

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

BULLETIN 1657

February 1, 1966

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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

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APPELLATE DECISIONS - LACQUA v. ENGLEWOOD.

Joseph Lacqua, t/a Englewood)
Country Club,)

Appellant,)

v.)

Common Council of the City)
of Englewood,)

Respondent.)
-----)

On Appeal

CONCLUSIONS
and
ORDER

Daniel Amster, Esq., Attorney for Appellant
William V. Breslin, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent whereby it imposed special conditions when approving the person-to-person and place-to-place transfer of a plenary retail consumption license from Louis E. Grusky and Edna L. Grusky, t/a Englewood Liquors, to appellant and from 36 East Palisade Avenue to Club House Road, Englewood.

On June 29, 1965 the Acting Mayor and Common Council adopted a resolution which provides as follows:

"THAT the application for transfer of Plenary Retail Consumption liquor license C 2 from LOUIS E. GRUSKY and EDNA L. GRUSKY, t/a Englewood Liquors, 36 East Palisade Avenue, Englewood, New Jersey, to JOSEPH LACQUA, t/a Englewood Country Club, Club House Road, Englewood, New Jersey be and is hereby granted, subject to compliance with Rules 8, 9 and 11 of the State Regulation #7, applicable to club licenses, effective July 2, 1965."

(The rules referred to are as follows:

"Rule 8. No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage to any person not a bona fide member of the club or a bona fide guest of such member.

"Rule 9. No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage except for consumption on the licensed premises.

"Rule 11. No club licensee shall sell, serve or deliver any alcoholic beverage to the holder of any special permit authorizing sale of alcoholic beverages

at a social affair to be conducted by the permittee, or to any person attending such social affair on the club licensed premises unless such person is in fact a bona fide member of the licensee-club or a bona fide guest of such member.")

Appellant in the petition of appeal contends that:

"The action of the Respondent was erroneous in that the action of the Mayor and Council in imposing such conditions and restrictions on a C-2 (broad privilege) license is in derogation of the statute, is unreasonable, arbitrary and capricious and nullifies the intent, purpose and effect of a C-2 (broad privilege) license, reducing the same to no more than a 'Club License.'"

Respondent's answer, among other things, contends that (a) the location of the appellant's premises is in a residential zone and an issuance of the license without conditions will result in an extension of a non-conforming use in the said residential zone, and (b) respondent may impose conditions and restrictions in order to protect the residents who happen to reside in a residential zone.

Although a letter objecting to the transfer of the license was received by respondent, no objectors appeared on June 15 or June 29, 1965, when the matter was heard by respondent, nor did any objectors appear at the hearing herein.

One question to be resolved is whether the respondent had authority to impose the type of special conditions on said plenary retail consumption license.

R.S. 33:1-12(1) provides that the holder of a plenary retail consumption license "shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises...."

In Re Smith, Bulletin 131, Item 4 (where a plenary retail consumption license was issued by the East Brunswick Township Committee to Lawrence Brook Country Club), former Commissioner Burnett ruled that "The Township Committee does not have the authority to restrict sales under plenary retail consumption licenses to club members and their friends." Furthermore, he ruled that the local issuing authority "may not issue licenses in a manner which would curtail the statutory privileges."

The ruling of the Commissioner (now Director) in matters of this kind, wherein the respondent attempts to impose conditions on a plenary retail consumption license, has been consistent that the privileges conferred by the statute may not be diminished by municipal action. Cf. Nardone v. Newark, Bulletin 764, Item 1, and cases cited therein.

In 48 C.J.S. 114, p. 232, it is stated:

"The licensing authority has no power to insert in a license any restriction, limitation, or condition which would be repugnant to the existing statutes, or in excess of the conditions which they impose."

Cited therein is Commonwealth v. Spence, 79 A. 775, 230 Pa. 571, 31 L.R.A., N.S., 376.

The quoted rules applying to club licenses, which the respondent imposed as special conditions upon the license in question, limited the privileges thereof to those of a club license in derogation of the statute.

Respondent contends that, if a plenary retail consumption license as such, with the special conditions, is permitted at the appellant's premises, it would constitute an extension of a non-conforming use in view of the fact that the premises are situated in a residential zone. As to this, it is obvious that a licensee cannot operate without complying with the provisions of all applicable laws. However, the obtaining of relief from a zoning restriction is not a condition precedent to the issuing of a liquor license. See Lubliner v. Bd. of Alcoholic Bev. Con. v. Paterson et als., 59 N.J. Super. 419 (App.Div. 1960), reprinted in Bulletin 1325, Item 1; aff'd. id. nom. 33 N.J. 428, reprinted in Bulletin 1365, Item 1. Of course, any impermissible use of the license may be the subject of appropriate action by the municipal authorities.

Inasmuch as the respondent lacked authority to impose the special conditions in the appellant's license, it is recommended that said conditions be disapproved.

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 record herein, including the Hearer's Report, I concur in the conclusions and recommendation of the Hearer and shall adopt them as my conclusions herein.

Accordingly it is, on this 22d day of December, 1965,

ORDERED that the special conditions in question, imposed on appellant's plenary retail consumption license by respondent, be and the same are hereby disapproved.

JOSEPH P. LORDI,
DIRECTOR

2. APPELLATE DECISIONS - CLARK AND CORBIN v. NEWARK AND BLOOM.

ELOISE CLARK and VIRGIE CORBIN,)	
Appellants,)	
v.)	ON APPEAL
)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	AND ORDER
BEVERAGE CONTROL OF THE CITY OF)	
NEWARK, and JACOB & SYLVIA BLOOM,)	
Respondents.)	

Anthony P. Bianco, Esq., Attorney for Appellants.
 Norman N. Schiff, Esq., by Anthony J. Iuliani, Esq., Attorney
 for Respondent Board.
 Mylod and Feinberg, Esqs., by Julius A. Feinberg, Esq., Attorneys
 for Respondents Bloom.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellants appeal from grant on September 22, 1965, by respondent Board of transfer of plenary retail distribution license issued to respondents Jacob and Sylvia Bloom (hereinafter licensees) from premises 36 South 14th Street to premises to be constructed, in accordance with plans and specifications submitted, at 76 South 14th Street, Newark.

Chairman Haynes, speaking for respondent Board, in announcing the Board's decision, stated:

"This is an application for a place to place transfer. There appeared many objectors to said application for transfer. Since the main contention was that the said licensed premises would be detrimental to the residents of the community, it must be noted that there were no objections in regard to the manner in which the licensees operated their business. With regard to the character and reputation of the licensees, the Board has the discretion and power to reject said application, but, it cannot, in a rejection, be unreasonable and arbitrary in the discretion. Therefore, under these circumstances, this Board will grant the application, because to do otherwise would be improper.

"Now, the Board has given extensive consideration to all of the facts and all the testimony given in this matter."

Appellants' petition of appeal alleges that the action of respondent Board in approving the place-to-place transfer of the license in question was erroneous for the following reasons:

"1. Area is already well supplied with alcoholic beverage outlets.

"2. There is no need for said outlet in this area and it will cause traffic hazards.

"3. The character of the area is residential and a store will make it commercial.

"4. Area is inhabited with many children under the age of 21 and licensee will sell articles as now in the present store, attracting the children into the store.

"5. Individuals will drink in autos in front of residences in the area, causing disgrace and trouble, which is now occurring.

"6. The Mt. Sinai Baptist Church is located in this area and the package store will conflict with the church interests, even though the store is closed on Sunday. There are activities in the Church throughout the week in which activities there are many youngsters under the age of 21.

"7. There is no building presently at 76 So. 14th Street, Newark, N. J. Mt. Sinai Baptist Church is diagonally across from this lot and the Church has already constructed its foundation and basement for its new Church."

Respondents' answers deny the aforesaid allegations in the petition of appeal. In addition thereto, respondent Board contends that "The grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the transfer be granted."

Edward T. Bowser, Sr., a registered architect, testified that he is a resident of East Orange and lives approximately two miles distant from the site of respondent licensees' proposed premises. He stated that he is familiar with the area in question, being there at least once each month as he takes care of the personal business and property located at 80 South 14th Street, owned by Mr. Jack Clark, said property adjoining the plot of ground whereon the licensees' premises are to be constructed. Mr. Bowser testified that the Mt. Sinai Baptist Church, whose edifice was formerly on "14th Street just north of Gould Avenue", with its present house of worship being on the corner of West Market Street and Gould Avenue, has now started construction of a church on 13th Street north of licensees' proposed premises, and that the church property "runs from 13th street back to 14th street." Mr. Bowser described the area wherein the proposed premises are to be erected thusly:

"Generally, 2, 3, and 4 family dwellings, across the street is a plant, down the street there is the Public Service bus terminal, and to the rear of the property on 13th street there are 3 family dwellings, and on the corner of 9th Avenue there are some retail shops, such as grocery stores, cleaning and dyeing establishment, beauty parlor, radio and television shop."

He further stated that there are nine other liquor outlets within "four square blocks." Mr. Bowser further testified that he opposed the transfer of the liquor license because the new premises would tend to aggravate the physical condition of Mr. Clark whose property is adjacent thereto.

On cross examination by respondent Board's attorney, Mr. Bowser stated that the Mt. Sinai Baptist Church was formerly located diagonally across the street from the licensees' premises on 14th Street; also that the plant he mentioned across the street from Clark's residence at 80 South 14th Street is used partly by the United Advertising Company, and another section thereof by "a subsidiary to United Parcel Service."

Appellant Eloise Clark testified that she lives at 80 South 14th Street and although in her opinion "the liquor store itself would not harm us", the "characters" attracted to the licensees' present store double-park their cars and use "all kinds of profanity." Mrs. Clark mentioned several instances when men came out of the licensees' store with alcoholic beverages and consumed the said beverages in front of the establishment. She also stated that on October 30th (the Saturday prior to the hearing herein) she sat in her car across the street from the licensed premises and observed alcoholic beverages in original containers being sold to customers during prohibited hours, the last of whom left the premises at 10:15 p.m.

On cross examination Mrs. Clark testified that the neighborhood had deteriorated since 1950 and, although since that time she saw objectionable persons patronizing the licensees' liquor store, she never formally objected to renewal of their license or to renewals of any of the other liquor licenses in the area.

Appellant Virgie Corbin testified that she resides in an apartment house at 86 South 14th Street and is a member of Mt. Sinai Baptist Church. Mrs. Corbin stated that she was concerned with the type of persons who she believed would patronize the proposed premises, and related incidents of happenings in the neighborhood, but admitted that she could not connect these instances with the proposed licensed establishment. She said she sat with Mrs. Clark in the car on October 30th and corroborated her testimony about the sale of alcoholic beverages by the licensees during prohibited hours. Mrs. Corbin further stated that she never formally objected to the manner in which the licensees operated their business.

Emory Pearce testified that he is "about a mile and a half, two miles" from the licensees' proposed premises and is familiar with the area "from passing through and visiting friends that live in the neighborhood." He stated that there are more liquor stores than needed and, even though he has no desire to put anyone out of business, he feels that liquor businesses should be located on the main thoroughfare and not in a "so-called residential neighborhood."

Emma Rose testified that she lives at 73 South 14th Street, and her objections to the liquor store at the proposed location are made because of her grandchildren and children of tenants living in her house. Mrs. Rose was fearful of the depreciation in the value of her property and also of persons drinking in the cars if the transfer is permitted.

Reverend John D. Renfro, minister of Mt. Sinai Baptist Church, testified that the church building is now under construction on 13th Street, and the church had contracted to purchase two lots on 14th Street, but he was uncertain as to the date that title passed to said lots. He further testified that it is intended by the church authorities to erect a recreation building, a playground and utilize some of the space for parking on the vacant land on 14th Street.

On cross examination Reverend Renfro said that he has been minister of the church for eleven years and, although the licensees' premises and the church were diagonally across the street from each other, during that time he never had occasion to voice any objection to the licensees. He further stated that his main objection was to the parking situation and people loitering outside the licensees' premises.

Two objectors living in the immediate neighborhood testified that they object to the proposed location as they are of the opinion that customers of the licensees by their activities would constitute a nuisance in the area. Furthermore, interested persons, speaking at the hearing before respondent Board, were of the opinion that the parking and actions of the customers and the drinking in cars would be a detriment to the neighborhood.

It is apparent from the testimony of Mr. Bowser that the location of the proposed premises is in a mixed residential and commercial area.

According to a survey prepared by Edwin E. Schumacher, Surveyor marked as an exhibit herein, the distance between the present location of licensees' premises at 36 South 14th Street and the proposed location at 76 South 14th Street is 587 feet. The survey also discloses that there are no other liquor outlets within 1,000 feet of 76 South 14th Street. Thus the transfer of the license does not in any appreciable degree aggravate the number of licenses in the area to sustain appellants' contention that respondent Board's action should be reversed on the ground that no public need exists for the license at the proposed site. Smith et als. v. Newark and Black, Bulletin 1481, Item 2, and cases cited therein.

It appears that appellants and also the objectors are apprehensive that the licensed premises would create a moral hazard with the children and teenagers residing in the area. It is readily understandable that such concern may exist, especially on the part of public spirited citizens who might be active in local civic and religious organizations. However, if the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), children or other persons who have occasion to pass the liquor establishment, who reside in the vicinity, have nothing to fear. If the licensed premises are permitted to be operated in an improper manner, so as to cause annoyance to the neighbors, or otherwise in violation of the Alcoholic Beverage Law, the licensees will subject their license to either suspension or revocation.

The number of licensed premises to be permitted in a particular area has been held to be a matter confided to the sound discretion of the local issuing authority. DiGioacchino v. Atlantic City, Bulletin 1030, Item 3. In cases such as that now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and,

if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy v. Maplewood & Topf, Bulletin 658, Item 4; Krogh's Restaurant, Inc. v. Sparta et al., Bulletin 1258, Item 1, Helms v. Newark et al., Bulletin 1398, Item 3; Jacobs v. Newark et al., Bulletin 1398, Item 4. The action of the municipal issuing authority will not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et als., 135 N.J.L. 502.

General objections to the issuance of any license for premises located in a neighborhood wherein business establishments are not prohibited does not justify a refusal. Carriell et al. v. Newark et als., Bulletin 1043, Item 2.

As was said by Justice Jacobs in Fanwood v. Rocco, 33 N.J. 404, 414:

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him. See Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943); Township Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 467 (App. Div. 1955); Neiden Bar and Grill v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 40 N.J. Super. 24, 28 (App. Div. 1956). Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See also Essex County Retail Liquor Stores Association v. Newark et als., 77 N.J. Super. 70.

Apparently no formal complaint whatsoever concerning the operation of the licensees' business was made against the licensees during many years of operating the liquor establishment at 36 South 14th Street. It seems odd, indeed, that appellants herein waited until the Saturday evening prior to this appeal hearing to park outside the licensed premises for the purpose of obtaining alleged evidence of a violation which might be related by them at the hearing in this matter to discredit the licensees. Because of the circumstances and the factors involved, such as possible inaccuracies as to the time given by the appellants herein, I shall not consider the incident involved. The licensees' former premises are at a distance not too great from the proposed premises and thus there will be no increase in the number of liquor licenses in the area. No proof was presented that the liquor store at the proposed site would adversely affect property values.

After careful consideration of the evidence presented herein, and the absence of any improper motivation on the part of the members of respondent Board, I conclude that appellants have failed to sustain the burden that the action of the Board was arbitrary, unreasonable and an abuse of its discretion. Rule 6 of State Regulation No. 15. I am further satisfied that no statute or local ordinance was violated by the transfer of the license herein.

It is recommended, based on the reasons aforesaid, that an order be entered affirming the action of respondent Board and dismissing the appeal.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony at the instant hearing and the transcript of the proceedings before respondent, the exhibits and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 22d day of December, 1965,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI,
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (IMMORAL ACTIVITY, FOUL LANGUAGE AND CONDUCT, SOLICITATION FOR PROSTITUTION, HOSTESS ACTIVITY, SALE TO INTOXICATED PERSONS, SALE DURING PROHIBITED HOURS) - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
Eugene Horvath)
t/a State Hotel & Bar)
933 State Street)
Perth Amboy, N.J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-108, issued by the Board)
of Commissioners of the City of)
Perth Amboy)
-----)

Kovacs, Anderson, Horowitz & Rader, Esqs., by Oliver R. Kovacs, Esq.,
Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge as follows:

"On Saturday night, July 17, Wednesday night, July 21, Friday night, July 30 into Saturday morning, July 31, Tuesday night, August 3, Wednesday night, August 4 into Thursday morning, August 5, Thursday night, August 5, into Friday morning, August 6, early Thursday morning, August 12, Thursday night, August 12, Sunday night, August 15 and Wednesday night, August 18 into Thursday morning, August 19, 1965, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that on all or some of said dates you allowed, permitted and suffered lewdness, immoral activity

and foul, filthy and obscene language and conduct in and upon your licensed premises; allowed, permitted and suffered a female employed on your licensed premises, and other persons thereon, to make offers, overtures and arrangements with male patrons to engage in acts of illicit sexual intercourse with them and to procure other females for such purpose; allowed, permitted and suffered females employed on your licensed premises to accept and consume alcoholic beverages at the expense of or as a gift from customers and patrons; allowed, permitted and suffered unescorted females frequenting your licensed premises to make overtures to and solicitation of male customers and patrons to purchase beverages for consumption by them and others; allowed, permitted and suffered the sale and service to and the consumption of alcoholic beverages by persons actually or apparently intoxicated in and upon your licensed premises; allowed, permitted and suffered alcoholic beverage activity in and upon your licensed premises during hours prohibited by a regulation of the City of Perth Amboy; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Absent prior record and under the totality of the circumstances as alleged in the quoted charge, the license will be suspended for seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days.

Accordingly, it is, on this 27th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-108, issued by the Board of Commissioners of the City of Perth Amboy to Eugene Horvath, t/a State Hotel & Bar, for premises 933 State Street, Perth Amboy, be and the same is hereby suspended for seventy (70) days, commencing at 2:00 a.m. Monday, January 3, 1966, and terminating at 2:00 a.m. Monday, March 14, 1966.

JOSEPH P. LORDI,
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 30 DAYS - NO REMISSION FOR PLEA ENTERED TO ONE CHARGE WHEN ANOTHER CONTESTED.

In the Matter of Disciplinary Proceedings against S. Amster, Inc., t/a Prospect Tavern 18 W. Prospect St., Waldwick, N. J., Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Waldwick.

CONCLUSIONS and ORDER

Daniel Amster, Esq., Attorney for Licensee David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded non vult to Charge 1 and not guilty to Charge 2 as follows:

"1. On Wednesday, June 30, 1965, at about 10:40 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., six 12 ounce cans of Rheingold beer, at retail, in their original containers for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38.

"2. On Wednesday, June 30, 1965, between 8:55 P.M. and 10:20 P.M., you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of a pool game for stakes of money; in violation of Rule 7 of State Regulation No. 20."

With respect to Charge 2, the Division offered the testimony of two ABC agents in substantiation of the charge, and their testimony may be summarized as follows:

Acting upon a specific assignment to investigate complaints of alleged sales of alcoholic beverages in original containers for off-premises consumption and permitting gambling on the premises (viz., the playing of pool games for stakes of money), these two agents entered the licensed premises at about 8:55 p.m. on Wednesday, June 30, 1965. They seated themselves at the bar and noted at the time of their entry that there were approximately seven male patrons who were being served by a female bartender (subsequently identified as Sadie Amster, treasurer and major stockholder of the corporate licensee). They also observed two of the patrons engaged in playing pool at a mechanical pool table. Agent V asked one of the players what they were playing for, and he replied, "a deuce a game." They further observed that, at the

conclusion of each game, the loser was required to pay the winner \$2. These transactions were made in the open, and the players did not attempt to conceal their activity. At one point Agent V said to Mrs. Amster, "If that fellow keeps losing on the pool table you will run out of singles." She made no comment. Mrs. Amster frequently changed larger denomination bills for the players. A little later he remarked, "That fellow must have lost about ten dollars." Again she made no comment, just shrugged her shoulders and walked away.

During part of the time that these patrons were playing, Mrs. Amster sat on the stool behind the bar and watched them. On one occasion she asked one of the players, "What happened to that pile of money you had on top of the bar?" He replied, "He got it", meaning the other player. At about 10:20 p.m. these two players terminated their play, and one of the patrons picked up his change and departed from the premises. Mrs. Amster asked the remaining player, "Did you win any money on the pool table?", to which he replied, "Yes, a few dollars" and then added "I won \$6." She then commented, "It is better than losing. At least you made \$6. I figured you made some money because I was watching you play."

At no time did Mrs. Amster make any attempt to stop these games while they were in progress. On cross examination Agent S stated that on several occasions he saw the players actually exchange money directly. "The loser of the game would either directly give the winner the two dollars or take it, the two dollars, from his pocket or from the loser's pile and put it on the winner's where his money was on the bar." This occurred approximately twelve to thirteen times. The agents further testified that Mrs. Amster refused to give them a written statement after confrontation.

Joseph Esposito, testifying on behalf of the licensee, stated that he was one of the players on the night in question, but denied that he was gambling. He insisted that the money on the bar was used for drinks and "once in a while we would take change from each other for the pool table." On cross examination he admitted that the loser was required to buy a drink for the winner after each game, and that was the procedure followed. He also stated that he understood that gambling was a crime but he did not consider that the buying of drinks for the winner of these games constituted gambling. It was further developed on cross examination that he was a frequent patron of these premises and, subsequent to this, signed a statement which was prepared by an agent of the licensee, prior to his return to the tavern. He didn't know when or by whom said statement was prepared.

Robert Dunn, also called as a witness by the licensee, couldn't recall actually who was playing at the pool table when he arrived at the tavern. He was particularly concerned with an open cut on his thumb which he sustained earlier that day, and he recalls going into the back room so that Mrs. Amster could replace the bandage with a Band-Aid. He was then asked, "Could there have been gambling by these pool players without you knowing they were gambling?" He answered, "Possibly, yes."

Sadie Amster (the manager of and bartender at the licensed premises) testified that she never allows gambling and didn't see any gambling on the night in question. She couldn't recall whether she had changed any money for the players, but did remember that there was money on the bar. She does remember saying, "Better you don't lose money gambling!, that is all, but no gambling going on there."

On cross examination she was then asked the following questions:

"Q. Did one of the agents say to you, 'One of the players at the pool table must have lost about ten dollars so far'?"

A I didn't pay attention because I just must have joked, 'It can't be.' Talk to me about it? I don't know.

Q You say you must have shaken your head?

A Couldn't be possible because I know it couldn't be possible. They don't play that much there."

She was then asked further:

"Q Is it possible you asked one of the pool players whether he won any money on the pool table that night?

A No. That doesn't interest me. That didn't interest me.

Q You weren't interested whether he had won any money?

A No. I don't ask questions"

And further:

"Q Didn't one of the pool players tell you he had won six dollars that night playing pool?

A No, I don't recall that."

The witness was then shown a letter from this Division dated February 4, 1964, addressed to the corporate licensee, which warned about certain alleged violations of the alcoholic beverage law and regulations, one of which was "allowing, permitting and suffering gambling, viz., playing of a pool game for stakes of money, in violation of Rule 7 of State Regulation No. 20." Mrs. Amster denied any knowledge of the letter, although she admitted that an acknowledgment of the said communication, by letter of February 5, 1964, was signed by her daughter Ethel A. Levine, president of the corporate licensee.

I have carefully examined and evaluated the testimony presented in this matter and am persuaded that the account given by the ABC agents was a forthright and credible one and truly portrayed what actually occurred at the premises on the date in question. On the other hand, I find the testimony of Mrs. Amster to be unconvincing, evasive and that it does violence to the realities of the situation. She seemed to be under the impression that, if there were displayed a "no gambling" sign on the premises, it would ipso facto absolve her of any responsibility for such activity. She further takes the position that, since she did not actually see any gambling take place, there was no liability attached to such activity on the part of the licensee. I am convinced that, as the agents' testimony reflects, she was an on-looker at the games; she made change as required by the players, and she permitted and suffered the said unlawful activity.

This is substantially supported by the testimony of the licensee's own witness Esposito. He is under the misapprehension that it is perfectly legal to play for "drinks", although he

understands that gambling for money is illegal. He frankly admitted that the loser bought the drinks for the winner and that this occurred during his play on the dates herein. Obviously, since he knew that gambling, which involves exchange of money, was illegal, he could not be expected to admit such statutory violations. Nevertheless, his testimony unequivocally sustains the fact of gambling on these premises.

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

One additional principle bears repetition. It is well established that a licensee is responsible for the misconduct of its employees and is fully responsible for their activities during their employment on licensed premises. In re Schneider, 12 N.J. Super. 449; Essex Holding Corp. v. Hock, 136 N.J.L. 28; Rule 33 of State Regulation No. 20. The responsibility of Mrs. Amster becomes the responsibility of the licensee. Mrs. Amster is under the mistaken belief that, if she did not actually see the violations committed, the licensee is thereby relieved. However, so far as Mrs. Amster is concerned, it is obvious that the licensee cannot be relieved of responsibility merely by her closing her eyes and ears. It has been consistently held that licensees or their agents must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3. Under all of the circumstances appearing herein, I find that the licensee allowed, permitted and suffered gambling in and upon its licensed premises -- the playing of a pool game for stakes of money -- in violation of Rule 7 of State Regulation No. 20.

I conclude that the Division has established the truth of the said charge by a fair preponderance of the believable evidence, and indeed by substantial evidence, and I therefore recommend that the licensee be found guilty of the second charge.

The licensee has no prior adjudicated record. In mitigation of the first charge, on which licensee pleaded non vult, counsel for licensee was permitted to introduce oral testimony at this hearing. He argued that the sale of alcoholic beverages for off-premises consumption, in violation of Rule 1 of State Regulation No. 38 (as charged) was due to a state of nervousness on the part of Mrs. Amster. This condition was produced by the patron who had a bleeding thumb and requested that she put a Band-Aid on it. However, it should be pointed out that the testimony clearly indicates that there were two sales of alcoholic beverages after hours on the date alleged -- the first occurred at 10:10 p.m. to a patron, and the second sale was made to an ABC agent at 10:40 p.m. (almost an hour after the first-aid treatment). According to the report of this agent, Mrs. Amster cautioned him at the time of the sale, "Watch out for the police when you go out."

Furthermore, it should be pointed out that, in the letter dated February 4, 1964, hereinabove adverted to, the licensee had been warned of similar alleged violations of the rules and regulations of this Division, including violation of Rule 1 of State Regulation No. 38 at these premises on January 24, 1964.

Under these circumstances, the imposition of less than the usual penalty is considered unwarranted.

It is further recommended that an order be entered suspending the license on the first charge for fifteen days (Re Szot, Bulletin 1632, Item 7), without remission for the plea since the same was entered at the hearing and when hearing was held on the other charge (Re Woodland Grove, Inc., Bulletin 1625, Item 4; Re Edna W. Fuller Company, Bulletin 1545, Item 3), and on the second charge for fifteen days (Re Velicka, Bulletin 1619, Item 5), making a total suspension of thirty days.

Conclusions and Order

Exceptions to the Hearer's Report and argument thereto were filed by the licensee's attorney pursuant to Rule 6 of State Regulation No. 16. I also heard oral argument in support thereof.

Having carefully considered the entire record herein, I find that the exceptions and arguments are without merit. Consequently, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 29th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Waldwick to S. Amster, Inc., t/a Prospect Tavern, for premises 18 W. Prospect Street, Waldwick, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Wednesday, January 5, 1966, and terminating at 2:00 a.m. Friday, February 4, 1966.

JOSEPH P. LORDI,
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Maria Alejandro & Luis Alejandro)
34 Wayne Street)
Jersey City, New Jersey)

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-232, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)

Rocco Wm. Lopiano, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on Sunday, October 31, 1965, they sold four cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensees have a previous record of suspension of license by the municipal issuing authority for ten days effective October 28, 1963, for permitting a brawl on the licensed premises.

The prior record of suspension of license for dissimilar violation occurring within the past five years considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Sachs, Bulletin 1635, Item 3.

Accordingly, it is, on this 30th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-232, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Maria Alejandro and Luis Alejandro for premises 34 Wayne Street, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Thursday, January 6, 1966, and terminating at 2:00 a.m. Friday, January 21, 1966.


Joseph P. Lordi
Director