STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2113 August 29, 1973

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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BULLETIN 2113

1. APPELLATE DECISIONS - 4 LEAF LIQUORS & LOUNGE v. NEWARK.

4 Leaf Liquors & Lounge (a N.J. Corp.), t/a 4 Leaf Deli and 4 Leaf Liquors & Lounge,

Appellant,

v.

Municipal Board of Alcoholic Beverage Control of the City of Newark,

Respondent.

On Appeal

CONCLUSIONS and ORDER

- - - - - - - - - - - - - - - - - -

Joseph Barry, Esq., Attorney for Appellant
William H. Walls, Esq., by Althear A. Lester, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) whereby on November 18, 1970 it directed appellant to reduce the size of the bar in its licensed premises to one not over ten feet in length.

Appellant alleges that the action of the Board was erroneous and should be reversed in that the Board had on June 10, 1970 given appellant permission to construct its present bar and that such permission was based upon plans then and now before it which clearly indicate the size of the proposed bar. The present bar complies with those plans.

In its answer the Board denies that permission was given to appellant to construct such bar and defends that appellant misrepresented the facts under which it obtained limited permission; said permission did not provide for appellant to construct the bar in its present dimension.

The appeal herein was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcripts -- four -- of the proceedings before the Board were received in evidence and, in addition thereto, testimony was presented by both appellant and respondent pursuant to Rule 8 of said regulation. A floor plan of the premises as existing and proposed was also received in evidence; these plans had been before the Board during its several hearings.

The single issue in this matter is -- did appellant have the permission of the Board to erect a thirty-foot bar in its licensed premises? A review of the transcripts of hearings before the Board and my inspection of the plans of premises, in evidence, reflect the following facts:

The licensee operated a combination delicatessen, restaurant, package bar and service bar at the licensed premises until April 27, 1970 when a fire occurred. One month later appellant's officer and its counsel appeared before the Board and explained that permission was sought to remodel the premises so that the rear portion would be changed to decrease the size of the kitchen and dining area, and relocate the bar which would be of greater length. Counsel for appellant was thereupon directed to discuss the matter with this Division and, having done so, reappeared before the Board on June 3 and thereafter on June 10 when a motion was adopted by the Board approving appellant's remodeling program. By August 30 the premises were rebuilt.

No further official action occurred until October 14, 1970 when the Board, following complaints of residents, recalled appellant from whom they learned that the size of the bar had been extended to twenty-six feet. Continued hearings on the matter were held October 28, November 4 and November 18, 1970. On November 18 the Board adopted the subject resolution which required the licensee to reduce the size of the bar to one not exceeding ten feet in length.

Efforts were made by the licensee on four subsequent occasions (January 13, January 27, February 3, culminating February 24, 1971) to obtain a rescission of the November 18 order without success, whereupon this appeal was instituted.

Preliminarily it should be noted that appellant relies heavily upon a large sheet in evidence showing outlines, side by side, of the present floor plan and proposed floor plan. The plans reveal on the present floor plan an arc-shaped bar with a chord length about eight feet located in one corner of a room identified as lounge and bar. On the proposed floor plan, in the rear along one wall exists what is called "proposed bar area" consisting of a rectangular area eight feet wide by thirty feet long. Testimony referring to these plans will be alluded to infra.

The length or size of a bar is a condition that may be imposed on the granting of a license and, if a license is so conditioned, such condition will be upheld if reasonable. "Thus the restriction as to the number or size of a bar must not be disturbed unless it appears to be wholly unreasonable." Corcoran v. Manasquan, Bulletin 1937, Item 1. In the instant matter the reasonableness of the size limitation is not at issue.

After three meetings and lengthy dialogue among the appellant, its attorney and members of the Board, the following motion of the Board was adopted on June 10, 1970:

"Motion has been made and seconded to approve the licensee's application for a change of location on the licensed premises as indicated in the plans submitted in behalf of the licensee by the licensee's attorney. And also in connection with the other statement contained on the record restricting the use of the trade name as presently used, and the fact that under item 1, they must still continue to operate as a bonafide restaurant. On the explanation and as contained in the record I will call the roll."

The motion passed unanimously. On the basis of this motion appellant proceeded with construction.

An inspection of the sheet containing the presumed before-and-after floor plans is far from conclusive of appellant's intent. In the proposed floor plan there is an elongated rectangle in which are found the words "proposed bar area." In the sketch of the present floor plan is a room called "Lounge & Bar" and a small arc figure could be presumed to be the bar. There are no words with explanatory markings that specify the location of the bar in either plan. The location of the bars by inspection of the plans alone can only be the result of conjecture or surmise. It could be conjectured by inspecting the proposed floor plan that the "proposed bar area" rectangle could be either the bar itself or contain the bar within it. It may be here noted that plans submitted to this Division which purport to show bar locations usually are so marked that an inspection will reveal the bar with the number of chairs or stools if such are proposed to accompany the bar, and the location of the back bar as well as the exits from behind the bar to the rest of the room area. The only sketch before the Board and here in evidence reveals none of these things. In consequence it is necessary to refer to the testimony for interpretation.

The first reference to the size of the bar occurred at the initial meeting when one of the members of the Board inquired of counsel:

Q "Your proposed bar, is it going to be any more than six feet?

A "I think that would be indicated in the plan. There is a plan submitted which is the present layout as well as the proposed layout, which is drawn to scale, and I think that will be a little larger than six feet."

Another Board member at this same meeting, upon inspecting the diagram, commented, "According to the diagram it says one inch equals one foot (sic), and from what I could make out it is an 8 by 30 foot bar, and that is a large bar. In my opinion this would be more of a commercial tavern, with a sized bar like that."

The plans were actually drawn on a quarter-inch scale.

This conclusion followed lengthy dialogue in which the same Board member asked the question, "In other words this bar would be approximately 8 feet by, say, 20 feet here", to which counsel replied, "I think it is a little smaller than that." The Board Secretary then volunteered, "14 feet I think", to which counsel added "Yes. It is U-shaped, the larger size being about 13 or so feet and the short end about 4 feet." From this response the members of the Board were given dimensions of thirteen feet by four feet as the size of the bar.

Again, at the meeting of June 3 one of the Board members, in commenting about the possible notice to objectors, added these words, "... Now you come in and you lengthen that bar by six feet. I think they should know." No denial by counsel was made of this supposition.

Finally, at the meeting of the Board of June 10, when the permissive motion was passed, the following dialogue took place:

Board member: "In other words this part is being relocated in the rear and it will be made a trifle larger?

Counsel: "This is correct. The rear portion, the kitchen is also being remodeled because it is heavily destroyed. The kitchen is made a little smaller as indicated on the plans.

Board member: "This bar is going to be probably about six feet larger, or something in that order?

Counsel: "I think a little more than that. I think it is shown on the plans. I think it is more than six feet.

Mr. Thomas (the owner): "About eight feet more.

Board member: "About eight feet longer?

Secretary Brown: "The whole length of the bar is what? Maybe in the length, maybe 18 - 20 feet.

Mr. Thomas: "Oh no.

Counsel: "Oh yes.

Board member (another): "Mr. Thomas, I understand you want to enlarge the bar by six feet, or maybe eight feet, is that right?

Mr. Thomas: "Yes."

At this plenary de novo hearing Thomas indicated the length of the prior bar was eight or nine feet. Hence, arithmetically the proposed bar would not exceed seventeen feet as indicated by appellant's principal stockholder.

After objections were raised to the completed bar, the spokesman for licensee (Mr. Thomas) testified before the Board on October 14 that the bar was twenty-six feet long. At the next meeting (October 28) one of the members indicated that an official measurement of the bar was taken and it showed the bar to be twenty-nine feet in length. Even at that late date counsel admitted, "I don't know the exact measurement even now."

On November 18 the Board passed the following motion:

> "The Board, therefore, orders the licensee to reduce the size of the present 29 to 30 foot bar to a measurement of not over 10 feet, the said reduction to become effective as soon as the necessary notices are sent out by this division."

In an abortive effort to have this motion rescinded, counsel apologized for "the errors which appear to me to have been inadvertently made" as to "the actual amount of the increase in the facilities which we are seeking." At that same meeting (January 27) counsel asked one of the objectors the following question:

> "But you realize that this Board initially made a decision that he should be allowed to expand his bar; the only thing the Board did not originally decide on is that he could expand it to 30 feet, isn't that correct?" (underscore added)

All of the foregoing leads to the inescapable conclusion that the Board allowed itself to be deluded by the licensee-appellant and compounded its own misimpression by adopting a motion which was ambiguous and unclear. The Board was deluded by outright misstatements by both counsel and appellant's witness; the Board relied on those statements and appellant knew the Board would so rely thereon.

The right of the Board to condition a license is here unchallenged. Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970). The license was conditionally limited by the action of this Board at its June 10 meeting; a license was initially given to these premises upon specific condition that the licensee "... shall conduct a restaurant [as defined by R.S. 33:1-1(t)] at the licensed place of business with no increase in the size of its present bar, which appears to be about six feet ..." (4 Leaf Liquors & Lounge v. Newark, Bulletin 1830, Item 1). It was the requirement that the licensee follow this mandate, or stay close to it, that gave rise to the repeated questions surrounding the length of the bar.

The original bar length permitted was approximately six feet; the actual bar length in operation pursuant to that permission was eight or nine feet. The bar length as permitted under the June 10 motion appears to have been fourteen to sixteen feet. This was the length the Board appeared to believe it was permitting. Had it intended to permit a bar with a maximum length of ten feet, it should have said so initially. Not having so limited appellant then, it should not do so now but, rather, maintain its own consistency and require a reduction in bar size to that initially approved on June 10, 1970. Such conclusion would then be consistent with established rule that:

> "It has been held in the Supreme Court that the right of a deliberative body to reconsider its vote in matters of this kind ceases when a final determination has been reached."
> Gulnac v. Freeholders of Bergen, 74 N.J.L. 543 (E. & A. 1906), citing Whitney v. Van Buskirk, 40 N.J.L. 463 (cf. Cascio v. Roselle Park, Bulletin 1579, Item 1).

When the Board was apprised that appellant had not followed its order of June 10, it had a duty to pursue the matter by further administrative effort. It did this promptly and extended to all of the parties in interest full opportunity to be heard. That hearing resulted in its reconsidered order of November 18 which in turn was based upon the newly discovered evidence that the bar had been improperly constructed.

> "In order to meet the ends of justice, a new [rehearing] may be granted where the newly discovered evidence refutes the evidence on which the [conclusion] was rendered."
> 66 C.J.S. Evidence, sec. 110.

I therefore find that appellant has not established that the action of the Board was erroneous and should be reversed in accordance with Rule 6 of State Regulation No. 15. It is accordingly recommended that the action of the Board be affirmed with the exception that its motion of November 18, 1970, requiring appellant to reduce the length of its bar to ten feet, be rescinded as to such ten-foot limitation and, in place thereof, appellant be required to reduce the length of its bar to be no more than fifteen feet in accordance with the sense and true content of the conditions imposed by the Board on its first resolution. It is further recommended that in all other respects the conditions imposed by the Board be affirmed.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the appellant; no answering arguments were filed on behalf of the respondent. Oral argument followed before my predecessor, the then-Director McDonough, in consequence of which the determination of the matter was thereafter held in abeyance for the reasons herein set forth.

In addition to a general argument addressed to the conclusions reached both by the Board and in the recommendations of the Hearer, appellant advocated that the determination of the Board and that recommended by the Hearer, both requiring a reduction of the size of the bar to ten feet and fifteen feet, respectively, was not consonant with either fairness and practicality. Appellant contends that both the bar and barroom were built in accordance with such architectural balance that reduction in the size of the bar to one-half or one-third of its length would, in turn require the room size to be similarly reduced. Further, it was argued, the reduction in room size would have a similar effect upon the entire licensed premises requiring a total interior reconstruction involving a potential cost of thousands of dollars, conceivably far more than the cost of the entire establishment. Hence, claimed appellant, the arbitrary requirement of cutting the bar size to ten feet, or even to fifteen feet as suggested by the Hearer, had a far more sweeping effect than either the Board or the Hearer appreciated.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report, the exceptions thereto and the oral argument advanced, I concurred in the argument advanced by appellant that the recommendations of the Hearer required further study, investigation and consideration.

The transcript of the testimony taken before the Board clearly establishes that the Board labored under a complete misconception of the length of the bar about to be erected. It is further clear that such misconception was encouraged by the appellant and its counsel, which conclusion was abundantly clear to the Hearer who supported the basis for such conclusion.

Hence the enlargement of the bar brought the issue squarely within the ambit of Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970), a landmark decision which holds (at p.303):

> "Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion."

In its assessment of appellant's initial proposal for enlargement it was patently clear that reliance was placed upon assurance that the length of the bar would approximate fifteen or perhaps eighteen feet at most. Permission for such enlargement was thus given. Thereafter, in its review, to which this appeal was taken, the Board was obviously disturbed by appellant's complete disregard of the apparent impression it gave, and, in consequence thereof, the Board ordered a reduction in the length of the bar to ten feet. If its action could be said to be arbitrary, the reduction to less than the length for which its permission had initially been given, could be the only area for that claim.

The recommendation of the Hearer would require that the action of the Board be affirmed, subject to the requirement that appellant reduce the length of the bar to the size initially proposed. In this recommendation, the paramount equities favor the Board and the objectors over the monetary losses to the appellant, no matter how great they may be. The fact is that the appellant is solely responsible for its action. I, therefore, adopt the Hearer's recommendations in the matter and adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of June 1973,

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

ORDERED that as a special condition to its continued operation under the said license, and any renewal thereof, appellant reduce the length of the bar in the licensed premises to a length not exceeding fifteen feet within thirty days of the date of this order.

ROBERT E. BOWER
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN APPLICATION - FAILURE TO KEEP BOOKS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO CORRECT AFTER 115 DAYS - PRIOR DISSIMILAR RECORD.

In the Matter of Disciplinary Proceedings against

Rocky's Club, Inc.
t/a J-B Lounge
2203 Atlantic Avenue
Atlantic City, N. J.,

Holder of Plenary Retail Consumption License C-81, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS and ORDER

No Appearance on behalf of Licensee
Carl A. Wyhopen, 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 charges:

"1. In your license application filed June 5,1972 with the Board of Commissioners of the City of Atlantic City and upon which you obtained your current plenary retail consumption license in answer to Question No. 8 you, after listing Jean Gallagher as the holder of all of your issued and outstanding stock failed to disclose in answer to Question 10 therein a change in facts in your last prior long-form application viz., to show a change in answer from "No" to "Yes" to Question No. 22 in said long-form application which asks: "Has any corporation,partnership, association or individual other than the stockholders,hereinbefore set forth any beneficial interest,directly or indirectly, in the stock held by said stockholders?_____.If answer is "Yes" state details_____.", to show and disclose that Martin Shafer had such an interest in that he was the real and beneficial owner of all of the shares of stock listed in the name of Jean Gallagher; such evasion and suppression of a material fact being in violation of N.J.S.A.33:1-25.

"2. In your aforesaid short-form application for license, you failed to state in answer to Question No. 10 therein a change in facts in your last prior long-form application,viz., a change from "No" to "Yes" to Question No. 29 which asks: "Has any individual,partnership,corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?_____.If so, state names,addresses and interest of such individuals,partnerships,corporations or associations_____.",and to show and disclose that the aforementioned Martin Shafer had such an

interest in that he, indirectly, through the said Jean Gallagher had such an interest, as hereinabove set forth in the license applied for and in the business to be conducted under said license, such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.

"3. From on or about October 1971 to April 1, 1972, you knowingly aided and abetted said Martin Shafer, to exercise contrary to N.J.S.A. 33:1-26 the rights and privileges of your successive plenary retail consumption licenses; in violation of N.J.S.A. 33:1-52.

"4. From on or about December 30, 1971 to April 1, 1972, you failed to have and keep a true book of accounts in connection with the operation and conduct of your licensed business viz., a record of all monies received, a record of the source of all monies received, a record of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made in violation of Rule 36 of State Regulation No. 20."

At the outset of the hearing held on May 3, 1973, the attorney for the Division stated that a copy of the charges was mailed on March 8, 1973 to the licensed premises and returned unclaimed. A letter informing the licensee that a plea must be entered by April 17, 1973 was mailed to Harris Aron, Esq. (a New Jersey attorney) who was the registered agent of the corporate licensee, at his address in Atlantic City, on April 3, 1973. A copy of that letter mailed to Jean Gallagher, the sole stockholder and officer of the corporate licensee, at her residence in Atlantic City, was returned undelivered.

On April 24, 1973, another letter was mailed to Mr. Aron informing him that a hearing on the charges was scheduled for May 3, 1973, at 2:00 p.m. Telephone communications were held with the registered agent and with a Martin Shafer who was alleged to have had a beneficial interest in the premises. The prosecutor was informed that the licensed premises were not operating and that Jean Gallagher could not be found in the State.

The hearing proceeded at 2:35 p.m. and neither the licensee nor anyone in its behalf appeared at the hearing.

It appears from the testimony of agent M, who conducted an investigation pursuant to specific assignment to investigate the allegation of a "front" situation involving the said license, and from the various exhibits received in evidence, that Martin Shafer assigned the entire interest or stock of the corporate licensee to Jean Gallagher, for which she paid no consideration. Under said assignment Jean Gallagher was to operate the liquor establishment for the benefit of Martin Shafer as the true owner; her interest was not disclosed in any license applications filed by the licensee. Additionally, it is apparent that licensee failed to maintain a detailed listing of the daily receipts and disbursements, in violation of Rule 36 of State Regulation No. 20.

Thus it is apparent that the Division has established the truth of the charges by a fair preponderance of the evidence, indeed by substantial evidence, and I recommend that the licensee be found guilty as charged.

Licensee has a prior record of suspension of license by the Director for ninety days effective April 22, 1971, for permitting lewd and immoral activity on its licensed premises. Re Rocky's Club, Inc., Bulletin 1971, Item 2, and Bulletin 1979, Item 3.

It is further recommended that the license be suspended on the first three charges herein for seventy-five days, and for thirty days on the fourth charge herein, making a total suspension of one hundred five days, to which should be added ten days by reason of the dissimilar violation occurring within the past five years, making a total of one hundred fifteen days.

However, since the unlawful situation has not been corrected to date, I recommend that the license be suspended for the balance of its term, and the term of any renewal thereof that may be granted, with leave granted to the licensee or any bona fide transferee of the license or any renewal thereof to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than one hundred fifteen days from the commencement of the suspension herein.

Conclusions and Order

No exceptions to the Hearer's report were taken 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 recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2nd day of July 1973,

ORDERED that any renewal of Plenary Retail Consumption License C-81 which may be granted for the 1973-74 licensing period by the Board of Commissioners of the City of Atlantic City to Rocky's Club, Inc., t/a J-B Lounge for premises 2203 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1974, commencing at 7:00 a.m. Friday, July 13, 1973, with leave granted to the licensee, or any bona fide transferee of the license, to apply to the Director, by verified petition, for the lifting of

suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted, in any event, sooner than one hundred-fifteen days,(i.e., 7:00 a.m. Monday, November 5, 1973) from the commencement of the suspension herein.

Joseph H. Lerner
Acting Director

3. APPELLATE DECISIONS - JOHNNIE MAE ISHMAL v. NEWARK - ORDER DISMISSING APPEAL.

Johnnie Mae Ishmal, Appellant,	)	
v.	)	O R D E R
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	Dismissing Appeal

Golden E. Johnson, Esq., Attorney for Appellant
William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from the denial of her application for renewal of her plenary retail consumption license for the 1972-73 licensing period. It appears that the said license was the subject of an appeal to the Appellate Division which heretofore affirmed the Director's denial of the said license for the prior licensing period. A petition for certification in the New Jersey Supreme Court by the appellant was denied.

It further appears that no application for the renewal of the said license for the current licensing period was made by the appellant and the appeal consequently has become moot. I shall, therefore, on my own motion dismiss the said appeal.

Accordingly, it is, on this 10th day of July 1973,

ORDERED that the said appeal be and the same is hereby dismissed.

Robert E. Bower
Director

4. APPELLATE DECISIONS - CONTROLLED SYSTEMS CORP. v. NORTH BERGEN.

Controlled Systems Corp., t/a Inn the Beginning, Appellant, v. Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, Respondent.	CONCLUSIONS and ORDER

Boffa, Willis & Kennedy, Esqs., by E. Richard Kennedy, Esq.,
Attorneys for Appellant
Joseph V. Cullum, Esq., by Charles De Fazio, III, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of respondent Municipal Board of Alcoholic Beverage Control of the Township of North Bergen (hereinafter Board) which on March 8, 1973 suspended appellant's plenary retail consumption license for premises 7407 Bergenline Avenue, North Bergen, for thirty days, in consequence of a finding of guilt of a charge alleging that on December 15, 1972 and on November 10, 1972 it allowed and permitted to ensue a brawl in the licensed premises.

Appellant's petition of appeal contended that the Board's action was erroneoue in that its findings were inconsistent with the facts presented before it. The Board answered in general denial of this contention.

Upon filing of this appeal an order was entered herein by the Director on April 2, 1973, staying the Board's order of suspension pending determination of this appeal.

Counsel to both parties had stipulated the admission of transcripts of testimony taken before the Board at its hearing of March 8, 1973, which stipulation was accepted at the de novo hearing in this Division pursuant to Rule 8 of State Regulation No. 15. Although afforded full opportunity to present evidence and cross-examine witnesses, both parties declined to do so in view of the aforesaid stipulation.

A review of the transcript of testimony taken before the Board revealed that two police officers testified, each to a different incident recited in the charge. Police Officer John Stahl testified that in the early morning of December 15, 1972, he was outside of appellant's premises and observed someone waiving to him and approached the doorway. As he approached the door three men emerged, two escorting a third man who had been cut over his eye. That was the extent of his observation. There was no complaint made, to his knowledge, against anyone in connection with what he had seen. However, someone had made a complaint against the manager of appellant's premises, which complaint was dismissed in the municipal court.

Officer Vincent Napoletano testified that, while on duty early in the morning of November 10, 1972, he saw a patron thrown out of the licensed premises. The patron wished to return to secure his coat, so the officer accompanied him back into the premises for that purpose. Words were exchanged between the patron's friends and others, and both officer and patron departed, followed by the patron's friends. Sensing trouble, the officer departed the scene to summon additional police support. On his return he observed many people at a gas station across the street from the premises engaged in some scuffle. He did notice two persons in the crowd whom he believed were employed in the licensed premises, but they were not participants in the affray.

No further testimony was adduced either on behalf of the Board or appellant.

It has long been held that "in order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. et al. v. Hoboken et al., 135 N.J.L. 502 (1947); G.E.L.L. Inc. v. Newark, Bulletin 1911, Item 1.

Appellant has been charged with allowing a brawl on two separate occasions. A brawl is defined as "a loud, angry, or disorderly quarrel: a rough noisy and often prolonged hand-to-hand fight" (Webster's Third New International Dictionary); "A clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace" (Black's Law Dictionary); 11 C.J.S. p. 767. Physical violence is not a necessary ingredient of a brawl or disturbance. It may, however, reasonably be expected to result therefrom, since words borrow one another and oft beget blows. Mitchell's Cafe v. Lambertville, Bulletin 1918, Item 2.

While there is no set formula for determining the quantum of evidence required, each case being governed by its own circumstances, the verdict must be supported by substantial evidence. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956). In determining the factual complex herein, the guiding rule is that the finding must be based on competent

legal evidence, and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

In order for appellant to prevail in the instant matter it must appear that the evidence did not preponderate in support of the determination of the Board. Feldman v. Irvington, Bulletin 1969, Item 2.

The testimony of neither police officer reflects a brawl having occurred in the licensed premises or one without in which the licensee or its agents or employees were participants, or allowed or suffered the same to occur. The two patrons both were escorted to the door after having been struck by someone. From their words, as recited by police officers, each had been a party to a fight which the licensee quickly terminated by their ejection. Hence there was a total and complete absence of proof of any brawl having taken place or, if there was, it was a sudden flare-up which the licensee's employees acted promptly to terminate.

In his summation counsel for the Board argued that the mere emergence of a bleeding patron creates an inference that a brawl took place. Inference cannot, however, be substituted in place of the preponderance of evidence necessary upon which a guilty finding must be predicated. Counsel's conclusion that "it will straighten this place out and teach them a lesson" seems reflective of the attitude of the members of the Board. While praiseworthy in their attempt to eliminate difficulties that may have arisen in appellant's and other premises, basing a finding and suspension without sufficient evidence is not a valid means to obtain such elimination.

Applying the above definitions to the evidence presented before the Board, I find that the conduct described does not come within the prohibited activity. The testimony of the witnesses for the Board indicates no sustained conduct which would justify the determination of the Board.

It is accordingly recommended that the action of the Board be reversed and the charge herein be dismissed.

Conclusions and Order

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

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

the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 2nd day of July 1973,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the Township of North Bergen be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

Joseph H. Lerner
Acting Director

5. STATE LICENSES - NEW APPLICATIONS FILED.

Allo Enterprises, Inc.
t/a Allo Wines
306-312 Adamsville Road
Bridgewater Twp.
PO Somerville, New Jersey
Application filed August 22, 1973 for place-to-place transfer of Wine Wholesale License WW-16 from 28 Evans Terminal, Hillside, New Jersey.

Cosmopolitan Wine & Liquor Corp.
591 Spruce Lane
Franklin Lakes, New Jersey
Application filed August 16, 1973 for limited wholesale license.

Hyde Park Imports, Ltd.
819 St. George Avenue
Woodbridge, New Jersey
Application filed August 29, 1973 for plenary wholesale license.

Robert E. Bower
Director