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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 1978 .

June 8, 1971

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISION - DANNY'S RED BALL, INC. v. ELIZABETH.
2. APPELLATE DECISION - 570 MAIN, INC. v. PASSAIC.
3. DISCIPLINARY PROCEEDINGS (Elizabeth) - SUPPLEMENTAL ORDER.
4. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1970 THROUGH MARCH 31, 1971.
5. DISCIPLINARY PROCEEDINGS (Orange) - SUPPLEMENTAL ORDER.
6. DISCIPLINARY PROCEEDINGS (Long Branch) - SUPPLEMENTAL ORDER.
7. STATE LICENSES - NEW APPLICATION FILED.

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

BULLETIN 1978

June 8, 1971

1. APPELLATE DECISION - DANNY'S RED BALL, INC. v. ELIZABETH.

#3520, #3534)
Danny's Red Ball, Inc., t/a "Gene's",)
Appellant,) ON APPEAL
v.)
City Council of the City of) CONCLUSIONS AND
Elizabeth,) ORDER
Respondent.)

Fierro, Fierro & Mariniello, by Joseph R. Mariniello, Esq.,
Attorneys for Appellant.
Edward W. McGrath, Esq., by Daniel J. O'Hara, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Two separate appeals were filed by the appellant challenging the action of respondent City Council of the City of Elizabeth (Council) which, on August 7, 1970, revoked appellant's license and denied its application for renewal of license for the current licensing period. The appeals were consolidated and will be the subject of a single Hearer's report. The following background facts are relevant as a brief history of these proceedings.

In June 1970, appellant made application for renewal of plenary retail consumption license for the 1970-71 licensing period for premises located at 414-434 Highway #25, Elizabeth. On June 12, 1970, the Council filed charges in disciplinary proceedings against the licensee alleging

- (1) that on May 2 and May 3, 1970, it allowed, permitted and suffered upon its licensed premises lewdness and immoral activity consisting of many men who were homosexuals acting toward each other in a lewd manner and permitting one male person to perform in a lewd and indecent manner on a dance stage around a pole simulating sexual behavior, in violation of Rule 5 of State Regulation 20 of the Division of Alcoholic Beverage Control and in violation of Section 20 of the Ordinance of the City of Elizabeth.
- (2) that on May 3rd it allowed the consumption and sale of alcoholic beverages during prohibited hours and
- (3) it failed to have its entire licensed premises closed and permitted a person other than the

licensee and bona fide employees of the licensee to remain thereon during prohibited hours on May 3rd, in violation of the local ordinance.

On June 18, 1970, the appellant entered a plea of not guilty to the aforementioned charges. On June 26, 1970, the Council considered the said application for renewal and decided to withhold approval thereof pending its determination of the charges against the appellant.

Thereupon, on June 29, 1970, appellant filed an appeal with this Division from the alleged denial by the Council of the said application. An answer was filed by the Council in which it defended that "the action taken by the respondent was not a final determination but was in effect a withholding of approval pending disposition of charges against appellant."

A hearing on the aforementioned charges was held before the Council on August 6, 1970. The Council dismissed charges #2 and #3 but found the appellant guilty of charge #1, and ordered that appellant's license be revoked and the application for renewal be "permanently denied".

On August 7, 1970, a second petition of appeal was filed by the appellant alleging that the action of the Council was erroneous because (a) said denial of the renewal of the aforesaid license was arbitrary and capricious and (b) the licensee has "conformed with all laws, regulations and rulings of the Division of Alcoholic Beverage Control of the City of Elizabeth and the State of New Jersey." Appellant also urged that the action of the Council be stayed pending the determination of this appeal. The Council, in its answer to this petition, defends that the action of the Council followed a "complete and comprehensive hearing" on August 7th and that its decision was made "upon ample proof as adduced by the testimony of competent witnesses." It further defends that its action was not unreasonable and that the revocation of the license and the denial of any renewal permanently "was the proper action justified by reason of the evidence presented at such hearing." Additionally, it asserts that "the nature of the charges as supported by the testimony on August 7 indicates that it would be contrary to the public interest to permit the operation of the licensed premises."

In the exercise of his discretion, the Director denied appellant's application for a stay of said revocation and the extension of the term of the license pending the determination of said appeal (Rules 11 and 12 of State Regulation No. 15). (Parenthetically, it should be significantly noted that as a result of the investigation by agents of this Division, a similar charge of permitting lewdness and immoral activity, i.e., indecent conduct by apparent male and female homosexual patrons on the licensed premises on July 15, 17-18 and 22-23, 1970, in violation of Rule 5 of State Regulation 20, was preferred by the Division against the appellant. The appellant subsequently pleaded non vult to the said charge and an order was entered by the Director on September 28, 1970 suspending the said license for forty days, the effective dates of such suspension to be fixed after the determination of the within appeal).

The matter was set down for hearing both on the

Order to Show Cause and the pleadings before this Division. The hearing herein was de novo pursuant to Rule 6 of State Regulation 15, with full opportunity for counsel to present additional evidence and cross examine witnesses. There was also admitted into evidence the transcript of the August 6th proceedings before the Council, pursuant to Rule 8 of State Regulation 15.

Voluminous testimony was taken in this matter both before the Council and on this plenary de novo appeal. The hearing before the Council consumed 6½ hours and is reflected in 286 pages of testimony. The hearing in this Division took place on August 11th and September 14, 1970 and is embodied in 201 pages of testimony.

I have fully examined and evaluated the record before me and make the following findings of fact: Appellant was cited on three separate charges before the Council. However, since charges #2 and #3 aforesaid were dismissed, it is unnecessary to review the testimony with respect thereto. Thus, on the appeal from the revocation in the disciplinary proceedings, we shall concern ourselves solely with the first charge, relating to the alleged immoral activity on May 2nd at the licensed premises.

I

The licensee operates premises which admittedly caters almost exclusively to alleged homosexuals. Mayor Thomas G. Dunn received numerous complaints from neighbors and local residents with respect to the objectionable operation of these premises. It appears that appellant filed an application for a dance hall license on September 8, 1969 and because of the complaints received by the Mayor and the Police Department, and their apprehension that these premises become a continuing source of trouble, the application for the dance hall license was denied. An appeal from the Mayor's action was taken to the Superior Court of New Jersey and the matter was eventually settled by granting the said license upon the representation by Eugene Laughlin (the principal officer and stockholder of appellant) that appellant would change the nature of the operation in conformity with certain conditions set forth by the City of Elizabeth. However, according to the testimony of Dunn and corroborated by other witnesses and police officers, the appellant continued to operate in the manner which the Council found objectionable.

On Saturday, May 2, 1970 shortly after 10 p.m., the Mayor began a customary personal patrol of the City, and particularly of the immediate area in which the appellant's premises were located. Upon arriving at these premises, he found that there was an unusual number of motor vehicles parked both in front and the rear of the appellant's premises; he estimated there were about 250 cars parked in the immediate area of the subject premises.

Accompanied by Councilman Farra, Sgt. Eugene J. Mirabella and Thomas G. Dunn, Jr., the Mayor's son, he entered the said premises shortly before 12 p.m. He remained in the premises for about ¾ of an hour during which time he had an opportunity to observe the activities and the actions of the patrons. His testimony, which was corroborated by the other witnesses who accompanied him, established that the patronage consisted almost entirely of alleged homosexuals and lesbians.

He noted that males were dancing with other males and were freely kissing each other on the lips and caressing each other on various parts of the body. The dancing was described as lewd and sensual.

The witnesses also observed that, in some instances, males were seated on the laps of other males and were being embraced, fondled and caressed openly and in full view of all present. They also observed that one of the alleged homosexuals was doing a "simulated dance" against a pole. He was performing a "sensuous act to simulate a form of sexual intercourse". This performance was done on an elevated platform for the benefit of the patrons. The witnesses for the Council described this as a lewd exhibition and performance; they disagreed with the version of appellant's witnesses that this was really a modern dance. They also noted that a number of the females were dancing with each other, holding each other closely, kissing each other on the lips, fondling and caressing each other on various parts of the body.

While the Mayor and his companions were watching these proceedings, a waiter employed by appellant approached them and asked Mayor Dunn whether he would care to have a drink. When the Mayor declined, this employee said to him, "Would you care to have me?" The Mayor replied "that he should leave me and go about his business elsewhere." Dunn understood this to be a solicitation to engage in unlawful sexual intercourse.

As the attorney for the appellant sets forth in his memorandum, a solicitation is an invitation or an overt act by someone to another to commit a criminal act. State v. Blechman, 135 N.J.L. 99. I find that there was such solicitation made to the Mayor on these premises by an employee of the appellant. Appellant noted that an individual had testified in Superior Court that he was the person who allegedly made such solicitation but that in fact no such solicitation was made. The Mayor denied emphatically that the male who so testified was the offender, and I find credibility in the Mayor's account.

The appellant's witnesses testified in substance that the dance performed by the entertainer who allegedly simulated sexual intercourse at the pole was, in fact, a modern dance. However, I find from the testimony of the police officer and the witnesses for the Council, that the dance was not a modern dance but was, in fact, a simulation of sexual intercourse, performed to arouse sexual desires on the part of the patrons.

II

The appellant argues that Rule 5 of State Regulation 20, upon which this charge is based, is constitutionally infirm because no adequate standards are set to guide the adjudication of lewd and immoral acts. Rule 5 reads as follows:

"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 manner as to become a nuisance."

Short shrift can be made of that contention because this argument was raised and rejected in One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control, 50 N.J. 329 (1967). Furthermore, the law is clear that a constitutional challenge to such regulation must be had by seeking a judicial ruling by plenary suit. R.S. 33:1-41. Blanck v. Magnolia, 33 N.J. Super. 306, 311, (1962); rev. on other grounds, 38 N.J. 484; Phillipsburg v. Burnett, 125 N.J.L. 157, 161 (Sup. Ct. 1940). The regulation insofar as applicable herein must, therefore, be considered as valid on its face.

III

Nevertheless, appellant argues that as long as the people in a bar behave so that their public behavior does not violate any legal prescription, they have the right to congregate in public; and so long as their public behavior conforms to current standards of decency and morality, they may be viewed as having the right to congregate within the licensed premises, citing One Eleven Wines and Liquors, Inc. v. Division of Alcoholic Beverage Control, supra. This is established principle of law, and the Council does not take issue with it. It should be emphasized, however, that the appellant here is not being charged with permitting, allowing or suffering the congregation of male homosexuals or lesbians on the licensed premises. We fully realize the legal impact of One Eleven Wines & Liquors to the effect that "the mere though open congregation of homosexuals at the licensed premises forms no basis for a charge against a licensee." Thus, well-behaved apparent homosexuals and lesbians have the equal right to patronize and meet in these premises as do any other patrons. However, as was pointed out in Ceill's Ltd., Bulletin 1916, Item 7, the fact that "they have equal rights does not make them more equal than other patrons; they are equally proscribed from engaging in overtly indecent conduct and public displays of sexual desires manifestly offensive to currently acceptable standards of propriety and decency."

Thus, the critical issue in this case is whether these patrons regardless of whether they were heterosexual or homosexual, conducted themselves in such manner as to constitute a violation of Rule 5 of State Regulation 20. As Ceill's Ltd. noted further: "where a licensee admittedly caters to this type of clientele, it should be particularly sensitive to the conduct of its patrons. Although it has no special obligation, it nevertheless cannot use less diligence than that required by one who must bear the burden of less comprehensive responsibility under the Alcoholic Beverage Law and the rules and regulations of this Division."

I find that the conduct and behavior of the patrons and the performance by the entertainer as described hereinabove, constituted lewd and immoral activity.

It is no answer that the appellant or its agents did not see the conduct or the specific actions as delineated by the witnesses for the Council. It has been consistently held that a licensee and its agents are not only expected to regulate the activity on licensed premises, but must use their eyes and ears and use them effectively to prevent the improper use of licensed premises. Re Schuyler, Bulletin 1787, Item 1; Re Ehrlich, Bulletin 1441, Item 5.

A tavern should not provide an arena for the behavior and conduct disclosed by the record herein. See concurring opinion in One Eleven Wines and Liquors, Inc. v. Division of Alcoholic Beverage Control, supra (50 N.J. at p. 342, 343). I therefore, conclude, that the said charge was established by a fair preponderance of the credible evidence.

The Council revoked appellant's license and denied renewal. Although the penalty imposed, of revocation, may seem unduly harsh, in view of the lesser penalty imposed by the Director on the subsequent charge involving a similar violation, I cannot say that, in full perspective, the Council acted unreasonably, and in an abuse of its discretion. It surely must have been mindful of the pendency of the said charge before this Division when it considered the penalty to be imposed. It undoubtedly felt that the appellant was continuing the same type of operation continuously and in disregard of the Rules and Regulations of this Division. Accordingly, I recommend that the action of the Council with respect thereto be affirmed.

IV

Having made such determination, the appeal relating to the denial of appellant's application for renewal becomes moot. Nevertheless, I shall consider the said challenge to the Council's denial in order to afford the parties a full consideration of the entire matter.

Before the Council decided to deny the said application, it was first satisfied that the aforementioned charge was fully established and that, as the answer of the Council discloses, said denial would be in the public interest. Since the renewal of licenses is a matter of discretion on the part of a local issuing authority, the burden of proof falls upon the appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84; Nordco, Inc. v. State, 43 N.J. Super. 277, 287. As the Court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

In its consideration of this matter, the Council was guided by the applicable principles enunciated in Tumulty v. Dunellen and Davis (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1, as follows:

"... The problem before the Council was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed...."

In the area of licensing as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. The record in this case shows manifestly that the Council felt that the continuance of this operation would be inimical to the public interest.

Not only was it apparent that the conduct of the patrons was violative of the applicable regulation, but the witnesses for the Council testified that the conditions on the outside of the premises, that is, the serious traffic problem created by the many cars, some illegally parked; patrons riding their motorcycles to and from the premises at all hours of the night; and other conditions referred to in the testimony both inside and outside the premises, were objectionable. Cf. Nordco, Inc. v. State, 43 N.J. Super. 277. Furthermore, both Mayor Dunn and local police officers testified that they have received many complaints from residents and neighbors of this facility concerning the improper operation of this facility.

Thus, the Council in its circumspect judgment and discretion determined that the continuance of this license would be inimical to the public interest. In the matter of licensing, 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, 446 (1960). The appellant has raised the question with respect to the motivation on the part of members of the Council in its action, pointing out that Mayor Dunn may have had some influence on members of the Council and upon their vote. My examination of the entire record finds no substantial evidence to support such contention; on the contrary, there are substantial proofs to substantiate the Council's action. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501.

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 its opinion and if so, to affirm irrespective of his personal views.

Tumulty v. Dunellen, Bulletin 1487, Item 4. More recently, as the court in Lyons Farms Tavern, Inc. v. Newark, et al., 55 N.J. 292 (1970) stated:

"... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

See Hudson-Bergen County Retail Liquor Stores Association, et al. v. Hoboken, et al., 135 N.J.L. 502, 511 (1947).

Furthermore, I have made independent findings of fact and conclusions of law based upon the entire record herein and conclude that the determination of the Council is supported by substantial evidence and that it exercised its discretion circumspectly and in the best interests of the community in refusing to renew appellant's license for the current licensing year.

It is, accordingly, recommended that the Council's action in denying appellant's application for renewal of its license be affirmed, and the appeals herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's Report and argument in support thereof were filed by appellant pursuant to Rule 14 of State Regulation No. 15. Answering written argument has been filed by respondent. Additionally, I held oral argument in this matter.

I have carefully considered the entire record herein, including the exceptions and argument concerning the Hearer's report, and find that there is no merit to any of appellant's exceptions except with respect to the issue of the severity of the revocation penalty imposed by respondent. It is my finding that revocation, with its concomitant disqualification of the licensee and its officers, directors and principal stockholders from being associated with the alcoholic beverage industry for two years (R.S. 33:1-31), is unduly severe in this case. I will therefore modify the Hearer's recommendation and, instead of affirming the license revocation, I will impose a suspension of appellant's license for the balance of its term which expires midnight June 30, 1971. However, the action of respondent in denying renewal of the license will be affirmed for the reasons set forth in the Hearer's report.

I therefore concur in the findings and recommendations of the Hearer as hereinabove modified, and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of April 1971,

ORDERED that the action of respondent in denying appellant's application for renewal of its license is hereby affirmed and the appeal with respect to such denial be and the same is hereby dismissed; and it is further

ORDERED that the action of respondent in revoking appellant's license is hereby modified to a suspension of said license for the balance of its current term expiring midnight June 30, 1971, effective August 7, 1970.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISION - 570 MAIN, INC. v. PASSAIC.

570 Main, Inc.)	
t/a Paradise Lounge,)	
)	On Appeal
Appellant,)	
)	
v.)	CONCLUSIONS AND
)	ORDER
Municipal Board of Alcoholic)	
Beverage Control of the City)	
of Passaic,)	
)	
Respondent.)	

 Feder & Rinzler, Esqs., by Joseph A. Feder, Esq.,
 Attorneys for Appellant.
 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

Appellant, holder of Plenary Retail Consumption License #C-152 for premises 570 Main Street, Passaic, was found guilty by respondent of violation of Rule 5 of State Regulation No. 20 in that it allowed, permitted and suffered lewdness on said premises (indecent dance) resulting in a suspension of its license for 120 days, effective May 11, 1970.

In its petition of appeal, appellant alleged the following:

- "3. The action of the respondent was erroneous in that:
- (a) Appellant was not present when the proceedings took place, being under the impression that the same would be continued;
 - (b) Appellant's constitutional right of due process was violated, in that he received no hearing, nor did he submit himself or witnesses in respect to said charges; and
 - (c) The verdict of guilty was erroneous, improper and illegal."

Respondent, in its answer, admitted the jurisdictional allegations of the petition and asserted that "the grounds to suspend were reasonable and proper and in the best interest of the public welfare."

Upon the filing of this appeal an order was entered on May 7, 1970 staying respondent's order of suspension until further order of the Director.

This matter was heard 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.

Sergeant Joseph A. Perna of the local police force testified that on January 10, 1970 at approximately 2:00 a.m. (accompanied by Officer Patti) he entered appellant's tavern, sat at the bar and ordered a drink.

He observed a "go-go" dancer performing and near the termination of her act she "at one point lowered her G-string with her left hand, exposing her private area, running her hand down her stomach down to her private area. She then inserted her index finger into it in a -- and just started more or less playing with it, and then this is all lasting a few seconds. She released the G-string and concluded her dance and left the stage." He was positioned approximately 7 or 8 feet distant from the stage.

On cross-examination, the witness stated that he entered the licensed premises pursuant to a specific assignment to observe the "go-go" dancer. Her buttocks were almost entirely exposed. She wore a G-string which fit tightly over the dancer's hips. At no time did he see her put her hands down in order to pull the string higher.

In behalf of appellant, Bertha Green, who is employed as a barmaid, testified that she was working behind the bar on the date in question. The dancer engaged in a "regular go-go dance" including waving her hands. The top part of her buttocks were uncovered. At no time did she observe her touch her body with her hands. She did not perform any lewd or suggestive act.

On cross-examination the witness conceded that while she was serving customers she could not observe the "go-go" dancer perform.

Floyd Foster who managed the operation of the appellant's establishment testified that he also was working behind the bar on the date in question. The dancer performed in a typical "go-go" style, including waving her hands. She also rubbed her hands over her body, over her hips and over her panty. She did not pull down her panties. He did not observe her perform the entire dance. He added that he could not produce the performer at the hearing because she was out of the state.

Prior to considering the substantive allegation raised by appellant in paragraph 3(c) of its petition of appeal, I find that there has been no testimonial proof offered at this de novo hearing in support of the allegations made by appellant in paragraphs 3(a) and (b) of its petition of appeal. In any event, appellant was not prejudiced because it now had full opportunity at this de novo hearing to present testimony on its behalf and cross-examine respondent's witnesses.

The major point of inquiry is factual. I have weighed the testimony presented in this matter and I find that the

affirmative testimony presented by the police sergeant (which remained unshaken upon intensive cross-examination) was sufficient to sustain the charge. This testimony, weighed against the negative testimony adduced in behalf of appellant clearly warrants a finding of guilt. Additionally, the testimony of the witnesses for the appellant was contradictory. The barmaid testified that the dancer at no time touched her body with her hands. However, the manager testified to the contrary.

The burden of establishing that the Board acted erroneously, and in an abuse of its discretion, is upon appellant. The ultimate test in this matter is one of reasonableness on the part of the Board. The Director should not reverse unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Cf. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502, (E. & A. 1947); cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

My examination of the facts and the applicable law generates no doubt that the truth of the charge was established by a fair preponderance of the believable evidence, and that it acted reasonably thereon in reaching the determination that appellant was guilty of said charge. I conclude, therefore, that appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15. See also Suppa v. Harrison, Bulletin 1783, Item 2; Sussman v. Paterson, Bulletin 1817, Item 1.

It is, therefore, recommended that an order be entered affirming the Board's action, dismissing the appeal, and fixing the effective dates for the suspension of license imposed by the Board.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's report were filed by the attorney for appellant.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Having carefully considered the entire record, including the transcript of testimony, the Hearer's report and the exceptions thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of April 1971,

ORDERED that the action of respondent be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-152, issued by the Municipal Board of Alcoholic Beverage Control for the City of Passaic to 570 Main, Inc., t/a Paradise Lounge, for premises 570 Main Street, Passaic, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1971, commencing at 3:00 a.m. Thursday, May 6, 1971;

and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Friday, September 3, 1971.

RICHARD C. McDONOUGH
DIRECTOR

Amended Order dated April 26, 1971 recites that appellant is presently operating under an Order dated June 29, 1970 entered in Case #3515 extending the license for the 1969-70 licensing period. Accordingly, the said Order suspends the said license for the balance of its term, viz., until midnight, June 30, 1971 commencing at 3:00 a.m. Thursday, May 6, 1971 and Ordered that any extension or renewal of the said license that may be granted is hereby suspended until 3:00 a.m. Friday, September 3, 1971.

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary)	
Proceedings against)	
Fortuna Club, Inc.)	
t/a Meadow Club)	
579-581 Jackson Avenue)	SUPPLEMENTAL
Elizabeth, N. J.)	ORDER
Holder of Plenary Retail Consumption)	
License C-220, issued by the City)	
Council of the City of Elizabeth.)	

Licensee, by Philip Cotroneo, President, Pro se.		
Walter H. Cleaver, Esq., Appearing for Division.		

BY THE DIRECTOR:

On October 19, 1970 I entered an amended order suspending the subject license for twenty days, the effective dates of such suspension to be fixed by further order because the premises were closed and not in actual operation and thus no effective penalty could have been imposed at that time. Re Fortuna Club, Inc., Bulletin 1942, Items 7 and 8.

It now appears from report of investigation that the licensee has resumed normal operation and the licensed premises are presently being operated on a substantial, full-time basis. Therefore, the suspension may now be reimposed.

Accordingly, it is, on this 26th day of April 1971,

ORDERED that Plenary Retail Consumption License C-220, issued by the City Council of the City of Elizabeth to Fortuna Club, Inc., t/a Meadow Club, for premises 579-581 Jackson Avenue, Elizabeth, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, May 11, 1971, and terminating at 2 a.m. Monday, May 31, 1971.

RICHARD C. McDONOUGH
DIRECTOR

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

4. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1970 THROUGH MARCH 31, 1971

	1st Quarter			2nd Quarter			3rd Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	
ARRESTS:										
Total number of persons arrested										
Licensees and employees		41			32			94		167
Bootleggers		13			20			45		78
Minors		28			12			18		58
Minors		-			-			31		31
SEIZURES:										
Motor vehicles - cars		3			1			1		5
- trucks		1			-			-		1
Still - 50 gallons or under		-			2			-		2
Alcohol - gallons		2.64			45			-		47.64
Mash - gallons		-			500			-		500
Distilled alcoholic beverages - gallons		39.988			43.833			12.845		96.666
Wine - gallons		79.456			10.250			33.325		123.031
Brewed malt alcoholic beverages - gallons		226.502			19.921			133.43		379.853
RETAIL LICENSEES:										
Premises inspected		1,463			2,118			1,997		5,578
Premises where alcoholic beverages were gauged		1,276			1,702			1,555		4,533
Bottles gauged		21,505			28,286			26,896		76,687
Premises where violations were found		425			507			479		1,411
Violations found		688			756			713		2,157
Unqualified employees		232			169			189		590
No Form E-141-A on premises		164			165			116		445
Form E-141-A incomplete		78			115			115		308
Application copy not available		51			106			102		259
Disposal permit necessary		19			21			12		52
Other mercantile business		13			3			6		22
Prohibited signs & practices		3			4			2		9
Improper beer taps		1			1			1		3
Other violations		127			172			170		469
STATE LICENSEES:										
Premises inspected		30			22			24		76
License applications investigated		12			12			22		46
COMPLAINTS:										
Complaints assigned for investigation		1,190			1,279			1,184		3,653
Investigations completed		1,187			1,362			1,203		3,752
Investigations pending		(311)			(294)			(312)		(312)
LABORATORY:										
Analyses made		235			328			311		874
Refills from licensed premises - bottles		147			207			214		568
Bottles from unlicensed premises		34			18			11		63
IDENTIFICATION:										
Criminal fingerprint identifications made		5			11			49		65
Persons fingerprinted for non-criminal purposes		1,535			1,148			1,021		3,704
Ident. contacts w/other enforcement agencies		1,018			890			872		2,780
DISCIPLINARY PROCEEDINGS:										
Cases transmitted to municipalities		13			20			9		42
Violations involved		16			22			9		47
Sale during prohibited hours		7			15			3		25
Sale to minors		8			5			6		19
Failed to close prem. dur. prohibited hours		1			2			-		3
Cases instituted at Division		71*			86*			77*		234*
Violations involved					83			94		278
Sale during prohibited hours		15			13			22		50
Possessing liquor not truly labeled		12			12			15		39
Sale to minors		11			12			15		38
Permitting immoral activity on premises		10			3			8		21
Beverage Tax Law non-compliance		-			15			2		17
Permitting lottery activity on premises		9			5			1		15
Fraud in application		4			1			6		11
Permitting misc. gambling on premises		3			2			6		11
Hindering investigation		3			4			-		7
Failed to close prem. during proh. hours		1			2			4		7
Purchase from improper source		-			5			1		6
Sol.-Permittee engaging in cond. proh. to employer		-			5			-		5
Permitting foul language on premises		2			2			-		4
Sales to non-members by club		1			1			2		4
Permitting hostess activity on premises		1			2			1		4
Unqualified employees		3			-			-		3
Sale to intoxicated persons		-			2			1		3
No Form E-141-A on premises		-			3			-		3
Sales outside scope of license		1			2			-		3
Possessing indecent matter		-			2			-		2
Fraud and front		1			1			-		2
Permitting bookmaking & raffle on premises		-			1			1		2
Permitting lottery & bookmaking on premises		-			1			1		2
Permitting bookmaking on premises		-			1			1		2
Permitting illegal activity (narcotics) on prem.		-			-			1		1
Permitting lottery, bookmaking & cards on prem.		1			-			-		1
Single instance of other violations		4			4			6		14

* Includes 3 cancellation proceedings - Licenses improvidently issued since they were the latest renewals for new licenses originally issued in 1966 and 1967; and licensee disqualified by reason of conviction of crime involving moral turpitude.

	1st Quarter			2nd Quarter			3rd Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	
DISCIPLINARY PROCEEDINGS (CONTINUED)										
Cases brought by municipalities on own initiative and reported to Division										375
Violations involved	48			46			69			163
Sale to minors	56			55			86			197
Conducting business as a nuisance	21			17			32			70
Sale during prohibited hours	6			7			6			19
Permitting gambling on premises	3			4			11			18
Permitting brawl, etc. on premises	6			6			6			18
Loitering by minors unaccomp. by adults (local reg.)	7			4			3			14
Failed to close prem. during proh. hours	3			2			7			12
Hindering investigation	3			2			6			11
Permitting prem. to be used for illegal activity	1			2			3			6
Failure to afford view into prem. dur. proh. hours	2			3			-			5
Permitting immoral activity on premises	-			-			3			3
Permitting narcotic activity on premises	1			1			-			2
Unqualified employees	-			-			2			2
Sale on Election Day (local reg.)	2			-			-			2
Single instance of other violations	-			2			-			2
	1			5			7			13
HEARINGS HELD AT DIVISION:										
Total number of hearings held	162			139			117			418
Appeals	27			25			15			67
Disciplinary proceedings	94			78			77			249
Eligibility	36			18			16			70
Seizures	5			7			3			15
Tax revocations	-			11			5			16
Applications for license	-			-			1			1
STATE LICENSES AND PERMITS ISSUED:										
Total number issued	5,726			4,822			3,424			13,972
Licenses	583			2			11			596
Solicitors' permits	153			137			116			406
Employment permits	1,621			965			678			3,264
Disposal permits	226			175			189			590
Social affair permits	1,349			1,372			1,212			3,933
Wine permits	87			458			15			540
Miscellaneous permits	879			1,029			798			2,706
Transit insignia	474			608			336			1,418
Transit certificates	354			96			69			519
OFFICE OF AMUSEMENT GAMES CONTROL:										
Licenses issued	21			71			377			469
State Fair licenses issued	130			-			-			130
Premises inspected	932			-			-			932
Premises where violations were found	54			-			-			54
Number of violations found	69			-			-			69
Enforcement files established	60			45			6			111

Richard C. McDonough

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: April 26, 1971

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against)

Gerald Schnee)
t/a Brandy's Lounge & Brandy's)
Liquors)
155-157 Main Street)
Orange, New Jersey)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-32, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.)

Mellinger & Rudenstein, Esqs., by Jacob Mellinger, Esq.,
Attorneys for Licensee

BY THE DIRECTOR:

On February 25, 1971 the Municipal Board of Alcoholic Beverage Control of the City of Orange suspended subject license for ten days commencing March 15, 1971, for sale to a minor.

On March 12, 1971, the said suspension was stayed by me pending my consideration of the licensee's application for the imposition of a fine in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971.

By resolution dated April 5, 1971, the said Municipal Board of Alcoholic Beverage Control of the City of Orange has advised me that, in view of the conditions existing at the said subject premises, the license be suspended and that this Division should not impose a fine in lieu thereof.

Having reviewed the matter, and in the exercise of my discretion, I shall accept the recommendation of the municipal issuing authority and deny the imposition of a fine in lieu of suspension and order the suspension be put into effect.

Accordingly, it is, on this 22nd day of April 1971,

ORDERED that my order dated March 12, 1971, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-32, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Gerald Schnee, t/a Brandy's Lounge & Brandy's Liquors, for premises 155-157 Main Street, Orange, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Monday, May 10, 1971, and terminating at 2 a.m. Thursday, May 20, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary
Proceedings against

PADDOCK LOUNGE, INC.
t/a PADDOCK LOUNGE
44-46 Chelsea Avenue
Long Branch, N. J.

SUPPLEMENTAL
ORDER

Holder of Plenary Retail Consumption
License C-52, issued by the City
Council of the City of Long Branch.

Anshelewitz, Barr, Ansell & Bonello, Esqs., by David K. Ansell,
Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

This matter was opened before me by Robert I. Ansell, Esq. of the firm of Anshelewitz, Barr, Ansell & Bonello, attorneys for Paddock Lounge, Inc., t/a Paddock Lounge, holder of Plenary Retail Consumption License C-52 issued by the City Council of the City of Long Branch, upon a verified petition dated March 31, 1971 wherein the petitioner requests that the suspension of the license for the balance of the term pursuant to Conclusions and Order in this matter entered on July 9, 1970 and a Supplemental Order entered March 15, 1971, wherein the said license was suspended for the balance of its term subject to the condition that the licensee may apply for the lifting of said suspension on or after April 17, 1971, provided the unlawful situation has been corrected; and it further appearing from the verified petition and the inspection of the books and records of said corporation that at a special meeting of directors and stockholders held March 30, 1971 that the said corporate stock was transferred to Attilio A. Agnellino, thereby correcting the unlawful condition set forth in the aforementioned Conclusions and Order;

I specifically take note of the fact that Attilio A. Agnellino was convicted by a jury in the Monmouth County Court on June 26, 1970 of having received stolen property. The said crime involves the element of moral turpitude and would, therefore, disqualify the said Attilio A. Agnellino from ownership of said license. R.S. 33:1-25.

However, further notice is taken of an order of stay of sentence entered June 26, 1970, which Order stayed the order of judgment pending the disposition of an appeal therein. Said appeal is presently pending before the Appellate Division of the Superior Court of New Jersey. Accordingly, good cause being shown, it is on this 22nd day of April, 1971,

ORDERED that the suspension hereinabove mentioned be and the same is hereby lifted forthwith pending determination of the said appeal and the entry of a further order herein.

RICHARD C. McDONOUGH
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Richard F. Ruddy, t/a The Beverage Warehouse, 1340 W. 7th St.,
Piscataway, N. J.

Application filed June 7, 1971 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-71 from Rocco Russo, t/a Robert Russo, Rear 197-199 Second St., Newark, New Jersey.

New Jersey State Library


Richard C. McDonough
Director