

Director

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

BULLETIN 1925

August 21, 1970

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - CLARENCE'S MUSIC WORLD, INC.
v. NEWARK.
2. APPELLATE DECISIONS - URBANOWSKI v. PASSAIC.
3. APPELLATE DECISIONS - AMENDED ORDER - URBANOWSKI
v. PASSAIC.
4. DISCIPLINARY PROCEEDINGS (Camden) - GAMBLING (NUMBERS
BETS) - LICENSE SUSPENDED FOR 65 DAYS.
5. DISCIPLINARY PROCEEDINGS (Somerdale) - GAMBLING
(HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS
5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Asbury Park) - SUPPLEMENTAL
ORDER.
7. DISCIPLINARY PROCEEDINGS (Paulsboro) - GAMBLING
(HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS,
LESS 5 FOR PLEA.

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

BULLETIN 1925

August 21, 1970

1. APPELLATE DECISIONS - CLARENCE'S MUSIC WORLD.v. NEWARK.

CLARENCE'S MUSIC WORLD, INC.,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent.)	

Edmund C. Spelman, Jr., Esq., Attorney for Appellant
No appearance on behalf of Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent whereby, effective January 14, 1970, it revoked appellant's Plenary Retail Consumption License C-347 for premises 47 Pennington Street, Newark, after finding the appellant guilty of the following charges:

"1. That you did on November 26, 1968, January 2, 1969, March 14, 1969 and May 7, 1969, allowed, permitted and/or suffered in and upon your licensed premises, known drug addicts, and you further allowed, permitted and/or suffered your licensed premises to be accessible for the conducting of illegal activity or enterprises; and you further allowed, permitted and/or suffered your licensed premises to be used in furtherance or aid of, or accessible for such illegal activity or enterprise, which may result in a conviction in a criminal prosecution in that you, by and through your employees, agents and/or servants did allow persons to make overtures and arrangements for the purchase and sale of narcotics; and that you, through your employees, agents and/or servants allowed, permitted and/or suffered persons in and upon your licensed premises who indulged in or appeared to indulge in the use of narcotics to frequent and congregate in and upon your said licensed premises; and you allowed, permitted and/or suffered your licensed premises to be used in furtherance or aid of, or accessible for such illegal activity or enterprise, that is, the sale and purchase of narcotics, which activity or enterprise may result in a conviction in a criminal prosecution; and you allowed, permitted and/or suffered your licensed premises to be conducted in such a manner offensive to common decency and public morals; in violation of Rule 4 of State Regulation No. 20.

"2. That you did on November 26, 1968, January 2, 1969, March 14, 1969 and May 7, 1969, allowed, permitted and/or suffered in and upon your licensed premises immoral activity in that you, by and through your employees, agents, and/or servants did allow persons to make overtures and arrangements for the sale and purchase of narcotics; and that you further allowed, permitted and/or suffered persons who indulged in and/or appeared to indulge in the use, sale and purchase of narcotics to frequent and congregate in and upon your said licensed premises; and you allowed, permitted and/or suffered and otherwise conducted your licensed place of business in such a manner as to become a nuisance and to be completely offensive to public morals and common decency; in violation of Rule 5 of State Regulation No. 20."

Upon filing of the appeal an Order dated January 14, 1970 was entered by the Director staying the respondent's Order of revocation until further order herein.

Appellant contends in its petition of appeal that the finding of the respondent was erroneous in that it was against the weight of the evidence, contrary to law, and a denial of substantial justice to the appellant and that the respondent had abused its discretion and further that respondent sought to require the appellant to exercise a police power which it does not possess.

Respondent filed no answer herein.

There were two hearings held before respondent in this matter, the first one September 10, 1969 and the other one on January 7, 1970. The September 10 hearing was held before the date of the charges preferred herein but since both transcripts of testimony have been marked as exhibits in evidence, the contents thereof will be considered in the appeal. At the appeal hearing no additional testimony was heard. However, the attorney for appellant made oral argument in behalf of his client to the effect that the action of respondent in revoking appellant's license was improper and should be reversed.

No one appeared at the hearing herein on behalf of respondent.

Charges concerning alleged violations to have been committed on November 26, 1968 and January 2, 1969 were dismissed by respondent on motion of its attorney because of the inability of respondent to produce sufficient evidence in the case.

The Hearing on the appeal was de novo pursuant to Rule 6 of State Regulation No. 15.

Thus the charges with respect to the violations allegedly occurring on March 14 and May 7, 1969, respectively, will be considered herein.

Michael Fortunato (hereinafter Fortunato) testified at the September 10 hearing that on March 14, 1969, he was in the area where appellant's licensed premises are located, and stated that he had been in appellant's premises prior to March 14 and from his observations some of the patrons appeared to be narcotic users. When questioned what, if anything, was done by the

bartenders of appellant's establishment, Fortunato testified as follows:

"Q But no one would come up to you or any of these persons that were near that you described and say, 'You are not permitted here, or you are not allowed here,' or anything of that type?

"A Sometimes I would be thrown out of the place.

"Q By whom?

"A Bartenders.

"Q I see. For what reason?

"A They just didn't want us hanging around.

"Q You say us. Did they prevent you from going back in there again?

"A Sometimes, yes.

"Q But not all the time?

"A No."

Fortunato further testified that he was arrested "on Orchard Street and Pennington Street" and charged with possession of narcotics.

At the hearing held on January 7, 1970 Fortunato again testified on behalf of respondent at which time he purchased narcotics on March 14, 1969 in appellant's tavern from a man called "Peter"; that he knew the owner and when questioned if the owner was there on the occasions when he was in the place, Fortunato said "I believe so, I am not sure"; that when asked:

"Q On this specific occasion on March 14 who connected with ownership or employees were on the premises?

"A I don't know.

"Q But was the bartender there that day?

"A Yes.

"Q Is that one or more bartenders?

"A One.

"Q Do you know whether or not the owner was there that day?

"A I am not sure.

"Q After you purchased the narcotics what did you do?

"A I walked out of the Clarence Music World and walked up to Orchard Street and Pennington Street and that is where I was arrested.

"Q Do you know who arrested you?

"A Police officers from the Third Precinct."

On cross examination Fortunato testified that he recalled being at a prior hearing but could not recall the date. He further stated that on March 14 he purchased narcotics from Peter Snyder "upstairs. In the back of the tavern there are steps where you go up. There is a pool table up there. And it was next to the pool table." Fortunato also stated that when he purchased the narcotics "I don't know if the bartender has seen this."

Leroy Snyder, also known as Peter, testified at the hearing before the respondent on September 10, 1969 that at times he has visited appellant's place of business to use the bathroom; that he hangs out at 45 Pennington Street, which is located next to appellant's establishment and that he (Snyder) was "Outside in front of 45" when he saw the police officers and as a result thereof walked "pretty fast" into the appellant's tavern; that as he was on his way to the bathroom two police detectives entered and placed him under arrest; that he never sold narcotics nor did he ever see anyone use narcotics at any time when he was in appellant's place of business. Further Snyder testified that no employee or "owners" of appellant knew he carried a narcotic user's card.

At the January 7 hearing before respondent, Snyder reiterated that he was in front of 45 Pennington Street and that when he observed the police he entered appellant's tavern where he was apprehended by the officer and placed under arrest for possession of narcotics.

Detective William Damiano testified that he assisted in the arrest of Snyder on May 7, 1969 in appellant's licensed premises after being informed that he was there; that he first saw Snyder in front of the tavern and when he (Damiano) entered he observed Snyder "as he was standing up facing the bar;" but he (Damiano) did not know whether Snyder got in the premises just before he got there.

Police Officer Joseph Martucci testified that on May 7, 1969, after entering appellant's premises he first saw Snyder standing to the left of the door, near a juke box and that as he approached Snyder the latter "tried to walk away from us"; that he took a plastic bag out of the hands of Snyder which "contained glassine envelopes with white powder." The contents were subsequently analyzed and disclosed to be heroin.

On cross examination Officer Martucci said it took the officers about ten or fifteen seconds to actually place Snyder under arrest and that the officers were in the appellant's premises not more than two minutes.

Clarence Turner (hereinafter Turner) president of appellant, testified on May 7, 1969 at about "1:30 or 2:00 o'clock" he observed Snyder come into the licensed premises and about two minutes thereafter two police officers entered, walked over to where Snyder was standing, touched him on the shoulder and when he jumped the officers grabbed him and took him from the tavern. Turner said that he had never seen anyone purchase narcotics in the place and had only seen Fortunato in the premises on one occasion. At that time, Turner stated that Fortunato asked him if he could use "the bathroom".

Turner further testified that Snyder came into the licensed premises on occasion and used to purchase a soda; that at some other time he either saw Snyder standing in front of the place or he was seated in a parked car across the street.

Turner said that since the neighborhood has "changed into a boarding house area" there is a different type of clientele patronizing appellant's tavern.

The charges preferred herein, alleging that on the dates of March 14 and May 7, 1969 appellant allowed, permitted and suffered its premises to be used for the sale and purchase of narcotics and that drug addicts were permitted to congregate in and upon the premises, are very serious accusations.

I have carefully examined the record provided in this matter to ascertain whether there has been sufficient evidence adduced by respondent to warrant its finding of guilt.

Considering the charges on March 14, 1969, the only witness on behalf of respondent was Fortunato who claimed he made a purchase of narcotics from Snyder that day. However at the hearing before respondent on September 10, 1969, Fortunato testified that he was in the area but never mentioned that he had purchased narcotics in appellant's licensed premises on the day in question. At said hearing, Fortunato admitted that at times he was evicted from appellant's premises as the licensee didn't want him hanging around.

I shall now consider the charge with reference to the alleged violation on May 7, 1969.

Detective Damiano testified at the September 10 hearing that after searching Snyder he arrested him for possession of heroin. Detective Damiano further stated he had seen Snyder in front of the appellant's premises prior to entering the tavern where he (Damiano) made the arrest in approximately a minute.

Officer Martucci testified that on May 7, 1969 he first observed Snyder inside appellant's premises and after searching Snyder the latter was immediately placed under arrest. Officer Martucci also stated that he and his fellow officer were in appellant's premises for not more than two minutes.

Snyder testified that when he saw the officers he hastily entered appellant's tavern and was on his way to the bathroom when apprehended. Snyder further testified that he had never seen any narcotics sold or used in appellant's premises at any time when he was there.

I am cognizant that, in order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error that the action of respondent was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502 (1947). In the matter now under consideration we are dealing with a purely disciplinary measure and an alleged infraction of the law. Such proceedings are civil in nature and not criminal. Kravis v. Hock, 137 N.J.L. 252 (1948). Thus this type of case requires proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). Furthermore, the general rule is that the finding in these cases 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 other words the charge must be established by affirmatively satisfactory evidence. See Re Silidker, Bulletin 405, Item 5.

I have carefully examined the entire record and have fully considered the testimony presented both before the respondent and at this de novo hearing. I am not impressed with the uncorroborated testimony of Fortunato, as in many instances he exaggerated incidences allegedly to have occurred in the licensed premises and at other times he had a loss of memory with reference to pertinent matters in this case.

There has been no evidence whatsoever that on the two dates which we are considering there was any sale of narcotics of any sort in the appellant's licensed premises. There seems to be no disagreement that the police who arrested Snyder went into the licensed premises immediately after he had gone in and that when searching him they found he did have narcotics in his possession. However, according to the testimony of the officer, in all they were only in the licensed premises for a period not in excess of two minutes. During that time the testimony is to the effect that they arrested Snyder and then left the premises.

The charge herein is that the licensee allowed, permitted and suffered illegal narcotic activity to be conducted on the licensed premises. However, there is no reliable evidence to suggest that any illegal transaction took place within the hearing or in the presence of Turner, who is the president of the appellant corporate licensee. Nor is there any suggestion that any other employee who may have been present had knowledge of any illegality taking place at the time in question. In fact, Turner has denied any knowledge of such activity during his presence in the licensed premises and he has stated that he has been on duty day in and day out, acting as bartender in the establishment.

As stated by Director Keegan in Ferraro v. Paterson, Bulletin 1878, Item 2:

"This Division is not unmindful of the serious problems presented by narcotics traffic and will not hesitate to act firmly where such activity takes place in liquor licensed premises. However, while the licensee has the responsibility to exercise full control of the acts and conduct of patrons in his establishment, the circumstances in this case are insufficient to show that the situation was brought to his attention or that he might have reasonably become aware of its existence. Cf. Hardy v. Newark, Bulletin 1578, Item 2; Schujas v. Bridgeton, Bulletin 1809, Item 2."

Under the circumstances I conclude that, in the absence of substantial evidence to support the charges, appellant has met the burden imposed upon it by Rule 6 of State Regulation No. 15.

Thus, it is recommended that the action of the respondent be reversed and that the charges preferred in this case against appellant be dismissed.

Conclusions and Order

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

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

of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 30th day of June 1970,

ORDERED that the action of respondent in finding appellant guilty of the charges preferred herein and revoking its license be and the same is hereby reversed, and the charges be and the same are hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - URBANOWSKI v. PASSAIC.

STANLEY URBANOWSKI)
t/a GOLD ARROW CAFE,)

Appellant,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF PASSAIC,)

Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

Edwin J. Nyklewicz, Esq., Attorney for Appellant
August C. Michaelis, Esq., by Milton J. Pashman, Esq., Attorney
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license for premises 142 Passaic Street, Passaic, was found guilty in disciplinary proceedings by respondent of allowing, permitting and suffering gambling activity to take place on his licensed premises on December 13, 1968, resulting in suspension of his license for twenty days effective October 26, 1969.

Appellant challenges said conviction, alleging that he did not allow, permit or suffer gambling on his premises.

Respondent asserted that it considered all the facts and circumstances in determining the guilt of the appellant, the decision rendered was fair and reasonable, based on the evidence adduced at the hearing.

Upon filing of the appeal, an order dated October 30, 1969, was entered by the Director staying respondent's order of suspension pending further order herein.

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 to cross-examine witnesses.

On behalf of respondent, Detective Michael J. Grochala, assigned to the gambling squad of the local police force, testified that, accompanied by Detective Stanley Jarensky, he entered the licensed premises on December 13, 1968, at 11:50 a.m.

for the purpose of executing a search warrant. He observed the licensee, Stanley Urbanowski, seated near the end of the bar on patrons' side. He also observed a female, identified as the barmaid Bertha Klecha, standing "a couple of feet away" behind the bar.

He searched a handbag that was lying on the top of the bar between Urbanowski and Mrs. Klecha, which handbag contained her identification. It contained eight slips of paper, identified by the detective as numbers and horse race bets, and cash in the sum of \$2,389.21 made up of "10 \$100 bills, 3 \$50 bills, 27 \$20 bills, 48 \$10 bills, 33 \$5 bills, 38 \$1 bills, 41 quarters, 46 dimes, 24 nickels, and 16 pennies." Mrs. Klecha asserted that the bag was hers and that "the money was for her son to open up a business." A photocopy of the betting slips was received in evidence (R-2).

Appellant, Stanley Urbanowski, testified that Bertha Klecha is related to his wife. He sent her to the bank weekly to cash checks for him so that he could cash checks for his patrons. On December 13, after she returned from the bank, he was counting the money on top of the bar. That money came out of Mrs. Klecha's handbag and represented the proceeds of a check she cashed for him that morning in the sum of \$1802.92. The check was marked A-1 in evidence.

Appellant asserted that Mrs. Klecha helps his wife (who is ill) with the laundry in an apartment above the licensed premises; that she cashes checks for him twice weekly; and that he does not compensate her for these services. He heard Mrs. Klecha inform Detective Grochala that the money was to be used by her son in order to purchase a gasoline station.

On cross examination, appellant testified as follows:

"Q Does Bertha [Klecha] ever tend bar for you?

A I just telling you if I am sick. I call her I am sick because I got three operation already. I could hardly walk.

Q Mrs. Klecha has worked behind the bar on certain occasions for you; is that right?

A Just to help me out hour or so, on account she got her own business.

Q What kind of business is Mrs. Klecha in?

A You know. You should know.

Q I am asking you.

A Liquor store."

It was represented by appellant's attorney that Mrs. Klecha could not be produced as a witness because she was serving a jail sentence, after pleading guilty to possession of lottery slips

In order to adjudicate this matter, the issue as to whether Mrs. Klecha was an "employee" as construed by Division precedents must be resolved. In determining this issue I have noted that the licensee admitted that Mrs. Klecha regularly cashed checks for him

to use in the conduct of his business and tended bar for him at irregular but recurring intervals.

In Re Jacobs, Bulletin 935, Item 3, it was held that salary or compensation is not a requisite to employment. This holding was followed in Re Neim, Bulletin 1772, Item 2, wherein it was held that the question of compensation is irrelevant to the determination of employment.

In Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948), the court considered this very issue. In that case it was alleged that certain females employed on licensed premises were engaged as independent contractors. In considering the matter of employment, the court stated (p.255):

"Webster defines the word 'employ': 'To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose.' The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word 'employed' as used in said regulation to embrace 'all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship.' Such a construction seems to be a logical one. Our courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the courts. Mr. Justice Perskie has emphasized this judicial determination in Cino v. Driscoll (Supreme Court, 1943), 130 N.J.L. 535, 540, where he said:

"Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N.J.L. 329; 22 Atl. Rep. (2d) 523...."

I therefore find that Mrs. Klecha was a person employed within the intendment of the Division rules and regulations, and her conduct on licensed premises is the responsibility of the licensee. It is a well established and fundamental principle that a licensee is responsible for the misconduct of persons employed and is fully accountable for their activities during their employment on licensed premises. In re Olympic, Inc., 49 N.J. Super. 299 (App. Div. 1958); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Rule 33 of State Regulation No. 20. Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961).

In view of the proofs adduced, I find that the licensee has violated Rule 7 of State Regulation No. 20 in that he did possess, have custody of, or allow, permit or suffer in and upon the licensed premises a slip, ticket, book, record, document, memorandum or other writing pertaining to bookmaking or an unlawful game or gambling. I conclude that respondent reached a reasonable conclusion based upon the credible evidence. The action of respondent may not be reversed by the Director unless he finds the action was clearly against the logic and effect of the

presented facts. Cf. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

Appellant has failed to meet the burden of showing that respondent's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15. It is, accordingly, recommended that an order be entered affirming respondent's action, dismissing the appeal, vacating the order heretofore entered staying respondent's order of suspension and fixing the effective dates for the suspension of license imposed by respondent.

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 conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 6th day of July 1970,

ORDERED that Plenary Retail Consumption License C-56 (for the 1970-71 licensing period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Stanley Urbanowski, t/a Gold Arrow Cafe for premises 142 Passaic Street, Passaic, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Tuesday, July 21, 1970 and terminating at 3:00 a.m. Monday, August 10, 1970.

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - AMENDED ORDER - URBANOWSKI v. PASSAIC.

STANLEY URBANOWSKI)	
t/a GOLD ARROW CAFE,)	
)	
Appellant,)	ON APPEAL
)	AMENDED
v.)	ORDER
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF PASSAIC,)	
)	
Respondent.)	

Edwin J. Nyklewicz, Esq., Attorney for Appellant
August C. Michaelis, Esq., by Milton J. Pashman, Esq.,
Attorney for Respondent

BY THE DIRECTOR:

On July 6, 1970 Conclusions and Order were entered herein affirming the action of respondent, dismissing the appeal and fixing the effective dates of suspension commencing on July 21 and terminating on August 10, 1970. Urbanowski v. Passaic, Bulletin 1925, Item 2.

It now appears from a letter dated July 15, 1970 from respondent that four days of the suspension were actually served

by the licensee prior to the effectuation of the stay by order of the Director dated October 30, 1969. Hence the appellant should receive credit for the four days suspension already served.

Accordingly, it is, on this 20th day of July 1970,

ORDERED that the order entered herein on July 6, 1970, be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-56, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Stanley Urbanowski, t/a Gold Arrow Cafe, for premises 142 Passaic Street, Passaic, be and the same is hereby suspended for the sixteen-day balance of the twenty-day suspension, commencing at 3 a.m. Tuesday, July 21, 1970, and terminating at 3 a.m. Thursday, August 6, 1970.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against)

ADA BOND)
t/a Bond's Bar)
538 Kaighn Avenue)
Camden, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-67 for the year 1968-69 and C-116 for the year 1969-70 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden)

Toll, Friedman and Pinsky, Esqs., by John A. Jones, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On April 22, 1969, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On April 22, 1969, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Before proceeding on the merits herein, I shall discuss the motion made by the licensee's attorney that the matter be adjourned to a future date. The reason advanced for such request was that three of the witnesses for the licensee, namely, Solomon Harvey, Edward Bond and James Green, although indicted, had not been tried for violations of the criminal laws for which they were apprehended in the licensee's licensed premises on the day in question.

The proceedings in this case are proceedings in rem (against the license) and not in personam (against the licensee), and thus an acquittal of a licensee or his agent and employee on criminal charges is immaterial to a determination in these proceedings. Disciplinary proceedings against a licensee are civil in nature. Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Schneider, 12 N.J. Super. 449 (Sup. Ct. 1951). The two proceedings (criminal and disciplinary are different in kind) involve different issues, quantum of proof and types of penalty. See Re Du Pree, Bulletin 108, Item 8; Re Messina and Ruisi, Bulletin 392, Item 12; Re Rosenthal & Geller, Bulletin 843, Item 4; Re 17 Club, Inc., Bulletin 949, Item 2; Re The Sport Center, Bulletin 1131, Item 5; Re Meehan, Bulletin 1841, Item 5. Thus the motion made by the attorney for the licensee was denied and the matter was heard on its merits.

ABC Agent M testified that on April 22, Dorothy Wilson, an employee of the tavern located next door to the licensee's licensed premises, requested him to take a numbers bet which she had accepted from him and also two bets that Dorothy had accepted from a female in Agent M's presence, and give them to Solomon Harvey in the instant licensee's tavern. When he entered the licensee's place of business, "I asked out loud who was Sol because I didn't know Mr. Harvey" and one of the patrons at the bar said that Harvey was behind the bar. The agent gave to Harvey the money and the paper whereon the numbers received from Dorothy were written saying, "Dot told me to give this to you." Harvey accepted the money and gave it to Edward Bond (the licensee's husband) who was seated at the patrons' side of the bar saying, "Here, Eddie, I checked that out."

Agent M further testified that he observed Bond give it to a man (subsequently identified as James Green) who left the premises. About ten minutes later, Green returned to the tavern. Shortly thereafter, Agent M left the premises, walked to the corner, gave a pre-arranged signal to another ABC agent, and he and other law enforcement officers entered the tavern. The agent "indicated Mr. Bond, Mr. Harvey and Mr. Green and the role that they had played, and they were then arrested by the city detective." Agent M "went into Renee's Bar [next door], and I pointed out Miss-Dot as the participant in there" to the law enforcement officers assigned to make the investigation in those premises.

ABC Agent G testified that at approximately 1:50 or 1:55 p.m. on April 22, he and four other law enforcement officers met Agent M outside the tavern and, upon entering, Agent M indicated to them Harvey, Green and Bond as the persons involved in the numbers writing activity. All the officers identified themselves and the three persons aforementioned were placed under arrest. A search of Edward Bond produced a quantity of money taken from his trousers pocket, on which the serial numbers on two one-dollar bills corresponded with the serial numbers recorded previous to the raid by Agent M.

The licensee's attorney represented that Ada Bond, the licensee, was not present at the time in question; and if Harvey, Green or Edward Bond, although subpoenaed and present at the hearing, were called as witnesses, each would not testify because their attorney had directed them to refuse to do so. Thus, as the matter now stands, I must evaluate the merits of the agents' testimony as there has been no testimony given on behalf of the licensee.

Although the licensee was not in the premises when the alleged incidents occurred, this in no way relieves her of responsibility for the activities of her employee. Kravis v. Hock, supra; Rule 33 of State Regulation No. 20. The activities of her employee (Harvey) becomes the licensee's responsibility regardless of whether she had personal knowledge of or participated therein. It has been held that a licensee is not relieved of responsibility even though the employee violated express instructions. Greenbrier Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961); cf. Mazza v. Cavicchia, 28 N.J. Super. 280 (App. Div. 1953); aff'd. 15 N.J. 498 (1954).

After careful examination of the testimony presented by Agent M and Agent G, I am satisfied that it is truthful and accurate in every way and conclude that Harvey participated in the illegal gambling transaction on the licensed premises. I therefore recommend that the licensee be found guilty of the charges preferred in this matter. Cf. Rule 33 of State Regulation No. 20.

Licensee has a prior adjudicated record of suspension of license by the Director for fifty-five days effective April 1, 1965, for permitting lottery activity on the licensed premises. Re Bond, Bulletin 1613, Item 3. In view of the similar violation occurring more than five but less than ten years ago, it is further recommended that the license be suspended for sixty-five days. Cf. Re Grecco, Bulletin 1908, Item 4.

Conclusions and Order

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

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

Accordingly, it is, on this 7th day of July, 1970,

ORDERED that Plenary Retail Consumption License C-116 (as renewed for the 1970-71 licensing period), issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Ada Bond, t/a Bond's Bar, for premises 538 Kaighn Avenue, Camden, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. Wednesday, July 22, 1970, and terminating at 2:00 a.m. Friday, September 25, 1970.

RICHARD C. McDONOUGH
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

WATSON ENTERPRISES, INC.
t/a Somerdale Liquor Store
301 White Horse Pike &
Crestwood Ave.
Somerdale, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-1 (for the 1969-70 and 1970-71 licensing periods), issued by the Borough Council of the Borough of Somerdale.

Richman, Berry & Ferren, Esqs., by Grover C. Richman, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on March 13, 1970, it possessed or permitted horse race bet slips on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Mercurio, Bulletin 1798, Item 3.

Accordingly, it is, on this 29th day of June 1970,

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Somerdale to Watson Enterprises, Inc., t/a Somerdale Liquor Store, for premises 301 White Horse Pike & Crestwood Ave., Somerdale, be and the same is hereby suspended for fifty-five (55) days, commencing at 9:00 a.m. Monday, July 6, 1970, and terminating at 9:00 a.m. Monday, August 31, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against)

MRS. JAY'S INC.)
t/a Mrs. Jay's)
909-911-913 Ocean Avenue)
Asbury Park, N. J.)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-5 (for 1969-70 and 1970-71 licensing periods), issued by the City Council of the City of Asbury Park)

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

BY THE DIRECTOR:

On March 17, 1970 an order was entered herein deferring the license suspension of thirty days for permitting lewdness and immoral activity on the licensed premises in violation of Rule 5 of State Regulation No. 20 because it appeared that the licensed business was not being conducted on a substantial full-time basis following the conclusion of the summer season. Re Mrs. Jay's, Inc., Bulletin 1903, Item 2.

Notice of appeal to the Appellate Division of the Superior Court from the order of the Director was filed by the attorneys for the licensee on April 30, 1970; no stay of the said order was sought. Appellant has failed to file a brief with said court in furtherance of the appeal, and the time for such filing has expired.

Report of recent investigation discloses that the licensed business has now been resumed for the current season and is being conducted on a substantial basis. Consequently I am satisfied that the deferred suspension may now be imposed.

Accordingly, it is, on this 7th day of July 1970,

ORDERED that Plenary Retail Consumption License C-5, issued by the City Council of the City of Asbury Park to Mrs. Jay's Inc., t/a Mrs. Jay's, for premises 909-911-913 Ocean Avenue, Asbury Park, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. Wednesday, July 22, 1970, and terminating at 3 a.m. Friday, August 21, 1970.

RICHARD C. McDONOUGH
DIRECTOR

