had been asked to leave and that he had been requested to escort Rispoli out of the building. He further testified that, once outside, Rispoli kicked him in the groin which eventually necessitated his being taken to the hospital for treatment. He went on to state that he had lost his night stick after being kicked and that he never struck anyone himself. Cramer verified that as an aftermath of this incident, he had filed a complaint against Rispoli for threatening to kill by word of mouth and attrocious assault while he, in turn, was charged with attrocious assault.

The police officers who came before the Board on January 30, 1979, testified to various and numerous disturbances on or about the licensed premises.

Sergeant Cornelius Berrigan testified that on October 27, 1978, as 300-400 patrons were exiting between 2:30 A.M. and 3:00 A.M., there was much noise, foul and abusive language, as well as several small fights which broke out in the parking lot. He stated that although the officers at the scene could see that punches were being thrown, it was impossible to ascertain who the aggressors were by the time the officers made their way through the crowd. The witness added that no one came forward to press charges although there was evidence of bruised faces, bleeding and torn clothing. He also stated that on the night of November 1, 1978, as 200-300 patrons exited the premises between 1:30 A.M. and 2:00 A.M., there was again loud noises, foul and abusive language and horn blowing and that on January 13, 1979, a patron's car was was towed away because it was blocking a neighborhood driveway.

Officer Alexander P. Freda testified that on October 31, 1978, eighteen summonses were issued in the area of the licensed premises for parking violations. He further stated that one car had to be towed away and that the fire department had to be summoned as a garbage dumpster in the parking lot had been set on fire.

Officer Joseph Oese testified that on the nights of November 4 and 23, 1978, twenty-five and twenty-two summonses for parking violations, respectively, were issued. He further testified that on each of those nights he was dispatched to appellant's premises in response to reports of fights taking place.

Officer Joseph Torterello testified that on November 5, 1978, he was dispatched to the licensed premises at closing time, approximately 3:10 A.M. From a police car parked across the street, he observed about 75-100 people in appellant's parking area creating noise by calling out to each other. The witness observed a fight in

progress, however the two combatants mingled into the crowd before the officers reached the scene. He further stated that it took approximately twenty minutes to disperse the crowd.

Officers Robert McDonald and Albert Spencer testified with regard to an incident on November 9, 1978, wherein a patron left appellant's building in an intoxicated state using loud and abusive language which eventually led to his arrest a short distance away from the licensed premises.

Officer Vincent Cappetta testified that at 2:30 A.M. on November 18, 1978, he observed fifty to sixty men exiting the licensed premises at one time"like a shoving match" and spilling into the parking lot and street. The seven police officers on duty at the scene went to the center of this crowd breaking up small fights. The witness further stated that on January 5, 1979, as the patrons were starting to leave at about 2:45 A.M., a fight involving fifteen people broke out in the premises' driveway area and proceeded to move along Harrison Street. On both dates, Officer Cappetta testified that there was substantial noise and automobile horn blowing.

Officer John Martucci testified that at closing time on November 22, 1978, at approximately 2:30 A.M., the crowd was very rowdy and uncontrollable. He further stated that a fight, involving three men, broke out at Harrison Street and Brighton Avenue with about fifty noisy onlookers.

Captain Carmen Zecca testified that on December 30, 1978, from 2:30 A.M. to 3:00 A.M., exiting patrons were loud and using abusive language. There was a blockage of traffic as cars stopped to pick up passengers, along with constant horn blowing.

Captain Robert Russomano prepared and offered a compilation showing the number of summonses issued in the vicinity of the licensed premises. This compilation (Exhibit P-1) sets out the summonses issued per month and can be summarized as follows:

Month	Number of Summonses Issued
June, 1978	16
July	23
August	21
September	172
October	375
November	201
December	184

The witness indicated that the increase in the number of summonses issued corresponds to the opening of the licensed premises on or about September 13, 1978.

Dominic Fiero, a principal of the appellant, testified at both the January 30, 1979 and February 16, 1979 hearings. Mr. Fiero stated that he employs between five and nine people for crowd control in the disco, which is primarily a liquor oriented dancing facility. In addition, at least two private security guards are on duty at the licensed premises every business night. He further testified that his employees have been instructed that, in the event of a disturbance on the premises, they are to ask those involved to leave, refund their cover charge and escort them out without manhandling them. He went on to state that firemen are at the licensed premises every night to check the capacity and the doors and that the police usually come in at closing and walk around. He was of the opinion that the local authorities had singled out his establishment and was subjecting it to harassing tactics although he knew of no reasons for such treatment. The witness testified that there was never a crowd control problem before the premises was operated as a disco and that he felt that there was no present problem of that nature. He further stated that he had inquired as to the possibility of renting a portion of the Morris Canal for use as additional parking space but had never received an answer to his request from the Town.

Debra Accocello, a local resident, Frank Constantino, Jr., a frequent patron who resides about one half mile away from the licensed premises, and Timothy DiDominico and Mr. Muccio, employees of the appellant, also appeared at the February 16, 1979 hearing and generally testified that there were no security or crowd control problems and that appellant conducted its operation in an orderly and proper manner with no disturbance to the peace and quiet and dignity of the surrounding area.

One of appellant's contentions is that the Board's decision was made contrary to the reasons set forth in N.J.S.A. 33:1-31 (a) through (j). That statute states, however, that:

> Any license, whether issued by the director or any issuing authority, may be suspended or revoked by the director, or the other issuing authority, may suspend or revoke any license issued by it, for any of the following causes:
> (g) Any violation of rules and regulations.

Pursuant to N.J.S.A. 33:1-39, the director may make such general rules and regulations as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of the Alcoholic Beverage law.

Among the subjects which these rules and regulations may cover is disorderly houses. It is clear that the authority granted to make rules and regulations is intended to be remedial of the abuses inherent in liquor traffic and is to be liberally construed (N.J.S.A. 33:1-73; In re Olympic, Inc., 49 N.J. Super. 299 (App. Div., 1958).

N.J.A.C. 13:2-23.6 provides that:

> (a) No licensee shall engage in or allow, permit or suffer in or upon the licensed premises:
> 1. Any lewdness or immoral activity;
> 2. Any brawl, act of violence, disturbance, or unnecessary noise;
> 3. 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.

It should be remembered that the sale of liquor has never been a business of right in this state (Grant Lunch Corp. v Driscoll, 129 N.J.L. 554 (E & A 1943), cert. denied 320 U.S. 801 (1944). There is no common, inherent natural or constitutional right to a liquor license as it is but a privilege (Eskridge v Division of Alcoholic Beverage Control, 30 N.J. Super 472 (App. Div. 1954). The liquor industry has been described as a business which may be restricted by such conditions as will limit to the utmost its evils (In re Larsen, 17 N.J. Super. 564 (App. Div. 1952). The right to prescribe conditions under which intoxicants may be sold is practically limitless with the power to do so vested in the Division of Alcoholic Beverage Control or other issuing authority pursuant to N.J.S.A. 33:1-31. As stated by the court in In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App. Div. 1953):

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

Unquestionably, the primary responsibility to enforce the law pertaining to retail licenses rests with the municipality (N.J.S.A. 33:1-24) which has the power to conduct disciplinary proceedings to suspend or revoke retail licenses (N.J.S.A. 33:1-31). While violation of the Alcoholic Beverage law may be criminally prosecuted, disciplinary proceedings are civil in nature. Therefore, guilt beyond a reasonable doubt need not be proved, but only by a preponderence of the believable evidence. And where there is sufficient competent evidence to support a determination, the courts will not disturb it (Benedetti v Board of Commissioners of the City of Trenton, 35 N.J. Super. 30 (App. Div. 1955).

The generally accepted gauge of administrative factual finality is whether the factual finding are supported by "substantial evidence" (Hornauer v Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956)) which as been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Universal Camera Corp. v National Labor Relations Board, 340 U.S. 474, 477, 71 Sup. Ct. 456, 459 (1951). The choice of accepting or rejecting the testimony of witnesses rests with the administrative agency and where that choice is reasonably made it is conclusive on appeal (Pilon v Board of Alcoholic Beverage Control of the City of Paterson, 112 N.J. Super. 436 (App. Div. 1970).

The witnesses called by the Town of Belleville gave uncontested testimony as to the occurrence of fights or brawls in or about the licensed premises on October 27, November 4, November 5, November 18, November 22, November 23, and December 30, 1978 and January 5 and January 7, 1979. The testimony of these witnesses also charged that, with regard to the two incidents of December 30, 1978, employees and agents of the appellant were the aggressors and provacators and, if believed by the Board, as it reasonably may have been, appellant would be held responsible pursuant to N.J.A.C. 13:2-23.28. The police witnesses also testified to numerous incidents of loud noises, loud, abusive and profane language and the congregation of large numbers of people outside the building in the early morning hours. These incidents showed a general pattern in that they usually occurred at closing time and lasted for approximately one half hour.

It has been held that a nuisance signifies anything that works hurt, inconvenience or damage to the general public (Mayor & Council of the Borough of Alpine v Brewster. 7 N.J. 43 (1951), and N.J.S.A. 2A:130-2 provides that "every building or place where the law is habitually violated is a nuisance." Additionally, in State v Berman, 120 N.J.L. 381, 382 (Sup. Ct. 1938), the court stated:

> While we find no definition of a disorderly house at common law, nor in our statute, yet under cases in our state, any house which a jury finds to be open to and frequented by persons who so conduct themselves there as to violate law and good order may be a disorderly house.

The Board has unquestionably determined that the guilt of the appellant, as to the four charges levied against it, was proven by a preponderance of the believable evidence. A review of the record in this matter results in the conclusion that there is sufficient competent evidence to support this determination and that it should not be disturbed on appeal. The appellant, in its Petition of Appeal, argues that the Board's decision was made

contrary to the facts presented at the hearing as no evidence was presented by the Town, other than by police officers, that the appellant had violated the peace and quiet of any person or acted as a public nuisance to any person in the neighborhood as alleged in charges #2, #4 set out previously. It is obvious, however, that if the Board believed the testimony of the police officers, given with the aid of their written reports, it was logical for the Board to conclude that the peace and quiet of the neighborhood was being adversely affected despite the fact that testimony by local residents was not received at the hearing. The licensed premises is not located in a vacuum but in a heavily populated residential area. It flies in the face of reason to believe that the continuous congregation of large numbers of patrons, loud noises and shouting, horn blowing and fighting and brawling will not result in any inconvenience or damage to the general public in that area.

Appellant also contends that it was deprived of a fair and proper hearing and that the Board's decision was arbitrary and politically motivated. The record, however, does not indicate that the appellant's due process rights were compromised in the least and it is void of any showing of impropriety on the part of the Board in reaching its determination.

The appellant further argues that the penalty imposed by the Board was unjust and so harsh as to cause undue hardship on it. It is settled law that the extent of any penalty imposed for violation of the Alcoholic Beverage law of the regulations promulgated thereunder rests within the sound discretion of the adjudicating authority (Benedetti, supra.; Mitchell v Cavicchia, 29 N.J. Super. 11 (App. Div. 1953), and the courts will interfere in the exercise of that discretion only in case of manifest error, clearly unreasonable action or some more untoward impropriety (Nordco, Inc. v State, 43 N.J. Super. 277 (App. Div. 1953). The appellant has continued to allow violations which are similar to charges for which it had recently been found guilty by the Board. The Board's decision, except for one charge not related to this pending matter, has been affirmed by the Director of Alcoholic Beverage Control in and order dated March 14, 1979. In light of the above, there is nothing to indicate that the one hundred and eighty (180) day suspension period ordered by the Board in this pending matter is arbitrary, a result of manifest error or that it is unwarranted under the existing circumstances (see Benedetti supra.)

Therefore, from a review of the record I FIND that:

1. Appellant is the holder of Plenary Retail Consumption License No. 0701-33-032-001 for premises located at 104 Harrison St., Belleville, New Jersey;
2. On January 30, 1979, the Board of Commissioners of the Town of Belleville, after hearing, found appellant guilty of

the four charges noted above and ordered that appellant's license be suspended for a period of one hundred and eighty (180) days;

3. On March 14, 1979, the Director of the Division of Alcoholic Beverage Control affirmed a previous suspension of appellant's license by the Board for similar violations although one charge, not related to this proceeding, was dismissed. The penalty imposed by the Director reduced the suspension period from one hundred and twenty (120) days to one hundred and five (105) days;
4. The Board's finding of appellant's guilt in this matter was supported by a preponderance of competent evidence;
5. The penalty imposed by the Board in this matter is not arbitrary or a result of manifest error and does not represent an abuse of its discretion;
6. Prior to the decision of the Appellate Division reversing the Director's order of February 2, 1979, which denied appellant a stay of the suspension pending determination of this appeal, the licensed premises was closed for a period of seven days.

CONCLUSION OF LAW

In view of the foregoing, the record in this matter reflects that the guilt of appellant, as to the four charges levied against it, has been established by a preponderence of the competent evidence and that the determination of the Board was not arbitrary or and did represent an abuse of its discretion. The appellant has not sustained the burden of proof imposed on it by N.J.A.C. 13:2-17.6 Therefore, the suspension period of one hundred and eighty (180) days imposed by the Board should not be disturbed by the Director of the Division of Alcoholic Beverage Control as the Board's decision complies with the guidelines set out in the pertinent statutory and case law. The appeal of appellant should be denied. As appellant was closed for a period of seven days as a result of this penalty, this suspension period should have a remaining life of one hundred and seventy-three (173) days to become effective after the expiration of any previously imposed penalties.

This action cannot be affected prior to the effective date of this order (45 days from the date of agency receipt of this order) unless the agency head acts to affirm, modify or reverse during the fourty-five (45) day period. N.J.S.A. 52:14B-10.

I hereby file with the Director of Alcoholic Beverage Control my Initial Decision in this matter and the record in proceedings.

April 30, 1979
DATE

Edward D. Beslow
EDWARD D. BESLOW, ALJ, c/b

April 2, 1979
DATE

Initial Decision received
by: Joseph H. Lerner, Direct
FOR AGENCY HEAD
Division of Alcoholic Beverage Control

DATE

FOR OFFICE OF ADMINISTRATIVE LAW

++++++++++++++

Joseph H. Lerner
Joseph H. Lerner
Director