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

BULLETIN 2009 November 11, 1971

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ITEM

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1. APPELLATE DECISIONS - HEIDE'S TAVERN, INC. v. SOUTH AMBOY.

Heide's Tavern, Inc., t/a Martin & Millie, Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Common Council of the City of South Amboy, Respondent.	)	

Kovacs, Anderson, Horowitz, Rader & Dato, Esqs., by Oliver R. Kovacs, Esq., Attorneys for Appellant
John E. Mullane, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is addressed to the Common Council of the City of South Amboy (Council) which, by resolution dated July 6, 1971 denied appellant's application for renewal of its plenary retail consumption license for the current licensing period for premises located at 506 Washington Avenue, South Amboy.

The resolution adopted by the Council sets forth the basis for its action, as follows:

> "WHEREAS, in the application filed with the Council of the City of South Amboy on June 9th, 1971 and upon which they sought a renewal of their current Plenary Retail Consumption License No. C-23, they failed to disclose any answer to question #35, or elsewhere in said application that a Plenary Retail Consumption License held by them for said premises had been suspended by the Municipal Issuing Authority for 20 days effective Jan. 2, 1968, and also had been suspended for 30 days effective Feb. 1, 1966, both instances being for the sale to minors in violation of Rule 1 of State Regulation #20, and that a Plenary Retail Consumption License held by Martin and Mildred Mikulis t/a Martin & Millie for premises at 564 South 11th Street, Newark, N.J. was suspended by the Issuing Authority for 30 days effective Jan. 1, 1964, for violation of the local hours ordinance and permitting a brawl, in violation of Rule 5 of State Regulation #20, such suspensions being in violation of R.S. 33:1-25; and
>
> WHEREAS, they failed to disclose their non vult plea to charges alleged that on June 30, 1970 and July 1, 1970 sold numerous drinks of various kinds of alcoholic beverages for off premises consumption

in violation of R.S. 33:1-2, and too on these same days permitted foul, filthy and abusive language by patrons on the licensed premises in violation of Rule 5 of State Regulation #20;

THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Governing Body of the City of South Amboy, that the application for renewal of Plenary Retail Consumption License No. C-23 is hereby denied by reason of the applicant's failure to disclose the aforementioned violations as required to in Question No. 35 of the applicant's application;"

In its petition of appeal appellant alleges that the action of the Council was erroneous and should be reversed for reasons which may be briefly summarized as follows:

(1) The failure to disclose the violations set forth in the said resolution in appellant's answers to questions No. 34 and No. 35 caused no "damage" to the community or to the Council since the Council had knowledge of these offenses; and therefore no fraud was "perpetrated".

(2) The failure to disclose the said complete prior record of violations by appellant was "the result of inadvertence and mistake of his attorney" which inadvertently was compounded by a language barrier between appellant's president and the law firm representing the appellant.

No answer was filed by respondent as required by Rule 4 of State Regulation No. 15. However, an affidavit by Edward McLane, Business Administrator of the City of South Amboy, purportedly on behalf of the Council (although not so stated therein) repeats the reasons set forth in the subject resolution and states that such non-disclosure was the reason for the denial of appellant's renewal application.

Upon the filing of this appeal, an order dated July 29, 1971 was entered by the Director extending the term of appellant's 1970-71 license until the determination of this appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 with full opportunity for the attorneys for the respective parties to present testimony and cross-examine witnesses.

The renewal application was presented into evidence and it is noted that there is no accompanying executed affidavit by the corporate appellant as required by the rule and therefore the said application is technically defective. This apparently was overlooked not only by the appellant but by the clerk of the Council and should be completed.

Martin Mikulis, the president and principal stockholder of the corporate appellant, gave the following account: Appellant has operated under this license at the present premises since 1967. When he brought the application form to his attorney for preparation, his attorney was about to leave for his vacation. The attorney handed the application to Mrs. Patricia Anderson, his secretary, with instructions to complete the form and return it to Mikulis for execution and delivery to the Council. Without consulting Mikulis as to appellant's prior record of violations, she simply

copies the information contained in a prior application, which did not contain a complete record of prior violations and certainly did not have the record of violations which occurred during the previous licensing period. This witness has difficulty with the English language and obviously required competent assistance in the preparation of the said application.

He admits the prior violations but states that he had no intention of deceiving the Council. Furthermore he adds that the premises are operated in a law-abiding manner and that during the last licensing period the police were summoned to these premises on only one occasion.

With respect to the charge that the appellant permitted and allowed foul, filthy and abusive language by patrons on the licensed premises on June 30 and July 1, 1970, he explained that he has tried to control his patronage.

Mrs. Patricia Anderson, the secretary in the office of appellant's attorney, corroborated the testimony with respect to her preparing the subject application for renewal. She stated that she inadvertently incorrectly answered questions No. 34 and 35, when she prepared the application and did not seek to obtain the necessary information which would be required for an accurate preparation thereof.

Edward A. McLane, the Business Administrator for this community stated that the application was received by the Council after other applications were submitted and therefore was not considered at its regular meeting on June 30, 1971.

Councilman Lewandoski stated that he voted to deny the said application because of the failure of the appellant to disclose the prior violations. He also stated that he had examined the "police report" with reference to police calls to the tavern and he was advised by the police chief "to take a hard look at the renewal."

No police reports were offered in evidence nor were any police officers called to testify with reference to conditions at the said premises.

It should be noted that the sole reason set forth in the resolution for denying the application for renewal was the failure of the appellant to fully answer questions No. 34 and 35, relating to the prior record of violations by the appellant. While it is clear that the failure to fully answer those questions constitutes a violation of N.J.S.A. 33:1-25 and should properly be the basis for action for suspension of the said license, the explanation given by appellant's witnesses for the failure to fully disclose the prior record should not subject the appellant to a denial of a renewal of the license.

I have observed that appellant's president has a limited grasp of the English language. Furthermore, I find that it was clearly the negligence of the law firm representing him that was responsible for the said omission. It is interesting to note that N.J.S.A. 33:1-25 pertaining to false or misleading statements reads as follows:

"...All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor.

> Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material fact in the securing of a license are grounds for suspension or revocation of the license." (Underscoring added.)

It is my view that the statute contemplates an intentional, knowing or willful perversion of the truth. In order to establish criminal guilt under this section, a person must have a guilty animus or an animus fraudare, an intent to cheat, deceive or impose upon. Cf. Feldman v. Bayonne, Bulletin 1980, Item 1. Of course, appellant's suppression of material facts should properly subject it in disciplinary proceedings to suspension or revocation of its license.

I do not believe that the appellant intended to mislead or deceive the Countil.

The fact is that appellant was suspended by the Director for sixty days, effective October 26, 1970, upon its plea of non vult to three charges (1) sale of alcoholic beverages for off-premises consumption, in violation of R.S. 33:1-2; (2) permitting foul and obscene language on the premises and (3) in its current application failed to disclose full record of prior license suspensions, in violation of R.S. 33:1-25. (Re Heide's Tavern, Inc., Bulletin 1944, Item 4.)

The suspension on the third charge, occurring only a few months ago, was obviously known to the Council, so it cannot be asserted that it was unaware of appellant's prior record. While this does not excuse the failure of appellant to truthfully comply with the statutory requirement for complete disclosure, the mitigating circumstances should be considered, together with the other circumstances in this matter.

The Council for the first time at this plenary hearing on appeal, seeks to introduce another reason, not set forth in the resolution, for denying renewal. Thus, one of its Councilmen stated that he considered a derogatory police report in voting to deny the said application.

However, the said report was not offered in evidence at the de novo hearing nor did any police officers testify with respect thereto. Also there is no evidence that the other Council members considered the police reports and the alleged misconduct that existed at these licensed premises in voting to deny the application for renewal. In fact, it must be assumed from the record that the only reason for the Council's action was appellant's failure to disclose its prior record.

It would seem unfair to require the appellant to meet this present allegation by Councilman Lewandoski in the absence of any prior notice thereof. Adequate notice and an opportunity to prepare remains the key to proper administrative proceedings. 1 Davis, Administrative Law, sec. 8.05 at 530; sec. 7.02 at 412 (1958). It offends elemental concepts of procedural due process to make a finding on a matter neither charged in the subject resolution nor adequately litigated at this appeal hearing.

Furthermore, the Division review is of the exercise of a discretionary power of the municipal issuing authority, and such review should be based upon the evidence it considered, as reflected in the adopted resolution. Cf. Barnett's Wines and Liquors, Inc. v. Cranford et al., Bulletin 1991, Item 1.

There is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). If denied

on reasonable grounds such action will be affirmed. On the other hand and where an application for renewal of a license is denied capriciously and not based on reasonable grounds, the action will be reversed. Jones v. Passaic, Bulletin 1972, Item 2; Tompkins v. Seaside Heights, Bulletin 1398, Item 1.

As the then Director stated the applicable principle in Monesson v. Lakewood Township, Bulletin 657, Item 1:

> "As I have heretofore pointed out on many occasions, the grant of a renewal license, like that of an original license is subject to the exercise of a reasonable discretion on the part of the local issuing authority. Where, however, as in this case, a license has been renewed year after year, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence...
>
> "If, during the course of the licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted."

See Salmanowitz v. Hightstown, Bulletin 807, Item 2; Bd. of Com'rs of Bayonne v. B & L Tavern, Inc., 42 N.J. 131 (1964).

From my examination of the entire record herein, I find that the appellant's prior record does not justify a denial of renewal. The denial of renewal of a license is an extreme measure and the authority to deny same should be exercised with great caution. It is elementary that the holder of a license or privilege acquires through his investment therein an interest which is entitled to some measure of protection. Cf. Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462 (App. Div. 1955).

I am of the conviction, from my examination of the entire record herein, that the basis for the denial by the Council was not sufficient to deprive appellant of its license. The appellant, however, should be cautioned that it bears the responsibility for the proper completion of its application with full and truthful answers to all the questions therein. Furthermore, it should be warned that its premises and the patronage must be kept under strict control, both inside and outside the said premises. Galasso v. Bloomfield, Bulletin 1387, Item 1.

Since I have concluded that the Council has acted erroneously, it is recommended that its action be reversed and that upon the proper completion and execution of the " Affidavit of Corporate Applicant" by appellant, that the Council be directed to renew appellant's plenary retail consumption license for the 1971-72 licensing period.

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 them as my conclusions herein.

Accordingly, it is, on this 20th day of September 1971,

ORDERED that the action of the respondent be and the same is hereby reversed, and the respondent be and is hereby directed to grant renewal of appellant's plenary retail consumption license for the 1971-72 licensing period upon appellant's completion and execution of the "Affidavit of Corporate Applicant" annexed to the subject application.

Richard C. McDonough
Director

2. APPELLATE DECISIONS - MARINACCIO v. ASBURY PARK.

Francesco A. Marinaccio, t/a Marino's Bar & Restaurant, Appellant, v. City Council of the City of Asbury Park, Respondent.	On Appeal CONCLUSIONS and ORDER

Louis R. Di Lieto, Esq., Attorney for Appellant
James M. Coleman, Jr., 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 City Council (hereinafter Council) whereby Council imposed conditions upon renewal of appellant's plenary retail consumption license for the 1971-72 license period for premises 807-809-811 Main Street, Asbury Park. The license was issued subject to the special conditions (1) "That the premises be properly policed" and (2) "That no music be played on the licensed premises."

The petition of appeal alleges that the action of Council was unreasonable in that "The condition requiring that the premises be properly policed is vague and unenforceable" and "The provision that no music be played on the licensed premises ... is too broad in its scope...."

No answer was filed on behalf of Council pursuant to Rule 4 of State Regulation No. 15. The appeal was heard de novo in accordance with Rule 6 of State Regulation No. 15, at which time the attorneys for the respective parties had full right to produce testimony and cross-examine witnesses.

An order dated July 2, 1971 was entered by the Director staying the effect of the special conditions imposed in the license until determination of this appeal.

Appellant moved to amend the petition of appeal to add a further ground, i.e., that respondent had not first obtained the permission of the Director of this Division to impose the conditions in the license as is required by Rule 10 of State Regulation No. 3 in order that such conditions be legally effective.

By agreement, testimony was first adduced by Council in support of its action in view of its failure to have furnished a statement of the grounds for its action in accordance with Rule 4 of State Regulation No. 15. Ascenzio R. Albarelli (a councilman of the City) testified that he was familiar with the licensed premises and sat in deliberation of the renewal with his colleagues. The conditions imposed were the result of prior happenings at or near the licensed premises and complaints received from residents concerning objectionable noise arising from the premises.

Councilman Edward R. English testified that there were groups of people congregating outside the premises and the noise from juke box, radio and voices disturbed residents in the area. He and his fellow Council members felt the premises should be controlled by the licensee to eliminate both nuisances. He believed the noise and the music coming from the open door of the premises attracted large groups of people, many of whom loitered in front of the establishment. The conditions were imposed to correct both situations.

The testimony of Ray Kramer (a councilman) revealed that the action of the Council was unanimous in voting to impose the said conditions and that his vote was based upon the belief that the licensee has the duty of discouraging disruptive congregants in front of the premises and the emanation of loud noises. The witness is a licensee in another community and gauges the responsibility of tavern owners on the standards of full adherance to law, regulations and ordinances. He believes appellant could have obviated the conditions had he been more strict in his compliance with the regulations of this Division with respect thereto.

Appellant testified that, despite the difficulties he was encountering in the management of his establishment which resulted from the destruction of several other licensed premises by fires during a riot, resulting in patronage in his facility of unsavory characters whom he disavowed, the police were unsympathetic. He had taken steps to reduce the negative effect of such undesirable patrons and believed that in time the situation would correct itself by dint of this extra effort. He was at loss to find means to provide the round-the-clock policing that the condition required (his premises being open twenty of each twenty-four-hour period) and, further, the absence of any music whatever, from radio or television, was an unfair requirement -- there were no other licensees so restricted.

There were two primary factors embraced in the testimony of the Council's witnesses. The first was that the police force of the City was so undermanned that it could not cope with the task of continuously policing any particular tavern and, secondly, the record of the licensee resulted in seven charges preferred against him during the past year-and-a-half.

Notice is herewith taken of the official record of this licensee, revealed on appeal to the Director wherein he affirmed the action of Council in suspending appellant's license for forty-five days for sales of alcoholic beverages to minors (Marinaccio v. Asbury Park, Bulletin ____, Item __) and another complaint charging him with sale of a bottle of whiskey the label of which did not truly disclose its con-

tents. In 1968 his license was suspended for permitting gambling on the premises and during the same year the license had been further suspended for a similar violation. Two years earlier his license had been suspended for the same cause. Altogether, the licensee has been in difficulty either with the municipal issuing authority or with this Division repeatedly during the past five years.

Preliminarily it should be observed that an issuing authority may impose any condition or conditions to the issuance of a license deemed necessary and proper to accomplish the objects of the Alcoholic Beverage Law. N.J.S. 33:1-32; Lubliner v. Paterson, 33 N.J. 428, 447 (1960).

It has been long established that a licensee may be required to post guards, special police or constables in or about the licensed premises to keep the peace. DeLuccia v. Paterson and Div. of Alcoholic Beverage Control (not officially reported, recorded in Bulletin 1271, Item 1); Epstein v. Paterson, Bulletin 1398, Item 2; Stratford Inn v. Avon-by-the-Sea, Bulletin 1853, Item 4. Such requirements may be made quite specific, i.e., "... employ a constable each night of the week from 10:00 P.M. to the hour of closing" (DeLuccia v. Paterson, Bulletin 1240, Item 1); "... special police officer shall be employed by appellant on the licensed premises on Wednesday, Friday, Saturday and Sunday evenings, from 8:00 P.M. to closing" (Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2).

The condition in question requires "that the premises be properly policed." Appellant charged that such condition was too vague and carried with it no definition of what was meant by the word "properly." Councilman Albarelli, when asked if it were his view that the premises be policed from morning until closing hour, responded, "Not necessarily." On direct examination he explained "... Actually, in the early part of the day it wouldn't be [necessary to have guard] but late at night, in the wee hours of the morning, we felt it should be ...." Councilman Edward R. English testified in that connection: "... It [presence of a guard] doesn't have to be in the morning. In the evening or late at night. People don't want to come in the area. It attracts them inside and outside. They congregate out there. This is the outcome." When questioned on the same subject, Councilman Kramer responded, "... You aren't hiring somebody twenty-four hours a day but at the hours of greater traffic at night." The Council's attorney admitted that this condition is vague, but such vagueness is to the advantage of appellant in that the hours during which a guard would be present would be at his election.

Shortly after this Division was established, Director (then Commissioner) Burnett was faced with a challenge to the condition on a license that "the outdoor rolle bocci game be discontinued." He determined that the condition should be imposed only to prevent playing after dusk. Eleuteri v. Trenton, Bulletin 141, Item 9. In a similar situation, the granting of a license was affirmed by the Director who added two special conditions, i.e., that there be no music after midnight except on Saturdays, Sundays and legal holidays and that outside lights shall not shine on the dwelling-house to the north. Coventry v. Eatontown et al., Bulletin 413, Item 13. Thus, conditions imposed become an integral part of the license; they should be clear and easily followed. N.J.S. 33:1-32 "is guided by the test of what is reasonable and serves the best interest of the community." Borko v. Mansfield, Bulletin 1894, Item 3.

With these guiding principles as a basis, it will be recommended as to condition (a) that the premises be properly policed by the employment by licensee of a special police

officer during evening hours from 8 p.m. to the closing hour every night.

The second condition, i.e., "That no music be played on the licensed premises", suffers from the same malady. Restriction in licenses against certain music is not uncommon. "That no music of any nature or kind be played upon or in said licensed premises, excepting music furnished by radio, television, or juke box" (Papp v. Trenton, Bulletin 1039, Item 1); "That no music of any nature or kind be played upon or in said licensed premises, excepting music furnished by radio or television" (Cesar v. Trenton, Bulletin 951, Item 2). Borko v. Mansfield, supra. Testimony of the officials shows a dichotomy of opinion respecting the playing of music. "We would have no objection to music provided it wasn't done to attract or congregate" stated Councilman Albarelli. Councilman English commented, "I figured if they didn't have a juke box it would be better controlled." Councilman Kramer was more positive: "Well, I am against music entirely."

The licensee is not prohibited from having radio or television for the enjoyment of his patrons, but the condition imposed, when related to the radio or television, is patently absurd. To require the licensee to extract and remove such music as would emanate from the radio or television is obviously unreasonable. I would therefore recommend as condition (b) that no juke box be played on the licensed premises, and that music from radio and television on the licensed premises be modulated so as to avoid congregation of persons outside the premises and so as not to disturb peace and quiet of neighbors.

The appellant complains that the conditions imposed in his license are unique to him, hence he is the victim of a more militant attitude on the part of respondent. There is nothing in the record to suggest other than proper motivation of respondent.

Counsel for respondent urged that the imposition of the conditions in the license was a compromise; thought existed among some of the councilmen that the license should not be renewed. The conditions were imposed in an effort to force the licensee to improve the conditions surrounding his establishment. The intent of respondent is laudable in view of appellant's sorry record.

Judicial notice is taken of the fact that one-tenth of the licenses issued by respondent carry some condition, some of which are described as: no orchestra, singing, dancing or other form of entertainment except the playing of radios, no orchestra or dancing on premises, no live music or entertainment, no music, entertainment except radios and music box. From the above phraseology it is apparent that respondent has continually excepted radio. Television would be presumed to fall within the same exception.

For the reasons aforesaid, it is recommended that the action of respondent be affirmed subject to the conditions as herein modified and approved by the Director.

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 transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations subject to the special conditions set forth hereinbelow. Cf. In re Club "D" Lane, Inc., 112 N.J. Super. 577, 579 (App.Div. 1971).

Accordingly, it is, on this 20th day of September 1971,

ORDERED that the action of respondent City Council of the City of Asbury Park be and the same is hereby affirmed subject to the following special conditions:

(a) That premises be properly policed by the employment by the licensee of special police officer during the evening hours from 8 p.m. to the closing hour, when the premises are open to the public,

and

(b) That no juke box or live music be played on the licensed premises and that the volume of sounds from radio or television be modulated so that they may not be heard on the exterior of the premises.

Richard C. McDonough,
Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - DISMISSED.

In the Matter of Disciplinary Proceedings against

Anthony F. Scelsa
t/a Kelly's Wines & Liquors
504 Broadway
Newark, N. J.,

Holder of Plenary Retail Distribution License D-57, issued by the Municipal Board of Alcoholic Beverage control of the City of Newark.

CONCLUSIONS and ORDER

Schapiro, Steiner & Walder, Esqs., by Justin P. Walder, 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 charge:

"1. On October 29 and November 9, 1970, 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 October 29 and November 9, 1970, 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."

The Division presented its case through the testimony of ABC agents R and G. Agent R testified that on October 29, 1970 he was alone, en route to his home about 2:00 p.m. when he stopped at the licensed premises for the purchase of a bottle of spirits for his own personal consumption. A conversation with the clerk, who was later identified as Willie Martin, resulted in the placing of a bet on number 343, the same number as the amount of the purchase. He reported the incident to his superior and thereafter to one of the detectives of the State Police.

Agent G testified that on November 9, 1970, he placed a numbers bet with Willie Martin in the doorway of the licensed premises. The making of this bet was later related to Detective Belcolle of the New Jersey State Police. Agent G was alone on November 9 when this bet was placed.

Upon behalf of the licensee, Detective Belcolle of the New Jersey State Police testified that he had been called into an investigation by the agents of this Division on October 29, 1970 concerning alleged gambling activity that was taking place at 91 Oritan Street, and on the sidewalk in front of Ben's Round Bar and Kelly's liquor store. The State Police had received information concerning this gambling activity and on the following day, October 30, the witness met at the ABC offices to discuss the investigation with several persons including agents R and G. He was definite that he was not then advised that agent R had placed a bet with Willie Martin on the previous day. On October 30, he did place a bet with Willie Martin at Ben's Round Bar, which is a tavern next door to the licensed premises herein. The total investigation progressed from October 29 until November 12; a search warrant was obtained for Ben's Long Bar, not for the premises here in question. The witness denied being advised by agent G that he (agent G) had placed a bet with Willie Martin in the doorway of the licensed premises or at the premises at all on November 9. The witness concluded that all that he had learned from the agents concerning gambling in connection with the licensed premises was gambling that took place outside the licensed premises on the sidewalk. Neither agent ever mentioned numbers bets being made on the licensed premises.

The licensee produced Willie Martin as a witness. He testified that he had worked for the licensee and recognized agent R to whom he once sold a package of cigarettes. The licensee was present in the store at that time. He had no recollection whatever of agent G making a bet with him within the store.

Joseph Kunze, an employee of the licensee, testified that his regular employment is in the Newark Fire Department and that as an extra job he works for the licensee. He recalled the two agents, R and G, coming into the store when he was on duty, their visit being to locate Willie. He denied he knew or said that Willie takes numbers bets and had no knowledge that any numbers bets were placed in the licensed premises. Willie was a delivery boy who worked from 2:00 p.m. to 6:00 p.m.

Anthony Scelsa, the licensee, testified that he never saw either of the agents in his store on the dates in question; Willie is a delivery boy whose hours begin at 2:00 p.m. and end at 5:00 p.m. Willie never waits on customers for the sale of alcoholic beverages but might make a sale of a package of cigarettes to a customer. Willie had worked there but a few months and the witness never questioned him about placing numbers bets or gambling because he had no reason to. He never left Willie in charge of the store but was always there when Willie worked.

Agent S of the Division was called as a rebuttal witness and he testified that he had informed Sergeant Rosko of the New Jersey State Police on October 30 of the visit by agent R to the licensed premises the previous day and of the bet the agent had made with Willie Martin. In consequence of this and other calls, a conference was set up at the Division office with Sergeant Rosko and other detectives of the New Jersey State Police for November 6.

In consequence of the testimony of agent S, the licensee called Sergeant Rosko, who testified that he did not recollect any information received by him of agent S indicating that numbers bets were taken by Willie Martin inside the licensed premises. He admitted that if he had been so told he would

have anticipated a search warrant would have been directed to the licensed premises as it was to Ben's Long Bar and the Martin home.

At the outset of the hearing, the attorney for the licensee moved for the dismissal of the first or second charge, in the alternative, as they both relate to one offense. It is clear that Rule 7 is particularly applicable where the placing of numbers bets are involved. The alleged gambling activity, furthermore, may also be chargeable under Rule 6 of State Regulation No. 20, and, as the attorney for the Division pointed out, it is the usual practice to bring these charges under both rules although the Division considers both charges as one violation for penalty purposes. The Blue Door Tavern, Inc., Bulletin 1954, Item 2. It is, therefore, recommended that the motion be denied.

In adjudicating matters of this kind, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Bev. Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

In appraising the factual picture presented and having had the opportunity to observe the demeanor of the witnesses as they testified, their credibility has been assessed. Testimony, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable under the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

It appears that during the fall of 1970, the enforcement arm of this Division was concerned with the prevalence of gambling within many licensed premises in this area of Newark. The numbers business was under their particular scrutiny along with Martin and his father-in-law, Gabe Bronson, both associated with that business. Betting activity taking place on the sidewalk in front of the licensed premises, and Ben's Long Bar alongside of it, as well as in the area generally, could conceivably have caused a mis-impression of the agents as to the location where bets were placed.

The version presented by the two New Jersey State Police was forthright, credible and accurately depicted what transpired within their knowledge concerning the licensed premises. Both denied ever being apprised that any bets had been taken whatsoever within the licensed premises. It is unlikely that the pertinent information given to Sergeant Rosko would have had omitted the bet placed by agent R within the premises, and it is just as incredible that Detective Belcolle would not have been similarly advised by agent G. To cap matters agent S testified that he advised Sergeant Rosko of agent R having placed the bet within the licensed premises, but Sergeant Rosko denied ever receiving such information. Such variations in testimony among enforcement officials must lend themselves to the benefit of the licensee.

The testimony of the licensee was impressive as coming from one who would not countenance apparent wrongdoing on his

licensed premises. He was candid in relating the problems faced in operating a package store in Newark and the circumstances under which Martin came to work for him. He appeared to be the kind of man who would run a "tight ship"; logic indicates that Martin would not attempt to take bets under the nose of this man. Martin's own testimony, while lightly regarded, was direct in admitting that he "took the number from them outside premises". While he was apparently charged with that offense, he was not so charged concerning accepting numbers bets inside the licensed premises. The testimony of Kunze offered additional corroboration to the character and manner under which the licensed premises was managed; weight was added to the impression that Martin or any other employee would hesitate before collecting bets within the licensed premises.

It would appear that there had been error in the recollection of the agents pertaining to the time and place of making the numbers bets with Martin. With realization that there were many places and several persons involved in this rather involved investigation, it is most human for the agents to have erred in the reproduction of a few details within its scope. The variances in these details preponderate in favor of the licensee.

After reviewing the evidence and exhibits, it is concluded that the Division has not established the truth of the charge by a fair preponderance of the believable evidence.

It is recommended that the charges against this licensee be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with written argument, were filed by the attorney for the Division pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits, the Hearer's report, and the exceptions and argument to the Hearer's report which I find have either been answered in the Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly; it is, on this 22nd day of September 1971,

ORDERED that the charges herein be and the same are hereby dismissed.

Richard C. McDonough,
Director.

4. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER - MODIFICATION OF SUSPENSION UNDER NEW DIVISION POLICY.

In the Matter of Disciplinary Proceedings against

Eighth Ward Progressive Republican Club
619 Ferry Avenue
Camden, N.J.,

Holder of Club License CB-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Supplemental ORDER

Ballen, Baroff and Laskin, Esqs., by Lee B. Laskin, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

On November 13, 1970 Conclusions and Order were entered herein suspending the license for sixty days, effective Monday, November 30, 1970 upon licensee's plea of non vult to charges alleging (1) that on May 16, 1970 it sold drinks of alcoholic beverages to non-members in violation of Rule 8 of State Regulation No. 7, and (2) and (3) that on the same date it sold and permitted the consumption of alcoholic beverages on its licensed premises during prohibited hours, in violation of a local ordinance. Re Eighth Ward Progressive Republican Club, Bulletin 1948, Item 6.

Prior to the effectuation of the order of suspension, on appeal filed, the Appellate Division of the Superior Court by order dated December 3, 1970 stayed the operation of the suspension until the outcome of the appeal. The appeal was not thereafter processed by the licensee, and the Appellate Division of the Superior Court, on its own motion, entered an order on September 13, 1971 dismissing the said appeal. Thus, the suspension may now be reimposed.

The attorney for the licensee has now petitioned for a modification of the said suspension.

After consideration of the facts and circumstances herein, and in accordance with present Division policy (Cf. Cuttino, Bulletin 1985, Item 6), which policy was not in effect at the time the said suspension was imposed, and for good cause appearing, I have determined, in the exercise of my discretion, to reduce the suspension, heretofore imposed, from sixty days to thirty days.

Accordingly, it is, on this 20th day of September 1971,

ORDERED that Club License CB-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Eighth Ward Progressive Republican Club, for premises 619 Ferry Avenue, Camden, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Tuesday, October 5, 1971, and terminating at 2:00 a.m. Thursday, November 4, 1971.

Richard C. McDonough
Director

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against	)	
Joe-Jean, Inc. t/a The Cecil Inn Black Horse Pike Monroe Township (Gloucester County) PO RD 4, Box 51, Williamstown, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-11 issued by the Township Committee of Monroe Township.	)	

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 1, 1971 it sold an alcoholic beverage to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Capitol Plaza Liquors, Inc., Bulletin 1990, Item 10. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of $400 in lieu of suspension.

Accordingly, it is, on this 20th day of September 1971,

ORDERED that the payment of a $400 fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough
Director