Director

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

BULLETIN 1931 September 17, 1970

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - RONNIE'S BAR & GRILL (a corporation) v. ROSELLE

2. APPELLATE DECISIONS - VICTORY HOUSE INCORPORATED v. HIGHLANDS

3. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 75 DAYS.

4. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS 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 1931 September 17, 1970

1. APPELLATE DECISIONS - RONNIE'S BAR & GRILL (a corporation) v. ROSELLE

Ronnie's Bar & Grill (a corporation), Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Mayor and Council of the Borough of Roselle, Respondent.	)	

Alfonso L. Pisano, Esq., Attorney for Appellant
Warren Brody, Esq., Attorney for Respondent
Julius R. Pollatschek, Esq., Attorney for Union County Package Stores Association, Louis Fernicola and Joseph Ferrarra, Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Council whereby on September 15, 1969, it denied the application for place-to-place transfer of appellant's plenary retail consumption license from premises located at 19 St. George Avenue to premises 301 Amsterdam Avenue, Roselle. The proposed new premises are located in another area of the municipality.

In its resolution, the Council denied the transfer for the following stated reasons:

"1. The applicant voluntarily chose not to buy the premises at the present location of the license for personal reasons.

"2. There are other locations in Roselle to which the applicant can relocate besides the proposed premises.

"3. The great majority of the neighbors residing near the proposed premises are opposed to the transfer.

"4. A consumption license at the proposed location would adversely change the character of the neighborhood."

In its petition of appeal, appellant alleged that respondent's action was erroneous in that:

"Respondent acted in an arbitrary and capricious manner in abuse of the exercise of its discretion, contrary to the evidence presented before it at the public hearing concerning said application for transfer held on

September 8, 1969; and otherwise in a manner contrary to law and the precedents of the Division of Alcoholic Beverage Control."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses. This was supplemented by inclusion of the remarks of several persons who opposed the transfer at the hearing held before the Council on September 8, 1969.

Prior to taking oral testimony, the parties stipulated to paragraphs 1,2,4, 12 and 13 of the findings of fact contained in the aforesaid resolution, as follows:

"1. Frank Lowe, the principal stockholder of the applicant, has operated the licensed premises as a tavern at its present location for 8 years without any reported incident or complaint except for a violation October 4, 1962 for selling a six-pack of beer to a minor resulting in a 3-day suspension imposed by the Mayor and Council.

"2. The applicant is a month-to-month tenant at the licensed premises under pressure from the owner to vacate, its lease having expired.

"4. When the applicant realized it had to move, it contracted a sale of its license for $28,000.00 to Johnny G's contingent upon Mayor and Council's approval of the transfer to Johnny G's Wood Avenue address in Roselle, near the applicant's present location. That sale failed when the transfer was denied because of a zoning restriction affecting Johnny G's premises.

"12. Six letters of objection were filed with the Clerk and a protest statement was submitted at the hearing containing over 500 signatures, most from people residing in the neighborhood. Well over one hundred people attended the hearing, about a dozen speaking in opposition to the transfer. The objectors were mainly concerned with the likelihood that the license would depress the neighborhood and be a bad influence on children, aggravate already dangerous traffic and parking problems, and would add to the safety hazards of young children going to and from the Washington elementary school six blocks away.

"13. The applicant submitted at the hearing a statement signed by over 200 people who had no objection to the transfer, most of whom live outside the neighborhood. One person attending the hearing spoke in favor of the transfer based on personal knowledge of the integrity of Mr. Lowe."

It appears from the proofs that in May 1966, the corporate appellant was in possession of premises at 19 St. George Avenue under and by virtue of a lease with the landlords, Robert C. Grogan and Dorothy Grogan (husband and wife), which contained a provision that, in the event of a sale of the premises, appellant had the right of first refusal.

Certain correspondence and negotiations ensued between landlord and tenant (relevant to the adjudication of the within appeal). The correspondence was initiated by Weiner,

Weiner and Glennon, attorneys for the Grogans, by registered letter dated May 11, 1966, to appellant informing it that the landlord had received an offer from Samuel Chalef, Richard Chalef and Morris Chalef, partners trading as Roselle Plumbing and Heating Supply Co., to purchase the property for the sum of $35,000 and that appellant had a fifteen day period in which to exercise its right of first refusal. Attached to this letter is a memorandum which, according to Frank W. Lowe, president of the corporate appellant, indicated that he (Lowe) had sent a "registered letter back to them giving the full price of 36,000 with interest rate, six per cent, down payment 3500, monthly payments include interest, $250, plus property tax and fire insurance. To pay that off in five years." By letter dated June 28, 1966, the attorneys acknowledged receipt of appellant's offer and stated that Mr. Grogan was not interested in taking back a mortgage, was solely interested in a cash transaction; that its offer was improper and not in accordance with the agreement. By letter dated June 30, 1966, appellant notified the Grogans' attorneys that it deemed the offer proper and in good faith, and in accordance with the lease. By letter dated July 11, 1966, the attorneys, after acknowledging receipt of the June 30th letter, informed appellant, "We have received a cash offer in the sum of $36,000.00 from the Chalefs. In view of the fact that your offer is a contingent one rather than a cash offer, we do not regard it as a proper offer and is not in accordance with the terms of the contract. We will proceed to close title on these premises."

On behalf of appellant, Lowe sent a letter dated July 16, 1966 to the Grogans' attorneys, as follows:

> "In reply to your letter of July 11, 1966, in which you stated that it is the desire of Mr. Grogan to accept the cash offer of the Chalefs and proceed close title, I feel that this is Mr. Grogan's privilege and choice.
>
> "Due to the fact that we continue at all times to conform and be in accord with our lease, we would like to welcome the new owners and extend to them the same courtesy and cooperation we have given to Mr. Grogan."

The final communication made part of Exhibit A-2 was a letter from the Grogans'attorneys dated January 19, 1968, addressed to appellant informing it as follows:

> "This is to inform you that premises occupied by you as a tenant under a certain lease agreement entered into between Robert Grogan and Dorothy Grogan, his wife and your company has been sold to Samuel Chalef, Richard Chalef and Morris Chalef, partners T/A Roselle Plumbing and Heating Supply Company having its principal office at 11 East St. George Avenue, Roselle, New Jersey. The lease agreement entered into on January 17 for the period from January 1 to August 31, 1968 at a monthly rental of $250.00 has been assigned to the new owners. This is to authorize you to pay future rents commencing February 1, 1968 to the new owners under the terms of the lease aforementioned."

Lowe testified that he was unable to submit an all-cash comparable offer for the property. Subsequently, Roselle Plumbing acquired title to the property. Roselle Plumbing refused to give Lowe a lease and informed him that it wanted the property for its own use.

Since the time that appellant and Grogan entered into the aforesaid negotiations for the purchase of 19 St. George Avenue, Lowe canvassed all of Roselle and engaged two real estate brokers to locate premises to which the license may be transferred.

He entered into the contract for the purchase of premises at 301 Amsterdam Avenue because he had been unsuccessful in completing a place-to-place and person-to-person transfer of the license to a Mr. Gallo (Johnny G's). Immediately after denial of the application for transfer, demand was made by Johnny G's attorneys, by letter dated March 12, 1968, for return of all deposit monies paid by the prospective transferee, in accordance with the agreement of January 17th between the parties. The letter was marked A-7 in evidence.

The contract for the purchase of premises 301 Amsterdam Avenue (Exhibit A-1) contained a contingency clause that permitted the purchaser to nullify the agreement in the event that it failed to procure approval for the transfer of the license by June 30, 1968. In view of the fact that appellant's lease for the present premises would expire in August 1968 and the Council could not act on the license transfer until after July 1, appellant chose to purchase the property instead of nullifying the agreement. The property is located in an area zoned for business. A map showing the zoning of the Borough, the location of the present licensed premises and the intended future location thereof was received in evidence (Exhibit A-5). After title to the premises was acquired, the exterior thereof was remodeled.

A letter dated August 25, 1969 addressed to appellant by Roselle Plumbing, containing a request that it vacate the St. George Avenue premises as soon as possible for the reason that the landlord had immediate need for the building and grounds, was received in evidence (Exhibit A-4).

Prior to purchasing 301 Amsterdam Avenue, he canvassed every section of the Borough for suitable premises to relocate. However, he could not find anything for less than approximately $100,000. This was beyond his means. At 301 Amsterdam Avenue he could provide off-street parking for twelve cars. Appellant intends to operate a restaurant seating approximately forty persons, with a service bar for table service only. It would be open for business from 7:00 a.m. to 11:00 p.m. There are no facilities of this type in the immediate area. The premises are located two blocks from an industrial area which is being developed. Diagonally across from the proposed location, there are stores along both sides of the street, at the intersection of Amsterdam Avenue and Third Avenue. Neither street is heavily trafficked.

The pressure from the landlord to move is getting stronger and appellant is fearful that eventually it will be compelled to vacate the St. George Avenue premises.

On cross examination, Lowe testified that the purchase price of the Amsterdam Avenue property was $24,000; that appellant became obligated to expend $4,000 for kitchen equipment and an air conditioner contingent upon the approval of the transfer; that it expended $3,000 on supplies for improving the premises in addition to his labor; that it must expend an additional $6,000 for bar equipment, tables, chairs,

china and glasses.

Lowe had applied to a Savings and Loan Association for a mortgage loan in order to enable appellant to purchase the St. George Avenue property. The Association appraised the property at $25,000 and offered to loan him $17,000 or $18,000. He could not raise the cash balance of $18,000 or $19,000 required to purchase the property. He did not engage a broker to find another place to locate until January 1968.

He had no previous experience in the restaurant business. He presently operates a bar and grill at St. George Avenue; however, lately he did not sell sandwiches. It is not conducted as a restaurant.

He engaged two brokers to seek other premises for the transfer of the license. Prior to entering into the Amsterdam Avenue contract, he rejected seven other locations that were submitted to him for the reason that the price was too high or there were too many other licensees in the area. One location was too close to a church.

Bernard Grego, who resides at 226 Gordon St., approximately 160 to 170 feet distant from the Amsterdam Avenue premises, and has a clear and unobstructed view thereof, testified that in his opinion, the transfer of the license would not have a detrimental effect upon the property in the area or the residents thereof or upon his school-age children in passing the premises on their way to school. He also asserted that approval of the transfer would not increase the traffic or the hazards in the area.

Victor Andersen, Chief of the local Police Department, testified that there are no complaints against appellant with respect to its operation of said premises. Traffic at the intersection of Amsterdam Avenue and Third Avenue (the location of the proposed licensed premises) is generally very heavy and in the evening hours is extremely heavy. He intends to recommend the installation of a traffic signal at that intersection in the near future. In his opinion, the transfer to the proposed premises would not further complicate traffic control at the intersection.

On cross examination, the Chief explained that in the event of the installation of a traffic signal at that intersection, street parking will be prohibited for a distance of 100 to 150 feet therefrom.

Reubin Ratzman, a licensed real estate broker, testified that he was retained by Lowe to seek a location to which the license could be transferred. Immediately after the Amsterdam Avenue property was listed for sale on April 25, 1968, he called it to Lowe's attention. Contracts for the purchase of the property were prepared and executed on April 27, 1968. Due to time limitations, Lowe waived the contingency clause in the contract concerning prior approval of the transfer of license by the Council.

It was Ratzman's opinion that the site was an excellent site for the conduct of Lowe's business. He described the area as "a small neighbor store shopping center." A package goods store which offers no off-street parking is located directly across the street. Most businesses

in the area do not provide off-street parking. He added that appellant's intended use of the premises would not depreciate property values in the area. The relocation would not generate more taffic than the opening of any other retail business, nor would the relocation change the character of the neighborhood.

On cross examination, the witness testified that he did not look for any place on St. George Avenue because Lowe had informed him that he had made a thorough check of that street. Lowe had suggested a price range of up to $30,000. However, Lowe might possibly have paid an additional $5,000.

The testimony of Albert Putnoky, who resides at 227 Gordon Street, diagonally opposite the Amsterdam Avenue premises, and who has a clear and unobstructed view thereof, was corroborative of Grego's testimony. The improvements to the building were beneficial to the neighborhood. He discussed the proposed transfer with approximately five or six people. Some were in favor of the transfer, some opposed it.

Matthew J. Monopoli, who resides at 216 Gordon Street (approximately 225 feet distant from the proposed location) testified that he operated a variety store directly across from the proposed site until March 9, 1969, when his place of business was destroyed by fire. In July 1968, he signed a petition in opposition to the transfer at Keegan's Liquor Store on Amsterdam Avenue. After attending a meeting of the Council at which Police Chief Andersen spoke favorably of Lowe's reputation, he decided to withdraw his opposition to the transfer. He was aware of the fact that a petition in opposition to the transfer was circulating in the liquor store a year prior to the filing of the application.

In June 1969, he sold certain equipment to Lowe for use in his proposed new location for the sum of $4,000. Although he did not expect payment until the proposed new location was opened, the equipment was not returnable. He is of the opinion that approval of the application would be beneficial to the area.

Frank J. Andriuli, a councilman of the ward wherein the proposed new location lies, testified that prior to being elected, he signed a petition and mailed a letter in opposition to the transfer. Upon being elected councilman, he expressed his opposition to the transfer and voted against it.

A petition in opposition to the transfer containing in excess of 550 signatures (including Andriuli's signature) which was considered by the Council at the hearing before it, was admitted into evidence (Exhibit A-9). Andriuli asserted that although he was not impartial at the hearing, he felt that there was no need to disqualify himself. He was influenced by the opposition to the transfer expressed by a large number of his constituents.

On cross examination, the witness asserted that he was impressed by the substantial opposition to the transfer. He described the general area as primarily residential in nature.

The last witness called by appellant was Robert A. Keegan who had operated a package liquor store across the street from the proposed location for seven years. He has no parking facilities in conjunction with the operation of the business. He is opposed to the transfer because it would change the character of the neighborhood. He resides above the package store. He felt that the grant of the application would not affect his business; however, it would affect property values. He admitted keeping in his premises a petition in opposition to the transfer.

The several individuals who spoke in opposition to the transfer at the hearing before the Council expressed an apprehension that in the event the transfer was approved, traffic conditions would be worsened; the overflow parking from the proposed new location would additionally worsen street parking conditions and increase the traffic hazards; it would add to the garbage problem in the area; it would present a hazard to the school children of the area; and it would devalue the property.

Thus, it appears that the principal issue has been identified: Did the Council act in the best interests of the community, and reasonably, particularly in view of the apparent hardship situation in which appellant finds itself.

Preliminarily, I observe that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960), affd. 33 N.J. 404 (1960): "No person is entitled to [the transfer of a license] as a matter of law" and " If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

In this connection it may be well to quote further from Fanwood v. Rocco, supra (p. 320):

> "The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R. S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc., v. Board of Com'rs of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent."

The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Council in either approving or denying an application for such transfer may not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the pre-

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

As was stated in Ward v. Scott, 16 N.J. 16,23 (1954):

> "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 ... 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)."

In the recent case of Lyons Farms Tavern, Inc. v. Newark, 55 N. J. 292, 303 (1970), the court stated:

> "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

In the Lyons Farms Tavern case, the Supreme Court re-emphasized the thesis of the Fanwood case that the Director may not disregard the municipal governing body's authority to decline to license the operation of any taverns or package stores in a business section, particularly where there is widespread local sentiment in favor of keeping the area free of taverns and package stores, albeit the sentiment may have resulted in part from moral precepts and in part from the general objections voiced in the testimony of the councilmen. In honoring the expressed sentiment, the governing body does not act at all unreasonably.

In the instant case, it is apparent, and I so find, that the expressed sentiments of a substantial number of the residents of the affected neighborhood are contra to grant of the transfer. This sentiment must be seriously weighed and considered.

Evidently, these factors were conscientiously evaluated by the Council in reaching its ultimate determination. Absent improper motivation, the action of the local issuing authority, based upon proper and bona fide use of its discretion, must be affirmed. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra.

It is regrettable that appellant, who has conducted his business in a respectable manner, may be the victim of a possible financial loss. Unfortunately, not

every hardship has a remedy. It has been consistently held that in a conflict between a licensee's financial concern and the public interest, the latter must prevail. Smith v. Bosco, 66 N. J. Super. 165 (App. Div. 1961).

Appellant's argument that one of the councilmen should have disqualified himself because he had expressed opposition to the grant of the transfer lacks merit. In Wollen v. Fort Lee, 27 N.J. 408 (1958) the court held that a borough ordinance amending a zoning ordinance in order to permit multi-story apartment houses was not void on ground of bias and prejudice of certain members of the borough council, who voted in favor of the amendment, because they had publicly announced before their election that, if elected, they would vote in favor of rezoning the district for multi-family dwellings.

Consonant with this thinking, the aptly expressed thoughts of Judge Frank in In re J. P. Linahan, 138 F. 2d 650,651-52, (2 Cir. 1943) warrant quoting at length:

> "Democracy must, indeed,fail unless our courts try cases fairly, and, there can be no fair trial before a judge lacking in impartiality and disinterestedness. If, however, 'bias' and 'impartiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions; and the process of education, formal and informal, creates attitudes in all men which affect them in judging situations, attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices. Without acquired 'slants,' preconceptions, life could not go on. Every habit constitutes a prejudgment; were those prejudgments which we call habits absent in any person, were he obliged to treat every habit as an unprecedented crisis presenting a wholly new problem he would go mad. Interest, points of view, preferences, are the essence of living. Only death yields complete dispassionateness, for such dispassionateness signifies utter indifference."

After considering all the evidence herein, including the transcript of the testimony, the exhibits and the summation of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Council was unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the council and dismissing the appeal.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof were filed by the attorney for appellant, and answer to the said exceptions, with supportive argument, was filed by the respective attorneys for the respondent and objectors.

I have fully analyzed and considered the exceptions, and I find that they 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, written exceptions filed thereto and answers to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 17th day of July 1970,

ORDERED that the action of respondent be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - VICTORY HOUSE INCORPORATED v. HIGHLANDS

Victory House Incorporated,)
Appellant,) On Appeal
v.) CONCLUSIONS and ORDER
Borough Council of the Borough of Highlands,)
Respondent.)

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

Bass & Kushner, Esqs., by Howard W. Kushner, Esq., Attorneys for Appellant
Benjamin Gruber, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent whereby its plenary retail consumption license for premises 231 Bay Avenue, Highlands, was suspended for forty-five days.

Respondent found appellant guilty of the following charges:

"1. On Sunday, November 3, 1968, at 6:55 P. M., you did sell alcoholic beverages, for off premises consumption, in violation of Revised Statute 33:1 et seq.

"2. On Sunday, August 31, 1969, at 11:52 P.M., your bartender, Victor E. Brush, sold, served and delivered and allowed, permitted and suffered to be served, alcoholic

beverage to a minor, Kathleen ---, age 19, in violation of Revised Statute 33:1 et seq."

Upon filing of the appeal an order dated December 30, 1969, staying the effect of the suspension, was entered by the Director until entry of a further order herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, at which time both parties had opportunity to produce testimony and cross-examine witnesses.

Initially I shall consider charge (2) aforementioned in this matter.

The testimony of three police officers disclosed that at approximately 11 p.m. on August 31, 1969, while in appellant's licensed premises, they observed a girl drinking beer and, upon questioning her, learned that she was a minor. The girl produced a driver's license which confirmed that she was under the age of twenty-one years. However, the minor in question was not produced by the respondent as a witness in the instant case and, according to the record, neither had she been produced to testify before the respondent; thus the age of the minor was not established by competent testimony. Cf. Abad v. Newark, Bulletin 619, Item 8. Moreover, a motor vehicle driver's license is not positive proof of age. Houlik v. Newark, Bulletin 232, Item 9.

Charge (1), relating to the sale of alcoholic beverages in original containers for off-premises consumption on November 3, 1968, will now be considered. Officer Thomas Sutton testified that at 6:05 p.m. on Sunday, November 3, 1968, he observed one Daniel Banks coming out of the side door of appellant's licensed premises carrying a package; that he spoke to Banks and, upon examination of the package Banks carried, found that it contained "a six-pack of Schaefer beer;" that he (Officer Sutton) called Larry Cochran, who was tending bar, outside of the premises and informed Cochran that he had just seen Banks coming out of the premises with a six-pack of beer. Cochran, according to Officer Sutton, denied selling Banks the beer in question.

Larry Cochran testified that he neither saw nor sold beer to Banks in the barroom on November 3, 1968. On cross examination Cochran stated that the side door was locked from the inside and, upon checking it, Officer Sutton found that to be so.

Timothy Mullins (employed as a bartender by appellant) testified that he was on duty on Saturday, November 2, 1968 from "six to eleven o'clock;" that about nine o'clock Banks ordered a six-pack, and near ten p.m. he (Mullins) told Banks "he had to take it out;" that Banks did as he was told but came back into the premises and engaged in conversation with some people; that, when he (Mullins) left at eleven o'clock, Banks was still there.

On rebuttal, Officer Sutton said "the door leading from the alley into the hallway was open; the door from the hallway to the bar was closed."

I am satisfied from the testimony of Officer Sutton that he gave a true and accurate account as to what

actually happened on November 3, 1968. Officer Sutton's testimony disclosed that he saw Banks coming out of the side door with a package which contained the six-pack of Schaefer beer in question.

I am not impressed with the testimony of Cochran or Mullins. I find as a fact that the six-pack of beer was purchased during prohibited hours in appellant's licensed premises on the date allegedly charged.

Under the circumstances, I recommend that an order be entered affirming respondent's action and finding appellant guilty on charge (1).

I further recommend that the action of the respondent in finding the appellant guilty on charge (2) be reversed.

In view of my recommendation to affirm the action of respondent in respect to charge (1) and to reverse its action on charge (2), I further recommend that the matter herein be remanded to respondent for modification of the suspension, which had heretofore been imposed. Cf. Gonzales & Borros v. Elizabeth, Bulletin 1344, Item 3.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the appellant, within the time limited by Rule 14 of State Regulation No. 15.

No answers to the said exceptions were filed by the respondent.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's report, and the exceptions thereto, which I find lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

ORDERED (1) That the action of the respondent in adjudging appellant guilty of Charge 1 be and the same is hereby affirmed; (2) That the action of the respondent in adjudging appellant guilty of Charge 2 be and the same is hereby reversed; (3) That this matter be and the same is hereby remanded to the respondent for the reimposition of modified penalty consistent with the determination herein.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 75 DAYS.

In the Matter of Disciplinary)
Proceedings against)
)
Maesm, Inc.)
t/a Maesm Tavern)
258 Johnston Avenue CONCLUSIONS
Jersey City, N. J.) and
ORDER
Holder of Plenary Retail Consumption)
License C-431, issued by the Municipal
Board of Alcoholic Beverage Control of)
the City of Jersey City.
-)

Miller, Hochman, Meyerson & Miller, Esqs., by Leonard Meyerson, 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 15, 28, May 2,14, June 2, 13 and 20, 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', and on said date of June 20, 1969, you also possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda and other writings pertaining to the aforementioned gambling activity; in violation of Rule 7 of State Regulation No. 20.

"2. On April 15,28, May 2,14, June 2,13 and 20, 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, and on said date of June 20, 1969, you also possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The Division's case was established through the testimony of two New Jersey State Police officers. Robert J. Gaugler (a New Jersey State Police detective), assigned to the criminal investigation bureau, testified that he has been engaged in the investigation of hundreds of cases involving gambling of the so-called numbers game during the past two-and-one-half years. Pursuant to a specific assignment to investigate alleged gambling activity at the subject licensed premises, he visited the premises on the dates set forth in the charges herein. His first visit was made to

this tavern on April 15, 1970 at about 1:10 p.m. At that time he observed the bartender (later identified as Samuel Petrick, vice president of the corporate licensee) accept money from several patrons who placed numbers bets with him. Petrick wrote these bets on a slip of white paper. These bets were "based on the number which is written in the newspapers which gives the total mutuel at the track, feature track of the day. It is the last 3 digits from the point-- the last 3 digits to the right of the decimal point." He then placed a $1 bet with Petrick on number 146. Petrick wrote the bet on a slip of paper and took the money and slip of paper into the rear room.

On his subsequent visits of April 28, May 2, May 14, June 2, June 13 and June 20, 1969, this witness also placed similar bets with Petrick. On each occasion he handed him a $1 bill, told Petrick that he wanted to play a number. Petrick wrote the number on a slip of white paper and accepted the money. Petrick was behind the bar engaged in bartending on these occasions.

On his visit to the premises on May 2 he observed a male (variously known as Bill, Shad and Wally, later identified as William Wally Cummings) accept a numbers bet from a patron and receive $1 therefor.

All of the bets placed with Petrick were numbers bets as heretofore described by the witness.

On June 20 he returned to the licensed premises and had in his possession a $1 bill, the serial number of which had been previously recorded. He placed a $1 numbers bet with Petrick on number 247. He left the premises at 12:26 p.m.

Detective Sergeant Paul A. Geczy (a member of the criminal investigation bureau of the New Jersey State Police, with more than twenty years experience in the investigation of similar matters) pursued this investigation on June 20, 1969. He testified that, after Gaugler left the premises, he entered the tavern at about 1:40 p.m., fortified with a search warrant for the premises. After identifying himself to Petrick and another male working in the kitchen (who later identified himself as William Wally Cummings), he produced and executed the said warrant. His search of the licensed premises disclosed many white slips of paper bearing numbers, which slips he identified as numbers slips. Some were found under the refrigerator in the kitchen, in a heater in the kitchen, on a shelf in a liquor closet, and in other parts of the premises. He also found large sums of money secreted in and about the premises. totaling $9,302.94. The marked $1 bill was included in that sum and was found, together with a large sum of money, in the kitchen liquor closet. He also confiscated the sum of $345 from the person of Petrick.

No witnesses were produced on behalf of the licensee.

This is a disciplinary proceeding which is civil in nature and not criminal; thus the proof must be supported by a fair preponderance of the believable evidence only.

Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). I have assessed the testimony herein and conclude that these charges have been proved by substantial evidence. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (1956).

It is therefore recommended that the licensee be found guilty of the said charge.

Licensee has a previous record of three suspensions of license by the Director, all for sales in violation of State Regulation No. 38, as follows: For ten days effective July 26, 1965 (Bulletin 1634, Item 2); for twenty-five days effective January 9, 1967 (Bulletin 1717, Item 7), for sixty days effective November 13, 1967 (Bulletin 1769, Item 4).

The prior record of three suspensions of license for dissimilar violations within the past five years considered, it is further recommended that the license be suspended for sixty days (Re Martinez, Bulletin 1904, Item 4), and for an additional fifteen days by reason of the record of suspensions for three dissimilar violations within the past five years (Re Clark, Bulletin 1877, Item 5), or a total of seventy-five days.

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, including the transcript of the testimony, the exceptions and 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 20th day of July 1970,

ORDERED that Plenary Retail Consumption License C-431, issued by Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Maesm, Inc., t/a Maesm Tavern for premises 258 Johnston Avenue, Jersey City, be and the same is hereby suspended for seventy-five (75) days, commencing at 2:00 a.m. Wednesday, August 5, 1970 and terminating at 2:00 a.m. Monday, October 19, 1970.

RICHARD C. McDONOUGH
DIRECTOR

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

In the Matter of Disciplinary Proceedings against Trufer, Inc. t/a Dohoney's Tavern 746 West Side Avenue Jersey City, N. J. Holder of Plenary Retail Consumption License C-497 for the 1969-70 licensing year and C-359 for the 1970-71 licensing year issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	CONCLUSIONS AND ORDER

Levy, Lemken and Margulies, Esqs., by John J. Lemken, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads guilty to charges (1) and (2) alleging that on divers days between May 22 and July 18, 1969, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 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 Oak Bar, Inc., Bulletin 1899, Item 2.

Accordingly, it is, on this 22nd day of July, 1970

ORDERED that Plenary Retail Consumption License C-359, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Trufer, Inc., t/a Dohoney's Tavern, for premises 746 West Side Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, July 28, 1970, and terminating at 2:00 a.m. Monday, September 21, 1970.

Richard C. McDonough
Director