

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

BULLETIN 1951

February 22, 1971

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STATE OF NEW JERSEY
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February 22, 1971

1. DISCIPLINARY PROCEEDINGS - NARCOTICS ACTIVITY - LICENSE
REVOKED, WITH LEAVE TO APPLY FOR RECONSIDERATION OF
PENALTY, UPON SURRENDER OF LICENSE TO LOCAL BOARD.

In the Matter of Disciplinary)
Proceedings against)

Elite, Inc.)
t/a Elite Cafe)
1211 Baltic Ave.)
Atlantic City, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-118 (for 1969-70 license)
period) and C-141 (for 1970-71 license)
period), issued by the Board of)
Commissioners of the City of Atlantic)
City.)
-----)

Cooper, Greenberg, Katzman & Todd, Esqs., by James L. Cooper,
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 has entered a "technical plea" of not guilty
to the following charges:

- "1. On December 14, 17, 23 and 31, 1969 and January 13, 16, 25, February 8, 21 and 27-28, 1970, you allowed, permitted and suffered in and upon your licensed premises unlawful possession of and unlawful activity pertaining to narcotic drugs, as defined by R.S. 24: 18-2; in violation of Rule 4 of State Regulation No. 20.
- "2. On December 14, 17, 23 and 31, 1969 and January 13, 16, 25, February 8, 21 and 27-28, 1970, you allowed, permitted and suffered immoral activity in and upon your licensed premises and your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that on all said dates you, through persons employed on your licensed premises, made offers to and arrangements with customers and patrons to obtain and procure for and/or sell narcotic drugs to them, and in furtherance of such offers and arrangements sold a narcotic drug to customers and patrons on your licensed premises on said dates of December 14 and 31, 1969, and January 13, 16, February 8 and 21, 1970; in violation of Rule 5 of State Regulation No. 20."

At the hearing herein the attorney for and on behalf of the licensee stated that the determination in this matter be made from reference to the reports filed with the Division by the various ABC agents who were assigned to and made the investigation which resulted in the aforesaid charges against the licensee.

Agent C's report disclosed that, accompanied by a male companion, she was in the licensee's licensed premises between 1:45 and 2:25 a.m. on December 14, 1969. Her companion spoke to a male bartender about purchasing two bags of heroin and the male bartender in turn referred him to another bartender after advising the latter what was desired. The bartender in question took his companion to the corner of the licensed premises near the side door, reached into his pocket, took out two small white cellophane envelopes sealed with red adhesive tape and handed them to the agent's companion. The bartender charged \$20 therefor.

At 8:45 p.m. on December 17, 1969 Agent P entered the licensee's place of business. The bartender on duty introduced himself to the agent who asked if there was anything moving and, in response thereto, the bartender said he did not deal in the business but he could show the agent someone who did. Thereafter the bartender went to the back of the bar, engaged in conversation with a male patron, returned and said "ain't nobody around with no coke, but I can get you some marijuana." The bartender summoned the man and the agent gave the bartender a ten-dollar bill and the male patron gave the agent a small envelope containing marijuana.

Agent P reported that he again visited the licensee's premises at 11:30 p.m. on December 23, 1969, at which time the bartender introduced a male patron to the agent who promised to get Agent P some heroin. The man left the premises and, after a period of time, failed to return. Agent P then left the establishment.

On December 31, 1969 Agent P further reported that he again purchased a small packet containing cocaine from the bartender on duty on the following dates, viz.: January 13, 16, 25 and on February 8 and 21, 1970. On February 27, 1970 at 9 p.m. Agent P entered the licensed premises and, at approximately 9:45 p.m. he observed three females, each of whom obtained a small cellophane packet similar to the packets which he had purchased on previous occasions which contained heroin from one Philip Smith, and then left the premises. Agent P kept a number of agents and other law-enforcement officers advised as to the activities of the evening.

At 1:45 a.m. on February 28 numerous ABC agents, prosecutor's detectives and representatives from the local Police Department entered the premises armed with arrest warrants for those who had previously sold narcotics to Agent P. A search of the licensed premises and of patrons revealed spoons, syringes and hypodermic needles. A quantity of white powder was found in the rear storeroom as were several small plastic bags (empty) and also paraphernalia used for packaging narcotics was found in the restroom.

Adele Polk (secretary and treasurer of the corporate licensee) testified that she had no knowledge whatsoever that her bartenders were involved in narcotic activities.

Rule 22 of State Regulation No. 20 provides that, in disciplinary proceedings brought pursuant to the Alcoholic

Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's premises shall constitute no defense to the charges preferred in such disciplinary proceedings. Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App.Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1. In fact it has been held that, even where an agent engages in proscribed activity against the express instructions of his employer, the licensee may be guilty of such violation. See Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951); Benedetti v. Trenton et al., 35 N.J. Super. 30 (App.Div. 1955). The licensee is, therefore, fully responsible for the activities of [its] employees during their employment on the licensed premises. Kravis v. Hock, 137 N.J.L. 252; In re Schneider, 12 N.J. Super. 449.

It is apparent that the traffic in narcotics ran rampant with the cooperation of the bartenders employed by the licensee.

Under the circumstances herein and after examination of the facts in this case, it is recommended that the licensee be found guilty of both charges filed in this matter.

Licensee has a prior adjudicated record. Its license was suspended for three days effective June 15, 1942 for a false statement in the license application. Re Elite, Inc., Bulletin 526, Item 9. Again, its license was suspended by the local issuing authority for sixty days effective December 1, 1954 on a narcotics charge. Additionally, the license of Tom-O-Inc., t/a Benn's Pub, for premises 336-338 N. New Hampshire Avenue, Atlantic City, a corporation wherein the officers and stockholders are the same persons who are officers and stockholders of the corporation now under consideration, had its license suspended on two occasions -- effective January 8, 1962 by the municipal issuing authority for five days for sale to minors, and by the Director effective December 2, 1969 for fifty-five days on a gambling (numbers) charge. Re Tom-O-Inc., Bulletin 1893, Item 3.

It is further recommended that the aforesaid dissimilar violation of gambling resulting in suspension of the license of Tom-O-Inc. effective December 2, 1969, only be considered.

However, I am satisfied that, in view of the seriousness of the charges herein and the manner in which the place had been operated, the only proper penalty to be imposed would be revocation of the license, which I therefore recommend. Re Richards, Bulletin 1838, Item 1, and cases cited therein.

Conclusions and Order

Exceptions to the Hearer's report and argument in support thereof have been filed by the licensee pursuant to Rule 6 of State Regulation No. 16. The exceptions stress the non-participation of the principals of the corporate licensee in the offenses in question and seek a penalty of less than revocation. In this connection, the licensee has offered to relocate or transfer the license to a purchaser of the licensed business if the license is not revoked.

I have carefully considered the entire record herein. There is no question that the facts establish the guilt of the licensee of each of the two charges preferred against it. The only question remaining is the one of penalty.

Under the Alcoholic Beverage Law (R.S. 33:1-31) a revocation of license renders the licensee and the officers, directors and each owner of more than ten per cent. of the stock of a corporate licensee ineligible to be associated with the alcoholic beverage industry in this State for a period of two years from the effective date of such revocation. In this instance such ineligibility would affect both of the principal stockholders of this licensee and require that they sever their connection with the license of Tom-O-Inc., which was not involved in the violations herein. R.S. 33:1-25, 26.

However, it is my firm opinion that this license should be terminated, for punitive and deterrent reasons as well as to protect the public against any possible future unlawful narcotics activities in connection therewith. Under the circumstances, I shall revoke the license effective immediately, with provision that, if the licensee shall within ten days hereof, tender to its municipal issuing authority formal written surrender of its license (without return of any portion of the current license fee), then, upon acceptance thereof, I shall enter a supplemental order vacating such revocation and imposing in lieu thereof a suspension of the license for the balance of its term.

Accordingly, it is, on this 13th day of November 1970,

ORDERED that Plenary Retail Consumption License C-141, issued by the Board of Commissioners of the City of Atlantic City to Elite, Inc., t/a Elite Cafe, for premises 1211 Baltic Avenue, Atlantic City, be and the same is hereby revoked effective immediately; and it is further

ORDERED that, if said licensee shall within ten days hereof tender to the Board of Commissioners of the City of Atlantic City formal written surrender of its said license (without return of any portion of the current license fee), then, upon acceptance by said Board of such surrender, a supplemental order shall be entered vacating such revocation and imposing in lieu thereof a suspension of the license for the balance of its term, viz., until midnight June 30, 1971.

RICHARD C. McDONOUGH
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against)

ELITE, INC.)
t/a Elite Cafe)
1211 Baltic Ave.)
Atlantic City, N. J.)

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-118 (for 1969-70 license period) and C-141 (for 1970-71 license period), issued by the Board of Commissioners of the City of Atlantic City.)

Cooper, Greenberg, Katzman & Todd, Esqs., by James L. Cooper, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

On November 13, 1970 Conclusions and Order were entered in the above case revoking the license in question, with the proviso that if the licensee should, within ten days of such date, tender to its municipal issuing authority (Board of Commissioners of the City of Atlantic City) formal written surrender of its license, then, upon acceptance by such issuing authority of such surrender, a supplemental order would be entered vacating such revocation and imposing in lieu thereof a suspension of the license for the balance of its term. I am now in receipt of a copy of a resolution adopted November 23, 1970 by said Board wherein it refused to accept the surrender of said license tendered to it in writing by the licensee on November 23, 1970.

It appears that such refusal was based upon a misunderstanding of the effect of my order entered in this matter. It was intended that the license be terminated, but that the principal stockholders of the licensee not be disqualified from holding an interest in another retail license, which disqualification would result from revocatory action. It was not intended that the license be renewable at the end of its term, an interpretation which the Board apparently reached in declining acceptance of the license surrender.

Under the circumstances, a supplemental order will be entered accomplishing the hereinabove stated purpose.

Accordingly, it is, on this 3rd day of December 1970,

ORDERED that the order of revocation entered herein on November 13, 1970 be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-141, issued by the Board of Commissioners of the City of Atlantic City to Elite, Inc., t/a Elite Cafe, for premises 1211 Baltic Avenue, Atlantic City, be and the same is hereby suspended, effective November 13, 1970, for the balance of its term, viz., until midnight June 30, 1971, and that said license shall not be renewable.

RICHARD C. McDONOUGH
DIRECTOR

3. NOTICE TO ALL RETAIL LICENSEES - LICENSEES AUTHORIZED TO APPLY TO STATE LOTTERY COMMISSION FOR LICENSE TO SELL NEW JERSEY STATE LOTTERY TICKETS.

NOTICE TO ALL RETAIL LICENSEES:

The Division has recently received numerous inquiries as to whether retail licensees will be allowed to apply for a license to sell New Jersey State Lottery tickets.

Rules 6 and 7 of State Regulation No. 20, with exceptions not here applicable, prohibit any license from allowing, permitting or suffering any lottery activity in or upon the licensed premises. However, the State Lottery Law (R.S. 5:9-1 et seq.) signed by the Governor February 16, 1970, in providing for the operation of a State lottery, specifically states that "No other law providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery shall apply to the sale of tickets or shares performed pursuant to this Act". R.S. 5:9-19. This law also provides "Notwithstanding any other provision of law, any person licensed as provided in this Act is hereby authorized and empowered to act as a lottery sales agent". R.S. 5:9-12.

Under the circumstances, it is my ruling that the Division's rules and regulations, including the above mentioned Rules 6 and 7 of State Regulation No. 20, are inapplicable to lottery activity authorized by, and licensed pursuant to, the State Lottery Law. Retail alcoholic beverage licensees therefore are not prohibited by the Division's Rules and Regulations from applying to the State Lottery Commission for a license to participate as lottery sales agents.

Dated: November 25, 1970

RICHARD C. McDONOUGH
DIRECTOR

4. APPELLATE DECISIONS - SALEGNAV, INC. v. EAST PATERSON AND SMITH & NANN ENTERPRISES, INC.

Salegnav, Inc.,)	
Appellant,)	On Appeal
v.)	CONCLUSIONS
Mayor and Council of the)	and ORDER
Borough of East Paterson, and)	
Smith & Nann Enterprises, Inc.,)	
Respondents.)	

Dennis J. Cummins, Jr., Esq., Attorney for Appellant
Mainardi & Mainardi, Esqs., by Andrew Mainardi, Jr., Esq.,
Attorneys for Respondent Smith & Nann Enterprises, Inc.
Michael J. Ferrara, Esq., Attorney for Respondent Mayor and
Council of the Borough of East Paterson

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On May 7, 1970, the Mayor and Council of the Borough of East Paterson (Council) granted the application of respondent

Smith & Nann Enterprises, Inc. for a place-to-place transfer of its plenary retail consumption license from premises 223-9 Kipp Avenue to premises 444 Boulevard, East Paterson.

The granting resolution sets forth in detail the reasons upon which the Council granted its action;

WHEREAS, Smith & Nann Enterprises, Inc. of 223-9 Kipp Avenue, East Paterson, N.J. has, under date of April 10, 1970 filed an application with the Borough for the transfer from place to place of a Plenary Retail Consumption Alcoholic Beverage License; and

WHEREAS, the proposed location of the Plenary Retail Consumption License is in conflict with Sections 8-11 and 8-12 of the Code of the Borough of East Paterson necessitating the obtaining of a waiver of said sections of the Code by the Mayor and Council of the Borough of East Paterson; and

WHEREAS, according to the provisions of Section 8-14 of the Code a public hearing is required prior to any determination by the Mayor and Council after the required publication, same having been done on April 2nd and April 9th, 1970 in the Garfield Messenger, Garfield, New Jersey; and

WHEREAS, the public hearing was had at a regular meeting of the Mayor and Council on the 16th day of April wherein the applicant and all interested citizens of the Borough had an opportunity to voice their reasons for approval or disapproval; and

WHEREAS, the applicant, Smith and Nann Enterprises, Inc. has represented to the Mayor and Council that the liquor license will be used only in an auxiliary capacity to a restaurant operation; and

WHEREAS, the present location of the Plenary Retail Consumption License, 223-9 Kipp Avenue, is presently located in an area zoned for commercial use but the nature of the area is strictly residential being comprised of mainly one and two family houses; and

WHEREAS, the area of the proposed transfer, 444 Boulevard is an area zoned for commercial use and the license is a area zoned for commercial use (sic) and the license is a permitted use in the area; and

WHEREAS, the proposed location at 444 Boulevard is strictly a commercial area surrounded by commercial uses on a major traffic artery in East Paterson; and

WHEREAS, the proposed location borders on a railway siding and is adjacent to a highway overpass of Interstate Route #80; and

WHEREAS, the applicant, Smith and Nann Enterprises, Inc. has supplied the Mayor and Council with such proofs and facts in their presentation at the public hearing that constitute sufficient hardship to warrant such a waiver of the distance requirements as provided in Section 8-14(A) (5); and

WHEREAS, the Mayor and Council has determined from all available information and testimony given that the waiver of requirements of Sections 8-11 and 8-12 shall not be detrimental to the health, safety, morals and general welfare of the community.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of East Paterson, based upon the aforementioned facts, that the application of Smith and Nann Enterprises, Inc. for a place to place transfer of the Plenary Retail Consumption Alcoholic Beverage License from 223-9 Kipp Avenue, East Paterson, New Jersey to 444 Boulevard, East Paterson, New Jersey be approved; and be it

FURTHER RESOLVED that this approval is made subject to the Plenary Retail Consumption License being an auxiliary use and for convenience only in connection with an exclusive restaurant operation; and be it

FURTHER RESOLVED that this approval is made subject to all New Jersey Statutes and Borough Ordinances and any and all approvals of any subordinate boards of the Borough of East Paterson which by law may be required.

Appellant, in its petition of appeal, alleges that the Council "acted contrary to the dictates of their own ordinances and did not meet the criteria for the granting of a waiver as set forth in their ordinance."

At the de novo hearing herein, the appellant moved to amend the petition to allege that Smith and Nann did not file plans and specifications as required by Rules 2 and 4 of State Regulation No. 6. The Council in its answer defends that it acted lawfully and incorporates the reasons for its action as set forth in its resolution granting the said transfer.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity to all parties to present testimony under oath and cross examine witnesses.

I

The appellant first challenges the jurisdiction of the Council in entertaining the application for transfer because it asserts that Smith and Nann did not comply with Rules 2 and 4 of State Regulation No. 6 relating to transfers of municipal licenses. Rule 2 of State Regulation No. 6, in its pertinent part, states:

"If the application is for transfer of the license to a building not yet constructed, plans of the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material and the over-all and room dimensions."

Rule 4 sets forth the form of notice of application required to be published.

However no proof was offered as to any alleged failure to comply with the said rules. No witnesses were produced by the appellant. It was admitted by the attorney for the appellant that there presently exists a building on the premises to which this license was transferred. Furthermore, the attorney for the Council has represented (and this was not denied or contradicted by the appellant) that a full architect's rendering was

submitted by Smith and Nann to the Council at its meeting, and that the said rendering was available for inspection by the appellant or any other interested person. I can see no prejudice to the appellant or to the public since there was substantial compliance with the aforesaid regulation.

Accordingly, this allegation must be rejected.

II

The central issue for resolution on this appeal was the alleged violation of the terms of the subject ordinance in approving appellant's application for the place to place transfer. The subject ordinance designated as Article 3, Section 8.9 et seq., adopted by the Council on October 1, 1966, refers to the operation of licenses. Section 8-11 states that no license for the sale of alcoholic beverages shall be granted, issued or transferred to any premises which are situated within 500 feet of any licensed premises. Section 8-12 similarly restricts such transfer to within 500 feet of any church, public or private schoolhouse, public playground, recreation area or building. Section 8-14 entitled "Waiver of Distance Regulation" sets forth that the distance requirement may be waived by the Council under certain conditions, after public hearing, where the Council, by a majority vote, shall make a finding of fact in writing and determination that, in its judgment, strict application of such distance requirement would constitute an unwarranted hardship in the particular case.

The applicable factor which may be considered by the Council was (5) "Proof of such other facts or circumstances as, in the judgment and candor of the Borough Council, constitute a sufficient hardship to warrant such waiver of the distance requirement." The Ordinance states that in such cases the Council is required to specially find that such waiver shall not be detrimental to the health, safety, morals and general welfare of the community and under no circumstances shall any license for the sale of alcoholic beverages be transferred to any premises which are less than 100 feet from other licenses.

The appellant produced no witnesses in support of its petition and relied solely upon the interpretation of the said ordinance by the Director.

On behalf of the respondent, Smith and Nann, John Smith, president and principal stockholder gave the following account: The license is presently located in an old two-family house which is located in an area predominantly residential. Although the area is in a business zone, it is surrounded by residences. Most of the residents of that area to whom he has spoken are in favor of the transfer of this license out of that area, in order to preserve its residential character. Furthermore, the present location does not have adequate parking facilities and the usual noise that would emanate from a tavern would be a source of concern to the residents.

The proposed new location which is located about a mile and a half from the present premises is bordered by Route 80 on the north and the Susquehanna Railroad tracks on the south. The property fronts on the Boulevard. Route 80 is graded to about 25 or 30 feet above the Boulevard. The property is located on a paved street and consists at the present time of a brick masonry building.

Smith and Nann intends to renovate this building at a cost of approximately \$150,000.00 and intends to operate the license in conjunction with a high-class restaurant, built in old colonial-type decor and design. Thus, its total investment is estimated to be about \$250,000.00.

On cross examination, the witness stated that the license was originally purchased in August or September of 1969 and has not been used at the present location. He asserted that he did not know whether, in fact, a zoning variance was required. However, this is not, of course, a factor to be considered in the determination of the matter. Lubliner v. Paterson, 59 N.J. Super. 419 (1960). Although this property is not within 100 feet from any liquor licensed premises, it is within 500 feet of another liquor licensee and is within 500 feet of a public playground.

From my consideration of the ordinance and its applicability by the Council, I find that the Council acted within the limits of discretion thereof in granting the application for transfer. The reasons set forth in the said adopted resolution are so clear and explicit as not to require elaboration. The Council determined that there was adequate proof of such other facts or circumstances as, in its judgment and candor, constituted a sufficient hardship to warrant the waiver of the distance requirements. It undoubtedly took into consideration that the license was being transferred from an area where residents were jealous of its predominantly residential character; and that it would be in the public interest and welfare for this liquor facility to be operated in an area which was essentially commercial, had adequate parking facilities and would better serve the needs of the municipality.

The burden of establishing that the action of a local issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. To be successful in this appeal, the appellant must show that the Council abused its discretion in approving the said application.

The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et als., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404 414 (1960):

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for...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... 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."

And further, in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle (at p. 23):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the local issuing authority, but merely to determine whether reasonable cause exists for the opinion and, if so, to affirm. Central Jersey Package Store Assn., et als. v. Pohatcong and Falk's, etc., Bulletin 1768 Item 2. In Lyons Farms Tavern, Inc. v. Newark, et als., 55 N.J. 292, Justice Francis, writing for a unanimous court, stated the principle in this way:

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

Reprinted in Bulletin 1905, Item 1.

I, accordingly, find that the Council lawfully interpreted and applied the aforementioned ordinance in its consideration of Smith and Nann's application, and acted within the bounds of reasonable discretion in its action.

As indicated hereinabove, the Director is governed by the principle that where reasonable men, acting reasonably, have arrived at a determination in the transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presentef facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); cf. Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960).

I do not find appellant's allegations meritorious, and thus, conclude that the appellant has failed to sustain the burden of establishing that the action of the Council was erroneous or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an Order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report with support of argument were filed by appellant and written answers to the said exceptions with support of argument were filed by the attorneys for respondent Smith & Nann Enterprises, Inc., pursuant to Rule 14 of State Regulation No. 15.

I have fully considered the exceptions to the Hearer's report and the answers to the said exceptions. I find that the exceptions have either been answered in the Hearer's report or are lacking in merit.

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

Accordingly, it is, on this 18th day of December 1970,

ORDERED that the action of respondent Mayor and Council of the Borough of East Paterson be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

5. APPELLATE DECISIONS - FENROSE WINE AND LIQUOR STORES v. PLAINFIELD AND SCHNEIDER.

VERA REALTY CORP. ET AL. v. PLAINFIELD AND SCHNEIDER.

Fenrose Wine and Liquor Stores,)
Appellant,)
v.)
Common Council of the City of)
Plainfield, and William J.)
Schneider, t/a Lee Place Tavern,)
Respondents.)

On Appeal

-----)
Vera Realty Corp. and Andora)
Amusement Corp.,)
Appellants,)
v.)
Common Council of the City of)
Plainfield, and William J.)
Schneider, t/a Lee Place Tavern,)
Respondents.)

O R D E R

Dalto & Gran, Esqs., by Angelo H. Dalto, Esq., Attorneys for)
Appellant Fenrose Wine and Liquor Stores)
James W. Hurley, Esq., Attorney for Appellants Vera Realty)
Corp. and Andora Amusement Corp.)
Kunzman & Kunzman, Esqs., by Edwin D. Kunzman, Esq., Attorneys)
for Respondent William J. Schneider)
Edward W. Beglin, Jr., Esq., Attorney for Respondent Common)
Council)

BY THE DIRECTOR:

Two appeals were filed by appellants herein from the action of respondent Common Council of the City of Plainfield (hereinafter Council) which granted the application of William J. Schneider for place-to-place transfer of a plenary retail consumption license from 229 Lee Place to 110 New Street, Plainfield.

Prior to hearing, the attorneys for respondent Schneider advised me by letter dated December 15, 1970 that their client desires to withdraw his application for transfer and have so advised respondent Council. The attorneys for appellants have, therefore, requested that an order be entered reversing the action of respondent Council. Good cause appearing, I shall grant the said request.

Accordingly, it is, on this 18th day of December 1970,

ORDERED that the action of respondent Common Council of the City of Plainfield in granting the application of respondent William J. Schneider for a place-to-place transfer of a plenary retail consumption license be and the same is hereby reversed.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP LIST OF EMPLOYEES ON LICENSED PREMISES, IN VIOLATION OF RULE 16 OF STATE REGULATION NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Salmon-Sport Holding Co., Inc.)
t/a Spare Room Lounge)
1215 Main St.)
Bradley Beach, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Borough of Bradley Beach.)
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Hanlon, Argeris & Amdur, Esqs., by Robert M. Hanlon, Esq.,
Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

"On August 13, 1970, and divers days prior thereto, you conducted your licensed business without keeping on the licensed premises a list containing the names and addresses and other required information with respect to all persons then currently employed on your licensed premises, contrary to and in violation of Rule 16 of State Regulation No. 20."

The facts are sufficiently set forth in the charge.

Attorneys for the licensee have certified that the list has since been prepared by the licensee and is on the licensed premises. A copy of said list has been filed with this Division.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Club 232, Inc., Bulletin 1928, Item 5.

Accordingly, it is, on this 10th day of December 1970,

ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Borough of Bradley Beach to Salmon-Sport Holding Co., Inc., t/a Spare Room Lounge, for premises 1215 Main Street, Bradley Beach, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Thursday, December 24, 1970, and terminating at 2 a.m. Tuesday, December 29, 1970.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP LIST OF EMPLOYEES ON LICENSED PREMISES, IN VIOLATION OF RULE 16(c) OF STATE REGULATION NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Osborne Tavern (Corp.))
t/a Club 26)
26 Chestnut Street)
Newark, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-606, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

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Licensee, by Clarence Cooper, President, Pro se.
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 13, 1970, it conducted its licensed business without keeping on the licensed premises a requisite list of persons employed thereon, in violation of Rule 16(c) of State Regulation No. 20.

Absent prior record, the licens will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Club 232, Inc., Bulletin 1928, Item 5.

Accordingly, it is, on this 14th day of December 1970,

ORDERED that Plenary Retail Consumption License C-606, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Osborne Tavern (Corp.), t/a Club 26, for premises 26 Chestnut Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, January 4, 1971, and terminating at 2:00 a.m. Saturday, January 9, 1971.

RICHARD C. McDONOUGH
DIRECTOR

- 8. DISCIPLINARY PROCEEDINGS - UNAUTHORIZED PERSONS ON LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANTHONY LA CALANDRA
t/a MONOPOLI BAR
611 Jersey Avenue
Jersey City, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensee, Pro se.
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

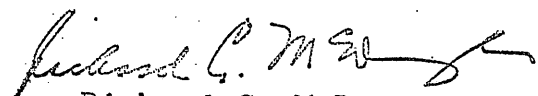
"On Sunday, November 15, 1970, between 10:20 A.M. and 10:30 A.M., you suffered and permitted persons except yourself and your actual employees and agents in and upon your licensed premises; in violation of Section 4 of Ordinance K-1299 adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950, as amended by Ordinance adopted by the Municipal Council of the City of Jersey City on June 4, 1968."

Licensee has a previous record of suspension of license by the Director for ten days effective July 26, 1965 for sale during prohibited hours in violation of Rule 1 of State Regulation No. 38. Re LaCalandra, Bulletin 1632, Item 6.

The prior record of suspension for similar violation occurring more than five but less than ten years ago 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 Tube Bar Inc., Bulletin 1866, Item 7.

Accordingly, it is, on this 14th day of December 1970,

ORDERED that Plenary Retail Consumption License C-387, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anthony LaCalandra, t/a Monopoli Bar, for premises 611 Jersey Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, December 21, 1970, and terminating at 2:00 a.m. Tuesday, January 5, 1971.


Richard C. McDonough
Director